

Judicial Disparity in Indonesian Polygamy Permits: Misapplication of Al-Shatibi's Maqāṣid al-Sharī'ah and Legal Certainty

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Article Info	Abstract
Corresponding Author: mfarrelirawan@student.ub.ac.id History: Submitted: 28-09-2025 Revised: 21-08-2026 Accepted: 24-08-2026 Keyword: Judicial Disparity; Legal Certainty; Maqāṣid al-Sharī'ah; Polygamy.  Copyright ©2026 by Muhammad Farrel Irawan, Siti Rohmah, and Fitri Hidayat. All writings published in this journal are personal views of the authors and do not represent the views of the Estudiante Law Journal.	This study examines judicial disparity in applications for polygamy permits before the Indonesian Religious Courts using Al-Shatibi's framework of <i>Maqāṣid al-Sharī'ah</i>. Addressing the tension between judicial discretion and statutory norms, the article analyses Decision Number 1286/Pdt.G/2014/PA.Mlg, which granted permission despite non-fulfilment of the alternative requirements, and Decision Number 1332/Pdt.G/2025/PA.Pwd, which rejected the application on a strict reading of Article 4 paragraph (2) of Law Number 1 of 1974. The study uses normative legal research with statutory, case and conceptual approaches. It finds that the disparity stems from divergent interpretative methods: the Malang decision employed a subjective-teleological interpretation that misapplied the maxim <i>dar' al-mafāṣid</i>, whereas the Purwodadi decision adhered to a formalist-grammatical interpretation. Viewed through Al-Shatibi's hierarchy, the grounds advanced in both cases, namely the desire for more offspring and a high sexual drive, fall squarely within <i>taḥsīniyyah</i>, the level of complementary or embellishing needs. Overriding mandatory statutory provisions for <i>taḥsīniyyah</i> motives undermines legal certainty and judicial predictability. The article proposes methodological parameters for Islamic judicial discretion in order to prevent judicial overreach.

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1. Introduction

In the field of Islamic Family Law, the issue of polygamy remains a subject of considerable discussion to this day. This is because polygamy continues to raise various issues, both in terms of public understanding of the normative framework governing polygamy in Indonesia and its practical implementation within society. There are diverse perspectives on the practice of polygamy. One of these is the critical perspective, which argues that polygamy may reproduce unequal power relations between men and women. Nevertheless, amid the various debates surrounding the practice of polygamy, some people regard polygamy as a solution to a number of other social problems, such as adultery, infidelity, and prostitution, which they believe can be addressed, among other means, through polygamous marriage. In addition to being regulated by the provisions of the Qur'an, Hadith, and Indonesian legislation, polygamy was also directly practiced by the Prophet Muhammad (peace be upon him) during his lifetime.¹

In Indonesia, polygamy is legally permitted subject to strict requirements, as stipulated in Law Number 1 of 1974 concerning Marriage. Articles 4 and 5 of the Law provide that a husband may have more than one wife only with the consent of his existing wife and based on certain legally recognized grounds, such as the wife being unable to fulfill her marital obligations, suffering from an illness or disability, or being unable to bear children. This provision is reinforced by Law Number 7 of 1989 concerning Religious Courts, particularly Article 49, which grants the Religious Courts absolute authority to adjudicate such matters. However, in practice, discrepancies are often found between legal norms and social practices, whereby a wife's consent may be obtained under unequal power relations or even disregarded altogether in informal polygamous marriages. This raises concerns regarding the effectiveness of legal protection for women in the context of polygamy.²

Accordingly, the practice of polygamy in Indonesia requires not only the consent of the existing wife but also official permission from the Religious Court. This provision is consistent with Law Number 1 of 1974 concerning Marriage, which fundamentally establishes the principle of monogamy. Nevertheless, under certain circumstances, the law allows for exceptions, provided that an application for polygamy satisfies the applicable requirements, both substantive and administrative. Furthermore, the procedures for implementing polygamy are further regulated under Government Regulation Number 9 of 1975 as the implementing regulation of the Marriage Law. Under this regulation, a man seeking permission to practice polygamy is required to submit several supporting documents, such as proof of income, tax documentation, and other documents that may serve as a basis for the court's consideration. Although the regulatory framework appears stringent in normative terms, its effectiveness in practice is frequently questioned, particularly given the continued occurrence of polygamous marriages

¹ Maimun Maimun, "Pernikahan Dalam Kompilasi Hukum Islam Dan Perdata," *Jurnal Al-Mizan* 9, no. 1 (2022): 12–21, <https://doi.org/10.54621/jiam.v9i1.263>.

² Maimun, "Pernikahan Dalam Kompilasi Hukum Islam Dan Perdata."

conducted outside lawful procedures and the potential for bias in the interpretation of administrative requirements by judicial authorities.³

The provisions concerning polygamy are also set forth in the Compilation of Islamic Law (*Kompilasi Hukum Islam* or KHI), specifically in Chapter IX, Articles 55 to 59. The substance of these provisions is generally consistent with the Marriage Law, as both legal frameworks impose restrictions on the practice of polygamy. The KHI stipulates that a husband may have a maximum of four wives, subject to certain requirements. First, the number of wives may not exceed four simultaneously. Second, the husband must be capable of treating his wives and children fairly. Third, if the requirement of fairness cannot be fulfilled, polygamy is not permitted. These provisions are intended to protect wives by ensuring that husbands understand the responsibilities and risks associated with polygamy and do not regard it as an easy or arbitrary decision. In addition, wives are provided with legal assurance that the husband will treat them fairly if he enters into a polygamous marriage.⁴

However, in society, polygamy continues to generate controversy regarding both the substance of the legal provisions and their implementation. A concrete example of the discrepancy between legal norms and the implementation of polygamy can be found in Decision Number 1286/Pdt.G/2014/PA.Mlg and Decision Number 1332/Pdt.G/2025/PA.Pwd. In Decision Number 1286/Pdt.G/2014/PA.Mlg, the Applicant sought permission to practice polygamy. At the time, the Applicant was already married to one wife and subsequently submitted an application to the Religious Court for permission to marry a second wife. According to the facts of the case set out in the decision, the Applicant's reason for seeking to practice polygamy was that his wife was unable to have additional children. The Applicant had been married to the Respondent, and their marriage had remained harmonious throughout their marital relationship. Furthermore, they had five children from the marriage. In relation to the Applicant's intention to practice polygamy, the Respondent raised no objection, agreed to become a co-wife, and consented to the Applicant's plan. As part of the procedure for applying for permission to practice polygamy, the Applicant submitted supporting documents, including salary slips and financial records, to demonstrate his financial capacity to provide for his wives and children in the future. Such evidence constituted one of the formal indicators considered by the court in assessing the Applicant's material capacity to treat his wives fairly.⁵

During the proceedings, the judge also directly examined the Respondent to assess the extent of her consent to the proposed polygamous marriage. Although, administratively, this procedure demonstrates an effort to protect the wife's rights, its effectiveness in ensuring comprehensive justice, both emotionally and socially, remains a matter that warrants further examination. During the hearing, the Respondent verbally confirmed the truth of all the arguments presented by the Applicant and, on that basis, expressed no

³ Aisyah Ayu Musyafah, "Perkawinan Dalam Perspektif Filosofis Hukum Islam," *Crepido* 2, no. 2 (2020): 111–22, <https://doi.org/10.14710/crepido.2.2.111-122>.

⁴ Musyafah, "Perkawinan Dalam Perspektif Filosofis Hukum Islam."

⁵ A. Malisi, "Hikmah Pernikahan," *Seikat: Jurnal Ilmu Sosial, Politik Dan Hukum* 1, no. 1 (2022): 22–28.

objection to the application. The Respondent also believed that the Applicant was capable of treating his wives fairly and had the financial capacity to take another wife. The court's decision in this case indicates a potential inconsistency with the national legal framework governing polygamy. In its considerations, the court granted the application for permission to practice polygamy on the grounds that the Applicant had obtained the first wife's consent, possessed sufficient financial capacity, and was committed to treating his wives fairly, as well as on the basis of preventing adultery.⁶

However, pursuant to Article 4 paragraph (2) of Law Number 1 of 1974 concerning Marriage, polygamy is only permitted when the wife is unable to fulfill her marital obligations, suffers from a disability or an incurable serious illness, or is unable to bear children. In this case, the reason presented by the Applicant does not indicate the existence of any of these circumstances. On the other hand, the requirements under Article 5 paragraph (1) are cumulative, requiring the wife's consent, sufficient financial capacity, and a guarantee of fairness. Accordingly, even if the requirements under Article 5 are fulfilled, the application for permission to practice polygamy cannot be granted in the absence of any of the grounds stipulated in Article 4 paragraph (2). Therefore, the granting of the application for polygamy should be considered legally impermissible. Consequently, the use of moral considerations, such as preventing adultery, which are not expressly recognized under positive law, raises a juridical issue and creates room for the potential abuse of judicial discretion in Religious Court proceedings.⁷

Subsequently, in Decision Number 1332/Pdt.G/2025/PA.Pwd, which concerned the same subject matter, namely an application for permission to practice polygamy, the Applicant, who was already married to one wife, submitted an application to the Religious Court for permission to enter into a polygamous marriage. In his application, the Applicant argued that the reason for seeking permission to practice polygamy was that he had already fallen in love with or become attracted to another woman. In addition, the Applicant claimed to have a sexual drive that was higher than that of the average man, causing the Respondent to feel overwhelmed when attempting to fulfill the Applicant's sexual needs. Therefore, the Applicant sought permission to marry another woman as his second wife, claiming that he was concerned about falling into acts prohibited by religious law.⁸

During the proceedings, the Respondent testified orally that two children had been born from her marriage to the Applicant. In its consideration of the case, the Panel of Judges in the second case rejected the Applicant's application on the grounds that one of the alternative requirements stipulated in Article 4 paragraph (2) of Law Number 1 of 1974 had not been satisfied. The Court found that the Respondent was still capable of fulfilling her obligations as a wife, did not suffer from any disability or serious illness, and had already borne children. On this basis, the Panel of Judges concluded that the reason

⁶ Musyafah, "Perkawinan Dalam Perspektif Filosofis Hukum Islam."

⁷ Aisyah Ayu Musyafah, "Hukum Perkawinan Islam Dalam Tata Hukum Di Indonesia," *Law, Development and Justice Review* 3, no. 2 (2020): 275-95, <https://doi.org/10.14710/ldjr.v3i2.10073>.

⁸ Malisi, "Hikmah Pernikahan."

presented by the Applicant had no legal basis and, therefore, the application could not be granted.⁹

Unlike the second decision, in the first case, the application for permission to practice polygamy was granted despite the failure to satisfy the alternative requirements, based on the fulfillment of the cumulative requirements and considerations of the family's welfare (*kemaslahatan keluarga*). These two decisions demonstrate a disparity in how judges interpret the legal requirements for polygamy, despite the fact that the subject matter of both cases is substantially similar.¹⁰

However, based on Constitutional Court Decision Number 12/PUU-V/2007, the requirements and procedures governing the practice of polygamy are intended to safeguard wives' rights and prevent the abuse of power by husbands. Accordingly, this disparity reflects not merely differences in judicial approaches but may also create legal uncertainty and undermine the protection of women that should be guaranteed under positive law. Therefore, where a Religious Court grants an application for permission to practice polygamy without observing the prescribed requirements, grounds, and procedures – in this case, where the alternative requirements for polygamy have not been fulfilled – it is necessary to further examine the factors contributing to such disparities in judicial reasoning. Based on the foregoing analysis, the author identifies a legal conflict concerning the granting of permission for polygamy and the regulations governing its implementation, which may result in legal uncertainty and create broader legal loopholes in the regulation of polygamy in Indonesia.¹¹

This diametrical difference demonstrates the uncertainty surrounding the standards of judicial interpretation within the Religious Courts. Some judges tend to exceed the limits of their authority (*judicial overreach*) by basing their decisions on classical *fiqh* norms or subjective considerations of *maslahah* without clearly defined limitations, while others remain committed to the principle of legality. This article examines the underlying causes of such disparities by assessing the applicability of Imam Al-Shatibi's concept of *Maqāṣid al-Sharī'ah* as a framework for reconstructing the boundaries of judicial discretion, with the aim of ensuring legal certainty and protecting women's rights.¹²

Previous studies on disparities in polygamy permits have predominantly focused either on purely juridical-dogmatic analyses or on the sociological impact of polygamy on gender relations. In contrast to these studies, the novelty of this research lies in its in-depth examination of the misuse of *fiqh* principles and the exploitation of judicial discretion through the hierarchical framework of Imam Al-Shatibi's *Maqāṣid al-Sharī'ah*, which consists of three levels: *dharūriyyah*, *ḥājiyyah*, and *taḥsīniyyah*. This research explicitly addresses the existing research gap by demonstrating that personal reasons frequently used to legitimize the granting of polygamy permits essentially fall within the level of

⁹ Malisi, "Hikmah Pernikahan."

¹⁰ Umar Umar, Faisar Ananda Arfa, and Irwansyah Irwansyah, "Sejarah Hukum Perkawinan Di Dunia Islam," *Student Research Journal* 3, no. 1 (2025): 262.

¹¹ Muhammad Shoim, *Pengantar Hukum Perdata Di Indonesia* (Jakarta: Prestasi Pustaka, 2022).

¹² Umar, Arfa, and Irwansyah, "Sejarah Hukum Perkawinan Di Dunia Islam."

tahsīniyyah and, therefore, methodologically cannot override the mandatory provisions of statutory law.¹³

2. Method

a) Type of Research

This research employs a normative juridical research method, as its primary focus is law or legal norms. The researcher uses library-based materials as the main sources of data for analyzing the relevant cases. Accordingly, this research does not involve field research or empirical data collection.

b) Research Approach

This research employs three approaches within the normative juridical research method. First, the statutory approach examines the hierarchy of laws and compliance with Law Number 1 of 1974, Government Regulation Number 9 of 1975, and the Compilation of Islamic Law (KHI). Second, the case approach analyzes the legal considerations (*ratio decidendi*) contained in Decision Number 1286/Pdt.G/2014/PA.Mlg and Decision Number 1332/Pdt.G/2025/PA.Pwd. Third, the conceptual approach examines the concepts of legal certainty and Imam Al-Shatibi's framework of *Maqāṣid al-Sharī'ah*.

c) Primary Legal Materials

1. Decision of the Malang Religious Court Number 1286/Pdt.G/2014/PA.Mlg;
2. Decision of the Purwodadi Religious Court Number 1332/Pdt.G/2025/PA.Pwd;
3. Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019 (State Gazette of the Republic of Indonesia of 2019 Number 186, Supplement to the State Gazette of the Republic of Indonesia Number 6401);
4. Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1975 Number 12, Supplement to the State Gazette of the Republic of Indonesia Number 3050);
5. Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law.

d) Secondary Legal Materials

Secondary legal materials are legal sources that do not have binding legal force but serve to provide explanations and interpretations of primary legal materials. These materials include explanations of laws and regulations, expert opinions, and academic manuscripts relevant to the issues examined in this research. In this study, secondary legal materials consist of books, articles, and scholarly journals relevant to the practice of polygamy in Indonesia.

e) Legal Materials Retrieval Technique

¹³ Musyafah, "Hukum Perkawinan Islam Dalam Tata Hukum Di Indonesia."

In preparing this research, the author conducted a systematic search for the legal materials required to support the study. The process began by compiling the titles of books to be used as references in developing the research, followed by determining relevant keywords for searching scholarly journals online. The primary and secondary legal materials used in this research were collected through a literature review (*library research*) conducted at the Library of the Faculty of Law, Universitas Brawijaya.

f) **Legal Materials Analysis Technique**

The collected legal materials were analyzed to identify answers and solutions to the legal issues examined in this research. The analysis process was conducted as an effort to develop a comprehensive understanding of the research object. In this study, the author employs several methods of legal interpretation. First, **grammatical interpretation** is used to analyze the meaning of the imperative phrases contained in Article 4 paragraph (2) and Article 5 paragraph (1) of Law Number 1 of 1974. Second, **teleological interpretation** is used to examine the validity of judicial considerations that rely on the principles of *kemaslahatan* (public or family welfare) and the prevention of harm (*dar'u al-mafāsīd*).

3. Judges' Considerations in Polygamy Permit Cases That Do Not Fulfil the Alternative Requirements, from the Perspective of *Maqāṣid al-Sharī'ah*

3.1. The Regulation of Polygamy Permits under Indonesian Law

Polygamy constitutes a part of Islamic family law that is specifically concerned with the practice of marriage. Within the context of Indonesia's national legal framework, Law Number 1 of 1974 concerning Marriage establishes monogamy as the fundamental principle of marriage, as stipulated in Article 3 paragraph (1): "In principle, a man may have only one wife, and a woman may have only one husband." Nevertheless, Indonesian law does not absolutely prohibit polygamy. Polygamy is permitted on a limited and conditional basis and is positioned as a form of marriage that may only be undertaken under special or compelling circumstances (*extraordinary circumstances*). Accordingly, Indonesia's marriage law system adopts the principle of open monogamy, rather than absolute monogamy.¹⁴

Polygamy is one of the many issues within the field of family law that continues to generate debate, giving rise to both supportive and opposing perspectives. Some groups view polygamy as a practice that undermines the dignity of women. Furthermore, polygamy is regarded as a violation of human rights because it is associated with the exploitation and male hegemony over women. Polygamy is also perceived as a form of betrayal and as an act that devalues women, which may consequently lead to discriminatory treatment against women.¹⁵

Within Indonesia's national legal framework, the regulation of polygamy is expressly provided for under Law Number 1 of 1974 concerning Marriage, particularly Articles 4 paragraph (2) and 5 paragraph (1). Article 4 paragraph (2), which establishes the

¹⁴ Mujibur Rohman, *Dinamika Hukum Perkawinan Islam Indonesia* (Istana Agency, 2021).

¹⁵ Gandhi Liyorba Indra and Marisa Putri, "Poligami Dalam Tafsir Mubadalah," *Mahkamah: Jurnal Kajian Hukum Islam* 7, no. 2 (2022): 174, <https://doi.org/10.24235/mahkamah.v7i2.11115>.

alternative requirements for the practice of polygamy, provides that the Court referred to in paragraph (1) may grant permission to a husband who wishes to have more than one wife only if:

- a. the wife is unable to fulfill her duties as a wife;
- b. the wife suffers from a physical disability or an incurable illness; or
- c. the wife is unable to bear children.

Furthermore, Article 5 paragraph (1), which establishes the cumulative requirements for polygamy, provides that an application to the Court as referred to in Article 4 paragraph (1) must satisfy the following requirements:

- a. the consent of the wife or wives;
- b. certainty that the husband is capable of providing for the living needs of his wife or wives and their children; and
- c. an assurance that the husband will treat his wife or wives and their children fairly.¹⁶

Violations of the law in the practice of polygamy today demonstrate increasing complexity. Polygamy, which should be based on objective and compelling grounds as stipulated in Article 4 paragraph (2) of Law Number 1 of 1974 concerning Marriage, is now often undertaken based on subjective motives, such as emotional attraction or romantic feelings toward another woman. Accordingly, if the first wife does not fall within any of the circumstances stipulated in the provision, the husband has no legal basis to apply for permission to practice polygamy, particularly if it is pursued unilaterally and without obtaining permission from the Religious Court. This phenomenon demonstrates a deviation from the spirit and principles of Indonesia's national marriage law, namely the principle of monogamy as stipulated in Article 3 paragraph (1) of the Marriage Law.¹⁷

The phenomenon of violations or deviations from legal norms concerning polygamy can be observed concretely through case studies from several Religious Courts. The following two cases reflect inconsistencies in the enforcement of the law by judges, particularly in interpreting and applying Article 4 paragraph (2) of Law Number 1 of 1974. In Decision Number 1286/Pdt.G/2014/PA.Mlg, a husband submitted an application for permission to practice polygamy, citing several reasons, including that he had known the prospective second wife for a considerable period of time, that his first wife was no longer capable of bearing children, that discussions had been held and consent obtained from the family, and that he wished to have more children.¹⁸ Although the Respondent did not explicitly consent and the claim that she was unable to bear children was not supported by medical evidence, the court nevertheless granted the application for polygamy. This decision raises

¹⁶ Odelia Christy Putri Tjandra and Kevin Kusumaatmaja Hasugian, "Perkawinan Lintas Iman Ditinjau Dari Hukum Islam Dan Hukum Positif Di Indonesia," *Res Nullius Law Journal* 5, no. 1 (2023): 35–46, <https://doi.org/10.34010/rnlj.v5i1.7335>.

¹⁷ Kasyfia Rizka and Leo Dwi Cahyono, "Perbandingan Hukum Dan Mazhab-Mazhab Dalam Islam," *Moefty* 12, no. 1 (2023): 21–30.

¹⁸ D. Desminar, *Buku Ajar Pengantar Hukum Keluarga*, 2021, <http://eprints.umsb.ac.id/1396/1/Buku.pdf>.

questions because the grounds presented did not satisfy the alternative requirements stipulated in Article 4 paragraph (2).¹⁹

Conversely, in Decision Number 1332/Pdt.G/2025/PA.Pwd, the application for permission to practice polygamy was rejected by the Panel of Judges, despite the similarity in the subject matter of the case. The Applicant stated that he had fallen in love with and become attracted to another woman; however, he failed to provide evidence that his wife was unable to fulfill her marital obligations, suffered from a disability or serious illness, or was unable to bear children. In this case, the court expressly rejected the application on the grounds that personal motives such as love or attraction do not constitute legally recognized grounds for polygamy under the applicable legislation.²⁰

Disparities in judicial decisions have significant implications for legal certainty. Several impacts can be identified as follows:

1. **Erosion of Normative Certainty:** If judges are permitted to disregard Article 4 paragraph (2) of Law Number 1 of 1974 based on subjective considerations of *maslahah*, the principle of open monogamy adopted under Indonesian marriage law may be undermined. This may create opportunities for *forum shopping*, whereby applicants seek out courts or judges perceived as more lenient.
2. **Threats to the Protection of Women’s Rights:** Legal certainty is jeopardized when the consent of the first wife, who may be vulnerable to pressure arising from unequal power relations, is used as a means of legitimizing the violation of the objective or medical requirements for polygamy.
3. **Abuse of Judicial Discretion (*Judicial Indiscretion*):** The arbitrary application of *fiqh* principles without a measurable framework based on *Maqāṣid al-Sharī’ah* may contribute to jurisprudential uncertainty within the Religious Court system.

For comparison, the following section discusses the regulation of polygamy permits in Indonesia under Law Number 1 of 1974 concerning Marriage, alongside the regulations governing polygamy in several other countries or jurisdictions with Islamic family law systems:

Table 1. Comparison of Polygamy Laws across Islamic Legal Jurisdictions

Country / Jurisdiction	Primary Regulation	Requirements & Grounds	Judicial Sanctions	Authority &
Indonesia	Law No. 1 of 1974 concerning Marriage in conjunction with the Compilation of Islamic Law (KHI)	Strict Open Monogamy: Applicants must satisfy alternative requirements (the wife is disabled or seriously ill, unable to bear children, or unable to fulfill her marital obligations) and cumulative requirements (wife’s consent, registered).	Permission from the Religious Court is mandatory. Polygamy without court authorization is not legally recognized by the state (i.e., the marriage is not officially registered).	

¹⁹ Desminar, *Buku Ajar Pengantar Hukum Keluarga*.

²⁰ Desminar, *Buku Ajar Pengantar Hukum Keluarga*.

		financial capacity, and ability to treat wives fairly).	
Tunisia	<i>Code de Statut Personnel (CSP) 1956, Article 18</i>	Absolute Prohibition: Polygamy is strictly prohibited and is regarded as inherently unjust and therefore impossible for a person to fulfill.	Polygamy constitutes a criminal offense. Violators may face imprisonment for up to one year and/or a monetary fine. A subsequent marriage is automatically void.
Malaysia	<i>Islamic Family Law Act (Federal Territories) 1984, Article 23</i>	Strict Judicial Oversight: Requirements include: (1) the marriage is <i>just and necessary</i> ; (2) sufficient financial capacity; (3) the ability to treat wives fairly; and (4) the marriage does not cause <i>harm</i> to the existing wife or wives.	Prior written authorization from the Syariah Court is mandatory. Polygamy without authorization constitutes an offense and may result in a fine or imprisonment.
Egypt	Law No. 25 of 1920, as amended by Law No. 100 of 1985	Notification System & Wife's Right to Seek Relief: The husband must declare his marital status before the marriage registrar (<i>Ma'dhun</i>), and the first wife must be officially notified of the marriage.	Prior judicial authorization is not required. However, notification is mandatory, and the first wife has the right to seek divorce (<i>khul'</i>) on the basis of moral harm (<i>dharar</i>).
Pakistan	<i>Muslim Family Laws Ordinance (MFLO) 1961, Article 6</i>	Arbitration Council System: Prior authorization must be obtained from an Arbitration Council consisting of the chairman, a representative of the husband, and a representative of the wife. The requirements include the wife's consent and compelling circumstances.	Polygamy without authorization from the Arbitration Council constitutes a legal violation. The husband may be required to immediately pay the <i>mahr</i> and may face imprisonment for up to one year.

Source: compiled by the authors from the legislation cited in the table.

When compared with other Islamic law jurisdictions, Indonesia falls within a moderately strict spectrum, similar to Malaysia and Pakistan, by emphasizing judicial control over the practice of polygamy. However, a fundamental weakness in Indonesia lies in the absence of stringent criminal sanctions against those who engage in unregistered or informal polygamy, as well as the lack of uniformity among Religious Court judges in interpreting the imperative nature of the alternative requirements for polygamy. This differs from Malaysia, where violations of the procedural requirements governing polygamy may constitute a legal offense and are subject to judicial sanctions.²¹

²¹ Dalam Persepektif and Hukum Di, "Jurnal Fakultas Hukum Universitas Tulungagung 59," n.d, 59–68.

3.2. Judges' Considerations in Decision Number 1286/Pdt.G/2014/PA.Mlg Regarding the Alternative and Cumulative Requirements

The judges' considerations in Decision Number 1286/Pdt.G/2014/PA.Mlg, concerning the application for permission to practice polygamy, which was granted by the court, were as follows:

1. Whereas the purpose and objective of the Applicant's application were as described above;
2. Whereas, on the scheduled date of the hearing, the Applicant, the Respondent, and the prospective second wife were present and provided sufficient statements;
3. Whereas, based on the Applicant's application and corroborated by Evidence P.7, it was established that the Applicant and the Respondent were legally married on July 9, 2003, under Marriage Certificate Number 343/18/VII/2003, and that they had five children;
4. Whereas the Applicant's reason for seeking to marry again (polygamy) to a widow named XX binti XX was that the Applicant was attracted to her and had known and maintained a close relationship with her through the Applicant's friend. Furthermore, the Applicant's marriage to the Respondent had lasted for 11 years and they had five children, while the Respondent was no longer able to bear additional children. The Applicant had also discussed the matter with the Respondent and her family, who raised no objection to the prospective second wife becoming the Applicant's co-wife;
5. Whereas, based on the statements of the Applicant, the Respondent, and the prospective second wife, as well as the testimony of the witnesses and documentary evidence, the following facts were established during the proceedings:
6. That the Applicant and the Respondent were legally married and their marriage had lasted for 11 years;
7. That the Applicant had sufficient income to provide for his wives;
8. That the Applicant had expressed his willingness and ability to treat his wives fairly;
9. That the Applicant had obtained the Respondent's consent to marry the prospective second wife;
10. That there was no mahram relationship between the Applicant and the prospective second wife, nor were there any circumstances preventing the Applicant from marrying the prospective second wife;
11. Whereas the property acquired during the marriage between the Applicant and the Respondent constituted jointly owned marital property;
12. Whereas, under Islamic law, a man is permitted to marry more than one woman, up to a maximum of four wives, provided that the applicable requirements and essential conditions are fulfilled, both under Islamic teachings and the prevailing

laws and regulations. In this case, the Applicant was deemed to have fulfilled the requirements referred to in Qur'an Surah An-Nisa' verse 3, which provides: "If you fear that you will not deal justly with the orphan girls, then marry those that please you of women, two, three, or four. But if you fear that you will not be just, then marry only one or those whom your right hand possesses. That is more appropriate so that you may not commit injustice.";

13. Whereas the marriage between the Applicant and the prospective second wife was considered likely to bring *maslahah* (benefit or welfare) to both parties, and preventing potential *mafsadat* (harm) was considered preferable to pursuing benefit, in accordance with the legal maxim: "Preventing or avoiding harm takes precedence over obtaining benefit";
14. Whereas, notwithstanding the considerations set forth above, the Applicant's application did not fulfill the grounds stipulated in Article 4 paragraph (2), but the application had fulfilled the requirements under Article 5 paragraph (1) of Law Number 1 of 1974, in conjunction with Article 55 paragraph (2) and Article 58 paragraph (2) of the Compilation of Islamic Law. Accordingly, the Panel of Judges considered that, in the interest of the welfare of the parties' family, the Applicant should be permitted to marry the woman named XX binti XX. Therefore, the Applicant's application was deemed justified and was granted;
15. Whereas, pursuant to Article 89 paragraph (1) of Law Number 7 of 1989, as amended by Law Number 3 of 2006 concerning Religious Courts, the court fees shall be borne by the Applicant;
16. Having regard to the applicable provisions of Sharia law and other relevant laws and regulations.²²

Based on the considerations set forth in the decision concerning the application for permission to practice polygamy, it appears that the Panel of Judges did not treat Article 4 paragraph (2) of Law Number 1 of 1974 concerning Marriage as an imperative norm in adjudicating the case. The provision, which should have served as the primary filter for determining the validity of the grounds for polygamy, was instead disregarded or was not expressly incorporated as a basis for the court's legal reasoning. In this case, although the ground for the application for polygamy was the desire to have more children, there was no medical evidence or objective legal fact demonstrating that the first wife was unable to bear children or suffered from fertility problems.²³

Accordingly, in this case, none of the three alternative requirements stipulated in Article 4 paragraph (2) of Law Number 1 of 1974 could be established either factually or juridically. With regard to the fulfillment of the cumulative requirements, the Applicant stated that he had sufficient financial capacity, with an average monthly income of IDR

²² Pengadilan Agama Malang, "Putusan Nomor 1286/Pdt.G/2014/PA.Mlg," *Direktori Putusan Mahkamah Agung Republik Indonesia*, n.d.

²³ Mughni Labib Ilhamuddin Is Ashidiqie, "Poligami Dalam Tinjauan Syariat Dan Realitas," *Al-Ahwal Al-Syakhsyiyah: Jurnal Hukum Keluarga Dan Peradilan Islam* 2, no. 2 (2021): 199-218, <https://doi.org/10.15575/as.v2i2.14332>.

15,000,000 (fifteen million rupiah). In addition, two witnesses testified that the Applicant had sufficient financial means to provide for the daily needs of his two wives.²⁴

In this decision, the judges placed greater emphasis on the first wife's consent and the Applicant's financial capacity, as stipulated in Article 5 paragraph (1), as well as subjective considerations such as the prevention of adultery. Furthermore, the judges considered the fulfillment of the cumulative requirements under Article 5 paragraph (1), together with the wife's consent, sufficient to support the application, thereby disregarding the failure to satisfy the alternative requirements under Article 4 paragraph (2). The judges applied the legal maxim *Dar'u al-Mafāsīd Muqāddam 'alā Jalb al-Maṣāliḥ* – the prevention of harm takes precedence over the pursuit of benefit – extensively, without establishing measurable parameters or clear limitations.

It can therefore be observed that deviations from statutory provisions continue to occur within the Religious Court system, particularly in the adjudication of applications for permission to practice polygamy, which frequently do not conform to the requirements stipulated in Article 4 paragraph (2) of the Marriage Law and Article 57 of the Compilation of Islamic Law. Based on the author's analysis of Decision Number 1286/Pdt.G/2014/PA.Mlg, the Panel of Judges in that case did not make the Marriage Law its primary reference. Instead, the judges relied primarily on fiqh principles in adjudicating the application for permission to practice polygamy. Another decision of the Malang Religious Court that granted an application for permission to practice polygamy despite the failure to satisfy the alternative requirements for polygamy is as follows:²⁵

1. Decision of the Malang Religious Court Number 50/Pdt.G/2025/PA.Mlg;
2. Decision of the Malang Religious Court Number 82/Pdt.G/2025/PA.Mlg;
3. Decision of the Malang Religious Court Number 519/Pdt.G/2025/PA.Mlg;
4. Decision of the Malang Religious Court Number 638/Pdt.G/2025/PA.Mlg;
5. Decision of the Malang Religious Court Number 745/Pdt.G/2025/PA.Mlg;
6. Decision of the Malang Religious Court Number 225/Pdt.G/2024/PA.Mlg;
7. Decision of the Malang Religious Court Number 1471/Pdt.G/2024/PA.Mlg;

3.3. Judges' Considerations in Decision Number 1332/Pdt.G/2025/PA.Pwd Regarding the Alternative and Cumulative Requirements

The application for permission to practice polygamy under case registration number 1332/Pdt.G/2025/PA.Pwd was declared inadmissible by the Panel of Judges based on the following considerations:

1. Whereas, the purpose and objective of the Applicant's application were as described above;

²⁴ Muhammad Riyan Ahsani et al., "Problematika Keadilan Dalam Praktik Poligami: Telaah Aksiologis Atas Etika Dan Estetika," *Equalita: Jurnal Studi Gender Dan Anak* 6, no. 2 (2024): 260–73.

²⁵ Ashidiqie, "Poligami Dalam Tinjauan Syariat Dan Realitas."

2. Whereas, the subject matter of this case was an application for permission to practice polygamy. Since both the Applicant and the Respondent are Muslims, pursuant to the Explanation of Article 49 paragraph (1) letter a of Law Number 7 of 1989, as amended by Law Number 3 of 2006 and Law Number 50 of 2009, the Religious Court has absolute jurisdiction to examine and adjudicate this case;
3. Whereas, based on the application, the Applicant and the Respondent reside within the jurisdiction of the Purwodadi Religious Court. Accordingly, pursuant to Article 4 paragraph (1) of Law Number 1 of 1974 concerning Marriage, the Purwodadi Religious Court has relative jurisdiction to examine and adjudicate the case;
4. Whereas, in his application, the Applicant stated that he had entered into a marriage with the Respondent but intended to practice polygamy. Therefore, the Applicant had the legal standing to submit the application;
5. Whereas, during the proceedings, the Applicant was accompanied and represented by legal counsel. The Panel of Judges therefore examined the Applicant's power of attorney, including the Advocate's Oath Certificate and Advocate Identification Card. The Applicant's power of attorney satisfied both the formal and substantive requirements, and therefore the Applicant was entitled to be accompanied or represented by legal counsel in defending his interests in the proceedings;
6. Whereas, the Panel of Judges had attempted to reconcile the Applicant and the Respondent, but such efforts were unsuccessful. The parties were subsequently ordered to undergo mediation. However, based on the written report of the mediator, Drs. H. Sanwar, S.H., M.Hum., dated June 2, 2025, the mediation failed to reach a settlement. Accordingly, the requirements under Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court had been fulfilled;
7. Whereas, in essence, the Applicant requested permission to marry another woman (to practice polygamy), namely XX, aged 39, Muslim, and a divorced widow, on the grounds that the Applicant had already fallen in love with or become attracted to another woman. In addition, the Applicant claimed to have a sexual drive higher than that of the average man, causing the Respondent to feel overwhelmed in fulfilling the Applicant's sexual needs. Therefore, the Applicant intended to marry the prospective second wife because he was concerned that he might commit acts prohibited by religious law;
8. Whereas, the principle adopted in Indonesian marriage law, as stated in General Explanation Number 4 letter c of Law Number 1 of 1974, is the principle of monogamy. A marriage between a husband and more than one wife, even if desired by the parties concerned, may only be entered into if certain requirements are fulfilled and permission is granted by the Court;
9. Whereas, in order to uphold the principle of monogamy in Indonesian marriage law, Article 4 paragraph (2) of Law Number 1 of 1974 establishes certain requirements constituting alternative requirements, at least one of which must be satisfied based on the condition of the wife, namely:

- a. the wife is unable to fulfill her obligations as a wife;
 - b. the wife suffers from a physical disability or an incurable illness; or
 - c. the wife is unable to bear children;
10. Whereas, the Applicant's reasons for seeking to practice polygamy – namely, that he had already fallen in love with or become attracted to another woman and that he had a sexual drive higher than that of the average man, causing the Respondent to feel overwhelmed in fulfilling his sexual needs – were considered by the Panel of Judges not to satisfy the specific requirements stipulated in Article 4 paragraph (2) of Law Number 1 of 1974. The Respondent's feeling of being overwhelmed in fulfilling the Applicant's sexual needs was not considered to constitute a condition in which the Respondent was unable to fulfill her obligations as a wife;
 11. Whereas, because the grounds submitted by the Applicant did not satisfy the applicable statutory requirements, the Applicant's application for permission to practice polygamy was declared inadmissible;
 12. Whereas, because this case concerned marriage, specifically an application for permission to practice polygamy, pursuant to Article 89 paragraph (1) of Law Number 7 of 1989, as amended by Law Number 3 of 2006 and Law Number 50 of 2009, all costs arising from the proceedings were imposed on the Applicant;
 13. Having regard to all applicable statutory provisions and Sharia law relevant to the case.²⁶

In this Decision, the judge interpreted Article 4 paragraph (2) imperatively, treating the alternative requirements as a *conditio sine qua non* (absolute prerequisites) that must be satisfied before the cumulative requirements under Article 5 paragraph (1) can be examined. Accordingly, the judge considered that failure to satisfy any of the alternative requirements under Article 4 paragraph (2) automatically rendered the application inadmissible. The judge objectively assessed whether the circumstances constituted an emergency (*dharūriyyah*) and concluded that the inability to fulfill the husband's sexual needs did not constitute a legally recognized emergency. Therefore, the Applicant's application substantively lacked a sufficient legal basis. The Panel of Judges demonstrated consistency in applying the normative provisions of the Marriage Law and the Compilation of Islamic Law, particularly Article 57 of the KHI, which is consistent with Article 4 paragraph (2) of the Marriage Law. The decision to reject the application for permission to practice polygamy was therefore appropriate, as it was grounded in the principle of legality and the hierarchy of legal norms.²⁷

²⁶ Pengadilan Agama Purwodadi, "Putusan Nomor 1332/Pdt.G/2025/PA.Pwd," *Direktori Putusan Mahkamah Agung Republik Indonesia*, 2025.

²⁷ Santoso, "Hakekat Perkawinan Menurut Undang-Undang Perkawinan, Hukum Islam Dan Hukum Adat," n.d.

3.4. Analysis from the Perspective of *Maqāṣid al-Sharī'ah*

It should be emphasized that *Maqāṣid al-Sharī'ah* is not a concept that determines whether a particular legal rule is applicable. Rather, as explained by Manshur Al-Khalifiy, *Maqāṣid al-Sharī'ah* may be defined as *al-ma'ānī* (meanings) and *al-ḥikam* (wisdoms) intended by the *Sharī'ah* in every legal determination, with the aim of realizing human welfare (*maslahah*) in both this world and the hereafter. In this research, the author bases the analysis on the thought of Imam Al-Shatibi concerning *Maqāṣid al-Sharī'ah*. According to Imam Al-Shatibi, *Maqāṣid al-Sharī'ah* constitutes an established concept within *uṣūl al-fiqh* that is oriented toward the objectives of law or *Sharī'ah*. In Al-Shatibi's framework, the welfare (*maslahah*) to be realized through a legal determination can be measured through three levels of necessity: *dharūriyyah*, *ḥājiyyah*, and *taḥsīniyyah*.²⁸

In Decision Number 1286/Pdt.G/2014/PA.Mlg, the Panel of Judges appears to have sought to realize the objectives of Islamic law (*Maqāṣid al-Sharī'ah*) by granting the Applicant's application for permission to practice polygamy. The Applicant's primary reason was his desire to have more children, which, within the framework of *Maqāṣid al-Sharī'ah*, may be associated with the objective of preserving progeny (*ḥifẓ al-nasl*). In addition, the Panel of Judges considered the close relationship that had developed between the Applicant and the prospective second wife, which was feared could lead both parties to acts prohibited by Islamic law if the application were rejected. In this regard, the Panel of Judges adopted a preventive approach by emphasizing the legal maxim *dar' al-mafāsīd muqaddam 'alā jalb al-maṣāliḥ* ("preventing harm takes precedence over attaining benefit") in order to avert potentially greater social and moral harm.²⁹ However, when examined through Al-Shatibi's theory of *Maqāṣid al-Sharī'ah*, the Applicant's request to practice polygamy in this case falls within the category of *taḥsīniyyah*, namely supplementary or complementary needs. Accordingly, the granting of the polygamy application cannot be regarded as addressing a *dharūriyyah* (essential) necessity, because the alleged benefits relied upon by the Panel of Judges do not constitute fundamental necessities whose absence would threaten the preservation of the essential objectives of the *Sharī'ah*. Therefore, the consideration that rejecting the application would result in greater harm requires further scrutiny, particularly because the potential harm invoked by the Applicant was speculative and did not necessarily justify setting aside the imperative requirements prescribed by positive law.³⁰

Meanwhile, in Decision Number 1332/Pdt.G/2025/PA.Pwd, the Panel of Judges rejected the Applicant's application for permission to practice polygamy because there was no convincing evidence demonstrating that the Respondent, as the first wife, was unable to fulfill her marital obligations as stipulated under the applicable laws and regulations. Accordingly, the alternative requirement set forth in Article 4 paragraph (2) of Law Number 1 of 1974, which constitutes one of the legal grounds for permitting polygamy,

²⁸ Jurnal Ilmiah and Wahana Pendidikan, "Hasbullah, Hasbullah. ANALISIS HUKUM TIDAK DICANTUMKAN STATUS PERKAWINAN PADA BUKU NIKAH DALAM PEMBUATAN AKTA AUTENTIK. Diss. Universitas Hasanuddin, 2017. 96" 11, no. November (2025): 96-108.

²⁹ Rohman, *Dinamika Hukum Perkawinan Islam Indonesia*.

³⁰ Maimun, "Pernikahan Dalam Kompilasi Hukum Islam Dan Perdata."

was deemed not to have been satisfied. The Respondent was merely overwhelmed by the Applicant's desire to engage in sexual intercourse at an excessively high frequency. In fact, as a housewife, the Respondent was responsible for managing household affairs and caring for the two children of the Applicant and the Respondent, which often placed significant physical and psychological demands on her.³¹ Based on the foregoing analysis, the author concludes that the Respondent's condition of being overwhelmed by the Applicant's sexual demands indicates that the Applicant made excessive requests for sexual intercourse. Thus, although the Respondent remained capable of fulfilling the Applicant's needs, she was burdened by the excessive frequency of such demands. Therefore, the Applicant's need for polygamy, motivated by a high sexual drive, falls within the category of *taḥsīniyyah*, or supplementary needs, under Al-Shatibi's theory of *Maqāṣid al-Sharī'ah*. Such needs, if left unfulfilled, would neither threaten any of the *al-kulliyāt al-khamsah* (the five essential objectives of Islamic law) nor cause significant hardship.³²

In Decision Number 1286/Pdt.G/2014/PA.Mlg, the Panel of Judges granted the Applicant's application for permission to practice polygamy despite the failure to satisfy the alternative requirements, relying instead on fiqh principles concerning *maslahah* and *mafsadah*. Yet the alternative requirements stipulated in Article 4 paragraph (2) of the Marriage Law are, normatively, mandatory requirements that must be fulfilled before the Religious Court may grant an application for permission to practice polygamy.³³ By disregarding these requirements and relying on *Maqāṣid al-Sharī'ah* considerations without a clear legal basis, the decision potentially conflicts with the provisions of the Marriage Law and the Compilation of Islamic Law. The decision rendered by the Panel of Judges may consequently give rise to legal uncertainty and may be subject to juridical scrutiny, as judges should not set aside statutory provisions in favor of other considerations, even when such considerations are intended to achieve *maslahah*. Nevertheless, in practice, judges may invoke *Maqāṣid al-Sharī'ah* considerations to fill legal gaps or address particular circumstances.³⁴

Based on the two decisions discussed above, the author argues that the Panel of Judges should have remained firmly bound by the provisions of Article 4 paragraph (2) of Law Number 1 of 1974 concerning Marriage. This provision expressly stipulates that a husband may apply for permission to have more than one wife only when there are grounds satisfying one of the alternative requirements, namely that "the wife is unable to fulfill her obligations as a wife," "the wife is unable to bear children," or "the wife suffers from a

³¹ Zainal Abidin, Muhammad Safuan, and Rafiqul Huda Siregar, "Poligami Dalam Islam Dan Keadilan Gender," *The International Journal of Pegon: Islam Nusantara Civilization* 8, no. 02 (2022): 17-38, <https://doi.org/10.51925/inc.v8i02.65>.

³² Malisi, "Hikmah Pernikahan."

³³ Rico Setyo Nugroho, "Pratik Poligami Dan Tujuan Pernikahan Dalam Rumah Tangga," *ICHES: International Conference on Humanity Education and Society* 3, no. 1 (2024): 7.

³⁴ Desminar, *Buku Ajar Pengantar Hukum Keluarga*.

physical disability or an incurable illness.”³⁵ Therefore, in every application for permission to practice polygamy, judges should strictly examine whether the grounds submitted by the Applicant genuinely satisfy one of these statutory requirements, rather than relying merely on emotional considerations or personal desires that have no direct connection to the legally prescribed requirements. Essentially, polygamy in Indonesia is not a practice that is encouraged, but rather an exception that is permitted only under certain circumstances and subject to stringent requirements. A husband who obtains permission to practice polygamy must fulfill all of his obligations fairly and responsibly toward each wife and safeguard the welfare of all parties concerned.³⁶

With regard to the purpose of marriage under Islamic law, which is essentially to establish a family characterized by *sakinah*, *mawaddah*, and *rahmah*, this is stipulated in Article 3 of the Compilation of Islamic Law (KHI). As an embodiment of a *sakinah* family or an ideal family, several criteria should be fulfilled, including the health conditions of family members and the economic condition of the family, both of which often have a significant influence on the functioning and sustainability of the household.³⁷

Therefore, when the purpose of marriage is considered in relation to Decision Number 1286/Pdt.G/2014/PA.Mlg, the purpose of the polygamous marriage sought by the Applicant in the case was to have additional offspring. This is closely related to the biological condition of the husband and wife and, consequently, to their health conditions. However, based on the facts established during the proceedings, both the husband and the prospective second wife were in good health, including with regard to their reproductive health, and remained capable of having children. Accordingly, the Applicant, as the husband, should have taken into consideration the condition of the Respondent as his first wife, particularly her decision not to have additional children, and instead focused on maintaining the household while giving greater consideration to the health and well-being of his wife and children. In addition, from an external factor, namely the economic condition of the family, the Applicant was known to work as a trader with an average monthly income of IDR 15,000,000 (fifteen million rupiah). When examined within the context of current economic conditions, an income of IDR 15,000,000 may be considered relatively limited for supporting a polygamous household and potentially create financial pressure and household conflict if the Applicant were to practice polygamy.³⁸

Then, in Decision Number 1332/Pdt.G/2025/PA.Pwd, the Applicant sought permission to practice polygamy on the grounds that he had a high sexual drive and was therefore concerned that he might engage in conduct prohibited by religious norms and applicable laws and regulations. In fact, the Respondent, as the first wife, remained in good health

³⁵ Firmansyah Firmansyah, Tarmizi Tarmizi, and Anisa Parasetiani, “Aktualisasi Konsep Sakinah Mawaddah Warahmah Pada Keluarga Muslim Di Kota Metro,” *Syakhshiyah Jurnal Hukum Keluarga Islam* 2, no. 1 (2022): 90–106, <https://doi.org/10.32332/syakhshiyah.v2i1.5123>.

³⁶ Umar, Arfa, and Irwansyah, “Sejarah Hukum Perkawinan Di Dunia Islam.”

³⁷ Putri Tjandra and Hasugian, “Perkawinan Lintas Iman Ditinjau Dari Hukum Islam Dan Hukum Positif Di Indonesia.”

³⁸ Abidin, Safuan, and Siregar, “Poligami Dalam Islam Dan Keadilan Gender.”

and was still capable of fulfilling the husband's biological needs. However, the Respondent acknowledged that she felt overwhelmed in fulfilling the Applicant's sexual demands. In this regard, the Applicant should have demonstrated greater understanding of the Respondent's circumstances, recognizing that her responsibilities as a wife extend beyond fulfilling her husband's sexual needs to include managing various household responsibilities, such as raising and educating the children and performing domestic work.³⁹

With regard to the external factor, namely the family's economic condition, the Applicant worked as a contractor with an average monthly income of IDR 50,000,000 (fifty million rupiah). In the context of current economic conditions, an income of IDR 50,000,000 may be considered sufficient to support a household consisting of one wife and two children. However, if the Applicant were to practice polygamy by adding one additional wife and two additional children, his total number of dependents would increase to six persons. This condition could potentially place greater financial pressure on the Applicant and adversely affect the welfare and sustainability of the household.⁴⁰

4. Conclusion

The disparity between Decision Number 1286/Pdt.G/2014/PA.Mlg and Decision Number 1332/Pdt.G/2025/PA.Pwd stems from fundamental differences in the methods of legal interpretation and the exercise of judicial discretion. The granting of permission to practice polygamy without fulfillment of the alternative requirements, as occurred in the Malang Religious Court decision, constitutes a misuse of the *Maqāṣid al-Sharī'ah* framework. Based on Al-Shatibi's theoretical framework, the Applicant's reasons for seeking additional offspring and for fulfilling excessive sexual desires fall within the category of *taḥsīniyyah* (supplementary needs), rather than *dharūriyyah* (essential needs) or *hājiyyah* (complementary needs). As *taḥsīniyyah* needs do not possess sufficient legal weight to override the written legal requirements stipulated in Article 4 paragraph (2) of Law Number 1 of 1974, they should not be used as a basis for setting aside such statutory provisions. This research contributes to the contemporary discourse on Islamic law by emphasizing the close relationship between *Maqāṣid al-Sharī'ah* and positive law. It demonstrates that the principle of *maslahah* should not be applied through unrestrained judicial discretion (*unbridled discretion*) to circumvent positive statutory law, but rather must remain subject to the hierarchy of needs established within Al-Shatibi's framework. Accordingly, this research recommends that the Supreme Court of the Republic of Indonesia issue a Supreme Court Circular Letter (*Surat Edaran Mahkamah Agung* or SEMA) or Guidelines on Marriage Disputes expressly instructing all Religious Court judges that the alternative requirements under Article 4 paragraph (2) of Law Number 1 of 1974 constitute essential prerequisites that must be satisfied before the cumulative requirements under Article 5 paragraph (1) are examined. Such guidance is important to

³⁹ Malisi, "Hikmah Pernikahan."

⁴⁰ Firmansyah, Tarmizi, and Parasetiani, "Aktualisasi Konsep Sakinah Mawadah Warahmah Pada Keluarga Muslim Di Kota Metro."

ensure legal certainty, unity of law, and the prevention of gender bias in polygamy cases in Indonesia.

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