

## Prevention Of Polyandry In The Perspective Of Islamic Law And Law No. 1 Year 2023

Maswandi<sup>1\*</sup>

Fakultas Hukum, Universitas Medan Area, Indonesia.

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### Abstract

Marriage as a normatively protected and religious institution in Indonesia still faces the threat of polyandry practices that are contrary to moral values, religion, and applicable legal regulations. This study aims to examine the Prohibition of polyandry from the point of view of Islamic law and the construction of criminal sanctions in Law Number 1 of 2023 concerning the Criminal Code, as well as formulating an integrative prevention model. The method used is normative juridical approach through the study of literature with descriptive-analytical analysis. The results showed that all schools of jurisprudence have agreed by ijma ' ban polyandry because it is contrary to maqashid al-Sharia, especially the principle of hifzh Al-nasl and hifzh al-'irdh. Indonesia's positive law also prohibits the practice through the principle of monogamy and the provision of double marriage. The meeting point between the two legal systems is an important foundation in building a comprehensive prevention mechanism. The Integrative prevention Model includes institutional synergies between KUA, MUI, and law enforcement officials, strengthening premarital education, and digitizing national marriage records in order to realize equitable family resilience.

**Keywords:** Polyandry, Islamic law, Maqashid Al-Sharia, criminal code 2023, Prevention of criminal acts

### 1. INTRODUCTION

Marriage in the Indonesian legal system is an institution that is protected normatively and religiously. However, the practice of polyandry, a condition in which a woman has more than one husband at the same time, is still found in various walks of life, both overtly and covertly. This phenomenon is not only contrary to moral and religious values, but also violates the provisions of positive law in force in Indonesia.<sup>1</sup> In the perspective of Islamic law, polyandry is expressly prohibited based on the nash of the Qur'an and the Hadith of the prophet, because it is contrary to the principles of maqashid al-Sharia which aims to preserve offspring (hifzh

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\*Email/Corresponding Author: [maswandi@staff.uma.ac.id](mailto:maswandi@staff.uma.ac.id)

<sup>1</sup> Muhammad Fathinnuddin, "Analisis Yuridis Eksistensi Tindak Pidana Perkawinan Di Indonesia Berdasarkan Undang-Undang Nomor 1 Tahun 2023 Tentang KUHPidana" 1, No. 2023 (2026): 19–24.

al-nasl) and honor (hifzh al-'irdh).<sup>2</sup> This prohibition is not just a formal rule, but touches on fundamental aspects of the family order in Islam.<sup>3</sup>

The development of national legislation also strengthened the ban through the renewal of marriage regulations. Law No. 1 of 2023 on the Criminal Code that came into full force provides a firmer criminal foundation against violations of marriage norms, including the practice of polyandry which is categorized as a form of bigamy or unlawful multiple marriages. This regulation is part of the state's efforts to carry out comprehensive legal reform in order to adjust the criminal law to the social development of Indonesian society.<sup>4</sup>

Although regulation is available, the effectiveness of prevention of polyandry crime still faces various challenges, ranging from low public legal awareness, weak administrative supervision of marriage, to the lack of integration between Islamic law and positive law approaches in handling cases. Therefore, an in-depth study of integrated prevention mechanisms between the perspective of Islamic jurisprudence and state legal instruments is needed so that the protection of the institution of marriage can run optimally.<sup>5</sup> Based on the background that has been described, this study identifies the main problems that are the focus of the study. First, How is the view of Islamic law on the crime of polyandry and its prevention mechanisms in terms of the principles of maqashid al-Sharia? Second, How do the provisions of Law Number 1 of 2023 regulate sanctions and prevention efforts against polyandry practices in the Indonesian criminal law system? Third, How is the synchronization between the perspectives of Islamic law and positive law in forming an effective prevention model against polyandry crimes in Indonesia?

This study aims to comprehensively analyze the Prohibition of polyandry from the perspective of Islamic law by referring to normative postulates and opinions of classical and contemporary fiqh scholars. Furthermore, this study aims to examine the construction of positive Criminal Law in Indonesia, especially in law No. 1 of 2023, in providing legal protection to the institution of marriage from polyandry practices. Finally, this study aims to find the point of convergence between the two legal systems in order to formulate recommendations for prevention models that are integrative and applicable. Theoretically, this study is expected to enrich

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<sup>2</sup> Universitas Brawijaya, "Pemidanaan Terhadap Pelaku Kawin Mut'ah (Kawin Kontrak) Dari Perspektif Hukum Islam Criminal Punishment Of Mut'ah (Contract) Marriage Perpetrators From The Perspective Of Islamic Law" 6, no. 6 (2025): 1–35.

<sup>3</sup> Achmad Hasan Alfarisi, "Kontribusi Hukum Islam Dalam Bidang Hukum Pidana Di Indonesia" 02, no. 03 (2025): 1038–45.

<sup>4</sup> Lu'luul Maknun, "Perlindungan Hukum Terhadap Istri Yang Menjadi Korban Tindak Pidana Kekerasan Dalam Rumah Tangga Oleh Suami Diwilayah Hukum Kepolisian Resor Kota Jambi" (Universitas Batanghari Jambi, 2025).

<sup>5</sup> Agustin Hanapi, "Resolution Of Polyandry Cases Through Customary Law (A Case Study In Darussalam District, Aceh Besar Regency)" 1, no. 2 (2024): 123–41.

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the treasury of Islamic law and national criminal law, especially in the discourse on criminal prevention of violations of marriage norms in Indonesia. In practical terms, the results of this study can be a reference for law enforcement officers, rulers, and religious institutions in strengthening the mechanism of marriage supervision in the field. In addition, this study is expected to contribute to policy makers in perfecting regulations that integrate the values of Islamic law with a positive legal system for the creation of a strong family resilience in Indonesia.

## **2. RESEARCH METHOD**

This research uses normative juridical approach (normative legal research), which is a legal research method that focuses on the study of primary, secondary, and tertiary legal materials as the main source of analysis.<sup>6</sup> This approach was chosen because the object of study focuses on Written legal norms, both sourced from Islamic law and Indonesian positive law, especially Law Number 1 of 2023 on Criminal Law and Law Number 16 of 2019 on amendments to Law Number 1 of 1974 on marriage, in order to analyze the construction of polyandry prevention laws in depth and systematically.<sup>7</sup>

Legal materials are collected through library research by tracing legislation, Court decisions, classic and contemporary fiqh books, and relevant scientific literature. The analysis was carried out in a descriptive-analytical manner, namely by describing the applicable normative provisions and then analyzing them critically to find suitability, gaps, and synchronization points between Islamic law and positive Criminal Law in the context of polyandry prevention. The interpretation methods used include grammatical, systematic, and teleological interpretation in order to reveal the meaning of the norm in a comprehensive manner.<sup>8</sup>

## **3. RESULT AND ANALYSIS**

### **A. Polyandry in the perspective of Islamic law**

#### **1. Normative basis of the Prohibition of polyandry in the Qur'an and Hadisth**

The marriage system in Islam is built on the principle of clarity of the legal relationship between husband, wife and offspring, so any form of deviation from the norm is considered contrary to the fundamental teachings of the religion. The practice of polyandry-the condition in which a woman has more than one husband at the same time is strictly forbidden

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<sup>6</sup> Sitompul, A. (2022). Metode Penelitian Hukum Normatif (Strategi Praktis Penulisan Skripsi, Tesis, Disertasi).

<sup>7</sup> “Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana,” No. 1 (2023): 1–261.

<sup>8</sup> Rya Elita, “Analisis Tindak Pidana Perzinaan Dalam Pembaharuan Hukum Pidana Dan Qanun Jinayat Di Aceh,” 2026, 62–68.

under the Qur'AN. An-Nisa verse 24 which prohibits marrying women who are still in a marriage bond, and QS. An-Nisa verse 3 which only opens a limited polygamous space for men without providing similar space for women. This normative provision affirms that the structure of Islamic marriage is asymmetric based on the roles and responsibilities of each party.<sup>9</sup> Furthermore, all schools of jurisprudence Hanafi, Maliki, Shafi'i, and Hanbali have come to the ijma' (consensus) that polyandry is absolutely haram without any significant difference of opinion, a condition which suggests that this prohibition is qath'i in nature and cannot be reinterpreted.

## **2. Maqashid Al-Shariah's review of polyandry**

The study of the Prohibition of polyandry cannot be separated from the framework of maqashid al-Shariah as the universal goal of Islamic Shari'a. Polyandry directly threatens hifzh al-nasl (guardianship of offspring) because the uncertainty of the identity of the biological father of a child will cause confusion in the nasab system, inheritance rights, guardianship, and maintenance responsibilities which are fundamental pillars of Islamic Family Law.<sup>10</sup> The ambiguity of this lineage is not merely an administrative issue, but touches on the dimension of justice for the child born from the relationship. In addition, the practice of polyandry is also contrary to hifzh al-'irdh (guard of honor), because in the Islamic view the honor of women and families is maintained through a clear and orderly marriage system. Polyandry has the potential to damage the moral image, create social stigma, and destroy the principle of qiwamah (Family Leadership) which is the foundation of household order in Islam.

## **3. Polyandry Prevention Mechanism According To Islamic Law**

Islamic law not only serves as a system of prohibitions, but also provides preventive and curative mechanisms of prevention. First, the role of religious institutions such as ulama, majelis taklim, and Islamic educational institutions is very strategic in instilling an understanding of marriage law to the community from an early age, especially through Sharia-based premarital guidance programs. Second, the TA'zir approach as an instrument of sanction gives the ruler or judge the flexibility to impose proportionate punishment on polyandrous offenders, given that there are no hudud provisions that specifically regulate this criminal act. Third, fostering families based on Islamic values through da'wah, counseling, and

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<sup>9</sup> Daniel Indriadi, Vivian Nadienna, and Vidya Utami Naya, "Perbedaan Hukumantara Poligami Dan Poliandri Berdasarkan Konsep Keadil

<sup>10</sup> Diana Zuhroh, "Husband-Wife Relations in Polyandry Households: Empirical Study of Polyandry in Plosorejo Village, Kismantoro District Wonogiri" 5 (2025).

strengthening religious literacy is an ongoing preventive measure to prevent the recurrence of deviant practices in marriage .<sup>11</sup>

## **B. Polyandry in the perspective of Law No. 1 year 2023 and Indonesian marriage regulation**

### **1. Construction of polyandry Criminal Law in the new criminal code**

In Indonesian positive law, the Prohibition of polyandry is not explicitly mentioned using the terminology, but is implicitly regulated through the principle of monogamy contained in Article 3 Paragraph (1) of law no. 1 of 1974 on marriage, which confirmed that a woman should have only one husband. This provision is reinforced by Article 9 of the same law, which prohibits a person who is still in a committed marriage from entering into a new marriage. Regulatory reform through law No. 16 of 2019 as an amendment to the marriage law, it also strengthens the orderly and legally valid marriage system, although the focus of the change is on the minimum age limit for marriage.<sup>12</sup> In the context of Law No. 1 of 2023 concerning the new criminal code, polyandry can be qualified as a form of bigamy or multiple marriage that meets the elements of actus reus (tort) and mens rea (intentional) as stipulated in the general provisions of criminal offenses.

### **2. Criminal sanctions and enforcement mechanisms**

The application of criminal sanctions against polyandrous perpetrators has received attention in Indonesian judicial practice. Based on the analysis of court decisions, there are variations in the judge's decision that depend on whether or not the elements of the criminal offense are met cumulatively. In some cases, the element of "entering into marriage" becomes a critical point that determines whether the defendant can be convicted or acquitted. Cases with a conviction generally occur when it is proven that the perpetrator knows his marital status is still valid but still entered into a new marriage, thus fulfilling the element of intent in the provisions of criminal law. In the new penal code, the main crimes that can be imposed include imprisonment and fines, which aim to provide a deterrent effect while maintaining legal order in the institution of marriage.

### **3. Prevention of polyandry in positive law**

The prevention mechanism in positive law rests on the administrative system of marriage registration as required by Article 2 Paragraph (2) of law no. 1 of 1974, which requires that every marriage be recorded according to applicable laws and regulations. This recording obligation becomes an

<sup>11</sup> Maswandi, "Community Views On Polygamy And Polyandry Islamic Legal Perspective" 2, no. 4 (2023): 163–68.

<sup>12</sup> "Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnalmahasiswa.Unesa.Ac.Id* 1, no. 1 (2021): 764–78, <https://jurnalmahasiswa.unesa.ac.id/index.php/jurnal-pendidikan-kewarganegaraan/article/view/35779%0Ahttps://repository.ar-raniry.ac.id/id/eprint/20163/%0Ahttps://e-journal.uingusdur.ac.id/al-hukkam/article/view/587%0Ahttp://riset.unisma.ac.id/index.php/fa>.

instrument of verification that prevents a person from secretly performing multiple marriages. In this context, the Office of Religious Affairs (Kua) plays a central role as a marriage registrar institution for Muslims, with the authority to refuse registration if there are indications of violations of marriage law. The weak administrative supervision, the rampant practice of sirri marriage, and the low legal awareness of the community in certain areas are the main factors that inhibit the effectiveness of formal polyandry prevention.

### **C. Synchronization of Islamic law and Law No. 1 year 2023 in polyandry Prevention**

#### **1. Law The point of convergence between Islamic law and positive law**

There is a very strong intersection between Islamic law and Indonesian positive law in viewing polyandry as a prohibited act and must be prevented. Both emphasized the principles of family clarity, the protection of honor, and the stability of the family institution as fundamental values that cannot be compromised. Indonesian positive law even explicitly recognizes the role of religious law in determining the validity of marriage, as contained in Article 2 Paragraph (1) of law no. 1 of 1974 which states that marriage is valid if it is carried out according to the laws of each religion and belief.<sup>13</sup> This shows that the national legal system does not separate itself from religious values, but rather integrates them as the basis for the legitimacy of marriage.<sup>14</sup> The synchronization of values between the two legal systems is an important capital in building polyandry prevention regulations that are not only formal-juridical, but also rooted in the moral and religious consciousness of the community.<sup>15</sup>

#### **2. Integrative polyandry prevention Model**

An effective polyandry prevention Model requires an integrative approach that synergizes the instruments of Islamic law and positive law simultaneously. First, the synergy between religious and state institutions must be realized concretely through the cooperation of KUA, religious courts, MUI, and law enforcement officials in building an integrated marriage supervision system. Second, strengthening regulations based on Islamic values needs to be done by ensuring that every marriage policy reflects the principles of maqashid al-Shariah while meeting applicable positive legal standards. Third, digitalization of the National Marriage

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<sup>13</sup> Ahmad Muhammad et al., "Poliandri Dalam Perspektif Pancasila Dan Hukum Islam : Kajian Konstitusional Dan Nilai-Nilai Kebangsaan Polyandry in the Perspective of Pancasila and Islamic Law : Constitutional Studies and National Values" 1, no. 2 (2024): 207–19

<sup>14</sup> "Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan," *Notes and Queries* s2-IX, no. 215 (1974): 112, <https://doi.org/10.1093/nq/s2-ix.215.112a>.

<sup>15</sup> Otong Rosadi and Susi Delmiati, "Perbedaan Hukumantara Poligami Dan Poliandri Berdasarkan Konsep Keadilan Dalam Islam" 3, no. 2 (2024): 57–65.

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information system is a necessity in the modern era to detect and prevent the practice of multiple marriages more effectively and responsibly. Fourth, premarital education programs that integrate Islamic law and positive law materials need to be strengthened as a long-term preventive effort, considering the low understanding of religion and law to be the main factor in the occurrence of polyandry in various regions. By integrating all of these elements, it is hoped that the Prevention of polyandry crimes can be carried out comprehensively, sustainably, and based on the values that live in Indonesian society.

#### **4. CONCLUSION**

Polyandry is an act that is expressly prohibited by Islamic law based on the *ijma'* of all schools of jurisprudence, because it is contrary to the principles of *maqashid al-Sharia*, especially *hifzh al-nasl* and *hifzh al-'irdh*. In positive law, a similar prohibition is contained in law No. 1 of 1974 and strengthened criminal sanctions through law No. 1 of 2023. The intersection of these two legal systems shows that Indonesia does not separate the religious dimension from its National Marriage Law. Synchronization of the two becomes a strong foundation in building a comprehensive prevention of polyandry, based on moral values as well as structured legal certainty.

The government together with religious institutions need to strengthen real cooperation between KUA, religious courts, MUI, and law enforcement officials in overseeing marriage practices in the field. Premarital education programs that combine Islamic law and positive law should be promoted evenly, especially in areas with low levels of legal awareness. In addition, the digitalization of the national marriage registration system needs to be accelerated in order to more effectively detect the potential for multiple marriages. An integrative approach between Sharia instruments and state regulations is believed to be able to create a strong family resilience and justice for all levels of Indonesian society.

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