



Reconstructing Polygamy Regulation Through Comparative Legal Systems: Strengthening the Protection of Women's and Children's Rights in Indonesia and Malaysia

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Abstract: This study aims to analyze the regulations and procedures governing polygamy in Indonesia and Malaysia and to evaluate their effectiveness in providing legal protection for women and children. The study employs a normative legal methodology, incorporating legislative, comparative, and conceptual approaches. Data consisting of legislation, court decisions, and legal literature were analyzed qualitatively using Lawrence M. Friedman's theory of legal systems—which encompasses legal substance, structure, and culture—as well as the theory of *maqāṣid al-sharīa* to assess protections for life, lineage, and property. The results of the study indicate that both countries share similarities in the basic regulations, restrictions, licensing procedures, and practices regarding polygamy, but differ in their legal protection mechanisms. Malaysia imposes sanctions for violations of polygamy laws, requires verification of the husband's financial capacity, and provides a mechanism for legalizing unregistered polygamy to ensure that the rights of wives and children remain protected. In contrast, unregistered polygamy in Indonesia faces difficulties in obtaining legal recognition because it depends on the fulfillment of formal requirements; consequently, protection for women and children remains suboptimal and does not fully reflect the principles of *maqāṣid al-sharīa*. This study contributes to the integration of the substantive, structural, and cultural dimensions of law as the basis for reforming polygamy regulations in a way that is more focused on protecting the rights of women and children.

Keywords: Polygamy; comparative legal system; women's and children's rights.

Abstrak: Penelitian ini bertujuan menganalisis pengaturan dan prosedur poligami di Indonesia dan Malaysia serta mengevaluasi efektivitas keduanya dalam memberikan perlindungan hukum bagi perempuan dan anak. Penelitian menggunakan metode hukum normatif dengan pendekatan perundang-

undangan, pendekatan perbandingan, dan pendekatan konseptual. Data berupa peraturan perundang-undangan, putusan pengadilan, dan literatur hukum dianalisis secara kualitatif menggunakan teori sistem hukum Lawrence M. Friedman yang mencakup substansi, struktur, dan budaya hukum, serta teori *maqāṣid al-syarī'ah* untuk menilai perlindungan terhadap jiwa, keturunan, dan harta. Hasil penelitian menunjukkan bahwa kedua negara memiliki kesamaan dalam pengaturan dasar, pembatasan, prosedur perizinan, dan praktik poligami, tetapi berbeda dalam mekanisme perlindungan hukum. Malaysia menerapkan sanksi terhadap pelanggaran poligami, mewajibkan verifikasi kemampuan finansial suami, serta memberikan mekanisme legalisasi poligami tidak tercatat sehingga hak istri dan anak tetap terlindungi. Sebaliknya, poligami tidak tercatat di Indonesia sulit memperoleh pengakuan hukum karena bergantung pada pemenuhan syarat formal, sehingga perlindungan terhadap perempuan dan anak belum optimal dan belum sepenuhnya mencerminkan prinsip *maqāṣid al-syarī'ah*. Penelitian ini berkontribusi dalam mengintegrasikan dimensi substansi, struktur, dan budaya hukum sebagai dasar reformasi regulasi poligami yang lebih berorientasi pada perlindungan hak perempuan dan anak.

Kata Kunci: Poligami; perbandingan sistem hukum; hak perempuan dan anak.



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Introduction

The issue of polygamy is an old one, but it will always be interesting.¹ In the current social conditions where people are increasingly materialistic and pragmatic, the issue of polygamy is even more relevant. Based on data from the Indonesian Supreme Court, there were 1.066 polygamy cases in 2023; 967 (90,7%) were approved, and the rest were rejected. The unregistered polygamous marriages are also many in society, but they may not be exactly accounted for. Unfortunately, polygamy regulations in Indonesia are still civil-administrative procedural, particularly in the Marriage Law concerning permits for polygamy. Criminal law, however, provides for imprisonment for unregistered polygamous marriages, subject to a complaint from the wives. This legal regulation differs from that of Malaysia, which imposes restitutory sanctions for violations of polygamy permits, including fines or imprisonment. The fine of 1000 ringgits for those who conduct unregistered polygamy

¹ Sam'ani Sam'ani et al., "Pragmatism of Polygamous Family In Muslim Society: Beyond Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 1 (March 2023): 321–40, <https://doi.org/10.22373/sjhk.v7i1.15874>.

marriages, and they may legalize them in the Court. According to the official data from *Dewan Negeri Selangor*, there are 218 cases in 2023. Husbands' financial capabilities are also a primary consideration in the Malaysian Court's procedure. Based on this comparison, it is necessary to examine both countries' laws on polygamy to determine the protection of women's and children's rights.

Various writings discuss polygamy both from the perspective of Islamic Law and Indonesian Law. The study of polygamy law in Indonesia also reveals a lot about efforts to reform Islamic Law² in Indonesia³ by regulating the conditions and procedures for polygamy set by the state⁴ to protect the rights of women or wives. A review of the existing literature on polygamy law in Indonesia shows that although polygamy is recognized in Islamic Law and accommodated in positive law, its practice remains restricted by various regulations. Indonesian marriage law, which is based on monogamy, only allows polygamy under strict conditions, such as the consent of the wife and permission from the religious Court.⁵

Darmawijaya⁶ and Aziz et al.⁷ Highlight the social and legal impacts of polygamy practices, both in the context of positive law in several Muslim countries and in empirical practice in Indonesia. Other studies, such as those

² Edi Darmawijaya, "Poligami dalam hukum islam dan hukum positif (Tinjauan Hukum Keluarga Turki, Tunisia Dan Indonesia)," *Gender equality: International Journal of Child and Gender Studies* 1, no. 1 (March 2015): 27–38, <https://doi.org/10.22373/equality.v1i1.621>.

³ Muhammad Faylasuf, Ria Anjani, and Ahmad Izzuddin, "Regulating Polygamy in Indonesia and Egypt Toward Greater Protection of Women," *Yudisia : Jurnal Pemikiran Hukum Dan Hukum Islam* 16, no. 2 (December 2025): 340–56, <https://doi.org/10.21043/yudisia.v16i2.27693>.

⁴ Naqiyah et al., "Polygamy Legal Politics in Southeast Asian Muslim Countries: Legal Pluralism and Qur'anic Perspectives," *Al-Manahij: Jurnal Kajian Hukum Islam*, May 26, 2025, 51–64, <https://doi.org/10.24090/mnh.v19i1.13201>.

⁵ Nina Agus Hariati, "Regulasi Poligami Di Indonesia Perspektif M. Syahrur Dan Gender," *Asy-Syari'ah : Jurnal Hukum Islam* 7, no. 2 (June 2021): 187–208, <https://doi.org/10.55210/assyariah.v7i2.597>.

⁶ Mat Noor Mat Zain, Ahmad Faris Zikri Mahsor, and Norhoneydayatie Abdul Manap, "Measures to Curb Polygamy Scams in Malaysia: A Legal Perspective," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (June 2023): 1243–66, <https://doi.org/10.22373/sjhk.v7i2.16031>.

⁷ Nasaiz Aziz, Rispalman Rispalman, and Tika Anggraini, "Polygamy in the Perspective of Tafsir Al-Ahkām and Islamic Law: An Examination of the Gayo Luwes Community in Aceh, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (October 2023): 1682–707, <https://doi.org/10.22373/sjhk.v7i3.20021>.

by Santoso & Asnawan⁸ and Jaman,⁹ emphasize the importance of polygamy regulation to prevent abuses that can harm women and children. From a global perspective, Hinchcliffe¹⁰ discusses the evolution of polygamy law in Islam, while Yasin and Jani¹¹ analyze the effectiveness of polygamy laws in Malaysia.

There are a few comparative studies of polygamy law. There is an article by Marlina et al. that compares polygamy laws in Indonesia and Malaysia in a normative context. It discusses only the normative laws of polygamy in Indonesia and Malaysia.¹² However, it has not further explored the protection of women's and children's rights and the implications for society in the two countries. This paper will further add to the treasury of legal knowledge in the field of family law, especially on the issue of polygamy with a comparative perspective of countries, namely Indonesia and Malaysia, with a more comprehensive presentation with a comparison of legal families and their implementation in society, as well as the protection the women and children rights, so that a better one can be taken to be adapted to each other. Thus, this comparative writing of polygamy law in Indonesia and Malaysia will be more comprehensive and contributive.

It uses the *maqāṣid al-sharīa* perspective in legal comparison, especially to analyze the legal protection for women's and children's rights, and analysis

⁸ Dri Santoso, "Philosophical Aspects of the Existence of Restrictions in Perspective Polygamy National Law in Indonesia," *Journal of Legal, Ethical and Regulatory Issues* 25 (2022): 1.

⁹ Andrio Alex Nurdin and Sayehu Sayehu, "The Harmonization of Islamic Law and National Law on the Practice of Polygamy in Indonesia," *Jurnal Al-ahkam* 16, no. 1 (October 2025): 15–31, <https://doi.org/10.15548/alahkam.v16i1.10896>; Najmah Jaman, "Implications Of Polygamy Practices On Positive Law In Indonesia," *Prophetic Law Review*, July 1, 2020, 22–36, <https://doi.org/10.20885/PLR.vol2.iss1.art2>.

¹⁰ Doreen Hinchcliffe, "Polygamy in Traditional and Contemporary Islamic Law," in *Issues in Islamic Law* (Routledge, 2017), 63–78; Rajnaara C. Akhtar, "Zainab Batul Naqvi, Polygamy, Policy and Postcolonialism in English Marriage Law; A Critical Feminist Analysis, Bristol: Bristol University Press, 2023, 239 Pp, Hb £85.00," *The Modern Law Review* 87, no. 5 (2024): 1377–80, <https://doi.org/10.1111/1468-2230.12893>.

¹¹ Firdaus Firdaus et al., "The Protection of Islamic Women in Indonesia: Evaluation of Polygamy Sanctions and Its Implications," *KARSA: Journal of Social and Islamic Culture* 31, no. 1 (June 2023): 79–108, <https://doi.org/10.19105/karsa.v31i1.10611>; Farida Nurun Nazah et al., "Reforming Islamic Family Justice: Integrating Legal and Psychological Perspectives in Handling Polygamy and Divorce Cases in Indonesia," *Nusantara: Journal of Law Studies* 5, no. 2 (August 2026): 1226–59, <https://doi.org/10.66325/nusantaralaw.v5i2.290>.

¹² Siti Marlina et al., "Perbandingan hukum poligami di indonesia dan malaysia," *Jurnal Inovasi Hukum dan Kebijakan* 5, no. 4 (2024); Zarifa Abbasy and Mohammad Alam Adeel, "A Study of the Concept of Polygamy in Islam and the Legal Systems of Afghanistan, Malaysia, and Turkey," *Diwan* 5, no. 2 (July 2024): 229–52, <https://doi.org/10.69892/Diwan.5213>.

of the legal system theory that is the integration between legal substance, legal structure, and social practice to analyze the effectiveness of the polygamy law in both countries. The polygamy laws of the two countries are presented in relation to their legal rules, requirements, procedures, sanctions, and community practices. This comparison not only looks for similarities and differences but also examines why they occur and the implications for the effectiveness of law in society in realizing legal protection, legal certainty, expediency, and justice. With this comparative model, a sound legal model can be developed to carry out law reform in the next stage. This model may become a novelty of the study.

The urgency of this study lies in the fact that unregistered polygamy remains prevalent in Indonesia and Malaysia, creating legal uncertainty and potentially infringing upon the rights of women and children, particularly regarding marital status, alimony, inheritance, and social protection. Although both countries have regulated polygamy through court licensing mechanisms, the implementation and effectiveness of their legal protections differ significantly. Therefore, this comparative study is important for identifying the effectiveness of legal substance, enforcement structures, and legal culture in the practice of polygamy in both countries, while also contributing to the development of Islamic family law reforms that better guarantee the protection of women's and children's rights.

This study is a legal research, utilizing legal materials such as legislation, books, scholarly articles, and other works relevant to the research topic. The approaches employed include the statutory approach, analyzing regulations regarding polygamy in Indonesia, such as Law No. 1 of 1974 concerning Marriage and its amendments, as well as in Malaysia, such as the Islamic Family Law Enactments; the comparative approach to identify similarities and differences in the legal systems of both countries; and the conceptual approach utilizing concepts from Islamic law and modern legal theory. The analysis examines the legal substance (rules and sanctions), legal structure (the role of judicial institutions), and legal culture (social practices) regarding polygamy in Indonesia and Malaysia, drawing on data from prior research and relevant literature. All data is systematically organized by aspects of rules, requirements, procedures, and sanctions, and their implementation in society, to provide a comprehensive overview. Within this analytical framework, this

study employs the *maqāṣid al-sharīa* theory to assess the protection of women's and children's rights, as well as Lawrence M. Friedman's legal system theory, which encompasses legal substance, structure, and culture. Through this comparative approach, the effectiveness of both legal systems can be analyzed, and directions for better legal development and reform can be formulated.

The Basic Norm of Polygamy in Indonesia and Malaysia

Indonesia and Malaysia are both Malay-majority territories.¹³ During the colonial period, both countries were colonized by foreign countries, namely the Dutch in Indonesia and the British in Malaysia. With this background, the development of Law in Indonesia and Malaysia is, of course, also influenced by local (customary) law, Islamic law, and colonial Western law. It's just that the Dutch, who colonized Indonesia, brought a civil law system.¹⁴ And the British in Malaysia introduced a common law system.¹⁵ These two legal systems are very different, yet they color the world today.

Regarding marriage law, these two countries are also heavily influenced by Islamic Law, especially for Muslims.¹⁶ Polygamy is also regulated in the laws of these two countries. The rules on polygamy in these two countries are derived from Islamic Law, adapted to the modern Western legal system, and accompanied by strict procedural requirements in the courts.

The law of polygamy in Indonesia is regulated in Law Number 1 of 1974 concerning Marriage, which basically adheres to the principle of monogamy,

¹³ Ahmad Suaedy, "Islam, Identitas dan Minoritas Di Asia Tenggara," *Jurnal Kajian Wilayah PS DR LIPI* 1, no. 2 (2010): 237–52; Saiddaeni Saiddaeni, "Ethics of Care, Gender Equality in Islamic Teachings Quran An Nisa: 3, Polygamy or Monogamy?," *Journal of Gender and Social Inclusion in Muslim Societies* 4, no. 1 (July 2023): 52–59, <https://doi.org/10.30829/jgsims.v4i1.15763>.

¹⁴ Dian Ekawati, "Model of the Indonesian Legal System," *Jurnal Kewarganegaraan* 7, no. 2 (2023): 2033–43; Ah Kholish Hayatuddin Desti Widiani, "Socio-Juridical Analysis on Polygamy Requirements in the Compilation of Islamic Law (KHI)," *Al-'Adalah* 19, no. 1 (June 2022): 195–222, <https://doi.org/10.24042/adalah.v19i1.10266>.

¹⁵ Saimi Bin Bujang and Noranizah Yusuf, "Impak Penjajahan Barat Terhadap Sistem Perundangan Dan Kehakiman Islam Di Sarawak: The Impact of Western Colonization on The Islamic Legal and Judicial System In Sarawak," *MANU Journal of Humanities* 35, no. 2 (2024): 99–124, <https://doi.org/10.51200/manu.v35i2.5764>; Abdul Wahab Ayoubi and Fazal Rahman Ayoubi, "Legality and Conditions of Polygyny in Afghanistan Legal System," *Integrated Journal for Research in Arts and Humanities* 4, no. 2 (April 2024): 129–32, <https://doi.org/10.55544/ijrah.4.2.20>.

¹⁶ Kholis Bidayati Kholis, Muhammad Alwi Al Maliki Alwi, and Suci Ramadhan Suci, "Dinamika pembaharuan hukum keluarga islam di negara muslim: studi atas negara malaysia dan brunei darussalam," *ADHKI: Journal of Islamic Family Law* 3, no. 1 (2021): 51–68.

as stated in Article 1, which states that marriage is a physical and mental bond between a man and a woman as husband and wife. However, polygamy is still possible under the provisions of Articles 3 to 5, under certain conditions and subject to court permission. A husband may apply for more than one wife if the first wife is unable to fulfill her obligations, suffers from an incurable disability or disease, or is unable to bear offspring.

The application for a polygamy license must meet several administrative and substantive requirements, including the consent of the wife or previous wives, the certainty that the husband can guarantee the wives' and children's basic living needs, and the guarantee of justice between them. In certain circumstances, such as when the wife cannot be asked for consent, or her whereabouts are unknown for two years or more, consent may be waived at the judge's discretion. Thus, in the Indonesian legal system, polygamy is restricted and closely monitored by the state through the judicial mechanism.

A review of the existing literature on polygamy law in Indonesia shows that although polygamy is recognized in Islamic Law and accommodated in positive law, its practice remains restricted by various regulations. Indonesian marriage law, which is based on monogamy, only allows polygamy under strict conditions, such as the consent of the wife and permission from the religious Court.¹⁷ From the perspective of Islamic Law, polygamy is allowed up to four wives under the condition of justice. Still, the legal consequences for husbands who violate this principle are quite significant in both Islamic and positive law.¹⁸ If polygamy is practiced without fulfilling the stipulated requirements, the marriage can be declared legally invalid, the first wife has the right to annul the marriage, and the husband could potentially face criminal sanctions.¹⁹

The regulations of polygamy procedures protect women's rights, particularly the first wife, who must grant permission in court. This prevents

¹⁷ Nina Agus Hariati, "Regulasi Poligami Di Indonesia Perspektif M. Syahrur Dan Gender," *Asy-Syari'ah: Jurnal Hukum Islam* 7, no. 2 (2021): 187–208.

¹⁸ Dian Septiandani and Dhian Indah Astanti, "Konsekuensi Hukum Bagi Suami Yang Melaksanakan Poligami Yang Melanggar Aturan Hukum Positif Indonesia Dan Hukum Islam," *Jurnal USM Law Review* 4, no. 2 (2021): 795–817; Michail Ivanov, "Polygamy: Proper or Primitive? Possible Pathways to Permitting the Practice in Australia," *The University of Queensland Law Journal* 44, no. 1 (March 2025), <https://doi.org/10.38127/uqlj.v44i1.10015>.

¹⁹ Fatma Amilia et al., "The Gendered Politics of Masalah: Patriarchal Tendencies in the Legal and Judicial Justification of Polygamy," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 58, no. 2 (December 2024): 241–72, <https://doi.org/10.14421/ajish.v58i2.1519>.

husbands from practicing polygamy without fulfilling legal requirements. However, the downside is that these polygamy laws are simply marriage laws and lack adequate sanctions, making them susceptible to violation and difficult to enforce. The sanction for a violation of the polygamy procedure is set out in Article 45 of Government Regulation No. 9 of 1975 as a very minimal fine (7.500 Rupiahs). Under Indonesian criminal law, illegal polygamy can be punished with imprisonment as a complaint-based offense if the wife reports it. If the wife is unaware of the situation and does not report it, she cannot be subject to criminal sanctions.²⁰

The law on polygamy in Malaysia is set out in Section 23 of the Enactment of the Islamic Family Law (*Negeri Selangor*) 2003, as well as in similar enactments in other states, which are almost uniform in substance. This provision states that a Muslim man may not enter a marriage contract with another woman. In contrast, a valid marriage exists unless he has obtained written permission from the *Shariah* Court. Valid reasons, details of income, maintenance obligations, and information regarding the consent of the wife or previous wives must accompany an application for permission for polygamy. The Court will consider the application by hearing the testimonies of the relevant parties. It will only grant permission if the polygamy is deemed necessary, the applicant can fulfill the maintenance of all wives and dependents, can be fair, and does not cause *shar'i* harm to existing wives.²¹

Under the procedure, men who wish to be polygamous in Malaysia must apply to the *Shariah* Court, attach supporting evidence, including affidavits regarding income and financial dependents, and pay the application fee. The Court then summons the first wife to testify before deciding whether to grant or deny the application. Sanctions for violating the polygamy law in Malaysia are set out in Section 40 of the same enactment, which provides for imprisonment of up to six months, a fine of up to RM 1,000, or both. Malaysia's polygamy laws impose strict penalties. However, the downside is that the wife's

²⁰ Asrat Nita Wati, Pagar Pagar, and Hasan Matsum, "Legal Protection for Wives in Unregistered Polygamous Marriages: An Analysis of Islamic Law in Indonesia," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 24, no. 1 (July 2025): 3701-12, <https://doi.org/10.31941/pj.v24i2.6589>.

²¹ Lia Noviana, Risma Wigati, and Nurulaini Halimatus Sakdiyah, "The Dynamics of Family Law Reform in Asia and Africa (Portrait of Polygamy Regulations in Indonesia, Malaysia, Pakistan, Morocco and Tunisia)," *Al-Syakhsiyyah: Journal of Law and Family Studies* 4, no. 2 (2022): 187-187, <https://doi.org/10.21154/syakhsiyyah.v4i2.5895>.

permission is subject to court approval. A husband can practice polygamy illegally without his wife's consent, then apply for permission to the court by paying a fine stipulated in the regulations, which the court then legalizes.

Legal and Unregistered Polygamy in Indonesia and Malaysia

Some practice polygamy with the court's permission, and those who do not, in Indonesian society. Polygamy carried out with court permission is called official (legal) polygamy, while those without court permission are usually a *sirri* marriage. This *sirri* marriage is not officially registered under state law. *Sirri* polygamy is practiced when there is no permission from the first wife, when the conditions are not fulfilled, or when a request is not submitted to the Court, and approval is not obtained from the Court. However, they are married under religious law.²²

The *sirri* polygamy for Muslim in Indonesia may be legalized by *itsbath nikah* or confirmation of marriage in the Religious Court if the polygamy conditions and procedures have been fulfilled. On the contrary, if the conditions and procedures of polygamy can't be fulfilled, the *sirri* polygamy can't also be legalized in the Religious Court.

In Malaysian society, some people also apply for polygamy according to legal procedures, and some practice polygamy without following legal procedures, which is called marriage without permission or syndicate marriage. The practice of polygamous marriage carried out according to the application procedure in the *Shariah* Court better guarantees the legal rights of the couple involved. This is because the *Shariah* Court will assess whether the applicant is suitable or necessary to practice polygamy, can provide for the family, and has a responsible attitude toward family members. If these conditions cannot be met, the *Syariah* Court will reject the application.

A marriage without permission, or a syndicate marriage, is a marriage conducted in the Thai border area or in any other area in Malaysia by a group or individual who has not received permission from the government authorities to conduct the wedding ceremony. Usually, this group or individual

²² Lukman Santoso, Arij Amaliyah, and Miftahul Huda, "Refusal of Polygamy Permit in Religious Court Decision: Criticism of Gender Justice Against Judge's Legal Reasoning," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 2 (December 2023): 160–73, <https://doi.org/10.30631/alrisalah.v23i2.1472>.

will provide all the facilities for the couple to get married, including witnesses and a guardian for the woman.²³ Some couples are more willing to take the easy way out by getting married without going through the Court's permission or through a syndicate because they believe that the polygamy application procedure is strict and difficult to obtain permission. This type of marriage is usually arranged by a syndicate in Southern Thailand, especially in Songkhla province.²⁴

Section 124 of the Selangor Islamic Family Law Enactment relating to Polygamy without Court permission, is as follows:

“If a man marries again anywhere while his existing marriage is still ongoing without obtaining prior written permission from the Court, then he is committing an offense and shall be punished by a fine not exceeding one thousand ringgit or imprisonment not exceeding six months or both.”

The provisions of the law state the punishment for the practice of polygamy carried out without obtaining permission from the *Shariah* Court, namely a fine not exceeding one thousand ringgit or imprisonment not exceeding six months or both.

The act of polygamy without permission is also carried out by some parties who claim that the polygamy application procedure is feared not to receive the judge's permission because several conditions have failed to be complied with, such as not being able to provide for the maintenance of his wife & future wife, not being fair to the existing wife, or wanting to keep the marriage with the existing wife secret. The problems that arise usually arise from cases of couples who engage in polygamy without obtaining permission from the *Shariah* Court. Such a marriage will raise doubts about its validity and about how the wife & children intend to claim rights, such as maintenance,

²³ Mohammad Tabrej Alam et al., “Islam Polygamy: india’s judicial response and jurisprudential basis,” *Lex Localis - Journal of Local Self-Government* 23, no. S6 (October 2025): 2515–25, <https://doi.org/10.52152/eb2shq64>.; Nurul Azwa. 2020. Kesan Nikah Siam Dan Nikah Sindiket, Masalah Menanti Di Kemudian Hari <https://www.mingguanwanita.my/kesan-nikah-siam-dan-nikah-sindiket-masalah-menanti-di-kemudian-hari/>

²⁴ Norani Othman, Yaso Nadarajah, and Rozana Mohd Isa, *Polygamous Marriages in Peninsular Malaysia: Family, Gender and Religion at the Crossroads* (Springer Nature, 2025); Noranizah Yusuf et al., “Perkembangan Perundangan Islam Di Sarawak Sebelum Kedatangan Penjajah Barat: Satu Tinjauan Awal,” *Proceedings Borneo Islamic International Conference* eISSN 2948-5045 14 (November 2023): 66–72.;

divorce, and inheritance.²⁵ Many spouses in Malaysian society conduct a syndicate marriage for polygamy, and then they register their marriages with the Syariah Court to be legalized by paying a fine of 1000 Ringgits. According to official data from Dewan Negeri Selangor, there were 218 cases in 2023 and 200 in 2024.

Islamic Law Reform and Polygamy Regulation in Indonesia and Malaysia: A Comparative Analysis

Indonesian and Malaysian Law are both influenced by Islamic Law because the majority are Muslim. That is what causes the similarities in law in the two countries. The influence of Islamic Law on the laws of the two countries (especially regarding polygamy) is evident in legal provisions permitting up to 4 wives, requiring that marriages be fair, and in other requirements (which have been modified to meet the demands of modernity). The basis of Islamic Law, derived from fiqh, is reformed and modified to align with a modern legal system, with a model of recording, registration, and Court permission (influenced by modernity). This model of Islamic law reform is called extra-doctrinal reform (according to Taheer Mahmud).²⁶ This legal reform leads to legal certainty, benefits, justice, and protection of women's rights. For example, with a procedural polygamous marriage with permission from the Court, the conditions for the first wife have automatically been met, and there is a guarantee of fair treatment from the husband. The second wife and so on, and their descendants, also receive legal recognition as legitimate family members and descendants of her husband or father, which is registered by the state. This is an aspect of legal certainty, benefit, justice, and legal protection. This legal reform is in line with the principles of *maqāṣid al-sharīa*, namely, the protection of religion, soul, reason, descendants, and property.

The legal procedures for polygamy in Indonesia and Malaysia are almost the same. A husband can practice polygamy with the same requirements as

²⁵ Javaid Rehman, "The Sharia, Islamic Family Laws and International Human Rights Law: Examining the Theory and Practice of Polygamy and Talaq," *International Journal of Law, Policy and the Family* 21, no. 1 (April 2007): 108–27, <https://doi.org/10.1093/lawfam/ebf023>; Norain Mohd Shah and Khairul Azhar Meerangani, "Poligami Tanpa Kebenaran: Kajian Terhadap Kes-Kes Di Mahkamah Tinggi Syariah Muar, Johor Tahun 2015-2019," *Jurnal'Ulwan* 6, no. 1 (2021): 269–77.

²⁶ Sri Wahyuni, "Legal Transplant: Influence of The Western Legal System in The Muslim Countries," *Justicia Islamica* 19, no. 1 (2022): 21–37.

when the wife is unable to carry out her duties as a wife, and must obtain permission from the Court. The Court's permission is for modernization and Islamic law reform in accordance with modern Western law. There are some differences between Indonesian and Malaysian law in polygamy as follows:

Table 1. Comparison of Polygamy Regulations and Practices in Indonesia and Malaysia

Indonesia	Malaysia
Permission from the first wife is an absolute condition	Permission from the first wife is not an absolute condition
The fairness is only in a statement letter, without financial details, before the Court, which may not guarantee the protection of the prosperity of wives and children.	The Court makes a financial observation that may serve as a safeguard for the prosperity of wives and children.
Sirri polygamy can't be legalized by <i>itsbath nikah</i> (marriage confirmation) without fulfilling all conditions and procedures of polygamy permission, especially the first wife's permission in the Religious Court	An illegal or syndicate polygamy marriage may be legalized with permission from the <i>Shariah</i> Court by paying a fine of 1000 Ringgit.
Many <i>sirri</i> polygamous marriages are practiced in society that are not legalized.	Many polygamous marriages are practiced in society, but the <i>Syariah</i> Court permission may legalize them.
The sanction for <i>sirri</i> polygamy is considered adultery in the criminal law codification, and in the Government Regulation 1975, with a very minimal fine.	The sanction for illegal or syndicate polygamy is included in the marriage law regulation (either <i>sirri</i> marriage or <i>sirri</i> polygamy)
The difficulty of legalizing <i>Sirri</i> polygamy in Indonesian law causes the lack of protection of wives' and children's rights.	The ease of legalizing Syndicate marriage in Malaysian Law as legal polygamy marriage may protect the wives and children.

Source: researchers' documents, 2025.

Based on a comparative study of polygamy laws in Indonesia and Malaysia, there are similarities and differences in the regulation, implementation, and social impact of this practice. Both countries apply the principle of monogamy as the basis of marriage, but allow polygamy under certain conditions and

permission from the Court.²⁷ In Indonesia, polygamy is regulated under the Marriage Law No. 1 of 1974, which requires the permission of the first wife before an application can be submitted to the Religious Court. In contrast, Malaysia refers to the Islamic Family (*Wilayah Persekutuan*) Act 1984, under which the consent of the first wife is not an absolute requirement but is left to the discretion of a *Shariah* Court judge.²⁸

The difference between Indonesian and Malaysian Law also lies in their legal systems: Indonesia adopts civil law from the Netherlands, while Malaysia adopts the common law model from England. Indonesia is a former Dutch colony with a civil law system, while Malaysia is a former British colony with a common law system. In the civil law system, there is a clear separation between criminal and civil law, whereas in the common law system, there is not. Regarding polygamy, under Indonesian Law, there are no strict criminal sanctions in the marriage law (only a relatively light fine). In contrast, in Malaysia, there are strict criminal sanctions, including imprisonment and/or fines. This can be seen in articles on sanctions for polygamy violations. In Indonesian law, criminal sanctions for *sirri* polygamy may be seen as adultery criminal (with wives' claims) in the Indonesian codification of criminal law. It's not included in the marriage law. This is the origin of the differences and similarities in polygamy law in Indonesia and Malaysia.

This comparative research examines the advantages and disadvantages of each, enabling the adoption of the better option for future legal development. Other comparative research²⁹ usually only looks at the similarities and differences. Usually, similarities and differences arise from different groups, so referring to the groups and origins of the law is very important. The study of

²⁷ Badai Husain Hasibuan and Dinda Asrona Warni Daulay, "Polemik keabsahan poligami: perbandingan hukum keluarga islam indonesia dan malaysia," *Jurnal Al-maqasid: Jurnal Ilmu Kesyariahan Dan Keperdataan* 10, no. 2 (2024): 347–66; Euis Nurlaelawati, "Expansive Legal Interpretation and Muslim Judges' Approach to Polygamy in Indonesia," *Hawwa* 18, nos. 2–3 (October 2020): 295–324, <https://doi.org/10.1163/15692086-12341380>.

²⁸ Siti Nor Aishah, Siti Zailia, and Armasito Armasito, "Prosedur Dan Syarat Poligami Di Indonesia Dan Malaysia," *Muqaranah* 6, no. 1 (2022): 61–68; Nurul Huda Mohd Razif, "Nikah Express: Malay Polygyny and Marriage-Making at the Malaysian–Thai Border," *Asian Studies Review* 45, no. 4 (October 2021): 635–55, <https://doi.org/10.1080/10357823.2020.1870931>.

²⁹ Marlina et al., "Perbandingan hukum poligami di indonesia dan malaysia"; Ismail Marzuki, "Politik Hukum Poligami (Studi Terhadap Peraturan Perundang-Undangan Di Negara-Negara Muslim)," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 1 (June 2019): 141–57, <https://doi.org/10.24090/mnh.v13i1.1799>.

societal practices related to polygamy further enhances the comprehensiveness of this research. Thus, this paper can enrich studies in the field of polygamy law and comparative state law.

The differences and similarities in the origin of Indonesian and Malaysian Law have implications for the practice of polygamy in their communities. In examining the case, several theories can be used, including the theory of legal validity (*das geltung des recht*) from Hans Kelsen, which states that the law will be effective if it meets three validities, namely philosophical (*philosophische geltung*), sociological (*sociologische geltung*), and juridical (*juridische geltung*) validity.³⁰ Philosophical enforceability is the enforceability of law in accordance with society's philosophical values. In contrast, sociological enforceability is the enforceability of law in accordance with general practices in existing communities. In the case of polygamous marriage, the value and understanding of society members about polygamy becomes the philosophical aspect, and the practice of polygamous marriage in society becomes the sociological one.

In Indonesia and Malaysia, which are predominantly Muslim, there are still parts of society that adhere to Islamic Law and think that polygamy is permitted in Islamic teachings without having to undergo legal procedures and permission from the courts. Thus, both in Indonesia and Malaysia, polygamy is known as an unregistered marriage (*sirri* polygamy in Indonesia or Syndicate marriage in Malaysia), namely marriage according to Islamic religious procedures without state registration procedures. These are the philosophical and sociological aspects of the polygamy law.

On the other side is the juridical enforceability (*juridische geltung*), namely the enactment of laws legitimized by state power; for example, in the Indonesian context, this has taken the form of statutory regulation.³¹ namely, in the case, it's the strict regulation or law of polygamy. In line with the above theory, Laurance M. Friedman also states that the legal system consists of legal

³⁰ Brian Bix, "Hans Kelsen and Choosing Legal Normativity," *SSRN Electronic Journal*, ahead of print, 2023, <https://doi.org/10.2139/ssrn.4491880>; Hans Kelsen, *Reine Rechtslehre*, 1934

³¹ Hervin Yoki Pradikta, Aan Budianto, and Habib Shulton Asnawi, "History of Development and Reform of Family Law in Indonesia and Malaysia," *KnE Social Sciences*, April 4, 2024, 316–31, <https://doi.org/10.18502/kss.v9i12.15863>; Mukhammad Nur Hadi, Faridatus Suhadak, and Zuliza Mohd Kusrin, "Social Justice and Humanity on Polygamous Marriage at the Religious Court of Pasuruan, Indonesia," *Justicia Islamica* 20, no. 2 (November 2023): 281–300, <https://doi.org/10.21154/justicia.v20i2.7324>.

substance, legal structure, and legal culture.³² The substance of the law is embodied in laws and regulations issued by the state, while the legal structure comprises law-enforcement agencies and other state structures that enforce those laws. Legal culture is the set of norms and values that govern how society implements the law.³³ The legal effectiveness depends on the three validities of law above, as well as on the three parts of the legal system. In the case of polygamous marriage in Indonesia, the regulation of polygamy has made a strict regulation about the conditions, requirements, and procedures for the Court permission. Unfortunately, many people still practice *sirri* polygamy in Indonesia or syndicate polygamy marriage in Malaysia, because some of them understand that *sirri* polygamy is right according to Islamic law. This is the gap between the philosophical and sociological aspects, and the legal, cultural, and structural aspects.

Based on the form description of norms and sociological aspects of polygamy in Indonesian and Malaysian law, many problems make it ineffective, as follows:

Table 2. Comparative Analysis of the Effectiveness of Polygamy Laws in Indonesia and Malaysia

No	Element	Indonesian Law	Malaysian Law
1	Legal substance	Strict, weak sanctions	Strict, strong sanctions
2	Legal structure	Not repressive	There are coercions and fines
3	Legal culture	Sirri is considered valid	Marriage syndicate is considered a shortcut

Source: Sources: researchers' documents, 2025.

A comparison of polygamy regulations in Indonesia and Malaysia teaches us one important lesson: the real issue is not merely the presence or absence

³² Lawrence M. Friedman, "The Legal System: A Social Science Perspective," Russell Sage Foundation, 1975; Jonathan Friedman, *Cultural Identity and Global Process*, Theory, Culture & Society (London ; Thousand Oaks, Calif: Sage Publications, 1994).

³³ Diya Ul Akmal, "Penataan Peraturan Perundang-Undangan Sebagai Upaya Penguatan Sistem Hukum Di Indonesia," *Jurnal Legislasi Indonesia* 18, no. 3 (2021): 296–308; Neni Nuraeni, Dewi Sulastri, and Z. Zulbaidah, "The concept and application of covenant in financing gold pawn by sharia banks in west java," *Asy-Syari'ah: Jurnal Hukum Islam* 27, no. 2 (July 2020): 127–46, <https://doi.org/10.15575/as.v22i1.5822>.

of legal rules. More than that, what matters is how legal substance, institutional structure, and legal culture interact. Within the framework of Lawrence M. Friedman's legal systems theory, the effectiveness of the law cannot be measured solely by the comprehensiveness of available written norms.³⁴ It also depends on law enforcement agencies' ability to implement those norms, as well as the extent to which society accepts, complies with, or seeks loopholes in the existing provisions. Thus, the practice of *sirri* polygamy or polygamy conducted without state permission in both countries must be understood as an issue that is simultaneously normative, institutional, and cultural.³⁵

From a substantive perspective, Indonesia and Malaysia stand on similar foundations. Neither rules out the possibility of polygamy for Muslims, but both restrict it through strict conditions and procedures.³⁶ The basic principle is monogamy. However, a court may grant a husband permission to have more than one wife, provided there is a valid legal reason, the wife's consent, the husband's financial capability, and a guarantee that he can treat all his wives and children fairly.³⁷ This provision is reflected in the Marriage Law and its implementing regulations, which designate the Religious Court's permission as the primary oversight mechanism.³⁸

In Malaysia, the procedure is not much different. A Muslim man who wishes to practice polygamy must first obtain written approval from the

³⁴ Agus Purnomo and Dawam Multazamy Rohmatulloh, "Legal system theory perspective on child marriage in indonesia after amendment to the marriage law," *Ulul albab: Jurnal Studi Islam* 23, no. 2 (December 2022): 228–50, <https://doi.org/10.18860/ua.v23i2.17426>; Imron Rosyadi, Helmy Ziaul Fuad, and Ashlaha Baladina Zaimuddin, "Criminalization of Unregistered Marriage in Indonesia: A Legal System Analysis Based on Friedman's Theory," *AL- ADALAH* 22, no. 1 (June 2025): 147–80, <https://doi.org/10.24042/adalah.v22i1.22779>.

³⁵ Dahlia Haliah Ma'u, "The Harmonization of Polygamy Between Islamic Law and Legal Law in Indonesia," *SAMARAH Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (May 2023): 669–669, <https://doi.org/10.22373/sjhk.v7i2.8519>.

³⁶ Ahmad Mustofa, "Historisitas dan orientasi poligami dalam perundang-undangan keluarga islam indonesia dan negara-negara muslim," *Tahkim (Jurnal Peradaban Dan Hukum Islam)* 6, no. 1 (April 2023): 91–112, <https://doi.org/10.29313/tahkim.v6i1.11487>.

³⁷ Nur Kholis, Jumaiyah Jumaiyah, and Wahidullah Wahidullah, "Poligami dan ketidakadilan gender dalam undang-undang perkawinan di indonesia," *Al-Ahkam* 27, no. 2 (December 2017): 195–195, <https://doi.org/10.21580/ahkam.2017.27.2.1971>; Lia Noviana, "Status wanita di negara muslim modern: studi terhadap hukum keluarga di tunisia dan indonesia," *Kodifikasi* 13, no. 2 (December 2019): 197–197, <https://doi.org/10.21154/kodifikasi.v13i2.1832>.

³⁸ Falah Andrean Prasetya, Dian Septiandani, and Dhian Indah Astanti, "Pelaksanaan poligami dan pembagian harta bersama dalam kajian hukum islam dan hukum positif indonesia," *Semarang Law Review (SLR)* 4, no. 2 (October 2023): 123–123, <https://doi.org/10.26623/slr.v4i2.7769>.

Shariah Court.³⁹ The court will assess the husband's financial capacity, the principle of fairness toward existing wives, and the potential harm to the family.⁴⁰ These provisions are included, among other places, in Section 23 of various state-level Islamic family law enactments.⁴¹ Thus, at the substantive level, both states adopt a model of restricted polygamy; polygamy is not absolutely prohibited but is controlled through judicial permission and oversight.

A more striking difference, however, lies in the legal consequences of violations. Indonesian law places polygamy within the realm of civil law, meaning the state cannot directly impose criminal sanctions for violations of polygamy procedures. Criminal sanctions can be pursued only through public-law channels if the wife files a report or a lawsuit. In other words, legal protection depends heavily on the aggrieved party's initiative to file a lawsuit, a petition for annulment, or other legal action in court.

Malaysia takes a different approach. Polygamy without permission from the Sharia Court can be directly classified as a Sharia offense subject to criminal sanctions. In this regard, Malaysian law appears more repressive, as the state provides more explicit mechanisms of sanction. However, there is one feature that serves as both a strength and a weakness: this violation can be resolved simply by paying a fine of approximately 1,000 Ringgit, after which the marriage can be officially registered. This leniency creates a gap between the substance of the law and the structure of its enforcement; sanctions that are

³⁹ Nurulbahiah Awang, "The Right Concept and Application of Polygamous Marriage in Malaysia: An Analysis to the Role of Court under the Provision of Islamic Family Law (Federal Territories) Act 1984," *Al-Ahwal Jurnal Hukum Keluarga Islam* 17, no. 1 (June 2024): 58–70, <https://doi.org/10.14421/ahwal.2024.17104>; Sofia Gussevi et al., "Comparison of Regulations and Implications of Polygamy in the Islamic Legal System, Continental European Law, and Anglo-Saxon Law," *International Journal of Nusantara Islam* 14, no. 2 (July 2026): 689–714, <https://doi.org/10.15575/ijni.v14i2.54603>.

⁴⁰ Zuliza Mohd Kusrin et al., "Revisiting Polygamous Marriage Laws in Malaysia: Addressing Enforcement Gaps and Contemporary Challenges in Islamic Family Law," *Jurnal Ilmiah Mizani Wacana Hukum Ekonomi Dan Keagamaan* 12, no. 2 (October 2025): 570–570, <https://doi.org/10.29300/mzn.v12i2.8651>; Hervin Yoki Pradikta, Aan Budianto, and Habib Shulton Asnawi, "History of Development and Reform of Family Law in Indonesia and Malaysia," *KnE Social Sciences*, ahead of print, April 4, 2024, <https://doi.org/10.18502/kss.v9i12.15863>.

⁴¹ Che Jamaludin Mahmud and Izmi Izdiharuddin, *A Review on the Laws of Polygamy in Federal Territories of Malaysia* / Izmi Izdiharuddin Che Jamaludin Mahmud, January 1, 2012, <https://ir.uitm.edu.my/id/eprint/32143/>.

too light cause the legal mechanism to function as a “shortcut” to legalization, rather than as a deterrent.⁴²

On one hand, this mechanism provides tangible benefits. Marriages that were previously unregistered can obtain administrative status, making it easier to access rights to alimony, lineage, inheritance, and the child’s legal identity.⁴³ But on the other hand, there is a potential for moral hazard that is hard to ignore. If the imposed sanction is merely a light fine, the offender may treat procedural violations as an “administrative risk” that can be paid later. This means that Malaysian law is more effective in the curative dimension, restoring rights after a violation has occurred, but is not necessarily effective in the preventive dimension, preventing unauthorized polygamy from the outset.⁴⁴

This is where it is important not to get caught up in a simplistic comparison of “Malaysia is better, Indonesia is weaker.” A more honest approach is to acknowledge that both have different strengths and weaknesses. Indonesia is relatively stricter in protecting the rights of the first wife. *Itsbat nikah*, or the legal validation of a marriage, is not granted automatically if the procedures for polygamy, including court permission and the first wife’s consent, are not fulfilled.⁴⁵ This can be interpreted as a form of protection to ensure that the first wife’s rights are not unilaterally overridden. The downside: the second wife and children from secret polygamy risk not receiving adequate legal protection, as their marriage lacks legal status in the eyes of the state, and this situation, in reality, is not sufficiently effective in

⁴² Kusrin et al., “Revisiting Polygamous Marriage Laws in Malaysia: Addressing Enforcement Gaps and Contemporary Challenges in Islamic Family Law”; Mulia Siregar, Fatimah Zuhrah, and Muhammad Jailani, “Islamic Legal Protection of Child’s Rights in Polygamous Marriage in Indonesia,” *Psychology and Education Journal* 58, no. 1 (January 2021): 5195–200, <https://doi.org/10.17762/pae.v58i1.1773>.

⁴³ Syabian Arya Rasyid Gurning and Husni Syawali, “Akibat Perkawinan Poligami Yang Tidak Tercatat Terhadap Ahli Waris Menurut Hukum Positif Dan Hukum Islam,” *Bandung Conference Series Law Studies* 5, no. 2 (August 2025), <https://doi.org/10.29313/bcsls.v5i2.21244>; Rusji Rumbia, Fokky Fuad Wasitaatmadja, and Susianto Susianto, “Poligami indonesia dan malaysia sebuah perbandingan atas keberlakuan hukum islam,” *Jurnal Magister Ilmu Hukum* 5, no. 2 (August 2021): 63–63, <https://doi.org/10.36722/jmih.v5i2.791>.

⁴⁴ Awang, “The Right Concept and Application of Polygamous Marriage in Malaysia: An Analysis to the Role of Court under the Provision of Islamic Family Law (Federal Territories) Act 1984.”

⁴⁵ Mukhtaruddin Bahrum, “Problematisasi isbat nikah poligami sirri,” *Al-Adalah Jurnal Hukum Dan Politik Islam* 4, no. 2 (October 2019): 194–213, <https://doi.org/10.35673/ajmpi.v4i2.434>; Durrotun Nasihah, “Pandangan Hakim Pengadilan Agama Pasuruan Terhadap Status Anak Hasil Poligami Terselubung,” in *eTheses of Maulana Malik Ibrahim State Islamic University (Maulana Malik Ibrahim State Islamic University)* (Universitas Islam Negeri Maulana Malik Ibrahim, 2020).

curbing the practice of secret polygamy itself.⁴⁶ Malaysia is more open to legalizing marriages that have already taken place without permission, and this provides legal certainty for those already in such marital relationships. However, this openness can weaken the coercive power of court approval, especially if the penalties are not severe enough or inconsistently enforced.

From a legal structural perspective, differences in effectiveness are also evident in the extent of the state's involvement in managing polygamy. In Indonesia, Religious Courts do play a crucial role: granting permission, examining the husband's reasons, hearing the wife's consent, and assessing the husband's ability to treat his wives fairly.⁴⁷ However, when polygamy is practiced secretly outside the registration system, the state can only respond if a party files a case. Legal effectiveness, in other words, depends heavily on public access to the courts, women's legal awareness, a wife's courage to sue, the economic capacity to litigate, and judges' sensitivity in assessing the social impact of unregistered polygamy.⁴⁸ In Malaysia, the *Shariah* Court has more direct authority. Polygamy without permission can be processed as a Sharia offense, and subsequently, the court opens the door for marriage registration.⁴⁹ This structure makes the state more present in regulating the legal consequences of polygamy. But the problem lies in the consistency of enforcement. If the fines imposed are light and the marriage can still be registered, then this legal structure can actually be interpreted by the public as an "alternative route": marry first without permission, pay the fine later, and then obtain legal recognition.⁵⁰ So Malaysia is strong in providing a path to legalization, but it still needs to be scrutinized regarding its deterrent effect.

⁴⁶ Raudlotul Firdaus Binti Fatah Yasin, "Analysis of polygamy provision under the Islamic family law (federal territories) act 1984 with reference to the qur'ān and sunnah," *IJUM Law Journal* 18, no. 2 (2010), <https://doi.org/10.31436/ijumlj.v18i2.25>.

⁴⁷ Theresia Dyah Wirastris and Stijn Cornelis van Huis, "The Second Wife: Ambivalences towards State Regulation of Polygamy in Indonesia," *Journal of Legal Pluralism and Unofficial Law* 53, no. 2 (2021): 246–68, <https://doi.org/10.1080/07329113.2021.1912579>.

⁴⁸ Rosyadi, Fuad, and Zaimuddin, "Criminalization of Unregistered Marriage in Indonesia: A Legal System Analysis Based on Friedman's Theory"; Muhammad Roy Purwanto et al., "Polygamy in Muslim Countries: A Comparative Study in Tunisia, Saudi Arabia, and Indonesia," March 8, 2021, 435–37, <https://doi.org/10.2991/aebmr.k.210305.082>.

⁴⁹ Awang, "The Right Concept and Application of Polygamous Marriage in Malaysia: An Analysis to the Role of Court under the Provision of Islamic Family Law (Federal Territories) Act 1984."

⁵⁰ Kusrin et al., "Revisiting Polygamous Marriage Laws in Malaysia: Addressing Enforcement Gaps and Contemporary Challenges in Islamic Family Law"; Ade Khoirunnisa et al., "Comparison of Islamic

Perhaps the most crucial point lies in legal culture.⁵¹ Both Indonesia and Malaysia are predominantly Muslim societies, where polygamy is understood not merely as a matter of state law, but also as a religious practice. Some people still hold the view that if the pillars and conditions of marriage, according to Islamic jurisprudence, have been fulfilled, then the marriage is valid under religious law even if it is not registered with the state.⁵² This perspective ultimately drives some people to choose the path of secret polygamy, and it does not stand alone: it simultaneously becomes a matter of sociological, philosophical, and legal-cultural validity. It is this perspective that gives rise to a difficult-to-resolve tension. In the language of the theory of *geltung des rechts*, there is an imbalance among legal, sociological, and philosophical validity. Legally, the state requires court approval and registration. Sociologically, some communities still accept secret polygamy as religiously valid. Philosophically, practitioners often feel their actions do not violate Islamic values as long as the marriage contract meets fiqh requirements. It is this misalignment of the three layers that makes state norms difficult to enforce fully.⁵³

Consequently, secret polygamy thrives not only due to weak regulations but also because of a legal consciousness that has not yet fully recognized state registration as an integral part of Sharia protection. Many practitioners view registration as a mere administrative matter rather than an instrument for protecting women and children. Yet in modern states, marriage registration helps ensure that the parties' legal rights can be proven and enforced. Without it, wives face difficulties in claiming alimony, shared assets, inheritance, or

Family Law in Malaysia and Indonesia,” *An-Nisa: Journal of Islamic Family Law* 2, no. 2 (June 2025): 109–20, <https://doi.org/10.63142/an-nisa.v2i2.226>.

⁵¹ Dahlia Farida et al., “Legal Protection for Disputing Parties through the Aceh Customary Court,” *AL-IHKAM Jurnal Hukum & Pranata Sosial* 15, no. 1 (June 2020): 31–49, <https://doi.org/10.19105/al-lhkam.v15i1.2250>.

⁵² Shinta Dewi Rismawati and Muhammad Abral Bin Abu Bakar, “Polygamy Marriage: Legal Culture, Optional Political Identity And Marital Status Dilemma (A Case Study in Pekalongan),” *AL-IHKAM Jurnal Hukum & Pranata Sosial* 14, no. 2 (December 2019): 234–64, <https://doi.org/10.19105/al-lhkam.v14i2.2396>.

⁵³ Rosyadi, Fuad, and Zaimuddin, “Criminalization of Unregistered Marriage in Indonesia: A Legal System Analysis Based on Friedman’s Theory”; Hervin Yoki Pradikta, Hasanuddin Muhammad, and Musda Asmara, “Poligami di Malaysia dan Indonesia Serta Relevansinya dengan Pemenuhan Hak Gender,” *Al-Istinbath: Jurnal Hukum Islam* 5, no. 2 November (November 2020): 213–28, <https://doi.org/10.29240/jhi.v5i2.1932>.

protection upon divorce. Children may also encounter various obstacles in managing their identity, inheritance, and social protection.⁵⁴

This analysis must be integrated with the *maqāṣid al-sharī'ah*, not as a normative justification but as a substantive benchmark for assessing whether polygamy regulations in both countries truly achieve the objectives of Islamic law: to realize the public interest and to prevent harm. The three most relevant *maqāṣid* principles are *ḥifẓ al-nasl* (protection of lineage), *ḥifẓ al-māl* (protection of property), and *ḥifẓ al-naḥs* (protection of life and safety).⁵⁵

First, from the perspective of *ḥifẓ al-nasl*, polygamy regulations should ensure the certainty of lineage, the child's legal identity, and family status. When polygamy is conducted through a court-approved marriage, children born from that union have a strong legal basis to obtain a birth certificate, establish civil relations with their father, and be recognized within the family structure. Conversely, in secret polygamy, children often face administrative obstacles because their parents' marital status is not registered. In Indonesia, these obstacles arise when a child needs identity documents or when the mother must prove the child's legal relationship with the father. In Malaysia, post-violation registration mechanisms can help restore aspects of *ḥifẓ al-nasl* but still warrant criticism, as ideally, protection of lineage should not be pursued through procedural violations in the first place.⁵⁶

Second, from the perspective of *ḥifẓ al-māl*, polygamy laws must guarantee the protection of the economic rights of wives and children.⁵⁷ The

⁵⁴ Sri Wulandari et al., "Measuring the Justice of Children's Inheritance Rights in Polygamy: A Comparison between Legal and Siri Marriages from the Perspective of Islamic Law," *Pena Justisia Media Komunikasi Dan Kajian Hukum* 24, no. 1 (April 2025): 6591–601, <https://doi.org/10.31941/pj.v24i2.6612>.

⁵⁵ Anugerah Fajar Ghifari, Izzuddin Ahmad, and Saiban Kasuwi, "Tinjauan maqasid hukum perkawinan islam terhadap syarat poligami dalam kompilasi hukum islam di indonesia," *Al-Maslahah (Syari'ah and Islamic Economic Faculty)*, ahead of print, September 26, 2025, <https://doi.org/10.24260/al-maslahah.v20i2.2861>; Muhammad Nur, "Contextualization of Polygamy Law; Justification of Islamic Legal Principles against Positive Regulations in Indonesia," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 16, no. 2 (July 2024): 273–87, <https://doi.org/10.32505/jurisprudensi.v16i2.8108>.

⁵⁶ Abdul Helim et al., "Cumulative Versus Alternative Conditions: A Study of Polygyny Permits in Indonesia From the Perspective of the Legal Certainty Principle," *De Jure: Jurnal Hukum dan Syar'iah* 15, no. 1 (July 2023): 21–38, <https://doi.org/10.18860/j-fsh.v15i1.15384>.

⁵⁷ Putra Afriadi, Safira Malia Hayati, and Muhammad Yasir, "Reinterpretation Of Polygamy Verses," *QOF* 5, no. 2 (December 2021): 173–86, <https://doi.org/10.30762/qof.v5i2.8>; Naqiyah et al., "Polygamy Legal Politics in Southeast Asian Muslim Countries: Legal Pluralism and Qur'anic Perspectives," *Al-Manahij: Jurnal Kajian Hukum Islam*, May 26, 2025, 51–64, <https://doi.org/10.24090/mnh.v19i1.13201>.

requirement for the husband's financial capacity and the guarantee of fairness are not mere formalities; they are instruments to ensure that polygamy does not result in impoverishment or abandonment. In the practice of secret polygamy, the second wife often lacks a strong legal standing to claim alimony, shared property, or inheritance. The first wife may also be disadvantaged if family assets are used to finance another marriage without her consent and without court oversight.⁵⁸ Here, Malaysia's mechanism allowing registration after sanctions is potentially more helpful, but only if the sanctions are sufficiently strict that the husband does not use subsequent legalization to avoid an initial economic capacity review.

Third, from the perspective of *ḥifẓ al-nafs*, polygamy conducted without permission and without the first wife's consent can lead to psychological pressure, domestic conflict, verbal or physical abuse, neglect, and family instability. The first wife may suffer because her rights are unilaterally disregarded, while the second wife lives in vulnerability due to a lack of social and legal recognition. Children may also experience stigma, identity conflicts, or uncertainty regarding their relationship with their father. Therefore, court permission for polygamy must not be understood merely as an administrative procedure; it is a mechanism for protecting human life and dignity.⁵⁹ Both Indonesia and Malaysia must ensure that judges not only examine formal requirements but also substantively assess the potential harm to the wife and children.

The effectiveness of polygamy laws in Indonesia and Malaysia cannot be measured solely by the strictness of the norms or the presence or absence of sanctions, but rather by the law's ability to change societal behavior, protect vulnerable parties, and bridge the tension between religious validity and state validity. At the substantive level, both countries restrict polygamy through court approval, the wife's consent, financial capacity, and the principle of justice; however, Malaysia is more explicit in employing Sharia criminal penalties as a curative response, while Indonesia relies more on preventive

⁵⁸ U. Rahman et al., "Men and Women in the Distribution of Inheritance in Mandar, West Sulawesi, Indonesia," *Samarah* 6, no. 1 (2022): 156–75, Scopus, <https://doi.org/10.22373/sjkh.v6i1.9094>.

⁵⁹ Nurlailatul Badriyyah Rekak et al., "Judicial consideration in granting a fourth wife permit: a maqāṣid al-sharī'ah perspective on the decision of the religious court of malang," *SHILAP Revista de Lepidopterología*, ahead of print, July 1, 2025, <https://doi.org/10.20414/ijhi.v24i1.997>.

controls through Religious Court approvals, which, unfortunately, do not extend to “*sirri*” polygamy occurring outside the formal system. Consequently, women and children in secret polygamy are at risk of receiving no legal protection at all, an irony in which the procedural rigidity intended to protect the first wife sacrifices those who are most vulnerable. From the perspective of *maqāṣid al-sharīa*, polygamy without registration and court permission contradicts both *ḥifẓ al-nasl*, *ḥifẓ al-māl*, and *ḥifẓ al-nafs*; thus, marriage registration and court authorization must be understood not merely as administrative procedures, but as instruments of *sharia* protection themselves. The reforms needed in both countries must therefore proceed in two directions: strengthening preventive sanctions so that norms do not remain merely formal, while simultaneously providing curative protection mechanisms for those already in unregistered marriages, accompanied by education that shifts public awareness to recognize that state procedures and Islamic values are not mutually exclusive, but rather mutually supportive for the welfare of the family.

Conclusion

There are several similarities in the substance, structure, and culture of polygamy laws in Indonesia and Malaysia, namely legal regulations, restrictions, and procedures for polygamy as well as its practice in society. The requirements for polygamy and its procedures are nearly identical. The similarities stem from the influence of Islamic Law in both countries and from modern legal reforms that incorporate court procedures to protect the rights of women and children as *maqāṣid al-sharīa*. At the same time, the differences stem from the influence of distinct Western colonial laws in both. Malaysian law, which is influenced by the common law system, does not separate private and criminal law, so there are criminal sanctions for illegal polygamy. In contrast, Indonesian law, which adheres to the civil law system, separates private and criminal law, so it emphasizes sanctions in criminal law rather than in marriage law, as a complaint offense (if the wife reports). In practice, both in Indonesia and Malaysia, there is also polygamy that has not been legally registered in Court, as practicing unregistered polygamy, because culturally, both Indonesian and Malaysian societies still adhere to legal marriage based on Islamic religious law.

The difference in legal substance is that Malaysian law imposes strict sanctions under polygamy law, while Indonesian law does not. Polygamy law in Malaysia is more able to protect women's rights in their welfare because court permission requires an examination of the husband's financial capabilities. *Sirri* polygamy in Malaysia can also be legalized in the Court after paying a fine of 1000 Ringgits, so that the polygamous wife and her children can be recognized legally and obtain protection of their rights. Meanwhile, in Indonesia, *sirri* polygamy cannot be confirmed in the Court before fulfilling the requirements of polygamy and the consent of the first wife, so that the polygamous wife and children do not receive legal protection. This contradicts the principles of the *maqasid al-sharia*, specifically safeguarding life, descendants, and property. This study can contribute to better legal reforms on polygamy and protect women's rights. The results of the study comparing polygamy in the two countries are very important for identifying which law is better, so that they can take the best aspects of both to reform the law into a more effective one.

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