



Between Law and Faith: Judicial Dilemmas of Unregistered Polygamy and Divorce in Indonesia

Holilur Rohman^{1*}, Rishat Ameer Ğafurof², Arif Jamaluddin¹, Wardah
Toyyibah¹, Abdul Wahab Naf'an³

¹ UIN Sunan Ampel, Surabaya, Indonesia

² Kazan Federal University, Tatarstan, Russian Federation

³ Suez Canal University, Ismailia, Egypt

Corresponding email: holilurrohman@uinsa.ac.id

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Abstract

Divorce in unregistered polygamous marriages constitutes one of the most pressing socio-legal challenges in contemporary Indonesia, particularly after the enactment of Supreme Court Circular (SEMA) No. 3 of 2018, which prohibits religious courts from granting *isbat nikah* for such unions. This article examines two interrelated questions: first, the practical problems of divorce faced by women in unregistered polygamous marriages within the SaMaRa Centre community; and second, the perspectives of religious court judges regarding these issues, assessed through the normative lenses of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and *Maqāṣid al-Sharī'ah*. Methodologically, this study adopts qualitative fieldwork, combining semi-structured interviews with women affected by such marriages and judges from religious courts in Surabaya and Probolinggo. The findings reveal divergent judicial approaches: some judges uphold strict procedural consistency in line with SEMA No. 3/2018, while others emphasise fairness and *maṣlaḥah* (public welfare) to justify more flexible rulings. This divergence underscores a judicial dilemma between procedural uniformity and the imperative of justice for vulnerable women. By situating these debates within international human rights norms and Islamic legal theory, the study emphasises the need to develop a more inclusive legal framework that balances state regulations with gender justice. Ultimately, it argues for stronger judicial



pathways to protect women's rights in informal unions, offering insights into the intersection of law, religion, and social realities in Muslim-majority contexts.

[Perceraian dalam pernikahan poligami tidak tercatat merupakan salah satu persoalan sosial-hukum yang paling mendesak di Indonesia kontemporer, khususnya setelah diberlakukannya Surat Edaran Mahkamah Agung (SEMA) No. 3 Tahun 2018 yang melarang Pengadilan Agama mengabulkan isbat nikah atas dasar perkawinan tersebut. Artikel ini mengkaji dua pertanyaan utama: pertama, problematika perceraian yang dihadapi perempuan dalam pernikahan poligami tidak tercatat di komunitas SaMaRa Centre; dan kedua, pandangan hakim Pengadilan Agama mengenai persoalan ini yang dianalisis melalui kerangka normatif Konvensi Penghapusan Segala Bentuk Diskriminasi terhadap Perempuan (CEDAW) dan Maqāṣid al-Sharī'ah. Secara metodologis, penelitian ini menggunakan pendekatan kualitatif lapangan dengan wawancara semi-terstruktur terhadap perempuan pelaku pernikahan poligami tak tercatat serta hakim dari Pengadilan Agama Surabaya dan Probolinggo. Hasil penelitian menunjukkan adanya perbedaan pendekatan hakim: sebagian menegakkan konsistensi prosedural sesuai SEMA No. 3/2018, sementara yang lain menekankan keadilan dan maṣlaḥah (kemaslahatan) untuk membenarkan putusan yang lebih fleksibel. Perbedaan ini memperlihatkan dilema yudisial antara kepatuhan prosedural dan tuntutan keadilan bagi perempuan rentan. Dengan menempatkan perdebatan ini dalam kerangka norma hak asasi manusia internasional dan teori hukum Islam, penelitian ini menegaskan perlunya kerangka hukum yang lebih inklusif yang mampu menyeimbangkan regulasi negara dengan keadilan gender. Pada akhirnya, penelitian ini menyerukan jalur hukum yang lebih kuat untuk melindungi hak-hak perempuan dalam perkawinan informal, sekaligus memberikan kontribusi pada kajian hubungan antara hukum, agama, dan realitas sosial di masyarakat Muslim.]

Keywords: Unregistered polygamy, divorce, SEMA No. 3/2018, religious courts, CEDAW.

Introduction

Sexual relations outside marriage are considered reprehensible and strictly prohibited by religion. Indonesia, which upholds both legal norms and customary values, likewise forbids intimate relations between men and women outside the institution of marriage. A valid marriage is not only encouraged but also intended to achieve positive purposes that bring benefits to the spouses (Zainuddin et al. 2024; Djubaedah 2019). The problem arises when, although a

marriage may be religiously valid, under Indonesian law it must be officially registered in order to be legally recognised by the state (Teuku Yudi Afrizal 2023, 583). Marriages that are not registered—commonly referred to as *nikah tak tercatat* (unregistered marriages)—are deemed ineffective and receive no legal recognition from state institutions (Pangestu and Muharman 2023). At the same time, however, the state does not explicitly prohibit such marriages nor declare them invalid (Hasan et al. 2022). This legal dualism is further reinforced by opinions that regard unregistered marriages, including unregistered polygamous unions, as religiously valid on the grounds that registration is not considered a fundamental requirement for the validity of marriage (Fathoni 2018).

In practice, there is no formal compulsion for individuals to register their marriages; thus, failure to do so is not regarded as a criminal act. Nevertheless, the absence of registration carries significant legal consequences, particularly for women and children, who may face difficulties in asserting or protecting their rights when they are unable to provide legal proof of the marital relationship. (Dimyathi and dkk., n.d.; Mark 2012)

Several previous studies have addressed the issue of unregistered marriages. Dian Suhartini, for instance, highlights the detrimental consequences of such unions. She explains that in cases where a husband lacks responsibility or displays negative character, the absence of state recognition enables him to evade his legal obligations to provide financial support to his wife and children. When seeking divorce, a husband may simply pronounce a repudiation (*ṭalāq*) without going through the court process, thereby avoiding the formal settlement of marital property. In some instances, when a husband fails to provide for his wife and she requests a divorce, he retains the discretion to either grant or withhold it entirely at his own will.

The problem of unregistered marriages becomes even more complex when they occur in the context of a second or subsequent marriage, commonly referred to as 'polygamy'. While polygamy may be perceived to have certain benefits, it also brings adverse consequences, such as domestic injustice, the neglect of women's and children's rights, heightened conflict and hostility among spouses, and the erosion of family bonds. (Aziz et al. 2023, 1702)

The phenomenon of unregistered marriages, particularly unregistered polygamous unions, cannot be taken lightly, as they often result in the denial of wives' rights and therefore demand legal protection. Although some unregistered marriages are later formalised through *isbat nikah* as permitted under the Compilation of Islamic Law (Nurlaelawati 2013), in many cases women remain trapped in their marriages. This occurs either because the husband refuses to grant a divorce despite ongoing domestic problems or because the

husband disappears without providing clarity, leaving the wife in a state of uncertainty regarding her marital status (Mutarofik et al. 2024).

With regard to *isbat nikah* (marriage validation), both positive and negative implications can be observed, particularly in cases of unregistered polygamous marriages (Bahrum 2019). However, such petitions have become highly problematic since the issuance of Supreme Court Circular (SEMA) No. 3 of 2018, which explicitly prohibits religious courts from receiving and approving *isbat nikah* applications for unregistered polygamous marriages, even when submitted for the sake of children's welfare (Cik Basir 2019; Adriyeni et al. 2024). In principle, *isbat nikah* provides a legal pathway for women in unregistered polygamous unions—often second wives—to obtain formal recognition of their marital status. Once validated, they may subsequently file for divorce in the religious courts, thereby securing post-divorce rights such as *mut'ah* (consolatory gift), maintenance during the *'iddah* period, unpaid dowry (*mahr*), and child support for minors under the age of 21 (Rohman 2022). Yet these rights become difficult to obtain when both marriage and divorce lack legal recognition due to the restrictions imposed by SEMA No. 3/2018, as experienced by several members of the SaMaRa Centre community. Although there have been exceptional cases, such as the ruling of the Banda Aceh Sharia Court (Decision No. 130/Pdt.G/2020/MS.Bna), which approved an *isbat nikah* for an unregistered polygamous marriage, scholars like Salam Abdul Muthalib contend that such judgements are inconsistent with SEMA No. 3/2018 (Abdul Muthalib 2022; Hadi 2024). This illustrates a significant gap between the formal regulation and its practical implementation, highlighting inconsistencies in the application of SEMA across different jurisdictions.

Method

This study is grounded in a dual theoretical framework that integrates the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the principles of *Maqāṣid al-Sharī'ah*. CEDAW provides an international human rights lens through which women's legal vulnerabilities in unregistered polygamous marriages can be assessed, emphasising non-discrimination, substantive equality, and state obligations. *Maqāṣid al-Sharī'ah*, by contrast, offers an Islamic legal-philosophical framework centred on justice (*'adl*) and welfare (*maṣlaḥah*), which allows for contextualised interpretations of family law. Together, these perspectives shape the research questions by highlighting the tension between procedural legal uniformity and the protection of women's rights in informal unions, and they guide the analytical approach adopted in this study.

Methodologically, this research employs a qualitative fieldwork design, chosen for its capacity to capture the lived experiences of women and the

interpretive practices of judges. Data were collected through semi-structured interviews with three women in unregistered polygamous marriages who sought consultation at the SaMaRa Centre, as well as two judges from religious courts in Surabaya and Probolinggo. The judges were selected purposively based on institutional ranking (class 1A and 1B courts) and gender representation, enabling a balanced understanding of judicial reasoning. This approach also included a documentary review of relevant legal texts, judicial circulars, and prior scholarly works to situate field findings within broader legal discourse (Miles et al. 2014).

Data analysis followed a descriptive-analytical method, combining thematic coding of interview transcripts with comparative analysis of judicial opinions (Wæraas 2022). This process allowed the study to identify patterns, divergences, and underlying rationales in judges' interpretations of SEMA No. 3/2018. The analysis directly addressed the research objectives by linking field data to the theoretical frameworks of CEDAW and *Maqāṣid al-Sharī'ah*.

Ethical safeguards were prioritised throughout the research process. Informed consent was obtained from all participants, and anonymity was maintained to protect the identities of women involved in sensitive marital disputes. Given the potential stigma surrounding unregistered polygamous marriages, confidentiality measures were strictly observed. The study adhered to institutional ethical standards, ensuring validity and trustworthiness through triangulation of data sources and transparent documentation of the research process.

Divorce Problems in Unregistered Polygamous Marriages: Empirical Findings from the SaMaRa Centre

The challenges of divorce in unregistered polygamous marriages reveal the profound vulnerability of women who enter such unions without legal recognition. Fieldwork conducted at the SaMaRa Centre demonstrates that second wives often find themselves trapped in ambiguous marital situations: some are abandoned without formal separation, others are denied divorce despite persistent domestic conflicts, and a few experience unilateral repudiation through phone calls, leaving them in precarious positions without enforceable rights. These empirical findings resonate with international scholarship that highlights the marginalisation of women in informal marriages, where the absence of legal documentation often results in the denial of basic entitlements such as maintenance, inheritance, and child custody (Hasan et al. 2022; Aziz, Rispalman, and Anggraini 2023). In this regard, the Indonesian experience mirrors broader global concerns about the intersection of gender, law, and informality, particularly in contexts where religious validity is prioritised over state registration. By situating these cases within comparative debates, this study

underscores the urgent need for legal frameworks that can address the structural injustices faced by women in unregistered polygamous marriages.

At the SaMaRa Centre, women reported feeling “trapped” in unregistered unions, especially when their husbands refused to divorce them or disappeared without trace. This situation produced what they described as a “hanging status”, in which they were neither properly divorced nor socially recognised as wives, leaving them vulnerable to stigma and without legal recourse. The lack of marriage registration meant that claims for post-divorce rights—including *mut’ah*, maintenance during the *‘iddah*, or child support—were consistently denied by the courts. These findings confirm previous studies that show how unregistered marriages disproportionately harm women by placing them outside the reach of formal legal protections (Cammack 2019; Nurlaelawati 2020). Yet they also refine existing scholarship by illustrating how such harms are intensified under polygamous arrangements, where competition between wives and the absence of state recognition exacerbate insecurity and inequality.

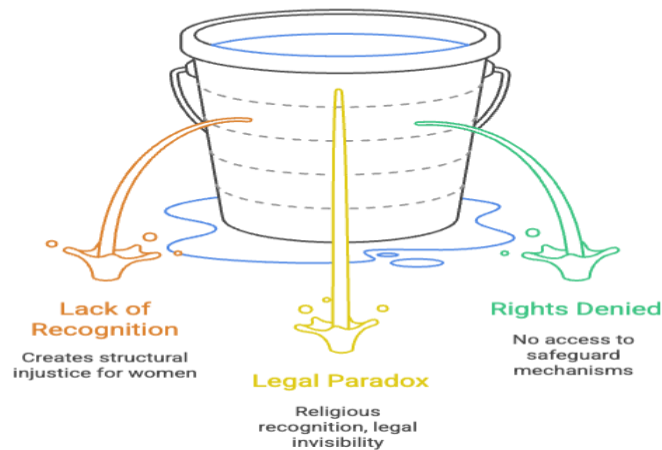
This evidence demonstrates that the problem is not merely one of legal formality but of substantive justice. When divorce occurs in unregistered polygamous unions, women’s rights are suspended in a legal vacuum: the state treats them as non-existent, while religious recognition provides no enforceable guarantees (Büchler and Schlatter 2013; Nawir et al. 2024). In contrast to arguments that unregistered marriages preserve religious freedom and personal choice, the lived experiences of SaMaRa Centre participants challenge this assumption, revealing that the lack of state recognition functions less as autonomy and more as abandonment. Such findings align with critiques in comparative family law, which argue that the failure to integrate informal marriages into legal systems perpetuates gendered vulnerability (Ali 2020; Welchman 2021). The Indonesian case thus highlights the urgency of reconciling religious legitimacy with state mechanisms of protection so that women in unregistered polygamous marriages are not left without justice in moments of marital breakdown (Fitra et al. 2025).

While existing studies on unregistered marriages in Muslim-majority societies often emphasise economic precarity and social stigma, the findings from the SaMaRa Centre highlight a more complex layer of vulnerability within polygamous contexts. Unlike monogamous unregistered unions, second wives in polygamous marriages face compounded disadvantages: they not only lack state recognition but also must navigate intra-household rivalries and resource inequalities that amplify their exclusion (Wirastri and Huis 2021; Raihan 2023). This dual marginalisation underscores how procedural rigidity, when combined with polygamous arrangements, produces a distinct gendered injustice that has not been sufficiently addressed in comparative family law scholarship (Alfitri et al. 2024). In this sense, the Indonesian case contributes a refinement to global

debates by showing that the harms of informality are not uniform but are magnified when embedded in plural marital structures.

Image 1
An illustration of the Unrecognised Polygamous Marriages

Unrecognized Polygamous Marriages: Injustice Prevails



Source: Researcher's illustration based on field data (2025).

In sum, the divorce problems faced by women in unregistered polygamous marriages illustrate that the absence of state recognition creates not merely administrative inconvenience but entrenched structural injustice (Sriwannawit 2025). These women are caught in a legal paradox: recognised religiously but invisible legally, they are denied access to rights that would otherwise safeguard their dignity and welfare. The SaMaRa Centre cases thus affirm the need to move beyond procedural formalism toward a jurisprudence that acknowledges the lived realities of vulnerable spouses. This sets the stage for the next discussion on how religious court judges themselves interpret and respond to these dilemmas, navigating the tension between legal uniformity and the pursuit of justice.

Judicial Perspectives on Divorce in Unregistered Polygamous Marriages

The perspectives of religious court judges on divorce in unregistered polygamous marriages reveal a profound judicial dilemma at the intersection of procedural law and gender justice. Interviews with judges in Surabaya and Probolinggo demonstrate divergent approaches: while some insist on strict adherence to SEMA No. 3/2018, emphasising procedural consistency and legal certainty, others adopt a more pragmatic stance, prioritising fairness (*'adl*) and public welfare (*maṣlahah*) in resolving marital disputes (Halim 2024; Herlina et al.

2024). This divergence reflects what Ali terms the “judicialisation of religion”, wherein courts become arenas for negotiating competing normative orders. It also resonates with studies in Muslim-majority jurisdictions showing that judicial discretion often mediates between rigid statutory provisions and the lived realities of vulnerable women (Ali 2020; Welchman 2021). The Indonesian case thus exemplifies how religious court judges are not merely passive enforcers of procedural rules but active interpreters who must navigate between state-imposed restrictions and the ethical imperatives of justice (Fauzi 2023). Such findings challenge the assumption that uniform regulations automatically secure legal certainty, instead suggesting that judicial reasoning can serve as a critical site of resistance—or accommodation—within the broader struggle for women’s rights in family law.

The interviews revealed a clear divergence between judges in Surabaya and Probolinggo regarding the application of SEMA No. 3/2018. While the former emphasised strict procedural uniformity as essential for maintaining legal certainty, the latter adopted a more flexible stance that prioritised *maṣlaḥah* (public welfare) and gender justice. This divergence illustrates the judicial dilemma at the heart of Indonesia’s family law: whether to uphold rigid procedural consistency or to interpret the law in ways that secure substantive protection for vulnerable women.

Table 1
Comparison of Judicial Perspectives on Divorce in Unregistered Polygamous Marriages

Religious Court	Position on SEMA No. 3/2018	Legal Reasoning	Main Orientation
Surabaya (Class 1A)	Strict adherence, rejecting <i>isbat nikah</i> applications for unregistered polygamous marriages	Emphasises legal certainty (<i>kepastian hukum</i>) and procedural uniformity	Procedural rigidity
Probolinggo (Class 1B)	Flexible interpretation, allowing exceptions to protect vulnerable women and children	Prioritises <i>maṣlaḥah</i> (public welfare) and constitutional guarantees of equality	Substantive justice

Source: Author’s elaboration based on interviews with Religious Court judges, 2025.

This contrast underscores that the fate of women in unregistered polygamous divorces is shaped not only by statutory law but also by judicial interpretation. Where one court enforces procedural rigidity, another advances substantive justice, creating unequal access to rights depending on jurisdiction. Such divergences reveal the absence of a coherent framework that reconciles state law with both international human rights standards and Islamic legal principles—a gap that becomes more evident when examining the intersection of CEDAW and *Maqāṣid al-Sharī'ah* in the pursuit of gender justice.

For instance, a judge in Surabaya emphasised that granting *isbat nikah* for unregistered polygamous unions would contradict explicit state policy, thereby undermining the principle of legal certainty. By contrast, a judge in Probolinggo argued that refusing recognition would leave women and children unprotected, violating both Islamic notions of welfare and constitutional guarantees of equality (Wahyudi 2014). These divergent judicial stances confirm earlier findings that judicial discretion in Muslim family law often mediates between rigid statutory texts and the social realities of litigants (Nasution and Muchtar 2024). At the same time, they challenge the assumption that religious courts in Indonesia function as mere executors of state law, instead showing them as active interpreters balancing law, morality, and justice (Nurlaelawati 2020).

This divergence also highlights the fragmented authority of religious courts. Where one judge views procedural uniformity as essential for upholding the rule of law, another prioritises contextual justice even if it means stretching or contesting procedural boundaries. Such inconsistency creates unequal access to justice for women, depending on which court or judge hears their case. Comparative scholarship similarly notes that in Morocco and Malaysia, judicial reasoning has become a decisive factor in shaping the protection of women's rights within polygamous or informal marriages (Peletz 2002; Weingartner 2004). The Indonesian findings therefore refine existing debates by illustrating how judicial interpretation not only reflects but also produces legal pluralism within a single jurisdiction.

What emerges from these findings is that judicial perspectives are not simply reflections of personal conviction but strategic responses to systemic tensions between state regulation and lived realities. By prioritising either procedural rigidity or substantive justice, judges effectively position themselves within broader debates on the relationship between law and morality in the Muslim family law (Hamayotsu 2015). This contributes a unique Indonesian case to global scholarship, demonstrating how religious courts can both reproduce and resist structural gender inequalities. Unlike contexts where judicial discretion is narrowly constrained, Indonesian judges still retain interpretive space to navigate between state circulars, Islamic legal objectives, and the imperatives of fairness (Karimullah 2022; Purkon 2022).

In short, the judicial perspectives on unregistered polygamous divorces underscore that the fate of women in such unions is shaped not only by statutory law but by the interpretive choices of judges. These choices can either entrench women's vulnerability through rigid formalism or open pathways to justice through contextual interpretation. The inconsistency of judicial practice, however, reveals the absence of a coherent framework that reconciles state law, international norms, and Islamic legal principles (Hefner 2016; Begum et al. 2024). This gap points directly to the need for a normative synthesis, which the following section explores by bringing CEDAW and *Maqāṣid al-Sharī'ah* into dialogue on the question of gender justice.

Between Universality and Faith: Gender Justice in Unregistered Polygamous Divorces

Unregistered polygamous divorces in Indonesia sit uneasily at the crossroads of two powerful normative orders: the universalist commitments of international human rights and the faith-based imperatives of Islamic jurisprudence. On one side, CEDAW demands non-discrimination, substantive equality, and the protection of women from structural disadvantage. On the other hand, *Maqāṣid al-Sharī'ah* emphasises justice (*'adl*), welfare (*maṣlaḥah*), and the preservation of fundamental human interests (*ḍarūriyyāt*) (Kurniawan et al. 2022a; Al-Shatibi 1997). Yet, rather than converging in the protection of women, these frameworks often collide in practice, particularly when judicial actors prioritise procedural consistency over substantive fairness. The divorce experiences of women in unregistered polygamous unions illustrate this tension vividly: abandoned spouses struggle to secure legal recognition, financial rights, and even a clear marital status, caught between international norms that guarantee equality and religiously informed interpretations that seek harmony but remain constrained by state regulations such as SEMA No. 3/2018 (Amar et al. 2024).

This intersection between universality and faith does not simply produce a clash of norms but opens a space for reimagining gender justice in Muslim family law. By bringing CEDAW and *Maqāṣid al-Sharī'ah* into direct conversation, this study demonstrates how international and Islamic legal frameworks can be read not as opposites but as complementary resources for advancing women's rights in contexts of legal pluralism (Sapriadi et al. 2025). Such a dialogue is urgently needed in Indonesia, where courts are increasingly pressured to enforce uniform procedural rules while grappling with the lived realities of vulnerable women. The cases from the SaMaRa Centre and the perspectives of religious judges provide a rare empirical lens into this normative encounter, showing that the future of gender justice lies not in privileging one system over the other, but in forging a principled reconciliation between universality and faith (Harisudin and Choriri 2021).

Several wives interviewed at the SaMaRa Centre described how their inability to access the courts after their husbands' disappearance left them without financial support for themselves or their children. Such experiences directly contradict CEDAW's Article 16, which guarantees equality in marriage and divorce, while also undermining the *Maqāṣid* objective of protecting lineage (*ḥifẓ al-nasl*) and property (*ḥifẓ al-māl*) (Jaffal et al. 2022a). The dissonance here reveals that the problem lies not in an inherent clash between universality and faith, but in the state's failure to provide mechanisms that uphold both frameworks simultaneously. Similar findings have been reported in comparative studies from Egypt and Nigeria, where procedural barriers in family courts perpetuate women's vulnerabilities despite both religious and international commitments to gender justice (Sonneveld 2020; Diala 2021).

From a CEDAW perspective, Indonesia's blanket prohibition of *isbat nikah* for unregistered polygamous unions under SEMA No. 3/2018 amounts to indirect discrimination: it disproportionately harms women who are unable to exit abusive or uncertain marriages. From a *Maqāṣid* perspective, this rule also violates the higher objectives of Shariah, which prioritise justice and welfare over procedural formality. Judges who favour a more flexible approach in granting recognition are therefore not undermining the law but embodying its ultimate spirit. This aligns with Kumar's argument that Islamic legal systems must balance procedural regularity with substantive outcomes and refines existing scholarship by showing how such balancing plays out in the contested terrain of Indonesian family law (Kumar and G 2024).

The Indonesian case thus contributes to global debates by demonstrating that universality and faith are not mutually exclusive but can be harnessed together to protect women's rights in contexts of legal pluralism. Where existing literature often frames human rights and Islamic law as competing paradigms, the lived realities of women in unregistered polygamous divorces illustrate the urgency of seeing them as complementary. By aligning CEDAW's demand for equality with *Maqāṣid*'s insistence on welfare, religious courts could transform procedural dilemmas into opportunities for justice. This represents a unique contribution to both feminist legal theory and Islamic jurisprudence, showing that gender justice can be forged in the dialogue—not the divide—between universality and faith.

In conclusion, unregistered polygamous divorces in Indonesia highlight that neither CEDAW nor *Maqāṣid al-Sharī'ah* alone can safeguard women's rights unless judicial practice bridges the two. When viewed in tandem, these frameworks provide a powerful normative foundation for advancing justice that is at once globally resonant and locally legitimate (Shafra et al. 2024). The next step, therefore, is to envision how Indonesia's family law can evolve into a more

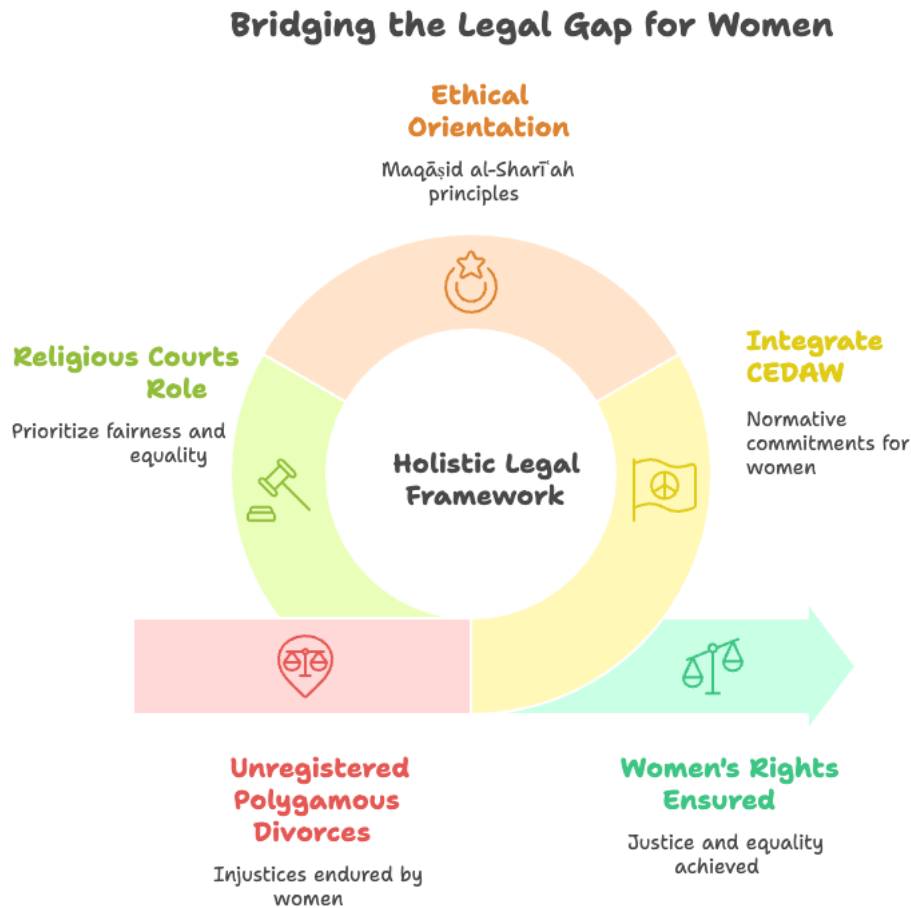
inclusive framework—one that not only regulates marriage procedurally but ensures that women's rights are substantively protected in all marital forms.

Towards a More Inclusive Legal Framework for Women's Rights in Informal Marriages

The dilemmas of unregistered polygamous divorces reveal a structural gap in Indonesia's legal system: while state law insists on procedural uniformity, it often fails to address the substantive injustices endured by women trapped in informal unions (Kurniawan et al. 2022b). Bridging this gap requires more than incremental reform; it demands a holistic legal framework that acknowledges the lived realities of women while remaining faithful to both constitutional mandates and international human rights standards. Integrating the normative commitments of CEDAW with the ethical orientation of *Maqāṣid al-Sharī'ah* offers a pathway to such reform, ensuring that women's rights are not sacrificed to procedural rigidity (Jaffal et al. 2022a; Awang 2018). Religious courts, as frontline institutions of family justice, have a pivotal role to play in this transformation. By interpreting the law in ways that prioritise fairness, welfare, and equality, they can transform moments of legal tension into opportunities for substantive justice (Halim 2024). Ultimately, the pursuit of an inclusive framework is not only about protecting women in unregistered marriages; it is about reimagining the very foundations of family law in Indonesia to be both locally legitimate and globally responsive.

Several wives explained that without official recognition of their marriages, they were unable to pursue claims for *mut'ah*, *nafkah iddah*, or child custody, even when their husbands had clearly abandoned them (Mara'tus 2024). Such outcomes contradict the state's constitutional obligation to protect citizens equally while also falling short of international commitments under CEDAW and the Sustainable Development Goals, which prioritise gender equality and access to justice (Ali 2024). At the same time, this exclusion runs counter to the *Maqāṣid al-Sharī'ah*, which requires the protection of family, property, and dignity. These empirical realities therefore reveal not only a legal technicality but also a failure to uphold both domestic and international standards of justice (Hapriyanto and Syamsiah 2024).

Illustration 1 The illustration of the legal gap for women



Source: Author's elaboration based on the Religious Court of Surabaya and Probolinggo (2025).

In comparative perspective, Indonesia's strict prohibition on recognising unregistered polygamous unions resembles policies in Malaysia and Pakistan, where procedural uniformity is prioritised but often at the expense of women's rights (Awang 2024). Yet, other jurisdictions, such as Morocco under the Moudawana reforms, have demonstrated that procedural regularity can coexist with substantive safeguards when courts are empowered to grant recognition in the interest of justice (Weingartner 2004; Ezzerouali et al. 2025). The Indonesian case thus challenges the prevailing assumption that uniform procedural rules necessarily guarantee legal certainty, showing instead that rigidity may produce deeper inequities for vulnerable women (Hamayotsu 2015).

The way forward, therefore, lies in constructing a legal framework that reconciles state regulation with the lived realities of informal marriages. This requires moving beyond the binary of legality versus illegality and toward a

rights-based approach that integrates both CEDAW's universalist standards and the ethical imperatives of the *Maqāṣid al-Sharī'ah* (Jaffal et al. 2022b; Shafra et al. 2024). By acknowledging informal unions through mechanisms that allow women to claim divorce and post-marital rights, the law would not only fulfil Indonesia's international obligations but also resonate with Islamic principles of justice and welfare (Zainuddin et al. 2024). Such a framework could serve as a model for other Muslim-majority societies grappling with the same tension between procedural uniformity and substantive justice.

In conclusion, addressing the divorce problems of unregistered polygamous marriages requires more than tightening procedural rules; it demands a transformative legal framework that prioritises protection over exclusion. An inclusive approach—anchored in both CEDAW and *Maqāṣid al-Sharī'ah*—would ensure that women's rights are not sacrificed to administrative rigidity. By embedding substantive justice at the heart of family law, Indonesia has the potential to move from a system that marginalises women in informal unions to one that affirms their dignity, secures their rights, and aligns local practices with global standards of gender justice.

Conclusion

The findings of this study reveal that divorce in unregistered polygamous marriages produces structural injustice for women, rooted in the gap between religious legitimacy and state recognition. Empirical evidence from the SaMaRa Centre shows that wives in such unions face abandonment, denial of legal divorce, and exclusion from post-marital rights such as maintenance, *mut'ah*, and child custody. Judicial perspectives, meanwhile, demonstrate inconsistency: some judges rigidly enforce SEMA No. 3/2018 in the name of legal certainty, while others prioritise fairness (*'adl*) and welfare (*maṣlaḥah*), thereby exposing the fragmented authority of Indonesia's religious courts. This tension highlights that the problem is not merely administrative but substantive—women's rights are suspended in a legal vacuum, leaving them vulnerable to stigma and deprivation. By situating these empirical realities within international and comparative debates, the study confirms that unregistered marriages systematically disadvantage women, while also refining global scholarship by showing how polygamy intensifies those vulnerabilities.

At a normative level, the research demonstrates that universality and faith need not be viewed as competing paradigms but as complementary resources for advancing gender justice. The juxtaposition of CEDAW's demand for non-discrimination and the *Maqāṣid al-Sharī'ah*'s emphasis on justice and welfare reveals that both frameworks converge in their call for substantive protection of women. Indonesia's challenge, therefore, is not to choose between procedural uniformity and religious legitimacy but to construct a more inclusive legal

framework that integrates these commitments. By aligning international standards with Islamic legal objectives, the country has the opportunity to transform its family law into one that is at once locally legitimate and globally resonant. Such a framework would not only safeguard the rights of women in unregistered polygamous unions but also contribute to broader international debates on legal pluralism, women's rights, and the future of family law in Muslim societies. In this sense, the Indonesian experience offers a powerful lesson: gender justice can only be achieved when law moves beyond formality to embrace the lived realities of those it seeks to govern.

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