

Prenuptial Agreement in Islamic Family Law: A Maqāṣid al-Sharī'ah Approach

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Article Info

Abstract

This study analyzes prenuptial agreements within the framework of Islamic family law and explores their harmonization with contemporary social demands. While recognized under Article 29 of Law No. 1 of 1974 jo. Law No. 16 of 2019, such agreements remain contested in classical Islamic jurisprudence. Using a qualitative method with a normative-conceptual and comparative approach, this research draws from classical texts (e.g., al-Māwardī, Ibn Qudāmah) and contemporary thought on maqāṣid al-sharī'ah (e.g., al-Shātibī, Ibn 'Ashūr), as well as interviews with scholars and practitioners. The findings show that prenuptial agreements are not inherently in conflict with Islamic law if aligned with core marital principles. When framed within maqāṣid, they can promote maṣlaḥah by clarifying spousal rights and protecting shared assets. The academic contribution of this study lies in its integrative framework that bridges traditional Islamic legal doctrine with the evolving socio-legal context of Muslim societies. It also offers practical implications for developing Islamic-compatible prenuptial models and raising public awareness.

I. Introduction

A pre-nuptial agreement (ta'liq al-nikah) is a form of agreement between prospective spouses that has begun to be widely discussed in the context of modern family law. On the one hand, this agreement can be considered as a means of protecting individual rights in marriage, especially for women. On the other hand, there is a conservative view that this practice contradicts the sacredness of marriage in Islam, which is based on trust, responsibility and moral commitment, not a legal contract with pre-requisites.¹

In Indonesian positive law, the space for prenuptial agreements is normatively open through Article 29 of Marriage Law No. 1 of 1974, which allows couples to establish agreements prior to marriage regarding matters such as property division, household responsibilities, and childcare. While such agreements are widely recognized and practiced in many countries with Western legal systems, their position in Islamic family law remains debated due to limited discourse on their legitimacy and boundaries.² Most previous studies have primarily focused on formal-legal aspects or examined the issue within classical fiqh frameworks, often overlooking the evolving social context and pressing contemporary needs—such as the protection of women's rights to joint property, role-sharing in the household, protection from domestic violence, and educational continuity for children after divorce—highlighting a critical gap in the integration of Islamic legal thought with current socio-legal realities.³

In the classical Islamic legal tradition, the marriage contract is regarded as a sacred bond imbued with religious, moral, and legal significance, wherein any additional conditions—such as prenuptial agreements—must not contradict the core principles of sharia. While some scholars permit conditional stipulations in marriage contracts provided they do not undermine essential obligations like the husband's duty of maintenance and fair treatment, others adopt a more conservative stance, viewing such additions as potentially detrimental to the sanctity of the marital bond.⁴ This debate becomes increasingly pertinent in modern Muslim societies experiencing significant socio-economic and cultural shifts, including greater female participation

¹ Hilda Swandani Prastiti, "Membedah Parameter Berusaha Dalam Upaya Meningkatkan Kemudahan Berinvestasi Di Indonesia (Studi Klomparasi Indonesia Dan Vietnam)," *Dharmasisya* 2, no. 1 (2022): 34, <https://scholarhub.ui.ac.id/dharmasisya/vol2/iss1/34/>.

² Widhy Andrian Pratama, "Eksistensi Perjanjian Pra Nikah Dalam Perspektif Hukum Islam Indonesia," *Tasamuh: Jurnal Studi Islam* 17, no. 1 (April 30, 2025): 92–104, <https://doi.org/10.47945/TASAMUH.V17I1.1572>.

³ Muhammad Muhazzir and Heri Firmansyah, "Praktik Perjanjian Lisan Pra Nikah Di Kelurahan Hinai Kiri Kecamatan Secanggang Kabupaten Langkat Dalam Perspektif Hukum Islam Dan Hukum Keluarga Di Indonesia," *KABILAH : Journal of Social Community* 8, no. 1 (June 27, 2023): 920–34, <https://ejournal.kopertais4.or.id/madura/index.php/kabilah/article/view/7208>.

⁴ Amum Mahbub Ali, "Analisis Hukum Perjanjian Pra-Nikah," *Al-Authar (Jurnal Pendidikan Dan Hukum Islam)* 3, no. 1 (June 17, 2024): 57, <https://jurnal-stai.babunnajah.ac.id/index.php/al-authar/article/view/35>.

in education and the workforce, rising legal awareness, and the growing prevalence of divorce and domestic violence. These developments have prompted many couples to consider prenuptial agreements as a means of ensuring rights protection and legal clarity. Within this evolving context, a critical question emerges: to what extent can Islamic law accommodate prenuptial agreements within the framework of *maqāṣid al-sharī'ah*, which prioritizes the protection of religion, life, intellect, lineage, and property?⁵

The novelty of this research lies in its effort to bridge two often dichotomized perspectives: Islamic family law rooted in classical traditions and the evolving needs of modern Muslim societies that demand flexibility and clarity in marital rights and obligations. While existing studies on prenuptial agreements in Islam tend to be normative and legalistic, lacking deep engagement with *maqāṣid al-sharī'ah* as an alternative framework, others that adopt sociological or feminist lenses frequently fall short of providing a solid *fiqh*-based foundation, limiting their acceptance among religious scholars.⁶ In reality, the development of contemporary Islamic legal thought has paved the way for a contextual reinterpretation of classical texts, particularly through the *maqāṣid* paradigm advanced by scholars such as al-Shātibī, Ibn 'Āshūr, Yusuf al-Qaradawi, and Ramadhan al-Būṭī. This approach positions Islamic law not as rigidly textual, but as a dynamic and responsive system oriented toward achieving tangible benefits and upholding essential values, thereby offering a more holistic and adaptive response to present-day legal and social challenges.⁷

Therefore, this study seeks to address an underexplored area by analyzing prenuptial agreements through the lens of *maqāṣid al-sharī'ah*-based Islamic family law, aiming to bridge the gap between traditional legal principles and the demands of modernity. The objective is to develop a conceptual model of prenuptial agreement that remains firmly grounded in Islamic values while also offering practical solutions to contemporary issues faced by Muslim couples.⁸ A further novelty of this research lies in its interdisciplinary approach, combining analysis of classical *fiqh* texts and statutory law with an understanding of evolving social dynamics, such as the rising legal awareness among young couples, calls for gender equality, and the need for clarity in spousal rights and responsibilities for a healthy family life. In doing so, the study offers a synthesis between normative and sociological approaches, which have

⁵ Asep Ubaidillah, "Untung Rugi Perjanjian Pra-Nikah : Analisis Yuridis Islam Dan Hukum Positif," *Qonuni: Jurnal Hukum Dan Pengkajian Islam* 3, no. 02 (April 21, 2025): 1–11, <https://doi.org/10.59833/gbxye596>.

⁶ Nenda Almira et al., "Perjanjian Pra Nikah Dalam Perspektif Hukum Islam Dan Hukum Positif Di Indonesia," *Jurnal Hikmatina* 5, no. 2 (August 22, 2023): 338–44, <https://jim.unisma.ac.id/index.php/jh/article/view/22347>.

⁷ Pratama, "Eksistensi Perjanjian Pra Nikah Dalam Perspektif Hukum Islam Indonesia."

⁸ Ahmad Assidik and A. Qadir Gassing, "Tinjauan Hukum Islam Dan Hukum Positif Terhadap Prenuptial Agreement Atau Perjanjian Pra Nikah," *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam* 1, no. 1 (March 13, 2020): 1–16, <https://doi.org/10.24252/qadauna.v1i1.11424>.

often been treated as separate and unintegrated in previous research.⁹

In practice, prenuptial agreements still face various social and cultural barriers, as many people perceive them as a sign of distrust between partners or even as an omen of marital failure. In reality, when understood wisely, prenuptial agreements can serve as preventive instruments to reduce household conflicts, clarify mutual responsibilities, and protect the rights of women and children. This underscores the importance of educational and socialization efforts grounded in an inclusive and adaptive interpretation of Islamic law.¹⁰ Within this framework, the study also analyzes the implementation of prenuptial agreements in other Muslim-majority countries such as Malaysia, Egypt, and Morocco, where contextual approaches have been integrated into family law. Through a comparative analysis, the research aims to identify best practices that may be adapted to the Indonesian context. In addition, the study aspires to provide practical recommendations for religious institutions, the Office of Religious Affairs (KUA), and religious courts so they can respond to community needs using approaches that are more solution-oriented and aligned with the principles of Islamic justice.¹¹

In a world that continues to evolve, Muslims are called not only to preserve religious traditions but also to offer fair and maslahat-oriented solutions for the realities of social life. When carefully examined and appropriately implemented, prenuptial agreements can serve as legal instruments that embody responsibility, justice, and equality within the framework of Islamic marriage.¹² Article 1 of Law Number 16 of 2019, which amends Law Number 1 of 1974 on Marriage, defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, aimed at forming a happy and lasting family grounded in the belief in God Almighty. This definition affirms that marriage is not merely a formal legal contract, but a moral and spiritual commitment that involves mutual emotional responsibility, thereby opening the space for arrangements—such as prenuptial agreements—that support the sustainability and harmony of the marital

⁹ Elin Siswanti, "Perjanjian Pra Nikah Dalam Prespektif Hukum Islam," *Journal of Law (Jurnal Ilmu Hukum)* 7, no. 2 (July 6, 2021): 433–47, <http://ejurnal.untag-smd.ac.id/index.php/DD/article/view/5639>.

¹⁰ Nuyun Nurillah, "Tinjauan Yuridis Perjanjian Pra Nikah Dalam Perspektif Hukum Islam Dan Hukum Positif Indonesia," *Jurnal Ilmiah Wahana Pendidikan* 9, no. 2 (January 28, 2023): 427–36, <https://doi.org/10.5281/ZENODO.7578873>.

¹¹ Sugih Ayu Pratitis and Rehulina Rehulina, "Keabsahan Perjanjian Pra Nikah Dan Akibat Hukumnya Ditinjau Dari Perspektif Hukum," *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL* 2, no. 2 (May 6, 2023): 56–73, <https://doi.org/10.55606/jhps.v2i2.1593>.

¹² Rana Tsani Tsamara and Adhitya Widya Kartika, "Tinjauan Yuridis Mengenai Perjanjian Pra Nikah Dalam Bentuk Lisan," *Kabilah : Journal of Social Community* 9, no. 1 (June 30, 2024): 65–80, <https://ejournal.iainata.ac.id/index.php/kabilah/article/view/329>.

relationship.¹³

The phrase "born and batin" indicates that the relationship between husband and wife must include physical, social and spiritual dimensions in a balanced manner. Furthermore, the statement that marriage occurs between a man and a woman confirms the heteronormative principle in Indonesian law, namely that only relationships between men and women are legally recognized in the national legal system. In this context, husband and wife occupy certain legal positions with interrelated rights and obligations and are regulated in family law. The purpose of this bond, which is to form a happy and lasting family, suggests that the state views the family as an ideal and stable social unit, which is expected to last a lifetime and become the foundation of society.¹⁴

The addition of the phrase "based on God Almighty" strengthens the position of marriage as an institution that not only has legal nuances, but also contains strong religious elements. This means that the validity of marriage is not only assessed from state legal records, but also from its conformity with religious norms and teachings.¹⁵ Therefore, all forms of regulation in marriage, including pre-marital agreements, must still reflect the principles of justice, equality, and the sacred purpose of marriage according to religious views. This provision becomes an important philosophical basis in analyzing the practice of pre-marital agreements in the perspective of Islamic family law, as it emphasizes the importance of maintaining a balance between the values of religious tradition and the demands of social justice in the context of modern households.

2. Research Method

This research employs a qualitative method with an interdisciplinary approach that integrates normative-theological analysis, the *maqāṣid al-sharī'ah* framework, and comparative legal studies. The normative-theological approach is used to analyze the legal basis and legitimacy of pre-marital agreements within classical and contemporary Islamic jurisprudence. The *maqāṣid al-sharī'ah* framework functions as the primary analytical lens to explore how pre-marital agreements align with and potentially enhance the core objectives of Islamic law, particularly the protection of life (*nafs*), property (*māl*), and lineage (*nasl*). To deepen the analysis, this study incorporates a sociological-comparative approach

¹³ Adelia Nova and Ade Fartini, "Hukum Perjanjian Pra Nikah Perspektif Hukum Perdata," *Al-Qadlāya: Jurnal Hukum Keluarga Islam* 3, no. 1 (2023): 8–15.

¹⁴ Nazma Tsania Salsabila, "Kajian Hukum Islam Tentang Perjanjian Pra Nikah Sebagai Bentuk Perlindungan Hukum Terhadap Harta Perkawinan," *Syntax Literate ; Jurnal Ilmiah Indonesia* 9, no. 11 (November 21, 2024): 6301–9, <https://doi.org/10.36418/syntax-literate.v9i11.50097>.

¹⁵ Muhammad Hilmi Ajjahidi, "Efektivitas Perjanjian Perkawinan Pra Nikah Dalam Melindungi Suami Istri Dan Pandangan Hukum Islam Terhadapnya," *SAMAWA : Jurnal Hukum Keluarga Islam* 3, no. 1 (January 31, 2023): 1–14, <https://doi.org/10.53948/samawa.v3i1.71>.

by examining legal practices and regulations related to prenuptial agreements in several Muslim-majority countries, including Malaysia, Egypt, and Morocco. This comparison aims to highlight best practices and contextual variations that could inform a more grounded and adaptive model for the Indonesian context.¹⁶

The research data consists of both primary and secondary sources. Primary sources include classical fiqh texts, Law No. 1/1974 on Marriage and its amendments, examples of prenuptial agreement documents, and relevant fatwas issued by religious authorities. Secondary sources comprise academic books, peer-reviewed journal articles, previous research findings, and policy documents from religious and governmental institutions. Data were collected through an in-depth literature review and supplemented by semi-structured interviews with selected key informants, including religious scholars, legal practitioners, and Muslim couples who have entered into prenuptial agreements. Informants were selected using purposive sampling to ensure diverse perspectives. Interview data were coded thematically, and data triangulation was applied to enhance the validity of findings. All collected data were then analyzed qualitatively to identify key themes and patterns related to *maqāṣid al-sharī'ah* and contemporary social dynamics, enabling the research to propose a synthesis that is both normatively grounded and socially responsive.

3. Results and Discussion

Dissecting the Social Stigma of Pre-Marital Agreements in Indonesia: Between Modern Needs and Traditional Values

In recent years, pre-marital agreements, also known as *ta'liq al-nikah*, have gained increasing attention among Indonesian Muslims. Especially among young couples, this issue has become the subject of considerable discussion, both in the private sphere, social media, to educational and religious forums. Increasing legal awareness, demands for fair marriage relations, and increasingly complex socio-economic conditions are the main backgrounds for the need to draft a written agreement before entering into a marriage institution. Whereas in the past marriages were based more on emotional beliefs and traditional norms, many prospective couples now see the importance of a legal foundation and clarity of responsibilities from the start of the marriage.¹⁷

This phenomenon cannot be separated from the changing mindset of the younger generation towards the meaning of marriage itself. Millennials and Generation Z tend to have a more rational and open view of the concept of rights and obligations in personal relationships. They have also grown up in a digital

¹⁶ Muhammad Badrut Tamam, "Pembaruan Ushul Fiqh Dalam Pemikiran al-Buthi" (UIN Syarif Hidayatullah, 2022).

¹⁷ Haqkida Kancana Suhendri, "Relevansi Perjanjian Pra-Nikah Antara Hukum Negara Dan Hukum Agama," *Muhammadiyah Law Review* 4, no. 1 (2020): 45–54.

era that provides wide access to various legal information, divorce case studies, and experiences of couples from various countries. As a result, there is an awareness that legal protection in marriage is not a form of mistrust or pessimism, but rather a preventive effort to avoid conflict and maintain household stability. Pre-nuptial agreements are understood as a way to recognize each other's expectations, limitations and commitments more openly and responsibly.¹⁸

In the context of Indonesian Muslim society, which is predominantly Muslim, the emergence of discussions about pre-marital agreements certainly cannot be separated from the growing religious discourse. Some people still think that discussing pre-marriage agreements can harm the sacredness of the marriage contract, which is actually based on love, trust and spiritual bonds. However, there are also groups who increasingly realize that Islam, as a religion that emphasizes justice and protection of rights, is very likely to accommodate this form of agreement as long as it does not conflict with the basic principles of sharia. Even in classical fiqh literature, conditions in the marriage contract are allowed as long as they do not violate the purpose of marriage and do not contain elements of invalidity.¹⁹

Young couples considering a pre-nuptial agreement usually have a number of practical reasons. One of these is to protect rights to inherited or joint property. In many cases, unpreparedness in managing financial matters is one of the main causes of divorce. With a pre-nuptial agreement in place, each party can determine in advance how the household finances will be run, who is responsible for certain expenses, and how assets will be divided in the event of divorce. This is considered to be able to prevent prolonged conflict and provide a sense of legal security.²⁰

In addition, in a society that is increasingly open to gender equality, a pre-nuptial agreement is also a space for fair negotiation between husband and wife. For example, couples can agree on the division of household roles, the continuation of the wife's education or career after marriage, and childcare patterns. This kind of agreement provides space for women to fight for their rights concretely, without having to contradict Islamic values. This is especially important for women who are already economically established or have strong career aspirations. Without a clear agreement, it is not uncommon for conflicts

¹⁸ Absarani Maharani Effendi, "Analisis Akibat Hukum Terhadap Hak Perkawinan Dari Perjanjian Pra Nikah," *Jurnal Ilmu Hukum Prima* 6, no. 2 (July 2, 2023): 324–31, <https://ejournal.penerbitjurnal.com/index.php/hukum/article/view/431>.

¹⁹ Rahmat Fadillah and M. Beta Subehi, "Perjanjian Pranikah Untuk Tidak Selingkuh Perspektif Hukum Islam Di Indonesia," *Interdisciplinary Explorations in Research Journal(IERJ)* 2, no. 2 (2024): 712–26, <https://shariajournal.com/index.php/IERJ/article/view/531/215>.

²⁰ Muhammad Amri Pratama et al., "Perjanjian Pranikah Dalam Perspektif Hukum Perdata Di Indonesia," *As-Syirkah: Islamic Economic & Financial Journal* 3, no. 3 (July 10, 2024), <https://doi.org/10.56672/syirkah.v3i3.297>.

to arise when a couple's expectations do not align after marriage.²¹

The rise of talk about pre-nuptial agreements is also inseparable from the increasing divorce rate in Indonesia. Data from the Supreme Court and the Ministry of Religious Affairs show an increasing trend of divorce cases, whether due to economic factors, disharmony, or domestic violence. This raises concerns among the younger generation and makes them more cautious in making the decision to get married. By making a pre-nuptial agreement, prospective couples feel they have a more certain grip and a clear structure in case things go wrong in the future.

However, although this phenomenon is increasingly being discussed, not all people are able to accept it well. Some still think that making an agreement before marriage is taboo, inappropriate, or even against religion. This view is largely born out of a patriarchal culture that places marriage within the framework of power relations, not partnership. Therefore, it is important to conduct legal education and a more inclusive religious understanding, so that pre-marital agreements can be understood proportionally, namely as a form of responsibility, not distrust.²²

Institutions such as the Office of Religious Affairs (KUA), religious instructors, and civil society organizations have a big role to play in providing this understanding. They can help socialize that a pre-marital agreement is not a symbol of failure, but rather a form of awareness and readiness to undergo marriage maturely. In addition, more contextual and *maslahat*-oriented religious approaches, such as the *maqāṣid al-sharī'ah* approach, need to be promoted so that Islamic law can provide solutions to modern problems of the *ummah*.²³

The phenomenon of increased attention to pre-nuptial agreements among young couples is part of a positive social transformation. It shows a higher awareness of the importance of clarity of rights and obligations in marriage, as well as the drive to create a healthier, fairer and more responsible household. If understood and implemented wisely, a pre-nuptial agreement will not only strengthen the marriage bond, but also provide a solid legal and moral foundation for family life in the modern era.²⁴

This phenomenon can also be read as a reaction to the crisis of the institution of the household in an increasingly complex society. On the one hand, rapid social changes - such as urbanization, increased participation of women in higher education and

²¹ Assidik and Gassing, "Tinjauan Hukum Islam Dan Hukum Positif Terhadap Prenuptial Agreement Atau Perjanjian Pra Nikah."

²² Siswanti, "Perjanjian Pra Nikah Dalam Prespektif Hukum Islam."

²³ Ismail Tanini and Titin Samsudin, "Perspektif Hakim Pengadilan Agama Gorontalo Tentang Perjanjian Pranikah (Studi Analisis Terhadap Putusan Pengadilan Nomor 851/Pdt.G/2018/PA.Gtlo)," *AS-SYAMS* 2, no. 1 (February 1, 2021): 34–48, <https://ejournal.iaingorontalo.ac.id/index.php/AS-SYAMS/article/view/19>

Aa Sofyan, "Perjanjian Pra-Nikah Perspektif Islam: Studi Fenomenologi Di Era Society 5.0," *Qonuni: Jurnal Hukum Dan Pengkajian Islam* 3, no. 2 (December 31, 2023): 99–109, <https://doi.org/10.59833/qonuni.v3i2.1661>.

the workforce, and widespread access to social media - have created new dynamics in husband and wife relationships. Gender roles are no longer as rigid as in traditional patterns. Women are now not only positioned as household caretakers, but also as active economic and intellectual subjects. As the structure of relations changes, the need for clarity of roles and responsibilities becomes more urgent. So, pre-nuptial agreements come as a response to the need to reformulate the relationship structure in a fair and rational manner.²⁵

Apart from being a form of legal protection, a pre-nuptial agreement for some couples also functions as an ethical document, a kind of declaration of intentions and values to be upheld in domestic life. In certain psychological settings, the drafting of such an agreement is not solely based on suspicion of the couple, but rather as a means of testing and strengthening value understanding. Couples who are able to openly discuss a pre-nuptial agreement show a high level of emotional maturity and mental readiness to enter married life. So, it is not the agreement that is the main point, but the process of dialog that accompanies it. In other words, the agreement becomes a tool for mutual introspection-an evaluative moment before the legal and spiritual bond actually takes place.²⁶

It is undeniable that pre-nuptial agreements also pose complex ethical and social dilemmas. One of the biggest challenges is the clash between modern individualism and the collective spirit of Indonesian family traditions. Many young couples are personally ready to make these agreements, but are hampered by resistance from parents or extended family circles. In a culture where marriage is still considered to be an affair of two families, not just two individuals, a move like making a pre-nuptial agreement can be perceived as a form of defiance or even arrogance. This is where the cultural contradiction becomes apparent: one side encourages independence, the other demands loyalty to the traditional order.

This resistance is even stronger when framed within conservative religious discourse. In many Islamic forums, pre-nuptial agreements are still often suspected as a form of "desecration" of the marriage contract, which is considered sacred and sufficient with moral trust in each other. This suspicion arises because pre-nuptial agreements are associated with Western law or individualistic culture that contradicts the principles of *tawakkul* and *ukhuwah*. In fact, within the framework of *maqāṣid al-sharī'ah*, such agreements are in line with the principles of protection of life, honor, property, and family continuity. Unfortunately, this *maqāṣid* approach has not become mainstream in popular religious discourse.

²⁵ Redy Bahtiar, "Pandangan Masyarakat Terhadap Perjanjian Pra-Nikah Di Kelurahan Bugih Kabupaten Pamekasan," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 1, no. 2 (December 12, 2019): 124–40, <https://doi.org/10.19105/al-manhaj.v1i2.3139>.

²⁶ Andrian Syah and Ilham Tholatif, "Urgensi Perjanjian Pranikah Sebagai Kesepakatan Awal Perkawinan," *Legal Standing : Jurnal Ilmu Hukum* 6, no. 2 (September 1, 2022): 115–28, <https://doi.org/10.24269/LS.V6i1.5017>.

Philosophical and Theological Foundations of Pre-Marital Agreement in Islam: A Study of *Maqāṣid al-Sharī'ah*

The basic philosophy of Islamic law is built on the principles of justice, benefit, and protection of basic human rights. *Maqāṣid al-sharī'ah*, as an ethical and rational framework in Islamic law, states that every shari'ah law aims to safeguard and protect five main things: religion (*dīn*), soul (*nafs*), intellect (*'aql*), offspring (*nasl*), and property (*māl*). In this context, marriage and all its legal instruments, including the possibility of entering into a pre-marital agreement, can be understood as an effort to achieve and safeguard these goals. A pre-marital agreement can serve as a tool to safeguard property (*māl*), prevent conflicts that damage offspring (*nasl*), protect the soul (*nafs*) from domestic violence or injustice, and ensure the sustainability of marriage as an institution that sustains religious and social life.²⁷

Theologically, Islam teaches that all contracts and *mu'āmalah* should be built on the principles of *ta'āqud* (mutual consent) and *'adālah* (justice). Allah SWT in many verses of the Qur'an emphasizes the importance of keeping promises and fulfilling agreements, including in QS. Al-Mā'idah: 1 and QS. Al-Isrā': 34. In this spirit, a pre-marital agreement can be seen as a form of real implementation of the spirit to agree transparently and fairly before the marriage contract is pronounced. There is nothing wrong with writing down rights and obligations, even the Prophet Muhammad himself in the Medina Charter provides an example of how agreements between individuals and groups are systematically written down to prevent conflict in the future.²⁸

On the other hand, some may argue that the practice of pre-nuptial agreements undermines the sacredness of marriage. However, this view derives more from patriarchal cultural constructions than from the principles of Islam itself. In many fiqh literature, such as the works of Ibn Qudāmah and al-Nawawī, scholars agree that the conditions added to the marriage contract are valid as long as they do not contradict the basic principles of sharia. There is even a fiqhiyah rule that states: *al-muslimūn 'alā shurūṭihim* (Muslims are bound by the conditions they agree to), as long as they do not make the unlawful or forbid the lawful. This confirms that there is room in Islamic law for prenuptial agreements that are based on fairness, transparency, and protection of the interests of both parties.²⁹

If drawn into *maqāṣid* studies, a pre-marital agreement can function as an instrument of protection. It provides a preventive legal framework that safeguards couples from harm or injustice, especially for vulnerable parties-in

²⁷ Siti Mutmainah and Ai Fatimah Nur Fuad, "Prenuptial Agreement Dalam Presepektif Hukum Islam (Studi Kasus Di Kecamatan Banjarnyar Kabupaten Ciamis)," *Innovative: Journal Of Social Science Research* 4, no. 3 (May 31, 2024): 8784–92, <https://doi.org/10.31004/INNOVATIVE.V4I3.11456>.

²⁸ Effendi, "Analisis Akibat Hukum Terhadap Hak Perkawinan Dari Perjanjian Pra Nikah."

²⁹ Nur Hadi, "Maqashid Syari'ah Hukum Perkawinan Dalam Kompilasi Hukum Islam (KHI)," *Al-Fikra : Jurnal Ilmiah Keislaman* 16, no. 2 (December 29, 2017): 203–32, <https://doi.org/10.24014/AF.V16I2.3831>.

most cases, women and children. For example, women can agree on rights to joint property, continuation of education or employment, and protection from domestic violence. From a maqāṣid perspective, this is very much in line with the principles of protection of the soul (ḥifẓ *al-nafs*), intellect (ḥifẓ *al-ʿaql*), and property (ḥifẓ *al-māl*). Thus, instead of undermining the sanctity of marriage, this agreement actually strengthens it by providing clear and fair limits for both parties.

This concept also shows how Islamic law is not a static or literalistic system, but a normative system that is open to reinterpretation based on the context of the times. Modern maqāṣid thinkers such as al-Shāṭibī, Ibn ʿĀshūr, and Yusuf al-Qaradāwī emphasize that maqāṣid opens space for ijtihad in presenting laws that are relevant and solutive to new challenges. In this case, pre-nuptial agreements are part of the discourse of Islamic family law reform, which remains grounded in traditional values but is able to respond to changing social realities. Thus, the discourse of pre-marital agreements should not be faced with suspicion, but with methodological and ethical openness.³⁰

maqāṣid al-sharīʿah approach, we are invited not to be trapped in the external form of a regulation, but to assess its substance, purpose, and impact on social justice and family welfare. In an increasingly complex world, healthy and just household relations cannot be built only with good intentions, but also with solid legal and moral structures. A pre-nuptial agreement is one way to organize that structure consciously, rationally and responsibly, in accordance with the lofty principles of Islam.

In the context of maqāṣid al-sharīʿah, it is important to realize that the Islamic Shari'ah does not only want to regulate human behavior, but also form a functional and equitable structure of social life. Household life is one of the most fundamental social structures in Islam. If this structure is fragile, then the implications extend to wider social issues - gender inequality, domestic violence, childcare dysfunction, and poverty reproduction. Therefore, pre-nuptial agreements, when examined from a maqāṣid perspective, are part of human efforts to prevent greater damage (mafsadah), while ensuring the realization of sustainable benefits in the family unit.³¹

Criticism of pre-nuptial agreements often stems from the notion that they create a tension between *tawakkul* (surrender to Allah) and rational planning. But this

³⁰ Nurfazila Nurfazila and Zainal Azwar, "Fenomena Berduaan Dengan Tunangan (Analisis Fatwa Syekh Yusuf Al-Qaradhawi)," *An-Natiq Jurnal Kajian Islam Interdisipliner* 4, no. 2 (August 12, 2024): 182–94, <https://doi.org/10.33474/an-natiq.v4i2.21701>.

³¹ Ahmad Kholil, Kasuwi Saiban, and R. Cecep Lukman Yasin, "Analisis Terhadap Hasil Pemikiran Yusuf Qardhawi Berkenaan Nikah Misyar Menurut Ulama Nahdhatul Ulama Dan Muhammadiyah Kota Malang," *Komparatif: Jurnal Perbandingan Hukum Dan Pemikiran Islam* 2, no. 1 (June 8, 2022): 1–13, <https://doi.org/10.15642/KOMPARATIF.V2I1.1682>.

dichotomy is often mistaken or misinterpreted. Islam never teaches that *tawakkul* means surrender without effort. In fact, in a popular hadith, the Prophet Muhammad said to a companion: "Tie up your camel, then tawakkul." The spirit of this hadith emphasizes that tawakkul must be preceded by maximum human effort in managing risks and designing life as well as possible. In this context, a pre-marital agreement is not a form of distrust in the partner or in God's destiny, but a form of readiness to carry the mandate of marriage with measured maturity and responsibility.

Pre-nuptial agreements can be positioned as a modern form of the principle of *ṣulḥ* (reconciliation or peaceful agreement) in Islam. In many *mu'āmalah* matters, Islam provides ample room for parties to make agreements as long as they do not contradict the main texts. The same logic can be applied in marriage. If there is a possibility of conflict in the future that can be prevented by an amicable agreement at the beginning, then it shows prudence and spiritual maturity. Unfortunately, this kind of logic has not been widely used in popular religious discussions, which still tend to prioritize symbols over the essence of Islamic law itself.³²

The maqāṣid approach encourages us to see the structure of Islamic law not as something closed, but rather as a value framework open to innovation. If in today's context, pre-nuptial agreements are proven to prevent divorce, reduce household conflicts, or strengthen women's position in equal relations, then there is no reason to reject them a priori. In fact, from a maqāṣid perspective, this could be a form of preserving *ʿird* (honor) and *nasl* (continuity of generations), two things that are highly guarded in the structure of Islamic law.

An Ideal Model of Pre-Marital Agreement Based on Maqāṣid al-Sharī'ah: Recommendations for Islamic Family Law Reform in Indonesia

One of the biggest challenges in understanding Islamic law today is the assumption that it is final, rigid, and does not open space for adaptation. It is in this context that the thoughts of Yusuf al-Qaradawi and Ramadhan al-Būṭī become very relevant. Both stand between two worlds - loyalty to the legacy of classical Islamic tradition on the one hand, and the need to read the times critically on the other. They do not simply propose technical reforms, but reformulate the way Muslims interpret sharia: not as a collection of dead legalistic commands, but as a moral and social framework that is constantly moving towards benefit and justice.³³

Yusuf al-Qaradawi, in works such as *Fiqh al-Awlawiyyāt* and *al-Fiqh al-Muyassar*, emphasizes the importance of understanding sharia in the context of

³² Alief Rachman Setyanto, Arif Sugitanata, and Afthon Yazid, "Urgensi Pendidikan Pra-Nikah Di Indonesia Sebagai Upaya Menanggulangi Pernikahan Dini Dan Kekerasan Dalam Rumah Tangga," *Tadris : Jurnal Penelitian Dan Pemikiran Pendidikan Islam* 16, no. 2 (2022): 41–53, <https://doi.org/10.51675/JT.V16I2.638>.

³³ Satino Satino et al., "Sosialisasi Dalam Masyarakat: Pengaruh Perjanjian Pra Nikah Terhadap Pembagian Harta Bersama Pasangan Suami - Istri Dalam Perceraian: Tinjauan Hukum Dalam Perspektif Hukum Perdata," *Hukum Dinamika Ekselensia* 7, no. 1 (March 1, 2025): 136–50, <https://journalpedia.com/1/index.php/hde/article/view/4656>.

its maqāṣid. He rejects the view that all fiqh provisions are absolute. According to him, many fiqh provisions stem from scholars' ijtihad on the social and political context of their times, not from final revelation. So, if the context changes, ijtihad must also change. He often mentions that true Islamic law should not be a burden for the people, but should be a solution that facilitates their lives, in accordance with the principle of al-taysīr wa raf' al-ḥaraj (ease and removal of difficulties). In this framework, the law is not a tool of oppressive control, but rather a means of liberation that leads people to the glory of life.³⁴

Qaradawi's emphasis on the dynamics of law is evident in his attitude towards contemporary issues, including the role of women, democracy, and the economy. He dares to use maqāṣid as a basis for correcting classical fiqh views that, according to him, are no longer in line with the reality of today's society. He considers maqāṣid as the "soul of sharia", without understanding it, the law becomes dry and loses its relevance. He does not even hesitate to mention that Islamic law must be able to speak the language of the times. In this context, he opens a wide space for the formation of new policies and regulations, as long as they are based on the principles of justice, protection, and the benefit of the people.³⁵

Meanwhile, Ramadhan al-Būṭī, although known to be more conservative than Qaradawi, shows a similar direction of thought, but is more systematic and spiritual in his approach. In his work *Ḍawābiṭ al-Maṣlaḥah fi al-Sharī'ah al-Islāmiyyah*, he explains that maslahat cannot be separated from sharia. He rejects the secular approach that separates law from religion, but he also rejects the purely textual approach that ignores social reality. According to al-Būṭī, Islamic law must consider true maslahat-not just maslahat in the pragmatic worldly sense, but maslahat that remains in harmony with the spiritual and transcendental values of Islam.³⁶

Al-Būṭī also explained that in many cases, the shar'i texts leave room for interpretation because they are mujmal (global), 'āmm (general), or zannī (conjectural). It is in these spaces that maqāṣid ijtihad is needed. According to him, Islamic law does not exist to punish people blindly, but to maintain a just and harmonious social structure. In this view, justice is not the result of a mere reading of the text, but of a deep understanding of the spirit of sharia and the context of the people.³⁷

What is interesting about both is their ability to synergize text and context. Qaradawi is more progressive, prioritizing quick and applicable legal reforms.

³⁴ Nurfazila and Azwar, "Fenomena Berduaan Dengan Tunangan (Analisis Fatwa Syekh Yusuf Al-Qaradhawi)."

³⁵ Ibid.

³⁶ Kholil, Saiban, and Yasin, "Analisis Terhadap Hasil Pemikiran Yusuf Qardhawi Berkenaan Nikah Misyar Menurut Ulama Nahdhatul Ulama Dan Muhammadiyah Kota Malang."

³⁷ Fajar Nur Kholifah and Rara Siti Masrurroh, "Peran Ganda Perempuan Dalam Budaya Patriarki Di Indonesia Menggunakan Analisis Said Ramadhan Al-Buthi," *Al-Isyraq: Jurnal Bimbingan, Penyuluhan, Dan Konseling Islam* 5, no. 2 (December 22, 2022): 173–84, <https://doi.org/10.59027/alisyraq.v5i2.170>.

He sees maqāṣid as the gateway to modern ijtihad. While al-Būṭī is more cautious, but very in-depth in parsing the requirements of maslahat so as not to slip into mere social compromise. Both are based on the understanding that Islamic law has a mission: to maintain human glory and create a balanced life between the world and the hereafter. Thus, legal reform must not lose its normative direction, but also must not ignore the real needs of society.³⁸

If the approaches of these two thinkers are connected to the discourse of pre-nuptial agreements or family law reform, it is clear that both provide strong theological and methodological justifications. Such agreements are not only valid, but can become obligatory under certain conditions to prevent harm (mafsadah) or to safeguard the rights of the weaker party. Both teach that sharia is not a system that rejects innovation, but rather encourages ijtihad in favor of living justice. Thus, when a new regulation is needed to respond to the challenges of the times, it is not a betrayal of Islam, but a form of loyalty to the maqāṣid of Islam itself.

A more strategic and gradual approach is needed. Instead of immediately demanding total acceptance of pre-marital agreements, reform strategies can start from strengthening alternative religious narratives that favor protection, balance of roles, and mutual responsibility. In this regard, the thoughts of contemporary scholars such as Yusuf al-Qaradawi and Ramadhan al-Būṭī can be an important foothold. They show that Islamic law is not a static system, but an instrument that continues to move towards contextual justice. This is also where academic research such as yours is important: as a bridge between the legacy of classical Islamic law and the demands of a more humane and equal age.

In the Indonesian context, family law reform through pre-nuptial agreements can also be linked to constitutional protection of citizens' rights. Law No. 39/1999 on Human Rights, for example, guarantees the right to legal protection, gender equality and justice in family life. Integrating pre-nuptial agreements into Islamic family law, then, is not only theologically relevant, but also constitutionally valid. When maqāṣid al-sharī'ah is read within the framework of the modern rule of law, it can actually become a bridge that strengthens the position of Islamic law in the public sphere-not weakens it.³⁹

The ideal model of a maqāṣid al-sharī'ah-based pre-marital agreement is promising as a foundation for Islamic family law reform in Indonesia, but the main challenge lies not in its legal design, but in the sociocultural acceptance of the idea. In the context of Indonesia's highly pluralistic Muslim society, which is still strongly influenced by collective traditions and patriarchal norms, the existence of such agreements is often not accepted as a form of progress, but rather suspected as an

³⁸ Hadi, "Maqashid Syari'ah Hukum Perkawinan Dalam Kompilasi Hukum Islam (KHI)."

³⁹ Awaliya Safithri, "Urgensi Pencatatan Perkawinan Perspektif Maslahah Sa'id Ramadhan Al Bouty:(Studi Kasus Di Kecamatan Pakusari, Kabupaten Jember Jawa Timur)," *Jurnal Mahasiswa: Jurnal Ilmiah Penalaran Dan Penelitian Mahasiswa* 1, no. 3 (2019): 26–34.

influence of legal liberalism or even a form of deviation from sharia. In fact, this rejection is often not based on substantive religious arguments, but more on psychological resistance to changes in the structure of relations that have been hierarchical.⁴⁰

From the perspective of Islamic legal criticism, this situation indicates a considerable gap between idealized legal norms and the social praxis of the people, or in the language of legal philosophy: between *das sollen* and *das sein*. Although *maqāṣid al-sharī'ah* offers methodological flexibility and responsiveness to context, the implementation of this idea is still hampered by the dominance of textualistic approaches in many formal religious institutions, including in religious courts. Often, family rules are still read in a literal and normative manner, without considering the broader dimensions of *maslahat*. As a result, reform efforts such as pre-marital agreements, which can actually be instruments of justice, are stifled by non-adaptive interpretive tools.

In terms of implementation, the state has an important role to play in institutionalizing this model into the national family law system, especially in regulations at the Office of Religious Affairs (KUA). Currently, although Article 29 of the Marriage Law has provided space for pre-marital agreements, the practice is still limited and tends to be elitist. Many couples do not understand the legal procedures or are even afraid of being perceived as distrustful of their partner. Thus, there needs to be a systematic effort to simplify procedures, provide legal assistance, and build public awareness that this agreement is not a form of distrust, but rather a manifestation of mutual responsibility.

This reform must also touch on the aspects of socialization and education, especially by religious leaders and Islamic institutions. There are still many objections to pre-marital agreements that stem from textual *fiqh* understanding that has not been contextualized. This is where the role of scholars, academics, and religious instructors is important to introduce the *maqāṣid* approach as an Islamic legal methodology that is able to answer the challenges of the times. Thus, the reform of Islamic family law is not an obscuring of religious values, but rather a process of refreshing these values to keep them alive and relevant.

4. Conclusion

A prenuptial agreement, when analyzed through the lens of *maqāṣid al-sharī'ah*, is not in conflict with Islamic principles but rather complements them as a tool for achieving justice, protection, and clarity in marriage. In the Indonesian Muslim context, such agreements can serve as preventive mechanisms to address household conflicts, clarify rights and obligations, and protect vulnerable parties—especially

⁴⁰ Moh. Mufid, "Pandangan Al-Buthi Terhadap Hukum Mengikuti Program Keluarga Berencana (KB) Berdasarkan Intervensi Negara," *AL-HUKAMA'* 10, no. 2 (December 10, 2020): 195–217, <https://doi.org/10.15642/alhukama.2020.10.2.195-217>.

women and children. Resistance to prenuptial agreements is largely rooted in cultural attitudes and a rigid, textualist interpretation of Islamic law, which overlooks the dynamic and purpose-driven nature of maqāṣid principles such as ḥifẓ al-māl (protection of wealth), ḥifẓ al-nafs (protection of life), and ḥifẓ al-nasl (protection of lineage).

This study contributes to the development of a maqāṣid-based model of prenuptial agreement that extends beyond technical matters to include household role-sharing, reproductive rights, spiritual commitments, and safeguards against domestic crises. Such a model aligns with the progressive Islamic legal thinking of scholars like Yusuf al-Qaradawi and Ramadhan al-Būṭī, who emphasize Islamic law as a value system responsive to changing realities. Future research should focus on operationalizing this model by developing practical guidelines for institutions like the Office of Religious Affairs (KUA) and Religious Courts, and integrating maqāṣid values into premarital education curricula. This will help institutionalize prenuptial agreements not only as legally valid, but also as socially and theologically grounded instruments for a more just and visionary Islamic family law system.

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