

Philosophical Examination of the Itsbat Nikah (Marriage Legalization) in Sirri Polygamy Following the Issuance of Supreme Court Circular No. 3 of 2018

Adriyeni¹

¹Universitas Islam Negeri Sjech M. Djamil Djambek Bukittinggi, kinarazain@gmail.com

Zikra Wahyuni²,

²International Islamic University Malaysia, z.maiza@live.iium.edu.my

Dahyul Daipon³

³University Islam Negeri Sjech M. Djamil Djambek Bukittinggi, dahyuldaipon55@gmail.com



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DOI: [10.30983/humanisma.v8i1.8266](https://doi.org/10.30983/humanisma.v8i1.8266)

Submission: April 03, 2024	Revised: August 20, 2024	Accepted: October 20, 2024	Published: November 31, 2024
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Abstract

Supreme Court Circular (SEMA) No. 3 of 2018 has effectively eliminated the possibility of granting requests for marriage registration in cases of polygamous marriages based on unregistered unions. This provision raises concerns about its potential to create various problems, particularly in relation to the protection of women and children. This research aims to analyze the issues arising in marriage law following the issuance of SEMA No. 3 of 2018 and its relevance to the protection of women and children, as well as the regulation of itsbat nikah (marriage legalization) for sirri polygamous marriages from the perspective of maqashid sharia. The study employs a library research methodology, utilizing secondary data sources. The data were collected through literature reviews and analyzed using qualitative data analysis methods. The findings indicate that the regulation of itsbat nikah for sirri polygamous marriages under SEMA No. 3 of 2018 aligns with the principles of protecting women and children. This regulation was introduced to uphold the core values enshrined in Indonesia's marriage laws. From the perspective of maqashid sharia, the provisions in SEMA No. 3 of 2018 correspond to the objectives of maqashid in preserving maslahah (public interest) at the dharuriyat level, particularly in safeguarding religion, lineage, and property.

Keywords: Marriage legalization, sirri polygamy, maqashid syariah.

Abstrak

Labirnya SEMA No. 3 Tahun 2018 telah menutup kemungkinan dikabulkannya permohonan itsbat nikah pada perkawinan poligami atas dasar nikah sirri. Ketentuan ini dikhawatirkan akan menimbulkan berbagai problematika terutama seputar perlindungan perempuan dan anak. Penelitian ini bertujuan untuk meneliti problematika yang muncul seputar itsbat nikah pasca lahirnya SEMA No. 3 Tahun 2018 dan relevansinya dengan perlindungan perempuan dan anak serta pengaturan itsbat nikah poligami sirri ditinjau dari perspektif maqashid syariah. Penelitian ini merupakan penelitian kepustakaan dengan menggunakan sumber data sekunder. Data penelitian didapatkan dengan melakukan penelusuran pustaka untuk selanjutnya dianalisis menggunakan metode analisis data kualitatif. Hasil penelitian ini menyimpulkan bahwa pengaturan itsbat nikah poligami sirri pada SEMA No. 3 Tahun 2018 relevan dengan konsep perlindungan perempuan dan anak. Aturan ini dilahirkan dalam rangka menegakkan nilai-nilai yang dijaga dalam pengaturan seputar perkawinan di Indonesia. Dari sudut pandang maqashid syariah, maka ketentuan dalam SEMA No. 3 Tahun 2018 sejalan dengan konsep maqashid dalam rangka memelihara mashlahat pada taraf dharuriyat dalam aspek penjagaan terhadap agama, keturunan dan harta.

Kata Kunci: Itsbat nikah, poligami siri, maqashid syariah.

Introduction

Marriage in Islamic law is regarded as a sacred covenant, embodying an act of worship to Allah SWT, adhering to the Sunnah of the Prophet Muhammad SAW, and conducted based on sincerity, responsibility, and compliance with the established legal provisions.¹ The validity of a marriage in Islamic law is determined by the fulfillment of the prescribed pillars and conditions.² The pillars (*rukun*) refer to essential elements that must be present to determine the validity of an act of worship. In marriage, these pillars consist of the two prospective spouses, the *wali* (guardian), witnesses, and the *sighat akad* (marriage contract pronouncement).³ Meanwhile, the conditions (*syarat*) of marriage serve as the foundation for its validity. The valid conditions of marriage are those that ensure the contract (*akad*) is capable of producing legal consequences, consisting of conditions specific to each of the pillars (*rukun*).⁴

Regarding marriage issues in Indonesia, Indonesian Muslims are not only required to adhere to Islamic marriage law but are also obligated to comply with the prevailing positive marriage law, including the requirement for marriage registration.⁵ Law No. 1 of 1974 on Marriage, particularly Article 2 paragraph (1), states that "a marriage is valid if conducted according to the laws of the respective religion and belief." Furthermore, paragraph (2) specifies that "every marriage shall be registered in accordance with the applicable laws and regulations." Additionally, Article 22 stipulates that "a marriage may be annulled if the parties fail to meet the requirements for entering into a marriage." This means that if the parties do not fulfill any of the conditions set forth by Law No. 1 of 1974 on

Marriage, the marriage is deemed invalid as it does not comply with the applicable legal provisions. This includes cases where the parties fail to register the marriage as required by the existing regulations.

Based on this regulation, it is clear that under the positive law in force in Indonesia, marriage registration is a mandatory requirement for every marriage conducted, including polygamous marriages. The Marriage Law, specifically Article 3 paragraph (1), stipulates that "in principle, a man is allowed to have only one wife, and a woman is allowed to have only one husband." Furthermore, Article 3 paragraph (2) states that "the court may grant permission for a husband to have more than one wife if desired by the concerned parties." Based on this, it is evident that polygamous marriages are permissible, provided they are agreed upon by all parties involved—namely, the husband, the existing wife, and the prospective wife. Furthermore, the polygamous marriage must be officially registered and not conducted as an unregistered or *sirri* marriage.

Marriage registration plays a crucial role in providing legal certainty for a marriage, including polygamous marriages. An unregistered marriage is not recognized by the state, which can lead to significant difficulties in the event of undesirable circumstances, such as divorce. In such cases, the wife may face challenges in claiming her rights arising from the marriage, as these rights can only be acknowledged if the marriage is properly registered. Moreover, issues surrounding the identity of children born from unregistered marriages may arise. These children may encounter difficulties in handling administrative matters and obtaining official identification, thus violating their fundamental rights.⁶

¹ Aisyah Ayu Musyafah, 'Perkawinan Dalam Perspektif Filosofis Hukum Islam', *Jurnal Crepido*, 02.02 (2020), p. 111.

² Muhammad Amin Sayyad, 'Urgensi Pencatatan Nikah Sebagai Rukun Nikah (Studi Kritis Pemikiran Siti Musda Mulia Dan Khoiruddin Nasution)', *El-Masblabah Journal*, 8.1 (2018), p. 4.

³ Slamet Abidin dan H. Aminuddin, *Fiqh Munakahat* (Bandung: CV. Pustaka Setia, 1999), hal. 64.

⁴ Abdul Aziz Muhammad Azam dan Abdul Wahab Sayyed Hawwas, *Fiqih Munakahat* (Jakarta: Amzah, 2009), hal. 100.

⁵ Engelen R. Palandeng dan Roy V. Karamoy, 'Tinjauan Yuridis Terhadap Perkawinan Sah Secara Agama Tetapi Tidak Sah Secara Hukum Positif Indonesia', *Lex Privatum*, VIII.2 (2020), p. 32.

⁶ Virahmawaty Mahera dan Arhjayati Rahim, 'Pentingnya Pencatatan Perkawinan', *As-Syams: Jurnal Hukum Islam*, 3.2 (2022), p. 98.

For marriages that have already been conducted as *sirri* marriages, the legislation provides an opportunity to ensure their legal certainty through the process of *itsbat nikah* (marriage legalization).⁷ Article 7 paragraph (2) of the Compilation of Islamic Law (KHI) stipulates that “in cases where a marriage cannot be proven with a marriage certificate, its *itsbat nikah* (marriage legalization) can be submitted to the Religious Court.” Furthermore, the Decree of the Chief Justice of the Supreme Court of the Republic of Indonesia No. KMA/032/SK/2006 on Guidelines for the Implementation of Judicial Duties and Administration defines *itsbat nikah* as the validation of a marriage conducted in accordance with Islamic law but not registered with the Office of Religious Affairs (KUA) or an authorized Marriage Registrar (PPN). This implies that for marriages conducted as *sirri* marriages, there is an opportunity to provide legal certainty through the mechanism of applying for *itsbat nikah* at the Religious Court.

The current reality, particularly following the issuance of Supreme Court Circular (SEMA) No. 3 of 2018 on the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chambers in 2018, stipulates that “applications for *itsbat nikah* (marriage legalization) in polygamous marriages based on *sirri* marriages, even for the sake of the child’s welfare, must be declared inadmissible. To safeguard the child’s interests, an application for the determination of the child’s lineage may be submitted.”

Based on this regulation, *sirri* polygamous marriages face significant obstacles in obtaining *itsbat nikah*. However, *itsbat nikah* is closely related to the protection of children’s rights as well as the rights of women (wives). In reality, polygamous

marriages are frequently conducted under the table (*sirri*) in society due to various factors.

Methods

In relation to SEMA No. 3 of 2018, questions arise regarding the underlying reasons for the issuance of this regulation. At first glance, the stipulation on *itsbat nikah* for *sirri* polygamous marriages in this regulation appears to contradict other provisions that prioritize the protection of women and children. Nonetheless, every regulation is created with specific objectives and purposes in mind. In Islam, there is the concept of *maqashid syariah*, which can be briefly understood as the ultimate goals, wisdom, values, norms, and meanings behind the establishment of a legal ruling.⁸ *Maqashid Syariah* can be understood as the underlying wisdom and ultimate objectives that the Lawgiver (Syari’) aims to achieve through every law that is prescribed.⁹ By understanding *maqashid syariah*, it serves as a guideline for a mujtahid (Islamic legal scholar) in formulating legal provisions. When linked to the issuance of the regulation concerning *itsbat nikah* for *sirri* polygamous marriages in SEMA No. 3 of 2018, it is clear that there is a specific *maqashid* behind this regulation. Therefore, this research aims to analyze the issues that emerged following the issuance of SEMA No. 3 of 2018 regarding the *itsbat nikah* for *sirri* polygamous marriages and its relevance to the concept of the protection of children and women, as well as how the regulation of *itsbat nikah* for *sirri* polygamous marriages, post-SEMA No. 3 of 2018, is viewed from the perspective of *maqashid syariah*. This research is also a qualitative study that is descriptive in nature.¹⁰ The data sources used in this research are secondary data. The data obtained through literature review will then be analyzed using qualitative data analysis techniques, leading to the formulation of conclusions.¹¹

⁷ Faizah Bafadhhal, ‘Itsbat Nikah Dan Implikasinya Terhadap Status Perkawinan Menurut Peraturan Perundang-Undangan Indonesia’, *Jurnal Ilmu Hukum*, 1.1 (2014), p. 3.

⁸ Abdul Helim, *Maqashid Al-Syariah Versus Ushul Al-Fiqh* (Yogyakarta: Pustaka Pelajar, 2019), hal. 9.

⁹ Busyro, *Maqashid Syariah, Pengetahuan Mendasar Memahami Mashlahab*, Jakarta (Kencana Prenada Media Group, 2019), hal. 11.

¹⁰ Sugiyono, *Metode Penelitian Kuantitatif Kualitatif Dan R&D* (Alfabeta, 2018), hal. 72.

¹¹ Mestika Zed, *Metode Penelitian Kepustakaan* (Yayasan Obor Indonesia, 2008), hal. 65.

Results and Discussion

Problems After the Issuance of SEMA No. 3 of 2018

The Marriage Law essentially stipulates that marriages in Indonesia must be registered. The obligation to register a marriage serves not only as a form of administrative order but also to provide legal certainty regarding the rights that arise after marriage. Consequently, a marriage conducted solely according to religious rites may be valid in the eyes of religion, but its existence will not be recognized by the state.¹²

Bagir Manan argues that marriage registration serves the function of ensuring legal order as an instrument for providing legal certainty, legal convenience, and also as evidence of a marriage.¹³ Marriage registration is very urgent in maintaining rights in marriage, especially the rights of women and children.

In cases where someone has already entered into an unregistered marriage (*sirri*), the Marriage Law provides a solution in the form of *itsbat nikah* (marriage legalization) so that the marriage can be officially registered and recognized as valid by the state. Therefore, *itsbat nikah* has significant legal implications in providing more tangible legal guarantees for the rights of children and wives within a marriage. This ensures that, in the event of a divorce, the rights of the children are not neglected, and the rights of the wife are also protected. In other words, *itsbat nikah* can be considered the legal foundation for marriage registration, which establishes legal certainty regarding the marital status, the status of children, and property rights within the marriage.

The issue surrounding *itsbat nikah* arises when it is performed by a couple in a *sirri* (unregistered) marriage who are still bound by a valid previous marriage (polygamy). In such cases, there appears to be a legal circumvention in the form of an attempt to conduct polygamy without following the established procedures, masked by *itsbat nikah*.

This type of *itsbat nikah* becomes problematic, as from a legal standpoint, polygamy must be carried out in accordance with the procedures set forth by the law. On the other hand, there is the consideration of legal certainty and the protection of the rights of the wife and children born from this *sirri* polygamous marriage that must be safeguarded.

Following the issuance of Supreme Court Circular (SEMA) No. 3 of 2018, the Supreme Court issued the results of the plenary meeting of the Religious Chamber, which stated that *itsbat nikah* for polygamous marriages based on *sirri* marriages cannot be granted. The content of SEMA No. 3 of 2018 states: “Applications for *itsbat nikah* in polygamous marriages based on *sirri* marriages, even for the sake of the child’s welfare, must be declared inadmissible. To safeguard the interests of the child, an application for the determination of the child’s lineage may be submitted.”

Based on the provisions above, it is clear that for any reason, even if it is for the sake of the child's welfare, the application for *itsbat nikah* in *sirri* polygamous marriages must be declared inadmissible. In this regard, it appears that the Supreme Court has firmly closed the possibility of legalizing polygamous marriages conducted under the table (*sirri*).

From the perspective of children's rights, a child is essentially a young human whose rights must be protected. In Indonesia, the protection of children's rights is guaranteed under Law No. 35 of 2014 on Child Protection. Substantively, the Child Protection Law outlines several rights for children, including the right to survival, the right to growth and development, the right to protection from violence and discrimination, the right to participation, civil rights and freedoms, the right to care, the right to health and well-being, and the right to education and culture. The main principles of child protection are non-

¹² Mukhtaruddin Bahrum, ‘Problematika Isbat Nikah Poligami Sirri’, *Al-Adalah: Jurnal Hukum Dan Politik Islam*, 4.2 (2019), pp. 194–213, doi:10.35673/ajmpi.v4i2.434.

¹³ Abdul Manan, *Aneka Masalah Hukum Perdata Islam Di Indonesia* (Jakarta: Kencana, 2006), h. 159.

discrimination, the best interests of the child, and respect for the child's views.¹⁴

Child protection refers to all activities aimed at ensuring and safeguarding children so that their rights are fulfilled¹⁵. Parents are the primary guardians who must ensure that their children's rights are properly fulfilled. However, protecting children becomes challenging in the case of marriages that are not recognized by the state because they are not officially registered. Therefore, for marriages conducted *sirri* (unregistered), *itsbat nikah* is usually requested from the Religious Court for the sake of the child's welfare.

However, following the issuance of SEMA No. 3 of 2018, not all marriages conducted *sirri* can be requested for *itsbat nikah* anymore. This is because SEMA No. 3 of 2018 stipulates that applications for *itsbat nikah* based on *sirri* polygamous marriages must be declared inadmissible. This undoubtedly affects the fulfillment of the rights of children born from such *sirri* polygamous marriages.

Regardless, children naturally have many rights that must be fulfilled. Children born from a *sirri* marriage will face difficulties in obtaining administrative identity. They will be unable to process birth certificates and other personal documents. Moreover, if a divorce occurs in the future, these children are at risk of losing their right to financial support if their father neglects his obligation. This right to support cannot be claimed, as under the law, a legitimate child is one born from a marriage that is recognized as valid.

In addition to the rights of the child, the wife is also vulnerable to losing her rights if the *sirri* marriage cannot be legalized through *itsbat nikah*. Upon further identification, the consequences of an unregistered marriage can lead to several issues as follows:¹⁶

For the husband and wife: In the event of a dispute concerning the rights and obligations between the husband and wife, for a *sirri* marriage, resolving such issues becomes difficult in court since there is no authentic evidence proving that the two are legally married. Additionally, a woman married *sirri* has no legal protection and is considered an unlawful wife. Therefore, if a divorce or the husband's death occurs, the wife cannot claim a share of the husband's inheritance.

For the child: From a legal perspective, a child born to parents in a *sirri* marriage is considered illegitimate and does not have civil relations with the father. Legally, the child only has civil relations with the mother. This is explicitly regulated in Article 43, paragraph (1) of the Marriage Law and Article 100 of the Compilation of Islamic Law (KHI). Therefore, it is clear that the consequences of an unregistered marriage, which cannot be legitimized through *itsbat nikah*, are severely detrimental to children born from such a marriage. These children will face difficulties in administrative matters and will be hindered in inheritance matters, as they only have inheritance rights from the mother.

Based on the issues arising from unregistered marriages, it can be understood that if such marriages cannot be legalized through *itsbat nikah* as regulated in SEMA No. 3 of 2018, especially in the case of *sirri* polygamous marriages, then the provisions of this SEMA are not aligned with the efforts made by the government and various parties to protect the rights of women and children. Moreover, it is not in line with Law No. 35 of 2014 concerning Child Protection, which is based on the principle of the best interest of the child.

Maqashid Syariah Perspective on the Regulation of *Itsbat Nikah*

¹⁴ Ahmad Tang, 'Hak-Hak Anak Dalam Pasal 54 UU No. 35 Tahun 2014 Tentang Perlindungan Anak', *Jurnal Al-Qayyimah*, 2.2 (2020), pp. 98–111, doi:10.30863/aqym.v2i2.654.

¹⁵ Hanani, S. (2012, November). Mengatasi Kekerasan Dalam Rumah Tangga Melalui Institusi Adat

Minangkabau (Suatu Upaya Dalam Mewujudkan Kesejahteraan Berbasis Perspektif Lokalitas dan Religius). In *Conference Proceeding AICIS* (Vol. 12, pp. 573-591).

¹⁶ Dahlia Haliah, 'Nikah Sirri Dan Perlindungan Hak-Hak Wanita Dan Anak (Analisis Dan Solusi Dalam Bingkai Syari ' Ah)', 1 (2016).

SEMA No. 3 of 2018 concerning the Implementation of the Results of the Plenary Meeting of the 2018 Chamber of the Supreme Court on the Guidelines for the Court's Task Implementation, specifically in the formulation of Section A, paragraph 8, clearly states that, "Requests for the *itsbat nikah* of polygamous marriages based on *nikah sirri* even with the reason of safeguarding the child's interests must be declared inadmissible. To ensure the child's interests, a petition for the child's lineage may be filed."

When analyzing the provisions in this regulation, two main points can be understood as the core mandate of this rule. First, the Religious Court judge must not accept or grant the request for *itsbat nikah* of a polygamous marriage based on *nikah sirri*, even with the reason of safeguarding the child's interests. Second, in order to ensure the legal interests of the child born from a *nikah sirri* marriage, the parents may file a petition for the child's lineage.

From these two provisions, it is clear that although the issuance of SEMA No. 3 of 2018 eliminates the *itsbat nikah* for polygamous marriages based on *nikah sirri*, which could have adverse implications for children born from such marriages, as children born from unregistered marriages will face many legal challenges, because the Marriage Law stipulates that a legitimate child is one born from a lawful marriage. However, with the additional provision that for the sake of the child's interests, the parents can file a petition for the child's lineage, the negative implications of the existence of SEMA No. 3 of 2018 can be minimized.

If analyzed further, it can be understood that the provision for permission for polygamy from the Religious Court based on the desire of an individual to engage in polygamy is evaluative in nature, not merely administrative. In this case, the Religious Court will assess whether a man is truly able and capable of fulfilling the various obligations that arise after his request for polygamy is granted. Therefore, according to the author, the regulation surrounding polygamy is not

merely an administrative matter. If it is viewed solely as an administrative issue, it would inadvertently negate or eliminate the values intended to be protected by the regulations regarding the polygamy procedure. This means that the legislator's efforts to protect juridical, sociological, and philosophical values through the imposition of conditions for polygamy will be rendered void if the *itsbat nikah* for *poligamy sirri* is granted.

Article 3, paragraph (2) of the Marriage Law explains that, "The Court may grant permission to a husband to have more than one wife if desired by the parties involved." Additionally, Article 4, paragraph (1) states, "In the event that a husband wishes to have more than one wife, as stated in Article 3, paragraph (2) of this Law, he is required to submit a request to the Court in the area where he resides."

Government Regulation No. 9 of 1975 regulates the implementation of polygamy permission in Article 43, which states that, "If the court deems there are sufficient reasons for the petitioner to have more than one wife, the court shall issue a decision granting permission to have more than one wife." Furthermore, Presidential Instruction No. 1 of 1991 on the Compilation of Islamic Law (KHI) provides the legal foundation for granting polygamy permission through Article 56, paragraph (3), which states, "A marriage conducted with the second, third, or fourth wife without permission from the Religious Court does not have legal force."

In addition to the provisions requiring permission for polygamy from the Religious Court, the Marriage Law also regulates the detailed requirements that must be fulfilled in order to apply for polygamy permission from the court. Article 4, paragraph (2) of the Marriage Law states that the court referred to in paragraph (1) of this article may only grant permission to a husband who wishes to have more than one wife if: *First*, The wife is unable to fulfill her duties as a wife. *Second*, The wife suffers from a physical disability or an incurable disease. *Third*, The wife is unable to bear children.

Article 5, paragraph (1) regulates that to submit a request to the court as mentioned in Article 4, paragraph (1) of this law, the following requirements must be met:

1. The consent of the wife/wives.
2. Assurance that the husband is capable of providing for the living needs of the wife/wives and children.
3. A guarantee that the husband will treat the wife/wives and children fairly.

The position of the permission from the Religious Court, along with its various requirements, is mandatory. Therefore, if it is carried out without first obtaining permission, the marriage does not have legal force and is considered invalid, as if it never took place. A polygamous marriage is deemed valid if it meets the material legal requirements, meaning it is conducted according to Islamic law (with the fulfillment of its terms and conditions), and also complies with formal legal requirements, meaning it is conducted after obtaining permission from the court that allows the polygamous marriage in question.¹⁷

Therefore, it can be understood that the urgency of the strict regulation of polygamy in Indonesia is aimed at synchronizing material law and formal law. The formal law must follow the material law, which determines the validity of the marriage. A marriage that only fulfills the material requirements but ignores the formal requirements will be considered as never having occurred. Conversely, a marriage that only fulfills the formal requirements but neglects the material requirements can be annulled.

is a matter of both legal recognition and societal acceptance. The philosophical values underlying the legal provisions that require court approval for polygamy, with its strict conditions, reflect the need to ensure justice, fairness, and the protection of rights, especially those of women and children. These provisions aim to maintain

balance within the family structure and uphold the dignity of all parties involved. In essence, the existence of a polygamous marriage is not only a legal matter but also a social responsibility to ensure the well-being and equal treatment of all spouses and children, in accordance with both religious and societal norms:¹⁸

The four points outlined here emphasize the significant legal consequences when a polygamous marriage does not meet the formal requirements, particularly the necessity of court approval and the fulfillment of legal conditions. Specifically:

1. No Legal Force: The marriage is deemed nonexistent in the eyes of the law, thus it does not produce any legal consequences.
2. Cannot Serve as a Legal Basis: The marriage cannot serve as a basis for any legal claims or actions involving the marriage itself, whether in the context of property, inheritance, or other related matters.
3. No Legal Recourse in Court: Any disputes arising from the marriage cannot be legally addressed or resolved in court due to the lack of legal recognition.
4. No Entitlement to Rights: Neither the rights of the spouses nor the rights of children born from the marriage can be legally claimed or enforced in the legal system or in society, as the marriage is not recognized by law.

The formal legal provisions surrounding polygamy in Indonesia are essentially designed to ensure that the existence and consequences of a polygamous marriage align with the objectives of Islamic law (syariat). These objectives include the creation of a household based on justice, affection (mawaddah), and mercy (rahmah). The goal is to foster a harmonious family life, which leads to the fulfillment of the happiness sought by both the husband and wife. These provisions ensure that the marriage is conducted in a manner that

¹⁷ Reza Fitra Ardhian, Satrio Anugrah, and Bima Setyawan, 'Poligami Dalam Hukum Islam Dan Hukum Positif Indonesia Serta Urgensi Pemberian Izin Poligam Di Pengadilan Agama', *Privat Law*, 3.2 (2015), p. 48.

¹⁸ Ardhian, Anugrah, and Setyawan, 'Poligami Dalam Hukum Islam Dan Hukum Positif Indonesia Serta Urgensi Pemberian Izin Poligam Di Pengadilan Agama'.

respects both legal and ethical standards, promoting a stable and just family environment.

This appears to align with the philosophical foundation behind the issuance of SEMA No. 3 of 2018, which states that requests for the legalization of polygamous marriages based on unregistered (*sirri*) marriages cannot be accepted, even if the reason is for the sake of the child's interests. The purpose of this regulation is to uphold the noble values sought from the legal framework surrounding polygamy in Indonesia. As clearly stated in the Marriage Law, polygamy can be carried out only if it is authorized by the court and meets the established requirements. This ensures that polygamy is practiced in accordance with both legal and moral standards, promoting justice and fairness in family life.

In cases of unregistered polygamous marriages (*nikah sirri*), there are indications that the polygamy was conducted without fulfilling the established requirements. For example, polygamy may have occurred without the consent of the first wife, or the husband may have failed to meet the financial capacity to support the wives and children. Therefore, if a request for legal recognition (*itsbat nikah*) is later made and granted by the court, the objectives that were carefully designed to protect polygamous families from practices of non-compliant polygamy would be undermined.

Thus, it can be understood that the issuance of SEMA No. 3 of 2018 is essentially aimed at preserving the public good (*mashlahah*) in marriage, including in polygamous marriages. *Mashlahah* itself is the core of the *maqashid syariah* (objectives of Islamic law), which should be the underlying principle for every legal product that is created.

Muhammad al-Yubi argues that *maqashid syariah* refers to the meanings and wisdoms that Allah SWT has set in each of His laws, whether specific or general, with the purpose of realizing the public good (*mashlahah*) for His servants. On

the other hand, Wahbah al-Zuhaily defines *maqashid syariah* as the meanings and objectives that can be understood or recorded in each law, and for the glorification of the law itself. It can also be defined as the ultimate goals of Islamic law and the secrets that al-Syari' has established in each of His laws.¹⁹

The purpose of Allah in establishing the *Shariah* is for the welfare (*mashlahah*) of His servants in this world and the Hereafter. Al-Syatibi, as quoted by Ahmad al-Raisuni, explains that the burden of law is actually established to preserve the objectives of the law within the beings of creation. These objectives consist of three categories: *dharuriyyah*, *hajjiyyah*, and *tahsiniyyah*. The *dharuriyyah* objectives consist of five essential matters that must be preserved: the preservation of religion, life, lineage, property, and intellect. Meanwhile, the *hajjiyyah* objectives aim to alleviate difficulties in the lives of the *mukallaf* (those obligated by the law), and the *tahsiniyyah* objectives serve as a means of perfection for the two previous categories.²⁰

The provisions in SEMA No. 3 of 2018, when viewed from the perspective of *maqashid syariah*, can be understood as a means to preserve the *dharuriyyah* (basic) benefits, particularly in the aspects of safeguarding religion, lineage, and wealth. From the perspective of religion, the positive legal provisions, including those in SEMA No. 3 of 2018, aim to ensure the enforcement of religion within the family. In a harmonious family, which is legally recognized, the implementation of religious values is more assured. On the other hand, in families with legal issues, there tends to be a higher risk of conflicts and even neglect of religious aspects within the household. The husband may neglect his responsibilities, the wife may feel unfulfilled in her rights and, therefore, neglect her duties, and similarly, the children may be deprived of religious values being instilled in them.

¹⁹ Wahbah Al-Zuhaily, *Ushul Al-Fiqh Al-Islami* (Damaskus: Dar al-Fikr, 1986), h. 1017.

²⁰ Muhammad Al-Raisuni, *Nadariyat Al-Maqashid 'Inda Al-Imam Al-Syatibi* (Beirut: Mu'assasah Al-Jami'ah, 1992), h. 116.

In terms of safeguarding lineage, the existence of SEMA No. 3 of 2018 becomes crucial to protect the offspring born from a marriage, ensuring they receive their rights and clarity regarding their lineage, both in material (Islamic) law and formal legal terms. A marriage, including a polygamous marriage that is legally recognized, will bring benefits (*mashlahah*) for the children born within that marriage in terms of legal status, administrative clarity, and other aspects.

In terms of safeguarding wealth, the provisions in SEMA No. 3 of 2018 are crucial to ensure the rights of wives and children in matters related to inheritance division. In secret marriages, wives and children are vulnerable to losing their rights to receive maintenance, especially if a divorce occurs in the future. Wives and children in such marriages lack legal standing to file maintenance and custody claims in the Religious Court, which often leads to women and children becoming victims. Moreover, if the husband passes away, the wife and children are likely to lose their inheritance rights, as there is no strong legal foundation to prove the marriage took place. In polygamous marriages, this situation is even more painful for the secret wife, as she and her children face the reality that the legitimate wife and children will inherit the husband's wealth according to legal proportions, while she and her children receive nothing and cannot file a claim in the Religious Court because the marriage is not recognized legally.

The provisions in SEMA No. 3 of 2018 can be understood as an effort to ensure the realization of welfare in every marriage conducted in Indonesia, including polygamous marriages. Therefore, the exclusion of marriage registration (*itsbat nikah*) for polygamous marriages based on secret marriages, as regulated in SEMA No. 3 of 2018, is aligned with the concept of *maqashid syariah* in order to preserve the welfare aspects related to religion, lineage, and wealth. It is not intended to undermine the protection of women and children; on the contrary, it aims to uphold it.

Concerns regarding the interests of children being neglected if the *itsbat nikah* (marriage

registration) for a polygamous secret marriage is denied can be addressed by seeking a solution through filing a petition for the establishment of the child's lineage (*asal-usul anak*) with the Religious Court. This process ensures that the child's legal status is clarified, providing them with the necessary legal recognition and rights, including those related to inheritance and other legal matters.

Conclusion

The issuance of SEMA No. 3 of 2018 has resulted in the closure of the possibility of granting a petition for the *itsbat nikah* (marriage registration) of a secret polygamous marriage. At first glance, this regulation may appear to contradict efforts to protect women and children. However, a deeper understanding reveals that the purpose of SEMA No. 3 of 2018 is to uphold the noble values and objectives intended in the regulation of marriage in Indonesia in general, and the regulation of polygamy in particular. The *mashlahah* values embedded in this SEMA align with the concept of *maqashid syariah*, particularly at the level of *dharuriyah* (necessities), concerning the protection of religion, lineage, and wealth.

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