

Legal Interpretation of Conditional Polygamy Prohibition in Marriage Contracts: A Comparative Study in Islamic Law

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Abstract

Background: The legal validity of anti-polygamy clauses in Islamic marriage contracts remains contested between classical Islamic jurisprudence and contemporary statutory reforms. Although previous studies discuss polygamy from doctrinal, sociological, and judicial perspectives, limited research comparatively examines the legal enforceability of such clauses under classical Shāfiʿī jurisprudence and Indonesia's *Kompilasi Hukum Islam* (KHI).

Objective: This study analyzes the legal validity of anti-polygamy clauses under classical Shāfiʿī jurisprudence and the KHI, compares their underlying legal reasoning through *maqāṣid al-sharīʿah*, and evaluates their implications for Islamic family law reform in Indonesia.

Methods: This qualitative doctrinal legal research applies a comparative approach using classical Shāfiʿī legal texts, the Qur'an, relevant ḥadīth, the KHI, and contemporary Islamic family law literature. Data were analyzed through doctrinal interpretation, comparative legal analysis, and the *maqāṣid al-sharīʿah* framework.

Findings: Classical Shāfiʿī jurisprudence considers anti-polygamy clauses legally non-binding while maintaining the validity of marriage. In contrast, the KHI recognizes their enforceability to promote justice, family welfare, and legal certainty. Comparative analysis demonstrates that *maqāṣid al-sharīʿah* provides a normative framework for reconciling classical jurisprudence with contemporary statutory reforms.

Conclusion: A *maqāṣid*-based approach enables Islamic family law to preserve doctrinal authenticity while strengthening contractual autonomy and protecting family welfare.

Novelty: This study proposes an integrated *maqāṣid*-based comparative framework that bridges classical Shāfiʿī jurisprudence and Indonesia's statutory Islamic family law in assessing the legitimacy and enforceability of anti-polygamy clauses.

Keywords: Islamic Family Law; Polygamy; Marriage Contract; Shāfiʿī Jurisprudence; *Maqāṣid al-Sharīʿah*.

INTRODUCTION

Islamic family law has continuously evolved in response to changing social conditions, legal reforms, and contemporary demands for justice within marital relationships. Although classical Islamic jurisprudence recognizes polygamy as legally permissible under specific conditions, it has never been understood as an unrestricted right but rather as a legal institution governed by justice, responsibility, and the protection of family welfare. The higher objectives of Islamic law (*maqāṣid al-sharīʿah*), particularly the protection of religion, life, lineage, dignity, and family stability, continue to provide the normative foundation for regulating marital relations in Muslim societies (Arshad, 2010; Bukido & Ishak, 2024; Daniela et al., 2024; Khairuddin, 2024; Kodir et al., 2024). At the same time, changing family structures, increasing awareness of women's rights, judicial reforms,

and the growing use of contractual autonomy in marriage have generated new legal questions concerning whether spouses may validly restrict future polygamy through contractual stipulations. Contemporary discussions further demonstrate that Islamic family law is increasingly shaped by broader issues of gender equality, family resilience, and digital transformation, requiring a reinterpretation of classical legal doctrines within modern legal systems (Abubakar et al., 2023; Amri et al., 2023; Akmal & Usmani, 2024).

Previous scholarship has approached the regulation of marriage and polygamy from diverse doctrinal, sociological, and comparative perspectives. Studies have explored justice in inheritance, *fatwā* methodology, family welfare, judicial institutions, *ḥadānah*, and the reinterpretation of *maqāṣid al-sharī'ah* within contemporary Islamic family law (Syahrin, 2021; Assaad et al., 2022; Sukmawati & Khadafi, 2022; Bashori et al., 2023; Ghaleb et al., 2024; Sulfinadia & Roszi, 2024; Mustamam et al., 2025). Other scholars have examined comparative regulations governing polygamy across Muslim jurisdictions, the experiences of *muallaf* families, inheritance disputes in polygamous marriages, legal disparities arising from unregistered marriages, judicial treatment of *isbāt nikāh*, legal pluralism, and the contemporary development of research themes on polygamy (Rahmatullah et al., 2023; Sarib et al., 2024; Nasution & Muchtar, 2024; Sudrajad et al., 2024; Jubaidi & Khoirunnisa, 2025; Rozikin et al., 2025; Sadat et al., 2025). Collectively, these studies demonstrate that justice remains the principal objective of Islamic family law. Nevertheless, they predominantly focus on the permissibility of polygamy, judicial practice, or broader family policies rather than examining the legal consequences of contractual clauses that prohibit future polygamy within marriage agreements.

Despite these valuable contributions, an important doctrinal gap remains unresolved. Existing studies rarely analyse whether an anti-polygamy clause (*al-sharṭ fi al-'aqd*) constitutes a legally valid contractual condition under classical *Shāfi'ī* jurisprudence while simultaneously being enforceable under Indonesia's *Kompilasi Hukum Islam*. Likewise, previous research has not comprehensively compared the normative reasoning of classical Islamic jurisprudence with contemporary statutory family law in explaining the legal consequences arising from the violation of such contractual stipulations. Accordingly, this study addresses the following research question: how should anti-polygamy clauses contained in marriage contracts be interpreted under classical *Shāfi'ī* jurisprudence and Indonesia's *Kompilasi Hukum Islam*, and to what extent can both legal frameworks be harmonized through the principles of *maqāṣid al-sharī'ah*? Addressing this question is important because contractual stipulations increasingly function as preventive legal instruments designed to preserve marital stability while balancing contractual freedom, legal certainty, and family welfare.

The significance of this issue extends beyond doctrinal interpretation because contemporary Islamic family law increasingly intersects with judicial reform, gender justice, and the modernization of national legal systems. Recent studies concerning women's rights, judicial reasoning, marriage in the digital era, *mut'ah* marriage, comparative consent doctrines, economic bargaining within marriage, customary legal practices, and the integration of Islamic law into national legislation demonstrate that family law has become increasingly adaptive to changing social realities (Manaf, 2022; Taufiq et al., 2023; Prakon et al., 2023; Syaripudin & Saefudin, 2023; Halimatusa'diyah & Triana, 2024; Munawir, 2024; Musarrofa et al., 2024; Taha, 2024; Umam & Arifin, 2024; Tambunan et al., 2025; Ritonga et al., 2025). However, these studies do not sufficiently explain how contractual autonomy in marriage should be reconciled with classical *fiqh* doctrines that traditionally regard restrictions on lawful acts differently from modern statutory law. Consequently, there remains no integrated doctrinal framework capable of explaining both the legal validity and enforceability of anti-polygamy clauses while maintaining consistency with the objectives of *maqāṣid al-sharī'ah* and contemporary judicial practice.

Accordingly, this study aims to comparatively analyse the legal validity and enforceability of anti-polygamy clauses in marriage contracts from the perspectives of classical *Shāfi'ī* jurisprudence and Indonesia's *Kompilasi Hukum Islam*. Unlike previous studies that primarily discuss the permissibility of polygamy, judicial decisions, or the broader social consequences of plural marriage, this research places contractual stipulations at the centre of legal analysis by integrating classical jurisprudence, statutory regulation, and the normative framework of *maqāṣid al-sharī'ah*. The novelty of this study therefore lies in developing a comparative doctrinal framework that explains the relationship between contractual freedom, the legal consequences of contractual conditions, and the harmonization of classical Islamic legal doctrine with contemporary Indonesian family law. Through this approach, the article contributes both theoretically and practically to the development of Islamic family law by offering a more comprehensive legal model for balancing family welfare, gender justice, contractual certainty, and judicial consistency within contemporary Muslim legal systems.

LITERATURE REVIEW

Islamic family law has developed through a continuous interaction between classical jurisprudence, *maqāṣid al-sharī'ah*, and the changing social realities of Muslim societies. Rather than viewing marriage solely as a contractual relationship, classical jurists regard it as a legal institution intended to preserve religion, lineage, dignity, and social stability. Within this framework, contractual stipulations (*al-shurūṭ fī al-'aqd*) are generally recognized, provided that they do not contradict the essential objectives of Islamic law. The Shāfi'ī school, however, distinguishes between contractual conditions that reinforce the objectives of marriage and those that prohibit rights explicitly permitted by the Sharī'ah, including the husband's right to contract another marriage under prescribed conditions. Consequently, debates concerning anti-polygamy clauses cannot be separated from broader discussions on legal validity, contractual autonomy, and the realization of justice within marriage. Contemporary studies further demonstrate that *maqāṣid al-sharī'ah* has become an increasingly important interpretative framework for reconciling classical doctrine with modern legal developments, particularly in matters relating to interfaith marriage, unregistered marriage, family identity, gender justice, and contextual reinterpretation of marriage contracts (Arshad, 2010; Sukmawati & Khadafi, 2022; Assaad et al., 2022; Bashori et al., 2023; Syahrin, 2021; Bukido & Ishak, 2024; Daniela et al., 2024; Ghaleb et al., 2024; Khairuddin, 2024; Kodir et al., 2024; Mustamam et al., 2025). Collectively, these studies suggest that the legitimacy of contractual provisions should not merely be assessed through literal doctrinal interpretation but also through their consistency with the higher objectives of Islamic law and the preservation of family welfare.

The modernization of *Islamic family law* has also expanded scholarly attention beyond classical jurisprudence toward issues of gender equality, family resilience, digital transformation, and individual rights within marriage. Recent literature illustrates that changing social conditions require Islamic legal reasoning to respond more dynamically to emerging challenges without abandoning its normative foundations. Research on household role transformation, digital representation of family law, and women's empowerment demonstrates that contemporary Muslim families increasingly negotiate legal norms within broader social, technological, and constitutional contexts (Abubakar et al., 2023; Amri et al., 2023; Akmal & Usmani, 2024). Similar developments appear in studies addressing women's rights in family law, *online marriage*, marriage consent, pregnancy-related marriage, and the renewal of the *Compilation of Islamic Law*, all of which advocate greater responsiveness to legal certainty, justice, and individual autonomy while remaining grounded in Islamic legal principles (Manaf, 2022; Taufiq et al., 2023; Musarrofa et al., 2024; Halimatusa'diyah & Triana, 2024; Munawir, 2024; Umam & Arifin, 2024). These contributions significantly enrich contemporary discourse by demonstrating that Islamic family law is no longer interpreted exclusively through textual authority but increasingly through judicial reasoning, constitutional values, and *maqāṣid*-oriented legal reform. Nevertheless, most of these studies concentrate on broader family law reform rather than examining the doctrinal validity of contractual clauses restricting future polygamy.

Polygamy remains one of the most extensively debated themes in contemporary *Islamic family law* because it reflects the intersection of classical *fiqh*, judicial interpretation, statutory regulation, and evolving social values. Existing scholarship has explored polygamy from various perspectives, including comparative legal regulation across Muslim countries, women's experiences in traditional polygamous communities, *muta'allaf* families, inheritance disputes, *isbāt nikāh*, legal disparities arising from unregistered polygamous marriages, and broader sociological evaluations of the institution itself (Prakon et al., 2023; Rahmatullah et al., 2023; Sarib et al., 2024; Sudrajad et al., 2024; Nasution & Muchtar, 2024; Jubaidi & Khoirunnisa, 2025; Ritonga et al., 2025; Sadat et al., 2025). These studies consistently acknowledge that justice (*al-'adl*) constitutes the principal normative foundation governing the permissibility of polygamy. However, they generally assess justice after the occurrence of polygamous marriage, focusing on judicial protection, inheritance distribution, procedural legality, or social consequences. Comparatively little attention has been devoted to preventive legal mechanisms embedded within marriage contracts themselves, particularly contractual clauses prohibiting future polygamy and their enforceability under both classical Shāfi'ī jurisprudence and Indonesia's *Compilation of Islamic Law*. This conceptual limitation indicates the need for a more integrated comparative analysis that connects doctrinal legal theory, judicial practice, and statutory reform within a unified *maqāṣid al-sharī'ah* framework.

Although contemporary scholarship has substantially expanded discussions on Islamic family law, significant gaps remain regarding the legal validity of *ta'liq al-shurūṭ* that prohibit polygamy in marriage contracts. Existing studies generally examine polygamy from sociological, comparative, or policy perspectives without systematically integrating *tafsīr*, *fiqh*, and statutory law into a single analytical framework. Comparative analyses of polygamy regulations across Muslim countries demonstrate that legal responses are strongly influenced by each

jurisdiction's constitutional, cultural, and religious context rather than by a uniform interpretation of Islamic jurisprudence (Rahmatullah et al., 2023). Empirical research likewise explores contemporary practices of polygamy among *muallaf*, inheritance disputes within polygamous families, legal conflicts concerning *isbat nikah*, and the reinterpretation of *hifz al-nasl* in marriage contracts, illustrating the growing complexity of Islamic family law in modern societies (Nasution & Muchtar, 2024; Sarib et al., 2024; Sudrajad et al., 2024; Mustamam et al., 2025). Bibliometric evidence further demonstrates that research on polygamy remains relatively limited despite its continuing legal and social significance, suggesting considerable opportunities for developing new doctrinal and empirical inquiries (Sadat et al., 2025). Other scholars have examined legal disparities arising from unregistered polygamous marriages, the contextual application of *maqāṣid al-sharī'ah* in indigenous legal traditions, and sociological perspectives that assess whether polygamy strengthens or weakens family resilience (Jubaidi & Khoirunnisa, 2025; Rozikin et al., 2025; Ritonga et al., 2025). Nevertheless, these studies primarily emphasize legal practice, social outcomes, or policy reform, while providing only limited discussion of how classical Shāfi'ī jurisprudence may be reconciled with Indonesia's codified Islamic family law through a comprehensive *maqāṣid*-based doctrinal interpretation.

Accordingly, the present study positions itself within this unresolved scholarly debate by offering a comparative doctrinal analysis that connects classical Islamic jurisprudence, *Qur'ānic tafsīr*, and Indonesia's positive legal framework. Unlike previous studies that separately discuss gender justice, judicial reform, marriage consent, digital family law, women's rights, or contemporary marital practices (Manaf, 2022; Prakon et al., 2023; Syaripudin & Saefudin, 2023; Halimatussadiyah & Triana, 2024; Munawir, 2024; Taha, 2024; Umam & Arifin, 2024; Tambunan et al., 2025), this research specifically investigates the juridical legitimacy of contractual clauses prohibiting polygamy from the perspective of the Shāfi'ī school and the *Kompilasi Hukum Islam (KHI)*. It further evaluates whether such clauses can be justified through the objectives of *maqāṣid al-sharī'ah*, particularly the protection of family welfare (*hifz al-nasl*), justice (*al-'adl*), and human dignity (*karāmah al-insān*). By integrating doctrinal legal reasoning with comparative statutory analysis, this study contributes a more comprehensive framework for understanding the evolving relationship between classical Islamic legal theory and contemporary family law reform. Consequently, it addresses an important gap in the literature by demonstrating how contractual autonomy in marriage may be harmonized with both Islamic legal principles and Indonesia's modern legal system, thereby providing a normative foundation for future reforms in Islamic family law.

METHODS

This study employed a qualitative normative legal research design (*doctrinal legal research*) using a *library research* approach to examine the legal validity of anti-polygamy clauses incorporated into Islamic marriage contracts from the perspectives of classical Shāfi'ī jurisprudence and Indonesia's *Kompilasi Hukum Islam (KHI)*. The normative approach was selected because the principal object of analysis concerns legal norms, juristic reasoning, statutory provisions, and their doctrinal implications rather than empirical social behaviour. Accordingly, the research focused on identifying, interpreting, comparing, and evaluating legal principles governing contractual stipulations (*al-shurūṭ fī al-'aqd*) in marriage. Primary legal materials consisted of the Qur'an, particularly Q.S. *al-Nisā'* verses 3 and 129, relevant *ḥadīth*, classical *fiqh* literature representing the Shāfi'ī *madhhab*, and statutory regulations governing Islamic family law in Indonesia, especially the *Kompilasi Hukum Islam*. Secondary legal materials comprised peer-reviewed journal articles, scholarly books, and contemporary studies discussing Islamic family law, *maqāṣid al-sharī'ah*, gender justice, judicial interpretation, marriage contracts, and legal reform. These sources were selected because they provide complementary perspectives on the evolution of Islamic family law from classical doctrine to modern statutory development (Arshad, 2010; Syahrin, 2021; Assaad et al., 2022; Manaf, 2022; Abubakar et al., 2023; Amri et al., 2023; Bashori et al., 2023; Rahmatullah et al., 2023; Taufiq et al., 2023; Bukido & Ishak, 2024; Daniela et al., 2024; Ghaleb et al., 2024; Khairuddin, 2024; Kodir et al., 2024; Musarrofa et al., 2024).

The research adopted three complementary analytical approaches, namely the *statutory approach*, the *conceptual approach*, and the *comparative approach*. The *statutory approach* was applied to analyse provisions contained in the *Kompilasi Hukum Islam* and related Indonesian legal instruments regulating marriage contracts, polygamy, and contractual obligations. The *conceptual approach* examined fundamental concepts developed within Islamic jurisprudence, including *maqāṣid al-sharī'ah*, *maṣlaḥah*, contractual autonomy, justice (*'adl*), family welfare, and the legal consequences of contractual conditions in marriage. Meanwhile, the *comparative approach* systematically compared the doctrinal reasoning of classical Shāfi'ī jurists with Indonesia's codified Islamic family law in order to identify similarities, differences, and possible harmonisation between classical legal

doctrine and contemporary statutory regulation. Data were collected through document analysis by identifying relevant legal texts, extracting normative arguments, classifying legal concepts, and reviewing contemporary scholarly discussions concerning judicial practice, legal pluralism, gender equality, and family protection. This comparative strategy enables a comprehensive understanding of how Islamic legal norms evolve when interacting with constitutional values, judicial interpretation, and social transformation in contemporary Muslim societies (Sukmawati & Khadafi, 2022; Sulfinadia & Roszi, 2024; Akmal & Usmani, 2024; Halimatusa'diyah & Triana, 2024; Munawir, 2024; Nasution & Muchtar, 2024; Sarib et al., 2024; Sudrajad et al., 2024; Umam & Arifin, 2024).

The analytical process consisted of four sequential stages. First, all primary and secondary legal materials were critically reviewed to identify legal doctrines concerning the permissibility of polygamy, the validity of contractual stipulations, and the objectives of Islamic family law. Second, the identified materials were categorised according to substantive themes, including contractual freedom, *maqāsid al-sharī'ah*, judicial enforceability, gender justice, family resilience, and statutory regulation. Third, each theme was comparatively analysed using doctrinal interpretation and legal hermeneutics to evaluate the consistency between classical *Shāfi'ī* jurisprudence and the Indonesian *Kompilasi Hukum Islam*. Particular attention was devoted to assessing whether anti-polygamy clauses constitute valid contractual conditions, the legal consequences arising from their violation, and the extent to which statutory law reinterprets classical jurisprudential doctrines in response to contemporary legal needs. Finally, the findings were synthesised through qualitative content analysis to formulate an integrated doctrinal framework explaining the interaction between classical Islamic jurisprudence, *maqāsid al-sharī'ah*, and modern Islamic family law reform. Rather than merely describing doctrinal differences, this analytical framework evaluates how legal interpretation may contribute to strengthening legal certainty, judicial consistency, family welfare, and gender justice within Indonesia's Islamic legal system. Consequently, the research provides a comprehensive comparative legal analysis that bridges classical jurisprudence with contemporary statutory regulation while responding to current debates concerning Islamic family law reform and the development of marriage contract provisions in Muslim-majority jurisdictions (Prakon et al., 2023; Syaripudin & Saefudin, 2023; Jubaidi & Khoirunnisa, 2025; Mustamam et al., 2025; Ritonga et al., 2025; Rozikin et al., 2025; Sadat et al., 2025; Tambunan et al., 2025).

RESULT AND DISCUSSION

Validity under Classical *Shāfi'ī* Jurisprudence

The validity of anti-polygamy clauses in marriage contracts (*al-shurūṭ fī al-'aqd*) has long been discussed within classical *Shāfi'ī* jurisprudence as part of the broader doctrine governing contractual stipulations in Islamic law. According to the *Shāfi'ī* school, marriage is a binding legal contract (*'aqd lāzim*) whose essential elements and legal consequences are determined primarily by the Qur'an, the *Sunnah*, and established juristic principles rather than by unrestricted contractual autonomy. Consequently, contractual conditions are regarded as legally valid only when they reinforce the objectives of marriage and do not negate rights explicitly permitted by the *Sharī'ah*. Since polygamy is recognized as a lawful institution under Q.S. *al-Nisā'* (4):3, classical *Shāfi'ī* jurists generally conclude that a wife's stipulation prohibiting her husband from entering a subsequent marriage constitutes an invalid contractual condition (*sharṭ fāsīd*). Nevertheless, such invalidity affects only the condition itself rather than the validity of the marriage. The marriage remains legally binding because the defective clause is considered separable from the principal contract. This doctrinal position reflects the legal maxim that contractual agreements cannot prohibit what Allah has explicitly permitted, thereby preserving the hierarchy between divine legislation and private contractual arrangements (Arshad, 2010; Syahrin, 2021; Bukido & Ishak, 2024; Daniela et al., 2024; Khairuddin, 2024; Kodir et al., 2024).

The classical position is further reinforced through Qur'anic interpretation and the jurisprudential understanding of justice (*al-'adl*) in polygamous marriages. While Q.S. *al-Nisā'* (4):3 permits a man to marry up to four wives, the verse simultaneously establishes justice as an indispensable legal requirement. Classical exegetes and *Shāfi'ī* jurists interpret this obligation primarily as equality in objectively measurable rights, including maintenance (*nafaqah*), residence, clothing, and the equitable distribution of time among wives. By contrast, emotional equality is regarded as an ethical aspiration rather than a legally enforceable obligation because it lies beyond complete human control, as acknowledged in Q.S. *al-Nisā'* (4):129. Consequently, the classical doctrine does not derive from these verses a legal basis for allowing contractual clauses that permanently prohibit polygamy. Instead, Islamic law imposes responsibility upon the husband to fulfil the standards of justice after exercising the lawful option of polygamy, whereas violations of those obligations become matters for judicial intervention rather than

contractual invalidation. Contemporary scholarship examining Islamic family law, judicial institutions, gender relations, and *maqāṣid al-sharī'ah* likewise confirms that classical jurisprudence consistently distinguishes between ethical obligations and contractual enforceability, even though modern legal discourse increasingly calls for broader preventive protection within marriage (Syahrin, 2021; Assaad et al., 2022; Sukmawati & Khadaḥī, 2022; Bashori et al., 2023; Ghaleb et al., 2024; Sulfinadia & Roszi, 2024; Mustamam et al., 2025).

From a comparative legal perspective, the present study finds that the classical *Shāfi'ī* approach prioritizes doctrinal consistency over contractual flexibility by preserving the integrity of divinely sanctioned legal rights. Rather than preventing potential injustice through contractual restrictions, the classical framework provides remedies after legal violations occur, including claims concerning maintenance, unequal treatment, or other breaches of marital obligations. This approach reflects the epistemological orientation of classical Islamic jurisprudence, which emphasizes textual fidelity and legal certainty while assigning judges the responsibility to resolve disputes arising from actual misconduct rather than hypothetical future events. However, the findings also demonstrate that such an approach encounters limitations when applied within contemporary legal systems that increasingly recognize contractual autonomy, preventive legal protection, and gender-responsive family law. Recent studies concerning family resilience, judicial reform, women's access to justice, comparative family law, and legal modernization illustrate that contemporary Muslim societies require legal mechanisms capable of preventing disputes before they arise rather than merely resolving them after harm has occurred (Abubakar et al., 2023; Amri et al., 2023; Prakon et al., 2023; Rahmatullah et al., 2023; Syaripudin & Saefudin, 2023; Taufiq et al., 2023; Akmal & Usmani, 2024; Manaf, 2022; Musarrofa et al., 2024). Therefore, although classical *Shāfi'ī* jurisprudence offers a coherent doctrinal justification for rejecting anti-polygamy clauses, its normative orientation leaves unresolved questions concerning preventive legal protection that later become central to statutory reforms in Indonesia. These unresolved issues provide the doctrinal foundation for examining how the *Kompilasi Hukum Islam* reinterprets contractual stipulations through a more contextual legal framework, which is discussed in the following section.

Table 1. Legal Characteristics of Anti-Polygamy Clauses under Classical *Shāfi'ī* Jurisprudence

Legal Aspect	Classical <i>Shāfi'ī</i> Jurisprudence
Legal status of anti-polygamy clause	<i>Shart fāsid</i> (invalid contractual condition)
Validity of marriage	Marriage remains legally valid
Husband's right to polygamy	Cannot be restricted through private contractual stipulations
Legal basis	Divine permissibility under Q.S. <i>al-Nisā'</i> (4):3
Judicial consequence	Clause is unenforceable; remedies arise only after violation of marital obligations
Orientation of legal reasoning	Preservation of textual authority and doctrinal consistency
Main limitation	Limited preventive protection for wives through contractual autonomy

Source: Author's analysis, 2025.

Position under the *Kompilasi Hukum Islam*

Unlike the classical *Shāfi'ī* doctrine, Indonesia's *Kompilasi Hukum Islam* (KHI) reflects a more contextual and reform-oriented approach to regulating marriage contracts. Although KHI does not explicitly formulate a provision stating that anti-polygamy clauses must always be inserted into marriage agreements, its legal structure recognizes the legitimacy of contractual stipulations (*ta'liq* and *perjanjian perkawinan*) provided that such agreements do not contradict Islamic principles and statutory law. This legislative orientation demonstrates a significant shift from classical jurisprudence by expanding contractual autonomy within marriage while maintaining the normative objectives of Islamic family law. The judicial requirements imposed before a husband may enter a polygamous marriage—including prior court authorization, proof of financial capability, and the ability to ensure equitable treatment among wives—indicate that polygamy is no longer viewed merely as an individual legal entitlement but as an institution subject to public legal control. Consequently, contractual clauses restricting future polygamy may function as preventive legal instruments that strengthen marital commitment and legal certainty rather than as attempts to prohibit what Islamic law has fundamentally permitted (Arshad, 2010; Syahrin, 2021; Manaf, 2022; Taufiq et al., 2023; Bukido & Ishak, 2024; Daniela et al., 2024; Musarrofa et al., 2024).

The present analysis indicates that the Indonesian legal framework substantially broadens the protective function of marriage contracts compared with classical *Shāfi'ī* jurisprudence. Rather than focusing exclusively on the textual legality of contractual conditions, *KHI* adopts a functional approach that prioritizes legal certainty, family stability, and the prevention of future disputes. This orientation corresponds with the broader development of Islamic family law in Indonesia, where statutory reforms increasingly integrate constitutional values, judicial practice, and contemporary social realities into Islamic legal interpretation. Recent scholarship demonstrates that Indonesian Islamic courts have progressively addressed issues concerning women's legal protection, inheritance disputes in polygamous families, judicial reasoning, unregistered marriages, and family resilience through a contextual interpretation of Islamic legal norms (Assaad et al., 2022; Sukmawati & Khadafi, 2022; Abubakar et al., 2023; Amri et al., 2023; Bashori et al., 2023; Rahmatullah et al., 2023; Halimatusa'diyah & Triana, 2024; Nasution & Muchtar, 2024; Sarib et al., 2024; Sudrajad et al., 2024; Jubaidi & Khoirunnisa, 2025; Tambunan et al., 2025). Accordingly, the enforceability of contractual stipulations under *KHI* should not be interpreted as a rejection of classical Islamic jurisprudence but rather as a legal mechanism intended to minimize harm (*mafsadah*) and strengthen justice within the contemporary institution of marriage.

A further finding of this study is that *KHI* implicitly transforms the legal function of marriage contracts from a merely declaratory instrument into a preventive mechanism for protecting family welfare. This transformation reflects the evolution of Islamic family law from a predominantly rights-based model toward a responsibility-based legal framework in which contractual autonomy operates alongside judicial supervision. The comparative analysis demonstrates that, under Indonesian law, the legal consequences of violating an agreed anti-polygamy clause may extend beyond moral responsibility and become relevant in judicial proceedings involving divorce, breach of marital obligations, or claims concerning family rights. Such an approach strengthens legal certainty while simultaneously providing greater protection for wives through enforceable contractual commitments. Nevertheless, this statutory development also raises an important doctrinal question regarding its compatibility with classical Islamic jurisprudence, particularly whether preventive contractual restrictions remain consistent with the higher objectives of Islamic law. Therefore, the principal contribution of the present study lies not merely in identifying differences between *KHI* and classical *Shāfi'ī* doctrine, but in demonstrating that these apparently conflicting approaches may be reconciled through an integrated *maqāṣid al-sharī'ah* framework, which constitutes the central novelty of this research and is discussed in the following section.

Table 2. Legal Characteristics of Anti-Polygamy Clauses under the *Kompilasi Hukum Islam*

Legal Aspect	Position under the <i>Kompilasi Hukum Islam</i>
Legal orientation	Contextual and reform-oriented
Status of contractual clauses	Recognized if consistent with Islamic law and statutory provisions
Judicial role	Court supervision prior to polygamous marriage
Function of marriage contract	Preventive legal protection and legal certainty
Protection of wives	Strengthened through enforceable contractual commitments
Legal consequence of breach	May constitute evidence in judicial proceedings concerning marital disputes
Principal objective	Family stability, justice, and protection of marital rights

Source: Author's analysis, 2025.

Comparative Analysis Based on *Maqāṣid al-Sharī'ah*

The comparative analysis demonstrates that the apparent contradiction between classical *Shāfi'ī* jurisprudence and Indonesia's *Kompilasi Hukum Islam (KHI)* is not fundamentally a conflict between Islamic law and statutory law, but rather a difference in legal methodology and the level at which legal reasoning is constructed. Classical *Shāfi'ī* jurisprudence primarily employs a textual-doctrinal approach (*manhaj naṣṣī*) that emphasizes the preservation of explicit legal permissions established by the Qur'an and the *Sunnah*. Accordingly, contractual clauses prohibiting polygamy are regarded as invalid because they seek to restrict an act that has already been declared permissible by divine revelation. In contrast, *KHI* adopts a contextual legal methodology that interprets marriage contracts within the broader objectives of family protection, judicial certainty, and public welfare. Although these two approaches appear to produce different legal conclusions, the findings of this study indicate that both ultimately pursue the same normative objective, namely the realization of justice, family stability, and social welfare. Therefore, the disagreement concerns the legal mechanism through which justice is achieved rather than the substantive objectives of Islamic law themselves (Arshad, 2010; Syahrin, 2021; Manaf, 2022; Assaad et al., 2022; Sukmawati & Khadafi, 2022; Abubakar et al., 2023; Bashori et al., 2023; Rahmatullah et al., 2023; Bukido &

Ishak, 2024; Daniela et al., 2024; Ghaleb et al., 2024; Khairuddin, 2024; Kodir et al., 2024; Mustamam et al., 2025).

From the perspective of *maqāṣid al-sharī'ah*, this apparent legal divergence can be reconciled through a purposive interpretation that prioritizes the protection of the family rather than the unrestricted exercise of legal rights. Classical jurisprudence protects the legitimacy of polygamy because it forms part of the divine legal structure, whereas contemporary statutory law seeks to prevent potential injustice before it occurs through contractual safeguards and judicial supervision. These two orientations should therefore be understood as complementary rather than contradictory. The findings suggest that contractual clauses restricting future polygamy do not necessarily prohibit a lawful act; instead, they function as preventive legal instruments designed to preserve *hiḍ al-nasl* (protection of family continuity), *hiḍ al-'ird* (protection of dignity and honour), *hiḍ al-naḥs* (protection of personal welfare), and ultimately *maṣlaḥah* within marital relations. This interpretation is consistent with the contemporary evolution of Islamic family law, which increasingly incorporates preventive justice, judicial accountability, and family resilience while remaining faithful to the normative foundations of Sharī'ah (Amri et al., 2023; Prakon et al., 2023; Syaripudin & Saefudin, 2023; Taufiq et al., 2023; Akmal & Usmani, 2024; Halimatusa'diyah & Triana, 2024; Musarrofa et al., 2024; Nasution & Muchtar, 2024; Sarib et al., 2024; Sudrajad et al., 2024; Umam & Arifin, 2024; Jubaidi & Khoirunnisa, 2025; Ritonga et al., 2025; Tambunan et al., 2025).

Based on these findings, this study proposes a new comparative framework termed the *Maqāṣid-Based Contractual Reconciliation Model*. Unlike previous studies that merely contrast classical jurisprudence with statutory reform, this model demonstrates that both legal traditions can be integrated through a hierarchy of legal objectives rather than through a hierarchy of legal authorities. Under this framework, the classical *Shāfi'ī* doctrine continues to define the substantive legality of polygamy, while statutory regulations such as *KHI* operate as procedural mechanisms ensuring that the exercise of this legal permission remains consistent with justice, responsibility, and family welfare. Consequently, contractual clauses prohibiting polygamy should not be interpreted as nullifying divine permission but as contractual instruments intended to secure the realization of *maqāṣid al-sharī'ah* within contemporary Muslim societies. This integrated framework represents the principal novelty of the present research because it shifts the scholarly debate from questioning whether anti-polygamy clauses are legally valid toward examining whether such clauses effectively realize the higher objectives of Islamic law. Accordingly, the contribution of this study extends beyond comparative doctrinal analysis by offering a normative model capable of harmonizing classical Islamic jurisprudence with contemporary statutory reform without compromising either textual authenticity or legal adaptability.

Table 3. *Maqāṣid al-Sharī'ah*-Based Reconciliation between Classical *Shāfi'ī* Jurisprudence and the *Kompilasi Hukum Islam*

Dimension	Classical <i>Shāfi'ī</i> Jurisprudence	<i>Kompilasi Hukum Islam</i>	<i>Maqāṣid</i> -Based Reconciliation
Legal orientation	Textual-doctrinal	Contextual-statutory	Integrated purposive approach
Position on anti-polygamy clauses	Invalid (<i>sharṭ fāsīd</i>)	Conditionally enforceable	Valid as preventive legal instruments where they realize <i>maṣlaḥah</i>
Primary concern	Preservation of divine legal permission	Protection of family through judicial regulation	Harmonization of rights and responsibilities
Dominant objective	Legal certainty	Family protection	Justice (<i>al-'adl</i>) and <i>maṣlaḥah</i>
Role of marriage contract	Records legal agreement	Preventive legal protection	Instrument for realizing <i>maqāṣid al-sharī'ah</i>
Main contribution	Preservation of doctrine	Adaptation to contemporary legal needs	Integration of classical and modern Islamic family law

Source: Author's analysis, 2025.

Implications for Islamic Family Law Reform in Indonesia

The findings of this study demonstrate that the debate concerning anti-polygamy clauses in marriage contracts extends beyond the question of contractual validity and reflects a broader transformation in contemporary Islamic

family law. The comparative analysis reveals that Indonesian Islamic family law is gradually shifting from a predominantly rights-oriented legal paradigm toward a more responsibility-oriented framework in which contractual autonomy, judicial supervision, and family protection operate simultaneously. Rather than treating marriage merely as a private legal relationship between spouses, contemporary statutory regulation increasingly recognizes marriage as a legal institution whose stability carries wider social implications. Within this framework, preventive contractual mechanisms become an important instrument for minimizing future disputes while strengthening legal certainty and protecting vulnerable family members. This development is consistent with the broader evolution of Islamic legal thought that emphasizes family resilience, judicial accountability, and contextual legal interpretation in response to changing social conditions (Arshad, 2010; Syahrin, 2021; Manaf, 2022; Assaad et al., 2022; Sukmawati & Khadafi, 2022; Abubakar et al., 2023; Amri et al., 2023; Bashori et al., 2023; Rahmatullah et al., 2023; Akmal & Usmani, 2024; Musarrofa et al., 2024; Tambunan et al., 2025).

From a theoretical perspective, this study contributes to the development of Islamic family law by proposing a *maqāṣid al-sharī'ah*-based framework for reconciling classical jurisprudence and contemporary statutory regulation. Previous studies have generally positioned classical *fiqh* and modern legislation as competing legal authorities, thereby producing a dichotomous understanding of Islamic legal reform. By contrast, the present study demonstrates that both legal traditions pursue the same normative objectives despite employing different legal methodologies. Classical *Shāfi'ī* jurisprudence safeguards the textual legitimacy of polygamy, whereas the *Kompilasi Hukum Islam* strengthens procedural safeguards to ensure that the exercise of this legal permission remains consistent with justice, family welfare, and human dignity. Accordingly, the proposed *Maqāṣid-Based Contractual Reconciliation Model* provides a new conceptual framework through which contractual stipulations can be evaluated according to their contribution to *maṣlaḥah* rather than solely their conformity with literal legal doctrine. This theoretical contribution expands existing scholarship on Islamic family law by integrating doctrinal analysis, comparative legal reasoning, and purposive interpretation into a single analytical framework (Bukido & Ishak, 2024; Daniela et al., 2024; Ghaleb et al., 2024; Khairuddin, 2024; Kodir et al., 2024; Halimatusa'diyah & Triana, 2024; Nasution & Muchtar, 2024; Sarib et al., 2024; Sudrajad et al., 2024; Umam & Arifin, 2024; Jubaidi & Khoirunnisa, 2025; Mustamam et al., 2025; Ritonga et al., 2025; Rozikin et al., 2025; Sadat et al., 2025).

The practical implications are equally significant for legislators, religious courts, marriage registrars, legal practitioners, and policymakers responsible for developing Islamic family law in Indonesia. First, clearer statutory guidelines concerning contractual clauses in marriage agreements could improve legal certainty and reduce inconsistent judicial interpretation among Religious Courts. Second, judges may employ *maqāṣid al-sharī'ah* as an interpretative framework when assessing disputes involving anti-polygamy clauses, thereby balancing textual legal doctrine with the broader objectives of justice and family welfare. Third, premarital counselling and marriage registration procedures should provide greater emphasis on contractual autonomy so that prospective spouses understand both their rights and responsibilities before entering marriage. Finally, future reforms of the *Kompilasi Hukum Islam* may further strengthen the legal status of contractual stipulations by explicitly integrating preventive legal protection into the codified principles of Islamic family law. These recommendations indicate that Islamic family law reform should not be understood as abandoning classical jurisprudence but rather as developing its normative objectives in response to contemporary legal realities. Consequently, the integrated *maqāṣid* framework proposed in this study offers a sustainable direction for future Islamic family law reform by harmonizing doctrinal authenticity, judicial certainty, and social justice within Indonesia's evolving legal system.

Table 4. Implications of the Proposed *Maqāṣid*-Based Contractual Reconciliation Model

Dimension	Implication	Expected Outcome
Islamic legal theory	Integrates classical <i>fiqh</i> and statutory law through <i>maqāṣid al-sharī'ah</i>	Stronger conceptual framework for Islamic family law
Judicial practice	Encourages purposive interpretation by Religious Court judges	Greater consistency in judicial decisions
Marriage contracts	Strengthens preventive contractual protection	Reduced marital disputes and enhanced legal certainty
Public policy	Supports future revision of the <i>Kompilasi Hukum Islam</i>	Contextual and responsive Islamic family law
Family welfare	Reinforces justice, responsibility, and family stability	Improved protection of women and family resilience

Source: Author's analysis, 2025.

CONCLUSION

This study demonstrates that the legal validity of anti-polygamy clauses (*al-shurūt fī al-‘aqd*) in Islamic marriage contracts remains a contested issue due to the different legal paradigms adopted by classical *Shāfi‘ī* jurisprudence and Indonesia’s *Kompilasi Hukum Islam* (KHI). Classical *Shāfi‘ī* doctrine generally considers contractual provisions that prohibit a husband from exercising a lawful right granted by *Sharī‘ah*, such as polygamy, to be legally invalid, although the invalidity of the condition does not affect the validity of the marriage itself. This doctrinal position is grounded in the principle that contractual autonomy cannot override rights explicitly recognized by Islamic law. Conversely, KHI adopts a more contextual statutory approach by recognizing the legal enforceability of marriage stipulations, including anti-polygamy clauses, provided that they do not contradict the essential principles of Islamic law and are directed toward protecting justice, family welfare, and legal certainty. Accordingly, the central research question concerning the legal legitimacy of anti-polygamy clauses is answered by demonstrating that their validity depends upon the legal framework employed: they are generally unenforceable under classical *Shāfi‘ī* jurisprudence but may acquire binding legal force within Indonesia’s codified Islamic family law through judicial enforcement and statutory interpretation. This finding illustrates the ongoing evolution of Islamic family law from a predominantly doctrinal paradigm toward a contextual legal system capable of responding to contemporary social realities while maintaining fidelity to Islamic legal principles.

The principal novelty of this research lies in the integration of comparative doctrinal analysis with *maqāṣid al-sharī‘ah* as the primary analytical framework for reconciling classical jurisprudence and modern statutory reform. Rather than treating classical *fiqh* and positive law as mutually contradictory systems, this study demonstrates that both ultimately pursue the same higher objectives of Islamic law, namely the realization of justice (*al-‘adl*), public welfare (*maṣlaḥah*), protection of lineage (*ḥifẓ al-nasl*), preservation of human dignity (*ḥifẓ al-‘ird*), and family stability. The comparative *maqāṣid*-based framework developed in this article therefore provides a more comprehensive doctrinal explanation of why contractual restrictions on polygamy may legitimately function as preventive legal instruments within contemporary Muslim societies without necessarily contradicting the ethical foundations of Islamic jurisprudence. This contribution extends existing scholarship by moving beyond descriptive discussions of polygamy toward a systematic legal analysis of contractual validity, judicial enforceability, and statutory harmonization. Consequently, the study contributes theoretically to the development of comparative Islamic family law by offering a model for harmonizing classical legal doctrines with contemporary legal reform, while practically providing guidance for judges, legislators, legal practitioners, and religious institutions in interpreting marriage agreements consistently with both statutory law and the higher objectives of *Sharī‘ah*.

Despite these contributions, this study remains subject to several limitations. The analysis is primarily normative and doctrinal, relying upon classical legal literature, statutory regulations, and contemporary academic scholarship without incorporating empirical evidence from judicial decisions, interviews with judges, or field observations concerning the implementation of anti-polygamy clauses in Indonesian Religious Courts. Consequently, the practical effectiveness of these contractual provisions in judicial practice cannot yet be comprehensively evaluated. Future research should therefore adopt empirical socio-legal or mixed-method approaches by examining court judgments, judicial reasoning, and the experiences of spouses who incorporate anti-polygamy clauses into marriage contracts across different legal jurisdictions. Comparative studies involving other Muslim-majority countries would also enrich understanding of how diverse legal systems reconcile contractual freedom, *maqāṣid al-sharī‘ah*, and statutory family law reform. Such future investigations would strengthen the comparative framework proposed in this article and contribute to developing a more responsive, equitable, and sustainable model of Islamic family law capable of addressing contemporary challenges while preserving the enduring normative foundations of Islamic jurisprudence.

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