

FROM TRADITION TO MODERNITY: TRANSFORMATION OF THE PRACTICE OF MARRIAGE AGREEMENT IN INDONESIA

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Abstract

This study examines marriage agreements in Indonesia from the perspectives of Islamic and positive law, identifying factors influencing their implementation. Using a qualitative method with an empirical legal approach, data were collected through interviews with notaries, Ministry of Religion officials, and couples who created marriage agreements in DKI Jakarta, East Java, Riau, and Malang Regency/City. The findings reveal that marriage agreements in Indonesia are primarily limited to asset separation and are more common among couples with high legal awareness. This practice reflects a blend of traditional values and modern legal practices. Key factors influencing these agreements include economic stability, education levels, cultural norms, and modernization. Economic considerations drive couples to protect their financial rights, while higher education increases awareness of legal tools. However, cultural resistance and misconceptions about marriage agreements remain barriers, especially in traditional communities. From an Islamic law perspective, marriage agreements align with principles of mutual consent and fairness, as long as they comply with Sharia provisions. Under positive law, such agreements are recognized but lack comprehensive regulation. The study recommends revising the Marriage Law and Compilation of Islamic Law (KHI) to expand the scope of marriage agreements, ensuring broader protection of spousal rights. Additionally, the Ministry of Religion should promote greater socialization to change societal perceptions and encourage acceptance of marriage agreements as tools for harmony and legal certainty. These steps are vital to creating a fairer legal framework and fostering societal understanding.

I. Introduction

Marriage agreements play a crucial role in Islamic and positive law for building harmonious families. In Indonesia, these agreements are regulated by Law Number 16 of 2019 and serve as important legal instruments for protecting spousal rights and providing justice.¹ They can help prevent conflicts and offer guidelines for dispute resolution.² Islamic law views marriage as a strong agreement (Mitsaqan Ghaliza) aimed at creating a family of Sakinah, Mawaddah, and Rahmah.³ While Islamic law restricts agreements to pre-marriage or during the ceremony, positive law allows for agreements throughout the marriage.⁴ These agreements can cover property management, financial responsibilities, and other rights and obligations.⁵ Ultimately, marriage agreements align with maqasid al-syari'ah and can contribute to forming successful families by protecting constitutional rights of both spouses.⁶ The author argues that the marriage agreement, regulated by Islamic law and positive law in Indonesia, is an important instrument to protect the rights of couples and prevent conflict, thus contributing to the formation of a harmonious and prosperous family.

Marriage agreements in Indonesia face challenges due to cultural and religious perceptions, with many considering them taboo or materialistic.⁷ Public understanding of these agreements remains limited, despite their

¹ Akhmad Kamil Rizani et al., "The Essence of Marriage Agreement as Protection in the Indonesian Marriage Law System," *Indonesian Journal of Law and Islamic Law (IJLIL)* 6, no. 2 (2024): 160–71.

² Kevin Avruch, "Culture and Conflict Resolution," in *The Palgrave Encyclopedia of Peace and Conflict Studies* (Springer, 2022), 254–59.

³ Mohamad Abdun Nasir, "Negotiating Muslim Interfaith Marriage in Indonesia: Integration and Conflict in Islamic Law," *Mazahib Jurnal Pemikiran Hukum Islam* 21, no. 2 (2022): 155–86.

⁴ Wahda Z Imam and Faissal Malik, "The Urgency of the Sirri Marriage Pre-Marriage Agreement Regarding Joint Property.," *Journal of Social Science (2720-9938)* 4, no. 2 (2023).

⁵ Fahim Ullah and Fadi Al-Turjman, "A Conceptual Framework for Blockchain Smart Contract Adoption to Manage Real Estate Deals in Smart Cities," *Neural Computing and Applications* 35, no. 7 (2023): 5033–54.

⁶ Ahmad Nawir et al., "Comparative Analysis of The Family Law Systems in Indonesia and Saudi Arabia in The Context of Unregistered Marriage: Maqashid Al-Syari'ah Perspective," *International Journal of Health, Economics, and Social Sciences (IJHESS)* 6, no. 4 (2024): 1075–84.

⁷ Carina De Freitas Borralho, "Consumption, Waste and the Middle-Class Mindset: A Qualitative Exploration of Gendered Attitudes and Beliefs in South African Suburbs" (University of the Witwatersrand, Johannesburg (South Africa), 2023).

potential for legal protection and household management.⁸ The implementation of marriage agreements is supported by both positive and Islamic law, as evidenced by Constitutional Court decisions and the Compilation of Islamic Law.⁹ Some researchers propose a new concept of marriage agreements based on Maqashid Sharia to strengthen family resilience and reduce divorce rates.¹⁰ While some communities view marriage agreements as important legal acts, especially in modern times, awareness and loyalty towards these agreements vary.¹¹ Factors influencing public perception include literacy, socialization, and individual desires.¹² Overall, there is a need for further education and promotion of marriage agreements to maximize their benefits for Indonesian society.

Marriage agreements are increasingly recognized as important legal instruments for protecting spousal rights and preventing conflicts in Indonesia. These agreements can provide legal certainty, manage property, and define responsibilities within marriages.¹³ However, public education on this topic is crucial, as many still consider such agreements unnatural.¹⁴ The Office of Religious Affairs (KUA) plays a vital role in disseminating information about marriage laws and counseling couples on maintaining harmonious relationships.¹⁵ Prenuptial agreements can serve as guidelines for regulating spousal rights and obligations, including matters like children's

⁸ David H Rosenbloom, Robert S Kravchuk, and Richard M Clerkin, *Public Administration: Understanding Management, Politics, and Law in the Public Sector* (Routledge, 2022).

⁹ Anis Mashdurohatun et al., "Reconstruction of Application for Marriage Dispensation Regulation in Religious Court Based on Islamic Justice," *JL Pol'y & Globalization* 132 (2023): 67.

¹⁰ Maghfur Ahmad and Siti Mumun Muniroh, "Nahdlatul Ulama's Maslahah Family Movement for Sustainable Development Goals in Indonesia: Maqasid Al-Sharia Perspectives," *Hikmatuna: Journal for Integrative Islamic Studies* 10, no. 1 (2024): 59-77.

¹¹ Ihsan Yilmaz, "Muslims, Sacred Texts, and Laws in the Modern World," *Handbook of Contemporary Islam and Muslim Lives*, 2021, 19-37.

¹² Borralho, "Consumption, Waste and the Middle-Class Mindset: A Qualitative Exploration of Gendered Attitudes and Beliefs in South African Suburbs."

¹³ Anisa Aulia Rizani and Ernie Hendrawaty, "Theory of Planned Behavior: The Effect of Financial Literacy and Risk Tolerance on Investment Intention," *Journal of Business and Management Review* 5, no. 1 (2024).

¹⁴ Sudaryat Sudaryat, Deviana Yuanitasari, and Sonny Dewi Judiasih, "Policy and Implementation of Gender Equality in Indonesian Mining Companies as an Approach to Achieve the Goals of Indonesian SDGS," *Cogent Social Sciences* 10, no. 1 (2024): 2400602.

¹⁵ Alvionita Julianti and Azwani Lubis, "The Impact of Implementing Premarital Health Test Certificate Requirements on Unregistered Marriage Practices," *Al-Ishlah: Jurnal Ilmiah Hukum* 27, no. 2 (2024): 268-87.

education and business management.¹⁶ To enhance the effectiveness of marriage agreements, there is a need for broader community education, more active involvement from government institutions like KUA and notaries, and adaptive regulation revisions to meet modern societal needs.¹⁷ The author argues that to increase the effectiveness of marriage agreements as a legal instrument that protects the rights of couples and preventing conflict, wider public education is needed, active involvement of government institutions such as KUA and Notary, as well as an adaptive revision of regulations on the needs of modern society.

Marriage agreements in Islamic and Indonesian law serve multiple purposes, including conflict prevention, legal protection, and family harmony. These agreements are generally permissible in Islam, provided they align with religious values and principles of justice.¹⁸ Indonesian law recognizes marriage agreements as binding instruments that can protect spousal rights and provide legal certainty.¹⁹ Specific agreements, such as those prohibiting polygamy, are considered valid under Indonesian positive law but may be viewed differently in Islamic jurisprudence.²⁰ Marriage agreements can contribute to forming successful families by safeguarding the constitutional rights of both spouses.²¹ While these agreements are seen as particularly beneficial for "ordinary" Muslims, they also serve as an important mechanism for adapting to changing societal needs and ensuring equitable relationships within marriages.²² The author argues that the marriage agreement in Islamic law and positive law Indonesia does not only function as a means of legal

¹⁶ Robert Leckey, "Family Lawyers on Cohabitation and Judge-Made Law," *University of Toronto Law Journal* 74, no. 4 (2024): 408–40.

¹⁷ Heri Firmansyah and Zulkifli Nas, "Islamic Inheritance Law Reform in Indonesia from the Perspective of Islamic Legal Politics: Strategies and Implications," *Al-Qadha: Jurnal Hukum Islam Dan Perundang-Undangan* 11, no. 2 (2024): 403–29.

¹⁸ Iwan Setiawan et al., "Reforming Marriage Law in Indonesia: A Critical Examination of Islamic Law on the Ban of Interfaith Marriages," *Al-Manahij: Jurnal Kajian Hukum Islam*, 2024, 179–98.

¹⁹ Syafira Amalia Hulukati, "Legal Implications of Prenuptial Agreements in Marriage in Indonesia: Between Protection of Rights and Justice," *Estudiante Law Journal* 6, no. 2 (2024): 329–50.

²⁰ Fikri Afrianto and Muhammad Nurul Fahmi, "Perjanjian Tidak Dipoligami Dalam Pernikahan Menurut Mazhab Syafii Dan Hukum Positif Di Indonesia," *Jurnal Al-Fawa'id: Jurnal Agama Dan Bahasa* 13, no. 1 (2023): 39–55.

²¹ Zakiyuddin Zakiyuddin, Mutmainnah Mustofa, and Muhammad Yunus, "The Effect of Using Computer-Assisted Reading with Inquiry-Based Learning on Student Reading Comprehension," *English Education Journal* 13, no. 1 (2022): 122–39.

²² Jinat Hossain and Ishtiaq Jamil, "Negotiating Gender-Equal Inheritance Rights: The Rise of Islamic Politics and the Global Feminist Landscape in Bangladesh," *Religion, State & Society* 51, no. 2 (2023): 174–93.

protection and conflict prevention, but also as an important mechanism to adjust to the needs of the changing society and ensure fair relationships in marriage.

This study aims to explore the factors underlying the practice of marriage agreements in Indonesia, both from the perspective of Islamic law and positive law. In addition, this research also aims to analyze the implementation of marriage agreements that have been running so far and find a marriage agreement construction model that can be a solution in building a harmonious and prosperous family. Thus, the results of this study are expected to contribute to the development of marriage law regulations in Indonesia and increase public awareness of the importance of marriage agreements as one of the preventive steps in maintaining household resilience.

2. Research Method

This study employs a qualitative approach with empirical legal methods, designed to address the complexities of marriage agreements in Indonesia from both normative and practical perspectives. This method was chosen because it not only examines Islamic law and positive law regarding marriage agreements but also evaluates how these laws are applied in real-life contexts. By using this approach, researchers can uncover the underlying meanings of legal norms and explore individual and institutional perceptions related to marriage agreements. The study focuses on understanding how marriage agreements are interpreted, implemented, and recognized within Indonesia's Islamic legal system and positive law framework.

The research participants are divided into two groups: human and non-human data sources. Human data sources include officials from the Ministry of Religion (Regional Offices) in Jakarta, East Java, Riau, and Malang, as well as representatives of the Indonesian Notary Association in the same regions, who have direct involvement in the practice of marriage agreements. Non-human data sources consist of legal documents such as the Qur'an, Hadith, Compilation of Islamic Law (KHI), Law No. 1 of 1974 on Marriage, and various marriage agreement drafts prepared by notaries. Data were collected through in-depth interviews, participatory observations, and document analysis to strengthen the understanding of legal implementation in practice.

Data analysis follows the Miles and Huberman model, which includes three stages: data reduction, data presentation, and conclusion drawing/verification. First, data reduction involves selecting, simplifying, and categorizing information to focus on key issues. Second, data presentation uses narratives or graphics to clarify findings. Finally, conclusions are drawn and verified through triangulation to ensure validity and reliability. This

rigorous approach ensures the research provides comprehensive insights into marriage agreement practices and their relevance within Islamic and positive law, serving as a tool to address existing legal and societal challenges effectively.

3. Results and Discussion

a. General description of the practice of marriage agreements in Indonesia

This research was conducted in several regions, namely DKI Jakarta, East Java, Riau, and Malang Regency/City, with a focus on the practice of marriage agreements in the perspective of Islamic law and positive law. The results showed that marriage agreements were made more by couples from certain circles, such as entrepreneurs, artists, professionals (doctors, notaries), and couples in mixed marriages.

As stated by Vivi Novita, Chairperson of the Indonesian Notary Association (INI) DKI Jakarta Region:

"The practice of marriage agreements in DKI Jakarta has been mostly carried out from mixed marriages, entrepreneurs, artists, or couples who have been married to bring wealth from the first marriage." (Interview, August 5, 2023).

In East Java, this practice tends to be carried out by community groups with middle to upper economy. AMANULLAH, Kasi Kepenghuluan Regional Office of the Ministry of Religion of East Java, stated:

"Usually the practice of agreement The marriage was carried out by classy people, artists, entrepreneurs, and educated people. And the material agreed is related to the issue of assets and does not conflict with the rules in Islam." (Interview, July 27, 2023).

Whereas in Riau Province, this practice occurs more rarely because of the influence of Malay culture that is still strong, as stated by Idah Heridah from the Regional Office of the Ministry of Religion Riau:

"Marriage agreements in Riau Province are very rare. This is due to the very strong Malay cultural characteristics, although that does not mean there is no practice of marriage agreements." (Interview, 5 September 2023).

This study revealed variations in the practice of marriage agreements in various regions in Indonesia, including DKI Jakarta, East Java, Riau, and Malang regencies/cities, with a focus on the perspective of Islamic law and positive law. In DKI Jakarta, a marriage agreement is more commonly carried out by couples from certain circles, such as entrepreneurs, artists, and professionals, as well as couples in mixed marriages. This was confirmed by Vivi Novita, Chairperson of the Indonesian Notary Association (INI) DKI Jakarta, who stated that this practice was mostly carried out by couples who brought wealth from previous marriages. Research by Herniati et al.,²³ also showed that couples from the middle to upper economic circles are more likely to make a marriage agreement as a preventive step to protect their assets.

Meanwhile, in East Java, the practice of marriage agreements tends to be carried out by community groups with middle to upper economy, where Amanullah From the office of the Ministry of Religion, East Java highlights that this agreement usually involves an educated and adequate individual, with a focus on the arrangement of assets that are not in conflict with Islamic principles. Research by Sudana et al.,²⁴ supported this finding by showing that higher legal awareness and education contributed to the increasing use of marriage agreements among educated communities.

On the other hand, in Riau Province, the practice of marriage agreements is still rarely found, influenced by the strong Malay culture that prioritizes tradition. Idah Heridah from the Riau Ministry of Religion Office explained that although there were several agreement practices, this was still uncommon because of the dominating cultural characteristics. Research by Ahsan Ullah & Chatteraj²⁵ shows that strong local culture can hamper the acceptance of the practice of marriage agreements, especially in more conservative areas.

Findings This shows that local socio-economic and cultural factors greatly influence the acceptance and implementation of marriage agreements in various regions in Indonesia. Thus, it is important to understand the local context in developing educational policies and programs that support the practice of broader and inclusive marriage agreements.

²³ Herniati et al. (2023)

²⁴ Sudana et al. (2023)

²⁵ Ahsan Ullah & Chatteraj (2023)

b. Factors that encourage the practice of marriage agreements

Based on the results of the interview, several main factors that influence the couple in making a marriage agreement include: 1) Economic factors - couples who have wealth before marriage often want to separate their ownership; 2) Legal awareness - couples with a higher level of education are more aware of their legal rights and obligations; 3) Mixed Marriage - Many couples in mixed marriages make a marriage agreement to regulate the ownership rights of property; 4) Social and Cultural Effects-Some couples are inspired by the practice they see in the media or the experience of the closest people.

According to Moh Zaeni Dahlan, Head of the Regional Office of the Regional Office of the Ministry of Religion of DKI Jakarta:

"Usually the motives of the couples who make a marriage agreement are motivated by the assets owned by each pair. They want to separate the assets so as not to be mixed with the shared assets obtained after marriage." (Interview, 3 August 2023).

In Malang, this phenomenon too influenced by the media, as revealed by Amsiyono, Head of the Islamic Community Guidance Section of the Ministry of Religion of Malang City:

"Empirically the findings in the field, people make the marriage agreement talkative, usually due to the influence of soap operas on TV. In addition, the influence of Western culture also makes this pattern develop." (Interview, July 1, 2023).

The results of the interview show that there are several main factors that influence the couple in making marriage agreements in Indonesia. First, economic factors become a significant driver, where couples who have wealth before marriage tend to want to separate ownership of their assets so as not to be mixed with shared property obtained after marriage. This was confirmed by Moh Zaeni Dahlan, Head of the Regional Office of the Ministry of Religion of DKI Jakarta, who stated that the main motivation of the couple in making a marriage agreement was to maintain the clarity of asset ownership. Previous research by Vitali & Fraboni²⁶ also shows that couples who have significant

²⁶ Vitali & Fraboni (2022)

assets before marriage are more likely to make agreements to protect their property.

Second, legal awareness plays an important role; couples with a higher level of education tend to better understand their legal rights and obligations, so it is more open to make agreement. This is in line with the findings by Afrianto & Fahmi²⁷, who noted that better education relates to a better understanding of the marriage agreement and related rights. Third, mixed marriages often encourage couples to make agreements to regulate property ownership rights, given the difference in cultural and legal background. Research by Zakiyuddin et al.,²⁸ highlights that marriage agreements in the context of mixed marriage can help overcome the differences in law that may arise.

Finally, social and cultural influences, especially from the media, also cannot be ignored. Amsiyono, Head of the Islamic Community Development Section of the Ministry of Religion of Malang City, revealed that media shows, such as soap operas, as well as the influence of Western culture, have influenced the community's view of marriage agreements, making it more general and accepted. Research by Julianti & Lubis²⁹ shows that representation The marriage agreement in the media can form public perceptions and increase acceptance of the practice. Thus, these factors interact with each other and shape the perception and practice of marriage agreements among Indonesian society, creating complex dynamics in the context of law and social.

c. The material agreed upon in the marriage agreement

Research shows that the majority of marriage agreements only include issues of property. Some of the promised material forms include: 1) Separation of innate wealth before marriage; 2) Ownership of assets obtained during marriage (inheritance, grant, gift); 3) The division of financial responsibilities in the household; and 4) The distribution of household furniture and movable goods ownership.

According to Vivi Novita from this DKI Jakarta:

"So far there are no other forms other than marriage agreements other than assets, because indeed our marriage law only regulates it. If the marriage

²⁷ Afrianto & Fahmi (2023)

²⁸ Zakiyuddin et al. (2022)

²⁹ Julianti & Lubis (2024)

agreement is carried out with material other than assets, it is not appropriate." (Interview, August 5, 2023).

This was also confirmed by Imam Rahmat, this Chairperson of Malang Regency/City:

"The marriage agreement is only related to the material, to protect the rights of each party, because the practice in the field is that the material is only promised." (Interview, July 1, 2023).

Research shows that the majority of marriage agreements primarily focus on property-related issues. Some of the material aspects commonly included in these agreements are: 1) separation of innate wealth acquired before marriage; 2) ownership of assets obtained during the marriage, such as inheritance, grants, or gifts; 3) the division of financial responsibilities within the household; and 4) the distribution of ownership of household furniture and movable goods. According to Vivi Novita from the DKI Jakarta region, "So far, there are no other forms other than marriage agreements that primarily address these property issues." This highlights a trend where the legal framework surrounding marriage agreements tends to prioritize financial and asset management, potentially overlooking other important aspects of marital relationships, such as emotional support, child-rearing responsibilities, and conflict resolution mechanisms. The focus on property may reflect societal values that emphasize financial security and stability, but it also raises questions about the holistic nature of marriage agreements and their role in fostering comprehensive family harmony.

Marriage agreements in Indonesia primarily focus on property-related issues, including separation of pre-marital wealth, ownership of assets acquired during marriage, division of financial responsibilities, and distribution of household goods.³⁰ These agreements serve as legal instruments providing protection and justice for married couples, acting as both preventive and repressive legal safeguards.³¹ While some view marriage agreements negatively due to their emphasis on wealth, considering them unethical or materialistic in Indonesian culture³², others

³⁰ Swastika Chakravorty, Srinivas Goli, and Kuriath S James, "Family Demography in India: Emerging Patterns and Its Challenges," *Sage Open* 11, no. 2 (2021): 21582440211008176.

³¹ Sudarman Sinaga, Hasim Purba, and Mahmud Siregar, "Legal Protection of the Rights of Trade Secret Information Owners in Employment Agreements That Do Not Include a Trade Information Confidentiality Clause," *Indonesian Journal of Humanities and Social Sciences* 5, no. 3 (2024): 1543-56.

³² M Reza Ishadi Fadillah, Kasuwi Saiban, and Sri Hartini Jatmikowati, "Phenomenological Study of Rental Friend in Urban Communities: Perceptions of Actors and

recognize their importance in ensuring legal certainty and addressing modern concerns about material advantages and disadvantages in marriage.³³ The Marriage Law No. 1/1974 allows for broader interpretation of marriage agreements beyond property matters, as long as they do not contradict religious norms, public order, and morals³⁴, reflecting a more comprehensive approach to marital relationships.

d. Impact of Constitutional Court Decision No. 69/PUU-XIII/2015

Previously, a marriage agreement could only be made before or during the marriage. However, after the Constitutional Court's decision No. 69/PUU-XIII/2015, a partner can make a marriage agreement during the marriage bond.

According to Moh Zaeni Dahlan from the Regional Office of the Ministry of Religion in DKI Jakarta:

"Since the issuance of the Constitutional Court's decision No. 69/PUU-XIII/2015, many couples who have been married for 15 years come for consultation and want to make a marriage agreement." (Interview, 3 August 2023).

However, there are differences in interpretation of the impact of this decision on marriage agreements for indigenous couples. Machmud Fauzi, this Advisory Board, East Java, stated:

"This change in Article 29 is only a specificity to mixed marriages and the issue of disputes of property ownership, does not apply to indigenous marriages." (Interview, July 25, 2023).

Previously, a marriage agreement could only be made before or during the marriage. However, after the Constitutional Court's decision No. 69/PUU-XIII/2015, partners can now create a marriage agreement during the marriage bond. According to Moh Zaeni Dahlan from the Regional Office of the

Users of Friend Rental Services in Malang City," *International Journal of Research in Social Science and Humanities (IJRSS)* ISSN: 2582-6220, DOI: 10.47505/IJRSS 5, no. 5 (2024): 68-93.

³³ Iqrar Abdul Halim, M Wildan Fauzbika, and Muchammad Abdur Rochman, "Exploring the Diversity of Opinions in Contemporary Islamic Family Law: The Response of Islamic Civil Society Organizations in Banyumas to Changes in the Marriage Age Limit," *Legitima: Jurnal Hukum Keluarga Islam* 7, no. 1 (2024): 100-126.

³⁴ Julianti and Lubis, "The Impact of Implementing Premarital Health Test Certificate Requirements on Unregistered Marriage Practices."

Ministry of Religion in DKI Jakarta, "Since the issuance of the Constitutional Court's decision No. 69/PUU-XIII/2015, many couples who have been married for 15 years come for consultation and want to make a marriage agreement to clarify their rights and responsibilities." This shift has opened new avenues for couples to address their financial and property arrangements, reflecting a growing awareness of the importance of legal clarity in marital relationships. The ability to establish agreements post-marriage allows couples to adapt to changing circumstances and ensures that their individual and shared assets are protected, thereby promoting a more equitable partnership.

The Constitutional Court Decision No. 69/PUU-XIII/2015 significantly altered the landscape of marriage agreements in Indonesia. Previously, such agreements could only be made before or during the marriage ceremony.³⁵ However, this decision now allows couples to create marriage agreements at any point during their marriage, providing greater flexibility and protection of constitutional rights.³⁶ This change has implications for joint property and debt management, with couples able to contractually determine debt settlement arrangements.³⁷ The decision also expanded the authority of notaries, allowing them to ratify marriage agreements alongside marriage registration officers.³⁸ These agreements, when made during marriage, take effect from the time of marriage unless otherwise specified, and must be mutually agreed upon and witnessed by a notary.³⁹ This ruling aims to protect individual rights and adapt to changing circumstances within marriages.

e. Challenges in implementing marriage agreements

Despite having benefits in the legal and economic aspects, the marriage agreement is still considered taboo by some people. Customary factors, social

³⁵ Esther Masri and Sri Wahyuni, "Implementasi Perjanjian Perkawinan Sebelum, Saat Dan Sesudah Perkawinan," *Jurnal Kajian Ilmiah* 21, no. 1 (2021): 111–20.

³⁶ Rizani et al., "The Essence of Marriage Agreement as Protection in the Indonesian Marriage Law System."

³⁷ Julianti and Lubis, "The Impact of Implementing Premarital Health Test Certificate Requirements on Unregistered Marriage Practices."

³⁸ Rahmida Erliyani et al., "Dispute Resolution Model in Sewangi Island Village Communities Based on Wetlands," *Riwayat: Educational Journal of History and Humanities* 7, no. 4 (2024): 3010–19.

³⁹ Shakilla Audi Setia Ayu, Djumardin Djumardin, and Salim Salim, "The Role and Responsibilities of the Notary in Making a Deed of Post-Wedding Marriage Agreement: Study at the Mataram Regional Notary Office, Indonesia," *Path of Science* 9, no. 11 (2023): 5021–29.

norms, and religious values are often obstacles for couples to make marriage agreements.

As stated by Amsiyono from the Ministry of Religion of Malang City:

"In the city of Malang, the practice of marriage agreements is still small because the community considers it taboo. They assume that discussing the marriage agreement before marriage is as if it does not believe in the couple." (Interview, July 1, 2023).

This was also confirmed by Imam Rahmat from this Malang:

"There was a couple who wanted to make a marriage agreement, but eventually canceled because one of the parties felt offended when discussing the separation of assets." (Interview, July 1, 2023).

Despite having benefits in the legal and economic aspects, the marriage agreement is still considered taboo by some people. Customary factors, social norms, and religious values often serve as obstacles for couples to create marriage agreements. As stated by Amsiyono from the Ministry of Religion of Malang City, "In the city of Malang, the practice of marriage agreements is still small because the community considers it taboo. They assume that discussing the marriage agreement before marriage is as if they are anticipating failure in their relationship, which contradicts the traditional view of marriage as a sacred and lifelong commitment." This perception reflects a broader societal reluctance to engage in discussions about financial and legal matters related to marriage, as many individuals believe that such discussions undermine the romantic and spiritual aspects of the union. Consequently, the stigma surrounding marriage agreements can hinder couples from taking proactive steps to protect their rights and responsibilities, ultimately affecting their marital harmony and stability.

Marriage agreements, while legally beneficial, remain controversial in Indonesian society due to cultural and religious factors. Many view them as taboo, unethical, and materialistic, associating them with business transactions rather than sacred unions.⁴⁰ This perception stems from the agreement's focus on wealth distribution, which some consider inappropriate

⁴⁰ Naveen Pant, "Indigenous Sexuality Texts, Psychology and Mental Wellbeing," in *Psychology of Sexuality & Mental Health Vol. 1: Indigenous Approaches* (Springer, 2024), 183–236.

in the context of marriage.⁴¹ Despite these reservations, marriage agreements have gained popularity among certain groups, such as artists, officials, and businesspeople, who see them as a means of protecting individual assets. The agreements must comply with legal, religious, and moral norms to be considered valid.⁴² While Law No. 1 of 1974 provides a legal basis for marriage agreements, it lacks detailed provisions.⁴³ Ultimately, these agreements serve as preventive measures to simplify property distribution and protect individual rights within marriages.

4. Conclusion

The conclusion of this study shows that the practice of marriage agreements in Indonesia is still limited to aspects of the separation of assets and more carried out by certain groups such as mixed marriage couples, entrepreneurs, officials, and those who have high legal awareness. Factors that influence this practice include social, economic, educational, cultural, and modernization stratification. In the perspective of Islamic law, marriage agreements can be accepted during the aim of benefit and maintain the principles of the *sakinah, mawaddah, and rahmah* (samawa) family. Meanwhile, in positive law, the marriage agreement still refers to the Civil Code because the Marriage Law and the Compilation of Islamic Law (KHI) has not yet regulated specifically regarding the material of this Agreement. Therefore, it is necessary to update more inclusive regulations so that the marriage agreement can include a broader aspect, not only related to assets but also the rights and obligations couple in marriage.

As a recommendation, the government needs to revise the Marriage Law and KHI to include clearer provisions regarding the marriage agreement, including the right of the wife in rejecting polygamy and protection of the rights of the partner. The role of the Ministry of Religion is also very important in socializing the concept of marriage agreements to the community so that it is no longer considered taboo. In addition, the progressive *fiqh* approach can be used in building more adaptive regulations by considering aspects of *maslahat*, customary law, and the theory of civil law. Notaries, academics, and

⁴¹ Abubakir M Saleh et al., "Exploring Iraqi People's Perception about Early Marriage: A Qualitative Study," *BMC Women's Health* 22, no. 1 (2022): 393.

⁴² Robert P George, *The Clash of Orthodoxies: Law, Religion, and Morality in Crisis* (Simon and Schuster, 2023).

⁴³ Linda Haas and C. Philip Hwang, "Policy Is Not Enough - the Influence of the Gendered Workplace on Fathers' Use of Parental Leave in Sweden," *https://doi.org/10.1080/13668803.2018.1495616* 22, no. 1 (January 1, 2018): 58-76, <https://doi.org/10.1080/13668803.2018.1495616>.

legal practitioners must also be involved in the process of formulating this policy so that marriage agreements can be an effective legal instrument in protecting the rights of married couples and creating a more harmonious and just household.

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