

## PRENUPTIAL AGREEMENT AS A PROTECTION OF WIFE'S RIGHTS: MAQĀṢID AL-SYARĪ 'AH'AH'S ANALYSIS OF THE MUI FATWA AND THE CONSTITUTIONAL COURT'S DECISION

Heri Sulaiman <sup>\*(a,1)</sup>, Rahmad Lubis <sup>\*(b,2)</sup>, Muhammad <sup>\*(c,3)</sup> Sri Dewi <sup>\*(d,4)</sup>, Arlina Sriani <sup>\*(e,5)</sup>,

a Nurul Iman Islamic Religious College Bogor Indonesia

b Nurul Iman Islamic College Bogor Indonesia

c Nurul Iman Islamic Religious College Bogor Indonesia

d Nurul Iman Islamic Religious College Bogor Indonesia

e Radin Intan Lampung State Islamic University Bandar Lampung Indonesia

1 [herisulaiman2511@gmail.com](mailto:herisulaiman2511@gmail.com) \*; 2 [lubisrahmad26@gmail.com](mailto:lubisrahmad26@gmail.com) \*; 3 [habibmumuh86@gmail.com](mailto:habibmumuh86@gmail.com);

\*; 4 [chidew14@gmail.com](mailto:chidew14@gmail.com) \*; 5 [arlinasriani2005@gmail.com](mailto:arlinasriani2005@gmail.com);

\*Writer in Charge (Heri Sulaiman)

### Abstract

*This article examines the legal position of prenuptial agreements as an instrument for the protection of wife's rights in Islamic family law in Indonesia. Since the Constitutional Court Decision No. 69/PUU-XIII/2015, the urgency of the prenuptial agreement has increased because it is declared valid both before and after marriage. However, its role has not been fully understood as a protection mechanism for wives, especially in family economic justice. This study aims to analyze the legal position of prenuptial agreements in the perspective of the MUI Fatwa and the Constitutional Court Decision and evaluate its relevance through maqāṣid al-syarī'ah. The research method uses a normative qualitative approach through conceptual and juridical analysis. The results of the study show that the two legal instruments affirm the protection of wives on different grounds of argument: the MUI fatwa emphasizes sharia benefits and moral protection, while the Constitutional Court Decision affirms constitutional equality and distributive justice. Through the analysis of maqāṣid, the pre-marriage agreement has a preventive function that ensures the protection of property (ḥifẓ al-māl), the dignity of women (ḥifẓ al-'ird), and fair economic participation. Thus, the prenuptial agreement needs to be interpreted as a maqāṣid-based legal tool, not just an administrative agreement, but a substantive justice mechanism in contemporary Islamic family law.*

**Keywords:** Prenuptial Agreement; Wife's Rights; Maqāṣid al-Syarī'ah; MUI Fatwa; The Constitutional Court; Islamic Family Law; Distributive Justice.

### INTRODUCTION

Marriage is a social institution that not only unites two individuals, but also forms a family structure as the foundation for the development of society. In Indonesia, marriage has a strong religious and legal dimension, so that the relationship between husband and wife is not only based on emotional values, but also legal norms and social responsibility.<sup>1</sup> The complexity of this relationship demands that there be efforts to protect the rights of the parties involved, especially wives, who have historically been placed in vulnerable positions in social practices and family dispute resolution.<sup>2</sup> Economic inequality, dominance of

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<sup>1</sup> Siti Nurjanah Et AL., "Al-Mubādalah Fī Maḥūmī Fiqhī Al-Mar'ah Al-Mu'āshirah Bī Indūnīsiyā," *Al-Ihkām: Journal of Law and Social Institutions* 17, no. 1 (2022): 189–215, <https://doi.org/10.19105/Al-Ihkam.V17i1.6140>.

<sup>2</sup> Damian Agata Yuvens, "Critical Analysis of Marriage Agreements in Court Decisions Critical Analysis on Marital Agreement Number 69/Puu-XII/2015," No. 69 (2017).

financial decisions by husbands, and patriarchal cultural biases often put women in subordinate positions. This reality raises the need for preventive legal instruments, including pre-marital agreements as a mechanism for protecting rights in a more concrete and structured manner.<sup>3</sup>

In the context of Indonesian law, a prenuptial agreement (prenup) is not only understood as a technical rule that regulates wealth, but also as a strategic instrument to maintain relational justice between husband and wife. Its regulatory authority, which was originally limited by traditional understanding, began to be expanded after the Constitutional Court (MK) decision Number 69/PUU-XIII/2015, which allowed the creation of marriage agreements after the marriage contract. This reform opens up new space for women to obtain legal protection that is more flexible and relevant to household dynamics, including economic rights, freedom of ownership, and property management. At this point, national law is moving towards a more adaptive paradigm towards the principles of equality and justice in the family.<sup>4</sup>

However, the regulatory shift is inseparable from the religious dimension, considering that the majority of Indonesian people are guided by Islamic law in the practice of marriage. The Indonesian Ulema Council (MUI) has issued a fatwa on marriage agreements, which affirms its legality as long as it does not conflict with sharia, and emphasizes the purpose of benefits as the basis for validity. This MUI fatwa links prenuptial agreements with the protection of women's rights and the prevention of domestic conflicts, thus showing the synergy between national law and Islamic values. This framework is in line with *maqāṣid al-sharī'ah*, which is the purpose of sharia that places the protection of soul, intellect, descent, property, and religion as the main pillars in the determination of law.<sup>5</sup>

However, academic studies that systematically link the Constitutional Court's decision, the MUI fatwa, and the concept of *maqāṣid al-syarī'ah* in the context of the protection of the rights of wives through pre-marriage agreements are still limited. Previous research has tended to address only formal legal aspects without comprehensively integrating the *maqāṣid* approach as a normative, philosophical, and ethical foundation. This gap creates a scientific gap, that the protection of women in the context of marriage agreements has not been positioned as an explicit implementation of sharia goals, even though *maqāṣid* is very relevant in reading the dynamics of modern family law.<sup>6</sup>

This study aims to analyze the pre-nuptial agreement as an instrument for the protection of the rights of the wife by examining the normative relationship between the MUI fatwa, Constitutional Court Decision No. 69/PUU-XIII/2015, and the perspective of *maqāṣid al-syarī'ah*. This study offers a scientific contribution in the form of a new model of meaning that pre-marriage agreements are not just property arrangements, but an instrument of benefit-based women's protection, by placing *maqāṣid* as a justification for sharia that is

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<sup>3</sup> D I Indonesia and Through Approach, "The Writing of Khoiruddin Nasution "Direction of the Development of Islamic Family Law" 27, No. April (2017): 25–42.

<sup>4</sup> Asmuliadi Lubis, "The Legal Status of Prenuptial Agreement and Its Relevance to Islamic Law (Case Study in Kramatmulya District, Kuningan Regency, West Java)," *Al Mashalih: Journal Of Islamic Law* 4, No. 1 (2023): 35–44.

<sup>5</sup> Asri Lasatu et al., "Equality of Husband and Wife in To Kulawi Customary Marriage Reviewed from a Human Rights Perspective," *Amsir Law Journal* 4, No. 2 (2023): 162–71, <https://doi.org/10.36746/Alj.V4i2.205>.

<sup>6</sup> Zulham Wahyudani, Oyo S. Mukhlis, and Atang Abdul Hakim, "Criminal Aspects in Family Law and Its Settlement in Legal Institutions in Indonesia," *Legalite : Journal of Islamic Laws and Criminal Law* 8, No. 1 (2023): 75–90, <https://doi.org/10.32505/Legalite.V8i1.6197>.

preventive, relational justice, and the strengthening of women's civil rights in marriage<sup>7</sup>. The novelty of this research lies in the affirmation that national regulations and religious fatwas can be aligned within the framework of *maqāṣid*, thereby strengthening the academic legitimacy and applicability to the protection of the rights of wives in Muslim families in Indonesia.<sup>8</sup>

## PROBLEM FORMULATION

The above introduction shows that the prenuptial agreement has a strategic position as an instrument for the protection of economic and social rights for wives, but the cross-legal study between the MUI's fatwa, the Constitutional Court's Decision, and *maqāṣid al-syarī'ah* has not been formulated systematically. To answer this gap, this research is formulated into the following questions:

1. What is the legal position of the prenuptial agreement in the perspective of the MUI Fatwa and the Constitutional Court Decision No. 69/PUU-XIII/2015 as an instrument to protect the rights of the wife?
2. What is the relevance of *maqāṣid al-syarī'ah* in assessing the significance of the prenuptial agreement for the protection of the wife's rights in marriage?
3. How is the construction of the new meaning of the pre-nuptial agreement as a mechanism for the protection of wife's rights based on *maqāṣid al-syarī'ah* in the context of family law in Indonesia?

The formulation not only directs research on normative-legal aspects, but also on the epistemological dynamics of Islamic law that move towards women's protection. This focus paves the way for conceptual analysis that does not stop at formal legality, but explores sharia rational-ethics as the foundation of relational justice in the family.

## RESEARCH OBJECTIVES

Referring to the formulation of the problem above, this study aims to:

1. Analyzing the position of the pre-nuptial agreement in the perspective of the MUI Fatwa and the Constitutional Court Decision as an instrument for the protection of the wife's rights.
2. Identify the relevance of the principle of *maqāṣid al-syarī'ah* to the urgency of protecting the rights of wives through prenuptial agreements.
3. Formulating a new conceptual construction of the pre-nuptial agreement as an instrument for the protection of wives based on *maqāṣid al-syarī'ah* in Indonesian family law.

This goal confirms that the research not only explains positive law, but also offers a new conceptual framework that integrates *maqāṣid* with national law. Thus, this research contributes to strengthening the paradigm of benefit-based women's protection (al-

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<sup>7</sup> Purpose of Polygamy Rules and Law No, "Khiyaroh, Purpose of Polygamy Rules in Law No. 1 of 1974 concerning Marriage" 3, No. 1 (1974): 21–30.

<sup>8</sup> Fatwa Review, M U I No, and Moh Mujibur Rohman, "On Marriage Under the Hand Based on Sadd al-Dzari' Ah and Gender Justice," no. 10 (2008): 74–87.

maṣlaḥah), as well as providing a theoretical reference for the development of a fairer family law for women in Indonesia.

## DISCUSSION

### A. The Legal Position of the Pre-Marriage Agreement as an Instrument for the Protection of Wife's Rights

The legal status of prenuptial agreements in the context of Indonesian family law is increasingly prominent as a preventive mechanism to protect the rights of wives, especially in the economic and property ownership fields. Indonesia's normative framework, which combines national law and Islamic law, places the agreement not just as a personal agreement, but as a legal instrument that regulates the structure of justice in the household.<sup>9</sup> The MUI fatwa provides a sharia basis by emphasizing the protection of women's property and dignity, while the Constitutional Court Decision No. 69/PUU-XIII/2015 strengthens the position of pre-nuptial agreements through constitutional legitimacy. The combination of these two legal authorities shows the convergence of the objectives of protecting vulnerable parties, so that the prenuptial agreement must be understood as an instrument of family governance that is structural, not just an administrative option. Thus, the legal significance of the prenuptial agreement needs to be analyzed epistemologically, not only from the point of view of legality but also from the perspective of gender justice and the economic protection of the wife based on maqāṣid al-syarī'ah.<sup>10</sup>

#### 1. Normative Description of Prenuptial Agreements in National Law

The position of the prenuptial agreement in Indonesian law was initially limited because Article 29 of the Marriage Law emphasizes that an agreement can only be made before the marriage contract. This limitation creates a protection gap for women who have entered marriage without a clear economic agreement, thus risking financial losses in the event of divorce or unfair distribution of property. The concept of joint marital property in practice often makes it difficult for women who have a business or independent income before marriage because of the loss of individual ownership authority after the formation of a household. This aspect shows that without a pre-nuptial agreement, women have the potential to lose the financial independence that the legal system should protect.<sup>11</sup>

After the issuance of the Constitutional Court Decision No. 69/PUU-XIII/2015, the character of the pre-marriage agreement underwent a significant transformation. Agreements can be made before or during marriage, so that the wife's economic protection space is wider and no longer depends on the moment before the contract. This amendment emphasizes the principle of equality and legal protection for women,

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<sup>9</sup> Journal of Sharia Sciences, Social Institutions Volume, and July-December Edition, "Ahmad Rofiq, Islamic Law in Indonesia, iii (Jakarta: Raja Grafindo Persada, 1998), p. 181. 284" 8 (2022).

<sup>10</sup> Prof. Titik And Triwulan Tutik, "Marriage Agreement For The Joint Assets In Mixed Couple Marriage According In Indonesia Book Of Civil Law Number 1 Of 1974 Post Decision Of The Court Of," No. 1 (2021): 290–301.

<sup>11</sup> Court and Constitution Decision Number, "Post-Marital Property Dispute Resolution" 11, No. 1 (2018): 43–58.

in line with the standards of justice in constitutional norms. Then, prenuptial agreements are no longer considered culturally inappropriate, but as a rational effort to prevent conflict, protect personal assets, and maintain family stability. This normative transformation places prenuptial agreements as an important element of economic protection in modern family law in Indonesia.<sup>12</sup>

## **2. Analysis of the MUI Fatwa on Marriage Agreements**

The MUI fatwa places the marriage agreement as an instrument that is permissible under sharia in order to maintain justice, access to property, and benefits in the family. As a product of non-legislative Islamic law, the fatwa does not have normative coercion, but it serves as a moral authority and ethical guide that integrates the practice of family law with the principles of *maqāṣid al-syarī'ah*. Through this fatwa, the pre-marriage agreement is positioned as an effort to prevent the potential for tyranny that can befall women, especially in the aspects of inherited property, independent business, and wealth management. From the perspective of sharia, women's personal ownership is still recognized even though they are married, so that the pre-marriage agreement is an instrument of affirmation of rights that have been guaranteed by the sharia.<sup>13</sup>

The MUI fatwa also implies an ethical imperative for Muslims to manage marriage in a fair, rational, and responsible manner. Its emphasis on the principle of *maslahah* shows that the pre-marital agreement is not a form of distrust to the spouse, but a means of protection of property that functions to avoid economic exploitation, especially in the context of modern families that no longer rely on sole maintenance from the husband. In terms of legal theology, the fatwa embodies *maqāṣid al-syarī'ah* in the form of the protection of property (*ḥifẓ al-māl*) and the protection of women's dignity (*ḥifẓ al-'ird*). Thus, although not legally binding, fatwas have moral legitimacy that reinforces the urgency of prenuptial agreements in Indonesian Muslim society.<sup>14</sup>

## **3. Implications of the Constitutional Court Decision No. 69/PUU-XIII/2015**

The Constitutional Court Decision 69/PUU-XIII/2015 created a crucial reform in Indonesian family law because it allows marriage agreements to be made after the marriage contract takes place. This change provides expanded access to legal protection for women who were previously unable to enter into prenuptial agreements due to social limitations or lack of legal understanding.<sup>15</sup> This reform provides a constitutional guarantee for women to defend personal property, manage business assets, and avoid financial losses that often arise from divorce or the takeover of assets by their husbands. Thus, the constitution favors the protection of vulnerable parties in marital

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<sup>12</sup> Fhauzi Prasetyawan, "Marriage After Court Decision" 2, No. 1 (2018).

<sup>13</sup> Marriage Covenants and, "The Marriage Covenant and Its Urgency for Women," n.D., 131–41.

<sup>14</sup> Yasin Yusuf Abdillah, "Marriage Agreements as an Effort to Form a Happy Family Review of Maqa S Id Ash-Syari' Ah )," N.D., 165–77.

<sup>15</sup> Introduction to Marriage, "Legal Protection of Wives for the Use of False Documents Melpa Tambunan" 9 (2022): 65–74.



relationships, in line with the principle of gender equality which is a universal norm in human rights.<sup>16</sup>

Furthermore, this ruling also strengthens the legality of the prenuptial agreement as a document that can be updated according to the needs of household dynamics. This flexibility provides legal autonomy for women to manage their economic protection throughout the marriage, without relying on time or unilateral consent. In fact, the strengthening of the position of the prenuptial agreement shows the orientation of national law towards distributive justice, namely the equitable distribution of economic benefits and burdens within the family. Along with the growth of women's economic role in the modern era, the Constitutional Court's decision indirectly affirms the importance of structural protection for women in family law.<sup>17</sup>

#### **4. Comparative Evaluation: MUI Fatwa vs Constitutional Court Decision**

Evaluation of the MUI Fatwa and the Constitutional Court Decision shows that there is a convergence of the goals of protecting women, even though the two differ in the basis of argument and legal force. The MUI fatwa provides sharia legitimacy by placing the marriage agreement within the framework of benefits, while the Constitutional Court Decision provides constitutional legitimacy that affirms legal certainty. At this point, the two are united in a protective function, which is to provide a security umbrella for women's economic rights. Fatwas protect through religious moral principles, while the Constitutional Court's decision is through binding legal force. Both show a model of Indonesian legal dualism that reinforces each other, not contradicts each other.<sup>18</sup>

However, there is a fundamental difference in the orientation of the two. The MUI fatwa emphasizes more moral and ethical protection in the family, while the Constitutional Court's decision emphasizes formal legal aspects and legal equality. This opens up a space for epistemological synthesis that can harmoniously integrate *maqāṣid al-syarī'ah* with national law. Thus, the prenuptial agreement is not only legally valid in sharia, but also has definite legal force nationally. This conclusion shows that Indonesian family law has the potential to develop a model for women's protection based on the principles of benefit, legal certainty, and gender justice. This convergence is an important foundation for a more responsive and progressive reconstruction of family law.

## **B. The Relevance of Maqāṣid al-Syarī'ah in Assessing the Significance of Protecting Wives' Rights**

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<sup>16</sup> M Arwani, Faculty of Law, and Muria University, "Progressive Legal Perspectives on Execution in Talak Divorce Cases at the Pati Religious Court" 20, no. 1 (2019): 1–17.

<sup>17</sup> Joint Property, in Marriage, and by Agreement, "Liability of Husband and Wife in Credit Agreement with Guarantee of Joint Property in Marriage with Marriage Agreement" 1, no. 69 (2018).

<sup>18</sup> Creating Marital Harmony, "The Legal Politics of Marriage Agreements After the Constitutional Court Decision Number 69/Puu-XIII/2015 in Creating Marital Harmony (" 6, No. 69 (2017): 53–68.

The position of the prenuptial agreement as an instrument for the protection of the rights of the wife requires an analysis based on *maqāṣid al-syarī'ah* so that it is not only understood in a legal formalistic framework, but in an ethical-substantive perspective that guarantees the benefit of the family. *Maqāṣid*, as the basic purpose of Islamic law, emphasizes the protection of rights, the prevention of harm, and the optimization of benefits in social life, including the institution of marriage. Pre-marriage agreements are in line with this principle because they provide preventive protection for women's assets, dignity, and independence in the family. With the *maqāṣid* approach, the prenuptial agreement is not just an administrative agreement, but a symbol of moral awareness to uphold justice and avoid potential economic oppression in the household. This relevance emphasizes that the protection of the rights of wives through pre-nuptial agreements is part of the sharia mandate directed to maintain family stability and harmony.<sup>19</sup>

### **1. Placement of Prenuptial Agreements in the Maqāṣid Category**

The placement of the pre-nuptial agreement within the framework of *maqāṣid al-syarī'ah* confirms that this legal instrument is in line with the purpose of the shari'a to safeguard property (*ḥifẓ al-māl*) and to protect the dignity and honor of women (*ḥifẓ al-'ird*). In many cases, the absence of arrangements regarding marital property has the potential to cause economic losses in the event of a dispute or divorce. Prenuptial agreements not only provide financial protection, but also give legitimacy to women's right to self-ownership. Thus, it functions as an instrument that ensures the equitable distribution of rights within the family, thus preventing women from exploitation, economic domination of their husbands, or the takeover of assets without consent.<sup>20</sup>

The *maqāṣid* assessment also links the pre-nuptial agreement with the principles of harm prevention (*dar'u al-mafāṣid*) and the realization of benefits (*jalb al-maṣlaḥah*). In the modern context, women are no longer solely dependent on their husbands' livelihoods, but are also active economic subjects in the business sector, professional work, digital trade, and investment.<sup>21</sup> When women have a significant economic contribution, shari'a requires structural damage prevention instruments. The prenuptial agreement facilitates this need, so that it becomes a *maqāṣid* mechanism that is relevant to contemporary family dynamics. In conclusion, this instrument is not only legally valid, but also *maqāṣid* justified to ensure inclusive justice for women in marriage.

### **2. Pre-Marriage Agreement as the Realization of Family Benefits**

The prenuptial agreement can be understood as a real realization of the goal of family welfare because it serves as a preventive measure to overcome potential economic disputes and injustices in the household. The principle of benefit in Islamic

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<sup>19</sup> Lutfiana Dwi Mayasari, "Juridical Review of the Property Separation Agreement in Marriage after the Constitutional Court Decision Number 69 / Puu-XIII / 2015" 1, no. 1 (2022).

<sup>20</sup> A A A Ngurah and Sri Rahayu, "Legal Consequences for Holders of Dependent Rights on the Constitutional Court Verdict No. 69/Puu-XII/2015 On Marriage Agreements," 2023, 115–31, <https://doi.org/10.38043/Jah.V6i1.4234>.

<sup>21</sup> Achmad Asfi Burhanudin, "The Concept of Marriage Agreements in the Perspective of Comparative Law (Civil Law and Islamic Law)" 5 (2019).

law does not only apply after a conflict, but also applies to prevent future damage (*maṣlaḥah muḥtamlāh*). This means that the shari'a does not encourage settlement only after problems arise, but outlines anticipatory mechanisms in order to maintain family harmony from the beginning. The prenuptial agreement fulfills this principle by providing certainty about the economic rights and obligations of husband and wife, thereby avoiding conflicts arising from property ownership, business management, or financial responsibility.

In the context of the modern family economic transformation, the implementation of prenuptial agreements is increasingly relevant. Many women are now financially independent, have productive assets, and contribute to household finances. An economically participatory family model requires clarity in the structure of wealth management so that profit sharing does not discriminate against women's contributions. Benefit also demands transparency in the ownership and management of family assets so that no party is harmed in the event of divorce, conflict, or death. Within this framework, prenuptial agreements are not only oriented towards individual protection, but are part of family governance that guarantees a balance of economic rights. This shows that the welfare of the family in Islam cannot be understood solely normatively, but must be interpreted dynamically to respond to contemporary socio-economic realities.<sup>22</sup>

### **3. Maqāṣid's Analysis of the MUI Fatwa and the Constitutional Court's Decision**

The analysis of maqāṣid al-syarī'ah on the MUI Fatwa shows the orientation of shari'i to secure women's property ownership and ensure that marriage contracts do not become a tool of oppression. The fatwa recognizes that every individual has the right to determine the management of his or her property, so that the prenuptial agreement becomes an instrument that facilitates this right without contradicting religious teachings. Its emphasis on the protection of women's dignity shows that the shari'a protects not only material, but also social status and a sense of security in marriage. This confirms that pre-nuptial agreements are not a threat to the integrity of the family, but rather a form of sharia efforts to maintain harmony so that the relationship between husband and wife is not polluted by economic exploitation.<sup>23</sup>

In the perspective of the Constitutional Court's Decision, maqāṣid is present in the form of a constitutional guarantee of equality of husband and wife. The decision strengthens the principle of distributive justice, namely the equitable distribution of economic rights and responsibilities within the family. The Constitution does not interpret marriage as a tool of women's subordination, but as an institution that must guarantee equal economic access. By providing space for marriage agreements to be made after the marriage contract, the Constitutional Court applies maqāṣid in a legal-formal manner that protects women throughout the marriage, not just in the pre-

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<sup>22</sup> Nurliana Nurliana, "Hikmatut 'Tasyri' Marriage Perspective Of Islamic Law," *Mediasas Journal : Sharia Knowledge Media'ah Dan Abwal Al-Syakhshiyah* 6, No. 1 (2023): 14, <https://doi.org/10.58824/Mediasas.V6i1.578>.

<sup>23</sup> Aldy Darmawan Et Al., "Legalization Of Nikah Sirri: A Solution To Obtain Marital Status Recognition Among Diverse Cultural Groups In Indonesia," *Kawanua International Journal Of Multicultural Studies* 4, No. 2 (2023): 165–74, <https://doi.org/10.30984/Kijms.V4i2.728>.



marriage phase. Consequently, national law encourages preventive protection that is in line with shari'a principles, so that the prenuptial agreement becomes an ethical—as well as a legal instrument that strengthens justice in the family. The integration of these two authorities emphasizes the urgency of the maqāṣid approach in building responsive family law.<sup>24</sup>

### **C. The Construction of a New Meaning of Pre-Marriage Covenants Based on Maqāṣid al-Syarī'ah**

The development of the meaning of prenuptial agreements in the context of contemporary Islamic family law can no longer be limited to administrative functions and transactional property arrangements. In the approach of maqāṣid al-syarī'ah, family law instruments should be directed to maintain family stability through the protection of those who have the potential to experience structural injustice, such as wives who are socio-economically inclined to be in vulnerable positions.<sup>25</sup> The reconstruction of the concept of the prenuptial agreement as an instrument for the protection of the wife is actually a response to the dynamic legal needs, because the law not only records the consequences of marriage, but also mitigates the risk of injustice before the conflict occurs. Thus, this new meaning builds a framework that the protection of wives is not just a consequence after divorce or property disputes, but is part of the shari'i effort to ensure justice from the beginning of the formation of the family.<sup>26</sup>

#### **1. New Paradigm Formulation**

The new paradigm of prenuptial agreements places it as a protective mechanism for vulnerable parties in marital relationships. This view shifts the orientation of the agreement from a mere property arrangement mechanism to a tool to mitigate women's vulnerability who often faces post-divorce economic subordination, neglect of alimony, or monopoly ownership of family productive assets. This reconstruction reinforces the substantive function of the prenuptial agreement as a preventive measure to maintain economic justice, honor, and dignity of the wife as part of the five main objectives of the Shari'ah (ḍarūriyyāt al-khams). This protective paradigm also reinforces the fact that family law should not position women as parties waiting for fair treatment, but needs to be equipped with instruments to ensure justice from the beginning of the marriage contract.<sup>27</sup>

The affirmation of the protection function also rejects the reduction of the meaning of the agreement towards a purely transactional function which is often considered to only regulate the status of property. In the maqāṣid approach, the value of protection

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<sup>24</sup> Hadi Hidayatullah, "Bayani: Journal of Islamic Studies Ijtihad Maslahah Mursalah on Joint Property in the Formulation of Marriage Law in Indonesia," N.D., 128–48.

<sup>25</sup> Journal of Thought and Usul Fiqh, "Criminalization of Marital Rape from the Perspective of Maqāṣid al-Syarī'ah (Study of the Domestic Violence Law, the TPKS Law and the Criminal Code Bill)" 4 (2022): 64–77.

<sup>26</sup> Budhi Tri Maryanto, "Realizing a Sakinah Family for Disabled Couples: A Review of Maqāṣid al-Syarī'ah" 04, No. 2 (2025): 162–70.

<sup>27</sup> Dahlia Haliah, "Nikah Sirri and Protection of the Rights of Women and Children (Analysis and Solutions in the Frame of Syari 'Ah)" 1 (2016).

(ḥifẓ al-'ird, ḥifẓ al-naḥs, ḥifẓ al-māl) is the basis that this agreement serves to protect the rights of the wife before a dispute arises, so that the pre-marriage agreement is anticipatory justice. With this principle, the prenuptial agreement is not an expression of distrust or materialistic calculations, but a form of moral-sharia protection so that family relations do not move towards structural injustice that has the potential to harm the wife.<sup>28</sup>

## **2. Wife Protection Benefits Model**

The model of benefits relevant to the pre-marriage agreement can be formulated through the concept of *al-maṣlaḥah al-mursalah al-ijtihādiyyah*, which is a benefit that does not have a specific *nash* but is built through rational-shari'i considerations to respond to social changes. In the contemporary context, family relations cannot be understood only through the unilateral maintenance pattern of the husband, as women also contribute significantly to the economic structure of the modern family. Women can play the role of business owners, professionals, or productive workers who produce assets, so pre-marital agreements are a necessity for the benefit to maintain their economic contribution rights. This form of benefit is not just a legal adjustment, but a sharia requirement so that family law does not cause losses for those who have a real economic contribution.<sup>29</sup>

The concept of this benefit can then be developed in the shared prosperity model, namely participatory justice in the formation, ownership, and management of family assets. In it, there is the principle of pre-dispute protection as a form of prevention against economic inequality which is often only realized after divorce or the death of a husband. This model is in line with the *maqāṣid* which prioritizes protection against harm before harm occurs (*dar' al-mafāsid muqaddam 'alā jalb al-maṣāliḥ*). With the framework of shared prosperity, the pre-marriage agreement is no longer limited to the technical arrangement of property, but an instrument of benefit to create an egalitarian, fair, and socially just household.<sup>30</sup>

## **3. Direction of Family Law Policy Development**

The direction of the development of *maqāṣid*-based family law needs to encourage the integration of protection values in marriage legislation. A prenuptial agreement should not be treated as a secondary or optional instrument that arises only in certain cases, but as a legal device that each couple is ready to use to ensure the fairness of rights and obligations. Thus, there needs to be a legislative step that emphasizes the position of prenuptial agreements and opens up the space for its regulation in the form of technical regulations that are easily accessible and understood by the public, without excessive bureaucratic procedures. The goal is not to encourage every couple to make

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<sup>28</sup> Inner Law, Maqā's Perspective, and Ş I D Ash-Syarī Ah, "Marriage Registration as Legal Protection" 12, no. 1 (2019): 15–28.

<sup>29</sup> Civilizational Studies And Full Paper, "The Determination Of Kifayah Adna As A Guarantee Of Wife's Maintenance In Islam: A Case Study In Klang Valley, Malaysia" 02 (2019): 111–26.

<sup>30</sup> Naili Suroya, "The Perspective of Maqasid Syari 'Ah on the Fatwa of the Indonesian Ulema Council Number 10 of 2008 concerning Marriage Under the Hand" 37, no. 2 (2022): 195–204.

an agreement, but rather to provide a responsive legal instrument for those who need it.<sup>31</sup>

Updates to technical regulations should also affirm the function of agreements as instruments of substantive justice in religious courts. The prenuptial agreement should be used as a basis for measuring the wife's economic and non-economic contributions, so that the judge has objective guidelines in deciding disputes over property, alimony, or post-divorce compensation. This interpretation shifts religious courts from a legalistic approach to an ethical-protective approach. If legislation supports this instrument, then the prenuptial agreement will become an integral part of the family law system that guarantees protection, not just an administrative tool whose function is narrowed down as a mere property contract.<sup>32</sup>

#### **4. Theoretical Contributions**

Theoretically, a pre-nuptial agreement can be categorized as a maqāṣid-based legal tool, which is a legal instrument based on the purpose of sharia, not just a formal legal provision. This contribution changed the way of looking at family law, which previously tended to be legalistic and normative, to an ethical-legal approach, namely a law that is integrated with the ethical values of protection and substantive justice. With this approach, the law not only records the event of marriage, but regulates the mechanism of justice from the pre-contract phase.<sup>33</sup>

At this point, the concept of maqāṣid-based pre-marriage agreements serves as a new foundation for strengthening women's economic role in the modern Islamic family. In an increasingly open social structure, women are no longer passive subjects in the family economy. They become productive actors whose contributions must be ethically and legally protected. Thus, the pre-marriage agreement is not a form of material pragmatism, but rather an expression of maqāṣid in maintaining the balance of justice, honor, and property rights of women in the contemporary Islamic family.<sup>34</sup>

### **CONCLUSION**

An analysis of the prenuptial agreement through the perspective of maqāṣid al-syarī'ah, the Fatwa MUI, and the Constitutional Court Decision No. 69/PUU-XIII/2015 shows that this legal instrument has undergone a fundamental shift from mere technical arrangements towards substantive protection of the rights of wives in modern family structures. Constitutional legitimacy through the Constitutional Court's Decision confirms that prenuptial agreements are not only legally valid, but also relevant in realizing economic justice in marriage. In the context of Islamic law, maqāṣid al-syarī'ah provides an ethical-

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<sup>31</sup> Maszlee Malik, "Constructing An Alternative Concept Of Islamic Governance: A Maqāṣidic Approach" 26, no. 2 (2019): 89–108.

<sup>32</sup> June R Carbone et al., "P Remarital A Greements In The Ali P Details Of" 01, no. 4 (2001): 231–44.

<sup>33</sup> Faculty of Law and University of Mataram, "Journal of Private Law, Faculty of Law, University of Mataram, Juridical Review of the Distribution of Matrimonial Property According to Islamic Law and Civil Law (Case Study of Decision No. ; 0752 / Pdt . G/2015/Pa . S.S." 2, No. 2 (2022).

<sup>34</sup> Nofa Taufani, Warda Fathullah, and Rusly Vita, "Premarital Guidance and Its Implications for the Formation of the Maslahah Family (Case Study in Kua Pajarakan )" 2, no. 1 (2024): 357–62.

normative foundation that strengthens the function of protection, especially to protect the property, dignity, and welfare of the wife as a socially vulnerable party.

This study also confirms that pre-marital agreements have a function of anticipatory justice, not just post-conflict responsiveness. Its meaning as a maqāṣid-based legal tool produces a new model of benefits that is oriented towards the equality of family economic contributions, the concept of shared prosperity, and pre-conflict protection. With this framework, the discourse of Islamic family law is no longer sufficient with a legalistic approach, but must integrate ethical-protective dimensions to sustain substantive justice. Therefore, the prenuptial agreement in the perspective of the maqāṣid not only plays a role in protecting the rights of the wife, but also serves as a mechanism for strengthening the family structure that is egalitarian, participatory, and adaptive to contemporary social realities.

### **SUGGESTION**

1. The institutionalization of prenuptial agreements The Government through the Ministry of Religion and the Supreme Court needs to clarify the technical mechanism of prenuptial agreements in the form of derivative regulations and implementing guidelines, including a standard contract model that contains protection clauses for wives based on economic and non-economic contributions.
2. The integration of Maqāṣid in Family Law Legislation marriage legislation must move from a normative-legalistic approach to an ethical-legal approach that places the protection of vulnerable parties as a legal principle. The values of maqāṣid (ḥifẓ al-māl, ḥifẓ al-naḥs, ḥifẓ al-'ird) need to be used as the basis for the formulation of new rules.
3. Empowerment of Judges Religious Courts Judges should be given interpretive guidelines based on maqāṣid to assess the contribution of wives in family economic disputes. Prenuptial agreements need to be recognized as a basis for strengthening substantive justice, not just as a means of proving assets.
4. Public Education and Legal Awareness Advocacy Religious institutions and academics need to encourage public education so that prenuptial agreements are not perceived as a sign of distrust in marriage, but rather as a moral instrument of sharia to prevent greater injustice.
5. Development of Interdisciplinary Studies The next research needs to develop an empirical model based on socio-legal studies to map the implementation of pre-marital agreements and their influence on family welfare. Cross-economic, gender, and contemporary fiqh studies are important to enrich theoretical constructions.

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