

The Dilemma of Joint Property (*Gono-gini*) in Multi-Ethnic Marriage Communities in North Sulawesi

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Abstract

Implementing marriage agreements in multi-ethnic communities presents complexities, particularly in harmonizing Islamic, customary, and favorable laws. The gap in understanding the concept of Syirkah Al-milk in classical fiqh and modern practice, as well as the lack of comprehensive studies on the implementation of marriage agreements in multi-ethnic areas such as North Sulawesi, creates an urgency to explore this phenomenon further. This study aims to analyze the implementation of marriage agreements from the perspective of Syirkah Al-milk and its dynamics in North Sulawesi's multi-ethnic communities. The study employed a qualitative approach with a multisite case study design across seven religious court institutions. Researchers collected data through semi-structured interviews with judges, religious figures, and traditional leaders, as well as non-participant observation and document analysis. They validated the data using method triangulation, member checking, and peer debriefing. The study found a significant gap between the concept of Syirkah Al-milk in Islamic law and its practice in society. Religious court judges face challenges harmonizing Syirkah principles with socio-cultural realities, particularly in recognizing non-financial contributions within marriage. Constitutional Court Decision No. 69/PUU-XII/2015 provides new flexibility in line with the principle of *maslahah* in implementing marriage agreements. The study concludes that a holistic

approach integrating Sharia values, customary law, and positive law is necessary to develop a more adaptive marriage agreement system. Continuous efforts are required to increase public understanding of Ayirkah Al-milk concepts and the benefits of marriage agreements.

Keywords: Islamic Law, Legal Pluralism, Marriage Agreement, Multi Ethnic Communities, Syirkah Al-Milk.

Introduction

The assets acquired during the marriage, commonly known as gono-gini, represent a complex concept within the Indonesian legal system. Although Sayuti Thalib defines them as wealth obtained during marriage, excluding gifts, grants, or inheritance, and Law No. 1/1974 Article 35(1) regulates joint property, disputes related to this matter are often intricate and time-consuming. This complexity is exacerbated by the tension between Islamic law, which grants individual ownership rights to each spouse, and positive law, which governs joint property.

Ahmad Azhar Basyir emphasizes that Islamic law grants each spouse the right to own assets individually. However, Law No. 1/1974 Article 35(1) stipulates that assets acquired during marriage constitute joint property. The tension between Islamic law and positive law creates a complex space for interpretation, particularly in multi-ethnic societies where customs and traditions vary.

The global trend of interethnic marriages has been increasing, reflecting broader social integration and diminishing traditional ethnic boundaries. Zhixiang Jian notes that interethnic marriages in China are an essential indicator of social processes leading to the acceptance of ethnic diversity. A similar phenomenon is identified by Zhenchao Qian and Daniel T. Lichter, who explain that this trend creates a complex space for negotiation regarding identity, citizenship, and cultural norms. In societies such as North Sulawesi, this dynamic underscores the importance of understanding how customary and religious norms accommodate social changes resulting from intercultural marriages.

Interethnic marriages often face legal and cultural challenges, especially in societies with pluralistic legal frameworks. Mutia Cherawaty Thalib highlights that in Gorontalo, interethnic couples, where one partner is Muslim, must adhere to Islamic norms, which often clash with local customary norms. In South Africa, as Johan D. van der Vyver noted, the coexistence of customary and modern legal

systems creates dilemmas in achieving legal equality for interethnic couples. These challenges are evident in Indonesia's efforts to harmonize Islamic, customary, and favorable laws.

Socioeconomic factors play a crucial role in the dynamics of interethnic marriages. Omar Shahabudin McDoom observes that in the Philippines, economic disparities among ethnic groups often reinforce the influence of traditional norms, ultimately limiting opportunities for interethnic couples. Meanwhile, research by Dionisia Maffioli, Anna Paterno, and Giuseppe Gabrielli in Italy reveals that cross-cultural couples frequently exchange attributes, such as education and economic security, to achieve social stability. In Indonesia's context of gono-gini agreements, spouses' economic backgrounds often influence their understanding of joint property.

Family support in interethnic marriages plays a key role in determining relationship stability. Rena Tecklenburg and Mandy Boehnke show that cross-cultural couples in Germany often rely on kinship networks for social support. However, the type of support varies depending on cultural openness and geographic proximity. In North Sulawesi, kinship relations also serve as a crucial foundation in resolving joint property disputes, where customary norms often become the primary reference.

Policy reforms and culturally sensitive approaches are essential in addressing the dilemmas of interethnic marriages. Sanyu Semafumu emphasizes the importance of legal reforms that recognize cultural plurality to ensure that the rights of intercultural couples are equally acknowledged and protected. In Indonesia, particularly in multi-ethnic regions such as North Sulawesi, harmonizing customary, Islamic, and positive law is a priority for creating an inclusive legal system. Public education on gono-gini agreements is also crucial in bridging the gap between traditional norms and modern legal requirements.

Previous studies have explored various aspects of marriage agreements, from Islamic legal perspectives and their implementation in modern contexts to challenges in judicial practice. However, no comprehensive research has examined the dynamics of marriage agreements in multi-ethnic societies, particularly in North Sulawesi. This gap becomes increasingly significant given the rising complexity of cross-cultural marriages and the potential for joint property disputes.

The novelty of this research lies in three main dimensions. First, this study conducts an in-depth exploration of the implementation of marriage agreements within the multi-ethnic society of North Sulawesi. This culturally diverse region has yet to receive sufficient academic attention. Second, a comprehensive analysis of the role and perspectives of religious court judges in handling marriage agreement cases provides new insights into judicial decision-making processes in legal pluralism. Third, a multisite approach that allows for a deeper understanding of variations in practices and challenges in the implementation of marriage agreements across different regions.

This research integrates three analytical dimensions within its conceptual framework: positive law, Islamic law, and socio-cultural dimensions. The positive legal dimension includes an analysis of marriage agreement regulations, including the Marriage Law, the Compilation of Islamic Law, and relevant court rulings. The Islamic legal dimension explores the concept of *Syirkah* and joint property in *fiq* and contemporary interpretations of agreements in Islam. The socio-cultural dimension examines customary values and social practices in multi-ethnic societies, including kinship systems and property ownership concepts across various local traditions.

Marriage in North Sulawesi's multi-ethnic society presents unique dynamics within Indonesian family law. This complexity is reflected in the interactions between various ethnic groups, such as Minahasa, Bolaang Mongondow, Sangir, and Gorontalo, each bringing customary values and traditions into marriage. This diversity creates specific challenges in applying marriage laws, particularly regarding joint property (*gono-gini*), where each ethnic group has different understandings and practices in managing marital assets. In rural areas inhabited by the Tonsea ethnic group (Minahasa), marriage is strongly perceived as a lifelong act of worship. In their tradition, discussions about asset separation are considered taboo. Instead, it is common for inherited assets to be merged into joint property before marriage through customary mechanisms practiced in the local village.

North Sulawesi's multi-ethnic communities show different preferences regarding joint property dispute resolution. In some regions, particularly those that strongly uphold customs, conflicts are often resolved through customary mechanisms rather than formal legal channels. It reflects the strong influence of traditional values in North Sulawesi society despite a formal legal framework regulating joint property. This phenomenon is also influenced by socioeconomic

factors, where varying levels of education and legal awareness among different ethnic groups shape their perspectives and approaches to resolving marital property disputes.

The complexity of implementing marriage agreements is firmly rooted in Islamic legal sources. The Quran, Surah Al-Maidah (5:1), explicitly forbids violating agreements that have been made. This principle underscores the strategic role of Marriage Registration Officers in guiding prospective spouses on the urgency of marriage agreements. However, implementation in the field faces various challenges, ranging from cultural resistance to gaps in legal understanding.

In the context of North Sulawesi, the implementation of marriage agreements becomes even more complex due to the diverse interpretations of marital property ownership across ethnic groups. Interviews with judges from the Religious Courts of Amurang, Manado, and Lolak reveal that public understanding of marriage agreements remains limited, often reduced to *shighat ta'liq talaq* at the time of marriage. This situation is further complicated by perceptions in certain regions, particularly in rural Minahasa, where formal marriage agreements are deemed irrelevant as they contradict the belief that marriage is a lifelong act of worship, making discussions about asset separation seem detrimental to the sanctity of marriage.

In classical fiqh, while the concept of joint property, known in modern law, is not explicitly mentioned, its principles can be found in discussions on Syirkah (partnership) and shared ownership rights. Al-Sarakhsi in Al-Mabsut explains that Syirkah Al-amwal involves cooperation in asset ownership derived from joint efforts or contributions. This concept reflects the principle of shared benefits according to the agreement between the parties. Imam Nawawi in Al-Majmu' (Shafi'i school) adds that asset division should consider each individual's material and moral contribution in divorce cases. This approach is rooted in the Islamic principle of justice, which respects individual rights based on contributions.

This study is expected to provide significant theoretical and practical contributions. Theoretically, it enriches understanding of the interaction between formal law, Islamic law, and social practices in Indonesia's plural society. Practically, its findings can serve as a foundation for developing legal policies and practices that are more responsive to socio-cultural diversity and as guidelines for legal practitioners handling marriage agreement cases in multi-ethnic communities.

Discussion

Challenges in Implementing Marriage Agreements in North Sulawesi.

The implementation of marriage agreements in North Sulawesi faces various complex challenges rooted in the community's social, cultural, and legal awareness. Judge Muh. Naskhin from the Amurang Religious Court identifies fundamental issues, stating that "the public's understanding of marriage agreements is minimal, where most people only recognize it as *shigat taklik talak* at the time of the marriage contract." This observation reveals a significant gap between formal regulations and real-world practices.

The perspective of religious scholars adds another dimension to this complexity. Edi Gunawan ¹ explains that "in classical fiqh, the concept of joint property is not recognized. Islam fundamentally acknowledges the separation of assets between husband and wife." This view presents the challenge of harmonizing Islamic law with local practices and Indonesia's positive law.

The customary dimension further complicates the issue, as highlighted by Denny H.R. Pinontoan, who explains the "antar harta" system in the Minahasan tradition: "When interethnic marriages occur, the couple must agree on which customary law to follow. If they choose the Minahasan tradition, the 'antar harta' system applies, involving a negotiation process known as *baku ator*, where spokespersons from both sides facilitate the unification of pre-marital assets into the joint property."

Rosdalina Bukido² observes the transformation of customary practices, stating that "modernization has had a significant impact on the practice of customary marriage agreements. In the past, marriage agreements were mostly oral and based on family consensus." This change poses challenges in bridging traditional practices with modern legal demands.

Senior Judge H. Suhadak³ from the Manado Religious High Court emphasizes the socio-cultural dimension, which plays a crucial role, as communities that strongly uphold customary traditions often perceive formal marriage agreements as less relevant. The preference for conflict resolution through customary mechanisms reflects the strong influence of traditional values in North Sulawesi society.

¹ Interviews with Edi Gunawan Islamic Religious Figures and Academics of North Sulawesi, on 31th January 2019

² Interviews with Rosdalina Bukido Traditional Figures and Academics of North Sulawesi, on 31th January 2019

³ Interviews with H. Suhadak, High Judge of the High Religious Court Manado, on 24th July 2019

Challenges in implementation also stem from the gap in understanding the concept of joint property. Judge Mohamad Adam identifies a prevalent tendency, particularly among husbands, to perceive assets acquired during marriage as the exclusive property of the earning party. This perception contradicts the principle of joint property in Indonesia's positive law.

The complexity of implementing marriage agreements in North Sulawesi's multi-ethnic society reflects a fundamental challenge in Indonesia's legal pluralism. The gap between formal regulations and social practices creates what is known as a "legal gap" in the implementation of family law policies. This phenomenon highlights the public's limited understanding and indicates cultural resistance to formalizing marital relations, especially economically.

Observations from religious court judges reveal that most society still views marriage agreements merely as *shigat taklik talak*, indicating a misalignment between regulatory objectives and social interpretation. This situation is further complicated by the complex interaction between Islamic law, customary law, and positive law, often resulting in what legal anthropology refers to as legal hybridity—a situation where multiple legal systems operate simultaneously but not always harmoniously. These implementation challenges reflect what legal sociology literature describes as the "gap between law in books and law in action," where the socio-cultural realities of society hinder the effectiveness of formal regulations.

Opportunities and Potential for the Development of Marriage Agreements in North Sulawesi.

Despite various challenges, implementing marriage agreements in North Sulawesi presents significant development opportunities. Judges Mujiburrokhman and Rokiah Mustaring⁴ from the Religious Court propose concrete solutions, recommending, in line with the Constitutional Court Decision No. 69/PUU-XII/2015, that "the ideal formulation of a marriage agreement should be through the creation of an authentic deed before a notary, which is then ratified by the Religious Court and recorded at the Office of Religious Affairs (KUA)." This approach offers a stronger formal framework for the legal protection of both parties.

Edi Gunawan provides an integrative perspective, stating that "Islamic law views joint property with a more dynamic approach, considering the contributions of each party in acquiring assets." This perspective creates an opportunity for developing a fairer system aligned with Islamic justice principles.

⁴ Interviews with Mujiburrokhman and Rokiah Mustaring, Religious Court Judge Amurang, on 27th September 2019

Denny H.R. Pinontoan highlights the potential for adapting customary systems, explaining that "the Minahasan community has an adaptive tradition in managing joint property in interethnic marriages." This flexibility demonstrates the potential for integrating customary practices with the modern legal system. Rosdalina Bukido observes opportunities for modernization, stating that "cultural acculturation in interethnic marriages occurs naturally. Many couples choose to incorporate traditional elements from both sides." This observation indicates the potential for developing a more inclusive and adaptive system.

Analyzing the opportunities for developing marriage agreements in North Sulawesi reveals significant potential for transforming the family law system into a more adaptive framework. Empirical studies show that social modernization and increased legal awareness have created space for reinterpreting traditional practices within a modern legal context. This phenomenon aligns with legal pluralism in transition, which describes adapting plural legal systems to the demands of modernity.

Integrating customary practices, Sharia principles, and positive law opens opportunities for developing a hybrid model more responsive to contemporary societal needs. Religious court judges identify a momentum for change through progressive jurisprudence and the increasing public awareness of the importance of legal protection in marriage. This observation confirms the legal development theory, which emphasizes the necessity of legal system evolution in line with societal advancements.

Practical Implications and Recommendations for Marriage Agreements in North Sulawesi.

The research reveals several important practical implications in implementing marriage agreements in North Sulawesi. Judge Mohamad Adam identifies a pattern in which ex-wives file joint property disputes more frequently. At the same time, Judges H. Suhadak and Masita Olii note that "the most common objects of dispute are immovable assets such as land and buildings."

Edi Gunawan emphasizes the crucial role of religious leaders, stating that "religious figures play a fundamental role in explaining the concept of joint property to the community, particularly in multi-ethnic regions like North Sulawesi." This role is essential in fostering a comprehensive public understanding.

Denny H.R. Pinontoan highlights the customary dispute resolution mechanism, explaining that "joint property disputes in Minahasan customary law follow a tiered resolution process, beginning with mediation and deliberation (*baku ator bae*)." This system offers an alternative dispute resolution model that can be integrated with the formal legal system.

Rosdalina Bukido recommends a holistic approach, stating that "this harmonization reflects how customary law can adapt without losing its essence." This perspective underscores the importance of balancing modernization with preserving traditional values.

The findings indicate the need for a comprehensive approach that considers socio-cultural complexities, ethnic diversity, and modernization dynamics in developing the marriage agreement system in North Sulawesi. Emerging recommendations include strengthening legal education, developing culturally sensitive mediation mechanisms, and harmonizing the formal legal system with local customary practices.

The practical implications of implementing marriage agreements in North Sulawesi highlight the necessity of a holistic approach to family law reform. The effectiveness of implementation largely depends on the harmonization between formal and informal legal systems and the judiciary's capacity to accommodate socio-cultural complexities. This phenomenon reflects what socio-legal studies call institutional capacity building—the need to develop institutional capacities responsive to legal pluralism. Judges and community leaders recognize the importance of integrating traditional dispute-resolution mechanisms with the formal judicial system, creating what is referred to in the literature as a hybrid justice system. These findings confirm the responsive law theory, which emphasizes the importance of a legal system that adapts to the needs and values of the local community.

The Dilemma of Tradition and Modernity: Marriage Agreements in the Legal and Customary Dynamics of North Sulawesi's Multi-Ethnic Society.

This study reveals the complexity of implementing marriage agreements in the multi-ethnic society of North Sulawesi. The key findings indicate a significant gap between the regulations outlined in Law No. 1 of 1974 and the Compilation of Islamic Law (KHI) and their practical application. Through in-depth interviews with judges from various Religious Courts in the region, it was found that the resolution of joint property disputes varies in duration and complexity.

Public perception is one of the key factors influencing the implementation of marriage agreements. Marriage agreements are still taboo in several areas, mainly rural South Minahasa. Judge Suhadak, in his interview, emphasized that the local community perceives marriage as a sacred religious commitment intended to last a lifetime. Consequently, discussions about property separation contradict the sanctity of marriage. This view reflects the strong influence of traditional and religious values in North Sulawesi society.

Cultural factors also play a crucial role in shaping public attitudes toward marriage agreements. Communities in remote areas that uphold Eastern traditions

and religious teachings tend to perceive discussions about property separation as “*pamali*” or taboo. These findings highlight the complex interaction between formal law and socio-cultural norms in a multi-ethnic society.

Nevertheless, the study also reveals differing perspectives among legal practitioners. Some judges argue that marriage agreements are not necessarily taboo, particularly in cases where wives earn an equal or higher income than their husbands. These differing perspectives indicate a shift in legal thinking, although the broader society has not fully internalized such views.

The study also uncovers a gap in understanding regarding the concept of *Syirkah* (partnership) in joint property under Islamic law. Some *fiqh* scholars recognize shared property, which could serve as a basis for marriage agreements. This finding underscores the need to harmonize Islamic law, positive law, and social practices within North Sulawesi’s diverse context.

A significant finding of this study is the lack of comprehensive public awareness regarding the benefits of marriage agreements. Judges emphasize the importance of educating the public about recording marital assets to prevent future disputes without undermining traditional Eastern values. Education is also crucial, as lower education levels in certain regions correlate with a lack of awareness regarding the importance of marriage agreements.

Another interesting finding is the dominance of ex-wives as plaintiffs in joint property dispute cases. It often occurs due to the perception that husbands tend to control marital assets, assuming the role of the primary breadwinner. The most frequently contested cases involve transferring joint property by ex-husbands, such as selling assets without the ex-wife’s knowledge or consent. The types of assets most commonly disputed include land, houses, and motor vehicles, reflecting patterns of asset ownership within the context of North Sulawesi society. This study highlights the need for stricter and more binding regulations in joint property dispute resolution, particularly given the common perception that the income earner is the sole owner of the assets. The implications of this perception often disadvantage wives, who generally bear a heavier burden in household management.

This research reveals the complexity of implementing marriage agreements in North Sulawesi, which is influenced by social, cultural, religious, and legal factors. These findings emphasize the importance of a holistic approach to bridging the gap between regulations and actual practices and the need for more comprehensive education and public awareness campaigns to enhance public understanding of the importance of marriage agreements in modern family law.

The study also uncovers the dynamics of law enforcement in joint property dispute cases. Judges in Religious Courts across North Sulawesi face

challenges in balancing formal legal provisions with the socio-cultural realities of the local community. They often have to carefully interpret the law to accommodate the unique circumstances of each case, particularly in situations where no explicit marriage agreement exists.

One key finding is the gap in public understanding regarding joint property ownership. Many couples—especially husbands—still believe that assets acquired during marriage belong exclusively to the earning spouse. This view contradicts the legal principle that all assets acquired during marriage are jointly owned, regardless of who generates the income. This lack of understanding is often the root cause of conflicts in joint property disputes.

The study also reveals that, in many cases, wives are disadvantaged when joint property disputes arise. It is especially true when wives do not have a formal income or work as homemakers. Although non-financial contributions to the household should be legally recognized, they are often overlooked or undervalued in property division processes.

Another interesting aspect is the role of mediation in resolving joint property disputes. Judges emphasize the importance of mediation as a preliminary step in conflict resolution. Several cases have been successfully settled through mediation, which expedites the resolution process and helps maintain amicable relationships between the disputing parties—especially when children are involved.

This study also highlights the importance of the role of the Office of Religious Affairs (KUA) in promoting awareness of marriage agreements. Some judges suggest that the KUA should be more proactive in educating engaged couples about the benefits and significance of marriage agreements. This approach is considered a preventive measure to reduce potential disputes in the future.

In the context of Islamic law, this study reveals differences in interpretation among Islamic scholars and legal practitioners regarding the concept of joint property. Some argue that joint property is not recognized in classical *fiqh*, while others view it as a form of *Syirkah* (partnership) in marriage. These differing perspectives reflect the complexity of harmonizing Islamic law with Indonesia's positive legal system.

This study underscores the importance of family law reforms that are more responsive to contemporary social realities. The judges and legal practitioners interviewed emphasize the need to revise or refine existing regulations to better accommodate the complexities of property relations in modern marriages, particularly in increasingly pluralistic societies such as North Sulawesi. This research provides a comprehensive overview of the challenges and complexities of implementing marriage agreements and resolving joint property

disputes in North Sulawesi. These findings are relevant to the local context and offer valuable insights for developing family law in Indonesia on a broader scale.

Based on in-depth interviews with religious and customary figures in North Sulawesi, the study reveals the complex dynamics in implementing customary and religious laws concerning interethnic marriages. Edi Gunawan, an Islamic religious scholar, emphasizes that from a classical fiqh perspective, joint property is not recognized, as Islam fundamentally acknowledges the separation of assets between husband and wife. Meanwhile, Rosdalina Bukido, a customary law expert and academic, notes that customary law in interethnic marriages in North Sulawesi has changed significantly.

Denny H.R. Pinontoan, a Christian religious and customary leader, adds that Minahasan customary law follows the "antar harta" system, which includes a negotiation process known as *baku ator*, where spokespersons from both families mediate the unification of assets. This multi-dimensional perspective highlights the complexity of harmonizing customary law, religious principles, and state regulations within the multi-ethnic society of North Sulawesi.

Bridging Tradition and Modernity: The Dilemma of Implementing Marriage Agreements in North Sulawesi.

This study reveals the complexity and urgency of marriage agreements within the context of North Sulawesi's society, which is undergoing social and legal transitions. Through in-depth interviews with judges and legal practitioners, several strong reasons emerged why marriage agreements are essential in the contemporary era.

One of the key findings is the recognition of potential disputes that may arise in the future. Judges, including Judge Suhadak, emphasized that marriage agreements can be a preventive instrument to anticipate joint property conflicts. It is reinforced by observations on the rising divorce rate in the region, further underscoring the importance of legal protection for both parties in marriage.

The study also reveals the importance of marriage agreements in defining property ownership boundaries. In an interview, Judge Ahmad highlighted that clarity in property ownership can prevent third-party involvement in disputes while protecting spouses' interests, especially in cases where the wife has a higher income than the husband.

However, this study also finds that some perspectives consider marriage agreements unnecessary, particularly among communities still firmly uphold customary traditions. Judge Budi explained that conflicts can still be resolved through customary mechanisms in homogeneous societies, making formal agreements seem less relevant. Another significant finding is the recommendation for the ideal formulation of marriage agreements. Judges, including Judge Siti, suggest that agreements should be made in the form of an authentic deed before

a notary, which is then ratified by the Religious Court and registered at the Office of Religious Affairs (KUA). The agreement's content is expected to cover the separation of pre-marital assets, the division of joint property, and other family life aspects that could lead to future conflicts.

The study also highlights challenges in implementing marriage agreements, particularly for low-income communities. Judge Rahman expressed concerns about the cost of drafting agreements, which may be unaffordable for some, emphasizing the need for a more inclusive solution. The study also focuses on the formal and material aspects of marriage agreements. Judges emphasize the importance of explicit content within the agreements to provide legal certainty and enforceability and a clear separation of pre-marital assets belonging to each party.

This research further analyzes the implications of Constitutional Court Decision No. 69/PUU-XII/2015, allowing marriage agreements to be made at any time during the marriage. Judge Aisyah explained that this ruling provides greater flexibility and broader legal protection for married couples. Another significant finding is the shift in paradigm regarding the meaning of marriage agreements. Judges, including Judge Yusuf, emphasize that marriage agreements are not merely a preparation for divorce but rather an instrument to protect the rights of both parties and maintain household harmony.

This study also reveals the crucial role of judges in resolving joint property disputes. Judges must extract the living legal values within society and maximize their judicial discretion to deliver fair and acceptable rulings for the parties involved. This study highlights the importance of adapting family law to social changes in globalization. Judge Fatimah emphasized that public awareness of marriage agreements is becoming increasingly crucial in globalization, where cross-cultural interactions are intensifying.

The study also uncovers the existence of traditional "marriage agreements" in some communities. Judge Ali explained that these traditional practices could be a strong foundation for developing more comprehensive formal marriage agreements. These findings confirm the complexity of implementing marriage agreements in North Sulawesi, which is influenced by legal, social, cultural, and economic factors. This study suggests the need for a more holistic and contextual approach in developing and implementing the concept of marriage agreements in Indonesia, particularly in regions with ethnic and cultural diversity, such as North Sulawesi.

This study also identifies challenges in implementing marriage agreements, including issues of accessibility for middle-to-lower-income communities and the necessity of harmonizing Islamic law, positive law, and social practices. Overall, this study provides in-depth insights into the dynamics of marriage agreements in contemporary Indonesian family law. These findings

are relevant to North Sulawesi and offer valuable perspectives for developing family law policies at the national level, particularly in addressing the challenges of globalization and rapid social change.

Classical Fiqh and Its Relevance to Constitutional Court Decision No. 69/PUU-XII/2015.

Constitutional Court Decision No. 69/PUU-XII/2015 represents a significant step in Indonesia's flexibility of marriage law. This ruling allows couples to create or modify a marriage agreement during their marriage, a previously unavailable flexibility. It provides greater adaptability for couples to adjust joint property arrangements to changes in their life circumstances. The relevance of this decision to classical fiqh can be found in the principle of *Syirkah* (partnership), which underlies joint property arrangements in Islam.

In classical fiqh, *Syirkah al-milk* describes a form of joint ownership resulting from the contributions of both parties toward a specific asset. Al-Sarakhsi, in his work *Al-Mabsuth*, explains that the distribution of benefits in this partnership must reflect each party's contribution, whether in the form of capital, labor, or non-financial roles. This approach aligns with Constitutional Court Decision No. 69/PUU-XII/2015, which allows spouses to redefine their rights and obligations concerning joint property during their marriage without undermining the principles of justice upheld in Islamic law.

Furthermore, Imam Nawawi, in *Al-Majmu'*, emphasizes the importance of justice in the distribution of joint property, including the recognition of non-material contributions, such as the wife's role in supporting the household. In Indonesia, such non-material contributions are often not proportionally recognized in joint property disputes. The flexibility introduced by this Constitutional Court ruling can be used to design agreements that accommodate the wife's contributions, which may not be financially visible, ensuring that the justice mandated in fiqh is realized within the framework of positive law.

This approach is also supported by Ibn Qudamah in *Al-Mughni*, who asserts that clarity in initial agreements regarding joint property management is crucial to avoiding future conflicts. If no prior agreement exists, property division should be based on each party's contributions during the marriage. By allowing couples to create or amend agreements during their marriage, Constitutional Court Decision No. 69/PUU-XII/2015 enables spouses to adjust their arrangements in response to changing needs, a principle consistent with Islamic fiqh.

Furthermore, in *Fiqh al-Zakah*, Yusuf al-Qaradawi emphasizes the importance of *maslahah* (public interest) in applying Islamic law. This principle makes Islamic law flexible and relevant in response to evolving social conditions. Constitutional Court Decision No. 69/PUU-XII/2015 provides a concrete

example of how *maslahah* can be integrated into the national legal framework, offering better legal protection for married couples in navigating the dynamics of modern life.

Classical *fiqh* and this Constitutional Court ruling also share a common goal of promoting gender justice. In joint property disputes, women are disadvantaged, notably when their non-financial contributions are not recognized. By restructuring marriage agreements during the marriage, the Constitutional Court ruling serves as a crucial instrument for ensuring greater equality, aligning with classical *fiqh*, and prioritizing substantive justice.

Constitutional Court Decision No. 69/PUU-XII/2015 also functions as a means of harmonizing Islamic law and national law. The Compilation of Islamic Law (KHI), which has been incorporated into Indonesia's legal system, establishes the division of joint property based on each party's contribution, mirroring the principle of *Syirkah* in *fiqh*. This ruling reinforces the principle of justice by providing flexibility in marriage agreements, ensuring that spouses' rights and obligations can be regulated according to contemporary needs without disregarding Sharia values.

Integrating classical *fiqh* with the legal flexibility introduced by Constitutional Court Decision No. 69/PUU-XII/2015 creates a more adaptive and inclusive legal foundation. This approach not only accommodates the needs of modern couples but also upholds Islamic principles of justice. It is a model for how Islamic law can contribute dynamically within a pluralistic legal system like Indonesia. Thus, this ruling strengthens the role of Islamic law as an integral part of developing a fairer and more responsive family law system.

Conclusion

Based on the research conducted, the implementation of marriage agreements in the multi-ethnic society of North Sulawesi reveals significant complexities in harmonizing Islamic law, customary law, and positive law. The gap in understanding regarding the concept of *Syirkah al-milk* in modern practice and the lack of comprehensive studies on the implementation of marriage agreements in the region present distinct challenges. Through a qualitative approach with a multisite case study design conducted in seven religious judicial institutions, the study uncovers a significant discrepancy between *Syirkah al-milk* in Islamic law and its societal practice. Religious court judges face challenges in harmonizing the principles of *Syirkah* with socio-cultural realities, particularly concerning the recognition of non-financial contributions in marriage. Constitutional Court Decision No. 69/PUU-XII/2015 introduces new flexibility that aligns with the *maslahah* principle in applying marriage agreements. In the North Sulawesi context, the implementation of marriage agreements becomes even more complex due to varying ethnic interpretations of property ownership

in marriage. This study recommends a holistic approach that integrates Sharia values, customary law, and positive law in developing a more adaptive marriage agreement system. Additionally, continuous efforts are needed to enhance public understanding of Syirkah al-milk and the benefits of marriage agreements. The harmonization of classical fiqh and legal flexibility, as embodied in the Constitutional Court ruling, establishes a more adaptive and inclusive legal foundation that accommodates the needs of modern couples while still upholding the principles of justice in Islam.

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