

Optimizing Prenuptial Agreements for Asset Protection: A *Maqashid Sharia* Based Approach

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Abstract

This research aims to explore the optimization of PNAs for asset protection by integrating the principles of *maqashid sharia*, which emphasize the protection of religion, life, intellect, progeny, and wealth. The high divorce rates in Indonesia, mainly due to online gambling, highlight the vulnerability of asset protection at the beginning of marriage and underscore the importance of prenuptial agreements (PNAs). This research uses a qualitative approach with normative juridical analysis methods. Secondary data was obtained through critical analysis of related literature, including the Indonesian Marriage Law, previous academic studies, and other legal documents related to the PNA. The descriptive-analytical method is used to evaluate the effectiveness of PNA in protecting assets based on *maqasid sharia* principles. The main question addressed is how PNAs can be effectively utilized to safeguard personal assets and reduce conflicts within marriage. This study critically analyzes Law No. 16/2019 Indonesian Marriage Law and suggests improvements to enhance the effectiveness of PNAs. The analysis reveals that detailed provisions on the content of PNAs, simplification of the legalization process, mandatory legal

consultation, and enhanced public education are essential for optimizing asset protection. The findings underscore the necessity of PNAs in providing legal certainty, promoting justice, and ensuring the welfare of both parties in marriage, aligning with the maqashid sharia principles. This research contributes to the existing literature by offering a new perspective on applying Maqashid sharia in PNAs and provides practical guidelines for drafting effective and Sharia-compliant PNAs.

Keywords: Prenuptial agreement; asset protection; maqashid sharia; divorce

Introduction

The high divorce rates in Indonesia, primarily due to online gambling, are a severe concern. In Indonesia, the increase in divorces caused by online gambling has reached 142%.¹ This situation highlights the vulnerability of asset protection at the beginning of marriage and underscores the importance of prenuptial agreements (PNAs) to safeguard personal assets from the negative impacts of destructive behaviour. If regulations in Indonesia strengthen the position and provide strict prenuptial agreement guidelines for asset protection, then the phenomenon of divorce due to misappropriation of assets such as online gambling should be well prevented. PNAs are crucial legal instruments for clarifying financial rights and responsibilities before marriage, thereby reducing conflicts and promoting harmony in the household. This research aims to position itself within the broader discourse on the legal and socio-economic implications of PNAs, particularly their effectiveness in asset protection and marital stability.

Research by Liman and Rifai demonstrates that PNAs provide legal certainty in asset management and prevent conflicts after divorce.² They emphasize the importance of the maqashid sharia approach, which focuses on five main objectives:³ protecting religion, life, intellect, progeny, and wealth.⁴

¹ Mae, "Cerai Akibat Judi Melonjak 142%, Paling Banyak Di Jawa Timur," Cnbc Indonesia, Accessed July 1, 2024, <https://www.cnbcindonesia.com/research/20240614131841-128-546677/cerai-akibat-judi-melonjak-142-paling-banyak-di-jawa-timur>.

² Padma Dewi Liman and Aulia Rifai, "Legal Implication of Marriage Prenuptial Agreement," *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 12, no. 3 (September 30, 2023): 539–52, <https://doi.org/10.24843/JMHU.2023.v12.i03.p05>.

³ Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (International Institute of Islamic Thought (IIIT), 2008); Adinda Yuliana Musthofa, Fayiz Afif, and Karimuddin Karimuddin, "Strengthening Sharia Economic Law In Indonesia: Challenges And Strategic Approaches Amidst Global Economic Dominance," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 3, no. 1 (June 2024): 1–18, <https://doi.org/10.32332/muamalah.V3I1.8521>.

⁴ Suud Sarim Karimullah, "Exploration of Maqasid Al-Shariah Concepts in The Development of Islamic Economic Policies," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 2, no. 2

This study fills a gap in the literature by integrating maqashid sharia principles as the primary analytical framework in drafting prenuptial agreements.

Previous research has highlighted various aspects of PNAs. Khanza, Okubo, and Mirantama show that PNAs help address asset ownership issues in mixed marriages, particularly regarding land ownership governed by Indonesian agrarian law.⁵ Aldilla also emphasizes the importance of asset arrangements in PNAs to avoid conflicts during and after marriage.⁶ Further research by Rajamanickam et al. states that PNAs enhance transparency and trust between spouses and provide legal protection for personal assets.⁷ This finding aligns with the results from Bakti and Rivai, who highlight the importance of PNAs for Indonesian citizens involved in mixed marriages to protect their legal rights.

In the context of Islamic law, legal protection of joint assets in polygamous marriages can also be achieved through PNAs. This protection includes fairness in the distribution of joint assets and ensures the rights of wives are protected. Aldilla stresses the importance of PNAs in protecting joint assets in polygamous marriages by equitably regulating the rights of each wife without reducing or exceeding their rights.⁸ Hosseini and Monirpour show that PNAs and spiritual attitudes can influence marital adjustment, whereas spiritual attitudes can improve the quality of marital relationships by providing stability and peace.⁹ This finding supports the importance of the spiritual aspect in PNAs, which aligns with the principles of maqasid shariah, emphasizing both parties' well-being and justice.

A study by Hartono also underscores the role of notaries in drafting PNAs, providing better legal certainty, justice, and benefits for married couples.¹⁰ This research highlights the legal changes that have expanded the

(December 2023): 153–72, <https://doi.org/10.32332/MUAMALAH.V2I2.7747>; Febry Wahyu Nurcahyo, “Penafsiran Konsep Konten Youtube Sebagai Bentuk Aset Yang Bisa Diikat Oleh Fidusia Tinjauan Hukum Ekonomi Syariah,” *Mu’amalah: Jurnal Hukum Ekonomi Syariah* 2, no. 2 (December 1, 2023): 277–96, <https://doi.org/10.32332/muamalah.v2i2.7832>.

⁵ Yuga Narazua Khanza, Haruki Okubo, and Ninda Mirantama, “The Impact Of Prenuptial Agreements On Property Ownership Legal Status Of Inter-Marriages” 1, no. 2 (2023).

⁶ Aldilla Gemiyu Pawitasari, “Perjanjian Perkawinan Sebagai Instrumen Perlindungan Hukum Dalam Perkawinan Poligami Di Indonesia,” *Jurnal Lex Renaissance* 4, no. 2 (July 1, 2019), <https://doi.org/10.20885/JLR.vol4.iss2.art8>.

⁷ Ramalinggam Rajamanickam et al., “Prenuptial Agreement: Legal Position in Malaysia,” *Academic Journal of Interdisciplinary Studies* 8, no. 4 (December 21, 2019), <https://doi.org/10.36941/ajis-2019-0042>.

⁸ Pawitasari, “Perjanjian Perkawinan Sebagai Instrumen Perlindungan Hukum Dalam Perkawinan Poligami Di Indonesia.”

⁹ Zahra Hosseini and Nader Monirpour, “Marital Adjustment: The Role of Prenuptial Agreement and Spiritual Attitudes,” *PSYCHOLOGY AND EDUCATION*, 2021.

¹⁰ Honggo Hartono, “Roles of Notary in Drawing Up Marriage Agreement After Constitutional Court Decision Number 69/PUU-XIII/2015,” *Prophetic Law Review* 2, no. 2 (December 1, 2020), <https://doi.org/10.20885/PLR.vol2.iss2.art4>.

scope of PNAs, which can be drafted anytime during the marriage. Silvia Parra López, in her study, highlights the importance of PNAs in an international context, showing that legal policies in various countries can affect the validity and implementation of these agreements.¹¹ This finding is relevant in the context of mixed marriages in Indonesia, which often involve couples with different legal backgrounds. The novelty through this research question is crucial as it offers a new approach combining the principles of maqasid syariah with PNAs for asset protection. With the increasing divorce rates due to economic issues such as online gambling, the need for solid protection mechanisms becomes more urgent. PNAs based on maqasid syariah protect property and promote justice and well-being for both parties in the marriage.

This study is expected to significantly contribute to the existing literature by offering a new perspective on applying maqasid syariah. By exploring how these principles can be applied in PNAs, this research can help fill gaps in the literature on Islamic family law and provide practical guidelines for parties wishing to draft effective and Sharia-compliant PNAs. This research also has the potential to encourage more studies in this field, especially in the context of increasing economic and social challenges faced by married couples in Indonesia and other Muslim-majority countries.

The research methodology for the article titled "Optimizing Prenuptial Agreements For Asset Protection: A Maqasid Sharia-Based Approach" employs a qualitative approach with a normative juridical analysis method. Secondary data is obtained through critical analysis of relevant literature, including the Indonesian Marriage Law, previous academic studies, and other legal documents related to prenuptial agreements.¹² This study uses a descriptive-analytical method to evaluate the effectiveness of prenuptial agreements in protecting assets based on the principles of maqasid sharia, which emphasize the protection of religion, life, intellect, progeny, and wealth.¹³

A critical legal analysis is conducted to identify weaknesses in the current laws and provide recommendations for improving the provisions related to prenuptial agreements. These recommendations include simplifying the legalization process, enhancing mandatory legal consultation, and better public education on the benefits of prenuptial agreements. The results of this analysis are compiled to offer practical guidelines for drafting effective and Sharia-compliant prenuptial agreements, thereby strengthening asset protection and ensuring justice within marriage.

¹¹ Silvia Lopez, "The Enforcement of Prenuptial Agreements in Spain," n.d.

¹² Iman Jalaludin Rifa'i et al., *Metodologi Penelitian Hukum* (Sada Kurnia Pustaka, 2023).

¹³ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

Discussion

Prenuptial Agreements in Indonesian Law

Prenuptial agreements are agreements made by couples before marriage that outline the rights and obligations of each party regarding assets and other matters during the marriage, as well as after divorce or the death of one of the spouses. One of the primary considerations for a prenuptial agreement is to protect personal assets acquired before marriage.¹⁴ Through this agreement, couples can ensure that property, investments, and wealth owned individually will not become part of the marital assets that must be divided in the event of a divorce¹⁵. It is essential for individuals who own businesses or family inheritances that they want to preserve and protect from the dynamics of marriage.¹⁶

Another consideration for drafting a prenuptial agreement is to reduce potential conflicts in the future. By having an explicit agreement on asset division and financial obligations, couples can avoid disputes that may arise related to economic issues. The agreement can also include arrangements regarding financial responsibilities during the marriage, such as debt repayment and household expenses, providing clarity and peace of mind for both parties. Thus, prenuptial agreements serve as a tool to strengthen the foundation of the marriage by establishing realistic and fair expectations from the outset.¹⁷

In Indonesia, prenuptial agreements are often considered taboo and inappropriate to discuss before marriage because they are perceived to undermine the sacredness of marriage and indicate a lack of trust between the parties. This perception is understandable given the cultural context, where marriage is seen as sacred and holy, and the purpose of marriage is not solely

¹⁴ Sri Subekti, Liliانا Tedjosaputro, and Mashari Anon, "Legal Protection Concept-Separate Maintenance For The Third Party In Prenuptial Agreement," *International Journal Of Civil Engineering And Technology (IJCIET)* 11, no. 1 (February 1, 2020), <https://doi.org/10.34218/IJCIET.11.1.2020.025>.

¹⁵ Nurnazli Nurnazli et al., "Productive Dowry and Women's Economic Empowerment and Their Influence on Marital Assets in Bandar Lampung," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (June 11, 2024): 954–79, <https://doi.org/10.22373/sjhh.v8i2.19887>.

¹⁶ Putri Ridzka Maheswari Djasmine and Fully Handayani Ridwan, "The Attitude of The Notary Public Towards The Request For The Cancellation of The Prenuptial Agreement Deed as A Result of The Marriage Annulment and The Consequences For Third Parties" 21, no. 2 (2022).

¹⁷ Hosseini and Monirpour, "Marital Adjustment: The Role of Prenuptial Agreement and Spiritual Attitudes."

related to wealth. Prenuptial agreements are also often viewed as expecting divorce thus, are perceived negatively as a lack of trust towards one's partner.¹⁸

However, the nature of prenuptial agreements is preventive, meaning they aim to prevent undesirable events. The lack of information, education, and societal taboos contribute to the general disinterest in prenuptial agreements among the public. Nonetheless, for public figures, officials, entrepreneurs, and other upper-middle-class individuals, prenuptial agreements are helpful tools to protect and respect the rights and obligations arising from each party's assets, particularly those acquired before marriage.¹⁹

Prenuptial agreements are practical legal tools in promoting sustainable asset protection and personal interest safeguarding. These agreements allow couples to set clear terms on managing and separating assets, whether owned before marriage or acquired during marriage. Consequently, individuals can ensure that essential assets, such as businesses, properties, and investments, remain protected from potential conflicts or unwanted division in divorce. For example, an entrepreneur can include a clause in the prenuptial agreement stating that their company will remain their property and not be divided with the spouse if the marriage ends.²⁰

In addition to protecting assets, prenuptial agreements safeguard each spouse's interests in financial matters. Couples can agree on the division of financial responsibilities, such as who will be responsible for existing debts or how household expenses will be divided. It provides legal protection, helps manage expectations and reduces potential conflicts related to financial issues within the household. For instance, a couple might provide that each partner's income will be kept in separate accounts, while household expenses are shared based on a certain percentage of their income.²¹

Prenuptial agreements can also include provisions for child custody and financial support if the couple has children. For example, the agreement can outline how education and childcare costs will be divided or who will have primary custody if a divorce occurs. By including such provisions, couples can maintain their children's best interests and reduce the risk of prolonged legal

Joice Soraya and Muhammad Ansy Althafzufar, "Legal Consequences Of Annulment Of A Prenuptial Agreement In Marriage Between Individuals Of Different Nationalities," no. 2 (2024).¹⁸ {Citation}

¹⁹ Ahsen Malik, "The Necessity of a Standard Prenuptial Agreement for American Muslims," *Journal of Islamic Faith and Practice* 5, no. 1 (March 19, 2024): 31–52, <https://doi.org/10.18060/28093>.

²⁰ Akanksha Ghatol, "The Emerging Importance Of Prenuptial Agreement In Indian Society" 54 (n.d.).

²¹ Ayu Nursyamsiah, Saharuddin Daming, and Latifah Ratnawaty, "Legal and Human Rights Review of The Implementation Of Prenuptial Agreements Based On The Principles Of Propriety, Fairness and Good Faith," n.d.

disputes. Another practical example is a couple that includes provisions for life insurance and inheritance in their prenuptial agreement, ensuring financial protection for their children regardless of what happens to their marriage.²²

Encouraging sustainable asset and personal interest protection through prenuptial agreements is a proactive and prudent step for couples about to get married. Prenuptial agreements, or prenups are legal agreements made by prospective spouses before they marry. The primary purpose of a prenuptial agreement is to regulate each spouse's financial rights and obligations and the rights related to property owned by each individual before marriage.²³ In a sustainable context, prenuptial agreements can protect a couple's assets and personal interests throughout their marriage. The primary consideration in creating a sustainable prenuptial agreement is the agreement on how property, investments, and other assets will be managed and divided in the event of a divorce or the death of one of the spouses.²⁴

One of the primary benefits of a sustainable prenuptial agreement is that it allows couples to clearly define their rights and obligations regarding assets owned before marriage and assets acquired during the marriage. It ensures more robust protection of individual property and financial interests regardless of marital status. Furthermore, a sustainable prenuptial agreement can help reduce conflicts and tensions that may arise in the event of a divorce or the death of one spouse. With a pre-agreed agreement, couples can avoid lengthy and costly legal processes to resolve issues related to the division of marital assets.²⁵ However, it is essential to remember that a prenuptial agreement is unsuitable for every couple. It is crucial to carefully consider the needs and desires of each partner, as well as their financial circumstances and family situations, before deciding whether a prenuptial agreement is necessary. Additionally, prenuptial agreements should be crafted carefully and with the assistance of an experienced family law attorney to ensure that the agreement is legally binding and encompasses all necessary provisions to protect each spouse's interests and assets.²⁶

Remembering that prenuptial agreements can be revised and updated over time is also essential. Financial circumstances, family dynamics, or legal

²² Azukaeva Baira Andreevna et al., "Prenuptial Agreement: Concept And Characteristics," 2020, 3571–77, <https://doi.org/10.15405/epsbs.2020.10.05.474>.

²³ Hosseini and Monirpour, "Marital Adjustment: The Role of Prenuptial Agreement and Spiritual Attitudes."

²⁴ Subekti, Tedjosaputro, and Anon, "Legal Protection Concept-Separate Maintenance For The Third Party In Prenuptial Agreement."

²⁵ Shreya Malhotra, "Does the Option to Sign Prenuptial Agreements Affect Domestic Violence?," *SSRN Electronic Journal*, 2021, <https://doi.org/10.2139/ssrn.4165086>.

²⁶ Djasmine and Ridwan, "The Attitude of The Notary Public Towards The Request For The Cancellation of The Prenuptial Agreement Deed as A Result of The Marriage Annulment and The Consequences For Third Parties."

changes may render an existing agreement irrelevant or unenforceable. Therefore, couples should regularly review and update their prenuptial agreements as needed.²⁷ In Indonesia, prenuptial agreements are regulated through various laws, including Law No. 1 of 1974, amended by Law No. 16 of 2019 on Marriage, and the Civil Code (KUH Perdata). Although "prenuptial agreement" is not explicitly mentioned, the concept is encompassed within "marriage agreements". Below is a detailed and systematic discussion of the relevant legal provisions.

Law No. 16 of 2019, which amends Law No. 1 of 1974 on Marriage, provides detailed regulations regarding marriage agreements in Article 29. This article states that at the time of or before the marriage, prospective spouses may create a written agreement that the marriage registrar legalizes. The critical points of Article 29 are as follows:²⁸

1. Creation of Agreement:

The agreement must be made at the time of or before the marriage and must be legalized by the marriage registrar. Mutual consent from both parties is required to legalize the agreement.

2. Validity of Agreement:

The agreement cannot be legalized if it violates legal, religious, or moral boundaries. The contents of the legalized agreement also apply to third parties as long as they are involved.

3. Enforcement and Modification:

The agreement becomes effective once the marriage takes place. The agreement can only be modified with mutual consent and must not harm third parties.

The explanation of Article 29 emphasizes that the marriage registrar must legalize the marriage agreement to bind both parties and any involved third parties. The Civil Code provides a more detailed regulation on marriage agreements, although it does not explicitly use the term "prenuptial agreement". The relevant articles are:²⁹

²⁷ Philip Herzberg, "Prenuptial Agreements and How They Affect Estate Planning," n.d.

²⁸ "UU No. 16 Tahun 2019," Database Peraturan | JDIH BPK, accessed July 2, 2024, <http://peraturan.bpk.go.id/Details/122740/uu-no-16-tahun-2019>.

²⁹ Filipp Levin, "Kitab Undang-Undang Hukum Perdata," n.d.

Article	Explanation
Article 139	Prospective spouses may create agreements that deviate from the general legal provisions on communal property, provided they do not contravene public order or decency. This allows prospective spouses to make agreements that differ from the general rules about communal property, as long as they do not violate public order or decency.
Article 140	The agreement must not diminish the husband's marital rights or the rights given by law to the surviving spouse. This ensures the protection of the fundamental rights of the husband as the head of the family while allowing the wife to manage her property.
Article 141	Prospective spouses cannot renounce their rights to legitimate portions of their inheritance or regulate the inheritance of their descendants. This limits the scope of marriage agreements so they do not include the regulation of descendant inheritance.
Article 142	The agreement cannot stipulate that one party bears a larger share of debts than their share in the communal property. This maintains balance in the distribution of debt obligations between husband and wife.
Article 143	The marriage bond must be subject to Indonesian law and cannot be governed by foreign laws or customs. This establishes that Indonesian law applies to marriage and cannot be influenced by foreign laws or customs.
Article 147	Marriage agreements must be made by notarial deed before the marriage takes place and will be void if not done so. This emphasizes the importance of formality in creating marriage agreements and the necessity of their creation before marriage.
Article 148	Changes to the agreement can only be made by notarial deed and with all parties' approval. This regulates the procedure for changing the marriage agreement to ensure its validity.
Article 149	Once the marriage has taken place, the marriage agreement cannot be altered. This stipulates the immutability of the marriage agreement after the marriage has been conducted.
Article 152	The provisions in the marriage agreement that deviate from the communal property rules will not apply to third parties until they are registered in the public registry at the District Court. This ensures that the marriage agreement is publicly known and binding on third parties through official registration.

The Compilation of Islamic Law (KHI) also regulates prenuptial agreements concerning marriage agreements in Chapter VII, Articles 45 to 52.

Article 45 of KHI states that prospective spouses may create marriage agreements in *ta'lik talak* and other agreements that do not contradict Islamic law.

The following clarifies *ta'lik talak* in KHI:³⁰

1. The content of *ta'lik talak* must not contradict Islamic law.
2. If the conditions stipulated in *ta'lik talak* occur, the divorce does not automatically take effect. For the divorce to be enforced, the wife must present the issue to the Religious Court.
3. The *ta'lik talak* agreement is not mandatory for every marriage, but it cannot be revoked once it is agreed upon.

Upon reviewing Article 3 of the Compilation of Islamic Law (KHI) and Article 29, paragraph 4 of the Marriage Law, it is evident that there are differences between these provisions. Article 29, paragraph 4 of the Marriage Law states that a marital agreement cannot be altered unless there is mutual consent and it does not harm third parties³¹. Conversely, the KHI stipulates that once *ta'lik talak* is agreed upon and declared, it cannot be revoked, indicating a specific exception not mentioned in the Marriage Law. According to Article 147 of the Civil Code (KUH Perdata), a prenuptial agreement must be executed in a notarial deed before the marriage. Article 149 of the Civil Code states that the agreement takes effect upon marriage and cannot be amended after that. It aligns with the concept that a prenuptial agreement is a contract governing the legal consequences of marital property.

The Marriage Law (Article 29, paragraph 1) specifies that a marriage registrar must ratify a prenuptial agreement. However, for an agreement to be valid, including a prenuptial agreement, it must meet four conditions under Article 1320 of the Civil Code: mutual consent of the parties, legal capacity to contract, a specific subject matter, and a lawful cause. It indicates that in addition to being ratified by a marriage registrar, the agreement must also comply with the validity requirements of the Civil Code.

Maqashid sharia Analysis of Prenuptial Regulation Agreements

The normative context of justice principles conveyed by the Qur'an can be explored through the theme of marriage. Examining justice principles in marriage is considered urgent and necessary, given the ongoing social changes within society, particularly affecting family environments. It is imperative for

³⁰ Pustaka Widyatama (Publisher), *Kompilasi Hukum Islam*, Seri Perundangan (Pustaka Widyatama, 2004), <https://books.google.co.id/books?id=6XqaetEzq0IC>.

³¹ Elimartati Elimartati and Elfia Elfia, "Kritik Terhadap Kompilasi Hukum Islam Tentang Ketentuan Harta Bersama Dalam Perkawinan," *JURIS (Jurnal Ilmiah Syariah)* 19, no. 2 (December 18, 2020): 231–43, <https://doi.org/10.31958/juris.v19i2.2283>.

Muslim individuals, both men and women, to enhance their understanding of the justice messages conveyed by the Qur'an, especially in the context of marriage, to achieve an equitable and ideal marital relationship.³²

From a constitutional perspective, the understanding of justice in marriage must also be aligned with constitutional principles. Article 6 of Law No. 1 of 1974 on Marriage states, "Since marriage aims to form a happy and eternal family and is following human rights, the marriage must be agreed upon by both parties entering into the marriage, without any coercion from any party." This provision guarantees several justice principles for both husband and wife, including the equality of mutual consent and the prohibition of coercion in the marital relationship.

Effective communication and mutual consent are crucial for achieving harmony in marriage. Harmonious dialogue is an expression of effective communication that should be strived for without involving coercion from either party. Effective communication is supported by the maturity of each party's ego, ensuring that the final agreement benefits both parties.³³ Marriage is intended to sustain human life on earth. Islam views the bond of husband and wife within the family system as the central pillar of human life. The progress or decline of a nation is often determined by the strength of this pillar, reflected in the culture of families marked by tranquillity, love, mercy, permanence, and beauty.³⁴

Marriage aims to achieve tranquillity and happiness for the couple. The Qur'an clearly states, "And among His signs is that He created for you from yourselves mates that you may find tranquillity in them, and He placed between you affection and mercy. Indeed, in that are signs for a people who give thought" (Qur'an 30:21).³⁵ Responding to the criteria in Surah al-Rum, it explains that the verse contains three critical aspects in marriage: *sakinah* (tranquillity), *mawaddah* (love), and *rahmah* (mercy). "*Sakinah*" means a place of residence, stability, and calm without fear. "*Mawaddah*" is interpreted as love, advice, and strong ties that do not involve harmful words or actions, indicating a

³² Siti Nurjanah et al., "Al-Mubâdalah Fî Mafhûmi Fiqhi al-Mar'ah al-Mu'âshirah Bî Indûnisîyâ," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 1 (July 11, 2022): 189–215, <https://doi.org/10.19105/al-lhkam.v17i1.6140>; Lukmanul Hakim, Imron Rosyadi, and Almasah Farah Diah Setyawati, "The Impact of Delaying Mie Gacoan's Halal Certification on Consumer Loyalty," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 3, no. 1 (June 7, 2024): 93–104, <https://doi.org/10.32332/muamalah.v3i1.9223>.

³³ Ziba Mir-Hosseini et al., *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws* (Simon and Schuster, 2022).

³⁴ Islam Negeri Batu Sangkar et al., "Strengthening Family Resilience through the Tradition of Agricultural Zakat Payment in Nagari Lima Kaum in Tanah Datar District of West Sumatera," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (June 2021): 496–513, <https://doi.org/10.22373/SJHK.V5I1.9147>.

³⁵ Ismail bin Umar bin Kasir, *Tafsir Ibnu Katsir* (Riyad: Dar al-Salam, 2001).

relationship of mutual love, advice, and respect. "*Rahmah*" signifies compassion, kindness, and sincerity. Marriage, as understood by Ruqoyatul Faiqoh et al., is God's grand hope that a couple will establish a relationship of mutual love, kindness, and sincerity.³⁶

Deepening the understanding of the purposes of marriage also involves understanding ideal human relations.³⁷ Each party's hope to respect the principle of equality begins with efforts to fulfil and protect their rights and dignity. Despite the existing stigma about the inferiority of one party compared to the other in marriage, there is a need to revive the spirit of justice and equal rights, especially for those long disadvantaged. It is essential to achieve the equitable and just ideal of marriage as envisioned in Islamic teachings and constitutional provisions.³⁸

Following the Maqashid sharia approach which was famous by ash-syatibi³⁹ and then developed by Jasser Auda as a systemic approach⁴⁰, the understanding that Islamic law aims to preserve five important elements: religion, life, intellect, lineage, and property.⁴¹ In the context of prenuptial agreements, the preservation of property (*Hifz al-Mal*) becomes particularly relevant.⁴² By ensuring the protection of individual assets through prenuptial agreements, Islamic law promotes financial stability and security for both parties, aligning with the broader objectives of Maqashid sharia.⁴³

The primary goal of prenuptial agreements under Maqashid sharia is to protect the wealth and property of both spouses. This protection is crucial in

³⁶ M. Quraish Shihab, *Tafsir Al-Misbah (Kesan, Pesan Dan Kerasian Al-Qur'an) Jilid 11, Lentera Hati*, vol. 11, 1, 2000, <https://www.ptonline.com/articles/how-to-get-better-mfi-results>.

³⁷ Zainal Arifin H. Munir et al., "Tahlil Marriage Among the Sasak Tribe of Lombok Based on Maqashid Al-Shari'ah Perspective and Its Relevance to Compilation of Islamic Law," *Al-Adalah* 19, no. 2 (2022): 419–40; Wahyu Abdul Jafar et al., "Philosophical Foundations and Human Rights in the Bajapuk Tradition: Bridging Local Wisdom and Islamic Law in Minangkabau Marriage Practices," *De Jure: Jurnal Hukum Dan Syaria* 16, no. 1 (June 30, 2024): 212–33, <https://doi.org/10.18860/j-fsh.v16i1.27681>.

³⁸ Mir-Hosseini et al., *Justice and Beauty in Muslim Marriage*.

³⁹ Abu Ishaq Ibrahim bin Musa al-Lakhmi al-Ghimathi al-Maliki al-Syathibi, *Al-Muwafaqat fi Ushul as-Syariah. Jilid 1* (Dar al-Hadits, 2005), http://perpustakaanlajnah.kemenag.go.id/home/index.php?p=show_detail&id=5458&keywords=.

⁴⁰ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

⁴¹ Yusefri Yusefri, Mu'adil Faizin, and Wahyu Abdul Jafar, "Protecting Child Labor Rights: Maqasid Sharia Framework and Policy Recommendations," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 8, no. 2 (July 31, 2024): 1188–1215, <https://doi.org/10.22373/sjhk.v8i2.24559>.

⁴² Karimullah, "Exploration of Maqasid Al-Shariah Concepts in The Development of Islamic Economic Policies"; Dina Nopiyana, "Multi Akad Pada Praktek Arisan Online Untuk Pembelian Jam Tangan (Studi Kasus Akun Instagram @Safa.Watch12)," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 2, no. 2 (December 2023): 201–14, <https://doi.org/10.32332/muamalah.V2I2.7417>.

⁴³ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

safeguarding financial rights and ensuring that assets brought into the marriage remain protected in case of divorce. It aligns with the principle of *Hifẓ al-Mal*, which emphasizes the protection of wealth from harm or unjust loss.⁴⁴

Maqashid sharia emphasizes justice (*Adl*) and equality (*musawah*) in marital relations.⁴⁵ Prenuptial agreements ensure that both parties have transparent and equitable terms regarding the division of assets, financial responsibilities, and other essential matters. This equitable approach helps prevent disputes and ensures that both parties are treated fairly, maintaining the justice that Maqashid sharia advocates.⁴⁶ Another objective of Maqashid sharia is preventing harm (*Daf' al-Darar*). Prenuptial agreements act as a preventive measure, ensuring that neither party suffers undue financial hardship or loss in the event of a divorce. By clearly outlining financial obligations and asset divisions, these agreements help mitigate potential conflicts and reduce the risk of financial harm.⁴⁷

Prenuptial agreements can also include provisions for the welfare of children, aligning with the objective of *hifẓ al-nasl*, which focuses on the protection of lineage and family structure. These agreements can stipulate terms for child custody, financial support, and education, ensuring that children's interests are protected even if the marriage ends.⁴⁸ Prenuptial agreements are consistent with Maqashid Shariah's principles and enhance property protection, ensure justice and equality, prevent harm, and safeguard family interests. This approach aligns Islamic legal principles with contemporary legal practices, offering a comprehensive framework for asset protection in marriage.

⁴⁴ Jasser Auda, *Maqasid Al-Shariah: A Beginner's Guide* (International Institute of Islamic Thought (IIIT), 2008); Suprapdi Suprapdi, "Penyelesaian Sengketa Melalui Lembaga Alternatif Penyelesaian Sengketa (Laps) Pada Securities Crowdfunding Di Indonesia," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 2, no. 1 (June 12, 2023): 1–14, <https://doi.org/10.32332/muamalah.v2i1.7023>.

⁴⁵ Luthfiah Dewi Masyithoh, Dwi Putra Amrah, and Imron Musthofa, "Sharia Economic Law Analysis of Mud Bathing in Tiktok Live as Online Begging (Maqashid sharia Approach)," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 3, no. 1 (June 9, 2024): 19, <https://doi.org/10.32332/muamalah.v3i1.7831>; Slamet Eko Widodo and Fredy Gandhi Midia, "Wanprestasi Akibat Keterlambatan Pengantaran Oleh Kurir Gofood," *Mu'amalah: Jurnal Hukum Ekonomi Syariah* 3, no. 1 (June 7, 2024): 141–55, <https://doi.org/10.32332/muamalah.v3i1.8136>.

⁴⁶ Auda, *Maqasid Al-Shariah*.

⁴⁷ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

⁴⁸ Malik, "The Necessity of a Standard Prenuptial Agreement for American Muslims."

Article/Regulation	Regulation Narrative	Content According to Maqashid sharia, Indicators
Article 147, KUH Perdata	<ul style="list-style-type: none"> • Prenuptial agreements must be made before a notary and before marriage. • Valid from the date of marriage. • It cannot be changed after marriage. 	<ul style="list-style-type: none"> • Hifz al-Mal (Protection of Wealth): Legally secures assets from pre-marriage. • Daf' al-Darar (Prevention of Harm): Prevents financial disputes.
Article 149, KUH Perdata	Prenuptial agreements are irrevocable after marriage.	Hifz al-Mal (Protection of Wealth): Ensures long-term financial protection.
Article 1320, KUH Perdata	Valid agreements require mutual consent, capacity, a particular object, and lawful cause.	Adl (Justice): Ensures fairness and legality in contractual agreements.
Article 6, UU No. 16/2019 on Marriage	<ul style="list-style-type: none"> • Both parties must agree upon marriage without coercion. • It ensures equality and mutual consent. 	Adl (Justice): Guarantees mutual consent and equality.
Article 29, UU No. 16/2019 on Marriage	<ul style="list-style-type: none"> • Prenuptial agreements must be made in writing and legalized by a marriage registrar. • Agreements cannot contradict religious, legal, or moral norms. • Valid from the date of marriage. • It cannot be changed unless both parties agree. 	<ul style="list-style-type: none"> • Hifz al-Mal (Protection of Wealth): Ensures individual property protection. • Adl (Justice): Establishes equitable terms and mutual consent.
Article 3, KHI	<ul style="list-style-type: none"> • Ta'lik talak agreements cannot be revoked once made. • It must not contradict Islamic law. 	<ul style="list-style-type: none"> • Hifz al-nasl (Protection of Lineage): Ensures family stability. • Daf' al-Darar (Prevention of Harm):

Article/Regulation	Regulation Narrative	Content According to Maqashid sharia, Indicators
		Avoids conflicts over marital agreements.
Article 45, KHI	Prenuptial agreements include ta'lik talak and other agreements that do not contradict Islamic law.	Hifz al-nasl (Protection of Lineage): Ensures clear terms for marital responsibilities.

Source: author's analysis

Article 29, UU No. 16/2019 on Marriage mandates that prenuptial agreements be written and legalized by a marriage registrar, ensuring they do not violate religious, legal, or moral standards.⁴⁹ It aligns with the Maqashid sharia principle of **Hifz al-Mal (Protection of Wealth)**, ensuring the protection of individual property. It also supports **Adl (Justice)** by establishing equitable terms and mutual consent. **Article 147, KUH Perdata** stipulates that prenuptial agreements must be notarized and made before marriage, with validity from the date of marriage and irrevocability after that.⁵⁰ It ensures asset security and aligns with **Hifz al-Mal** and **Daf' al-Darar (Prevention of Harm)** by preventing financial disputes.

Article 149, KUH Perdata ensures that prenuptial agreements remain irrevocable after marriage, providing long-term protection for individual assets,⁵¹ which aligns with **Hifz al-Mal**. **Article 6, UU No. 16/2019 on Marriage** ensures marriages are consensual and without coercion, promoting equality and mutual consent, which is aligned with **Adl (Justice)**. **Article 3, KHI** stipulates that ta'lik talak agreements are irrevocable once made and must not contradict Islamic law.⁵² It supports **Hifz al-nasl (Protection of Lineage)** by ensuring family stability and **Daf' al-Darar** by avoiding conflicts over marital agreements. **Article 45, KHI** defines prenuptial agreements to include ta'lik talak and other non-contradictory agreements to Islamic law, supporting **Hifz al-nasl** by clarifying marital responsibilities.

Article 1320, KUH Perdata outlines that valid agreements must have mutual consent, capacity, a particular object, and lawful cause, ensuring fairness and legality,⁵³ aligning with **Adl (Justice)**. By mapping these regulations through the lens of Maqashid sharia, it is evident that prenuptial agreements align with

⁴⁹ "UU No. 16 Tahun 2019."

⁵⁰ Levin, "Kitab Undang-Undang Hukum Perdata."

⁵¹ Levin.

⁵² Widyatama (Publisher), *Kompilasi Hukum Islam*.

⁵³ Levin, "Kitab Undang-Undang Hukum Perdata."

Islamic principles and enhance the protection of assets, ensure justice, prevent harm, and safeguard family interests. Prenuptial agreements can be optimized to protect assets by ensuring that the agreement covers all essential aspects to safeguard individual properties from potential conflicts during or after the marriage. These agreements should include the separation of personal assets acquired before marriage, the management and division of assets acquired during the marriage, and the determination of each party's financial responsibilities.

Prenuptial agreements allow each party to own assets acquired before marriage fully. It is crucial for protecting personal properties such as businesses, investments, and family inheritances from potential division in the event of a divorce. By establishing clear financial responsibilities, including debt repayment and household expenses, prenuptial agreements help reduce potential conflicts arising from financial issues.

The agreement can outline how assets acquired during the marriage will be managed and divided, ensuring both parties understand their rights and responsibilities. A properly drafted prenuptial agreement provides legal certainty and reduces the likelihood of future legal disputes, which can be costly and time-consuming. The Marriage Law should include more detailed provisions regarding the permissible content of prenuptial agreements, including but not limited to the separation of assets, financial responsibilities, and protection of business and investment assets. The legalization process of prenuptial agreements by marriage registrars should be simplified to ensure that couples can quickly draft and validate their agreements without excessive bureaucracy. Couples should be required to consult with an experienced family law attorney before drafting a prenuptial agreement. It ensures the agreement is legally binding and covers all necessary aspects to protect assets.

The Marriage Law should recognize prenuptial agreements made abroad, provided they do not conflict with Indonesian law. It is essential for couples where one or both parties are foreign nationals or have assets abroad. The government should undertake extensive education and socialization efforts about the benefits and importance of prenuptial agreements. Changing the public perception that prenuptial agreements are taboo and unnecessary is crucial. The following are suggestions for changes to Law No. 16 of 2019 in the analysis of Maqasid sharia:

Article of the Regulation	Suggested Improvement Narrative	Protection Indicator According to Maqashid sharia
Article 29 Paragraph 1	Provisions that require prenuptial agreements should be added, including the separation of assets owned before marriage, financial responsibilities during marriage, and the management of joint assets.	Hifz al-Mal (Protection of Property) ensures asset management's security and clarity.
Article 29 Paragraph 2	Simplifying the legalization process of prenuptial agreements by marriage registrars and providing clear and accessible guidelines on the procedure.	Hifz al-Nafs (Protection of Life) reduces administrative burden and ensures ease of process.
Article 29 Paragraph 3	Adding provisions that prenuptial agreements must be drafted with mandatory legal consultation from an experienced family law attorney to ensure legal validity.	Adl (Justice) ensuring the agreement is lawful and fair according to law.
Article 29 Paragraph 4	Introducing provisions that allow the revision of prenuptial agreements with mutual consent and legal validation, especially in the event of significant changes in the couple's financial situation.	Hifz al-Mal, Hifz al-Nafs ensuring legal flexibility to adapt to changing situations.
Article 6 (Additional)	Requiring extensive socialization and education about the importance of prenuptial agreements and their benefits in asset protection and conflict prevention.	Hifz al-Nasl (Protection of Offspring) increasing public awareness and understanding.
Article 7	Adding provisions regarding the recognition and legalization of prenuptial agreements made abroad, provided they do not conflict with Indonesian law.	Hifz al-Nasl ensuring legal protection across borders.

Source: author's analysis

Prenuptial agreements are crucial in protecting personal assets and reducing potential conflicts during and after marriage. In the context of

Maqashid sharia, the following critical analysis and recommendations can be implemented to enhance the effectiveness of the Marriage Law in regulating prenuptial agreements.⁵⁴

1. Understanding and Legal Clarity (*Hifz al-Din*)

Through extensive education and socialization, they are increasing public understanding of the benefits and importance of prenuptial agreements. They provide precise and accessible guidelines on the legalization procedure and permissible content of prenuptial agreements.

2. Justice and Equality (*Adl*)

Adding provisions to ensure that prenuptial agreements are drafted with professional legal assistance to avoid injustice and ensure compliance with applicable laws. Simplifying prenuptial agreements' legalization and validation process ensures all couples can access and utilize them without excessive bureaucratic hurdles.

3. Protection of Property (*Hifz al-Mal*)

Ensuring prenuptial agreements include detailed arrangements on separating and managing assets before and during marriage. Allowing flexibility for the revision of prenuptial agreements to adapt to significant changes in the couple's financial situation, with mutual consent and legal validation.

4. Protection of Life and Peace of Mind (*Hifz al-Nafs*)

Guaranteeing that prenuptial agreements reduce potential conflicts and provide legal certainty and security for both parties. Reducing the administrative burden in the legalization process to provide peace of mind and legal security for couples.

By implementing these recommendations, the marriage law can be further optimized to protect individual assets and ensure justice and welfare in marriage, which is in line with the principles of Maqashid sharia.

Conclusion

Prenuptial agreements are essential legal instruments for protecting personal assets and reducing conflicts within marriage. Given the high divorce rates in Indonesia, primarily driven by economic issues such as online gambling, prenuptial agreements have become increasingly relevant. These agreements provide legal certainty regarding managing and separating assets, which is crucial for individuals with businesses or family inheritances they wish to protect. The Maqashid sharia approach, emphasizing the protection of religion, life, intellect, progeny, and wealth, offers a comprehensive framework for optimizing

⁵⁴ Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*.

prenuptial agreements. This approach can integrate prenuptial agreements with Islam's values of justice and welfare. A critical analysis of the Marriage Law reveals several necessary improvements to optimize asset protection through prenuptial agreements. First, the law should include more detailed provisions regarding the contents of prenuptial agreements, such as the separation of assets, financial responsibilities, and asset management. Second, the legalization process of prenuptial agreements should be simplified so that couples can quickly draft and validate their agreements. Third, mandatory legal consultation should be required to ensure that the agreements are legally binding and cover all essential aspects of asset protection. Fourth, recognition of prenuptial agreements made abroad should be ensured, provided they do not conflict with Indonesian law. Lastly, education and socialization about the benefits and importance of prenuptial agreements should be enhanced to change the public perception that prenuptial agreements are taboo. By implementing these recommendations, prenuptial agreements can be better optimized to protect individual assets, ensure justice and welfare within marriage, and reduce future conflicts and legal disputes. It aligns with the Maqashid sharia principles, which emphasize the well-being and justice of all parties in marriage.

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