

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

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ABSTRACT

Background: The permissibility of polygamy in Islamic law remains a subject of scholarly debate, particularly when marriage contracts include clauses that conditionally prohibit a husband from practicing polygamy. This issue presents a conflict between classical Islamic jurisprudence and contemporary statutory reforms.

Objective: This study aims to examine the legal status of conditional stipulations on polygamy in marriage contracts by comparing the classical position of the Shafi'i school with the statutory provisions in the Indonesian Compilation of Islamic Law (Kompilasi Hukum Islam/KHI).

Methods: This research adopts a qualitative-normative approach using doctrinal legal analysis. It reviews classical juristic texts, including the Shafi'i madhhab, and codified Indonesian Islamic law. The study also engages with Qur'anic exegesis and scholarly commentary to interpret the legal and ethical dimensions of conditional stipulations (*shurūṭ*).

Findings: According to Imam Shafi'i, conditions that restrict a husband from lawful acts—such as polygamy—are considered invalid, although the marriage remains legally valid. In contrast, KHI permits such clauses if they uphold justice and are consistent with Qur'anic values, especially Surah An-Nisa (4:3), which emphasizes fairness in polygamous relationships. This divergence reflects differing responses to the evolving needs of Muslim societies regarding gender justice and family stability.

Conclusion: The study underscores the need for a dynamic interpretation of Islamic family law that accommodates classical legal principles alongside contemporary ethical imperatives. It also affirms the legal plausibility and reformist value of incorporating conditional stipulations in modern Muslim marriage contracts.

Novelty: This paper contributes a comparative tafsir-based legal analysis that bridges classical Shafi'i jurisprudence with the statutory Islamic legal system in Indonesia, offering new insights into the legitimacy and enforceability of conditional polygamy prohibitions in Muslim-majority legal contexts.

Keywords: Islamic Family Law, Polygamy, Shafi'i Jurisprudence, Marriage Contract, Indonesian Islamic Law

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INTRODUCTION

The development of Islamic family law continues to face evolving challenges, particularly in relation to the protection and welfare of children with special needs. Among these pressing issues is the integration of *maqāṣid al-sharī'ah*—the higher objectives of Islamic law—into contemporary therapeutic and legal frameworks. Although the treatment and development of children with Autism Spectrum Disorder (ASD) have recently gained more scholarly attention, most existing research tends to emphasize medical, clinical, or educational aspects, often omitting the crucial dimension of Islamic legal-ethical principles.

For instance, Abidin et al. (2024) demonstrate the effectiveness of Applied Behavior Analysis (ABA) as a behavioral therapy method for children with ASD. However, this study does not address how Islamic law may guide or support such interventions. Likewise, research on child protection within Islamic legal contexts—such as informal marriages (*perkawinan siri*), domestic violence, and custody disputes (Bashori et al., 2023; Sulfinadia & Roszi, 2024)—remains largely disconnected from the specific vulnerabilities of special-needs children. These works also seldom explore how the framework of *maqāṣid al-sharī'ah* could shape inclusive and just legal responses for these children.

This gap is significant, particularly in Muslim-majority societies where children with ASD often experience marginalization not only due to their condition but also due to inadequate legal recognition. There is also a lack of institutional inclusion from religious authorities and legal institutions that ought to embody Islamic ethical values. As modern Muslim families face social transformations—such as the emergence of the childfree phenomenon, increasing rates of divorce and remarriage affecting custody, and sociopolitical debates on gender equity—the urgency to develop an integrated *maqāṣid*-based family law becomes more apparent. Therefore, this research seeks to address the following core question: How can the principles of *maqāṣid al-sharī'ah* be integrated with ABA therapy to form a comprehensive legal and social protection framework for children with ASD? By bridging doctrinal Islamic law with contemporary therapeutic needs, this study aims to offer a practical legal model that responds to the current realities of Muslim families while remaining grounded in core Islamic values.

The permissibility of polygamy in Islamic law has long been a subject of scholarly debate, especially in the context of modern marriage contracts that include conditional stipulations prohibiting a husband from engaging in polygamy. While classical Islamic jurisprudence, particularly within the Shafi'i school, permits polygamy—up to a maximum of four wives—it does so under the strict requirement of justice among wives. Imam al-Shafi'i emphasizes that justice must be observed primarily in material matters such as financial maintenance, housing, and equitable rotation of time between wives. Emotional fairness, though recognized, is considered beyond the full control of human beings. This requirement is rooted in the interpretation of Qur'anic verses such as Surah al-Nisa (4:3 and 4:129), which have been the focus of numerous classical and modern exegetical works.

Islamic scholars and commentators—including Muhammad Abduh, Muhammad Quraish Shihab, Ibn Kathir, and Buya Hamka—have provided detailed interpretations of these verses. Their tafsir (exegesis) reflects various perspectives on the ethical and legal parameters of polygamy. For instance, Muhammad Abduh connects polygamy to social justice, particularly the protection of orphans and widows, highlighting the Qur’anic context of post-war Arabia. Ibn Kathir incorporates hadith to contextualize verse 4:3 historically, while Quraish Shihab and Hamka underscore the moral responsibility of fairness and the evolving understanding of justice in contemporary Muslim societies. Despite general agreement among scholars on the permissibility of polygamy, many insist that it is not an unqualified right but a conditional allowance that must align with the broader objectives of Islamic law (*maqāṣid al-sharī‘ah*), including the protection of human dignity, justice, and family welfare.

In light of this, the current study seeks to examine the legal status and legitimacy of conditional polygamy prohibitions in marriage contracts by comparing classical jurisprudential views within the Shafi’i school and codified law as represented in Indonesia’s Compilation of Islamic Law (KHI). By integrating doctrinal legal analysis with a comparative framework, the research aims to highlight the evolving interpretation of Islamic family law in response to contemporary demands for gender justice and ethical reform. This paper contributes to the ongoing discourse by offering a structured tafsir-based legal argument that bridges classical Islamic jurisprudence with the statutory developments in majority-Muslim legal systems, particularly Southeast Asia.

METHODS

This study employs a qualitative, library-based research methodology focused on comparative legal analysis within Islamic jurisprudence. The primary data sources include classical Islamic legal texts from the Shafi’i madhhab, such as the foundational fiqh manuals and classical commentaries on marriage contracts and conditional stipulations (*shurut*). Additionally, the study thoroughly examines statutory law, particularly the Indonesian Compilation of Islamic Law (Kompilasi Hukum Islam, KHI), to understand the codified approach toward conditional polygamy prohibitions within modern Islamic legal frameworks. This dual focus enables the study to explore both the traditional juristic positions and the evolving statutory regulations affecting marriage contracts.

Data collection involves detailed textual analysis of relevant Qur’anic verses, especially Surah An-Nisa (4:3), alongside classical and contemporary tafsir that address the permissibility and limits of polygamy and the enforceability of contract conditions. Legal maxims and jurisprudential principles related to conditions (*shurut*) in contracts are also critically assessed. The study further compares interpretations by Islamic legal scholars (*fuqaha*) across historical periods, highlighting divergences between classical doctrine—primarily from the Shafi’i school—and modern statutory regulations within Indonesian Islamic family law. This comparative approach situates the research within broader discourses of Islamic legal reform and socio-legal ethics.

The analytical framework integrates principles of Islamic legal hermeneutics and comparative law methodology to interpret the nuances of conditional stipulations on polygamy prohibition. Emphasis is placed on the validity, legal effect, and enforceability of such conditions under Islamic law, scrutinizing their implications on marriage contracts without annulment. Through this comparative lens, the study identifies tensions and reconciliations between classical jurisprudence and contemporary legal codes, providing a normative basis for dynamic legal interpretations. The results are synthesized to offer a balanced understanding that accounts for ethical, jurisprudential, and socio-legal dimensions in modern Islamic family law.

LITERATURE REVIEW

The debate over conditional polygamy clauses in marriage contracts lies at the intersection of Islamic legal hermeneutics and modern statutory reform. While the Shafi'i school has held that stipulations restricting lawful polygamy are invalid (though not nullifying the marriage), Indonesian statutory law represented in the *Kompilasi Hukum Islam* (KHI) allows such provisions if they adhere to justice and Qur'anic values. Over time, scholars and jurists have analyzed these divergent positions through exegesis, jurisprudence, and comparative legal studies.

Classical jurists, including Imam al-Shafi'i, affirm that men are permitted up to four wives but must maintain justice in financial support, housing, visitation rights, and emotional fairness—though he acknowledges emotional equity is inherently limited (e.g., Qur'an 4:3, 4:129). Exegetes such as Ibn Kathir use hadith-informed historical context to interpret these verses, while Hamka and Quraish Shihab emphasize ethical limitations and compassionate application. Collectively, they assert that polygamy must align with foundational *maqāṣid* goals: justice, family welfare, and dignity.

On the statutory side, KHI integrates classical principles with evolving ethical demands. It legitimizes conditional clauses in marriage contracts, provided they do not contravene Qur'anic principles and are enforceable under legal procedures. Scholars such as Hidayah et al. (2021) and Amiati et al. (2024) discuss how Indonesia's codified framework reflects *maqāṣid*-driven reform, incorporating gender justice and family stability into family law. Comparative studies reveal tension: while the Shafi'i view sees such clauses as legally non-binding, KHI positions them as valid if properly formulated and executed.

Despite growing interest, comparative tafsir-based legal analysis on conditional polygamy clauses remains scarce. Few works critically engage with the legal enforceability of these clauses, or explore how they mediate between classical Shafi'i jurisprudence and statutory family law in Muslim-majority states. This gap marks the primary contribution of the present study.

Table 1: Summary of Key Sources

Source / Author (Year)	Focus	Position on Conditions	Maqāṣid Emphasis	Gap / Relevance
Imam al-Shafi'i	Classical jurisprudence	Invalid but marriage remains valid	Justice in financial/emotional equilibrium	No enforceability; normative view
Ibn Kathir	Qur'anic exegesis (historical)	Explains context of Qur'an verse 4:3	Maqāṣid via textual interpretation	No statutory comparison
Hamka, Quraish Shihab	Modern exegesis	Conditional polygamy limited by justice	Ethical interpretation	No legal enforceability discussion
KHI (Indonesia)	Codified family law	Permits clauses that meet justice conditions	Maqāṣid in law; gender/family welfare	Requires doctrinal support
Hidayah et al. (2021); Amiati et al. (2024)	Legal reform studies	KHI as example of maqāṣid-based reform	Gender justice, family stability	Lacks tafsir-based comparative legal analysis
Comparative tafsir legal gap	—	—	—	Justifies current research

The table above outlines key scholarly contributions relevant to the legal interpretation of conditional polygamy stipulations in Islamic marriage contracts. It highlights a spectrum of perspectives—from classical jurisprudence to statutory legal reforms—providing a foundation for understanding how these clauses have been treated across Islamic legal thought. Imam al-Shafi'i, representing the classical doctrinal view, considers such conditional clauses invalid since they limit lawful actions permitted by sharia (like polygamy), though he affirms that the marriage itself remains valid. His position is rooted in a normative understanding of Islamic law, emphasizing equilibrium in financial and emotional treatment of wives. However, this view lacks enforceability mechanisms within a statutory framework, underscoring the absence of practical legal application.

Exegetical scholars like Ibn Kathir, Hamka, and Quraish Shihab bring rich tafsir-based insights to the interpretation of Qur'anic verses on polygamy—especially Surah An-Nisa (4:3 and 4:129). Ibn Kathir offers a historical lens rooted in hadith to explain the socio-cultural context of polygamy during the early Islamic period. In contrast, Hamka and Quraish Shihab adopt a reformist, ethical lens, focusing on justice and compassion as central values. Despite these valuable interpretations, they stop short of exploring the enforceability of conditional clauses in formal legal systems. Their works focus more on moral and spiritual implications rather than doctrinal-legal mechanisms for implementation.

Contemporary statutory frameworks, such as the Indonesian Kompilasi Hukum Islam (KHI), bridge classical interpretations and the evolving demands of modern Muslim societies. KHI legitimizes conditional clauses in marriage contracts, provided they promote justice and align with Qur'anic values. Legal reform studies by Hidayah et al. (2021) and Amiati et al. (2024) further advocate for maqāṣid-based statutory reform, especially in advancing gender justice and family welfare. However, these studies often treat codified law in isolation, without grounding their arguments in comparative tafsir or the doctrinal roots of classical

jurisprudence. This gap—the lack of integrated, tafsir-based comparative legal analysis—defines the novelty of the present research, which seeks to critically link classical Shafi'i doctrine, Qur'anic interpretation, and modern statutory enforcement in assessing the legal validity and ethical legitimacy of conditional polygamy prohibitions.

RESULTS

The analysis of conditional polygamy prohibitions within Islamic marriage contracts reveals a significant divergence between the classical Shafi'i jurisprudential stance and the statutory provisions of the Indonesian Compilation of Islamic Law (Kompilasi Hukum Islam, KHI). According to classical Shafi'i fiqh, any contractual condition restricting lawful acts permitted by Sharia—such as polygamy—is invalid and non-binding. This position upholds the principle that divine permissions in Islamic law cannot be overridden by private stipulations. Hence, even when a marriage contract includes a clause prohibiting polygamy, the husband retains his classical legal right to marry multiple wives, and the marriage remains valid regardless of the conditional clause. This reflects a normative legal perspective emphasizing the inviolability of religiously sanctioned rights.

Contrastingly, the Indonesian KHI represents a more progressive and contextually responsive approach. It recognizes the validity and enforceability of conditional clauses in marriage contracts, including those that prohibit polygamy, as long as they are just, equitable, and aligned with the *maqāṣid al-sharī'ah*, particularly the Qur'anic emphasis on fairness outlined in Surah An-Nisa (4:3). Under KHI, the breach of such conditional prohibitions can result in legal sanctions or even dissolution of marriage, giving wives tangible recourse through the judicial system. This statutory provision embodies a shift towards integrating gender justice, family stability, and ethical considerations into Islamic family law, signaling an important reform that balances classical doctrine with contemporary societal needs.

A core finding from this study is that the KHI's reformist legal stance aligns closely with *maqāṣid al-sharī'ah* principles, particularly justice (*'adl*), welfare (*maslahah*), and protection of human dignity within the family. The legal acknowledgment and enforceability of conditional polygamy prohibitions serve to contextualize Islamic family law within modern legal frameworks, ensuring greater protection for vulnerable family members, especially women. However, practical enforcement still faces challenges due to judicial discretion and community attitudes rooted in classical interpretations. This underscores the ongoing need for harmonizing traditional jurisprudence with reformist objectives and for strengthening institutional capacity to implement *maqāṣid*-driven family law reforms effectively.

Table 2: Comparative Overview of Conditional Polygamy Restrictions in Classical Shafi'i Jurisprudence and Indonesian Islamic Law (KHI)

Aspect	Classical Shafi'i Jurisprudence	Indonesian Compilation of Islamic Law (KHI)
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Legal Validity of Conditions	Conditions restricting polygamy are invalid/non-binding	Conditions restricting polygamy are valid if just and equitable
Effect on Marriage Validity	Marriage remains valid despite prohibitive conditions	Marriage remains valid; breach may result in sanctions
Enforceability	No legal enforcement of conditions prohibiting polygamy	Legal enforcement possible, including sanctions for breach
Basis of Legitimacy	Divine sanction of polygamy as lawful act	Qur'anic principles combined with justice and equity
Protection of Women's Rights	Limited protection via contractual conditions	Enhanced protection through enforceable conditions

This comparative summary illustrates the tension and potential reconciliation between classical legal orthodoxy and contemporary statutory reforms aimed at promoting justice and welfare within Muslim families. The divergence also highlights the innovative role of Indonesian Islamic law in pioneering maqāṣid-based reforms that address modern social realities while maintaining religious authenticity.

DISCUSSION

This study highlights the enduring tension between the classical Shafi'i jurisprudential position and contemporary statutory reforms, as exemplified by the Indonesian Compilation of Islamic Law (KHI), regarding conditional prohibitions on polygamy in marriage contracts. Classical Shafi'i fiqh maintains that polygamy is a lawful right explicitly granted to Muslim men, and any contractual conditions attempting to restrict this right are considered invalid and unenforceable. This stance reflects a deep-rooted conviction in the immutability of certain divine legal rulings within Islamic law, prioritizing the preservation of legally sanctioned rights even amid evolving social realities. The classical approach is thus anchored in the preservation of established religious doctrine over changing societal norms.

In contrast, the KHI adopts a dynamic and reformist approach by recognizing and enforcing conditional polygamy prohibitions that meet principles of justice ('adl), equity, and family welfare, consistent with maqāṣid al-sharī'ah and Qur'anic guidance. This legislative framework responds to contemporary concerns about gender justice and family harmony, illustrating how Islamic law can be both faithful to scripture and adaptable to the needs of modern Muslim communities. The legal acknowledgment of conditional stipulations in marriage contracts marks a critical evolution in Islamic family law, moving from rigid orthodoxy toward contextual flexibility that balances religious fidelity with social ethics.

Nevertheless, the study underscores significant challenges in the practical enforcement of these conditional provisions. Traditional jurisprudential resistance and lack of judicial clarity may hinder consistent application, potentially limiting the effectiveness of statutory reforms. To address this, the study recommends the development of clear judicial protocols and capacity-building initiatives for judges and legal practitioners. These efforts should emphasize the compatibility of conditional clauses with maqāṣid al-sharī'ah and foster an understanding of contemporary family dynamics. Enhanced judicial capacity will be crucial for upholding

contractual protections and advancing justice, preventing potential abuses arising from unilateral polygamy.

Furthermore, this comparative analysis stresses the importance of ongoing scholarly and institutional dialogue to bridge the gap between classical fiqh and modern statutory law. Such discourse should aim to harmonize religious authenticity with social justice, ensuring that reforms grounded in maqāṣid al-sharī‘ah gain wider acceptance among religious authorities and communities. The recognition of conditional prohibitions aligns with the broader maqāṣid goals of protecting family welfare and promoting equitable treatment within marriage, particularly safeguarding women from harm and fostering balanced marital relations.

The study also situates these legal reforms within the broader socio-cultural shifts in Muslim-majority societies, where changing gender roles and family expectations call for enhanced legal protections. Conditional polygamy clauses empower women by granting them enforceable rights within marriage contracts, advancing gender justice in a manner consistent with Islamic principles. Despite the progressive nature of these reforms, resistance from conservative segments remains a challenge. Therefore, community engagement and educational outreach are vital to frame these reforms as legitimate, Qur’an-based interpretations rather than external impositions.

Ultimately, this research affirms that incorporating conditional polygamy prohibitions represents a transformative step in Islamic family law. It reflects a careful balancing act between immutable classical jurisprudence and the flexible, context-sensitive demands of contemporary legal systems. This development promotes justice, equity, and family stability—core objectives of both Sharia and the societies governed by it. In conclusion, the study advocates for a nuanced and contextually informed approach to Islamic family law reform. By synthesizing the enduring principles of classical jurisprudence with the responsiveness required by modern social and legal realities, supported by maqāṣid al-sharī‘ah, this framework offers a sustainable path forward to protect women’s rights and enhance family welfare in Muslim societies today.

CONCLUSION

This study concludes that the legal interpretation of conditional polygamy prohibitions within marriage contracts reveals a pronounced divergence between the classical Shafi’i jurisprudential stance and the Indonesian Compilation of Islamic Law (KHI). While classical Shafi’i fiqh generally views such conditional clauses as invalid and unenforceable, the KHI embraces and enforces these stipulations, provided they align with Qur’anic principles of justice and equity, especially those articulated in Surah An-Nisa (4:3). This evolution in legal interpretation reflects a critical reconciliation between the immutable doctrines of classical Islamic law and the evolving ethical, social, and human rights imperatives of contemporary Muslim societies.

By legally recognizing conditional restrictions on polygamy, the modern statutory framework offers a flexible yet principled approach that seeks to protect women's rights and foster family harmony without completely overturning traditional jurisprudence. However, the study identifies ongoing challenges related to procedural clarity and judicial enforcement, underscoring the necessity for comprehensive judicial guidelines and capacity building to ensure these conditions are effectively upheld in practice. Addressing these issues is essential to overcome the historical non-binding status of such conditions and to reinforce their legitimacy within Islamic family law.

Ultimately, this comparative analysis emphasizes the importance of dynamic, context-sensitive interpretations of Islamic family law that balance classical fiqh principles with the higher objectives of *maqāṣid al-sharī'ah*. Such an approach enables reforms that uphold justice, equity, and social welfare, offering a valuable model for legal development in Southeast Asia and Muslim-majority contexts worldwide. The study thus contributes to the ongoing discourse on harmonizing religious authenticity with modern legal and ethical demands, advancing the protection and empowerment of vulnerable family members in the contemporary era.

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