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POLYGAMY IN THE LAW OF THE REPUBLIC OF INDONESIA NUMBER 1 OF 1974 AND THE EGYPTIAN FAMILY LAW NUMBER 100 OF 1985 FROM THE PERSPECTIVE OF ISLAMIC LAW AND MAQASHID SHARIA

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ABSTRACT

Indonesia is currently in a state of emergency for adultery. The National Commission on Human Rights of the Republic of Indonesia, on its official website (2019), informs that the number of commercial sex workers (PSK) in Indonesia reaches around 230,000 people. This condition should be of concern to the government as a regulator. This research aims to analyze and compare the polygamy regulations in the Law of the Republic of Indonesia Number 1 of 1974 and the Egyptian Family Law Number 100 of 1985 from the perspective of Islamic law and maqashid sharia. This research is library research. The data analysis technique in this research is content analysis and comparison. This research concludes that first, in the polygamy regulations in Indonesia, there are requirements that are very difficult to fulfill by most husbands who want to be polygamous, namely that the court only grants permission to be polygamous if the first wife or wives are in an incurable disability or illness, cannot bear offspring, and must be with the consent of the first wife or wives. Meanwhile, the polygamy regulations in Egypt include requirements that can generally be fulfilled by husbands who want to practice polygamy, namely that they only have to explain their marital status in the marriage certificate, make a statement letter including the names of their wives and their

places of residence, and the notary must notify the first wife about the new marriage. Then, polygamy can be carried out officially without permission from the court. Second, the polygamy regulations in Indonesia and Egypt are basically both built on maslahah considerations, but what distinguishes the two is that in the polygamy regulations in Indonesia there are provisions, as mentioned above, are not relevant to Islamic law because the potential harm that will arise is greater than the maslahah that will be achieved. The polygamy regulations in Egypt are all relevant to Islamic law. Third, the polygamy regulations in Indonesia and Egypt are basically both able to facilitate the realization of maqashid sharia, but what distinguishes the two is that in the polygamy regulations in Indonesia there are provisions, as mentioned above, that can hinder the process of realizing two maqashid sharia, namely protecting religion and offspring. The provisions of polygamy in Egypt are all relevant to maqashid sharia, especially in terms of protecting religion and protecting offspring. The theory found in this research is kullu tanzhimin mabniyyin 'ala al-masya'ir wahdaha, fa-inna mafsadatahu takunu a'zham min al-mashlahah al-murad tahqiquha (every regulation that is built on the consideration of feelings alone, then the mafsadah will be greater than the maslahah to be achieved). This theory is strengthened by the finding that 73.01% of polygamy requests in Indonesia were rejected, even though 34.8% of them were approved by the old wives.

Keywords: Indonesian Polygamy; Egyptian Polygamy; Islamic Law; Maqashid Sharia.

A. INTRODUCTION

Polygamy is essentially permitted in Islam, based on the Qur'an, Sunnah, and consensus.²⁹ Behind the permissibility of polygamy are various wisdoms and benefits for the servants of Allah. Among them is the solution to the greater number of women compared to the number of men; this is in line with the various wars that occurred from time to time, so that many men died on the battlefield. Other wisdoms of polygamy are maintaining the honor of women and widows, maintaining lineage and preserving offspring, avoiding various diseases caused by free sex, strengthening kinship relationships, strengthening the spread of Islamic propagation, fulfilling excessive biological needs for men, protecting themselves from adultery, and so on.³⁰

Indonesia is currently in a state of adultery emergency. The National Commission on Human Rights of the Republic of Indonesia, on its official website (2019), informs that the

²⁹ Mushthafa Khan, Mushthafa Al-Bugha dan Ali Asy-Syarbaji, *Al-Fiqhul Manhaji 'Ala Madzhabi Al-Imam Asy-Syafi'i*, (Damaskus: Daru Qalam Liththiba'ah Wannasyri Wattaazi', 1413H), jld. 4, hlm. 35.

³⁰ Az-Zuhaili, Wahbah Mushthafa, *Al-Fiqhul Islami Wa Adillatuhu*, (Damaskus: Darul Fikri), jld. 9, hlm. 6671-6673.

number of commercial sex workers (PSK) in Indonesia reaches around 230,000 people.³¹ This very large number of prostitutes is an advertisement and socialization facility for adultery that can increase the level of adultery and the lifestyle of the community.³² This condition should be a concern for the government as a regulator, especially through the regulation of marriage and polygamy, because both are facilities to fulfill the sexual needs of men and women and are facilities to close and reduce the level of adultery.

The law in Indonesia that regulates the implementation of marriage and polygamy is Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage. Law Number 1 of 1974 Concerning Marriage states that the court only gives permission to a husband to have more than one wife if desired by the parties concerned: the old wife or wives cannot carry out her obligations as a wife; the wife gets a disability or an incurable disease; the wife cannot give birth to offspring; there is consent from the wife or wives; there is certainty that the husband is able to guarantee the living needs of his wives and their children; there is a guarantee that the husband will be fair to his wives and their children.

The polygamy regulations above outline two things. First, several conditions must be met by husbands who will practice polygamy. Second, polygamy can only be officially implemented if the court grants permission. This is different from the polygamy regulations in Egypt, a Muslim-majority country like Indonesia. Polygamy in Egypt can be officially implemented without the need for permission from the court and without having to fulfill the above conditions.

The basic similarity between the polygamy regulations in Indonesia and Egypt is that there are three parties who have a mutual interest in the continuity of polygamy, namely the husband, the first or previous wife, and the court.³³ The basic difference between the two is that polygamy in Egypt can be officially implemented without the requirement of permission from the court, as well as without the requirement that the wife is unable to carry out her

³¹ Anoname, *Menyoal Dampak Penutupan Lokalisasi di Indonesia*, <https://www.komnasham.go.id/index.php/news/2019/9/24/1170/menyoal-dampak-penutupan-lokalisasi-di-indonesia.html>, diakses pada 16 November 2023, jam 15.45 wib.

³² Zaitun, *Sosiologi Pendidikan*, (Pekanbaru: Mahkota Riau, 2009), hlm. 136.

³³ Zaitun, *Sosiologi Pendidikan*, hlm. 136.

obligations as a wife, the wife has a disability or disease that cannot be cured, the wife cannot bear offspring, and the consent of the wife.

Given the differences above, it is interesting to question whether these two regulations are actually relevant to Islamic law and *maqashid sharia* (the objectives of sharia) or not, given that Egypt is a country that constitutionally stipulates that Islam is the state religion,³⁴ and Indonesia has a majority Muslim population. If they are relevant to Islamic law and *maqashid sharia*, what makes them relevant to Islamic law and *maqashid sharia* despite their differences in substance. If in both or in one of them there are substances that are not relevant to Islamic law and *maqashid sharia*, then what causes the substance to be irrelevant to Islamic law and *maqashid sharia*, and what are the recommendations of the author to improve it so that it can be relevant to Islamic law and *maqashid sharia*.

The questions above need to be answered, given that Islamic law and *maqashid sharia* are the reference for all laws and regulations that are established to achieve *maslahah* and prevent *mafsadah*.³⁵ The problem formulations of this research are first: how is the substance of polygamy regulations in the Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage and the Egyptian Family Law Number 100 of 1985? Second, how is the comparative analysis between the polygamy regulations in the two laws from the perspective of Islamic law? Third, how is the comparative analysis between the polygamy regulations in the two laws from the perspective of *maqashid sharia*?

B. RESEARCH METHOD

This research is library research, and the data analysis technique in this research is content analysis and comparison. In analyzing Islamic law, the author uses three methods of *ijtihad*.³⁶ *Ijtihad bayani*, *ijtihad qiyasi* (analogy), and *ijtihad istishlahi* (consideration of *maslahah*) First, *ijtihad bayani*, which is *ijtihad* carried out through understanding the words

³⁴ Anoname, *At-Taqrir Ad-Dauli Bi Sya'ni Al-Hurriyyah Ad-Diniyyah Fi Mishr Li 'Am 2019*, https://eg.usembassy.gov/ar/irf_ar_2019/, diakses pada 15 Oktober 2023, pukul 10.44 wib.

³⁵ Asy-Syathibi, Ibrahim Musa, *Al-Muwafaqat*, (Dar Ibni 'Affan, 1417H), jld. 2, hlm. 9.

³⁶ Helmi Basri, *Teori Maalaatul Af'aal*, (Jakarta: Kencana, 2021), hlm. 50-54.

of the Qur'an and Sunnah, both in terms of general, specific, *muthlaq*, *muqayyad*, *manthuq*, *mafhum*, and so on.³⁷

Second, *ijtihad qiyasi* (analogy), which is *ijtihad* carried out by analogizing a problem that there is no specific *nash* that explains its law with a problem that there is a specific *nash* that explains its law by looking at the similarity of the *ilat* law.³⁸ Third, *ijtihad istishlahi*, which is *ijtihad* carried out to find laws based on *maslahat* reviews while still referring to the Qur'an and Sunnah.³⁹

As for the *maqashid shariah* analysis method, the author analyzes the substance of polygamy regulations in family law in Indonesia and Egypt by analyzing the revelation of these regulations with the five main objectives of the establishment of sharia. The five main objectives are protecting religion, protecting the soul, protecting offspring, protecting the mind, and protecting property. Then the author strengthens it with *qawa'id maqashidiyyah*, which are rules related to the objectives of the establishment of sharia.

C. RESULTS AND DISCUSSION

1. Polygamy, Islamic Law and *Maqashid Sharia*

Etymologically, "polygamy" comes from the Greek words "*polus*" which means "many", and "*gamos*" which means "marriage". The combination of the words "*polus*" and "*gomus*" means: the marriage of a man with more than one woman at the same time.⁴⁰ In *fiqh* literacy, polygamy is known as تَعَدُّدُ الزَّوْجَاتِ "*ta'addud az-zaujat*". "*ta'addud az-zaujat*" is Arabic. "*ta'addud*" تَعَدُّدُ comes from the word تَعَدَّدُ "*ta'adada*" which means كَثُرَ "*katsura*" which means "to be many", which also means زَادَ "*zada*" which means "to increase".⁴¹ "*az-zaujaat*"

³⁷ Muhammad Sulaiman, *Af'alur Rasul Wadalalatuha 'Alal Ahkam Asy-Syar'iyah*, (Beirut, Muassasatur Risalah, 1424H), jld. 1, hlm. 118.

³⁸ An-Namlah, Abdul Karim, *Al-Muhadzdzab Fi 'ilmi Ushulil Fiqhil Muqaran*, (Riyadh, Maktabatur Rusyd, 1420H), jld. 4, hlm. 1866.

³⁹ Asy-Syathibi, Ibrahim Musa, *Al-Muwafaqat*, (Dar Ibn 'Affan, 1417H), jld. 2, hlm. 11.

⁴⁰ Ach Faisol, *Poligami dalam Berbagai Perspektif (Upaya Memahami Polarisasi Pro-Kontra Poligami-Monogami)*, (jurnal Ilmiah Ahwal Syakhshiyah, 2020), vol. 2, no. 1, hlm. 20.

⁴¹ Ahmad Mukhtar, *Mu'jamul Lughah Al-'Rabiyyah Al-Mu'ashirah*, ('Alamul Kutub, 1429H), jld. 2, hlm. 1464.

الرَّوَجَاتُ is the plural form of the word الزَّوْجَةُ "*az-zaujah*" which means "wife".⁴² As for terminology, "*ta'adud az-zaujat*" means the act of a Muslim man combining two or more women, maximum four, in a legal marriage.⁴³

Polygamy is basically allowed. This is based on the Qur'an, Sunnah, and consensus.⁴⁴ Although polygamy is allowed and is part of Islamic law, if a Muslim wants to carry it out, there must be conditions that are fulfilled by him, namely having the ability to fulfill maintenance and being ready to be fair.⁴⁵ A Muslim who wants to be polygamous must be capable and committed to providing for all his wives.⁴⁶ A Muslim who wants to be polygamous must also be committed to being fair to all his wives,⁴⁷ namely being fair in terms of fulfilling maintenance, housing, and sharing time together.⁴⁸

In the terminology, Islamic law has a general meaning and a specific meaning. The general meaning of Islamic law is Islamic law in general.⁴⁹ The specific meaning of Islamic law is *fiqh*.⁵⁰ In the terminology, *fiqh* is "Knowing the sharia rulings related to deeds with detailed evidence".⁵¹ The sharia rulings are the "*khithabullah* (words of Allah) that relate to the actions of people who are *mukalaf* (rational and mature) in the form of *al-iqtidha'* (commands and prohibitions), choices and *al-wadh'i*."⁵² The *khithabullah* referred to in the

⁴² Ahmad Mukhtar, *Mu'jamul Lughah Al-'Rabiyah Al-Mu'ashirah*, hlm. 1007.

⁴³ As-Sarkhasi, Muhammad, *al-Mabsuth*, (Beirut: Darul Ma'rifah, 1414H), jld. 5, hlm. 217.

⁴⁴ Mushthafa Khan, Mushthafa Al-Bugha dan Ali Asy-Syarbaji, *Al-Fiqhul Manhaji 'Ala Madzhabi Al-Imam Asy-Syafi'i*, (Damaskus: Daru Qalam Liththiba'ah Wannasyri Wattauzi', 1413H), jld. 4, hlm. 35.

⁴⁵ Az-Zuhaili, Wahbah Mushthafa, *Al-Fiqhul Islami Wa Adillatuhu*, (Damaskus: Darul Fikri), jld. 9, hlm. 6669-6670.

⁴⁶ Salim Mahmudi, *Ta'adduduz Zaujat Baina Asy-Syari'ah Al-Islamiyyah Wal Qanun Al-Jaz-iry*, (Algerian Scientific Journal Platform- ASJP), Vo. 10, no. 1, hal 128.

⁴⁷ Ibnu Qudamah, Abdullah Ahmad, *Al-Mughni*, (Kairo: Maktabatul Qahiroh, 1388H), jld. 7, hlm. 301.

⁴⁸ Asy-Syafi'i, Muhammad Idris, *Al-Umm*, (Beirut: Darul Fikri, 1403H), jld. 5, hlm. 118.

⁴⁹ Az-Zuhaili, Wahbah Mushthafa, *Al-Fiqhul Islami Wa Adillatuhu*, (Damaskus: Darul Fikri), jld. 8, hlm. 6313.

⁵⁰ Panji Adam, *Hukum Islam*, (Jakarta Timur: Sinar Grafika, 2019), hlm. 14.

⁵¹ Al-Utsaimin, Al-Utsaimin, Muhammad Shalih, *Al-Ushul Min 'Ilmil Ushul*, (Dar Ibnul Jauzi, 1430H), hlm. 7.

⁵² Ar-Razi, Muhammad Umar, *Al-Mahshul*, (Muassasah Ar-Risalah, 1418H), jld. 1, hlm. 89. Lihat juga: Al-Isnawi, Abdurrahim Hasan, *Nihayah As-Sul Syarh Minhaj Al-Wushul*, (Beirut: Darul Kutub Al-'Ilmiyyah, 1420H), hlm. 11. Lihat juga: Al-Amadi, Ali Muhammad, *Al-Ihkam Fi Ushulil Ahkam*, (Beirut: Al-Maktab Al-Islami, 1402H), jld. 1, hlm. 50 dan 95.

definition above are the direct words of Allah, the Qur'an, or the Sunnah, consensus and other *shar'i* proofs that reveal the rulings of Allah.⁵³

Maqashid shari'ah in terminology is the objectives that the sharia is established to realize, for the benefit of Allah's servants.⁵⁴ In terms of urgency, *maqashid* can be divided into two categories: *maqashid ashliyyah* (primary) and *maqashid taba'iyah* (subsidiary).⁵⁵ *Maqashid ashliyyah* is the basic and main purpose contained in a sharia law.⁵⁶ For example, it is forbidden for a Muslim to propose to a woman who has been proposed to by someone else. The basic purpose of this prohibition is to maintain the integrity of the brotherhood. As for *maqashid taba'iyah*, it is an objective that is derivative of a sharia ruling and not the main objective.⁵⁷ For example, it is forbidden for a Muslim to propose to a woman who has already been proposed to by someone else.⁵⁸ The *Maqashid taba'iyah* of this sharia is so that the man who has proposed to the woman first does not have to bother looking for another woman to marry.

In terms of its level of strength, *maqashid sharia* can be divided into three levels, namely *maqashid dharuriyyah* (primary), *maqashid hajiyyah* (tertiary), and *maqashid tahsiniyyah* (tertiary). *Maqashid dharuriyyah* is *maqashid* which is the principle of prosperity and welfare of life both in this world and in the hereafter. If *maqashid dharuriyyah* is not fulfilled, then prosperity and welfare will not be realized.⁵⁹ *Maqashid dharuriyyah* has five elements, namely protecting religion, protecting the soul, protecting offspring, protecting the mind, and protecting property.⁶⁰

⁵³ Hasan Sa'd Khadhr, *Maratib Al-Hukmi Asy-Syar'i Dirasah Ushuliyyah Mqaranah*, (Nabul: Universitas An-Najah), hlm. 56.

⁵⁴ Ar-Raisuni, Ahmad, *Nahzariyyatul Maqashid 'Inda Al-Imam Asy-Syathibi*, (Ad-Darul 'Alamiyyah Lilkitab Al-Islami, 1412H), hlm. 7.

⁵⁵ Asy-Syathibi, Ibrahim Musa, *Al-Muwafaqat*, (Dar Ibni 'Affan, 1417H), jil. 1, hlm. 382.

⁵⁶ Ar-Raisuni, Ahmad, *Nahzariyyatul Maqashid 'Inda Al-Imam Asy-Syathibi*, (Ad-Darrul 'Alamiyyah Lilkitab Al-Islami, 1412H), hlm. 275.

⁵⁷ Ahmad Mukhtar, *Mu'lamul Lughatil Al-'Rabiyyah Al-Mu'asharah*, jld. 1, hlm. 282.

⁵⁸ Ahmad Ibnu Hanbal, *Musnad Imam Ahmad*, (Kairo: Darul Hadis, 1416H), jld. 5, hlm. 489, no. 6276, dari Abdullah bin Umar *radhiyallahu 'anhu*.

⁵⁹ Asy-Syathibi, Ibrahim Musa, *Al-Muwafaqat*, (Dar Ibni 'Affan, 1417H), jil. 2, hlm. 8.

⁶⁰ Al-Khaadimi, Nuuruddin Mukhtar, *Ilmul maqaashid asy-syar'iyyah*, (Riyadh: Maktabh 'Abiikaan, 1421H), hlm. 81.

2. Islamic Law Review of Polygamy Regulations in Indonesia and Egypt

The essence of the polygamy regulation in Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage is that the court only gives permission for a husband to be polygamous if his previous wife or wives cannot carry out her obligations as a wife, if his previous wife or wives is in an incurable disability or illness, cannot bear offspring, and must be with the consent of his previous wife or wives.

According to the author, these requirements need to be reviewed for the following reasons: The first reason is that it is basically permissible for a husband to practice polygamy without having to fulfill the above conditions.⁶¹ Allah says, which means: “then marry those that please you of [other] women, two or three or four”.⁶² In this verse Allah allows a Muslim man to marry two or more women, and the maximum is four women. In this verse, Allah does not explain that polygamy is only allowed if the existing wife cannot fulfill her duties as a wife, if the existing wife is disabled or incurably ill, cannot bear children and must have the consent of the existing wife.

The second reason is that the Prophet *shallallahu ‘alaihi wasallam* was polygamous, but his wives were still able to fulfill their duties as wives, and his wives were healthy and not disabled. This shows that polygamy is allowed without conditions if the wife is unable to fulfill her duties as a wife, without conditions if the wife is disabled or has an incurable illness.

The third reason is that it is in the nature of men to want to be polygamous and in the nature of women not to want to be polygamous. *Fitrah* is the basic condition or nature that Allah created every human being upon. Part of man's nature is that he has an inner need or desire for the opposite sex that must be fulfilled. Allah Ta'ala says, which means: “*Beautified for people is the love of that which they desire - of women and sons, heaped-up sums of gold and silver, fine branded horses, and cattle and tilled land. That is the enjoyment of worldly life, but Allāh has with Him the best return [i.e., Paradise].*”⁶³

⁶¹ Ibnu Rusyd, Muhammad Ahmad, *Bidayatul Mujtahid Wa Nihataul Muqtashid*, (Kairo: Darul Hadis, 1425H), jld. 3, hlm. 64.

⁶² Q.S. An-Nisa' (4):3.

⁶³ Q.S. Ali Imran (3):14.

The above verse shows that human nature is to have lust for the opposite sex.⁶⁴ At the same time, women's nature basically does not want to be polygamous. If the consent of the wife or wives is used as a condition that must be met by a husband, then, of course, this is not relevant to the concept of general *maslahah*. This is because the motivation for polygamy is not merely for fun but also in order to maintain personal honor, avoid adultery, meet biological needs that cannot be met with one wife alone, maintain religion or obedience to Allah, and preserve offspring.

The fourth reason is that Islam closes the doors to various damages and evils. This is called *sadd adz-dzari'ah* by the scholars.⁶⁵ In linguistic terms, *sadd* means to close,⁶⁶ and *adz-dzari'ah* means *wasilah*, or intermediary.⁶⁷ As for the terminology, *sadd adz-dzara-i'* is cutting off the means that lead to damage or badness.⁶⁸

The worst thing that can happen if husbands cannot fulfill the conditions of polygamy in Indonesia is the increasing number of *siri* marriages and adultery. The *siri* marriage referred to in this case is a marriage that is religiously valid but not officially recorded, that is, not registered at the Office of Religious Affairs (KUA).⁶⁹ Without official marriage registration at the Office of Religious Affairs (KUA), the government does not recognize the official bond of marriage, so there are matters relating to the rights of children and wives that cannot be fulfilled officially, such as the right to inherit each other between children and fathers, the right to inherit each other between husbands and wives, and so on.⁷⁰

In a census conducted by the non-governmental organization *Pemberdayaan Perempuan Kepala Keluarga* (Empowering Women Headed Households), 25 percent of people in Indonesia practice *siri marriage* and *customary marriage*.⁷¹ The census was conducted in

⁶⁴ Abu Zahrah, Muhammad, *Zahrah At-Tafasir*, (Darul Fikri Al-'Arabi), jld. 3, hlm. 1131.

⁶⁵ Menutup wasilah kepada keburukan atau kerusakan.

⁶⁶ Ahmad Mukhtar Abdul Hamid, *Mu'jamul Lughah Al-'Arabiyyah Al-Mu'ashirah*, ('Alamul Kutub, 1429H), jld. 2, hlm. 1047.

⁶⁷ Ahmad Mukhtar Abdul Hamid, *Mu'jamul Lughah Al-'Arabiyyah Al-Mu'ashirah*, jld. 1, hlm. 808.

⁶⁸ Al-Qarafi, Ahmad Idris, *Anwarul Buruq Fi Anwa-il Furuq*, ('Alamul Kutub), jld. 2, hlm. 32.

⁶⁹ Ahmad Sobari, *Nikah Siri dalam Perspektif Islam*, (Bogor: UIKA Bogor, 2013), Jurnal Ilmu Syariah, vol. 1, no. 1, hlm. 49.

⁷⁰ Syarifah Lisa Andriati, Tri Murti Lubisa, *Penyuluhan Hukum Poligami dan Nikah Siri Menurut Undang-undang Perkawinan*, (Medan: Abdimas Talenta, Jurnal Pengabdian Masyarakat, 2017), hlm. 124.

⁷¹ Penelitian ini adalah penelitian tahun 2012. Penulis menukil data ini meskipun data tahun 2012, karena penulis belum menemukan data terbaru setelah melakukan penelusuran.

111 villages in 17 provinces. There are several provinces where the rate of *siri* marriage is above 50 percent. NTT 78 percent, Banten 65 percent, and NTB 54 percent.⁷²

The Head of the Research, Development, and Education Agency of the Ministry of Religious Affairs said that there are many things that cause people to perform *siri* marriage. One of them wants to get another wife. The husband did not want his marriage to be known by many people but he wanted to have another wife, so because he did not get permission, he had an unregistered marriage.⁷³

Edi Gunawan, in his research entitled *Nikah Siri dan Akibat Hukumnya Menurut UU Perkawinan* mentioned that there are eleven factors that cause unregistered marriage. One of them is the desire for polygamy.⁷⁴

Thus, the provisions that the court only allows a husband to be polygamous if his existing wife or wives are unable to perform their duties as wives, if his existing wife or wives are disabled or incurably ill, unable to bear offspring, and if he obtains the consent of his existing wife or wives have the potential to cause great harm, so they need to be reviewed.

As for adultery, this is logically possible, such as when a husband has a need for more than one wife. If a husband has a need for more than one wife, then he does not get permission to marry from the religious court, or he feels pessimistic that he will get permission from the religious court with requirements that are difficult for him to fulfill, so if he does not apply for polygamy to the religious court, then it is very likely that he will commit unregistered marriage or even adultery.

The above is in line with data on the number of commercial sex workers (PSK) in Indonesia released by the National Commission on Human Rights of the Republic of Indonesia. The National Commission on Human Rights of the Republic of Indonesia, on its official website (2019), informs that the number of commercial sex workers (PSK) in

⁷² Henny Rachma Sari, *25 Persen Masyarakat Indonesia Melakukan Nikah Siri*, <https://www.merdeka.com/peristiwa/25-persen-masyarakat-indonesia-melakukan-nikah-siri.html>, diakses pada 07 Mei 2023, pukul 10.01 wib.

⁷³ Henny Rachma Sari, *25 Persen Masyarakat Indonesia Melakukan Nikah Siri*, <https://www.merdeka.com/peristiwa/25-persen-masyarakat-indonesia-melakukan-nikah-siri.html>, diakses pada 07 Mei 2023, pukul 10.01 wib.

⁷⁴ Edi Gunawan, *Nikah Siri dan Akibat Hukumnya Menurut UU Perkawinan*, (Manado: Jurnal Ilmiah Asy-Syir'ah, 2013), hlm. 8-10.

Indonesia reaches around 230,000 people.⁷⁵ This very large number of prostitutes is a facility for adultery that can increase socialization, the level of adultery, and a bad lifestyle in society.⁷⁶

A dating app called *Justdating* conducted a survey on infidelity. The survey results released by *Justdating* showed that 40 percent of men and women in Indonesia admitted to cheating and betraying their partners. This percentage makes Indonesia rank second as the country in Asia with the most infidelity cases.⁷⁷

The survey results above show that infidelity is common in Indonesia. Although the survey did not explain the religion of the perpetrator or the reasons why infidelity occurred, this data can be a strong indicator that polygamy is a halal instrument in Islam that is relevant to human needs and the times.

The fifth reason is that incurable disabilities or illnesses are relatively rare when compared to non-disabled and non-incurable illnesses. These few conditions are certainly not feasible if they are included in a generally applicable law. Based on data from the Central Bureau of Statistics (BPS) in 2020, the number of people with disabilities in Indonesia reached 22.5 million, or around five percent.⁷⁸ Five percent of the data includes both male and female genders, so we can say that the percentage of disabled people of the female gender does not reach five percent of the total of all Indonesian citizens. The data above shows that the percentage of Indonesian citizens who are not disabled is more than 95 percent.

The sixth reason is that the historical review shows that the polygamy provisions in the Law of the Republic of Indonesia Number 1 of 1974 concerning marriage, which are difficult to fulfill by husbands who will be polygamous, are provisions influenced by the movements of women's organizations demanding the government to prohibit the practice of

⁷⁵ Anoname, *Menyoal Dampak Penutupan Lokalisasi di Indonesia*, <https://www.komnasham.go.id/index.php/news/2019/9/24/1170/menyoal-dampak-penutupan-lokalisasi-di-indonesia.html>, diakses pada 16 November 2023, jam 15.45 wib.

⁷⁶ Zaitun, *Sosiologi Pendidikan*, (Pekanbaru: Mahkota Riau, 2009), hlm. 136.

⁷⁷ Anoname, *Indonesia Jadi Negara Kedua di Asia Paling Banyak Kasus Selingkuh*, <https://www.popmama.com/life/relationship/rindi-1/indonesia-negara-kedua-di-asia-yang-banyak-kasus-selingkuh>, diakses pada 20 Mei 2023, pukul 08.33 wib.

⁷⁸ Anoname, *Kemensos Dorong Aksesibilitas Informasi Ramah Penyandang Disabilitas*, <https://kemensos.go.id/kemensos-dorong-aksesibilitas-informasi-ramah-penyandang-disabilitas>, diakses pada 24 April 2023, pukul 08.40 wib.

polygamy in Indonesia, such as the *Persatuan Wanita Republik Indonesia* (PERWARI) organization and the *Gerakan Wanita Istri Sedar* (GERWIS) organization.⁷⁹ GERWIS and PERWARI rejected the practice of polygamy in Indonesia.⁸⁰ This shows that the provisions of polygamy in Indonesia tend to be built on purely emotional considerations, without considering various *maslahah* and *mafsadah*.

The seventh reason is that the potential for harm is greater than the potential for *maslahah* to be achieved through polygamy provisions in Indonesia. This is supported by data on religious court decisions in various districts in Indonesia that the author has collected. The author has conducted a search of religious court decisions in various districts in Indonesia. The author managed to collect 63 religious court decisions on requests for polygamy permits made by husbands.⁸¹ These decisions are religious court decisions from 2013–2023.

The data shows that of the 63 decisions, 17 of them, or 26.9% of the 63 decisions, decided that the petition was granted. This shows that the total number of rejected requests was 46, or 73.01% of the 63 requests. The number of rejected requests is far greater than the number of granted requests. Of the 46 rejected applications, 16, or 34.8%, were approved by the original wives. 34.8% of the 46 rejected applications were because the husbands did not fulfill the provisions of the Law of the Republic of Indonesia in applying to the court for a polygamy license, namely that the wife cannot perform her duties as a wife, the wife is not disabled or has an incurable illness, and the wife can bear children. This data shows that the above provisions prevented 34.8% of the applicants for polygamy permits from being able to carry out polygamy, even though their previous wives had consented. This shows that the potential harm that will result from these decisions is great.

Based on the above analysis, the author considers that some of the provisions in the Law of the Republic of Indonesia Number 1 of 1974 are not relevant to Islamic law. These provisions are that the court only gives permission to a husband to have more than one wife if

⁷⁹ Khiiyaroh, *Alasan dan Tujuan Lahirnya Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan*, (Langsa: Al-Qadha Jurnal Hukum Islam Dan Perundang-Undangan, 2020), vol. 07, no. 01, hlm. 8.

⁸⁰ Maria Merdu Wati Sihombing, *Gerakan Wanita Menolak Poligami*, (Surabaya: Universitas Negeri Surabaya, 2016), Jurnal Avatra Pendidikan Sejarah, vol. 4, no. 1, hlm. 127.

⁸¹ Jumlah 63 bukanlah batasan maksimal atau minimal, namun jumlah ini hanyalah sampel yang penulis ambil secara acak dan tanpa melihat hasil putusan tersebut terlebih dahulu. Penulis mengetahui isi putusan tersebut setelah mengumpulkan semua putusan-putusan tersebut dan membacanya satu persatu.

desired by the parties concerned; the wife cannot carry out her obligations as a wife; the wife has a disability or disease that cannot be cured; the wife cannot bear offspring; and there is consent from the wife or wives.

Next is an Islamic law review of the polygamy regulations in the Egyptian Family Law Act No. 100 of 1985. The essence of the polygamy regulations in Egyptian Family Law No. 100 of 1985, Article 11, is that a husband who will carry out polygamy must explain his marital status in the marriage certificate, make a statement by listing the names of his wives and their places of residence, and the notary must notify the old wives of the new marriage. Then polygamy can be carried out officially without permission from the court.⁸²

Egyptian Family Law No. 100 of 1985, Article 11, also states that a wife whose husband is polygamous may sue for divorce if she suffers material or immaterial harm. The wife's right to sue for divorce is lost if one year has passed since she learned of her husband's new marriage, unless she has consented either explicitly or implicitly, and her right to sue for divorce is renewed every time her husband marries another woman. A wife can only sue for divorce if it is discovered that her husband hid his old marriage.⁸³

The Islamic law review of the polygamy provisions above is as follows: First, government policy.⁸⁴ The government has the right to set policies to realize the benefits of its people.⁸⁵ Government policy must fulfill two things. First, it does not contradict Allah's commands.⁸⁶ Second, government policy must aim to realize the benefit of the people.⁸⁷ As for the provisions of polygamy in Egyptian Family Law No. 100 of 1985, Article 11, the author considers that none of these provisions contradict the Shari'ah, and all are stipulated to realize the benefits for husbands and wives and their children

Second, *jalbul maslahah* and *daf'ul mafsadah*. The provisions of polygamy in Egyptian Family Law No. 100 of 1985, Article 11, are stipulated to realize *maslahah* for husbands,

⁸² Undang-undang Hukum Keluarga Mesir Nomor 100 tahun 1985 pasal 11.

⁸³ Undang-undang Hukum Keluarga Mesir Nomor 100 tahun 1985 pasal 11.

⁸⁴ Al-Mawardi, Ali Muhammad, *Al-Ahkam As-Sulthaniyyah*, (Kairo, Darul Hadis), hlm. 16.

⁸⁵ Ibnu Katsir, Ismail Umar, *Tafsir Ibnu Katsir*, (Beirut: Darul Kutub Al-'Ilmiyyah, 1419H), jld. 2, hlm. 304.

⁸⁶ Al-Hindawi, Hasan, *Dhawabith Shalahiyyati Tasharrufi Imam Fil Ilzam Bil Ibahah Tathbiqat Mu'ashirah*, (Riyadh: Jurnal Al-'Adl, 1435H), hlm. 345.

⁸⁷ As-Suyuthi, Jalaluddin Abdurrahman, *Al-Asybah Wa-Nazha-ir Fi Qawa-'id Wa Furu'I Fiqhi Asy-Syafi'iyyah*, (Darul Kutub Al-'Ilmiyyah, 1403H), hlm. 121.

wives, and their children, as well as to prevent and reject *mafsadah* upon them. Egyptian Family Law No. 100 of 1985, Article 11, states that a husband who wants to practice polygamy must explain his marital status on the marriage certificate, make a declaration by stating the names of his wives and their places of residence, and inform the old wives about the new marriage. This is in line with the actions of the prophet Muhammad *Shallallahu ‘alaihi wasallam*.

The Prophet Muhammad *shallallahu ‘alaihi wasallam* was married to more than one woman, and he never hid any of them from his other wives.⁸⁸ Each of the wives of the prophet Muhammad *shallallahu ‘alaihi wasallam* had a house or residence. Each of them knew the other's house or residence.⁸⁹ This action of the Prophet *shallallahu ‘alaihi wasallam* is an example for his followers in marrying more than one wife, where the husband does not hide any of his wives from the other wives. This is aimed at realizing *maslahah* and preventing *mafsadah*.⁹⁰

The stipulation that wives have the right to sue for divorce if they suffer material or immaterial harm due to their husband's polygamy is a form of realizing *maslahat* and removing *mafsadah*. The Prophet Muhammad *shallallahu ‘alaihi wasallam* said in a hadith narrated by Ubadah bin Shamit *radhiyallahu’ahu* yang artinya, which means: "It is not permissible to do an action that is harmful and harmful to others".⁹¹

Based on the above analysis, the author considers that all the provisions of polygamy in Egyptian Family Law Number 100 of 1985 are relevant to Islamic law.

⁸⁸ Ibnu Hisyam, *As-Sirah An-Nabwiyyah Libni Hisyam*, (Mcsir: Syarikah Maktabah Wa Mathba’ah Mushthafa Al-Halabi, 1375H), 643-648.

⁸⁹ Ibnu Majah, Muhammad Yazid, *Sunan Ibnu Majah*, (Dar Ar-Risalah Al-‘Alamiyah, 1430H), jld. 3, hlm. 426, no. 2334. *Tahqiq*: Syuaib Al-Arna-uth. Syuaib Al-Arna-uth menilai bahwa derajat hadis ini adalah *shahih*.

⁹⁰ Ibnu Hisyam, *As-Sirah An-Nabwiyyah Libni Hisyam*, (Mcsir: Syarikah Maktabah Wa Mathba’ah Mushthafa Al-Halabi, 1375H), jld. 2, hlm. 643-648.

⁹¹ Ibnu Majah, Muhammad Yazid, *Sunan Ibnu Majah*, (Dar Ar-Risalah Al-‘Alamiyah, 1430H), jld. 3, hlm. 73, no. 1874. *Tahqiq*: Syuaib Al-Arna-uth. Syuaib Al-Arna-uth menilai bahwa derajat hadis ini adalah *shahih lighairihi*.

3. Comparative Analysis of Polygamy Regulations in Indonesia and Egypt from the Perspective of Islamic Law

After the author analyzes the substance of polygamy regulations in the Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage and the Egyptian Family Law Number 100 based on the review of Islamic law, the author considers that there are some similarities and differences between the two. The similarities and differences are as follows:

First, the similarities and differences between the polygamy regulations in the Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage and the Egyptian Family Law Number 100 of 1985. The author considers that there are three fundamental similarities between the polygamy regulations in the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage and the Egyptian Family Law Number 100. The three similarities are: first, both are based on *maslahah mursalah* considerations.⁹² Second, both still open opportunities for husbands to practice polygamy. Third, both make judges the authorized party to decide matters related to polygamy.

The first similarity is that the polygamy regulations in Indonesia and Egypt are based on *maslahah mursalah* considerations. In the definition of *maslahah mursalah* in terms of terminology, is a *maslahah* that is not stipulated by sharia specifically or in a special argument and is not also denied by Sharia specifically or in a special argument.⁹³ *Maslahah mursalah* can be implemented if it meets several requirements. First, the *maslahat* is a real *maslahat*, not a *wahmiyyah maslahat*.⁹⁴ Second, the *maslahat* is a general *maslahat*, not a personal *maslahat*. Third, the *maslahat* does not contradict the foundations of Sharia that have been established based on the texts of the Qur'an and Sunnah, as well as the *ijma*. Fourth, the *maslahat* does not conflict with other similar *maslahats* or other *maslahats* that are greater. Fifth, the *maslahat* is a *maslahat* in the realm of *ijtihad*.⁹⁵

⁹² *maslahah mursalah* adalah maslahat yang tidak secara jelas disetujui oleh syariat dan tidak secara jelas dinafikan oleh syariat.

⁹³ An-Namlah, Abdul Karim, *Al-Muhadzdzab Fi Ushul Fiqhil Muqaran*, (Riyadh: Maktabah Ar-Rusydi, 1420H), jld. 3, hlm. 1003-1004.

⁹⁴ Maslahat *wahmiyyah* adalah maslahat yang hanya merupakan dugaan-dugaan tanpa dasar, yang tidak dibenarkan secara syariat atau tidak diakui.

⁹⁵ Abdul Wahhab Khalaf, *Ilmu Ushulil Fiqh*, (Maktabah Ad-Dakwah), hlm. 82. Lihat juga: Iyadh Nami As-Sulami, *Ushulul Fiqhi Alladzi La Yasa'ul Faqiha Jahluhu*, (Riyadh: Dar At-Tadmuriyah, 1426H), hlm. 209.

After analyzing the polygamy regulations in Indonesia and Egypt, the author considers that there are differences in the review of *maslahah mursalah* in both. The author considers that there are several provisions in the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage that do not fulfill the provisions of *maslahah mursalah*. These provisions are: a husband only gets permission from the court if the wife cannot carry out her obligations as a wife; if the wife gets a disability or an incurable disease; if the wife cannot give birth to offspring; and if he gets approval from the first wife or old wives.

The above conditions are conditions that generally occur rarely or are special conditions when compared to conditions that are otherwise. Conditions that rarely occur or special conditions, if made into a generally applicable provision, can potentially cause greater harm than the *maslahah* that will be achieved. If the provisions of polygamy have the potential to cause greater harm than the *maslahah* to be achieved, then these provisions are not relevant to the conditions for the implementation of *maslahah mursalah*, so they should not be implemented.

As for the provisions of polygamy in Egyptian Family Law Number 100 of 1985, the author considers that all of these provisions are relevant to the requirements of the implementation of *maslahah mursalah*. The regulation of polygamy in Egyptian Family Law takes into account the *maslahah* of the wife and husband simultaneously in a balanced manner.

The second similarity between the polygamy regulations in Indonesia and Egypt is that both still open the opportunity for husbands to be polygamous. However, the author considers that the polygamy regulations in Egypt have a stronger Islamic legal foundation when compared to the polygamy regulations in Indonesia. This is based on the following reasons:

First, the provisions of polygamy in Indonesia do not accommodate conditions that are general or majority in nature, while the provisions of the Egyptian polygamy regulations accommodate conditions that are general or majority in nature. Secondly, the provisions of polygamy in Indonesia do not accommodate the fulfillment of the biological needs of husbands who have a high need for conjugal relations, the need to support widows while raising their status, the prevention of adultery, and so on. At the same time, Islamic law, or Islamic sharia,

is universal, accommodates all human needs, accommodates all *maslahat* for humans, and prevents and rejects harm to humans. The provisions of polygamy in Egypt can accommodate the fulfillment of these things.

The provisions of polygamy in Indonesia tend to be built on emotional considerations and feelings. Whereas a generally applicable regulation should be built on transcendental, intellectual, and spiritual aspects.⁹⁶ Alaidin Koto explains in his book entitled *Bertanyalah kepada Allah* that in behaving, it is not enough for a person to base his behavior on feelings alone; it must also be based on transcendental intellectual and spiritual aspects, especially if the behavior is related to the interests of the people, the interests of the nation, and the state.⁹⁷

This is in contrast to the polygamy laws in Egypt. Polygamy regulations in Egypt accommodate conditions that are general or majority. This is emphasized by the role of scholars or jurists in the birth of polygamy regulations in Egypt. The government in Egypt is very respectful and listens to the directions of jurists in establishing polygamy regulations in Egypt.⁹⁸ This is the main factor underlying the general *maslahah* considerations in the polygamy regulations in Egypt. These considerations are based on *ijtihad* methods that are recognized by *ushul fiqh* scholars, so they are not based on emotional considerations and feelings alone. *Wallahu a'lam*.

The third similarity between the Indonesian and Egyptian polygamy regulations is that both give judges the authority to make decisions regarding polygamy. However, the difference between the two is that the Indonesian polygamy law authorizes judges to decide whether or not to grant permission to husbands to practice polygamy. Meanwhile, the Egyptian polygamy law authorizes judges to make decisions on problems arising from polygamy practiced by husbands. The author considers that both regulations are relevant to Islamic law.

⁹⁶ *Transcendental* adalah cara berpikir tentang hal-hal yang melampaui apa yang terlihat, melampaui apa yang dapat ditemukan di alam semesta.

⁹⁷ Alaidin Koto, *Bertanyalah kepada Allah*, (Depok: Raja Grafindo Persada, 2021), hlm. 63.

⁹⁸ Muhammad Rasyid Ridha, dkk. *Majallatul Mannar*, (al-Maktabah asy-Syamilah, 1431H), jil. 28, hlm.

The provision of polygamy in Indonesia that a husband who wants to commit polygamy must first obtain permission from the religious court has become *'urf* for the people of Indonesia. Likewise, in Egypt, a husband can officially commit polygamy even without special permission from the religious court; this has become *'urf* for the Egyptian people. This is indicated by the 49-year-old Law of the Republic of Indonesia No. 1 of 1974 Concerning Marriage and the 38-year-old Egyptian Family Law No. 100 of 1985. Both regulations are good things for the people in both countries. This is relevant to the *fiqh* rule, which reads: "*There is no denying the difference in rulings due to changes or differences in time, place, and conditions.*"⁹⁹

The *fuqaha'* explain that *'urf* is words and actions that are considered good by reasonable people and occur repeatedly.¹⁰⁰ It is also considered good in terms of sharia, so long as it does not contradict it.¹⁰¹

The provision in the Egyptian Family Law Act that judges are authorized to rule on problems arising from polygamy practiced by husbands is a provision that is relevant to the practice of the Prophet Muhammad *Shallallahu 'alaihi wasallam*) in resolving household problems,¹⁰² and this is also what is applied in Indonesia, namely the resolution of household problems of Muslim families in the Religious Courts.¹⁰³

4. Comparative Analysis of Polygamy Regulations in Indonesia and Egypt from the Perspective of *Maqashid Sharia*

The following is an analysis of the *maqashid sharia* review of polygamy regulations in the Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage and the Egyptian Family Law Number 100 of 1985. The author analyzes the *maqashid sharia* based on the

⁹⁹ As-Sadlan, Shalih Ghanim, *Al-Qawa'id Al-Fiqhiyyah Al-Kubra Wama Tafarra'a 'Anha*, (Riyadh: Dar Bilansiyah Lin-nasyri Wa At-Tauzi', 1417H), 326.

¹⁰⁰ As-Sayyid Shalih, *Atsarul 'Urf Fi At-Tasyri' Al-Islami*, (Kairo: Darul Kitab Al-Jami'i), hlm. 52.

¹⁰¹ As-Sayyid Shalih, *Atsarul 'Urf Fi At-Tasyri' Al-Islami*, hlm. 52.

¹⁰² Al-Mishri, Ahmad Muhammad, *Irsyadu As-Sari Syarh Shahih Al-Bukhari*, (Mesir: Al-Mathba'ah Al-kubra Al-Amiriyyah, 1379), jld. 8, hlm. 48.

¹⁰³ Undang-undang Nomor 7 Tahun 1989 Tentang Peradilan Agama, pasal 49 s.d 53.

review of the *maqashid dharuriyyat*, namely protecting religion, protecting the soul, protecting offspring, protecting the mind, and protecting property.

After analyzing the polygamy regulations in family law in Indonesia and Egypt, the author considers that basically, the polygamy regulations in Indonesia and Egypt can be a facility to realize the objectives of sharia in the form of protecting religion, protecting the soul, protecting offspring, protecting the mind, and protecting property. This is because the polygamy regulations in Indonesia and Egypt still open up opportunities for husbands to be polygamous. However, the author considers that there are provisions in the polygamy regulations in Indonesia that can be an obstacle to the process of realizing *maqashid sharia* through polygamy regulations, especially in terms of protecting religion and protecting offspring. As for the polygamy regulations in Egypt, the author considers that all of these regulations are relevant to *maqashid sharia*.

The provisions of polygamy in Indonesia that can be an obstacle to the process of realizing *maqashid sharia* are that the court only allows a husband to be polygamous if his old wife or wives cannot fulfill their obligations as wives, if his old wives or wives are disabled or incurably ill, cannot bear offspring, and must be with the consent of his old wives or wives.

The consequence of the above provisions is that a husband whose wife can carry out her duties as a wife, his wife is healthy and not disabled, and his wife can give birth to children is not entitled to permission from the court to carry out polygamy. If husbands will only get permission to practice polygamy when they are in the above conditions, then this can result in many husbands who will not get permission to practice polygamy because the above conditions are special conditions, conditions that rarely occur, while in general, husbands are not in the above conditions. This can be an obstacle to the realization of *maqashid sharia*, especially in terms of protecting religion and protecting offspring.

The author considers that if the above conditions are not made a condition for husbands to obtain permission to engage in polygamy, then the solution is the judge's *ijtihad*. Judges can make the *ijtihad* to give permission for polygamy or not. The author considers that with this, polygamy regulations in Indonesia will be able to facilitate the realization of *maqashid sharia*. Mentioned in *maqashid* rules:

مقاصد الشارع لا تثبت إلا بالظن الراجح^{١٠٤}

"The purposes of the lawmaker (Allah) are not established except by qath'i knowledge¹⁰⁵ or azh-zhann ar-rajih (strong prejudice)."

In determining whether or not a husband is eligible for polygamy, the judge is obliged to pay attention to and consider the *maslahah*, whether they are *qathi'i* (absolute) or *azh-zhann ar-rajih* (strong prejudice). This is in line with the purpose of the sharia, which is to realize the benefits of the people, both now and in the future.¹⁰⁶ It is mentioned in a *maqashid* rule:

الأوامر تتبع المصالح والنواهي تتبع المفاسد^{١٠٧}

"The commands (of sharia) are based on maslahah, and the prohibitions are based on mafsadah."

One of the indications that a government policy is based on *maslahah* considerations is that the policy is not built on lust, personal or group interests, or feelings alone. This is in line with the principle of sharia, which is to guide people so as not to be shackled by their desires. Mentioned in a *maqashid* rule:

المقصد الشرعي من وضع الشريعة إخراج المكلف عن داعية هواه^{١٠٨}

"The aim of sharia in establishing sharia is to remove the mukalaf from following his desires."

One of the indications that a government policy is based on *maslahah* considerations is that it pays attention to the basic needs and *maslahah* of the people, then secondary needs, then tertiary. This is in line with the objectives of the sharia, which are *dharuriyyat*, or primary; *hajiyyat*, or secondary; and *tahsiniyyat*, or tertiary. Mentioned in a *maqashid* rule:

المقاصد الشرعية ضروريات وحاجيات وتحسينيات^{١٠٩}

"The objectives of sharia are dharuriyyat, hajiyyah, and tahsiniyyat."

¹⁰⁴ Yayasan Zayid Ibnu Shulthan, *Ma'malatu Zayid Lilqawa'idil Fiqhiyyah Wal-ushuliyyah*, (Abu Dabi: Yayasan Zayid Ibnu Shulthan, 1443H), jld. 5, hlm. 217.

¹⁰⁵ *Qath'i* artinya adalah bersifat absolut.

¹⁰⁶ Asy-Syathibi, Ibrahim Musa, *Al-Muwafaqat*, (Dar Ibni 'Affan, 1417H), jld. 2, hlm. 9.

¹⁰⁷ Al-Qarafi, Syihabuddin Ahmad, *Anwaru Buruq Fi Anwa-il Furuq*, ('Alamul Kutub), jld. 3, hlm. 113.

¹⁰⁸ Ibid, hlm. 289.

¹⁰⁹ Ibnu 'Asyur, Muhammad Ath-Thahir, *Maqashid Asy-Syari'ah Al-Islamiyyah*, (Qatar: Wizaratul Awqaf Wasy-syu-un Al-Islamiyyah, 1425H), jld. 2, hlm. 170.

One of the indications that a government policy is determined based on *maslahah* considerations is that the policy is relevant to human nature. This is in line with the characteristics of the establishment of sharia, which is in accordance with human nature. It is mentioned in a maqashid rule:

مقاصد الشريعة مبنية على الفطرة¹¹⁰

"Maqashid sharia is built on fitrah."

D. CONCLUSION

Based on the explanation and analysis above, the following conclusions can be drawn: First, in the polygamy regulations in the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, there are requirements that are very difficult to fulfill by most husbands who want to practice polygamy, namely that the Religious Court only gives permission to practice polygamy if the old wife or wives are disabled or incurably ill, cannot bear offspring, and must be with the consent of the old wife or wives. Meanwhile, the polygamy regulations in Egyptian Family Law No. 100 of 1985 include requirements that can generally be fulfilled by husbands who want to practice polygamy, namely that a husband who wants to practice polygamy only has to explain his marital status in the marriage certificate without having to obtain permission from the court; if he has married, he must make a statement and include the names of his wives and their places of residence; and the notary must notify the old wives of the new marriage.

Second, the polygamy regulations in Indonesia and Egypt are basically both built on *maslahah* considerations, but what distinguishes the two is that in the polygamy regulations in Indonesia there are provisions whose potential harm is greater than the *maslahah* to be

¹¹⁰ Ibnu 'Asyur, Muhammad Ath-Thahir, *Maqashid Asy-Syari'ah Al-Islamiyyah*, jld. 3, hlm. 176.

achieved, so these provisions are not relevant to Islamic Law. These provisions are the ones mentioned above. The polygamy regulations in Egypt are all relevant to Islamic law. The theory found in this research is *is kullu tanzhimin mabniyyin 'ala al-masya'ir wahdaha, fa-inna mafsadahahu takunu a'zham min al-mashlahah al-murad tahqiquha* (Any regulation that is built on the basis of mere emotional considerations, then the *mafsadah* will be greater than the *maslahah* to be achieved.).

Third, in terms of *maqashid sharia*, if the court only grants permission for polygamy if the old wife or wives are incurably disabled or sick and unable to give birth, obtaining the consent of the old wife or wives can be an obstacle to the process of realizing *maqashid sharia*, especially in terms of protecting religion and protecting offspring, because these requirements are generally difficult to meet. As for the regulation of polygamy in Egypt, the author considers that all the provisions in it are relevant to *maqashid sharia*, especially in terms of protecting religion and protecting offspring.

The author recommends the Indonesian authorities to carry out a review of the Law of the Republic of Indonesia Number 1 of 1974 Concerning Marriage, articles 3, 4, and 5. The author recommends that the wife's condition where she does not carry out her obligations as a wife, the wife is disabled or has an incurable illness, and the consent of the wife is only used as a consideration for judges in deciding whether a husband deserves permission to be polygamous or not and is not used as a condition that must be met for a husband who will be polygamous. The author also recommends that the Egyptian authorities maintain the existing polygamy regulations in Egyptian Family Law Number 100 of 1985, because the author considers that these regulations are relevant to Islamic law and *maqashid sharia*.

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