

Judicial Control over the Practice of Polygamy: A Comparative Study of Religious Courts in Indonesia and Sharia Courts in Malaysia

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Received: 17 July 2026

Revised: 21 July 2026

Accepted: 30 July 2026

KEYWORDS

*Judicial Control,
Polygamy,
Courts in Indonesia, Sharia
Courts, Malaysia*

ABSTRACT

This study examines Islamic family law in Indonesia and Malaysia, focusing on polygamy licensing practices at the Temanggung Religious Court and Sharia Courts in several Malaysian states. Although both countries legally permit polygamy subject to requirements of justice and capacity, they apply different legal frameworks. Indonesia adopts monogamy as the general principle, with strictly regulated exceptions under Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law, while Malaysia regulates polygamy through the Islamic Family Law (Federal Territories) Act 1984 and state Islamic family law enactments. Using a qualitative case study approach, this research combines document analysis with semi-structured interviews involving three key informants: a Temanggung Religious Court judge, a *fiqh munakahat* lecturer at UniSHAM Kedah, and a *maahad tahfiz* administrator in Selangor. Data were analyzed through reduction, presentation, and inductive conclusion drawing. The findings show that Indonesian regulations emphasize legally recognized grounds, the first wife's consent, financial capacity, and the guarantee of equitable treatment. At the Temanggung Religious Court, approximately 60–70% of polygamy applications are rejected, mainly due to the absence of the first wife's consent and insufficient financial capacity. In Malaysia, greater emphasis is placed on measurable financial capacity (approximately RM 4,000 per month per family), emotional fairness, transparency, compliance with Sharia Court procedures, and official registration. Although the first wife's consent is strongly considered, it is not always an absolute requirement.

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Introduction

Va Pro Marriage is a fundamental institution in Islamic teachings and an integral part of

the national legal system, carrying religious, social, and juridical implications. From the normative perspective of Islam, marriage is understood as a valid contract (*‘aqd*) intended to establish a harmonious family (*sakinah*), preserve lineage (*hifz al-nasl*), and maintain social order (Sumarjoko, 2017). In addition to being an act of worship, marriage is also firmly regulated within the state legal framework, as affirmed by Law No. 1 of 1974, which defines marriage as a physical and spiritual bond between a man and a woman intended to establish a happy and everlasting family based on the belief in the One and Only God (Law No. 1 of 1974 on Marriage, 1974). Thus, marriage occupies a strategic position as a point of intersection between religious norms and state regulations.

One form of marriage that continues to generate debate in contemporary Islamic family law is polygamy. Although normatively permitted in Islam under certain conditions, the practice of polygamy in modern society often raises concerns regarding justice, the protection of women's rights, and legal certainty (Abidin & Aminuddin, 1999). Previous studies have shown that regulations on polygamy in Muslim-majority countries tend to adopt restrictive approaches through judicial authorization mechanisms. Nevertheless, a research gap remains concerning how differences in legal and institutional systems affect the concrete application of polygamy requirements, particularly in comparative contexts between Indonesia and Malaysia (Noor, 2019).

Examining the implementation of polygamy requirements is important because polygamous marriages without adequate legal oversight may potentially violate the rights of wives and children and contradict the principle of justice underlying Islamic family law (Rohman, 2020). In Indonesia, polygamy requires court authorization and the consent of the existing wife, as stipulated in Law No. 1 of 1974. Meanwhile, Malaysia regulates polygamy through the Islamic Family Law (Federal Territories) Act 1984 and Islamic family law enactments in individual states, which require rigorous examination by the Sharia Courts (Halim & Pratama, 2020). These differences demonstrate the importance of comparative research to assess the effectiveness of legal regulations in ensuring legal protection and substantive justice.

Several previous studies have examined various aspects of polygamy in Indonesia and Malaysia. Nik Muhammad Syawal Fitri, for example, examined polygamy procedures in Indonesia and Kelantan. Halim and Hikam examined sanctions for unregistered polygamous marriages, while Siti Nor Aishah et al. investigated the procedures and requirements for polygamy in both countries (Noor, 2019). Halim and Hikam Pratama (2020) explained that sanctions relating to polygamy in Indonesia are regulated under Law No. 1 of 1974 and its implementing regulation, Government Regulation No. 9 of 1975, particularly Article 45 (Halim

& Pratama, 2020). Furthermore, Siti Nor Aishah, Siti Zailia, and Armasito, in their study entitled "Procedures and Requirements for Polygamy in Indonesia and Malaysia," presented an in-depth normative-comparative analysis of the requirements for polygamy in both countries, focusing on the legal and social norms governing the practice (Aishah et al., 2022). In addition, Kahfi, in a thesis submitted to the Faculty of Sharia and Law at UIN Syarif Hidayatullah Jakarta entitled "An Islamic Law Perspective on the Procedures for Polygamy among Civil Servants," examined the procedures governing polygamy among civil servants based on Government Regulation No. 45 of 1990 (Kahfi, 2011).

While these previous studies have generally focused on various aspects of polygamy, the present study aims to comparatively analyze the implementation of polygamy requirements in Indonesia and Malaysia. The primary focus is placed on polygamy licensing practices and the legal implications of regulatory implementation for the protection of women's and children's rights. Employing a qualitative approach and comparative legal analysis, this study seeks to systematically identify the similarities and differences in the mechanisms governing the implementation of polygamy in the two countries.

Method

This study employs a field research approach, using qualitative data and a descriptive-comparative research design. Descriptive-comparative research is a method that aims to systematically, factually, and accurately describe a particular condition or phenomenon while comparing the variables under investigation to identify causal relationships as well as similarities and differences (Wahyuni & Nurhayati, 2018). Such comparisons are conducted between variables sharing similar objects, such as countries, regions, institutions, groups, or individuals, enabling researchers to gain a deeper understanding of the factors influencing the emergence of a particular phenomenon.

Data were collected through observation (site visits), interviews, and documentation (Sari, 2023). The data analysis process involved data reduction, namely summarizing the collected information and selecting the most relevant data. This was followed by data display, in which interview findings were organized and presented in a descriptive text after undergoing data analysis (Saifudin, 2016).

Results and Discussion

1. Polygamy Practices and Requirements in Indonesia

a. First Wife's Consent as a Central Requirement

Interviews with a judge of the Temanggung Religious Court indicate that the first wife's consent is the most decisive requirement in applications for polygamy authorization. If the first wife explicitly refuses to give her consent, the application is almost certain to be rejected, unless there are exceptionally strong legal grounds that can be objectively proven. Such consent is not regarded merely as a written formality but is also assessed through the wife's presence at the court hearing, the mediation process, and an examination to determine whether the consent has been given voluntarily and without coercion (Compilation of Islamic Law [KHI], Book I, Articles 3–5, 2001).

This approach is consistent with the KHI, which requires the wife's consent as well as justice and the husband's capacity as prerequisites for polygamy. In practice, judges regard the wife's consent as an instrument for protecting against potential injustice and marital conflict. Secret polygamy or polygamy conducted without notification is considered potentially detrimental to family harmony. Internal data from the Temanggung Religious Court indicate that approximately 70% of polygamy applications are rejected due to the absence of, or lack of clarity regarding, the first wife's consent (Amin, 2025).

b. Financial Capacity and Maintenance Assurance

The second aspect strongly emphasized by judges is the husband's financial capacity. Applicants are required to submit evidence of income, such as salary slips, business certificates, bank statements, or income statements issued by the village or subdistrict authorities, in order to assess whether they are financially capable of providing reasonable maintenance for more than one household. Although Indonesian regulations do not establish a specific minimum monetary threshold, judges assess financial capacity based on relative adequacy, particularly whether the basic needs of the wives and children—including food, housing, and education—can continue to be fulfilled after polygamy is permitted. Approximately 70% of rejected applications are associated with unclear sources of maintenance and the potential for unrealistic economic burdens if polygamy were to be authorized.

This approach is consistent with the husband's maintenance obligations under Indonesian Marriage Law and the *fiqh* principle that marriage, particularly polygamous marriage, requires both physical and financial capacity (*al-qudrah*). Polygamy without sufficient economic capacity is considered likely to result in injustice and harm.

c. Justice, the Wife's Health, and Substantive Grounds

Justice is positioned as both the moral and juridical foundation of polygamy. During court proceedings, judges do not merely examine the husband's ability to distribute financial support and time fairly but also assess how he plans to maintain emotional and psychological fairness among his wives. Many applicants fail to provide a concrete plan for achieving such fairness and are therefore considered morally unprepared to practice polygamy.

The substantive grounds recognized by Indonesian law for polygamy include the wife's inability to perform her marital obligations, her suffering from a physical disability or incurable illness, and her inability to bear children (Compilation of Islamic Law [KHI], Book I, Articles 3–5, 2001). However, judges emphasize that such grounds must be supported by medical documentation and other accountable evidence. Subjective claims or allegations unsupported by sufficient evidence are frequently rejected (Amin, 2025). Accordingly, claims concerning health and infertility are treated cautiously to ensure that they do not become justifications for disregarding the rights of the existing wife.

d. Regulation of Marital Property to Prevent Conflict

The management of marital property also emerges as an important issue. Judges pay attention to ensuring that assets acquired during the first marriage are not simply mixed with the interests of the second wife and her children, in accordance with statutory provisions distinguishing between marital property and separately acquired property.

In several cases, uncertainty regarding the status of marital property has triggered serious conflicts among the first wife, the second wife, and the children, particularly in cases of divorce or inheritance. Therefore, judges often encourage clear arrangements and, in some circumstances, written agreements concerning the separation of property before authorizing polygamy. This constitutes a concrete application of the principle of justice in the regulation of polygamous marriage.

2. Polygamy Practices and Requirements in Malaysia: Perspectives of Islamic Scholars and Academics

a. The Role of the Sharia Court and Variations in State Enactments

In Malaysia, polygamy is regulated within the framework of Islamic family law through the *Islamic Family Law (Federal Territories) Act 1984* for the Federal Territories and Islamic

family law enactments applicable in each state. Every application for polygamy must be submitted to the Sharia Court, which has the authority to assess whether substantive requirements, including justice, financial capacity, and the absence of harm to the wife and children, have been fulfilled (Ibrahim & Samsudin, 2018).

Enactments in several states, such as Selangor and Kelantan, emphasize the court's obligation to assess emotional fairness and the condition of the existing household, including by requiring the first wife to appear for an interview. At the same time, the federal structure results in technical variations in procedures among states, although the underlying principles remain broadly similar.

b. Wife's Consent and Family Consultation

According to Ustadz Muhammad Akmal and Dr. Rohani, the first wife's consent in Malaysia is not an absolute requirement for the validity of the marriage contract (*'aqd*) from a *fiqh* perspective. However, it is given significant administrative and ethical consideration by the Sharia Court. In states such as Selangor, the first wife is required to attend an interview session to express her views, emotional condition, and potential concerns regarding conflict if polygamy is permitted.

From a *fiqh* perspective, women may include an anti-polygamy clause in the marriage contract. When mutually agreed upon, such a clause may provide a strong legal basis for the wife to object to polygamy or pursue legal remedies if the husband violates the agreed condition. This provides a contractual protection mechanism that is not explicitly recognized in Indonesia's Marriage Law. The informants emphasized the importance of family consultation with the wife and extended family as both an ethical practice and a preventive measure against social conflict.

c. Measurable Standards of Financial Capacity

Unlike Indonesia, Malaysia tends to apply more measurable financial standards. The informants stated that, in practice, a minimum income of approximately RM 4,000 per month per household is often used as a reference by the Sharia Court and should be assessed in relation to the number of households that the husband will be responsible for supporting.

Evidence of financial capacity must include salary slips, proof of assets, bank statements, or other official financial documents. Applications from husbands whose income is

considered insufficient are generally rejected because of the risk that polygamy could push the family into financial hardship. Research and reports from relevant institutions indicate that failure to provide adequate maintenance is one of the major sources of marital breakdown in polygamous families.

d. Emotional Justice, Transparency, and Child Protection

Rohani emphasized that justice in the Malaysian context of polygamy is understood broadly to include financial maintenance, equitable allocation of time, emotional fairness, and the protection of the wife's dignity. The Sharia Court is expected to assess whether polygamy will bring *maslahah* or instead cause *mafsadah* to the family, including the potential risks of domestic violence and psychological distress.

Transparency among the parties is an important prerequisite. The husband is expected to disclose his financial circumstances, health condition, and existing responsibilities honestly. Concealment of debts or misrepresentation of his readiness may be regarded as an element of *gharar* that could undermine the validity of the marriage or become grounds for legal dispute. Furthermore, unregistered polygamous marriages may create legal complications concerning the status and rights of children, including birth registration, inheritance rights, and access to education.

3. Comparative Analysis of Polygamy Requirements in Indonesia and Malaysia

a. First Wife's Consent

Both countries place the first wife's opinion in an important position, but its legal weight differs significantly. In Indonesia, the wife's consent is an explicit requirement under the Marriage Law and the Compilation of Islamic Law (KHI); refusal almost automatically leads to the rejection of a polygamy application, except under highly exceptional circumstances. In Malaysia, the wife's consent carries strong moral and administrative weight, but the Sharia Court may still authorize polygamy if it determines that the application meets Islamic legal requirements and serves the public interest (*maslahah*), even when the wife objects, particularly where the marriage contract contains no clause prohibiting polygamy (Compilation of Islamic Law, n.d.).

From the perspective of women's protection, the Indonesian model provides a high level of formal protection but may be considered relatively rigid and potentially limit the scope for *ijtihad* in particular cases. The Malaysian model is more flexible and places the final decision in the hands of the Sharia judge. However, this flexibility requires judicial integrity, competence, and gender sensitivity to prevent the process from becoming a mechanism for legitimizing the unilateral interests of the husband.

b. Financial Capacity and Objective Standards

Indonesia requires financial capacity without establishing a fixed monetary threshold, allowing judges to consider local circumstances such as the cost of living, the number of dependents, and the applicant's occupation. The advantage of this approach is its flexibility in responding to diverse socioeconomic conditions. Its weakness, however, lies in the potential for differences in standards between courts and a greater degree of judicial subjectivity.

Malaysia tends toward more explicit minimum income thresholds, such as approximately RM 4,000 per household, and requires measurable financial documentation. This makes the assessment process more standardized and predictable. However, such standards may be relatively exclusive and could restrict lower-income groups from pursuing polygamy, even where compelling circumstances may exist, such as the protection of widows or orphans.

c. Substantive Justice and the Emotional Dimension

Textually, both countries base the permissibility of polygamy on the principle of justice as articulated in the Qur'an and *fiqh*. In practice, however, Indonesia places greater emphasis on material and administrative dimensions of justice, particularly financial maintenance and the allocation of time, while the emotional and psychological dimensions of the wife's well-being have not yet been fully integrated into formal judicial criteria.

Malaysia, through several state enactments, explicitly incorporates emotional justice and the potential for harm (*mudharat*) into judicial considerations. Judges are expected to assess whether polygamy could adversely affect the mental well-being of the wife and children. This approach is more closely aligned with the objectives of *maqāṣid al-sharī'ah*, particularly the protection of life (*hifz al-nafs*) and intellect (*hifz al-'aql*). Nevertheless, it requires a high level of analytical capacity and sensitivity on the part of judges.

d. Substantive Grounds: Health and Fertility

In Indonesia, the wife's health condition and infertility are explicitly recognized as grounds that may justify polygamy. In practice, however, these grounds are sometimes interpreted narrowly and may be vulnerable to misuse as formal justifications. Judges at the Temanggung Religious Court respond by requiring stronger evidence and rejecting claims that are unsupported by medical documentation or appear merely to rationalize the husband's desire to practice polygamy.

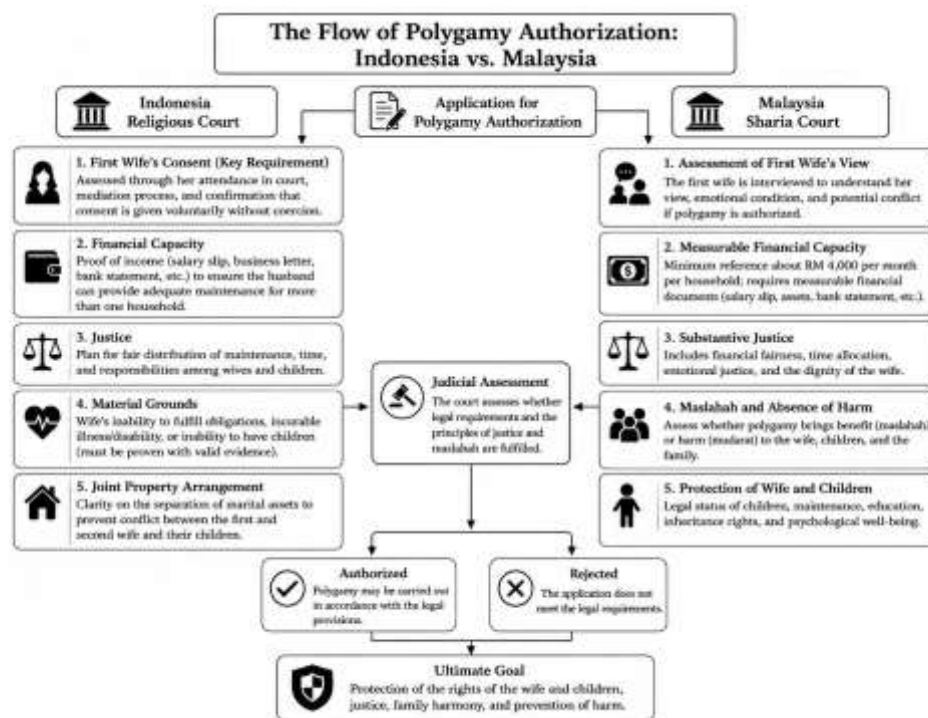
Malaysia tends to address health and fertility issues within a broader framework of family welfare. A wife's inability to bear children does not automatically justify polygamy; rather, the court considers its potential impact on the wife's dignity, household stability, and the availability of alternative solutions that would not cause harm. This approach is more ethically oriented but requires a longer and more intensive examination process.

e. Institutional Design and the Role of the State

Institutionally, Indonesia integrates polygamy regulation within a unified national legal system, with the Religious Courts serving as the principal judicial institution authorized to handle such applications. This provides greater normative uniformity but continues to face challenges concerning consistency in implementation across regions. Malaysia, by contrast, operates through 13 state-level Islamic family law enactments within a federal framework. This structure allows greater adaptation to local circumstances but also creates potential procedural and regulatory disparities among states.

In both models, the state plays an active role in regulating polygamy through judicial authorization requirements and sanctions for unregistered polygamous marriages. This reflects a broader transformation of polygamy from a predominantly private domestic practice into a matter of public law subject to formal and intensive state oversight.

The comparative findings show that both Indonesia and Malaysia place judicial control at the center of polygamy authorization, although their assessment mechanisms differ. Indonesia emphasizes the first wife's consent, financial capacity, and legally recognized grounds, while Malaysia gives greater weight to substantive justice, family welfare, *maslahah*, and the protection of wives and children. The overall process is summarized in Figure 1, which illustrates how judicial assessment determines whether polygamy is authorized or rejected in pursuit of justice and protection from harm.



Conclusion

In Indonesia, polygamy is regulated under Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law (KHI), which establishes monogamy as the general principle while permitting polygamy under specific circumstances. Its implementation requires authorization from the Religious Court and the fulfillment of substantive requirements, including the first wife's consent, legally recognized grounds, adequate financial capacity, and a guarantee of equitable treatment. The practice at the Temanggung Religious Court indicates that a substantial proportion of polygamy applications are rejected, particularly due to the absence or lack of clarity of the first wife's consent and the applicant's inability to demonstrate adequate financial capacity. Thus, judicial authorization functions not merely as an administrative procedure but as an important mechanism for screening and restricting polygamous marriages that may potentially harm wives and children. In Malaysia, polygamy is regulated through the Islamic Family Law (Federal Territories) Act 1984 and Islamic family law enactments applicable in each state. Authorization from the Sharia Court is required, with consideration given to *maslahah*, financial capacity, substantive justice, family welfare, and the protection of women's and children's rights. Unlike Indonesia, the first wife's consent is not necessarily an absolute requirement; rather, her views and circumstances constitute important considerations in the judicial assessment. The Malaysian model therefore provides greater discretion for Sharia judges to evaluate the broader consequences of polygamy within the family and social context.

Comparatively, Indonesia places greater emphasis on the formal protection of the first wife through strict judicial authorization and the requirement of her consent, whereas Malaysia adopts a more substantive and contextual approach by emphasizing financial capacity, emotional justice, family welfare, transparency, and the potential for *maslahah* or *mafsadah*. The institutional structures of the two countries also differ: Indonesia operates within a relatively unified national legal framework, while Malaysia applies state-level Islamic family law enactments within a federal system, resulting in certain procedural variations among states. Nevertheless, both models demonstrate a common legal orientation: polygamy is not an absolute right of the husband but a conditional legal possibility accompanied by significant moral, social, and juridical responsibilities. Accordingly, the requirements and judicial authorization mechanisms governing polygamy should be understood not merely as administrative formalities, but as instruments of legal protection designed to prevent harm, safeguard the rights and welfare of wives and children, and promote substantive justice within the family.

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