

Regulating Unregistered Polygamous Marriages in Indonesia: An Analysis through the *Siyāsah Shar‘iyyah* Framework of ‘Abd al-Wahhāb Khallāf

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A B S T R A C T

Unregistered polygamous marriages (*poligami siri*) in Indonesia raise complex legal and social issues at the intersection of the permissibility of polygamy in Islamic jurisprudence (*fiqh*), the need for legal protection, and the authority of the state to maintain public order. This study aims to analyze the legal position of regulations governing unregistered polygamous marriages in Indonesia from the perspective of ‘Abd al-Wahhāb Khallāf’s concept of *siyāsah shar‘iyyah*, particularly through the concepts of *maṣlaḥah mursalah* and *sadd al-dharā‘i*. This research employs a normative legal method using statutory and conceptual approaches, based on a literature review of relevant legislation, the works of ‘Abd al-Wahhāb Khallāf, and pertinent Islamic legal scholarship. The analysis is conducted through a qualitative-normative approach by examining positive legal provisions concerning marriage registration and polygamy in relation to the principles of public interest (*maṣlaḥah*), the prevention of harm (*mafsadah*), and the authority of the *ulil amri* (legitimate governing authority). The findings indicate that the mandatory registration of marriage and the requirement to obtain judicial authorization for polygamy may be regarded as manifestations of *siyāsah shar‘iyyah*, as they are intended to ensure legal certainty, protect the rights of women and children, and prevent adverse social and legal consequences. From the perspective of *sadd al-dharā‘i*, unregistered polygamous marriages conducted without legal registration and judicial oversight have the potential to become a means through which *mafsadah* arises and may therefore legitimately become the subject of state regulation. Accordingly, ‘Abd al-Wahhāb Khallāf’s thought provides a normative basis for affirming that state regulation of unregistered polygamous marriages does not necessarily conflict with the permissibility of polygamy in Islamic jurisprudence, provided that such regulation is oriented toward the realization of *maṣlaḥah*, the prevention of harm, and the protection of the rights of affected parties.

1. Introduction

The development of Islamic family law in various Muslim-majority countries demonstrates ongoing efforts to adapt classical *fiqh* norms to changing social conditions, the need for legal protection, and demands for legal certainty. In this context, Islamic law is understood not merely as a set of religious norms, but also as a source of values that may serve as a basis for legal policymaking, provided that such policies remain oriented toward the realization of public welfare (*maṣlaḥah*) and do not contravene the fundamental principles of the Shari'ah (Khallaf, 2009; Hasram, 2019). This perspective is particularly important for understanding the relationship between Islamic law and state law, especially when the state regulates family matters that already possess a normative basis in *fiqh*.

In Indonesia, the regulation of Islamic family law reflects an interaction between *fiqh* norms and state policy. Polygamy is one of the issues that illustrates this interaction. In Islamic jurisprudence, polygamy is essentially permissible subject to certain conditions, whereas Indonesian positive law places polygamy within a framework of restrictions and legal oversight through specific requirements, including judicial authorization. These regulations are intended to ensure that the practice of polygamy does not disregard the principles of justice and the protection of affected parties (Ichsan, 2018; Ardhian et al., 2016; Aqil, 2023). Thus, the issue of polygamy concerns not merely whether polygamy is permissible according to *fiqh*, but also how such permissibility is implemented within the national legal system.

The issue becomes more complex when polygamy is conducted as an unregistered marriage (*nikah siri*), namely a marriage solemnized in accordance with religious requirements but not registered through the state's administrative mechanisms. Such practices may create difficulties in establishing marital status and securing the legal rights of the parties involved. Women in unregistered marriages may face difficulties in obtaining legal certainty regarding their marital status, while children born from such marriages may encounter problems concerning the fulfillment of their civil rights (Arsyad, 2020; Alam, 2025). Accordingly, the problem of unregistered polygamy extends beyond the question of the religious validity of the marriage to encompass the legal and social consequences arising from the absence of state registration and legal oversight.

Several studies have demonstrated that unregistered polygamy may raise significant concerns regarding legal protection and public welfare. Sudirman et al. (2021), for example, examined unregistered polygamy from the perspective of *maṣlaḥah* and demonstrated that the issue should be considered not only in terms of the permissibility of the marriage contract but also in relation to its consequences for family and community life. Hidayati et al. (2023) specifically examined unregistered polygamy conducted without the consent of the existing wife from the perspective of the Compilation of Islamic Law (*Kompilasi Hukum Islam*, KHI), while Aqil (2023) demonstrated that the tightening of polygamy regulations in Indonesia can be analyzed through the perspectives of *maqāṣid al-shari'ah* and positive law. These studies indicate that the regulation of polygamy must take into account the dimensions of rights protection, justice, and public welfare alongside the formal legal aspects of marriage.

These circumstances raise an important question concerning the limits of state authority in regulating practices that are normatively permitted under Islamic jurisprudence. Can the requirement to register a marriage and obtain judicial authorization be regarded as a

restriction on the permissibility of polygamy, or should it instead be understood as a legitimate form of administrative regulation designed to prevent harm and protect the rights of members of society? This question is significant because the distinction between *fiqh* and state law cannot be adequately explained merely by determining whether a marriage is valid or invalid. A theoretical framework is needed to explain the legitimacy of state authority in establishing regulations concerning matters of public interest.

One relevant framework for addressing this issue is *siyāsah shar‘iyyah*. In the thought of ‘Abd al-Wahhāb Khallāf, *siyāsah shar‘iyyah* concerns the policies adopted by governing authorities in managing public affairs on the basis of the principles of the Sharī‘ah and public welfare (Khallaf, 1977). Khallāf’s thought also places considerations of public welfare at the center of legal policymaking when a particular issue is not regulated in detail by the revealed texts (*nuṣūṣ*). Arisman and Hakim (2021) demonstrate that Khallāf’s political thought gives significant attention to the relationship between the Sharī‘ah, governance, and the regulation of public welfare. Meanwhile, Deski (2022) explains that Khallāf’s conception of *maqāṣid al-sharī‘ah* provides a foundation for incorporating considerations of public welfare into the process of legal determination.

Within this framework, the concepts of *maṣlaḥah mursalah* and *sadd al-dharā‘i‘* are particularly relevant for analyzing the regulation of unregistered polygamy. *Maṣlaḥah mursalah* provides a basis for establishing policies that are not specifically prescribed by the revealed texts but are necessary to realize public welfare. By contrast, *sadd al-dharā‘i‘* permits restrictions on means that are originally permissible when such means have a substantial potential to lead to harmful consequences. The application of these two concepts is important for assessing whether marriage registration and judicial authorization requirements may be understood as instruments for realizing public welfare and preventing *mafsadah* in the practice of polygamy (Khallaf, 2009; Deski, 2022; Hasram, 2019).

Studies of ‘Abd al-Wahhāb Khallāf’s thought further demonstrate that his ideas are relevant not only to *uṣūl al-fiqh* but also to understanding the relationship between Islamic legal norms and public policy. Abdillah (2012) examined Khallāf’s legal epistemology and identified the methodological characteristics of his approach to legal formation. Sufyan (2017) discussed Khallāf’s method of *ṭarīq dalālah al-naṣ*, while Suhri (2020) examined the *bayānī* methodology as a method of legal *istinbāṭ* in the thought of ‘Abd al-Wahhāb Khallāf. This body of literature demonstrates that Khallāf’s thought possesses a methodological dimension that can be employed to systematically examine contemporary legal issues, including those concerning family law and state policy.

Previous studies have examined unregistered polygamy from various perspectives. Ferdiansyah examined polygamy through *nikah siri* as a form of legal circumvention, while Hidayati et al. (2023) discussed unregistered polygamy conducted without the consent of the existing wife from the perspective of the KHI. Ardhian et al. (2016) emphasized the importance of judicial authorization in the practice of polygamy, whereas Aqil (2023) analyzed the tightening of polygamy regulations from the perspectives of *maqāṣid al-sharī‘ah* and positive law. Sudirman et al. (2021) examined unregistered polygamy from the perspective of *maṣlaḥah*, while Karimullah (2023) connected polygamy with the protection of lineage (*hifẓ al-nasl*). Meanwhile, Alam (2025) specifically addressed the protection of children's rights in

unregistered marriages from the perspectives of Islamic family law and the Child Protection Law. These studies demonstrate that unregistered polygamy has been examined in terms of *fiqh*, positive law, *maqāṣid al-sharī'ah*, public welfare, and the protection of women and children.

Nevertheless, studies that specifically analyze the legitimacy of state regulation of unregistered polygamy through 'Abd al-Wahhāb Khallāf's framework of *siyāsah shar'īyyah*, while integrating the concepts of *maṣlaḥah mursalah* and *sadd al-dharā'i'*, remain limited. Previous research has predominantly focused on the legal status of polygamy, the protection of women and children, restrictions on polygamy, or analyses based on *maqāṣid al-sharī'ah*. Therefore, the issue requiring further investigation is not merely whether unregistered polygamy is valid according to *fiqh* or produces legal consequences under positive law, but how the state's authority to regulate such practices can be legitimized from the perspective of *siyāsah shar'īyyah* and the parameters of public welfare developed by 'Abd al-Wahhāb Khallāf.

In light of this research gap, this study employs 'Abd al-Wahhāb Khallāf's thought as an analytical framework for examining the regulation of unregistered polygamy in Indonesia. The novelty of this study lies in its attempt to connect the regulation of unregistered polygamy with *siyāsah shar'īyyah*, particularly through the concepts of *maṣlaḥah mursalah* and *sadd al-dharā'i'*, in order to explain the limits and legitimacy of state authority in regulating unregistered polygamous practices. This approach does not seek to alter the original legal status of the permissibility of polygamy, but rather to examine the dimensions of public law, rights protection, and the prevention of harm arising from unregistered polygamous practices.

This study aims (1) to analyze the legal problems arising from the practice of unregistered polygamy within the Indonesian legal context; (2) to analyze the regulation of unregistered polygamy through 'Abd al-Wahhāb Khallāf's concept of *siyāsah shar'īyyah*, particularly *maṣlaḥah mursalah* and *sadd al-dharā'i'*; and (3) to formulate the normative implications of this perspective for strengthening regulation and legal protection in cases of unregistered polygamy. Accordingly, this study is expected to contribute to the development of Islamic family law scholarship, particularly by clarifying the relationship between the permissibility of polygamy in *fiqh*, the regulatory authority of the state, and the need for legal protection within society.

2. Method

This study employs a normative legal research approach aimed at analyzing the regulation of unregistered polygamy in Indonesia based on positive law and the perspective of 'Abd al-Wahhāb Khallāf's *siyāsah shar'īyyah*. Normative legal research focuses on examining legal norms, principles, doctrines, and concepts contained in legal materials in order to address particular legal issues (Marzuki, 2021; Muhaimin, 2020). This study employs a statutory approach and a conceptual approach. The statutory approach is used to examine legal provisions concerning marriage registration and polygamy, particularly Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019; Government Regulation No. 9 of 1975; and Law No. 23 of 2006 on Population Administration, as amended by Law No. 24 of 2013. This approach involves identifying relevant legal provisions and subsequently examining their interrelationships and consistency in addressing the legal issues under investigation (Marzuki, 2021). Meanwhile, the conceptual approach is employed to analyze these regulations through

‘Abd al-Wahhāb Khallāf’s concept of *siyāsah shar‘iyyah*, particularly *maṣlahah mursalah*, *sadd al-dharā’i’*, and the authority of the *ulil amri* (governing authority) to formulate policies concerning public welfare (Khallaf, 1994).

The legal materials used in this study consist of primary and secondary legal materials. Primary legal materials include legislation concerning marriage, polygamy, marriage registration, and population administration, as well as the principal works of ‘Abd al-Wahhāb Khallāf relevant to the concept of *siyāsah shar‘iyyah*. These primary legal materials serve as the principal sources for identifying the norms constituting the object of analysis, while secondary legal materials provide explanations, interpretations, and scholarly perspectives on those norms (Marzuki, 2021; Muhaimin, 2020). The secondary legal materials comprise books, scholarly journal articles, research findings, and other academic works addressing unregistered polygamy, Islamic family law, *siyāsah shar‘iyyah*, *maṣlahah mursalah*, and *sadd al-dharā’i’*. The identification and collection of legal materials were conducted through library research by identifying, classifying, and critically examining sources relevant to the research focus. ‘Abd al-Wahhāb Khallāf’s works, particularly *‘Ilm Uṣūl al-Fiqh*, were used as the conceptual foundation for examining the relationship between public welfare, the prevention of *mafsadah* (harm), and the authority of the governing authority in formulating legal policies (Khallaf, 1994).

The analysis was conducted using a qualitative normative-legal approach through several stages. First, the study identifies and interprets positive legal provisions governing marriage registration and the requirements for polygamy. Second, it identifies the legal issues arising from the practice of unregistered polygamy, particularly those concerning legal certainty and the protection of the rights of wives and children. Third, the relevant legal provisions are analyzed through ‘Abd al-Wahhāb Khallāf’s concept of *siyāsah shar‘iyyah* by examining their orientation toward public welfare, their potential to prevent *mafsadah*, and the authority of the *ulil amri* to establish regulations. Fourth, the study formulates conclusions concerning the legitimacy of regulating unregistered polygamy from the perspective of Islamic law and its implications for strengthening legal protection. The analysis is prescriptive in nature, connecting positive legal norms with the principles and concepts of Islamic law employed as the analytical framework (Marzuki, 2021). This approach makes it possible to distinguish between the original legal status of polygamy in Islamic jurisprudence and the state’s regulatory authority over its implementation, thereby assessing whether state regulation of unregistered polygamy possesses a legitimate basis within the framework of *siyāsah shar‘iyyah*.

3. Results and Discussion

3.1. The Legal Status of Unregistered Polygamy under Indonesian Law

Polygamy under Indonesian law occupies a restricted and conditional position. Law No. 1 of 1974 on Marriage, as amended by Law No. 16 of 2019, essentially places marriage within a monogamous framework while allowing a husband to have more than one wife if the statutory requirements are satisfied. Indonesian positive law therefore does not abolish the permissibility of polygamy, but subjects its implementation to a legal mechanism intended to ensure legal certainty and protection for the parties involved. The restricted and conditional nature of polygamy is also reflected in studies examining the relationship between Islamic law

and Indonesian positive law, which demonstrate that the implementation of polygamy in Indonesia is subject to judicial authorization and oversight (Ardhian et al., 2016; Ichsan, 2018; Aqil, 2023).

This regulatory framework demonstrates that polygamy under Indonesian law is not merely a matter of religious permissibility, but also constitutes a legal act with consequences for the rights and obligations of the parties involved. Accordingly, the implementation of polygamy cannot be based solely on the husband's wishes and religious considerations; it must also comply with the legal procedures established by the state. In this context, judicial authorization serves as an important instrument for ensuring that the grounds and circumstances underlying an application for polygamy can be objectively examined and that the rights of affected parties are duly considered. The importance of this authorization mechanism has likewise been emphasized in studies of polygamy under Islamic and Indonesian positive law, which identify judicial authorization as an instrument of state oversight over the implementation of polygamy (Ardhian et al., 2016; Yani, 2022).

Another inseparable aspect of this issue is marriage registration. The Marriage Law stipulates that every marriage must be registered in accordance with the applicable laws and regulations. This provision indicates that registration constitutes part of the legal administration of marriage and provides certainty regarding the existence of a marital relationship. From the perspective of family law, registration is significant because it determines the ability of the parties to establish proof of their marital status and obtain legal protection for rights arising from the marriage (Arsyad, 2020; Sudirman et al., 2021).

These provisions are further elaborated in Government Regulation No. 9 of 1975 concerning the Implementation of the Marriage Law. The regulation establishes procedures for marriage registration, including the obligation to notify the marriage registrar of the intention to marry before the marriage is solemnized. For Muslim marriages, the registration mechanism has also been further developed through regulations issued by the Ministry of Religious Affairs concerning marriage registration as part of orderly administration and legal certainty. In the context of polygamy, registration becomes particularly important because it provides an administrative basis for establishing the legal relationship between a husband and each of his wives and ensures that the marriage is conducted within a framework subject to state oversight (Sudirman et al., 2021).

Within this context, unregistered polygamy (*poligami siri*) may be understood as a polygamous marriage conducted without complying with the state's registration mechanism and legal procedures. The term *siri* in this context should be distinguished from the question of the validity of the marriage contract under Islamic law. A marriage that, according to certain *fiqh* perspectives, fulfills the essential elements and requirements of marriage does not necessarily possess the same legal status as a marriage registered under the state legal system. The distinction primarily concerns evidentiary status, administrative recognition, and the ability of the parties to obtain legal protection and enforce their civil rights through legal mechanisms. This issue represents a central concern in studies of unregistered polygamy because an unregistered marriage may create significant problems concerning rights protection, notwithstanding differing views regarding its validity from the perspective of *fiqh* (Arsyad, 2020; Hidayati et al., 2023; Sudirman et al., 2021).

The problem becomes more complex when polygamy is conducted without judicial authorization and without marriage registration. The absence of these mechanisms may make it difficult to establish proof of the marital relationship and may weaken the legal position of parties whose rights depend upon formal recognition of that relationship. Under such circumstances, the consequences extend beyond the relationship between husband and wife to include the fulfillment of children's civil rights, maintenance obligations, inheritance, population administration, and other legal matters requiring evidence of marital status. Studies on unregistered polygamy indicate that questions of *maṣlahah* cannot be separated from the legal consequences affecting women and children, who may potentially suffer harm as a result of the absence of legal certainty (Sudirman et al., 2021; Alam, 2025; Ilahi et al., 2023).

Accordingly, the central problem of unregistered polygamy under Indonesian law is not simply a conflict between religious law and state law. Rather, it concerns the distinction between the permissibility of polygamy as a norm of religious law and the procedures governing its implementation and legal consequences within the national legal system. Through marriage regulations, the state does not merely determine whether polygamy may be practiced; it also establishes procedures that must be followed to ensure that its implementation takes place within a legally supervised framework and provides protection for the parties concerned. From the perspective of positive law, these restrictions may therefore be understood as an effort to place polygamy within a framework of legal protection and public welfare, rather than merely as a limitation on the *fiqh* principle permitting polygamy (Ardhian et al., 2016; Aqil, 2023; Karimullah, 2023).

From a normative legal perspective, this situation raises a more fundamental question: can the requirements of marriage registration and judicial authorization be justified when Islamic law essentially permits polygamy subject to certain conditions? This question is important because state regulation cannot be evaluated solely on the basis of whether an explicit prohibition exists in the revealed texts (*nuṣūṣ*). Such regulation must also be assessed in terms of its intended objectives, the public interests it seeks to protect, the harms (*mafsadah*) it seeks to prevent, and the limits of state authority in regulating family life. Within ‘Abd al-Wahhāb Khallāf’s thought, the relationship between the norms of the Sharī‘ah and the authority of the governing power to regulate public welfare constitutes an important dimension of *siyāsah shar‘iyyah* (Khallaf, 1977; Arisman & Hakim, 2021; Deski, 2022).

It is at this point that unregistered polygamy becomes particularly relevant to *siyāsah shar‘iyyah*. If positive law is understood as an instrument for regulating the implementation of polygamy, the subsequent question is whether such state authority possesses legitimacy within Islamic law. This question provides the basis for examining the regulation of unregistered polygamy through ‘Abd al-Wahhāb Khallāf’s thought, particularly his views concerning the authority of the *ulil amri*, *maṣlahah mursalah*, and *sadd al-dharā‘i*. This framework enables the study to distinguish between the original legal status of polygamy as a matter of *fiqh* and the state’s authority to regulate its implementation in pursuit of public welfare and the prevention of *mafsadah* (Khallaf, 1977, 2009; Deski, 2022; Arisman & Hakim, 2021).

3.2. The Regulation of Unregistered Polygamy from the Perspective of ‘Abd al-Wahhāb Khallāf’s *Siyāsah Shar‘iyyah*

In the thought of ‘Abd al-Wahhāb Khallāf, *siyāsah shar‘iyyah* concerns the regulation of public affairs by the government in accordance with the principles of the Shari‘ah, with the objective of realizing public welfare (*maṣlaḥah*) and preventing harm. Its scope is not limited to matters expressly and comprehensively regulated by the revealed texts (*nuṣūṣ*), but also encompasses policies necessary for regulating social life, provided that they do not conflict with the fundamental principles of the Shari‘ah. Accordingly, *siyāsah shar‘iyyah* provides governing authorities with room to formulate legal policies in response to social needs and changing circumstances (Khallaf, 1977, 2009). Khallāf’s conception of the relationship between Islamic law, political authority, and the need for social regulation further indicates that government policies must be directed toward the realization of public welfare and remain within the boundaries of the principles of the Shari‘ah (Arisman & Hakim, 2021; Deski, 2022).

This conception is important for understanding the authority of the state to regulate unregistered polygamy. Although polygamy as a form of marriage has a normative basis in Islamic law, matters such as marriage registration, judicial review procedures, population administration, and legal protection for the parties involved are not regulated comprehensively and in detail by the Qur’an and Sunnah. These matters fall within the sphere of public regulation, which requires legal policies responsive to prevailing social conditions. Within Khallāf’s framework, such regulatory space may constitute part of *siyāsah shar‘iyyah* insofar as the policies are oriented toward public welfare and do not conflict with the principles of the Shari‘ah (Khallaf, 1977; Arisman & Hakim, 2021). Accordingly, state regulation of the administrative aspects of marriage does not inherently conflict with Islamic law, provided that the substance and objectives of such regulation can be justified from a Shari‘ah perspective.

The state’s authority to regulate polygamy must therefore be distinguished from the authority to determine its original legal status. The state is not positioned to alter the fundamental Shari‘ah ruling concerning the permissibility of polygamy; rather, it may regulate the manner in which polygamy is implemented when such regulation is necessary to achieve legal objectives and protect public interests. This distinction is essential to ensure that marriage registration requirements and judicial authorization are not automatically understood as prohibitions on polygamy. They are more appropriately understood as regulations governing the implementation of an act that is normatively permissible, particularly with regard to legal order and the protection of rights. Studies of polygamy under Islamic and Indonesian positive law similarly indicate that procedural restrictions on polygamy do not amount to the abolition of its permissibility, but rather constitute mechanisms for regulating its implementation (Ardhian et al., 2016; Aqil, 2023).

From Khallāf’s perspective, the legitimacy of government policy is not determined solely by the existence or absence of a specific textual proof addressing the particular form of the policy. *Siyāsah shar‘iyyah* provides governing authorities with room to formulate policies concerning matters that require regulation when such policies are consistent with the general objectives of the Shari‘ah. Khallāf associates *siyāsah shar‘iyyah* with the application of *maṣlaḥah mursalah*, namely a public interest that has neither been specifically affirmed nor rejected by the Shari‘ah but may serve as a basis for legal consideration when it satisfies criteria consistent with the objectives of the Shari‘ah (Khallaf, 2009). Contemporary scholarship on Khallāf’s

thought likewise identifies *maṣlahah* as an important element in understanding his legal methodology and political-legal thought (Deski, 2022; Arisman & Hakim, 2021).

On this basis, mandatory marriage registration may be understood as an administrative policy directed toward the realization of public welfare. Registration provides formal evidence of marital status and enables the legal relationship between the parties to be identified and established through state mechanisms. In the context of polygamy, the requirement of judicial authorization likewise serves an oversight function by ensuring that the statutory requirements are assessed before the marriage is solemnized. Accordingly, the relevant analytical question is not whether registration constitutes an element or condition of marriage under *fiqh*, but whether marriage registration and state oversight produce a form of public welfare that can be justified according to the principles of *siyāsah shar‘iyyah*. In studies of unregistered polygamy, registration and state oversight are also associated with efforts to provide legal certainty and protection to the parties involved in the marriage (Sudirman et al., 2021; Hidayati et al., 2023).

However, the authority of the *ulil amri* within the framework of *siyāsah shar‘iyyah* is not unlimited. Government policies must remain within the boundaries of the principles of the Shari‘ah and be directed toward the realization of public welfare. Scholarship on Khallāf emphasizes that *siyāsah shar‘iyyah* must be oriented toward *maṣlahah* and must not conflict with religious principles, even when the specific form of regulation is not expressly prescribed by the revealed texts (Khallaf, 1977; Arisman & Hakim, 2021). Therefore, the legitimacy of regulating unregistered polygamy cannot be based solely on the state’s formal authority. The regulation must be supported by an identifiable welfare objective, a clearly defined form of *mafsadah* that it seeks to prevent, and a rational relationship between the legal instrument employed and the protective objective pursued. This principle is important to prevent *siyāsah shar‘iyyah* from becoming an unrestricted justification for every government policy.

In the context of unregistered polygamy, there are relevant grounds for evaluating state regulation through this framework. The absence of marriage registration and failure to follow legal procedures may create difficulties in establishing marital status and enforcing the civil rights of the parties involved. These risks become particularly significant in matters concerning maintenance, marital property, inheritance, and children's rights. Studies of unregistered polygamy indicate that questions of *maṣlahah* are closely related to the protection of women's and children's rights, particularly when the marital relationship lacks adequate administrative recognition (Sudirman et al., 2021; Arsyad, 2020). The protection of children further demonstrates that the consequences of an unregistered marriage do not necessarily end with the relationship between husband and wife but may extend to the fulfillment of children's civil rights (Alam, 2025; Ilahi et al., 2023).

Nevertheless, the relationship between unregistered polygamy and *mafsadah* should not be assumed automatically. Not every unregistered marriage produces the same legal problems, nor can every instance of unregistered polygamy immediately be categorized as an act that necessarily results in harm. Accordingly, from the perspective of *siyāsah shar‘iyyah*, what must be assessed is the potential and specific forms of *mafsadah* that may reasonably arise from the absence of registration and legal oversight, as well as whether the regulations established by the state are genuinely relevant to preventing or mitigating such harm. This

approach is consistent with the principle that *maṣlaḥah* must be assessed rationally and in relation to the objectives of the law, rather than simply assumed on the basis of the existence of a particular government policy (Khallaf, 2009; Deski, 2022).

On this basis, the regulation of unregistered polygamy may be understood in two dimensions. First, it functions as an administrative and public-law instrument intended to establish legal certainty concerning marital status. Second, it functions as a legal-protection mechanism through which the rights and obligations of the parties may receive formal recognition and become enforceable through legal procedures. These two functions provide a basis for examining the regulation of unregistered polygamy through the concepts of *maṣlaḥah mursalah* and *sadd al-dharā'i'*, which constitute the analytical instruments in the following discussion. In the context of unregistered polygamy, this welfare-oriented approach is further supported by studies identifying the protection of women's and children's rights as a central concern arising from unregistered marriages (Sudirman et al., 2021; Alam, 2025).

Accordingly, 'Abd al-Wahhāb Khallāf's conception of *siyāsah shar'īyyah* provides a conceptual basis for arguing that state regulation of unregistered polygamy may obtain *Sharī'ah*-based legitimacy, but such legitimacy is conditional rather than automatic. Regulation must be grounded in a demonstrable public interest, directed toward preventing harm, consistent with the fundamental principles of the *Sharī'ah*, and implemented through instruments that are relevant and proportionate to the legal-protection objectives pursued (Khallaf, 1977, 2009). Within this framework, unregistered polygamy should not be viewed merely as a conflict between *fiqh* and state law, but rather as a question of how state authority translates the principle of public welfare into family-law regulation. This position provides the basis for further examining *maṣlaḥah mursalah* as a source of legitimacy for regulating unregistered polygamy in the following subsection.

3.3. *Maṣlaḥah Mursalah* as a Basis for the Legitimacy of Regulating Unregistered Polygamy

In the thought of 'Abd al-Wahhāb Khallāf, *maṣlaḥah mursalah* constitutes one of the bases that may be employed in legal determination when a particular issue has no specific ruling in the *nuṣūṣ* that expressly commands or rejects it, but a public interest exists that is consistent with the general objectives of the *Sharī'ah*. This concept provides room for the formulation of legal policies necessary to regulate social life, provided that such policies do not conflict with the fundamental principles of the *Sharī'ah*. Within the framework of *siyāsah shar'īyyah*, *maṣlaḥah mursalah* is particularly relevant because many public issues evolve in response to social change, while their specific regulatory forms are not always explicitly addressed in the sources of Islamic law (Khallaf, 2009). Khallāf's conception of *maṣlaḥah* further demonstrates that considerations of public interest must remain situated within the framework of the objectives of the *Sharī'ah* and may not be employed to legitimize policies that contradict fundamental principles of Islamic law (Deski, 2022; Arisman & Hakim, 2021).

The application of *maṣlaḥah mursalah* to the regulation of unregistered polygamy must begin by distinguishing between the original legal status of polygamy and the regulation of its implementation. The permissibility of polygamy under Islamic law does not, in itself, determine all administrative procedures and legal consequences associated with its implementation. Marriage registration, judicial review, proof of marital status, and mechanisms for protecting legal rights are matters of legal governance that may be regulated

by the state in response to social needs. Accordingly, assessing the regulation of unregistered polygamy through *maṣlahah mursalah* does not seek to alter the original legal status of polygamy, but rather to determine whether state regulation of its implementation has a justifiable basis in public welfare. This distinction between the normative permissibility of polygamy and the mechanisms governing its implementation is also reflected in studies of polygamy under Islamic and Indonesian positive law (Ichsan, 2018; Ardhian et al., 2016).

The first identifiable form of public welfare concerns legal certainty regarding marital status. Registration provides formal evidence of the existence of a marital relationship, thereby enabling the legal status of the parties to be established and verified. In cases of unregistered polygamy, the absence of registration may create difficulties when one of the parties is required to establish the marital relationship in legal or administrative proceedings. Registration therefore serves not merely as an administrative procedure, but also as an instrument through which rights and obligations arising from marriage can be evidenced and legally protected. The issue of legal certainty is particularly significant in cases of unregistered marriage because the absence of registration may affect the ability of the parties concerned to obtain legal recognition and protection (Sudirman et al., 2021; Hidayati et al., 2023).

The second form of public welfare concerns the protection of wives' rights. Polygamy creates a legal relationship involving a husband's obligations toward more than one wife. When a marriage is not registered, the wife may face greater difficulties in obtaining legal protection in the event of disputes concerning maintenance, property, divorce, or other rights arising from the marital relationship. From the perspective of *maṣlahah mursalah*, regulations requiring registration and judicial review may therefore be understood as mechanisms for ensuring that the implementation of polygamy is not based solely on the unilateral will of the husband, but also takes into account the rights and interests of affected parties. Studies of unregistered polygamy from the perspective of public welfare indicate that the protection of women's rights is an important consideration in evaluating unregistered marital practices (Sudirman et al., 2021; Arsyad, 2020).

The third form of public welfare concerns the protection of children. An unregistered marriage may create administrative and evidentiary difficulties concerning family relationships. Under certain circumstances, these difficulties may affect the fulfillment of children's rights and their civil-law relationships. Marriage registration therefore has a protective dimension that extends beyond the relationship between husband and wife. The state has an interest in ensuring that family status can be administratively established so that children do not bear the legal consequences of decisions made by adults over which they have no control. Research on the protection of children's rights in unregistered marriages demonstrates that registration is closely connected to the fulfillment and protection of children's rights from the perspectives of Islamic family law and national law (Alam, 2025). Similar concerns are reflected in studies of the implications of Constitutional Court Decision No. 46/PUU-VIII/2010 for the civil rights and obligations of children born from unregistered marriages (Ilahi et al., 2023).

The fourth form of public welfare concerns administrative order and legal certainty in the public sphere. Marriage is a legal event with consequences for various aspects of population administration. Registration enables the state to obtain accurate information

concerning an individual's marital status and family relationships. In the context of polygamy, this function becomes even more significant because multiple marital relationships generate corresponding rights and obligations. State regulation may therefore be understood as part of an effort to maintain orderly legal relations within society. Registration thus serves not only the individual interests of the spouses but also the broader interests of administrative order and the state's capacity to provide public services and legal protection on the basis of verifiable family status (Sudirman et al., 2021; Hidayati et al., 2023).

Nevertheless, not every interest claimed to constitute a *maṣlaḥah* can automatically serve as a basis for legitimizing legal policy. Within the framework of *maṣlaḥah mursalah*, a public interest must be connected to the objectives of the Shari'ah and may not be invoked to justify policies that contradict the fundamental principles of Islamic law. Accordingly, the regulation of unregistered polygamy must be evaluated in terms of the type of *maṣlaḥah* it seeks to realize, the degree of harm it seeks to prevent, and the compatibility between the regulatory instruments employed and the objectives pursued. This principle is consistent with Khallāf's approach to the use of public welfare in legal determination, which requires *maṣlaḥah* to be more than a subjective interest and to possess demonstrable relevance to the objectives of the Shari'ah (Khallaf, 2009; Deski, 2022).

On the basis of these parameters, mandatory marriage registration has a rational connection to the objectives of legal certainty and rights protection. Similarly, the requirement of judicial authorization for polygamy may be understood as a mechanism for examining the grounds and circumstances underlying an application for polygamy. Such judicial review ensures that the decision to enter into a polygamous marriage does not remain exclusively within the private sphere, but is subject to a legal oversight mechanism through which the interests of other parties may be taken into consideration. The importance of judicial authorization as an instrument for overseeing the implementation of polygamy has likewise been examined in studies of polygamy under Indonesian positive law (Ardhian et al., 2016; Yani, 2022).

However, such legitimacy does not mean that every form of restriction on polygamy can automatically be justified in the name of *maṣlaḥah*. The principle of *maṣlaḥah mursalah* requires a clear relationship between the restriction imposed and the public interest sought to be achieved. It is insufficient for the state merely to assert that a particular policy is intended to protect society; that objective must be translated into legal instruments that are relevant and proportionate. Accordingly, state authority to regulate polygamy remains subject to limits. Within Khallāf's framework, *maṣlaḥah* must operate within the boundaries of the principles of the Shari'ah, meaning that not every policy subjectively regarded as beneficial can obtain legitimacy under Islamic law (Khallaf, 2009; Arisman & Hakim, 2021).

In the context of unregistered polygamy, these limits are important because the principal problems to be addressed concern uncertainty regarding legal status, inadequate protection of rights, and potential difficulties in enforcing the civil rights of the parties involved. Therefore, regulations directed toward marriage registration, judicial review, and rights protection possess a stronger welfare-based justification than restrictions that have no direct relationship to these concerns. This argument is consistent with studies examining the tightening of polygamy regulations from the perspectives of *maqāṣid al-shari'ah* and positive

law, particularly with regard to protecting the interests of affected parties (Aqil, 2023; Karimullah, 2023).

Accordingly, from the perspective of *maṣlaḥah mursalah*, the regulation of unregistered polygamy may obtain *Shari'ah*-based legitimacy insofar as such regulation serves to realize demonstrable public welfare, prevent foreseeable harm, and remain within the boundaries of the principles of the *Shari'ah*. State regulation in this context should not be understood as altering the permissibility of polygamy, but rather as regulating its implementation within the sphere of public law. Marriage registration and judicial oversight function as instruments to ensure that the permissibility of polygamy does not undermine legal certainty or the protection of the rights of the parties concerned. This position is consistent with Khallāf's conception of *siyāsah shar'īyyah*, according to which governing authorities possess discretion to establish policies that are not specified in detail by the *nuṣūṣ*, provided that such policies are directed toward public welfare and do not conflict with the principles of the *Shari'ah* (Khallaf, 1977, 2009).

The analysis demonstrates that *maṣlaḥah mursalah* provides conditional rather than absolute legitimacy for the regulation of unregistered polygamy. Such legitimacy rests on four principal objectives: certainty of legal status, protection of wives' rights, protection of children's rights, and orderly public administration. This framework further demonstrates that state policies concerning polygamy should be evaluated on the basis of their objectives and legal consequences, rather than solely in terms of the apparent distinction between *fiqh* and positive law. Accordingly, the regulation of unregistered polygamy may be regarded as an actualization of public welfare within the domain of *siyāsah shar'īyyah*, provided that it satisfies the requirements of the *Shari'ah* and maintains a rational connection with the protection of public interests (Khallaf, 2009; Deski, 2022).

3.4. *Sadd al-Dharā'i'* and the Prevention of *Mafsadah* in Unregistered Polygamy

In addition to *maṣlaḥah mursalah*, the regulation of unregistered polygamy can be analyzed through the concept of *sadd al-dharā'i'*, namely the principle of preventing means or avenues that may potentially lead to *mafsadah* (harm). Within the framework of *siyāsah shar'īyyah*, this principle is relevant when an act is essentially permissible, but the manner in which it is practiced may produce consequences contrary to the objectives of legal protection and public welfare. Accordingly, the focus is not merely on the legal status of the underlying act, but also on the consequences that may arise from the manner in which it is implemented. This preventive principle can be situated within the methodological framework of Islamic law, which emphasizes the relationship between an act and its consequences (Hasram, 2019; Khallaf, 2009).

The application of *sadd al-dharā'i'* to unregistered polygamy must, however, be approached with caution. Unregistered polygamy cannot automatically be categorized as *mafsadah* merely because the marriage is not registered. Likewise, not every unregistered marriage necessarily results in harm to the wife or children. The analysis of *sadd al-dharā'i'* should therefore focus on identifying the relationship between the absence of registration and legal oversight and the potential emergence of legal problems. From this perspective, the object of prevention is not polygamy as a marital institution per se, but rather the potential *mafsadah* that may arise when polygamy is practiced without adequate legal mechanisms. Such

caution is important because studies of unregistered polygamy indicate that questions of public welfare must be assessed contextually and in light of their consequences rather than through the generalization that every unregistered marriage necessarily produces harm (Sudirman et al., 2021; Arsyad, 2020).

One potential form of *mafsadah* concerns uncertainty regarding marital status and proof of marriage. An unregistered marriage may create difficulties when the marital relationship must be established before state institutions. This problem becomes more complex in polygamous marriages because more than one marital relationship must be legally established and verified. Such uncertainty may impede the fulfillment of rights arising from marriage and increase the possibility of future disputes. Research on unregistered polygamy from the perspective of *maṣlaḥah* indicates that the absence of registration may become problematic when marital status and the rights arising from the marriage require recognition through state legal mechanisms (Sudirman et al., 2021; Hidayati et al., 2023).

A further potential *mafsadah* concerns the protection of wives' rights. In a polygamous marriage, a husband assumes legal and moral obligations toward each of his wives. When a marriage is unregistered and has not undergone legal scrutiny, difficulties may arise in establishing the legal relationship and enforcing rights in the event of a dispute. Marriage registration and judicial review may therefore be positioned as preventive instruments to ensure that the marital relationship does not rest solely upon personal or religious recognition, but also possesses an evidentiary basis that can be relied upon when legal disputes arise. The protection of women's rights is an important dimension in assessing unregistered marriage practices from the perspective of Islamic family law (Arsyad, 2020; Sudirman et al., 2021).

Potential *mafsadah* may also concern the protection of children's rights. Children have no control over their parents' decisions concerning the form and legal status of their marriage. When the parents' marriage is unregistered, administrative and evidentiary difficulties concerning family relationships may, under certain circumstances, affect the fulfillment of children's rights. Regulations encouraging marriage registration can therefore be understood as preventive measures intended to reduce the risk that children will bear the consequences of uncertainty surrounding their parents' marital status. Studies on the protection of children's rights in unregistered marriages indicate that marital registration is closely related to the fulfillment and protection of children's rights from the perspectives of Islamic family law and national law (Alam, 2025). This issue is also connected to the evolving interpretation of children's civil-law relationships following Constitutional Court Decision No. 46/PUU-VIII/2010 (Ilahi et al., 2023).

Beyond individual protection, there is also a dimension of legal order and public administration. Marriage produces legal consequences that extend beyond the relationship between husband and wife to matters of population administration, family relationships, property, inheritance, and various other legal relationships. Unregistered polygamy may make some of these relationships difficult to identify within the state administrative system. From the perspective of *sadd al-dharā'ī*, requirements concerning registration and legal oversight may therefore be regarded as preventive measures intended to reduce the possibility of more complex legal problems arising in the future. In studies of unregistered polygamy,

this issue is associated with the need for legal mechanisms capable of providing certainty and protection for affected parties (Sudirman et al., 2021).

The relationship can be systematically formulated as follows:

Polygamy without registration and legal oversight → weakened certainty and proof of marital status → potential difficulties in enforcing rights → potential disputes and legal harm → need for preventive regulation.

This sequence demonstrates that the legitimacy of regulation does not rest on the assumption that unregistered polygamy invariably produces harm, but rather on the reasonably foreseeable possibility of *mafsadah* arising from the absence of registration and legal oversight mechanisms. Accordingly, state regulation functions to close or narrow the avenues leading to *mafsadah* without altering the original legal status of polygamy. Such reasoning is consistent with methodological approaches in Islamic law that consider the relationship between legal reasoning, public welfare, and the consequences of an act (Hasram, 2019; Sufyan, 2017).

Within this framework, judicial authorization performs a preventive function that differs from that of marriage registration. Registration primarily provides legal certainty and formal evidence of the marriage, whereas judicial review allows the circumstances and statutory requirements underlying the proposed polygamous marriage to be assessed. This mechanism provides the state with an opportunity to ensure that the interests of affected parties have been considered before the polygamous marriage receives recognition within the national legal system. Accordingly, registration and judicial authorization may be viewed as complementary instruments of *sadd al-dharā'i'*. The importance of judicial authorization as an instrument for overseeing the implementation of polygamy has likewise been emphasized in studies of polygamy under Indonesian positive law (Ardhian et al., 2016; Yani, 2022).

Nevertheless, the principle of *sadd al-dharā'i'* cannot be invoked to justify unlimited restrictions. The prevention of *mafsadah* must establish a clear relationship between the risk to be prevented and the legal instrument employed. If a restriction has no rational connection to the protection of rights or the prevention of harm, its justification under *sadd al-dharā'i'* becomes weak. The principle must therefore be applied cautiously so that the prevention of *mafsadah* does not become a disproportionate restriction on individual rights. Within the framework of *siyāṣah shar'iyah*, the authority of the governing power must remain directed toward public welfare and operate within the boundaries of the principles of the Shari'ah (Khallaf, 1977, 2009; Arisman & Hakim, 2021).

In the context of unregistered polygamy, the application of this principle is more appropriately directed toward preventing harmful legal consequences, rather than criminalizing or prohibiting polygamy merely because an individual has more than one wife. Regulations requiring registration and compliance with legal procedures are more consistent with *sadd al-dharā'i'* because they seek to prevent risks associated with uncertainty of marital status, inadequate protection of rights, and difficulties in legal enforcement. This position is consistent with studies that view restrictions and oversight of polygamy as mechanisms for protecting the interests of affected parties (Aqil, 2023; Ardhian et al., 2016).

This analysis also demonstrates the complementary relationship between *sadd al-dharā'i'* and *maṣlaḥah mursalah* discussed above. *Maṣlaḥah mursalah* explains the welfare

objectives to be realized through regulation, such as legal certainty and the protection of rights. By contrast, *sadd al-dharāʾiʿ* explains the preventive rationale for why regulation is necessary, namely to reduce the likelihood of *mafsadah* arising from the absence of registration and legal oversight. The two concepts therefore serve different but complementary analytical functions. Both can be situated within an Islamic legal methodology that takes into account public welfare as well as the consequences of an act in the process of legal determination (Khallaf, 2009; Hasram, 2019).

Based on this analysis, the regulation of unregistered polygamy may be considered consistent with the principle of *sadd al-dharāʾiʿ* insofar as it is directed toward preventing actual or strongly foreseeable *mafsadah*, particularly those involving uncertainty regarding marital status and inadequate protection of the rights of the parties concerned. Such regulation should not be understood as abolishing the permissibility of polygamy, but rather as a preventive mechanism designed to ensure that polygamy is implemented within a legal framework that provides protection and certainty. In this context, state regulation may be understood as an exercise of *siyāsah sharʿiyyah* authority aimed at anticipating potentially harmful legal consequences (Khallaf, 1977; Arisman & Hakim, 2021).

Thus, *sadd al-dharāʾiʿ* strengthens the argument that mandatory marriage registration and legal oversight of polygamy possess a rational basis within *siyāsah sharʿiyyah*. Nevertheless, this legitimacy remains conditional and proportionate. The state must identify the *mafsadah* it seeks to prevent and ensure that the regulatory instruments employed are genuinely relevant to that objective. At this point, the subsequent discussion of the limits of the authority of the *ulil amri* becomes important, because the state's authority to prevent *mafsadah* does not entail unlimited authority to regulate every aspect of polygamy.

3.5 Limits of *Ulil Amri* Authority in the Regulation of Polygamy

The discussion of the authority of the *ulil amri* is essential for determining the extent to which the state may regulate unregistered polygamy. From the perspective of ʿAbd al-Wahhāb Khallāf's *siyāsah sharʿiyyah*, governmental authority cannot be understood as an unrestricted power. Rulers have the authority to formulate policies concerning matters of public interest, but such policies must be directed toward the realization of *maṣlahah* and must not contradict the principles of the Shariʿah (Khallaf, 1977, 2009). Studies of Khallāf's political and legal thought likewise indicate that *siyāsah sharʿiyyah* provides governments with room to regulate social affairs on the basis of social needs and public welfare, provided that such regulation remains within the framework of Islamic law (Arisman & Hakim, 2021). Accordingly, the state's authority to regulate polygamy must be distinguished from the authority to alter the fundamental legal status of polygamy.

This distinction is important because polygamy has a normative basis in Islamic law, whereas the mechanisms governing its implementation and oversight constitute an area that may be regulated in accordance with the legal needs of society. The state may establish administrative requirements, review mechanisms, registration procedures, and certain legal consequences to ensure that polygamous marriages are conducted in an orderly manner. Such authority, however, does not automatically provide a basis for the state to declare that polygamy, which is fundamentally permissible under the Shariʿah, is categorically prohibited. Within the framework of *siyāsah sharʿiyyah*, the object of state authority is the regulation of the

implementation and legal consequences of an act, rather than the alteration of fundamental Shari'ah rulings. The distinction between the original legal status of polygamy and regulations governing its implementation is also important for understanding the Indonesian marriage-law system, which does not abolish polygamy but places its implementation under certain requirements and procedures (Ichsan, 2018; Aqil, 2023).

In the Indonesian context, this authority is manifested, among other things, through the requirement of judicial authorization and mandatory marriage registration. These two mechanisms demonstrate state intervention in the implementation of polygamy, but such intervention has identifiable legal objectives. Judicial authorization provides a mechanism for reviewing an application before polygamy is undertaken, whereas registration provides legal certainty and formal evidence of marital status. Studies of polygamy under Indonesian positive law indicate that judicial authorization plays an important role in examining the grounds and requirements for polygamy while also protecting the interests of the parties concerned (Ardhian et al., 2016). Therefore, state intervention may be regarded as a form of public-law regulation insofar as it is directed toward protecting the interests of the parties and maintaining legal order.

However, the authority of the *ulil amri* cannot be justified merely on the ground that a particular policy has been enacted by the state. The Shari'ah-based legitimacy of a policy must be assessed in relation to its objectives and consequences. Khallaf identifies *maṣlaḥah* as an important basis for formulating legal policies concerning matters of public interest (Khallaf, 1977, 2009). Accordingly, in the case of unregistered polygamy, the government must be able to demonstrate that the requirements and restrictions it imposes have a rational relationship with the objectives of legal protection. If a particular requirement is merely formal and has no clear function in realizing *maṣlaḥah*, its basis in *siyāsah shar'iyah* becomes weaker.

Based on the preceding analysis of *maṣlaḥah mursalah* and *sadd al-dharā'i'*, at least three interests provide a basis for justifying state regulation: certainty of marital status, protection of the rights of wives and children, and prevention of potential disputes and legal harm. These three interests provide a basis for the state to regulate unregistered polygamy. Studies of unregistered polygamy indicate that questions of *maṣlaḥah* in such practices are closely related to the protection of rights and the legal consequences that may arise from the absence of registration (Sudirman et al., 2021). Similarly, concerns regarding the protection of children in unregistered marriages demonstrate the importance of legal certainty concerning family status for the fulfillment of children's rights (Alam, 2025). However, the existence of such *maṣlaḥah* does not mean that every form of restriction can be justified. The legal instruments selected must remain directly relevant to the problems they are intended to address.

The limits of *ulil amri* authority may be formulated through several principles. First, it must not contradict the fundamental principles of the Shari'ah. State policy must not transform administrative authority into an instrument for altering fundamental religious rulings. In the context of polygamy, the state may regulate the procedures and requirements governing its implementation, but such regulation must be distinguished from a claim that the original legal status of polygamy has itself changed. This principle is consistent with the nature of *siyāsah shar'iyah*, which places governmental policy within the framework of the objectives and general principles of the Shari'ah (Khallaf, 1977; Arisman & Hakim, 2021).

Second, it must be oriented toward public welfare. A policy must have an objective that can be justified from the perspective of the interests of society. In the context of unregistered polygamy, such objectives may include protecting the rights of women and children, ensuring certainty of marital status, and maintaining administrative order. Regulation, therefore, should not be based solely on moral considerations or the ruler's preferences without a clear *maṣlahah*-based justification. The principle of *maṣlahah* as a basis for legal policy occupies an important position in Khallāf's thought, particularly when the state confronts matters that are not regulated in detail by the *naṣṣ* (Khallaf, 2009; Deski, 2022).

Third, it must prevent identifiable *mafsadah*. As analyzed through *sadd al-dharā'ī*, regulation may be employed to reduce risks arising from the absence of registration and legal oversight. However, such *mafsadah* must be capable of rational explanation. It would be inappropriate to assume that every instance of unregistered polygamy necessarily causes harm and to use that assumption as the sole basis for restriction. Studies of unregistered polygamy from the perspective of *maṣlahah* instead indicate the need to examine the concrete consequences and potential harms arising from the practice (Sudirman et al., 2021).

Fourth, it must be proportionate to the objective pursued. The prevention of *mafsadah* should not result in restrictions that are greater than the problem being addressed. Therefore, the state should select appropriate legal instruments, such as registration, judicial review, and rights-protection mechanisms, rather than merely imposing sanctions that do not address the underlying administrative and civil-law problems. Within the context of Indonesian positive law, judicial authorization functions as an instrument for assessing the statutory requirements for polygamy, giving the restriction an identifiable legal purpose (Ardhian et al., 2016; Aqil, 2023).

Fifth, it must take into account the interests of vulnerable parties. In the context of unregistered polygamy, the position of wives and children should constitute an important consideration in regulatory policy. This is because the consequences of uncertainty regarding marital status are not necessarily borne by the party who made the decision to enter into an unregistered marriage. The state may exercise its authority to ensure that the interests of more vulnerable parties receive adequate legal protection. Studies concerning the protection of children's rights in unregistered marriages indicate that uncertainty regarding marital status may affect the fulfillment of children's rights and should therefore be considered in family-law regulation (Alam, 2025). The same issue can be observed in discussions of the implications of Constitutional Court Decision No. 46/PUU-VIII/2010 for children's civil rights (Ilahi et al., 2023).

On the basis of these limitations, the authority of the *ulil amri* to regulate polygamy may be understood as limited and purposive regulatory authority, rather than an unrestricted authority to determine religious law. The state has room to establish rules when there is a need to maintain social order and public welfare, but every regulation must be justifiable in terms of its legal objectives and consistency with the principles of the Shari'ah. From Khallāf's perspective, this policy-making space constitutes part of the function of *siyāsah shar'iyyah*, namely the administration of public affairs through policies that are consistent with the objectives of the Shari'ah (Khallaf, 1977; Arisman & Hakim, 2021).

From this perspective, mandatory registration and judicial authorization may be understood as forms of regulation governing the implementation of polygamy rather than as mechanisms for abolishing its permissibility. Registration serves to provide legal certainty and formal evidence, whereas judicial authorization provides a mechanism for review and oversight. Both instruments acquire stronger legitimacy when directed toward preventing *mafsadah* and protecting the rights of affected parties. The tightening of procedural requirements for polygamy under Indonesian law may likewise be understood within the framework of protecting family interests and advancing the objectives of Islamic law, particularly when viewed through the *maqāsid al-sharī'ah* approach (Aqil, 2023; Karimullah, 2023).

Nevertheless, this analysis also demonstrates that the *Sharī'ah*-based legitimacy of regulation is not automatic merely because a regulation is intended to protect society. Every policy must still be evaluated on the basis of the *maṣlaḥah* it seeks to realize, the *mafsadah* it seeks to prevent, and the compatibility between its objectives and the legal instruments employed. Thus, *siyāsah shar'īyyah* not only provides a basis for state authority but also establishes normative limits on the exercise of that authority. Khallāf's conception of the relationship between law, public welfare, and public policy supports the view that governmental authority must remain methodologically and substantively accountable (Khallaf, 1977, 2009; Abdillah, 2012).

On this basis, the regulation of unregistered polygamy in Indonesia may be regarded as legitimate within the framework of 'Abd al-Wahhāb Khallāf's *siyāsah shar'īyyah*, insofar as such regulation is directed toward the realization of *maṣlaḥah*, prevents *mafsadah*, does not conflict with the fundamental principles of the *Sharī'ah*, and is implemented through proportionate legal instruments. This finding demonstrates that the central issue is not whether the state possesses authority to regulate polygamy, but rather how that authority is exercised responsibly to balance the normative permissibility of polygamy with the need for legal certainty and protection. Accordingly, the authority of the *ulil amri* in this context is regulatory, preventive, and protective, while remaining constrained by the principles of *maṣlaḥah*, the prevention of *mafsadah*, and conformity with the fundamental principles of the *Sharī'ah*.

3.6 Normative Implications for Strengthening Regulation and Legal Protection

The analysis of *maṣlaḥah mursalah*, *sadd al-dharā'i'*, and the authority of the *ulil amri* demonstrates that the regulation of unregistered polygamy should not be understood merely as a restriction on the permissibility of polygamy. Such regulation has a public-law dimension relating to certainty of marital status, the protection of the rights of women and children, and the prevention of potential *mafsadah* that may arise from unregistered marriages. From the perspective of 'Abd al-Wahhāb Khallāf's *siyāsah shar'īyyah*, state authority to regulate public affairs may be justified insofar as it is directed toward the realization of *maṣlaḥah* and does not contradict the fundamental principles of the *Sharī'ah* (Khallaf, 1977, 2009; Arisman & Hakim, 2021). Therefore, the normative implication of this perspective lies in the need to ensure that the regulation of polygamy does not stop at administrative requirements but also functions as an instrument of legal protection.

The first implication is the strengthening of marriage registration as an instrument of legal protection. Registration should not be understood merely as an administrative formality but as a mechanism that provides evidence of the existence of a marital relationship and enables the rights and obligations of the parties to be enforced through the legal system. In the context of polygamy, this function becomes increasingly important because multiple marital relationships may generate complex legal consequences. Studies of unregistered polygamy indicate that the absence of registration may create problems from the perspective of *maṣlaḥah*, particularly with regard to certainty of marital status and the protection of the rights of the parties involved (Sudirman et al., 2021; Hidayati et al., 2023). Accordingly, strengthening marriage registration constitutes an effort to realize *maṣlaḥah* in the form of legal certainty while simultaneously preventing *mafsadah* that may arise from uncertainty regarding marital status.

The second implication concerns strengthening the mechanisms for reviewing and supervising applications for polygamy. Judicial authorization should not be understood merely as a procedural requirement but as a mechanism for ensuring compliance with legal provisions and taking into account the interests of affected parties. Such review is important to ensure that the grounds for polygamy, the husband's ability to fulfill his obligations, and the circumstances of the parties involved are assessed before the marriage is contracted. Studies of polygamy under Indonesian positive law indicate that judicial authorization plays an important role in controlling the implementation of polygamy and providing legal protection to interested parties (Ardhian et al., 2016). Thus, the function of the court is not merely administrative but may also be understood as a preventive mechanism within the framework of *sadd al-dharā'ī*.

The third implication is the strengthening of legal protection for wives in polygamous marriages. Regulation should ensure that the position of a wife does not become legally vulnerable merely because of the existence of a subsequent marriage or because the marriage was conducted without registration. Such protection includes certainty concerning the husband's rights and obligations, the fulfillment of maintenance obligations, and access to dispute-resolution mechanisms. Studies of unregistered polygamy indicate that questions of *maṣlaḥah* cannot be separated from the position and protection of parties affected by such marriages (Sudirman et al., 2021). Likewise, critical studies of polygamy from the perspective of *maqāṣid al-sharī'ah* identify the protection of women's interests as an important consideration in assessing polygamous practices (Arsyad, 2020). The perspective of *siyāsah shar'īyyah*, therefore, provides a basis for the state to ensure that policies concerning polygamy do not merely regulate its formal permissibility but also take into account the interests of parties who may occupy a more vulnerable position (Khallaf, 1977; Arisman & Hakim, 2021).

The fourth implication is the strengthening of the protection of children's rights. Children should not bear the legal consequences of their parents' decision to enter into an unregistered marriage. Accordingly, the regulatory system should be directed toward ensuring that children's legal status and familial relationships receive adequate protection. Research on the protection of children's rights in unregistered marriages indicates that problems may arise concerning children's legal status and the fulfillment of their rights when their parents' marriage has not been formally registered (Alam, 2025). This issue is also related to developments in the law concerning children's civil-law relationships, as reflected in

Constitutional Court Decision No. 46/PUU-VIII/2010 (Ilahi et al., 2023). In this context, marriage registration and population administration play an important role because they provide a formal basis for recognizing family relationships and securing various children's rights. This form of protection demonstrates that the orientation of regulation is not directed solely toward the spouses entering into the marriage but also toward other parties affected by that marriage.

The fifth implication is the strengthening of legal mechanisms for marriages that have already been conducted through an unregistered process. Regulation that focuses exclusively on prevention does not fully resolve situations in which unregistered polygamy has already occurred. Under such circumstances, legal mechanisms are needed to provide certainty regarding marital status and the rights of the parties involved in accordance with applicable law. This issue is important because the absence of registration does not eliminate all civil-law consequences that may arise from a marital relationship. Studies of unregistered polygamy indicate the existence of *maṣlahah*-related concerns involving the status and protection of the rights of the parties (Sudirman et al., 2021), while studies of the implications of Constitutional Court Decision No. 46/PUU-VIII/2010 demonstrate the importance of legal mechanisms for protecting children's civil rights (Ilahi et al., 2023). *Siyāṣah shar'īyyah* is therefore relevant not only to preventing *mafsadah* but also to formulating policies capable of addressing legal consequences that have already arisen.

The sixth implication is the need to maintain a balance between regulatory enforcement and the protection of rights. Regulation of unregistered polygamy should not be oriented solely toward imposing sanctions for procedural violations. Sanctions may indeed serve as instruments of law enforcement, but the effectiveness of regulation should ultimately be assessed according to its ability to achieve its legal objectives, namely providing certainty, preventing harm, and protecting affected parties. Within the framework of *maṣlahah mursalah*, policies that merely punish offenders without resolving problems concerning marital status and the protection of rights should be evaluated in terms of their utility and effectiveness. The principle of *maṣlahah* in Khallāf's thought requires public policy not to stop at formal considerations but to maintain a clear orientation toward the interests of society (Khallaf, 1977, 2009).

From the perspective of *sadd al-dharā'i'*, strengthening regulation should also be directed toward preventing a chain of legal problems from arising in the first place. Such prevention may be pursued through marriage registration, judicial review, the provision of legal information to prospective spouses, and supervision of the fulfillment of rights and obligations after marriage. This preventive approach is consistent with the principle of *sadd al-dharā'i'* because it seeks to narrow the pathways leading to *mafsadah* before problems develop into disputes or more serious forms of harm. Within Islamic legal methodology, this preventive orientation should be considered alongside *maṣlahah* so that the resulting policy retains a clear legal basis and objective (Hasram, 2019; Khallaf, 2009).

Accordingly, 'Abd al-Wahhāb Khallāf's perspective implies that the strengthening of regulations concerning unregistered polygamy should be directed toward three principal functions: preventive, protective, and corrective. The preventive function is realized through registration and judicial review before polygamy takes place; the protective function is

realized through guarantees for the rights of wives and children; and the corrective function is realized through legal mechanisms for parties who have experienced problems as a result of an unregistered marriage. These three functions reflect the exercise of *ulil amri* authority in managing public affairs on the basis of *maṣlaḥah*, consistent with the character of *siyāṣah sharʿiyyah* in Khallāf's thought (Khallaf, 1977; Arisman & Hakim, 2021).

Based on the foregoing analysis, strengthening the regulation of unregistered polygamy should not be directed toward abolishing the permissibility of polygamy as a norm of Islamic jurisprudence but toward strengthening the legal governance of its implementation. The state may exercise the authority of the *ulil amri* to establish procedures and protective mechanisms insofar as such policies are grounded in *maṣlaḥah*, prevent *mafsadah*, and do not contradict the fundamental principles of the Shariʿah. The tightening of procedural requirements for polygamy under Indonesian law may be understood within this framework, particularly because such regulation is intended to ensure compliance with legal requirements and protect family interests (Aqil, 2023; Ardhian et al., 2016). Thus, state regulation derives its legitimacy not merely from governmental authority but from its capacity to perform legal functions consistent with the objectives of public welfare.

From this perspective, the normative contribution of this study lies in emphasizing that the regulation of unregistered polygamy should be situated within a framework of legal protection rather than merely within a framework of controlling polygamous practices. *Maṣlaḥah mursalah* provides a basis for the state to establish rules necessary to secure legal certainty and legal protection, while *sadd al-dharāʾiʿ* provides a preventive basis for reducing potential *mafsadah*. Both, however, are constrained by the principle of *ulil amri* authority, which must remain within the framework of the Shariʿah and public welfare (Khallaf, 1977, 2009; Deski, 2022).

Accordingly, the strengthening of regulations concerning unregistered polygamy may be directed toward an integrative regulatory model that combines administrative certainty, judicial review, the protection of women's and children's rights, and mechanisms for resolving cases in which marriages have already taken place without registration. Such a model is more consistent with ʿAbd al-Wahhāb Khallāf's framework of *siyāṣah sharʿiyyah* because it positions law as an instrument for realizing *maṣlaḥah* and preventing harm while simultaneously maintaining limits on state authority so that it does not exceed the fundamental principles of the Shariʿah (Khallaf, 1977; Arisman & Hakim, 2021). Within this framework, the regulation of unregistered polygamy should ideally function not merely as an instrument of control but also as an instrument of prevention, protection, and restoration of rights.

3.7 The Relevance of Constitutional Court Decision No. 46/PUU-VIII/2010 to the Protection of Children's Rights

Constitutional Court Decision No. 46/PUU-VIII/2010 is highly relevant to the discussion of *siri* polygamy, particularly with regard to the protection of children's rights. However, the decision must be understood within its proper scope. The decision does not specifically regulate *siri* polygamy or provide legal legitimacy for the practice. The case concerned the judicial review of Article 43(1) of Law No. 1 of 1974 on Marriage, particularly regarding the civil relationship between children born outside a legally recognized marriage and their biological fathers. Accordingly, its relevance to the present study primarily lies in its

legal implications for children when the marital status of their parents gives rise to legal uncertainty (Ilahi et al., 2023).

In its ruling, the Constitutional Court declared Article 43(1) unconstitutional insofar as it was interpreted as eliminating the civil relationship between a child and a man who, based on scientific and technological evidence and/or other legally admissible evidence, could be proven to have a biological relationship with the child as his father. The provision was subsequently required to be interpreted to mean that a child born outside marriage has a civil relationship not only with the mother and her family but also with the biological father whose blood relationship with the child can be legally established, including a civil relationship with the father's family. This restructuring of the legal framework represents an important development in the protection of the civil rights of children born outside marriage (Ilahi et al., 2023).

The decision is significant for child protection because the marital status of the parents cannot, by itself, eliminate all civil relationships between a child and his or her biological father. The Court provided a mechanism for establishing biological relationships through scientific and technological evidence and/or other forms of evidence recognized by law. Consequently, legal responsibility toward the child may still be imposed upon a man whose biological relationship with the child has been legally established. This approach reflects a shift from an exclusive emphasis on the formal status of marriage toward greater protection of the interests and rights of children as legal subjects (Alam, 2025; Ilahi et al., 2023).

The relevance of the decision to *siri* polygamy becomes particularly apparent when such a marriage results in the birth of a child and subsequent questions arise concerning the child's legal status and entitlement to rights. In such circumstances, legal analysis should not be limited to whether the parents' marriage complied with formal registration procedures. It must also consider the best interests of the child and the protection of the child's legal rights. The Constitutional Court's decision demonstrates that a biological relationship may serve as the basis for establishing certain civil relations between a child and the biological father once that relationship has been legally proven (Ilahi et al., 2023).

From the perspective of *siyāṣah shar'īyyah*, this protective orientation can be connected to the principle of *maṣlahah*. A child has no control over whether the parents register their marriage. Therefore, the consequences of the parents' decision should not automatically be imposed upon the child. In this context, the protection of children's rights constitutes a form of public benefit that may legitimately be taken into consideration in the formulation and implementation of legal policy. The state is not concerned solely with maintaining administrative order in marriage registration; it must also ensure that its policies do not produce legal disadvantages for persons in vulnerable positions. Such a policy orientation is consistent with Khallaf's view that governmental policies within the domain of *siyāṣah shar'īyyah* should be directed toward realizing public benefit and preventing harm (*mafsadah*) (Khallaf, 1977; Khallaf, 2009).

The decision further strengthens the argument that marriage registration and the protection of children's rights are distinct but interconnected issues. Marriage registration is necessary to provide legal certainty regarding marital status, whereas child-protection mechanisms are necessary to ensure that children continue to enjoy their rights when their

parents' marital status gives rise to legal difficulties. Accordingly, non-compliance with marriage-registration procedures should not be interpreted as automatically resulting in the denial of children's rights. The literature on unregistered marriages likewise demonstrates that the absence of registration may affect the legal position and protection of children, making child protection an integral component of family-law policy (Alam, 2025).

In the context of *siri* polygamy, these implications become even more significant because children may be born from unregistered marriages. If the relationship between the child and the biological father cannot be established or does not have access to an adequate legal recognition mechanism, the child may encounter difficulties in securing protection of his or her legal rights. Therefore, strengthening the regulation of polygamy should be accompanied by effective mechanisms for protecting children born from marriages affected by registration problems. Regulation should thus not merely control the conduct of adults but also prevent children from becoming the parties who suffer the greatest consequences from administrative and legal problems surrounding marriage (Alam, 2025).

Nevertheless, Constitutional Court Decision No. 46/PUU-VIII/2010 cannot be used as a basis for concluding that *siri* polygamy is thereby legalized or automatically granted legal recognition. The decision focused on the civil relationship between a child and his or her biological father, rather than on the legalization of unregistered marriages. Therefore, using the decision directly to justify *siri* polygamy would constitute an inappropriate expansion of its legal meaning. Its relevance to the present study is instead protective and consequential: it demonstrates the importance of safeguarding children's rights when questions concerning the marital status of their parents arise (Ilahi et al., 2023).

This distinction is important within the framework of *sadd al-dharā'i'*. If the state requires marriage registration and judicial oversight of polygamy in order to prevent legal uncertainty, such policies should not stop at preventing unregistered marriages. The state must also provide effective mechanisms for children who have already been born from such marriages so that they do not suffer legal disadvantages because of their parents' marital status. In other words, preventive and protective functions must operate simultaneously. This principle is consistent with the concept of *siyāsah shar'īyyah*, which views governmental policy as an instrument for realizing public benefit and preventing harm in society (Khallaf, 1977).

From the perspective of *maṣlaḥah mursalah*, the Constitutional Court's decision also demonstrates the importance of recognizing children as legal subjects entitled to legal protection. The benefit to be realized is not limited to orderly marriage administration but also encompasses legal certainty concerning civil relationships and parental responsibilities toward children. Studies on the implications of Constitutional Court Decision No. 46/PUU-VIII/2010 indicate that the decision has significant consequences for the civil rights and obligations of children born from unregistered marriages, particularly concerning the relationship between children and their biological fathers once the biological relationship has been legally established (Ilahi et al., 2023).

Accordingly, the relevance of Constitutional Court Decision No. 46/PUU-VIII/2010 to this study can be formulated in three respects. First, the decision reinforces the principle that children should not be deprived of legal protection merely because there are legal problems concerning their parents' marital status. Second, it demonstrates the importance of

mechanisms for establishing biological relationships as an instrument for ensuring the father's legal responsibility toward the child. Third, it provides a perspective that marriage regulation must take into account the legal consequences for vulnerable parties, particularly children (Alam, 2025; Ilahi et al., 2023).

Thus, the Constitutional Court's decision should not be regarded as a basis for legitimizing *siri* polygamy, but rather as reinforcing the legal-protection rationale underlying the need for regulation. Within Abdul Wahhab Khallaf's framework of *siyāsah shar'īyyah*, the protection of children's rights may be regarded as part of the *maṣlahah* that *ulil amri* must take into consideration. Accordingly, polygamy regulations should ideally not merely restrict and supervise the practice of polygamy but also ensure that every child born from such a marital relationship receives adequate legal protection. Through this approach, the state's authority extends beyond administrative control and is directed toward realizing public benefit and preventing harm as the principal objectives of legal policy within *siyāsah shar'īyyah* (Khallaf, 1977; Khallaf, 2009).

4. Conclusion

The regulation of *siri* polygamy in Indonesia demonstrates a distinction between the permissibility of polygamy under Islamic law and the procedures governing its implementation under positive law. The state does not abolish the permissibility of polygamy; rather, it regulates its implementation through mandatory marriage registration and judicial authorization mechanisms to ensure legal certainty, administrative order, and the protection of the rights of wives and children. From the perspective of *siyāsah shar'īyyah* as developed by Abdul Wahhab Khallaf, such regulation may be regarded as an exercise of the authority of the *ulil amri* in managing public affairs, provided that it is grounded in *maṣlahah*, does not conflict with the fundamental principles of Islamic law, and is applied proportionately.

The concept of *maṣlahah mursalah* provides a basis for legitimizing such regulation because marriage registration and judicial oversight are directed toward tangible public interests, particularly legal certainty regarding marital status, the protection of the rights of women and children, and the maintenance of legal order. Meanwhile, *sadd al-dharā'i'* provides a preventive basis for addressing potential *mafsadah* that may arise from unregistered polygamous marriages, including difficulties in proving marital status, inadequate protection of legal rights, and the potential for legal disputes. Thus, the legitimacy of state regulation is conditional rather than absolute: the state has the authority to regulate the implementation of polygamy, but such authority cannot be used unilaterally to alter the fundamental legal status of polygamy under Islamic law.

Accordingly, the strengthening of regulations governing *siri* polygamy should be directed toward three principal functions: **preventive, protective, and corrective**. The preventive function is realized through marriage registration and judicial examination; the protective function through guarantees for the rights of wives and children; and the corrective function through legal mechanisms for parties who have experienced difficulties as a consequence of unregistered marriages. Constitutional Court Decision No. 46/PUU-VIII/2010 reinforces this protective orientation by affirming the importance of safeguarding children's civil rights on the basis of legally established biological relationships, without being interpreted as legitimizing *siri* polygamy itself. Therefore, regulations governing *siri*

polygamy that are oriented toward the realization of *maṣlahah* and the prevention of *mafsadah* may be regarded as consistent with Abdul Wahhab Khallaf's conception of *siyāsah shar‘iyyah*, while simultaneously strengthening legal protection for vulnerable parties.

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