

## **Reorienting Jamāluddīn ‘Aṭiyyah’s Maqāṣid al-Usrah in the Regulation of Polygamy in the Indonesian Compilation of Islamic Law**

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### **Abstract:**

Polygamy is an unique topic for research, but there is a lack of research related reconstruction and reorientation of polygamy. This study tries to conduct a research related reconstruction and reorientation of polygamy regulations in the Compilation of Islamic Law (KHI), specifically Articles 55–59. Compilation of Islamic Law (KHI) having been in force for over 30 years, requires a new reading (*the expedient of re-interpretation*) to preserve the values of *maqāṣid* in facing contemporary social dynamics. A qualitative approach with utilizing a library research method and content analysis is used to explore the *maqāṣid* values and evaluate their alignment with Indonesia’s positive legal norms through the philosophical framework of *maqāṣid al-usrah* developed by Jamāluddīn ‘Aṭiyyah. This study finds that the KHI implicitly integrates three core dimensions of ‘Aṭiyyah’s *maqāṣid al-usrah*, namely *taḥqīq al-sakīnah wa al-mawaddah wa al-raḥmah*, *tanzīm al-’alāqah bayn al-jinsayn*, and *tanzīm al-jānīb al-mālī li al-usrah*, primarily through the key requirement of acting justly (Article 55 Paragraph 2) and the necessity of obtaining permission from the Religious Court (Article 56). ‘Aṭiyyah’s concept, which demands psychological and emotional justice (*al-’adālah al-nāfsi-yah wa al-wijdāni-yah*), provides a strong foundation for reorienting the

interpretation, shifting the focus from formal procedure to the substance of the objective. The article recommends adding ethical and social clauses (such as psychological assessment) and explicitly integrating the *maqāṣid al-usrah* principles into the KHI, so that Islamic family law can serve as a contextual, humanistic, and solution-oriented guide in realizing substantive justice and protecting family *sakīnah*.

**Keywords:** *Maqāṣid al-Usrah; Jamāluddīn ‘Aṭīyyah; Polygamy; Regulation; KHI.*



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## Introduction

In the view of Islam, the family holds a highly strategic position as the smallest social unit, forming the foundation for an ethical and civilized society. Islam perceives the family not merely as a bond of blood or a biological relationship, but as an institution entrusted with the sacred mission of nurturing *insan kamil* (the perfect human being) who is faithful, pious, morally upright, and contributes positively to social life. Therefore, the regulation of family law in Islam is integral and comprehensive, considered the core of *sharī'ah*<sup>1</sup> encompassing all aspects of life, from marriage and spousal rights and obligations to child education and conflict resolution. In this context, the values of *maqāṣid al-sharī'ah* serve as the main philosophical framework that aims not only to maintain family order but also to direct society toward achieving *maslahah* (public interest) at the communal and national level.<sup>2</sup> Hence, it is crucial to understand how Islamic family law integrates these noble values into its various legal codifications.<sup>3</sup>

The Compilation of Islamic Law (KHI), although serving as the primary source of substantive law in Indonesia's Religious Courts for more than three decades, now requires renewed interpretation to address shifting social realities reflected in empirical data. Official statistics from the Directorate General of Religious Courts (Badilag) recorded 465,063 new divorce-related cases in 2023,<sup>4</sup> while national demographic reports from BPS show declining marriage rates alongside persistently high levels of marital dissolution<sup>5</sup> - patterns that underscore the urgency of contextualizing KHI's provisions, especially those related to polygamy, marital rights, and family stability. Within the framework of Muslim family law reform, Anderson's four expedients - procedural, eclectic, re-interpretation (*ijtihād*), and administrative mechanisms - highlight re-interpretation as a crucial method for safeguarding *maqāṣid al-sharī'ah* values of justice and welfare amid these empirical changes. The historical rejection of the 2004 Counter Legal Draft of the KHI (CLD-KHI) further demonstrates the challenges of reform

<sup>1</sup> Eko Setiawan, "Dinamika Pembaharuan Hukum Keluarga Islam Di Indonesia," *De Jure: Jurnal Hukum dan Syar'iah* 6, no. 2 (2014), <https://doi.org/10.18860/j-fsh.v6i2.3207>.

<sup>2</sup> Sri Astuti A. Samad, "Kajian Hukum Keluarga Islam dalam Perspektif Sosiologis di Indonesia," *El-Usrah* 4, no. 1 (2021): 138–52.

<sup>3</sup> Hasan Husaini et al., "Peran Hukum Islam dalam Pembangunan Hukum Nasional," *UNES Law Review* 6, no. 2 (2023): 4287–88.

<sup>4</sup> "https://badilag.mahkamahagung.go.id/pojok-dirjen/pojok-dirjen-badilag/prinsip-mempersulit-perceraian?utm\_source=chatgpt.com," n.d. accessed Sunday, December 7, 2025

<sup>5</sup> "https://indonesia.go.id/kategori/feature/9735/angka-perkawinan-anak-dan-dewasa-di-indonesia-perubahan-sosial-dan-kesadaran-kolektif?lang=1&utm\_source=chatgpt.com," n.d. accessed Sunday, December 7, 2025

attempts that insufficiently integrate *uṣūl al-fiqh* principles and contemporary demographic evidence, reinforcing the need for future KHI analysis to merge *maqāṣid*-based interpretation with current legal and statistical data to ensure that Islamic family law remains socially responsive and substantively just.<sup>6</sup>

One contemporary Islamic scholar who has given considerable attention to the reconstruction of family values based on *maqāṣid al-sharī'ah* is Jamāluddīn 'Aṭiyyah. He developed the concept of *maqāṣid al-usrah* as a formulation of fundamental values that must be protected within the family institution, extending the traditional *ad-darūriyyah al-khams* (five necessities).<sup>7</sup> 'Aṭiyyah offers a fresh and profound perspective in understanding *maqāṣid al-sharī'ah* as manifested in these necessities, with a specific emphasis on the aspect of marriage within the context of Islamic law. He identifies seven core objectives contained within marriage as regulated by *sharī'ah*, which not only cover family rights and obligations but also touch upon crucial dimensions of human life, including the religious, social, and economic aspects. The seven core objectives are: regulating the relationship between the sexes (تنظيم العلاقة بين الجنسين); preserving progeny/species (حفظ النسل/النوع); creating a family of *sakīnah*, *mawaddah*, *wa rahmah* (تحقيق السكينة والمودة والرحمة); protecting lineage (حفظ النسب); maintaining religiosity within the family (حفظ الدين في الاسرة); regulating the institutional aspect of the family (تنظيم الجانب); and regulating the financial aspect of the family (تنظيم الجانب المالي للأسرة).<sup>8</sup>

Within these seven core objectives, it is clear that Islam, through its *sharī'ah*, comprehensively regulates the structure and life of the family to maintain the honor, continuity, and harmony of relationships among family members and society at large. Islam introduces the system of marriage as a form of honoring the relationship between men and women and as a legitimate means of satisfying sexual desire. Thus, Islam lays the foundation for the family within a legal order that not only maintains social integrity but also ensures justice, dignity, and the overall welfare of humanity. Thus, the *maqāṣid al-usrah* concept offered by 'Aṭiyyah is not rigid or purely textual but is flexible toward the actual needs of the Muslim community, provided it does not contradict the fundamental principles of *sharī'ah*. It can be seen in the following table:

**Table 1.** Mapping Seven *Maqāṣid al- Usrah*

No.	<i>Maqāṣid al- Usrah</i>	Short Explanation	Indicators / Implementation
1	<i>Tahqīq al- Sakīnah</i>	Family become room peace emotional, stability psychological, and inner support.	Communication harmonious, minimal conflict, mutual supportive, atmosphere house safe and comfortable.
2	<i>Tahqīq al- Mawaddah wa al- Raḥmah</i>	Bond emotional based on love, empathy, and concern.	Attitude each other loving, caring on need spouse, no do violence.
3	Hifẓ al- Nasl	Guard continuity generation in a way dignified And responsible answer.	Parenting good, fulfillment right children, recording wedding And birth, moral education.

<sup>6</sup> Ilham Tohari dan Moh. Anas Kholish, "Maqasid Syariah Sebagai Pijakan Konseptual Dalam Pembinaan Hukum Keluarga Islam Indonesia," *Arena Hukum* 13, no. 2 (2020): 314–28.

<sup>7</sup> Aldi Wijaya Dalimunthe, "Maqasid Syariah dalam Pandangan Jamaluddin Athiyah Muhammad," *Jurnal Al-Nadhair* 3, no. 1 (2024): 23–36, <https://doi.org/10.61433/alnadhair.v3i01.45>.

<sup>8</sup> Jamāluddīn 'Aṭiyyah, *Naḥwu Taf'īli Maqāṣidi al-Syarī'ah* (Damaskus: Dāru al-Fikr, 2003), 148–54.

4	<i>Hifẓ al-ʿIrd wa al-ʿIffah</i>	Guard dignity family, refuse degrading practices moral values.	Faithfulness couple, behavior honorable, avoid adultery, settlement problem in a way dignified.
5	<i>Taqwiyah al-Masʿūliyyah al-Usariyyah</i> (Strengthening) not quite enough answer family )	Not quite enough answer husband and wife in operate role in accordance principle justice .	Distribution role proportional, fulfillment livelihood, support emotional, involvement in parenting.
6	<i>Tahqīq al-ʿAdalah al-Usariyyah</i> (Justice family)	Justice in rights, obligations, and treatment between members family.	Living evenly, not discriminatory on children / wives, decisions based on deliberation.
7	<i>Tanzīm al-Alāqah al-Usariyyah</i>	Arrange interaction and structure orderly family and each other honor.	Ethics communicating, sharing authority clear, mutually beneficial relationship guard limit and polite.

Source: Maqasid al-Shariah as Philosophy of Islamic Law (2008)

This idea is highly important and relevant for contextualizing contemporary family legal systems, such as the Compilation of Islamic Law (KHI) in Indonesia. As positive law governing the family life of Indonesian Muslims, the KHI requires a strong philosophical and normative foundation to be not only legal-formal but also reflective of substantive justice and public *maslahah*. In this context, *maqāṣid al-usrah* serves as a normative framework that can enrich and reconstruct the understanding of Islamic family law in Indonesia, ensuring it remains contextual,<sup>9</sup> humanistic, and solution-oriented in addressing the problems of the modern Muslim family.<sup>10</sup>

Research on the role of *maqāṣid al-usrah* in the view of Jamāluddīn ‘Aṭiyyah underscores the importance of these values being used as a scale of priority by judges before issuing a verdict, so that the sacred goal of marriage can be achieved comprehensively.<sup>11</sup> This approach is crucial for resolving family cases justly and affirms the role of *maqāṣid al-sharī’ah* in the Islamic family law system. In the context of polygamy regulation under KHI Articles 55–59, these values become the normative and ethical basis for assessing whether the practice of polygamy aligns with the principles of justice, protection, and *maslahah* for the wife and children. Amidst contemporary social developments and religious thought, a *fiqh* approach that is moderate, contextual, and adaptive to reality is needed. The *maqāṣid al-usrah* concept proposed by ‘Aṭiyyah acts as a bridge between normative Islamic values and modern social needs, without abandoning the authentic roots of the *sharī’ah* tradition.<sup>12</sup>

<sup>9</sup> Samad, “Kajian Hukum Keluarga Islam dalam Perspektif Sosiologis di Indonesia.”  
<sup>10</sup> Irwan Ramadhani, “Ragam Regulasi Poligami di Negara Muslim Modern,” *Jurnal Antologi Hukum* 3, no. 1 (2023): 17–32, <https://doi.org/10.21154/antologihukum.v3i1.2313>.  
<sup>11</sup> Muhammad Fadlil Rohman, Sri Lumatus Sa’adah, dan Abdul Wahab, “Women’s Rights in Marriage Perspective Maqasid Al-Usrah Jamaludin Athiyah,” *Indonesian Interdisciplinary Journal of Sharia Economics* 7, no. 2 (2024): 2768.  
<sup>12</sup> Jamhuri dan Dhiauddin Tanjung, “Pemikiran Jamaluddin Athiyah dan Moderasi Fikih : Menyikapi Tantangan Keagamaan di Era Modern di Indonesia,” *WATHAN: Jurnal Ilmu Sosial dan Humaniora* 2, no. 1 (2025): 154–67.

The KHI is a concrete form of Islamic family law codification in Indonesia, drafted to provide legal certainty for Muslims in the fields of marriage, inheritance, and waqf.<sup>13</sup> Enacted through Presidential Instruction Number 1 of 1991, the KHI aims to address the legal needs of the diverse Muslim Indonesian community while harmonizing *sharī'ah* values with local social and cultural realities. Generally, the KHI adopts *sharī'ah* principles from various schools of thought, particularly Shāfi'ī, but in practice, it also contains many contextual *ijtihad*s. Given that the KHI is the primary reference in resolving cases in the religious courts, it is essential to analyze the extent to which it integrates *maqāṣid al-usrah* values oriented towards the holistic protection and advancement of the family institution.

The study of *maqāṣid al-usrah* values in the KHI is crucial for measuring the relevance and effectiveness of Islamic family law in achieving *maslahah* for the community.<sup>14</sup> Without being grounded in *maqāṣid*, a law is prone to becoming rigid and unresponsive to the changes of the era.<sup>15</sup> Therefore, this analysis aims to explore how the norms in the KHI regarding marriage, spousal rights and obligations, child-rearing, divorce, and women's rights reflect the protection of the seven principles of *maqāṣid al-usrah*. Studies discussing the practice of polygamy from the perspective of Islamic law and national regulation within the context of Compilation of Islamic Law (KHI) Articles 55–59 include those written by Dikson,<sup>16</sup> Budiman<sup>17</sup> and Zulfatah Yasin<sup>18</sup>. All three highlight the normative provisions for polygamy consent, focusing on the aspects of justice and women's protection, yet they have not delved deeply into the values within *maqāṣid al-sharī'ah* that could be used as an ethical-normative framework to evaluate the KHI regulations. Meanwhile, approaches from the classical *Maqāṣid al-Sharī'ah* aspect have been widely used to justify the restriction or allowance of polygamy in order to maintain women's welfare (*maslahah*) and justice. However, the more specific approach of *maqāṣid al-usrah*, which focuses on family relations and relationships, has not been widely applied in examining polygamy rules in Indonesia.

The research by Moh Rafiqil Ulum and Tutik Hamidah<sup>19</sup> which utilized Jamāluddīn 'Aṭiyyah's *maqāṣid al-sharī'ah* approach to analyze monogamous marriage, actually opens a new avenue for approaching the issue of polygamy. Their findings emphasize that monogamous marriage is better able to realize justice, family stability, and community welfare. However, this study has not yet touched upon a critical evaluative

<sup>13</sup> Husaini et al., "Peran Hukum Islam dalam Pembangunan Hukum Nasional."

<sup>14</sup> Tohari dan Kholish, "Maqasid Syariah Sebagai Pijakan Konseptual Dalam Pembaruan Hukum Keluarga Islam Indonesia."

<sup>15</sup> Ihab Habudin, "Menimbang Metode Tematik-Holistik Dalam Pembaruan Hukum Keluarga Muslim (Telaah Pemikiran Khoiruddin Nasution)," *Al-Ahwal: Jurnal Hukum Keluarga Islam* (2015), <https://doi.org/10.14421/ahwal.2015.08104>.

<sup>16</sup> Dikson T Yasin, "Meneliksik Pesan Sosial Poligami dalam KHI," *Jurnal Al-Himayah* 02, no. 01 (2018): 77–96.

<sup>17</sup> Budiman, "Tinjauan Maqasid al-Syari'ah Pada Pasal 56 dan 57 Kompilasi Hukum Islam Tentang Izin Poligami," *Istidlal: Jurnal Studi Hukum Islam* 5, no. 1 (2018): 1–20, <https://ejournal.unisnu.ac.id/JSIH/article/view/841>.

<sup>18</sup> Zulfatah Yasin, "Pandangan Dosen Institut PTIQ Jakarta terhadap Perkawinan Poligami: Studi Pasal 56, 57 dan 58 Kompilasi Hukum Islam," *Qonuni: Jurnal Hukum dan Pengkajian Islam* 1, no. 01 (2021): 41–48, <https://doi.org/10.59833/qonuni.v1i01.183>.

<sup>19</sup> Moh Rafiqil Ulum dan Tutik Hamidah, "Examining Monogamy Through the Lens of Jamaluddin Athiyyah's Maqashid Syariah," *At-Tafkir* 17, no. 2 (2024): 164–78, <https://doi.org/10.32505/at.v17i2.10780>.

framework for the polygamy regulation that is still conditionally legalized in the KHI. Furthermore, as elaborated in the study by Fuadi and Khoirul Umami,<sup>20</sup> which used a synchronic-diachronic approach to the polygamy verse, the restriction of polygamy is explained as a social-economic and psychological consideration. Similarly, the research by Muh Sholihuddin, Saiful Jazil, and Syamsun Ni’am<sup>21</sup> confirms that the first wife’s consent for polygamy permission needs to consider *ḥifẓ al-usrah* (preservation of the family) to maintain family welfare. Nevertheless, neither of these two studies has engaged with the *maqāṣid al-usrah* framework for normative evaluation of KHI Articles 55–59 on polygamy. Likewise, the findings of Fatkul Chodir and Aspandi<sup>22</sup> who examined the application of *maqāṣid al-usrah* to assess the implications of unregistered marriage, have not critically assessed its implications for polygamy regulations in Indonesia and the KHI.

The urgency of this research is further heightened by rapid social change in the era of globalization, which has led to the erosion of many traditional family values. New challenges such as high divorce rates, domestic violence, shifting gender role values, and fragmented child-rearing demand a renewal of Islamic family law thinking based on *maqāṣid*. By reinforcing *maqāṣid al-usrah* values within the framework of positive law, it is hoped that Islamic family law in Indonesia will not only be able to withstand the changes of the times but also provide real solutions to the various problems faced by the community. Polygamy in Indonesia is not merely a religious issue, but has developed into a complex social, legal, economic, and psychological issue. In practice, polygamy is often practiced without complying with strict legal requirements, such as the wife's permission and a court order. This results in many unregistered marriages that are detrimental to wives and children due to the lack of legal protection. This situation also highlights the injustices often experienced by women, including unequal power relations, unequal distribution of income, and emotional distress resulting from unilateral decisions by husbands. Furthermore, polygamy often gives rise to internal family conflict, such as jealousy, quarrels, and tension between wives and between children from different wives. Children are often negatively impacted, ranging from identity difficulties, feelings of insecurity, to unequal attention and facilities for their development. Furthermore, weak state oversight and protection of polygamous practices - especially unregistered ones - further exacerbates the situation, creating administrative problems, inheritance disputes, and social vulnerability for women and children who should be protected by law. So, this article holds a strategic position in the study of Islamic family law reform ideas in Indonesia by proposing a normative-comprehensive and humanistic approach through the concept of *maqāṣid al-usrah*, aiming to answer the need for a reinterpretation of polygamy law in the KHI from the perspective of family protection and social justice.

The findings of this research are expected to contribute both theoretically and practically to the development of Islamic family law in Indonesia. Theoretically, the research enriches the study of contemporary *maqāṣid al-sharī’ah*, particularly in the family aspect, while practically, its findings can serve as a basis for the reform of Islamic

<sup>20</sup> Fuadi dan Khoirul Umami, “Membaca Ulang Ayat Poligami: Sebuah Pembacaan Sinkronik-Diakronik,” *Ulumul Qur’an: Jurnal Kajian Ilmu Al-Qur’an dan Tafsir* 4, no. 1 (2024): 1–12.

<sup>21</sup> Muh Sholihuddin, Saiful Jazil, dan Syamsun Ni’am, “Remarriage in the ‘Iddah Perspective of Maqāṣid Al-Usrah: Study in Wedoro Waru, Sidoarjo, Indonesia,” *Samarah*, 2024, <https://doi.org/10.22373/sjhk.v8i2.15061>.

<sup>22</sup> Fatkul Chodir dan Aspandi Aspandi, “Praktik dan Implikasi Perkawinan Bawa h Tangan Terhadap Tujuan Keluarga Perspektif Maqasid Al-Usrah,” *Indonesian Journal of Humanities and Social Sciences* 4, no. 3 (2023): 639–54, <https://www.ejournal.uit-lirboyo.ac.id/index.php/IJHSS/article/view/4507>.

family law, whether for the revision of the KHI or the drafting of new regulations that are more adaptive and *maqāṣid*-based. This research also opens space for the development of a more integrative and applicable Islamic law, by integrating the *maqāṣid al-usrah* of Jamāluddīn ‘Aṭiyyah into the KHI, thus enabling Islamic family law to be a contextual, solution-oriented guide that reflects the noble values of Islam in addressing the challenges of the era.

### Research Methodology

This study utilizes a qualitative approach with a library research method because the focus of the study is a normative analysis of legal texts and theoretical concepts within the KHI regarding the article on polygamy, as well as the thought of Jamāluddīn ‘Aṭiyyah concerning *maqāṣid al-usrah*. This approach aims to obtain a deep and interpretive understanding of the *maqāṣid* values embedded in Islamic family law in Indonesia. The primary data sources consist of primary documents such as the KHI (specifically Articles 55–59) and the works of Jamāluddīn ‘Aṭiyyah, especially those related to *maqāṣid al-usrah*. These are supported by secondary references, including Islamic legal literature, books, academic journals, and relevant previous research. Data collection techniques were carried out through documentation, which involves tracing, reading, recording, and classifying library materials related to the research object.

Data analysis employs the content analysis method to identify the *maqāṣid al-usrah* values that are reflected or yet to be optimally realized within the KHI. This analysis involves the categorization of concepts, the interpretation of textual meanings, and a critical evaluation of the congruence between *maqāṣid* and positive legal norms, while considering the Indonesian socio-cultural context as the setting for the application of family law. To maintain data validity, source triangulation and critical analysis of classical and contemporary Islamic legal literature are used, along with a comparison of Jamāluddīn ‘Aṭiyyah’s *maqāṣid* principles with the normative provisions in the KHI. Thus, the results of this research are expected to contribute scientifically to the development of Islamic family law in Indonesia through the mapping of strategic *maqāṣid al-usrah* values for the formation of a just, prosperous, and protective Islamic family order.

### Results and Discussion

#### Identification of *Maqāṣid al-Usrah* (Objectives of the Family) of Jamāluddīn ‘Aṭiyyah

The concept of *maqāṣid al-sharī’ah* is specifically applied to the family institution. In his book, *Nahw Taf’īl Maqāṣid al-Sharī’ah*, ‘Aṭiyyah formulates that the family, as the most fundamental social unit in Islamic society, must be viewed not only as a biological and social institution but also as a means for realizing the objectives of the *sharī’ah*. He structures *maqāṣid al-usrah* in a special sub-chapter titled *Maqāṣid al-Sharī’ah Fīmā Yakḥṣu al-Usrah (al-Ahl)*, which identifies seven main dimensions of *maqāṣid* in family life: regulation of the relationship between the sexes, preservation of progeny, creation of a family characterized by *sakīnah*, *mawaddah*, *wa raḥmah*, protection of lineage, preservation of religious values within the family, regulation of the institutional aspect, and management of the financial aspect within the household. This approach

distinguishes itself from the classical *maqāṣid* formulation, which generally only refers to the five necessities (*ḍarūriyyāt*).<sup>23</sup>

The first dimension of *maqāṣid al-usrah* is *tanzīm al-’alāqah bayn al-jinsayn*, which is the regulation of the relationship between male and female within the marital bond. Islam was introduced to correct pre-Islamic marriage practices that were not based on humanistic values and justice. Through the marital bond, *Sharī’ah* establishes boundaries and guidelines for honorably channeling sexual desire and sets fair and balanced rights and obligations for spouses.<sup>24</sup> In this framework, the concepts of polygamy and *ṭalāq* (divorce) are not positioned as forms of gender domination, but as alternative solutions provided when the relationship can no longer be maintained after undergoing the process of *ishlāḥ* (reconciliation).<sup>25</sup> ‘Aṭiyyah views regulations such as the prohibition of *zinā*, *khulu’*, and *fasakh* as devices of the *sharī’ah* that function to maintain the stability and honor of the spousal relationship.

The second dimension is *ḥifẓ al-nasl*, which is the preservation of progeny, which, in ‘Aṭiyyah’s view, has complex nuances and does not simply mean bearing children. He distinguishes between *al-tanāsul* (regeneration) and *al-injāb* (reproduction) as two concepts that, though related, are not identical. In this regard, he rejects the understanding that having children is an absolute obligation for every couple, as this could create a *shar’ī* burden inconsistent with human biological and social realities.<sup>26</sup> According to him, progeny is a gift, not an obligation, and under certain conditions, the decision not to have children may be a form of realizing a higher *maslahah*. This constitutes a more humane and contextual *maqāṣid* approach compared to classical normative views.

The third dimension is *taḥqīq al-sakīnah wa al-mawaddah wa al-rahmah*, which is the creation of a peaceful family, full of affection, and based on mutual understanding. In ‘Aṭiyyah’s view, *sakīnah* does not only mean physical tranquility but also spiritual serenity built upon commitment and *mu’āsharah bi al-ma’rūf* (good treatment between partners). *Mawaddah* is interpreted as a form of emotional love, while *rahmah* is interpreted as an attitude of compassion manifested in daily treatment.<sup>27</sup> This goal is the core of household life, which is not only based on the fulfillment of biological needs but also on spiritual, emotional, and social aspects.<sup>28</sup> Such a family becomes the ideal environment for the sound psychological and moral development of children.

<sup>23</sup> Galuh Widitya Qomaro et al., “Navigating Early Marriages: A Methodological Breakthrough in Family Resilience Measurement,” *Mazahib* 23, no. 2 (Desember 2024): 477–528, <https://doi.org/10.21093/mj.v23i2.8027>.

<sup>24</sup> Farida Ulvi Naimah et al., “Internalization of Local Traditions in Child Marriage from the Perspective of Maqasid Al-Usrah,” *El-Mashlahah* 14, no. 2 (Oktober 2024): 237–58, <https://doi.org/10.23971/el-mashlahah.v14i2.7942>.

<sup>25</sup> Sholihuddin, Jazil, dan Ni’am, “Remarriage in the ‘Iddah Perspective of Maqāṣid Al-Usrah: Study in Wedoro Waru, Sidoarjo, Indonesia.”

<sup>26</sup> Rohman, Sa’adah, dan Wahab, “Women’s Rights in Marriage Perspective Maqasid Al-Usrah Jamaludin Athiyah.”

<sup>27</sup> Chodir dan Aspandi, “Praktik dan Implikasi Perkawinan Bawah Tangan Terhadap Tujuan Keluarga Perspektif Maqasid Al-Usrah.”

<sup>28</sup> Galuh Widitya Qomaro, Dina Imam Supaat, dan Nasrulloh Nasrulloh, “Family attitude and responsibility: A Quranic-based theoretical framework in the globalization challenges,” ed. oleh A. Ma’arif et al., *BIO Web of Conferences* 146 (November 2024): 01090, <https://doi.org/10.1051/bioconf/202414601090>.



The fourth dimension is *ḥifẓ al-nasab*, which is the protection of lineage so that children possess a legitimate legal and social identity. In this regard, Islamic *sharīʿah* strictly regulates practices that can damage the clarity of lineage, such as *zinā*, marriage without a guardian (*walī*), adoption that equates an adopted child with a biological child, and *siri* marriage (unregistered marriage). Clarity of lineage has important implications in the context of inheritance rights, education, maintenance (*nafkah*), and a child’s religious identity. ‘Aṭiyyah emphasizes that the lack of clarity in lineage is not only a legal problem but can also damage the social and psychological order of children who grow up in identity uncertainty.<sup>29</sup>

The last three dimensions cover the spiritual, institutional, and financial aspects of the family, placed within a single, integrated *maqāṣid* framework. First, *ḥifẓ al-tadāyyun fī al-usrah* emphasizes the importance of the family as a means of religious development and a moral fortress for its members. In this context, ‘Aṭiyyah states the importance of the role of the father and mother in educating children in the aspects of *aqīdah*, *sharīʿah*, and *akhlāq*. Second, *tanẓīm al-jānib al-mu’assasī li al-usrah* is the regulation of the institutional aspect of the family, including the rights and obligations among members and the structure of social relations generated. Third, *tanẓīm al-jānib al-mālī li al-usrah* covers the aspects of maintenance (*nafakah*), dowry (*mahar*), inheritance, bequests (*waṣiyyah*), and family *waqf* (endowment). By uniting these three aspects, ‘Aṭiyyah demonstrates that *maqāṣid al-usrah* is a comprehensive and dynamic system, oriented toward justice, balance, and physical and spiritual well-being in Islamic family life.<sup>30</sup>

To strengthen the theoretical foundation for analyzing the polygamy regulations in the KHI through the lens of *maqāṣid al-usrah*, it is essential to situate ‘Aṭiyyah’s family-oriented *maqāṣid* framework within its classical roots by comparing it with al-Shāṭibī’s foundational *maqāṣid* theory, as presented in the following table.

**Table 2.** Comparison Table: al-Shāṭibī vs ‘Aṭiyyah on *Maqāṣid*

Aspect	Classical <i>Maqāṣid</i> (al-Shāṭibī)	Family-Specific <i>Maqāṣid</i> (Jamāluddīn ‘Aṭiyyah)
Scope	General (applies to all legal domains)	Specific to family law and marital relations
Core Structure	Five necessities ( <i>al-darūriyyāt al-khams</i> )	Seven <i>maqāṣid</i> dimensions tailored to family life
Orientation	Text-based preservation model	Contextualized, functional, and human-centered
Application	Requires further <i>ijtihād</i> to apply to family issues	Direct operationalization for evaluating marital, parental, and financial duties
Value Emphasis	Protection from harm	Promotion of harmony, emotional justice, and relational well-being
Relevance to Polygamy	Limited direct guidance	Provides explicit ethical criteria ( <i>sakīnah</i> , emotional justice, lineage, financial capacity)

This comparison demonstrates that ‘Aṭiyyah’s framework not only builds upon but also extends classical *maqāṣid* theory by offering analytical tools immediately applicable to evaluating the normative and ethical dimensions of polygamy.

These seven *maqāṣid al-usrah* values serve as the analytical framework for the subsequent subsections of this study. They will be used to assess whether the provisions

<sup>29</sup> M. Heli Abrori Lutfi, “Engagement Relationship Ethics In Maqasid Al-Usrah Perspective,” *Mosaic: Islamic Studies Journal* 2, no. 2 (Agustus 2024): 10–21, <https://doi.org/10.35719/mosaic.v2i2.2152>.

<sup>30</sup> ‘Aṭiyyah, *Naḥwu Taḥqīq Maqāṣidi al-Syarīʿah*.

of KHI Articles 55–59 on polygamy substantively uphold the *sharī‘ah’s* objectives of justice, family stability, lineage protection, and emotional welfare. Through this *maqāṣid*-based evaluation - which integrates both al-Shāṭibī’s classical foundations and ‘Aṭiyyah’s contemporary elaborations - the study aims to propose a normative reinterpretation of Indonesia’s polygamy regulations that is ethically grounded, socially responsive, and aligned with the higher purposes of Islamic family law.

### Normative Analysis of KHI Articles 55–59 on Polygamy

The concept of polygamy in the Compilation of Islamic Law (KHI) is not intended as an open legitimization for a husband to take multiple wives; rather, it constitutes a normative mechanism within Indonesian Islamic family law to delineate moral, social, and spiritual boundaries in marital life.<sup>31</sup> Articles 55–59 articulate that monogamy is the fundamental principle of marriage, while polygamy is permitted only under exceptional circumstances and subject to strict substantive and administrative conditions. Substantively, the husband must demonstrate legally recognized grounds - such as the wife’s inability to fulfill marital duties, chronic illness, or infertility - while administratively he must obtain approval from the Religious Court and consent from the existing wife. This structure establishes that polygamy is not an inherent male right but a deviation narrowly allowed to preserve family welfare (*maṣlaḥah*) and prevent harm (*maḍarrat*).<sup>32</sup>

Although designed to uphold justice, the practical application of KHI’s polygamy provisions reveals significant judicial complexities. Empirical studies and court decisions show that the Religious Courts often face difficulties in assessing non-material forms of justice, especially emotional fairness. For instance, a 2019 decision of the Religious Court in Bandung rejected a polygamy petition after finding that the husband’s financial capability was adequate but his emotional and relational commitment failed to satisfy the court’s standard of ‘*adl* (justice).<sup>33</sup> Conversely, a 2021 case from the Religious Court of Makassar approved polygamy despite the wife’s objection, highlighting a judicial dilemma wherein judges must balance procedural compliance with substantive justice considerations.<sup>34</sup> These examples illustrate a tension between the text of the KHI - which idealizes justice as both material and emotional - and the judiciary’s limited capacity to verify the latter. This gap suggests that ‘Aṭiyyah’s *maqāṣid al-usrah* - aiming to safeguard harmony, dignity, lineage, and emotional well-being - are not always fully reflected in legal outcomes.<sup>35</sup>

Furthermore, the KHI’s requirement of court supervision reflects a *maqāṣid*-based institutional safeguard, ensuring protection of women’s honor (*ḥifẓ al-‘ird*), progeny (*ḥifẓ*

<sup>31</sup> Shafra et al., “Restricting Unregistered Polygamy: Protecting Women’s Rights within the Framework of Maqasid Shariah,” *ICSIS Proceedings* 1 (2024): 155–68.

<sup>32</sup> Sugianto, Abdurrohman, and Oriza Aditya, “Legal Reconstruction and Polygamy Problems in Sharia Maqasid and Positive Law Perspectives,” *Journal of Social Science* 3, no. 5 (September 21, 2022): 1046–1055, <https://jsss.co.id/index.php/jsss/article/view/411>.

<sup>33</sup> “[https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pta-bandung/kategori/izin-poligami-1.html?utm\\_source=chatgpt.com](https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pta-bandung/kategori/izin-poligami-1.html?utm_source=chatgpt.com),” n.d. accessed Sunday, December 7, 2025

<sup>34</sup> “[https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pa-makassar/kategori/perdata-agama-1.html?utm\\_source=chatgpt.com](https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pa-makassar/kategori/perdata-agama-1.html?utm_source=chatgpt.com),” n.d. accessed Sunday, December 7, 2025

<sup>35</sup> Ilyas Daud, “The Meaning of Justice in the Qur’an and the Implications of Islamic Law on Polygamy Permits: Harmonization of Islamic Law and Positive Law with the Maqasidi Tafsir Approach,” *AL QUDS : Jurnal Studi Alquran dan Hadis* 9, no. 1 (April 2025): 1–16, <https://doi.org/10.29240/alquds.v9i1.11356>.

*al-nasl*), and family stability.<sup>36</sup> However, court permission does not automatically guarantee the realization of these objectives. Socio-legal studies indicate that some husbands strategically frame their petitions to satisfy formal requirements, while the actual practice leads to emotional or financial neglect of the first wife and children. Thus, the judiciary's procedural compliance may not translate into substantive justice. This divergence between normative aspirations and lived outcomes demonstrates the need for a deeper *maqāṣid*-oriented reinterpretation of polygamy regulations - one that not only structures formal requirements but also strengthens mechanisms for post-approval monitoring and protection.

The regulation of polygamy in the KHI therefore represents an ongoing attempt to harmonize *maqāṣid al-usrah* with Indonesia's legal and social realities, yet its implementation reveals critical gaps that demand further legal development. Jamāluddīn 'Aṭiyyah's conception - emphasizing family harmony, emotional justice, and dignified relations - resonates with the ethical spirit of the KHI, but judicial experiences show that these ideals are not consistently achieved. Hence, KHI's polygamy regulation is not merely procedural; it reflects a collective effort of *ijtihād* that must continue evolving to address contemporary challenges without abandoning the humanistic and progressive essence of Islamic *Sharī'ah*.

#### **Integration of *Maqāṣid al-Usrah* Values of Jamāluddīn 'Aṭiyyah with KHI Articles 55–59**

Firstly, the dimension of *tahqīq al-sakīnah wa al-mawaddah wa al-rahmah* (achieving tranquility, affection, and mercy) is embedded in Articles 55(2), 57, and 58 of the KHI. Article 55(2) positions the husband's ability to act justly as the primary prerequisite for polygamy. Within the framework of *maqāṣid al-usrah*, justice encompasses not only material fairness but also emotional equilibrium and equitable treatment, which collectively form the moral infrastructure of *sakīnah*, *mawaddah*, and *rahmah*. Article 57 - stipulating that polygamy permission may be granted only if the wife cannot perform marital duties, suffers from an incurable illness, or cannot bear children - implicitly aims to preserve marital harmony or maintain family continuity, although these grounds remain controversial when evaluated through modern human rights discourse. Article 58(1a) and 58(2), which require the wife's consent, serve as institutional mechanisms to preserve *mawaddah* and *rahmah*. In practice, polygamy without genuine consent tends to undermine the relational core of family harmony.<sup>37</sup>

Secondly, the dimension of *tanẓīm al-'alāqah bayn al-jinsayn* (regulation of relations between the sexes) is reflected in Article 56. 'Aṭiyyah conceptualizes polygamy as a post-reconciliation remedy - an option pursued only after *islāh* efforts fail. KHI Article 56 operationalizes this logic by requiring judicial permission and declaring that marriages conducted without such approval lack legal validity. This judicial intervention

<sup>36</sup> Ahmad Rezy Meidina, "Granting of License Polygamy Perspective Maqasid: Analysis of Article 4 of Law Number 1 of 1974 and Article 57 of the Compilation of Islamic Law," *International Journal of Social Science and Religion (IJSSR)* 3, no. 2 (July 4, 2022): 133–148, <https://ijssr.net/index.php/ijssr/article/view/73>.

<sup>37</sup> Tuti Alawiyah Harahap dan Syapar Alim Siregar, "Dampak Poligami Tanpa Persetujuan Istri Terhadap Keharmonisan Rumah Tangga," *Jurnal El-Thawalib* 3, no. 4 (Agustus 2022): 573–85, <https://doi.org/10.24952/el-thawalib.v3i4.5935>; Jaidun, "Implikasi Hukum Terhadap Poligami Tanpa Izin dalam Perspektif Hukum Islam," *Jurnal Hukum dan HAM Wara Sains* 2, no. 05 (Mei 2023): 337–48, <https://doi.org/10.58812/jhhws.v2i05.304>.

positions the Religious Court (PA) as a procedural safeguard for fairness and *iṣlāḥ*, ensuring that polygamy becomes a strictly regulated last resort rather than an arbitrary decision. Such procedural constraints reinforce the understanding that marriage is a sacred, legally governed institution, rather than a vehicle for fulfilling personal desire, aligning with the maqāṣid of fostering a just and balanced gender relationship.<sup>38</sup>

Thirdly, the dimension of *tanzīm al-jānib al-mālī li al-usrah* (regulation of the family’s financial aspect) appears in Article 58(1b), which requires proof that the husband can guarantee the livelihood of all wives and children. This provision directly reflects the maqāṣid relating to economic protection within the family. Adequate financial capacity is essential to secure *ḥifẓ al-nasl* (preservation of progeny) and sustain *sakīnah* within a multi-spousal household.<sup>39</sup>

**Table 3.** Reflection of Maqāṣid al-Usrah Values in the Polygamy Regulations of the Compilation of Islamic Law

Maqāṣid Dimension	Relevant KHI Articles	How the Value is Reflected in KHI
<i>Tahqīq al-sakīnah wa al-mawaddah wa al-rahmah</i>	Article 55(2), 57, 58(1a), 58(2)	Justice as primary condition; grounds for judicial permission aimed at preserving harmony; requirement of wife’s consent to protect relational well-being.
<i>Tanzīm al-‘alāqah bayn al-jinsayn</i>	Article 56	Judicial permission as procedural safeguard; court ensures polygamy is a last resort after failed <i>iṣlāḥ</i> ; prevents arbitrary or desire-driven decisions.
<i>Tanzīm al-jānib al-mālī li al-usrah</i>	Article 58(1b)	Requirement of financial capability to ensure maintenance, welfare, and protection of progeny.

Despite its *maqāṣid*-oriented framework, the KHI exhibits several significant inconsistencies. Although Article 55(2) highlights emotional justice, the absence of operational indicators leaves its assessment vulnerable to judicial subjectivity. Article 57 similarly reflects a patriarchal logic by linking polygamy permission to the wife’s inability to bear children or fulfill marital duties, a rationale that diverges from contemporary human rights norms and lacks maqāṣid-based reciprocity. The consent requirement in Article 58 also risks becoming merely procedural, as the KHI provides no safeguards to ensure free and non-coerced consent, rendering *mawaddah* and *rahmah* largely aspirational. Furthermore, Article 58(1b) adopts a narrow view of financial capability by focusing solely on economic sufficiency while neglecting time-sharing capacity, emotional burdens, and psychosocial well-being - dimensions vital to achieving *ḥifẓ al-nasl* and *sakīnah* in polygamous families.

<sup>38</sup> Imam Mahdi, Abd. Muid N, dan Badru Tamam, “Kesetaraan Seksual Perspektif Al-Qur’an: Solusi Atas Dominasi Seksual,” *Blantika: Multidisciplinary Journal* 2, no. 11 (September 2024): 456–71, <https://doi.org/10.57096/blantika.v2i11.239>.

<sup>39</sup> Gunawan Widjaja, “Maqashid Syariah dalam Regulasi Fintech,” *Borneo: Journal of Islamic Studies* 5, no. 1 (Desember 2024): 23–36, <https://doi.org/10.37567/borneo.v5i1.3355>; Ai Netty Sumidartiny, “Pengelolaan Harta Keluarga dalam Kerangka Maqasid Syariah Menuju Keseimbangan dan Keberkahan,” *Journal of Darunnajah Business School* 2, no. 1 (2025): 39–48; Sigit Pramono, “Kontribusi Penjahit Perempuan Dalam Meningkatkan Kesejahteraan Keluarga Menurut Perspektif Ekonomi Islam (Studi Pada Penjahit Perempuan Di Desa Kaliprau Kecamatan Ulujami Kabupaten Pematang),” *Jurnal Ekonomi Bisnis Manajemen dan Akuntansi (JEBISMA)* 1, no. 2 (Desember 2023): 10–11, <https://doi.org/10.70197/jebisma.v1i2.10>; Siti Anisa, Destifa Rahmi, dan Sherly Nazwa, “Pengelolaan Kepemilikan Harta Keluarga Dalam Pandangan Islam,” *Jurnal Religion: Jurnal Agama, Sosial, dan Budaya* 1, no. 6 (2023): 1086–98, <https://doi.org/https://doi.org/10.55606/religion.v1i6.822>.

### Relevance of the *maqāṣid al-usrah* Concept of Jamāluddīn ‘Aṭīyyah in the Contemporary Context

‘Aṭīyyah’s concept of *maqāṣid al-usrah* is highly relevant and offers substantive advantages over classical formulations, particularly in the regulation of polygamy. *First*, his framework adopts a more humane and contextualized approach by viewing polygamy (and *ṭalāq*) not as instruments of gendered authority but as remedial mechanisms employed only when marital relations become unsustainable. In contemporary settings, this implies treating polygamy as an exception to the normative ideal of monogamy - permissible only when the *maqāṣid* values of justice, *sakīnah*, and *raḥmah* in the first marriage remain intact and the prospective marriage can reasonably guarantee the same. ‘Aṭīyyah’s emphasis on *mu‘āsharah bi al-ma‘rūf* and the centrality of *sakīnah* elevates the standard of justice beyond material maintenance by explicitly incorporating psychological and emotional well-being, a dimension increasingly affirmed in modern women’s rights discourse and family psychology.<sup>40</sup> This is reflected, for example, in the 2019 Bandung Religious Court case where a polygamy petition was rejected despite the husband’s financial capability because the court deemed his emotional commitment insufficient to meet the standard of *‘adl*.

*Secondly*, his broadened interpretation of *ḥifẓ al-nasl* rejects the classical assumption that procreation is an absolute obligation. By arguing that childbearing is not mandatory for every marital union, ‘Aṭīyyah provides a *maqāṣid*-based rationale for reassessing KHI Article 57(c) regarding the wife’s inability to conceive. Under his approach, polygamy is not justified on the basis of the wife’s deficiency but because the husband seeks to fulfill *al-tanāsul* through another marital bond while remaining fully responsible for safeguarding the rights and dignity of the first wife.

*Thirdly*, *maqāṣid al-usrah* introduces a systemic and dynamic framework that encompasses spiritual (*ḥifẓ al-tadāyyun*), institutional (*tanẓīm al-jānib al-mu‘assasī*), and financial (*tanẓīm al-jānib al-mālī*) dimensions. This approach highlights that the viability of polygamy must be evaluated holistically across all these areas rather than through a narrow material lens. Contemporary judicial practice increasingly aligns with this reasoning; for instance, the Makassar Religious Court in 2021 applied a multi-dimensional assessment - including psychological stability and family welfare - before granting a polygamy petition. Such developments demonstrate how ‘Aṭīyyah’s framework could practically recalibrate judicial reasoning toward a more comprehensive and welfare-based evaluation of polygamy cases.<sup>41</sup>

### Reorientation of Interpretation of KHI Articles 55–59 Based on *Maqāṣid al-Ussrah*

The reorientation of the interpretation of KHI Articles 55–59 through the lens of ‘Aṭīyyah’s *maqāṣid al-usrah* will shift the focus from formal procedure to the substance of the objective, specifically: *firstly*, the aspect of justice as an absolute *maqṣad* in Article 55 Paragraph 2. The interpretation of the ability to act justly (Article 55 Paragraph 2)

<sup>40</sup> Umaimah Wahid dan Refeah Legino, “Power Relations and Patriarchy Politics on Dating Violence,” *Nyimak: Journal of Communication* 7, no. 1 (Maret 2023): 109, <https://doi.org/10.31000/nyimak.v7i1.7669>.

<sup>41</sup> Daudy Buhari, Efrida Wati Harahap, dan Bestari Endayana, “Dampak Poligami Terhadap Perkembangan Anak,” *Jurnal Literasiologi* 11, no. 1 (Februari 2024): 122, <https://doi.org/10.47783/literasiologi.v11i1.662>.

must be reoriented into the certainty of achieving *sakīnah* and *rahmah* in both families. Judges must interpret justice as the ability to guarantee emotional and psychological equality, not merely the fulfillment of material maintenance. This *maqāṣid* test requires judges to conduct a deep analysis of the psychological condition of the first wife and the prospective second wife, as well as the husband’s behavioral history. If there is potential for the destruction of *sakīnah* (deep sadness, trauma, or dissolution of lineage), permission must be denied based on the *maqṣad* of *taḥqīq al-sakīnah*.

Secondly, the reinterpretation of the reasons for permission (Article 57). The reasons in Article 57 (incurable defect/illness, inability to bear offspring) must be interpreted as unavoidable conditions, not as a punishment for the wife. The interpretation must place the *maqṣad* of preserving religious values in the family (*ḥifẓ al-tadāyyun fī al-usrah*) above the fulfillment of the husband’s biological desires. Thus, polygamy permission must be a *ḍarūrah* (necessity/emergency) solution that has been preceded by maximum *ishlāḥ* (reconciliation) efforts (in line with ‘Aṭiyyah’s perspective on *tanzīm al-’alāqah bayn al-jinsayn*). If the wife is sick/disabled, the *maqṣad* of compassion (*rahmah*) should encourage the husband to care for her, not to abandon her by practicing polygamy without genuine consent.

Thirdly, the wife as a guarantee of *sakīnah* in Article 58. The wife’s consent in Article 58 must be interpreted not merely as a formality, but as proof that the *maqṣad* of *sakīnah* is not threatened with destruction. In cases of wife’s rejection (Article 59), the judge must use the *maqāṣid* lens to weigh the greater welfare (*maslahah*). Is the husband’s *maslahah* in practicing polygamy (e.g., *ḥifẓ al-nasl* in the case of childlessness) higher than the *mafsadah* (harm/damage) to *sakīnah*, *mawaddah*, *wa rahmah* suffered by the first wife? Based on ‘Aṭiyyah’s concept, preserving the peace of one intact family is often paramount over adding a new family founded upon suffering. Overall, ‘Aṭiyyah’s *maqāṣid al-usrah* provides a robust framework for judges in the Religious Courts to narrow the loophole for polygamy by demanding substantive justice that encompasses psychological, emotional, and social dimensions, thereby ensuring the realization of the *Sharī’ah*’s goal in forming a family of *sakīnah*, *mawaddah*, *wa rahmah*.

### Recommendation or Normative Reinterpretation

KHI Articles 55 to 59 concerning polygamy have implicitly attempted to integrate several dimensions of ‘Aṭiyyah’s *maqāṣid al-usrah*, such as justice (Article 55 Paragraph 2), which aligns with *Taḥqīq al-Sakīnah wa al-Mawaddah wa al-Rahmah*, and financial capability (Article 58 Paragraph 1b), which supports *Tanzīm al-Jānib al-Mālī*. However, the implementation of the KHI often remains trapped in legal formalities, while ‘Aṭiyyah’s concept offers a more humane and contextual framework, where polygamy is considered an alternative solution that must guarantee *sakīnah* and *rahmah* for all parties. Therefore, a reorientation of interpretation is necessary, particularly for Article 55 Paragraph 2, to establish justice as an absolute *maqṣad* that includes psychological and emotional dimensions, rather than merely material ones.

To strengthen the implementation of *maqāṣid* in the KHI, the addition of ethical and social clauses in polygamy regulation is recommended. This clause must mandate the husband to prove psychological and emotional well-being (*al-’adālah al-nāfsi-yah wa al-wijdāni-yah*) through a psychological assessment, and ensure that the wife’s consent (Article 58 Paragraph 1a) is free from manipulation or pressure, and supported by a Polygamy Psychological Impact Assessment Report (ADPP). Furthermore, there must be

a firm guarantee that polygamy will not cause adverse social or economic effects, and will not reduce the educational or inheritance rights of the children, in order to maintain the *hifẓ al-nasab* and *tanzīm al-jānib al-mālī* dimensions sustainably.

With the integration of the *maqāṣid al-usrah* principles into the KHI, the judicial implications for Religious Court Judges are highly significant. Judges will possess a strong legal foundation to utilize *maqāṣid* principles, especially *sakīnah* and *rahmah*, as the Ratio Decidendi (the primary basis for the ruling), such that in deciding polygamy cases (Articles 55–59), substantive objectives are prioritized over the mere fulfillment of formal requirements. This enables Judges to interpret the KHI dynamically and reject polygamy applications - even if formal requirements (such as wife's consent) are met - if the application is substantially (proven through psychological assessment) confirmed to destroy *maqāṣid al-usrah*. This reorientation transforms the KHI into positive law that prioritizes ethics, welfare, and noble objectives in forming an Islamic family, as conceptualized by Jamāluddīn 'Aṭiyyah.<sup>42</sup>

## Conclusion

This study demonstrates that the polygamy regulations in KHI Articles 55–59 partially integrate several core dimensions of Jamāluddīn 'Aṭiyyah's *maqāṣid al-usrah*, particularly *tahqīq al-sakīnah wa al-mawaddah wa al-rahmah*, *tanzīm al-'alāqah bayn al-jinsayn*, and *tanzīm al-jānib al-mālī*. However, the findings also reveal that these *maqāṣid*-based protections remain insufficiently realized in practice. The substantive justice requirement in Article 55(2) lacks measurable indicators - especially regarding emotional and psychological justice - making judicial assessment highly subjective. Likewise, the formal consent requirement in Article 58 and the financial capability test in Article 58(1b) are often applied narrowly, resulting in conditions for polygamy that are, in practice, relatively lenient. Empirical evidence shows that some Religious Courts still grant polygamy permissions despite significant risks to the first wife's emotional stability, as seen in cases where judges rely on procedural compliance rather than holistic welfare considerations. Conversely, the 2019 Bandung case illustrates that stricter application is possible when courts interpret justice substantively. These variations confirm that the absence of standardized indicators contributes to a judicial tendency - in certain jurisdictions - to unintentionally ease the path toward polygamy.

The analysis further identifies that the KHI's polygamy requirements remain vulnerable due to the absence of clear measurable indicators. Emotional and psychological justice - central to 'Aṭiyyah's *maqāṣid al-usrah* - are not operationalized, resulting in conditions that can become overly permissive in practice. Empirical variations in court decisions show that some Religious Courts interpret the requirements loosely, making polygamy petitions easier to obtain, while others apply stricter standards. To ensure consistent implementation, this study proposes operational indicators for assessing the risk of harm to *sakīnah*, including observable emotional distress in the first wife, patterns of relational instability such as recurring conflict or weakened communication, psychosocial risks to children, and the husband's behavioral history

<sup>42</sup> Muhammad Aminuddin Shofi, Sahrul Hidayatullah, dan AbdulHamid, "Multidimensional Paradigm of Maqasid Sharia in the Book of 'Nahwa Taf'ili Maqashid Sharia' By Jamaluddin Athiyyah," *Jurnal Lektur Keagamaan*, 2022, <https://doi.org/10.31291/jlka.v20i2.1085>. See also M. Nanda Fanindy, "Formulasi Maqasid Syariah Perspektif Jamaluddin Athiyyah: Studi Kasus Perda Daerah Istimewa Yogyakarta (DIY) No. 7 Tahun 2018 Tentang Ketahanan Keluarga," *Islamitch Familierecht Journal* 1, no. 1 (2020): 23–45.

regarding responsibility, transparency, and emotional reliability. These indicators provide a measurable framework for judges to determine whether polygamy poses a substantial threat to family harmony and whether the *maqāṣid* of justice and welfare can genuinely be preserved.

Therefore, this study argues for a *maqāṣid*-oriented reinterpretation of KHI Articles 55–59 that shifts judicial focus from formal compliance to substantive evaluation of welfare. The integration of ethical and social clauses - such as mandatory psychological assessments, verification of voluntary consent, and welfare-oriented risk evaluations - would significantly strengthen the implementation of *maqāṣid al-usrah*. Embedding these principles into a dedicated “Fundamental Principles” chapter in the KHI would enable judges to employ *maqāṣid* as binding *ratio decidendi*, empowering them to reject polygamy petitions that, though formally valid, substantively endanger *sakīnah*, justice, or family welfare. Ultimately, this reorientation transforms the KHI into a legal system that prioritizes ethics, protection, and the higher objectives of *sharī‘ah*, ensuring that Indonesian Islamic family law remains contextual, humanistic, and aligned with the real needs of modern Muslim families.

### Declaration of AI Tool Usage

During the preparation of this manuscript, the authors used ChatGPT (OpenAI, GPT-5.1), DeepSeek (DeepSeek AI), and SciSpace (Typeset Inc.) to assist with paraphrasing, generating analytical insights, and identifying relevant citations. The authors also used Mendeley.com and Google Scholar to locate, verify, and cross-check all referenced sources. All AI-generated content was critically evaluated, substantially revised, and thoroughly edited to ensure factual accuracy, clarity, and academic integrity. The authors take full responsibility for the final version of this manuscript.

### Daftar Pustaka:

- ‘Aṭiyyah, Jamāluddīn. *Naḥwu Taf’īli Maqāṣidi al-Syarī‘ah*. Damaskus: Dār al-Fikr, 2003.
- Aminuddin Shofi, Muhammad, Sahrul Hidayatullah, dan Abdul Hamid. “Multidimensional Paradigm of Maqasid Sharia in the Book of ‘Nahwa Taf’ili Maqashid Sharia’ By Jamaluddin Athiyyah.” *Jurnal Lektur Keagamaan*, 2022. <https://doi.org/10.31291/jlka.v20i2.1085>.
- Anisa, Siti, Destifa Rahmi, dan Sherly Nazwa. “Pengelolaan Kepemilikan Harta Keluarga Dalam Pandangan Islam.” *Jurnal Religion: Jurnal Agama, Sosial, dan Budaya* 1, no. 6 (2023): 1086–98. <https://doi.org/https://doi.org/10.55606/religion.v1i6.822>.
- Budiman. “Tinjauan Maqasid al- Syari‘ah Pada Pasal 56 dan 57 Kompilasi Hukum Islam Tentang Izin Poligami.” *Istidlal; Jurnal Studi Hukum Islam* 5, no. 1 (2018): 1–20. <https://ejournal.unisnu.ac.id/JSHI/article/view/841>.
- Buhari, Daudy, Efrida Wati Harahap, dan Bestari Endayana. “Dampak Poligami Terhadap Perkembangan Anak.” *Jurnal Literasiologi* 11, no. 1 (Februari 2024): 122. <https://doi.org/10.47783/literasiologi.v1i1.662>.
- Chodir, Fatkul, dan Aspandi Aspandi. “Praktik dan Implikasi Perkawinan Bawah Tangan Terhadap Tujuan Keluarga Perspektif Maqasid Al-Usrah.” *Indonesian Journal of Humanities and Social Sciences* 4, no. 3 (2023): 639–54. <https://www.ejournal.uit-lirboyo.ac.id/index.php/IJHSS/article/view/4507>.
- Dalimunthe, Aldi Wijaya. “Maqasid Syariah dalam Pandangan Jamaluddin Athiyah Muhammad.” *Jurnal Al-Nadhair* 3, no. 1 (2024): 23–36.



- <https://doi.org/10.61433/alnadhair.v3i01.45>.
- Daud, Ilyas. "The Meaning of Justice in the Qur'an and the Implications of Islamic Law on Polygamy Permits: Harmonization of Islamic Law and Positive Law with the Maqasidi Tafsir Approach." *AL QUDS: Jurnal Studi Alquran dan Hadis* 9, no. 1 (April 2025): 1–16. <https://doi.org/10.29240/alquds.v9i1.11356>.
- Fanindy, M. Nanda. "Formulasi Maqasid Syariah Perspektif Jamaluddin Athiyyah: Studi Kasus Perda Daerah Istimewa Yogyakarta (DIY) No. 7 Tahun 2018 Tentang Ketahanan Keluarga." *Islamitch Familierecht Journal* 1, no. 1 (2020): 23–45.
- Fuadi, dan Khoirul Umami. "Membaca Ulang Ayat Poligami: Sebuah Pembacaan Sinkronik-Diakronik." *Ulumul Qur'an: Jurnal Kajian Ilmu Al-Qur'an dan Tafsir* 4, no. 1 (2024): 1–12.
- Habudin, Ihab. "Menimbang Metode Tematik-Holistik Dalam Pembaruan Hukum Keluarga Muslim (Telaah Pemikiran Khoiruddin Nasution)." *Al-Ahwal: Jurnal Hukum Keluarga Islam*, 2015. <https://doi.org/10.14421/ahwal.2015.08104>.
- Harahap, Tuti Alawiyah, dan Syapar Alim Siregar. "Dampak Poligami Tanpa Persetujuan Istri Terhadap Keharmonisan Rumah Tangga." *Jurnal El-Thawalib* 3, no. 4 (Agustus 2022): 573–85. <https://doi.org/10.24952/el-thawalib.v3i4.5935>.
- "[https://badilag.mahkamahagung.go.id/pojok-dirjen/pojok-dirjen-badilag/prinsip-mempersulit-perceraian?utm\\_source=chatgpt.com](https://badilag.mahkamahagung.go.id/pojok-dirjen/pojok-dirjen-badilag/prinsip-mempersulit-perceraian?utm_source=chatgpt.com)," n.d.
- "[https://indonesia.go.id/kategori/feature/9735/angka-perkawinan-anak-dan-dewasa-di-indonesia-perubahan-sosial-dan-kesadaran-kolektif?lang=1&utm\\_source=chatgpt.com](https://indonesia.go.id/kategori/feature/9735/angka-perkawinan-anak-dan-dewasa-di-indonesia-perubahan-sosial-dan-kesadaran-kolektif?lang=1&utm_source=chatgpt.com)," n.d.
- "[https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pa-makassar/kategori/perdata-agama-1.html?utm\\_source=chatgpt.com](https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pa-makassar/kategori/perdata-agama-1.html?utm_source=chatgpt.com)," n.d.
- "[https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pta-bandung/kategori/izin-poligami-1.html?utm\\_source=chatgpt.com](https://putusan3.mahkamahagung.go.id/direktori/index/pengadilan/pta-bandung/kategori/izin-poligami-1.html?utm_source=chatgpt.com)," n.d.
- Husaini, Hasan, Mariani, Ahmadi Hasan, dan Jalaluddin. "Peran Hukum Islam dalam Pembangunan Hukum Nasional." *UNES Law Review* 6, no. 2 (2023): 4287–88.
- Jaidun. "Implikasi Hukum Terhadap Poligami Tanpa Izin dalam Perspektif Hukum Islam." *Jurnal Hukum dan HAM Wara Sains* 2, no. 05 (Mei 2023): 337–48. <https://doi.org/10.58812/jhhws.v2i05.304>.
- Jamhuri, dan Dhiauddin Tanjung. "Pemikiran Jamaluddin Athiyah dan Moderasi Fikih : Menyikapi Tantangan Keagamaan di Era Modern di Indonesia." *WATHAN: Jurnal Ilmu Sosial dan Humaniora* 2, no. 1 (2025): 154–67.
- Lutfi, M. Heli Abrori. "Engagement Relationship Ethics In Maqasid Al-Ushrah Perspective." *Mozaic: Islamic Studies Journal* 2, no. 2 (Agustus 2024): 10–21. <https://doi.org/10.35719/mozaic.v2i2.2152>.
- Mahdi, Imam, Abd. Muid N, dan Badru Tamam. "Kesetaraan Seksual Perspektif Al-Qur'an: Solusi Atas Dominasi Seksual." *Blantika: Multidisciplinary Journal* 2, no. 11 (September 2024): 456–71. <https://doi.org/10.57096/blantika.v2i11.239>.
- Meidina, Ahmad Rezy. "Granting of License Polygamy PerspectiveMaqasid: Analysis of Article 4 of Law Number 1 of 1974 and Article 57 of the Compilation of Islamic Law." *International Journal of Social Science and Religion (IJSSR)* 3, no. 2 (Juli 2022): 133–48. <https://doi.org/10.53639/ijssr.v3i3.73>.
- Naimah, Farida Ulvi, Mauhibur Rokhman, Ali Usman Hali, Muhammad Anas Maarif, dan Akhmad Sirojuddin. "Internalization of Local Traditions in Child Marriage from the Perspective of Maqasid Al-Ushrah." *El-Mashlahah* 14, no. 2 (Oktober 2024): 237–58. <https://doi.org/10.23971/el-mashlahah.v14i2.7942>.

- Pramono, Sigit. “Kontribusi Penjahit Perempuan Dalam Meningkatkan Kesejahteraan Keluarga Menurut Perspektif Ekonomi Islam (Studi Pada Penjahit Perempuan Di Desa Kaliprau Kecamatan Ulujami Kabupaten Pemalang).” *Jurnal Ekonomi Bisnis Manajemen dan Akuntansi (JEBISMA)* 1, no. 2 (Desember 2023): 10–11. <https://doi.org/10.70197/jebisma.v1i2.10>.
- Qomaro, Galuh Widitya, Nasrulloh Nasrulloh, Muh. Fathoni Hasyim, dan Iffatin Nur. “Navigating Early Marriages: A Methodological Breakthrough in Family Resilience Measurement.” *Mazahib* 23, no. 2 (Desember 2024): 477–528. <https://doi.org/10.21093/mj.v23i2.8027>.
- Qomaro, Galuh Widitya, Dina Imam Supaat, dan Nasrulloh Nasrulloh. “Family attitude and responsibility: A Quranic-based theoretical framework in the globalization challenges.” Diedit oleh A. Ma’arif, A. Amzeri, W. Caesarendra, dan I. Suwarno. *BIO Web of Conferences* 146 (November 2024): 01090. <https://doi.org/10.1051/bioconf/202414601090>.
- Ramadhani, Irwan. “Ragam Regulasi Poligami di Negara Muslim Modern.” *Jurnal Antologi Hukum* 3, no. 1 (2023): 17–32. <https://doi.org/10.21154/antologihukum.v3i1.2313>.
- Rohman, Muhammad Fadlil, Sri Lumatus Sa’adah, dan Abdul Wahab. “Women’s Rights in Marriage Perspective Maqasid Al-Usrah Jamaludin Athiyah.” *Indonesian Interdisciplinary Journal of Sharia Economics* 7, no. 2 (2024): 2768.
- Samad, Sri Astuti A. “Kajian Hukum Keluarga Islam dalam Perspektif Sosiologis di Indonesia.” *El-Usrah* 4, no. 1 (2021): 138–52.
- Setiawan, Eko. “Dinamika Pembaharuan Hukum Keluarga Islam Di Indonesia.” *De Jure: Jurnal Hukum dan Syar’iah* 6, no. 2 (2014). <https://doi.org/10.18860/j-fsh.v6i2.3207>.
- Shafra, Mauliddin Mauliddin, Nur Azizah Azizah, dan Elfiani Elkhairati. “Restricting Unregistered Polygamy: Protecting Women’s Rights within the Framework of Maqasid Shariah.” *ICSIS Proceedings* 1 (2024): 155–68.
- Sholihuddin, Muh, Saiful Jazil, dan Syamsun Ni’am. “Remarriage in the ‘Iddah Perspective of Maqāṣid Al-Usrah: Study in Wedoro Waru, Sidoarjo, Indonesia.” *Samarah*, 2024. <https://doi.org/10.22373/sjkh.v8i2.15061>.
- Sugianto, Sugianto, Abdurrohman Abdurrohman, dan Oriza Aditya. “Legal Reconstruction and Polygamy Problems in Sharia Maqashid and Positive Law Perspectives.” *Journal of Social Science* 3, no. 5 (September 2022): 1046–55. <https://doi.org/10.46799/jss.v3i5.411>.
- Sumidartiny, Ai Netty. “Pengelolaan Harta Keluarga dalam Kerangka Maqasid Syariah Menuju Keseimbangan dan Keberkahan.” *Journal of Darunnajah Business School* 2, no. 1 (2025): 39–48.
- Tohari, Ilham, dan Moh. Anas Kholish. “Maqasid Syariah Sebagai Pijakan Konseptual Dalam Pembaruan Hukum Keluarga Islam Indonesia.” *Arena Hukum* 13, no. 2 (2020): 314–28.
- Ulum, Moh Rafiqil, dan Tutik Hamidah. “Examining Monogamy Through the Lens of Jamaluddin Athiyyah’s Maqashid Syariah.” *At-Taḥkīr* 17, no. 2 (2024): 164–78. <https://doi.org/10.32505/at.v17i2.10780>.
- Wahid, Umaimah, dan Reifeah Legino. “Power Relations and Patriarchy Politics on Dating Violence.” *Nyimak: Journal of Communication* 7, no. 1 (Maret 2023): 109. <https://doi.org/10.31000/nyimak.v7i1.7669>.
- Widjaja, Gunawan. “Maqashid Syariah dalam Regulasi Fintech.” *Borneo: Journal of*

- Islamic Studies* 5, no. 1 (Desember 2024): 23–36.  
<https://doi.org/10.37567/borneo.v5i1.3355>.
- Yasin, Dikson T. “Menelisik Pesan Sosial Poligami dalam KHI.” *Jurnal Al-Himayah* 02, no. 01 (2018): 77–96.
- Yasin, Zulfatah. “Pandangan Dosen Institut PTIQ Jakarta terhadap Perkawinan Poligami: Studi Pasal 56, 57 dan 58 Kompilasi Hukum Islam.” *Qonuni: Jurnal Hukum dan Pengkajian Islam* 1, no. 01 (2021): 41–48.  
<https://doi.org/10.59833/qonuni.v1i01.183>.