

Legal Models of Polygamy and Family Resilience: A Comparative Study

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Abstract

This study examines the regulation of polygamy within the transformation of contemporary Islamic family law from formal legality toward substantive family protection, focusing on its implications for gender equality, judicial accountability, and family resilience. The study addresses the gap in existing scholarship that tends to discuss legal permissibility, judicial practice, and socio-familial consequences separately without integrating them into a comparative socio-legal framework. Using doctrinal legal research with statutory, conceptual, and comparative approaches, this article analyzes the regulatory models of Indonesia, Tunisia, and Morocco by examining judicial authorization mechanisms, evidentiary standards, institutional safeguards, and the protection of wives and children. The novelty of this study lies in positioning family resilience as an evaluative socio-legal framework for assessing the effectiveness of polygamy regulation, thereby extending comparative Islamic family law discourse beyond debates on textual permissibility toward the broader issue of substantive justice and family protection. The findings demonstrate that Indonesia adopts a permission-based model whose protective function remains vulnerable when judicial review is limited to procedural verification; Tunisia applies a prohibitive model that prioritizes preventive legal certainty and monogamous family stability; while Morocco develops a restrictive permission model based on substantive judicial scrutiny, exceptional reasons, financial proof, transparency, and recognition of women's legal agency. The study concludes that the effectiveness of polygamy regulation depends not merely on the degree of legal restriction, but on the interaction between regulatory design, judicial quality, institutional enforcement, and socio-cultural legitimacy in protecting household stability, gender equality, and the welfare of wives and children.

Keywords: Court Permission; Family Protection; Family Resilience; Polygamy; Spousal Rights

1. INTRODUCTION

The transformation of Islamic family law has become an important part of contemporary debates on constitutionalism, gender equality, and human rights in Muslim-majority societies. Family law is no longer understood only as a domain of religious doctrine or private morality, but also as a field in which the state defines the legal status of family members, distributes rights and obligations, and determines the scope of protection for women and children. Within this broader transformation, polygamy remains one of the most contested issues because it brings together questions of religious legitimacy, statutory reform, judicial authority, and the constitutional commitment to equality and family protection.¹ The diversity of legal responses to polygamy demonstrates that Islamic family law is not static, but continues to develop through interaction between classical fiqh, modern legislation, constitutional values, and international human rights discourse.

¹ Janeko, "Studi Eksplorasi Hukum Poligami Di Berbagai Negara Muslim," *Ummul Qura Jurnal Institut Pesantren Sunan Drajat (INSUD) Lamongan* 10, no. 2 (2017): 51–64, <https://doi.org/10.55352/uq.v10i2.438>.

The problem becomes more complex when legal recognition of polygamy does not necessarily produce effective protection for family members. In countries that still accommodate polygamy through a permission-based system, the existence of formal legal requirements may not always prevent coercion, unequal treatment, economic neglect, or emotional instability within the household. Indonesia provides an important example of this tension. Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law formally requires court permission, the consent of the wife, financial capability, and the husband's commitment to act justly. Nevertheless, socio-legal practice shows that these requirements are not always implemented effectively. Studies on polygamy among civil servants in North Gorontalo, for instance, indicate that some husbands practiced polygamy without the first wife's consent, reflecting weak administrative enforcement and limited substantive supervision.² This condition reveals a gap between formal legal regulation and the practical protection of marital justice.

The Indonesian experience reflects a broader challenge in Muslim family law reform: the existence of legal regulation does not always guarantee substantive protection. In several jurisdictions, reforms in marriage law have attempted to reconcile religious norms with constitutional values, gender equality, and the protection of family members. However, the effectiveness of such reforms depends on the regulatory architecture adopted by each legal system. A permission-based model may formally recognize judicial supervision, but it may still produce weak protection if the court only verifies administrative requirements. A prohibitive model may offer stronger legal certainty, while a restrictive permission model may provide a middle path through strict judicial control. This variation shows that the central issue is not merely the legality of polygamy, but how legal design translates justice into enforceable protection for the family.

The debate on polygamy, therefore, cannot be reduced to the question of whether polygamy is permitted or prohibited in Islamic law. The more fundamental issue concerns the legal reasoning used to assess the legitimacy of polygamy in modern family law. A textual approach tends to emphasize the formal permissibility of polygamy based on classical legal sources, while a maqashid-based approach places justice, harm prevention, family welfare, and the protection of vulnerable parties at the center of legal consideration. The difference between these approaches is visible in the works of Wahbah Az-Zuhaili and Muhammad Syahrur, which represent two important tendencies in contemporary Islamic legal discourse: one emphasizes the normative legitimacy of the text, while the other requires substantive justice as the principal condition for the permissibility of polygamy.³ This theoretical tension is crucial because the legality of polygamy becomes problematic

² Edi Darmawijaya, "Poligami Dalam Hukum Islam Dan Hukum Positif (Tinjauan Hukum Keluarga Turki, Tunisia Dan Indonesia)," *Gender Equality: International Journal of Child and Gender Studies* 1, no. 1 (2015): 27–38, <https://doi.org/10.22373/equality.v1i1.621>.

³ Tahir Mahmood, *Personal Law In Islamic Countries* (New Delhi: Academy of Law and Religion, 1987).

when the legal system is unable to ensure fairness, prevent harm, and maintain family resilience.

Previous studies on polygamy in Muslim family law have generally developed in three main directions. The first group examines polygamy within the broader framework of Islamic family law reform, particularly in relation to gender equality, women's legal status, and the reinterpretation of classical fiqh in modern legal systems.⁴ This scholarship has contributed to explaining why several Muslim-majority countries have restructured their personal status laws, but it tends to discuss reform at a general normative level and has not sufficiently examined how specific regulatory models affect the resilience of families.⁵ The second group focuses on legal permissibility and judicial or administrative practice, including the requirements for court permission, the role of the wife's consent, and the discretion of judges in polygamy cases.⁶ These studies are useful for identifying the gap between statutory norms and legal implementation, yet they often remain confined to national legal practice and do not develop a comparative assessment of regulatory architecture.⁷ The third group discusses the social, psychological, and economic consequences of polygamy for family life. This literature shows that polygamy may affect emotional stability, economic distribution, and relations between spouses and children, but it often treats family outcomes separately from the legal structures that enable, restrict, or prohibit polygamy.

The limitation of these studies lies in the absence of an integrated framework that connects legal design with family resilience as a socio-legal outcome. Existing scholarship has widely discussed whether polygamy is textually permissible, how courts process polygamy applications, and how polygamy affects family relations. However, it has not sufficiently explained how different regulatory architectures shape the conditions under which family resilience may be protected or weakened.⁸ This study addresses that limitation by comparing Indonesia, Tunisia, and Morocco as three distinct legal models: a permission-based model, a prohibitive model, and a restrictive permission model. Through this comparison, the article examines not only the formal legality of polygamy but also the capacity of each legal design to produce substantive justice, legal certainty, spousal protection, and household stability.

The existing literature therefore, indicates that studies on polygamy have addressed reform discourse, court-based licensing, and family impacts, but these discussions remain fragmented. Scholarship on reform tends to emphasize gender-oriented legal change; studies on licensing tend to focus on procedural requirements and judicial practice; and socio-

⁴ Rihan Erwin Hidayat, 'Poligami Menurut Wahbah Az-Zuhaili Dan Muhammad Syahrur', *Jurnal Tana Mana* 1, no. 2 (2020): 102–10, <https://doi.org/10.33648/jtm.v1i2.107>.

⁵ Mahmood, *Personal Law In Islamic Countries*.

⁶ Darmawijaya, 'Poligami Dalam Hukum Islam Dan Hukum Positif (Tinjauan Hukum Keluarga Turki, Tunisia Dan Indonesia)'.

⁷ Janeko, 'Studi Eksplorasi Hukum Poligami Di Berbagai Negara Muslim'.

⁸ Abdur Rahman Adi Saputera and Nindi Lamunte, 'Indikator Terjadinya Pernikahan Dalam Masa Iddah Di Kecamatan Bolangitang Barat', *El-Usrah* 3, no. 1 (2020): 17–35, <https://doi.org/10.22373/ujhk.v3i1.7651>.

familial studies tend to explain household consequences without connecting them to the structure of legal regulation.⁹

This fragmentation leaves an analytical gap in explaining how different regulatory models shape the conditions under which family resilience may be protected or weakened. Comparative studies have shown that Tunisia, Morocco, and Indonesia adopt different approaches to polygamy, but the relationship between regulatory architecture, judicial oversight, substantive justice, and family stability still requires further evaluation.¹²

This study addresses that gap by comparing the regulation of polygamy permits in Indonesia, Tunisia, and Morocco and analyzing its implications for family resilience. These three countries are selected because they represent different models of legal policy within Muslim family law. Indonesia represents a permission-based model that formally accommodates polygamy under court supervision. Tunisia represents a prohibitive model that removes polygamy from the legal structure of marriage.¹³ Morocco represents a restrictive model that maintains limited recognition of polygamy while subjecting it to strict judicial scrutiny, objective justification, financial proof, and protection of wives' rights. Through this comparison, the study examines how each legal model constructs the boundaries of polygamy and how those boundaries relate to the protection of wives, children, and household stability.

Based on these considerations, this study aims to examine the regulation of polygamy permits in Indonesia, Tunisia, and Morocco and to analyze its implications for family resilience. More specifically, this study first analyzes the Indonesian legal system, which accommodates polygamy through a court-permission model based on statutory and Islamic family law requirements. Second, it examines the Tunisian legal model, which prohibits polygamy as a principle of family law and as a mechanism for protecting women and household stability. Third, it analyzes the Moroccan legal framework, which does not absolutely prohibit polygamy but subjects it to strict judicial control, objective justification, financial proof, and safeguards for wives and children. Fourth, it evaluates the implications of these three regulatory models for family resilience, particularly in relation to substantive justice, spousal protection, legal certainty, economic security, and household stability. Through these objectives, this article contributes to family law scholarship by showing that the regulation of polygamy should not be assessed merely from the standpoint of formal

⁹ Moh. Wafa Ali, *Hukum Perkawinan Di Indonesia Sebuah Kajian Dalam Hukum Islam Dan Hukum Materil*, in *Yayasan Asy-Syari'ah Modern Indonesia* (Tangerang Selatan: YASMI, 2018).

¹⁰ Hendra Yasin, Abdur Rahman Adi Saputera, and Salha Polapa, 'Tinjauan Hukum Terhadap Poligami Pegawai Negeri Sipil Tanpa Izin Istri Di Kecamatan Atinggola Kabupaten Gorontalo Utara', *Jurnal Tana Mana* 1, no. 2 (2020): 138–56, <https://doi.org/10.33648/jtm.v1i2.139>.

¹¹ Danu Aris Setiyanto, 'Resilience of Families of Different Religions in Indonesia between Social and Religious Problems', *Al-Hukama': The Indonesian Journal of Islamic Family Law* 12, no. 2 (December 2022): 47–73, <https://doi.org/10.15642/alhukama.2022.12.2.47-73>.

¹² Siti Hapsah Fahira, 'The Issue of Polygamy in Islamic Family Law: Between Tradition and Gender Justice on the International Stage', *Journal of Islamic Family Law* 1, no. 2 (July 2025): 63–72, <https://doi.org/10.59784/jifl.v1i2.8>.

¹³ Abdur Rahman Adi Saputera and Nindi Lamunte, 'Indikator Terjadinya Pernikahan Dalam Masa Iddah Di Kecamatan Bolangitang Barat', *El-Usrah* 3, no. 1 (2020): 17–35, <https://doi.org/10.22373/ujhk.v3i1.7651>.

legality, but also from its capacity to protect the family as a social and legal unit. The novelty of this article therefore lies in its effort to move the discussion of polygamy beyond the debate on legal permissibility and judicial procedure. It offers a comparative evaluation of polygamy regulation as a form of regulatory architecture and assesses its consequences for family resilience as a socio-legal outcome.¹⁴ In doing so, the study contributes to global Islamic family law scholarship by showing that the success of polygamy regulation should be measured not only by its conformity with religious or statutory requirements, but also by its capacity to protect equality, prevent harm, and maintain the stability of the family unit.

2. METHOD

This study uses a doctrinal legal research method with a comparative legal approach. The doctrinal orientation is chosen because the primary focus of this study is the analysis of legal norms, statutory provisions, and institutional mechanisms governing polygamy in Indonesia, Tunisia, and Morocco. This study does not employ socio-legal fieldwork, although socio-legal findings from previous studies are used as supporting materials to contextualize the practical implications of polygamy regulation for family resilience. Through this approach, the research examines how each legal system constructs the permissibility, restriction, or prohibition of polygamy within the framework of family law and the protection of wives and children.

Indonesia, Tunisia, and Morocco are selected as comparative units because they represent three different models of polygamy regulation in Muslim family law. Indonesia represents a permission-based model in which polygamy is legally accommodated through court authorization and statutory requirements. Tunisia represents a prohibitive model that removes polygamy from the legal structure of marriage and attaches sanctions to violations. Morocco represents a restrictive permission model that maintains limited legal recognition of polygamy while subjecting it to strict judicial scrutiny, exceptional reasons, financial proof, and safeguards for wives and children. The selection of these three jurisdictions enables this study to compare different regulatory architectures and to evaluate how each model relates to substantive justice and family resilience.

The units of analysis in this study consist of legal norms, judicial or administrative licensing mechanisms, and institutional safeguards related to polygamy. In Indonesia, the analysis focuses on Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975, and the Compilation of Islamic Law, particularly provisions governing court permission, the consent of the wife, financial capacity, and the husband's obligation to act justly. In Tunisia, the analysis focuses on the Personal Status Code, especially the provision prohibiting polygamy and imposing sanctions for violations. In Morocco, the analysis focuses on the *Mudawwanah al-Usrah* or Family Code, particularly provisions requiring exceptional reasons, judicial authorization, financial proof, protection of the first

¹⁴ Audrey Dwinandita, 'Islamic Child Parenting Practices and Muslim Family Resilience in Southeast Asia: A Systematic Literature Review', *Al-Athfal: Jurnal Pendidikan Anak* 10, no. 2 (December 2024): 83–105, <https://doi.org/10.14421/al-athfal.2024.102-01>.

wife's rights, and notification to the prospective second wife. Secondary legal materials, including scholarly articles, books, and policy-related literature, are used to support the interpretation of these legal instruments and to explain their relationship with family resilience.

The comparative analysis is conducted through functional and structural comparison. Functional comparison is used to examine how the three legal systems respond to the same legal problem, namely the regulation of polygamy and the protection of family members from potential injustice. Structural comparison is used to identify differences in regulatory design, including whether polygamy is prohibited, permitted under court supervision, or restricted through strict judicial control. The comparison is organized around several parameters: the legal status of polygamy, the requirements for permission or prohibition, the role of the court or administrative authority, the position and consent of the wife, the evidentiary standard for financial responsibility, the existence of transparency mechanisms, the availability of sanctions, and the extent to which the regulation protects wives and children.

The interpretation of legal materials is carried out systematically by reading each provision in relation to the broader structure of family law in each country. The analysis does not isolate individual articles but examines how legal requirements, institutional procedures, and protective safeguards operate as a regulatory framework. In this process, statutory interpretation is used to identify the normative meaning of each legal provision, while comparative interpretation is used to assess similarities and differences among the three jurisdictions. The evaluation is then directed toward whether the legal design merely provides formal legality or whether it also creates substantive protection for family members.

The analytical process is carried out in three stages. First, the relevant legal provisions in each country are identified and interpreted to determine the normative structure of polygamy regulation. Second, these provisions are compared to reveal differences in regulatory architecture, institutional oversight, and protective mechanisms. Third, the results of the comparison are evaluated using criteria of substantive justice and family resilience. Substantive justice is assessed through the extent to which the law prevents coercion, ensures equal treatment, protects the rights of wives and children, and requires concrete proof of responsibility from the husband. Family resilience is assessed through indicators of legal certainty, economic security, emotional stability, protection of children, and the capacity of the family to maintain its essential functions. This method allows the study to examine not only whether polygamy is legally permitted or prohibited, but also whether each regulatory model is capable of supporting marital justice and family protection.

3. RESULTS AND DISCUSSION

3.1 Regulation of Polygamy Permits in the Indonesian Legal System

Indonesian marriage law formally places monogamy as the basic principle of marriage, while polygamy is positioned as a limited exception that may only be exercised

under judicial permission. This structure shows that the Indonesian legal system does not recognize polygamy as an unrestricted marital right, but as a legally controlled practice that must pass through institutional scrutiny. Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975, and the Compilation of Islamic Law establish several requirements for polygamy, including the existence of legally recognized reasons, the consent of the wife, the husband's financial capacity, and the assurance that he will act justly toward his wives and children. In normative terms, these requirements indicate an effort to balance religious accommodation, marital order, and protection of family members.¹⁵

However, the main issue in the Indonesian model lies not in the absence of regulation, but in the gap between the formal design of the law and its implementation in practice. The requirements for wife's consent, economic capability, and justice are formulated as safeguards, yet their application may remain procedural when the court focuses primarily on the completeness of documents rather than on the substantive condition of the family. Wife's consent, for example, may be treated as an administrative requirement, whereas its validity should also be examined through the lens of voluntariness, absence of pressure, and the wife's actual understanding of the legal consequences of polygamy. Similarly, the husband's promise to act justly is difficult to measure if the judicial assessment does not include a deeper inquiry into economic distribution, emotional responsibility, and the potential impact on children.

This formalistic tendency reveals the weakness of judicial oversight in the Indonesian polygamy licensing framework. Court permission is intended to function as a preventive mechanism against arbitrary polygamy, but it may lose its protective meaning when judicial examination does not move beyond verification of statutory requirements. The law provides a normative filter, yet the effectiveness of that filter depends on whether judges actively assess substantive justice and family welfare. In this context, the Indonesian model still shows vulnerability because legal permission can be granted without a sufficiently rigorous assessment of whether the proposed polygamous marriage will preserve household stability or instead create new risks of conflict, economic neglect, and unequal treatment.

The distinction between law in books and law in action is therefore central to understanding polygamy regulation in Indonesia. On paper, Indonesian law restricts polygamy through court authorization and cumulative requirements. In practice, various studies show that polygamy may still occur without proper permission, without the effective consent of the first wife, or through unregistered marriage arrangements that place women and children in a legally vulnerable position.¹⁶ This condition indicates that the Indonesian regulatory model has not fully transformed court permission into a substantive mechanism of family protection. The challenge is not merely to maintain the requirement of judicial

¹⁵ Sayuti Thalib, *Hukum Kekeluargaan Indonesia: Berlaku Bagi Umat Islam* (Jakarta: UI Pers, 1986).

¹⁶ Beni Ahmad Saebani and Samsul Falah, *Hukum Perdata Islam Di Indonesia* (Bandung: CV Pustaka Setia, 2011).

permission, but to ensure that such permission operates as a rights-based assessment capable of protecting wives, children, and family resilience.

The relevant provisions in Law Number 1 of 1974 and the Compilation of Islamic Law may therefore be understood not merely as procedural rules, but as instruments that should guide the court in evaluating substantive justice. Article 3 affirms monogamy as the general principle, while Articles 4 and 5 regulate the exceptional conditions under which polygamy may be requested. These provisions require the court to examine the legal reasons for polygamy, the wife's consent, the husband's financial ability, and his capacity to act fairly. Nevertheless, these requirements only contribute to family protection when they are interpreted substantively rather than administratively.

The central issue in the Indonesian polygamy licensing framework is not the absence of legal regulation, but the limited institutional effectiveness of that regulation in ensuring substantive protection. Indonesian law formally constructs polygamy as an exception to monogamy and subjects it to court permission, the wife's consent, financial capacity, and the husband's commitment to justice. However, the existence of these requirements does not automatically guarantee that the licensing process protects women and children in practice. The effectiveness of the system depends on how far the court is willing to examine the social, economic, and psychological consequences of polygamy, rather than merely verifying whether the required documents have been submitted.

This condition reveals a contradiction between procedural legality and substantive justice. Procedural legality is fulfilled when the husband submits an application, provides the required documents, presents the wife's consent, and demonstrates financial capability before the court. Substantive justice, however, requires a deeper inquiry into whether the wife's consent is genuinely voluntary, whether the husband's economic capacity is sufficient to prevent neglect, whether children's welfare will remain protected, and whether the proposed polygamous marriage may create emotional instability or unequal power relations within the household. When the court treats these requirements as administrative elements, the licensing mechanism risks legitimizing polygamy without adequately protecting the family members affected by it.¹⁷

Judicial discretion therefore occupies a decisive position in the Indonesian model. The Religious Court has the authority to assess whether the legal reasons for polygamy are acceptable and whether the husband fulfills the cumulative requirements prescribed by law.¹⁸ Nevertheless, discretion may become problematic when it is exercised without clear evaluative standards for measuring justice, consent, and family welfare. The husband's promise to act fairly, for instance, is difficult to verify if the court does not require concrete evidence concerning income stability, division of household responsibilities, emotional

¹⁷ Wahyudi Sahri, 'Implikasi Hukum Poligami Tanpa Persetujuan Istri Pertama (Studi Kasus Di Pengadilan Agama Kelas I A Kota Makassar Dan Kepolisian Resort Kota Besar Makassar)' (Universitas Islam Negeri Alauddin Makassar, 2023).

¹⁸ Ariyall Hikam Pratama, 'Sanksi Poligami Tanpa Izin Dari Pengadilan Agama Di Indonesia Dan Mahkamah Syariah Selangor (Malaysia)' (UIN Syarif Hidayatullah, 2019).

consequences for the first wife, and the potential impact on children. In this context, judicial discretion may either function as a safeguard for women's rights or, conversely, as a procedural channel that permits polygamy despite weak substantive justification.

This problem also reflects a broader issue in Islamic judicial reform. Contemporary debates on Muslim family law increasingly emphasize that courts should not merely apply classical permissibility or statutory requirements, but should also act as institutions that translate justice, equality, and harm prevention into concrete legal outcomes. In this regard, Indonesia's polygamy licensing framework needs to be read within a broader comparative landscape in which Muslim-majority jurisdictions seek to reconcile religious norms with gender justice and family protection.¹⁹ The challenge is not simply whether polygamy can be legally permitted, but whether judicial institutions are capable of preventing the licensing process from becoming a formalistic mechanism that weakens women's substantive rights.

Accordingly, the Indonesian model demonstrates the vulnerability of a permission-based system when it is not supported by rigorous judicial oversight. The law already provides a normative framework to restrict polygamy, yet this framework remains insufficient when courts do not critically examine the actual conditions of the family. The gap between law in books and law in action appears in the possibility that the wife's consent may be obtained under pressure, economic capacity may be assessed superficially, and the requirement of justice may be reduced to a verbal commitment. This gap shows that the main problem in Indonesia is not merely regulatory incompleteness, but weak implementation and the limited transformation of formal requirements into substantive protection.

3.2 Tunisia: Prohibition of Polygamy as a Principle of Family Law

Tunisia represents a prohibitive model in the regulation of polygamy. Since the enactment of the Personal Status Code in 1956, polygamy has been expressly prohibited and treated not as a matter of judicial permission, but as a violation of family law. Article 18 of the Personal Status Code provides that a man who enters into another marriage while still being legally married may be subject to criminal sanction. The prohibition applies not only to formally registered marriages, but also to unregistered marital arrangements. This legal design shows that Tunisia removes polygamy from the scope of permissible marital practice and places monogamy as the mandatory legal structure of family relations.²⁰

The prohibition of polygamy in Tunisia should not be understood merely as the implementation of monogamy as a marital principle. It also reflects a broader project of political modernization and state-led reform of Islamic family law after independence. Through the Personal Status Code, the Tunisian state attempted to reorganize family relations by transforming religiously influenced norms into codified statutory law. This

¹⁹ Fahrysyah Aulya et al., 'Analisis Pemberian Ijin Poligami Dalam Perkawinan Berdasarkan Hukum Islam Dan Undang-Undang Nomor 16 Tahun 2019', *Jurnal Penelitian Dan Pengabdian Masyarakat Indonesia* 3, no. 2 (2024): 1301–7.

²⁰ Mamnuniyatillah and Lilik Andaryuni, 'Hukum Keluarga Di Tunisia : Sebuah Studi Kepustakaan', *Jurnal Tana Mana* 3, no. 2 (2022): 46–48, <https://doi.org/10.33648/jtm.v3i2.321>.

process shifted the authority to define marriage from dispersed juristic interpretation toward centralized legal regulation by the state. In this context, the prohibition of polygamy became part of a broader effort to construct a modern family law system that linked marital stability, women's legal status, and the state's responsibility to regulate private relations in the name of public order and social reform.

Article 18 of the *CPS* explicitly states that polygamy is prohibited. A man who remarries while still married to his lawful wife without having divorced her will be subject to a maximum penalty of one year in prison and/or a fine of 240,000 millimes. The prohibition covers both officially registered marriages and those conducted without registration (*zawaj 'urfi*). Thus, even if a man marries a second wife without state registration, the practice is still categorized as a form of polygamy prohibited by law.

According to John L. Esposito, the Tunisian government relied on two main foundations in establishing the polygamy prohibition. First, that polygamy, similar to slavery, is a social institution no longer accepted by the majority of the world community. Second, the *Qur'an* ideally encourages monogamy as the primary form of marriage. This perspective aligns with the *tafsir* (exegesis) of Muhammad Abduh, who stated that although *Surah an-Nisa Verse 3* permits polygamy, *Verse 129* of the same *surah* emphasizes human inability to act justly among multiple wives. Therefore, the *Qur'an* implicitly directs its followers to adopt monogamy as the fundamental principle in marriage.²¹

The Tunisian model also illustrates the relationship between state feminism, codification of family law, and legal centralization. State feminism in this context does not simply mean the adoption of women-friendly legal norms, but refers to the state's active role in redefining family law to improve women's legal position within marriage. By codifying the prohibition of polygamy in the Personal Status Code, Tunisia placed family relations under a unified statutory framework and reduced the possibility of competing interpretations that might preserve unequal marital arrangements. The prohibition therefore operates not only as a substantive rule against polygamy but also as an institutional statement that the state has the authority to reinterpret Islamic family law in accordance with legal certainty, gender equality, and social modernization.

The legal reasoning behind this prohibition is closely related to the state's policy choice to prevent unequal marital relations and protect the stability of the household. Tunisia does not adopt a model that requires the court to examine whether a husband is capable of acting justly among several wives. Instead, the law assumes that the risk of injustice, emotional conflict, and economic fragmentation arising from polygamy is sufficiently serious to justify a preventive prohibition. In this sense, the Tunisian model differs from systems that depend on judicial discretion or administrative verification. The law seeks to avoid the possibility that formal permission may legitimize a marital structure that is difficult to reconcile with equality, certainty, and the protection of vulnerable family members.

²¹ John L. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 1982).

This prohibitive model has important implications for family resilience. By eliminating legal access to polygamy, Tunisian family law attempts to preserve household stability through a clear and predictable marital framework. The prohibition strengthens legal certainty for wives and children because the husband cannot create a second marital relationship that may divide economic resources, weaken emotional cohesion, or create competing household obligations. From the perspective of family resilience, this model supports several important indicators, including spousal protection, economic security, emotional stability, and child welfare. The family is protected not only through post-dispute remedies, but also through a preventive rule that reduces the possibility of structural inequality within marriage.

The sanction attached to the prohibition also reflects an important policy outcome. Criminalization is not merely punitive, but functions as a deterrent against attempts to bypass the legal order through informal or unregistered marriage. This is significant because unregistered polygamy often places women and children in a vulnerable position due to the absence of legal recognition, inheritance protection, maintenance rights, and clear civil status. By extending the prohibition to both registered and unregistered arrangements, Tunisian law seeks to close the gap between formal legal regulation and social practice. The model therefore emphasizes that family protection cannot depend solely on administrative legality, but must also ensure that the legal system prevents practices capable of weakening the family structure.

Compared with permission-based models, the Tunisian approach prioritizes preventive protection over case-by-case assessment. Its strength lies in the clarity of the norm and the absence of discretionary space for husbands to seek legalization of polygamy through procedural compliance. This does not mean that the Tunisian model is free from debate, particularly in relation to different interpretations of Islamic legal doctrine. However, from the standpoint of legal policy and family resilience, the prohibition reflects a firm orientation toward the protection of marital stability, equality between spouses, and the welfare of children. The regulation therefore demonstrates how a legal system may use prohibition as an instrument to transform family law from a framework of marital permission into a framework of family protection.²²

However, the relationship between the prohibition of polygamy and family resilience should not be understood in a mechanical or automatic sense. A prohibitive legal model does not by itself guarantee that all families will become stable or free from conflict. Rather, the significance of the Tunisian model lies in its capacity to create legal conditions that are more favorable to family resilience. By preventing the formation of multiple marital households, the law reduces the risk of divided economic obligations, competing emotional attachments, unequal spousal status, and uncertainty regarding the rights of children. These conditions

²² Zainuddin, Yadi Harahap, and Ramadhan Syahmedi, 'Konsekuensi Hukum Poligami Di Indonesia Dan Tunisia: Perspektif Teori Kepastian Hukum Dan Masalah Mursalah', *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam* 10, no. 2 (2022): 373–92, <https://doi.org/10.30868/am.v10i01.2770>.

support important indicators of family resilience, particularly legal certainty, economic security, spousal equality, and household cohesion. Therefore, the Tunisian model is better understood as a preventive legal framework that seeks to minimize structural risks to family stability, rather than as a guarantee of family resilience in every social context.

3.3 Morocco: Strictly Regulated Polygamy with an Orientation towards Justice

Morocco represents a restrictive permission system in the regulation of polygamy. Unlike Tunisia, which prohibits polygamy entirely, Morocco does not remove polygamy from the legal framework of marriage. However, the Moroccan Family Code places polygamy under strict judicial control and makes its practice exceptional rather than ordinary. The reform of the *Mudawwanah al-Usrah* in 2004 marked an important shift in Moroccan family law because it moved the regulation of marriage from a classical fiqh-based model toward a statutory framework that gives greater attention to gender equality, judicial supervision, and the protection of family members.²³

The Moroccan Family Code represents a hybrid model of legal reform in Muslim family law. It does not completely abandon the Maliki fiqh tradition, but it reconstructs that tradition through statutory codification, judicial supervision, and modern principles of justice within family relations. The reform of the *Mudawwanah al-Usrah* therefore should not be understood merely as a technical amendment to marriage procedure. It reflects an institutional attempt to reconcile Islamic legal authority with contemporary constitutional commitments to equality, dignity, and the protection of women and children. In this sense, Morocco occupies a distinctive position between classical permissibility and modern legal restriction: polygamy remains legally recognized, but its implementation is conditioned by a rights-based and court-centered framework.

The main characteristic of the Moroccan model is that polygamy is legally possible but institutionally difficult. Article 40 of the Moroccan Family Code provides that polygamy is not permitted when there is a fear of injustice among wives or when the wife has stipulated a prohibition of polygamy in the marriage contract. This provision shows that the wife is not placed merely as an object of the husband's marital decision, but as a legal subject whose prior contractual position can prevent polygamy. The requirement also reflects a shift from formal permission to substantive control because the court must consider whether the proposed polygamy creates a real risk of unequal treatment.²⁴

The restrictive nature of this model is further strengthened by the requirement that the husband must present objective and exceptional reasons before the court. In addition, he must prove sufficient financial capacity to maintain more than one household, including maintenance, housing, and other family obligations. These requirements indicate that Moroccan law does not treat the husband's desire to remarry as a sufficient legal ground.

²³ Nofriandi, 'Poligami Dalam Hukum Keluarga Di Dunia Islam (Studi Komparatif Undang-Undang Perkawinan Indonesia Dan Maroko)' (Universitas Islam Negeri Syarif Hidayatullah, 2020).

²⁴ Mohammad Atho' Muzdhar, *Hukum Keluarga Di Dunia Modern Studi Perbandingan Dan Keberlanjutan UU Modern Dari Kitab-Kitab Fikih* (Tangerang Selatan: Ciputat Press, 2003).

The court is required to examine whether the request is supported by a serious justification and whether the proposed marriage can be carried out without harming the rights of existing family members. In this sense, judicial control functions not only as a formal authorization but also as a substantive assessment of responsibility, fairness, and family protection.

Judicial authorization in the Moroccan model functions as a substantive legal filter rather than a mere administrative procedure. The court is not only required to verify whether the husband has submitted the necessary documents, but also to assess whether the proposed polygamy is supported by objective and exceptional reasons, whether financial capacity is sufficient to prevent economic neglect, and whether the rights of the existing wife and children will remain protected. This distinguishes the Moroccan system from a purely formal permission model. The judicial process is designed to test the substance of fairness before polygamy is allowed, thereby transforming the court from a licensing institution into a guardian of marital justice.

This model differs from the Indonesian permission-based system. In Indonesia, polygamy is also subject to court permission, wife's consent, financial capacity, and the husband's commitment to act justly. However, the Indonesian model remains vulnerable when these requirements are assessed primarily through administrative completeness. Morocco provides a more restrictive approach because it combines judicial permission with exceptional reasons, contractual protection for the wife, financial verification, direct judicial examination, and sanctions for manipulation of information. The comparison shows that the effectiveness of a court-permission model depends not only on the existence of legal requirements, but also on how deeply the court examines the substantive impact of polygamy on wives, children, and household stability.

The Moroccan system also offers an important mechanism for protecting the first wife and the prospective second wife. The first wife must be involved in the judicial process, while the prospective second wife must be informed of the husband's existing marital status before the marriage can proceed. This requirement strengthens transparency and prevents polygamy from being carried out through concealment or unequal information. The law also provides consequences when the husband manipulates information or submits false documents. These safeguards show that Moroccan law attempts to close the gap between formal legality and actual protection by ensuring that all parties affected by polygamy are legally recognized and procedurally heard.

The wife's right to stipulate a prohibition of polygamy in the marriage contract is also significant from the perspective of women's bargaining power. This clause does not merely provide an additional procedural requirement, but strengthens the wife's legal agency within marriage. In a family law system where the husband traditionally holds greater authority in marital decision-making, the contractual prohibition of polygamy gives the wife a legal instrument to shape the terms of the marital relationship from the beginning. This mechanism reflects a gender-sensitive reform because it recognizes that protection cannot

depend only on judicial discretion after a dispute occurs, but must also be embedded in the structure of the marriage contract itself.

From the perspective of family resilience, the Moroccan model contributes through a controlled and preventive legal structure. Its restrictive permission system seeks to reduce the risk of emotional conflict, economic neglect, and uncertainty regarding the rights of wives and children. The requirement of objective justification, financial proof, and judicial examination supports indicators of family resilience, particularly legal certainty, spousal protection, economic security, and relational stability. Rather than relying merely on the husband's declaration of fairness, Moroccan law requires institutional verification before polygamy can be authorized.

The Moroccan model therefore illustrates how gender-sensitive reform can be institutionalized within Muslim family law without completely removing polygamy from the legal system. Its restrictive design shows that the protection of women and children can be strengthened through a combination of codification, judicial control, contractual agency, financial verification, and sanctions against procedural manipulation. The importance of this model lies not only in the complexity of its regulation, but in the way it transforms polygamy from a matter of unilateral marital choice into a legally supervised decision subject to substantive justice. From the perspective of family resilience, this framework contributes to legal certainty, spousal protection, economic accountability, and relational transparency.

The Moroccan approach therefore occupies a middle position between Tunisia's prohibitive model and Indonesia's permission-based model. It does not prohibit polygamy absolutely, but it narrows the legal space for polygamy through substantive judicial control. Its relevance for Indonesia lies in the way it transforms court permission from a procedural requirement into a rights-based assessment. This comparison indicates that a polygamy licensing system will be more protective when judicial oversight is directed not only toward the fulfillment of statutory documents, but also toward the concrete evaluation of justice, transparency, and the resilience of the family unit. Accordingly, the Moroccan system provides an example of institutionalized gender-sensitive reform in contemporary Muslim family law. It does not adopt Tunisia's total prohibition, but it narrows the legal space for polygamy through substantive judicial authorization and stronger recognition of women's legal position. This model is relevant for Indonesia because it shows that court permission should not function merely as a procedural requirement, but as a substantive mechanism for examining justice, protecting women's bargaining power, and preserving family resilience.

3.4 Implications for Family Resilience

Family resilience in the context of polygamy regulation should be understood as a multidimensional socio-legal concept. It does not refer merely to the absence of divorce or household conflict, but to the capacity of the family to maintain emotional stability, economic security, balanced gender relations, legal certainty, and protection for vulnerable members. In this sense, the relationship between polygamy regulation and family resilience cannot be explained through a simple assumption that stricter regulation automatically

produces stronger families. The effectiveness of a regulatory model depends on the interaction between legal restrictions, institutional enforcement, judicial quality, and cultural legitimacy within society.

A multidimensional approach is important because each model of polygamy regulation produces different forms of protection and different types of vulnerability. Emotional stability is affected by whether the legal system prevents coercion, concealment, and unequal marital expectations. Economic security depends on whether the husband's financial capacity is examined substantively and whether wives and children receive enforceable guarantees of maintenance. Gender relations are shaped by whether the law recognizes the wife as a legal subject with agency, consent, and bargaining power, rather than merely as a party affected by the husband's decision.²⁵ Legal certainty is determined by whether the status of marriage, children, maintenance, inheritance, and civil rights is clearly protected. These dimensions show that family resilience is not produced by legal restriction alone, but by the quality of protection embedded in the legal framework.

The comparison of Indonesia, Tunisia, and Morocco therefore needs to be read through the relationship between regulatory design and institutional capacity. Indonesia formally restricts polygamy through court permission, but its contribution to family resilience depends on whether judicial oversight can transform procedural requirements into substantive protection. Tunisia prohibits polygamy and thereby creates strong legal certainty, yet the resilience effect of this model depends on the state's ability to enforce the prohibition and maintain its legitimacy within society. Morocco adopts a restrictive permission model that combines religious continuity with modern judicial control, but its effectiveness also depends on how consistently courts assess exceptional reasons, financial capacity, and women's legal position. These differences indicate that the effectiveness of polygamy regulation is determined not only by the level of legal restriction, but also by the quality of institutional enforcement and the extent to which the legal model is socially legitimate.

In Indonesia, the permission-based model formally seeks to protect family members by requiring court approval, the consent of the wife, financial capacity, and the husband's commitment to act justly. Normatively, this structure indicates that polygamy is not treated as an unrestricted right, but as an exception subject to legal control. However, its implication for family resilience remains ambivalent because the protective function of the law depends heavily on the quality of judicial assessment. When the court examines only the completeness of documents, the mechanism may become procedural rather than substantive. Wife's consent may be reduced to a formal requirement, financial capacity may be assessed only through surface-level evidence, and the husband's promise of fairness may not be tested against the actual emotional, economic, and social consequences for the existing family.

²⁵ Muhammad Amin Suma, *Himpunan Undang-Undang Perdata Islam Dan Peraturan Pelaksanaan Lainnya Di Negara Hukum Indonesia* (Jakarta: Rajawali Pers, 2008).

This gap weakens the relationship between polygamy regulation and family resilience in Indonesia. The family may formally remain protected by the existence of court permission, but substantively remain vulnerable to coercion, unequal distribution of resources, conflict between spouses, and uncertainty for children. The Indonesian model therefore shows that legal permission does not necessarily produce family protection unless it is accompanied by rigorous judicial oversight and a rights-based evaluation. Family resilience requires more than the fulfillment of statutory requirements; it requires a legal process capable of identifying whether polygamy will undermine or preserve the stability of the family unit.

Tunisia presents a different model by prohibiting polygamy entirely under the Personal Status Code. The implication of this model for family resilience lies in its preventive character. By removing polygamy from the legal framework of marriage, Tunisian law creates a clear and predictable marital structure based on monogamy. This approach strengthens legal certainty for wives and children because the husband cannot create a second marital bond that may divide economic resources, weaken emotional cohesion, or produce competing obligations within different households. In this sense, the Tunisian model treats family resilience as something that must be protected before conflict occurs, rather than restored after harm has already emerged.

The prohibition of polygamy in Tunisia also reflects a policy choice that prioritizes household stability and equality within marriage. Its strength lies in the clarity of the norm and the limited space for legal manipulation through unregistered or informal marriages. From the perspective of family resilience, the model supports the protection of the family through preventive certainty, emotional security, and the reduction of structural inequality between spouses. However, its relevance in comparative analysis does not lie merely in the fact that Tunisia prohibits polygamy, but in the way the prohibition functions as a legal instrument to prevent family fragmentation and protect vulnerable family members from the consequences of unequal marital arrangements.

Morocco occupies a middle position between Indonesia and Tunisia. It does not prohibit polygamy absolutely, yet it restricts the practice through a strict permission system based on exceptional reasons, judicial control, financial proof, transparency, and the protection of wives and children. The implication for family resilience is stronger than a purely administrative model because the court is not only asked to authorize polygamy, but also to assess whether the proposed marriage is compatible with justice and family protection. The involvement of the first wife, the requirement to inform the prospective second wife, and the possibility of consequences for manipulation of information indicate that Moroccan law seeks to prevent polygamy from being carried out through concealment, pressure, or unequal access to information.

The Moroccan model demonstrates that family resilience can be supported through substantive judicial supervision. Its restrictive design strengthens legal certainty, spousal agency, economic accountability, and relational transparency. The requirement of objective

and exceptional reasons prevents polygamy from being justified solely by personal desire, while financial verification reduces the risk that polygamy will create economic neglect. This model shows that when polygamy remains legally accommodated, the law must provide a stronger institutional filter to ensure that marital expansion does not damage the existing family structure.

The comparison of the three countries indicates that the strongest contribution of polygamy regulation to family resilience appears when the law moves beyond formal legality toward substantive justice. Indonesia provides a formal permission model, but its effectiveness depends on whether judicial oversight is capable of preventing coercion and inequality. Tunisia provides a prohibitive model that protects resilience through legal certainty and prevention. Morocco provides a restrictive permission model that protects resilience through strict judicial control and substantive safeguards. These differences show that the existence of marriage law does not merely influence family resilience, but by the quality of the legal design used to protect wives, children, and household stability.

Accordingly, the central implication for Indonesia is the need to strengthen the substance of its polygamy licensing framework. Court permission should not operate only as an administrative gateway, but as a substantive examination of family welfare. Judges need clearer evaluative standards to assess the voluntariness of the wife's consent, the husband's real economic capacity, the potential impact on children, and the likelihood of emotional or relational harm. The Indonesian model may learn from Tunisia's preventive orientation and Morocco's restrictive judicial control without necessarily adopting either model entirely. The main lesson is that polygamy regulation must be directed toward the protection of family resilience, where legal certainty, substantive justice, and household stability become the core criteria for evaluating whether a legal system truly protects the family.

Table 1. Comparative Models of Polygamy Regulation and Their Implications for Family Resilience

| Country | Regulatory Model | Main Legal Orientation | Implication for Family Resilience |
|-----------|------------------------------|--|---|
| Indonesia | Permission-based model | Formal court approval and statutory requirements | Normatively protective, but vulnerable when judicial assessment remains administrative |
| Tunisia | Prohibitive model | Prevention and legal certainty | Preventive protection through monogamy, legal clarity, and reduced risk of family fragmentation |
| Morocco | Restrictive permission model | Substantive judicial control | Substantive safeguards through exceptional reasons, financial proof, transparency, and spousal protection |

Source: Data processed by the authors, 2026.

Table 1 demonstrates that the implications of polygamy regulation for family resilience are determined not merely by whether polygamy is legally permitted or prohibited, but by the extent to which each legal system institutionalizes substantive safeguards, judicial accountability, and protection-oriented family governance. Indonesia adopts a permission-based model that formally requires judicial authorization, wife's consent, financial capability, and the husband's commitment to fairness; however, the effectiveness of this framework remains vulnerable when judicial assessment is limited to procedural verification rather than substantive evaluation of family welfare. Consequently, formal legality may still legitimize unequal marital relations, emotional instability, and economic vulnerability within the household. In contrast, Tunisia employs a prohibitive model that prioritizes preventive legal certainty by eliminating polygamy from the structure of lawful marriage, thereby reducing the risks of divided household obligations, emotional conflict, and structural inequality between spouses. This model strengthens family resilience through a stable monogamous framework and clearer protection of women's and children's rights. Meanwhile, Morocco represents a restrictive permission model in which judicial authorization functions as a substantive legal filter requiring exceptional reasons, financial proof, transparency, and recognition of women's legal agency before polygamy can be approved. Compared with Indonesia, the Moroccan system demonstrates a stronger integration between judicial oversight and substantive justice because courts are required to evaluate the potential socio-economic and relational consequences of polygamy on the existing family structure. Overall, the comparison confirms that family resilience is more likely to be strengthened when legal regulation moves beyond administrative legality toward enforceable safeguards grounded in substantive justice, gender-sensitive protection, institutional transparency, and long-term household stability.

The comparative findings indicate that the future direction of Islamic family law reform should no longer focus exclusively on the normative debate concerning the permissibility or prohibition of polygamy, but rather on the extent to which legal systems are capable of institutionalizing substantive family protection through enforceable safeguards and accountable judicial mechanisms. The Indonesian model demonstrates that procedural legality alone is insufficient when judicial authorization is limited to administrative verification without rigorous examination of emotional welfare, economic sustainability, and gender equality within the household. In contrast, Tunisia illustrates how preventive legal certainty may strengthen household cohesion by minimizing structural inequality and competing marital obligations through a monogamous legal framework, while Morocco shows that limited legal accommodation of polygamy can still be aligned with family resilience when judicial authorization functions as a substantive rights-based filter rather than a formal licensing procedure. These comparative patterns confirm that family resilience is ultimately shaped by the interaction between regulatory design, institutional enforcement, judicial quality, and socio-cultural legitimacy. Accordingly, contemporary reform of Muslim family law should prioritize gender-sensitive judicial

review, transparent evidentiary standards, protection of women's bargaining power, and child-centered welfare assessment as integral elements of polygamy regulation, thereby transforming marriage law from a framework of formal marital permission into a comprehensive system of substantive family protection

4. CONCLUSION

This study concludes that the regulation of polygamy in contemporary Muslim family law should be evaluated not merely based on permissibility or prohibition, but on the extent to which its legal framework ensures substantive justice, gender equality, and family resilience. The comparative analysis demonstrates that Indonesia applies a permission-based model that formally requires court authorization, wife's consent, financial capability, and fairness, yet its protective function remains weak when judicial review is limited to procedural verification. Tunisia adopts a prohibitive model that prioritizes preventive legal certainty and monogamous family stability, while Morocco develops a restrictive permission model that emphasizes substantive judicial control through exceptional reasons, financial proof, transparency, and safeguards for wives and children. The novelty of this study lies in positioning family resilience as a socio-legal evaluative framework for assessing polygamy regulation, thereby expanding comparative Islamic family law scholarship beyond debates on textual permissibility toward the broader question of how legal institutions operationalize justice and family protection. The findings confirm that the effectiveness of polygamy regulation depends not only on the degree of legal restriction but also on judicial quality, institutional enforcement, evidentiary standards, and socio-cultural legitimacy. Accordingly, Indonesia should strengthen its polygamy licensing framework through clearer substantive judicial review, stricter evidentiary standards, mandatory mediation to ensure voluntary consent, and child-centered welfare assessment so that court authorization functions as an effective instrument of family protection rather than merely a procedural mechanism.

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