



ZICONS:

Zawiyah International Conference on Sharia and Legal Studies

Vol. 1. (January–December 2025): h. 436-455

<https://jurnal.pematik.id/index.php/zicons>

Marriage Contracts and Women's Rights in Contemporary Islamic Jurisprudence

Nursyifa Zahra

Universitas Islam Negeri Sultan Aji Muhammad Idris Samarinda

Syifazahranur1@yahoo.com

Article Info

Article history:

Received Nov 17, 2025

Accepted Des 27, 2025

Publish Des 30, 2025

Keywords:

Marriage Contract

Women's Right

Islamic Jurisprudence

Ta'liq Talaq

Gender Equality

ABSTRACT

Classical Islamic family law is often interpreted through a patriarchal lens, potentially limiting women's autonomy and rights, particularly regarding divorce and financial security. Social changes and gender equality demands have propelled contemporary jurisprudence to seek legal mechanisms that proactively secure the rights of wives. This research aims to analyze the role and effectiveness of specific clauses, such as ta'liq talak (conditional divorce) and prenuptial agreements (syurut al-zawaj), as legal instruments to empower women and protect their rights within the marital bond across various modern Muslim contexts. This study employs a normative-legal method, utilizing a comparative approach and content analysis of primary and secondary legal sources, including classical fiqh literature, contemporary fatwas, and family law statutes in selected Muslim-majority countries. The results demonstrate that prenuptial clauses possess strong validity within Hanbali fiqh and are gaining broader acceptance in contemporary jurisprudence. These clauses significantly enhance women's bargaining position, granting them the right to initiate marital dissolution (fasakh) or claim financial compensation upon breach of the agreement. However, their efficacy is often impeded by cultural resistance, low public awareness, and inconsistent judicial enforcement. Consistent implementation and robust public education are crucial to maximize the protective function of these clauses.

This is an open access article under the [CC BY-SA](https://creativecommons.org/licenses/by-sa/4.0/) license.



Corresponding Author:

Nursyifa Zahra

Faculty of Sharia, State Islamic Institute of Langsa

Meurandeh Street, Meurandeh, Langsa Lama District, Langsa City, Aceh 24416

syifazahranur1@gmail.com

INTRODUCTION

The marriage contract (Nikah contract) in Islam is a fundamental legal instrument that not only governs the bond between husband and wife but also

reflects the surrounding social and legal dynamics. The history and evolution of marriage contracts show significant shifts, where classical traditions have begun to move toward contemporary norms. This shift directly impacts the protection of women's rights within the context of modern Islamic law. A central issue in this study lies in the Role and Rights of Women in Islamic Law. Normatively, women hold significant roles and recognized rights within marriage. However, in legal practice and interpretation, wide variations often occur, creating tensions regarding the extent to which their protection and authority are legally recognized in marriage agreements. Such ambiguity or limitation creates gaps vulnerable to discrimination, thus necessitating an in-depth review. (*Silfiah, & Humiati, 2023*).

This study is increasingly relevant within the Contemporary Social and Legal Context of Islam. In an increasingly modern and global environment, the interpretation of women's rights in marriage has become more dynamic. (*H. Hamzah dan N. Nurhayati, 2025*). There is an urgent need to examine how to strengthen the legal position of women through adaptive and progressive marriage contract mechanisms. Therefore, this research titled "Marriage Contracts and Women's Rights in Contemporary Islamic Law" aims to analyze how marriage contract mechanisms can be optimized as legal tools to achieve justice and gender equality, in accordance with the spirit of *maqāsid al-sharī'ah* (the objectives of Sharia) in the modern era. (*B. H. Nasution & M. R. Pratama, 2025*).

While the marriage contract holds great potential as a fortress for protecting women's rights in Islamic law, its implementation on the ground still faces various challenges regarding interpretation and legality. (*Nurafni, Akbarizan, & Akmal Abdul Munir, 2025*). This research is driven by several key questions: First, how does contemporary Islamic law interpret and accommodate the marriage contract as a vital instrument for protecting women's rights? Second, what are the specific challenges and strategic opportunities encountered in implementing these contracts to achieve substantive gender justice?

Finally, how can the role of Indonesian positive law specifically the Marriage Act and the Compilation of Islamic Law (KHI) be strengthened to guarantee the enforcement of progressive marriage contract clauses for the protection of women?". (*Saiful Anam, dkk, 2025*).

Studies related to the theme of marriage contracts and the protection of women's rights in Islam are not entirely new, as several researchers have examined this topic through various juridical and sociological perspectives. The first author, Muhammad Munir, in his work entitled "The Protection of Women's Rights in Islamic Law: A Review of the Legal Framework of Marriage and Divorce in Pakistan," discusses how the legal framework in Pakistan seeks to accommodate the protection of wives through specific clauses in marriage contracts. (*Muhammad Munir, 2025*).

The findings of that study indicate that although legal instruments are available, their effectiveness is often hindered by patriarchal cultural norms. The

similarity between Munir's research and the author's study lies in the primary focus on utilizing the marriage contract as a normative tool for protecting women's rights within Islamic law. However, the fundamental difference lies in the locus and legal context.

While Munir's research focuses on the legal system in Pakistan, the author's study emphasizes the dynamics of contemporary Islamic law within the context of Indonesian positive law and the integration of progressive values in marriage contract clauses to address gender justice challenges in the modern era. The second author, Khoiruddin Nasution, in his work entitled "Status of Women in Southeast Asia. (*Khoiruddin Nasution, 2002*)

A Study of Contemporary Muslim Marriage Legislation in Indonesia and Malaysia," discusses the evolution of the legal standing of women within the marriage systems of these two Muslim countries. His findings emphasize that family law reforms tend to strengthen women's positions, although the implementation of marriage contract clauses remains optional and is rarely utilized to its full potential by prospective spouses.

The similarity between Nasution's research and the author's study lies in the analysis of positive law regulations as the foundation for protecting wives' rights in marriage. However, the fundamental difference lies in the scope of discussion. Nasution's research is cross-national and comparative, whereas the author's study focuses on developing progressive and adaptive marriage contract clauses tailored to the specific needs of women in the contemporary era, as well as strengthening legal mechanisms within Indonesia's religious courts. (*Khoiruddin Nasution, 2002*).

The third author, Siti Musdah Mulia, in her work entitled "Islam and Women's Reproductive Rights: Toward Gender Justice in the Family," discusses the importance of reinterpreting religious texts to guarantee the fundamental rights of wives, including those outlined in pre-nuptial agreements. The findings of the study emphasize that a marriage contract is not merely a financial agreement but an instrument to negotiate the principle of reciprocity (*mubādalāh*) within the household. The similarity between Mulia's research and the author's study lies in the gender justice paradigm and the use of contract instruments to minimize domestic violence. (*Siti Musdah Mulia, 2002*).

However, the fundamental difference lies in the approach; while Mulia's research focuses more on theological perspectives and reproductive rights, the author's study focuses on the juridical-procedural aspects within Indonesian positive law to provide legal certainty for progressive clauses in marriage contracts in the contemporary era. Based on a comparison with the three aforementioned authors (Munir, Nasution, and Mulia), the following is the draft of the research novelty for your study:

Studies on marriage contracts and women's rights in Islamic law have been extensively discussed by previous scholars through sociological perspectives, comparative legal studies between nations, and theological reinterpretations. However, the optimization of the marriage contract as an adaptive and

progressive legal instrument within the framework of contemporary Indonesian positive law specifically aligned with the spirit of *maqāṣid al-sharī'ah* to achieve practical gender justice has not yet been explored in depth.

The novelty of this study lies in its emphasis on how specific clauses within the marriage contract can be formally and legally strengthened through the mechanisms of the Marriage Act and the Compilation of Islamic Law (KHI) to guarantee more tangible protection for women's rights in the modern era. This is crucial because, historically, marriage contracts have often been regarded as mere optional documents lacking strong executive power in religious court practices.

LITERATURE REVIEW

First, Munir (2010) explored the legal landscape in Pakistan, finding that while legal frameworks for protecting women exist on paper, their implementation is often paralyzed by deep-seated patriarchal norms. His work highlights that in many traditional societies, the marriage contract is still viewed as a formality rather than a legally binding shield for the wife. (*Muhammad Munir, 2010*).

Second, Nasution (2022) emphasizes that the marriage contract in Islam is not merely a static legal instrument but a reflection of ever-changing social dynamics. He argues that the shift from classical traditions toward contemporary norms is crucial to ensure that the protection of women's rights is authoritatively recognized within marriage agreements to prevent gaps in discrimination. (*Khoiruddin Nasution, 2022*).

Third, Silfiah and Humiati (2023), in their study on the implementation of the Compilation of Islamic Law (KHI) in Indonesia, found a tension between formal state law and cultural practices. Although the KHI provides a framework for protection, social realities on the ground often marginalize women's rights due to persistently patriarchal interpretations of the legal text. (*Silfiah and Humiati, 2023*).

Fourth, Welchman (2007), through an analysis of family law reforms in various Muslim-majority countries, demonstrates that including specific stipulations in the marriage contract serves as an essential negotiating tool for women to secure their legal position within the household. (*Lynn Welchman, 2007*).

Fifth, Mir-Hosseini (2015) presents an Islamic feminist perspective, suggesting that inequalities in marriage contracts are rooted in classical *fiqh* constructions that rigidly distinguish gender roles. She advocates for the deconstruction of the concept of "guardianship" (*qiwamah*) so that the marriage contract can transform into an agreement based on equality. (*Ziba Mir-Hosseini, 2015*).

Sixth, Ali (2010) highlights the vital role of the state in intervening in marriage registration procedures. She argues that without a robust

administrative system and judicial oversight of the contract's content, the protection of the wife's rights will remain difficult to enforce effectively. (Shaheen Sardar Ali, 2010).

RESEARCH NOVELTY

While previous studies have extensively discussed the patriarchal barriers in Pakistan (Munir, 2010) and the formal legal framework of the Compilation of Islamic Law in Indonesia (Silfiah & Humiati, 2023), this article offers a distinct contribution by integrating the concept of "Digital-Era Agency" and "Negotiated Stipulations" within the Nikah contract. The novelty of this research lies in three primary aspects:

1. Shift from Normative to Negotiated Rights

Unlike Nasution (2022) who focuses on historical evolution, this study analyzes how modern Muslim couples in Indonesia are increasingly utilizing *Sighat Ta'liq* (supplementary conditions) as a proactive tool to redefine domestic roles, moving beyond the standard templates provided by the state.

2. Implementation Gap in the Digital Context

This article examines how social media and digital legal literacy have empowered women to understand their contractual rights before the wedding, a dimension not captured in the 2007–2015 studies (Welchman; Mir-Hosseini).

3. Synthesizing International Standards with Local Customary Resilience

This study provides a fresh legal framework that bridges the gap between CEDAW's global mandates (Abiad, 2008) and the local practicalities of Indonesian religious courts, offering a "Middle Path" model for marriage contract reform that is both culturally sensitive and legally protective. (Muhammad Munir, 2010). (Silfiah & Humiati, 2023).

METHOD

This research is categorized as a qualitative study utilizing a normative-juridical approach, specifically through library-based research (library research). The study focuses on analyzing legal norms, principles, and doctrines within contemporary Islamic jurisprudence and their integration into the Indonesian legal system. The methodology employed is descriptive-analytical, aimed at providing a comprehensive overview of how marriage contracts can be optimized as a protective legal instrument for women. Furthermore, the researcher utilizes a philosophical approach by incorporating the concept of *maqāṣid al-sharī'ah* to examine the higher objectives of Islamic law regarding gender justice and family welfare. This approach allows the study to move beyond literal textual interpretation, offering a more progressive understanding of marital agreements. By combining these methods, the research systematically explores the synergy

between classical Islamic legal traditions and the demands of modern legal certainty within the Indonesian context, ensuring that the findings are both theoretically sound and practically relevant for legal reform.

The data for this study are derived from primary and secondary sources, which are analyzed using a qualitative content analysis technique. The primary data sources include fundamental legal texts such as the Qur'an and Hadith, Law No. 1 of 1974 concerning Marriage, and the Compilation of Islamic Law (KHI). Secondary data consist of scholarly books, international journal articles, and previous research findings related to women's rights and contemporary family law.

To ensure data credibility and validation, the researcher employs source triangulation and thorough literature cross-checking to maintain the objectivity and reliability of the legal interpretations. The data analysis process involves several stages: data collection from diverse literatures, data reduction to focus on relevant legal clauses, and data synthesis to draw meaningful conclusions regarding the strengthening of marriage contracts. Finally, the manuscript is drafted by systematically organizing these synthesized insights into a coherent journal article structure, ensuring that every argument is supported by authoritative legal references and aligned with the overarching theme of achieving substantive gender justice in contemporary Islamic law. To maintain the quality of the research, the researcher employs rigorous data validation methods and qualitative data analysis techniques throughout the study. Data validation is conducted through a technical triangulation process, which involves cross-referencing information from various types of literature to ensure the consistency and accuracy of the legal interpretations presented. The credibility of the data is further tested through persistent observation of legal trends and peer discussions to minimize subjective bias. The analysis follows a qualitative content analysis model, which begins with the systematic collection of data from digital and physical libraries. This is followed by data reduction, where the researcher filters out irrelevant information and focuses strictly on progressive clauses within marriage contracts that directly impact women's protection. The final stage involves data display and conclusion drawing, where the synthesized information is transformed into a logical argument regarding the necessity of strengthening the legal position of marriage contracts within the Indonesian religious court system to provide better legal certainty for wives.

RESULTS & DISCUSSION

The Dynamics of Marriage Contracts in Contemporary Islamic Jurisprudence

The interpretation of contemporary Islamic jurisprudence regarding marriage contracts has shifted from a rigid sacramental view toward a more functional and protective legal framework. This research finds that modern

Islamic law accommodates the marriage contract as a bilateral agreement ('aqd) that carries profound legal and moral implications for protecting women's autonomy. Unlike traditional perspectives that often focus on patriarchal authority, contemporary scholars interpret the contract as the primary legal basis for defining reciprocal rights and obligations between spouses. (*Ali Trigiyatno dkk, 2025*)

This accommodation is fundamentally rooted in the establishment of a partnership based on mutual consent and justice, where the contract serves as a vital instrument to safeguard the wife's dignity. Within this modern legal framework, the marriage contract is increasingly viewed as a flexible mechanism that can adapt to contemporary needs through the principle of *al-shurūṭ fī al-nikāḥ*. This principle provides a legitimate space for prospective spouses to negotiate and document legally binding expectations, ensuring that the union remains aligned with the core pillars of Islamic justice. (*Al Hairy, 2025*).

Consequently, the marriage contract has evolved from a symbolic requirement into a strategic legal tool that guarantees a dignified and equitable life, providing a solid foundation for the specific reinterpretations discussed in the following section. The concept of stipulations within a marriage contract is deeply rooted in the Prophetic tradition, which asserts that the conditions most deserving of fulfillment are those by which marital intimacy is made lawful. (*Achmad Fauzi, 2025*)

In the contemporary era, this tradition is reinterpreted by legal experts to address modern challenges such as women's education, professional careers, and economic independence. (*Rahmawati, 2025*)

By including specific clauses regarding these matters, the marriage contract acts as a preventive mechanism against potential domestic conflicts and ensures that the wife's fundamental rights are not compromised by patriarchal interpretations of family roles. The flexibility of contemporary Islamic law allows for these stipulations to be dynamic, reflecting the changing socio-economic status of women in the Muslim world. (*Fitriani, 2025*).

Furthermore, the recognition of these clauses in modern jurisprudence highlights a transition toward a more contractual and egalitarian model of marriage. This development is crucial for providing a clear legal framework that protects individual autonomy while maintaining the sanctity of the marital bond, thereby aligning religious traditions with modern legal standards of human dignity and fairness.

(*Yolanda Yosephine & Dwi Aryanti Ramadhani, 2024*).

Furthermore, the integration of *maqāṣid al-sharī'ah* (the higher objectives of Sharia) provides a robust philosophical foundation for the inclusion of progressive clauses in marriage contracts. The primary goal of Sharia in family law is to ensure *maṣlaḥah* (public interest and welfare) and to prevent *maḥṣadah* (harm). From this perspective, any clause in a marriage contract that aims to protect a woman from physical, emotional, or economic abuse is seen as a

realization of the protection of the soul (*hifz al-nafs*) and the protection of dignity (*hifz al-'ird*). (Fitriani & Ahmad Syarif, 2025)

Contemporary jurists argue that the validity of a marriage contract should be measured by its ability to foster justice and prevent oppression within the family unit. Therefore, the marriage contract is reconstructed as a protective shield that ensures the wife's well-being is prioritized throughout the marital journey. This objective-oriented approach shifts the focus from rigid legal formalism to a more substantive application of justice, where the contract becomes a living document that safeguards the fundamental interests of both spouses in accordance with the spirit of divine mercy and equity. (Achmad Fauzi, 2025).

The shift toward a more reciprocal and egalitarian understanding of marriage contracts is also reflected in the concept of *mubādalāh* (reciprocity), which has gained significant traction in modern Islamic gender studies. This perspective argues that the marriage contract should be a site of negotiation where both parties have equal standing to express their concerns and secure their rights. (Faqihuddin Abdul Kodir, 2019).

In many traditional settings, the contract was often viewed as a one-sided document that primarily listed the husband's authority; however, contemporary jurisprudence seeks to correct this imbalance. (Ihab Habudin, 2015).

By utilizing the marriage contract as a space for mutual agreement, women are empowered to negotiate clauses that guarantee their right to participate in public life and decision-making processes within the family. This reciprocal model ensures that the marital relationship is built on a foundation of partnership rather than hierarchy.

As a result, the marriage contract becomes an essential instrument for dismantling structural inequalities that have historically marginalized women, paving the way for a more inclusive and just interpretation of Islamic family law. Lastly, the effectiveness of marriage contracts in contemporary jurisprudence is heavily dependent on the legal certainty and enforcement mechanisms provided by the state.

While the theoretical foundations for progressive contracts are well-established in modern Islamic thought, their practical implementation requires a supportive legal environment that recognizes these private agreements as binding. Contemporary jurists emphasize that without strong institutional backing, the clauses intended to protect women remain merely symbolic.

Therefore, there is a growing consensus on the need to integrate these religious legal principles into national family legislations, ensuring that religious courts have the authority to enforce marital stipulations. This synergy between religious jurisprudence and state law is vital for providing women with tangible legal remedies in cases of breach of contract.

By strengthening the judicial recognition of marriage contracts, the legal system can guarantee that the progressive values of contemporary Islam are

translated into real-world protections, ultimately fostering a society where gender justice is a lived reality within every Muslim household.

Legal Formalization of Marriage Agreements within the Indonesian Positive Law Framework

The implementation of marriage agreements in Indonesia presents a complex landscape of specific challenges and strategic opportunities for achieving substantive gender justice. While the Marriage Act No. 1 of 1974 and the Compilation of Islamic Law (KHI) provide a clear normative basis for these contracts, the primary challenge lies in the deep-seated cultural resistance and structural barriers that hinder their widespread adoption. Many prospective spouses encounter significant psychological hurdles due to the prevailing social stigma that views pre-nuptial agreements as a sign of distrust or a preparation for divorce rather than a protective measure. (*H. M. Arsyad Almakki, 2025*).

Moreover, a lack of legal literacy among women and limited proactive support from marriage registrar officers often result in these legal instruments being underutilized or reduced to mere administrative formalities. However, these challenges also reveal strategic opportunities to integrate progressive gender justice values through a more responsive judicial interpretation. By identifying these obstacles, the legal system can begin to shift toward a model where the marriage contract serves as a transformative tool for female empowerment. (*Ahmadi & Fida Ruhayah, 2025*).

This dual reality of structural constraints and potential reform underscores the necessity of strengthening the judicial recognition of marital stipulations within the Indonesian religious court system. In addition to the Marriage Act, the Compilation of Islamic Law (KHI), which was established through Presidential Instruction No. 1 of 1991, provides more detailed procedural guidelines for marriage agreements among Indonesian Muslims. (*Nurun Najwah, 2025*)

Articles 45 through 52 of the KHI further clarify that a marriage agreement can cover various aspects, including property separation and other stipulations that do not contradict Islamic law. A distinctive feature of the KHI is its flexibility, which allows for the agreement to be made not only at the time of marriage but also during the course of the marriage, as long as it does not disadvantage third parties. This dynamic nature of the KHI reflects an evolution in Indonesian legal thought that recognizes the changing circumstances of modern family life. (*Suwarlan, Sudarmanto, & Dewi, 2025*).

For women, this means that legal protection is not a one-time opportunity at the beginning of the union but a continuous possibility that can be adjusted to meet new challenges. By providing these detailed regulations, the KHI serves as a technical bridge that translates broad religious principles into enforceable legal clauses, ensuring that the rights of wives are systematically integrated into the national judicial process.

However, the implementation of marriage agreements in Indonesia often encounters cultural and structural barriers that hinder their effectiveness as a tool for women's empowerment. Despite the clear legal provisions in the Marriage Act and the KHI, many Indonesian Muslims still view pre-nuptial agreements with suspicion, often associating them exclusively with wealth separation or anticipating the failure of the marriage. (Mufid Arsyad, Habib Ismail, & Linda Firdawaty, 2025).

This social stigma creates a psychological barrier for women who wish to propose progressive clauses, such as those regarding education or career autonomy. Furthermore, the role of Marriage Registrar Officers is critical, yet many lack the specialized training to encourage or facilitate the drafting of comprehensive marriage agreements beyond standard templates.

This gap between the "law in books" and the "law in action" suggests that legal formalization alone is insufficient without a corresponding shift in social perception and bureaucratic support. Addressing these hurdles requires a multi-faceted approach that involves legal literacy and a re-socialization of the marriage contract as a positive instrument for family stability rather than a precursor to divorce. (Salsabila, 2025.)

The judicial enforcement of marriage agreement clauses in Indonesian Religious Courts represents the ultimate test of their validity and protective power. Judges play a pivotal role in interpreting these agreements when disputes arise, and their decisions set important legal precedents for the protection of women's rights. Contemporary judicial trends in Indonesia have shown an increasing openness toward enforcing non-traditional clauses, particularly those aimed at preventing domestic violence or ensuring post-divorce financial security. (Lilik Andar Yuni and Akhmad Haries, 2025).

Nevertheless, there remains a need for more consistent judicial activism where judges actively prioritize the protective intent of the agreement over rigid procedural formalities. When a marriage agreement is properly registered and its clauses are clearly defined, it provides a strong evidentiary basis that simplifies the litigation process and ensures that the wife's negotiated rights are upheld. Strengthening this judicial recognition is vital for transforming the marriage agreement from a static document into a living legal shield that offers real protection in the face of marital conflict or dissolution, thereby fulfilling the state's mandate to protect all its citizens.

Ultimately, the synergy between Indonesian positive law and the progressive values of contemporary Islamic jurisprudence creates a unique opportunity for legal reform. By utilizing the existing mechanisms within the marriage Act and the KHI, the Indonesian legal framework can accommodate the "negotiated justice" that modern Muslim women seek. This synergy is particularly evident when marriage agreements are aligned with the principles of human rights and gender equality, which are also enshrined in the Indonesian Constitution. The formalization process ensures that every stipulation has

"executive power," meaning it can be enforced by the state if one party breaches the agreement. (Lanjar Sariyanto, 2021).

This integration of religious ethics and state authority provides a comprehensive protection system that is both culturally relevant and legally robust. Moving forward, the challenge lies in optimizing these legal instruments to be more accessible and widely utilized by the public. By doing so, Indonesia can become a model for other Muslim-majority nations in demonstrating how positive law can be harmonized with Islamic jurisprudence to create a safer and more equitable marital environment for women in the 21st century.

Reconstruction of Marriage Contracts Based on Maqāṣid al-Sharī'ah and Substantive Gender Justice

Strengthening the role of Indonesian positive law to guarantee the enforcement of progressive marriage contract clauses requires a strategic integration of Maqāṣid al-Sharī'ah into the technical application of the Marriage Act and the Compilation of Islamic Law (KHI). This research argues that the effectiveness of Law No. 1 of 1974 can be enhanced by transforming Article 29 from a permissive provision into a more proactive framework that encourages the inclusion of protective stipulations for women. Furthermore, the KHI must be strengthened through specific judicial guidelines that grant "executive power" to non-traditional clauses, such as those related to education and career autonomy, ensuring they are not merely moral promises but legally binding obligations. By adopting a Maqāṣid-based approach, judges in the Religious Courts can prioritize the protection of the soul (hifz al-nafs) and dignity (hifz al-'ird) as legal grounds to enforce these agreements during marital disputes. This legislative and judicial strengthening is essential to provide women with substantive legal certainty, preventing the marginalization of their rights within the domestic sphere. Consequently, refining these national legal instruments ensures that the spirit of gender justice is not only recognized in theory but fully realized through consistent state-enforced protection.

Implementing gender justice through Maqāṣid-based marriage contracts necessitates the courage to formulate clauses that are more specific and adaptive to the needs of modern women. This includes negotiating rights for self-development, access to continuous education, and more certain economic protections in the event of marriage failure. Philosophically, this protection aligns with efforts to safeguard the intellect (hifz al-'aql) and property (hifz al-māl), whereby women are granted legal space to remain intellectually empowered and financially independent. (Euis Nurlaelawati, 2019)

Progressive agreements should not be viewed as a form of distrust between partners, but rather as a form of transparency and mutual commitment to building an equal and respectful relationship. In practice, these clauses serve to minimize potential conflict by establishing clear boundaries and responsibilities from the onset of the marriage. Thus, strengthening the substance of marriage

contracts is a concrete effort to realize the principle of reciprocity (*mubādalah*), which is the core of family teachings in Islam, ensuring that justice is no longer a theoretical jargon but a reality felt directly by both parties. (*Faqihuddin Abdul Kodir, 2023*)

The synergy between Indonesian positive law and the values of *Maqāṣid al-Sharī'ah* also requires the active role of legal stakeholders, particularly judges in Religious Courts and officers at the Office of Religious Affairs (KUA). Legal apparatuses are expected to possess gender sensitivity in interpreting marriage contract texts to avoid narrow, textual interpretations that often disadvantage women. When a marriage contract is drafted with a spirit of protection, the judicial institution must be able to provide strong legal protection if those clauses are violated. (*Raihan Azzahra dan Farid Sufian Shuaib, 2022*).

Judges hold the authority to make the marriage contract a decisive legal consideration in ruling on divorce cases or disputes over wives' rights. Strengthening the intellectual capacity and moral integrity of law enforcers is the key to ensuring that the values of justice in Sharia are effectively institutionalized within the national judicial system. Without support from a responsive legal ecosystem, progressive clauses in marriage contracts will remain passive documents without executive power. (*Muhammad Thahira, 2021*).

Therefore, continuous education for legal practitioners regarding the philosophical dimensions of marriage contracts is urgent to ensure the sustainable guarantee of women's rights. Beyond institutional support, a paradigm shift at the socio-cultural level is a determining factor for the successful optimization of marriage contracts as a tool for women's protection in Indonesia. The public needs to be given a broader understanding that the marriage contract is a means of *da'wah* to realize a *sakinah, mawaddah, warahmah* family through the path of justice. (*Ahmad Tholabi Kharlie, 2020*).

Public education must be directed toward erasing the negative stigma historically attached to pre-nuptial Kementerian Agama Republik Indonesia, Al-Qur'an dan Terjemahannya. agreements, which are often mistakenly viewed as preparation for divorce. Conversely, these agreements should be promoted as a form of affection and responsibility on the husband's part to guarantee his wife's rights in the future, fully aligned with the Qur'anic command to document agreements in *muamalah* affairs. (*Qadriani Arifuddin, 2025*)

The role of community organizations and religious leaders is vital in voicing the importance of family law literacy to prospective brides, grooms, and their extended families. With positive cultural support, women will feel more confident in proposing clauses that protect their rights without feeling intimidated by patriarchal norms. (*Qadriani Arifuddin, 2025*).

This social transformation will strengthen the effectiveness of positive law and ensure that gender justice values are deeply embedded in the collective consciousness of the Indonesian Muslim community. (*Qadriani Arifuddin, 2025*).

In concluding this analysis, the reconstruction of marriage contracts is a strategic step that can no longer be delayed in the effort to reform Islamic family

law in the contemporary era. A harmonious relationship between progressive jurisprudence theory, inclusive national legal policies, and equitable implementation in courts will form a resilient protection ecosystem for women.

Through marriage contracts that are legally strong and philosophically rich, Muslim women in Indonesia possess a legal tool to navigate domestic life with more dignity and protection. This represents a tangible contribution of Islamic law to the advancement of human civilization that values equality and justice for all parties without exception. (*Nasaruddin Umar, 2024*)

This study confirms that novelty in formulating adaptive clauses is not merely a legal innovation but a moral obligation to restore the primary mission of Islam as a mercy to all worlds. By optimizing the full potential of available laws, both in Islamic tradition and positive law, the protection of women's rights will reach a more substantive and permanent level. The future of Indonesian family law lies in the courage to continue making reforms based on the welfare of the people and true justice for women.

The Dynamics of Marriage Contracts in Contemporary Islamic Jurisprudence

The interpretation of contemporary Islamic jurisprudence regarding marriage contracts has shifted from a rigid sacramental view toward a more functional and protective legal framework. This research finds that modern Islamic law accommodates the marriage contract as a bilateral agreement ('*aqd*) that carries profound legal and moral implications for protecting women's autonomy. Unlike traditional perspectives that often focus on patriarchal authority, contemporary scholars interpret the contract as the primary legal basis for defining reciprocal rights and obligations between spouses. (*Nasaruddin Umar, 2024*).

This accommodation is fundamentally rooted in the establishment of a partnership based on mutual consent and justice, where the contract serves as a vital instrument to safeguard the wife's dignity. Within this modern legal framework, the marriage contract is increasingly viewed as a flexible mechanism that can adapt to contemporary needs through the principle of *al-shurūṭ fī al-nikāḥ*. (*H. M. Arsyad Almakki, 2025*). This principle provides a legitimate space for prospective spouses to negotiate and document legally binding expectations, ensuring that the union remains aligned with the core pillars of Islamic justice. (*H. M. Arsyad Almakki, 2025*)

Consequently, the marriage contract has evolved from a symbolic requirement into a strategic legal tool that guarantees a dignified and equitable life, providing a solid foundation for the specific reinterpretations of gender roles. The concept of stipulations within a marriage contract is deeply rooted in the Prophetic tradition, which asserts that the conditions most deserving of

fulfillment are those by which marital intimacy is made lawful. (H. M. Arsyad Almakki, 2025).

In the contemporary era, this tradition is reinterpreted by legal experts to address modern challenges such as women's education, professional careers, and economic independence. By including specific clauses regarding these matters, the marriage contract acts as a preventive mechanism against potential domestic conflicts and ensures that the wife's fundamental rights are not compromised by patriarchal interpretations of family roles.

The flexibility of contemporary Islamic law allows for these stipulations to be dynamic, reflecting the changing socio-economic status of women in the Muslim world. Furthermore, the recognition of these clauses in modern jurisprudence highlights a transition toward a more contractual and egalitarian model of marriage.

This development is crucial for providing a clear legal framework that protects individual autonomy while maintaining the sanctity of the marital bond, thereby aligning religious traditions with modern legal standards of human dignity and fairness.

Legal Formalization and Implementation Challenges in the Indonesian Context

The implementation of marriage agreements in Indonesia presents a complex landscape of specific challenges and strategic opportunities for achieving substantive gender justice. While the Marriage Act No. 1 of 1974 and the Compilation of Islamic Law (KHI) provide a clear normative basis for these contracts, the primary challenge lies in the deep-seated cultural resistance and structural barriers that hinder their widespread adoption. (H. M. Arsyad Almakki, 2025).

Many prospective spouses encounter significant psychological hurdles due to the prevailing social stigma that views pre-nuptial agreements as a sign of distrust or a preparation for divorce rather than a protective measure. Moreover, a lack of legal literacy among women and limited proactive support from marriage registrar officers often result in these legal instruments being underutilized or reduced to mere administrative formalities. (H. M. Arsyad Almakki, 2025).

However, these challenges also reveal strategic opportunities to integrate progressive gender justice values through a more responsive judicial interpretation. By identifying these obstacles, the legal system can begin to shift toward a model where the marriage contract serves as a transformative tool for female empowerment. This dual reality of structural constraints and potential reform underscores the necessity of strengthening the judicial recognition of marital stipulations within the Indonesian religious court system. (Qadriani Arifuddin, 2025).

No	Implementation Barrier	Impact on Women's Rights	Mitigation Strategy
----	------------------------	--------------------------	---------------------

1	Social Stigma	Psychological reluctance to negotiate	Legal literacy and community education
2	Bureaucratic Inertia	Passive registration by PPN/KUA officers	Training on gender-responsive law
3	Structural Inequality	Unbalanced bargaining power during nikah	Standardized progressive templates
4	Judicial Formalism	Clauses treated as moral promises only	Maqasid-based judicial activism

In addition to the Marriage Act, the Compilation of Islamic Law (KHI) provides more detailed procedural guidelines for marriage agreements among Indonesian Muslims. Articles 45 through 52 of the KHI further clarify that a marriage agreement can cover various aspects, including property separation and other stipulations that do not contradict Islamic law. (Siti Mutmainah, 2024).

A distinctive feature of the KHI is its flexibility, which allows for the agreement to be made not only at the time of marriage but also during the course of the marriage, as long as it does not disadvantage third parties. This dynamic nature of the KHI reflects an evolution in Indonesian legal thought that recognizes the changing circumstances of modern family life. (Siti Mutmainah, 2024).

For women, this means that legal protection is not a one-time opportunity at the beginning of the union but a continuous possibility that can be adjusted to meet new challenges. By providing these detailed regulations, the KHI serves as a technical bridge that translates broad religious principles into enforceable legal clauses, ensuring that the rights of wives are systematically integrated into the national judicial process through a clear administrative and legal framework.

Strengthening Legal Enforcement through Maqāṣid al-Sharī'ah and Legislative Reform

Clause Type	Specific Example	Maqasid Focus	Legal Foundation
Educational Rights	Continued Higher Education (S2/S3)	Hifz al-Aql	Art. 29 Law 1/1974
Career Autonomy	Right to Professional Employment	Hifz al-Mal	Art. 45-52 KHI
Dignity Guard	Anti-Polygamy/Consent Clause	Hifz al-Ird	Maqasid Shariah
Physical Security	Domestic Violence Protection	Hifz al-Nafs	Shariah Principle

4. Equality in Rights and Obligations

As a foundation for contemporary review, this verse affirms that women have rights balanced with their obligations within the legal framework of marriage.

وَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ ۗ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ ۗ وَاللَّهُ عَزِيزٌ حَكِيمٌ

And due to the wives is similar to what is expected of them, according to what is reasonable. But the men have a degree over them [in responsibility and authority]. And Allah is Exalted in Might and Wise (The Saheeh International Translation, 2010, QS. Al-Baqarah: 228). (*Saheeh International, 2010*).

CONCLUSION

This research underscores that marriage contracts within contemporary Islamic jurisprudence have transcended mere administrative formalities to become vital legal instruments that safeguard women's rights comprehensively. Through a nuanced analysis of Qur'anic verses, specifically Surah An-Nisa' 4 and 19, it is evident that gender justice and the financial autonomy of the wife serve as the bedrock of the marriage covenant. Current shifts in Islamic legal thought demonstrate a progressive movement toward strengthening women's bargaining power by integrating specialized clauses, such as advanced *tal'iq sighat* or sophisticated pre-nuptial agreements. The practical application of these rights within modern legal frameworks proves that Sharia possesses the inherent flexibility to adapt to contemporary exigencies while remaining anchored to its core principles. Consequently, a profound grasp of both procedural and substantive rights within marriage contracts is pivotal for manifesting domestic justice in the modern era and mitigating legal discrimination often spawned by narrow, literalist interpretations.

Moving forward, future scholarship should delve deeper into the efficacy of legal enforcement regarding contract violations in religious courts, particularly concerning post-divorce financial disputes. While this study is limited by its normative-theoretical focus and specific geographical scope, it necessitates subsequent empirical cross-national studies among Muslim-majority societies to compare the global implementation of these contractual rights. This methodological boundary does not diminish the validity of the findings but rather invites critical interpretation of how positive law interacts with Islamic jurisprudence across various jurisdictions. Legal practitioners and betrothed couples are encouraged to scrutinize the minutiae of marriage contracts as a preventive measure against future rights infringements. Ultimately,

REFERENCES

Silfiah, & Humiati. (2023). Protection of Women's Rights in Marriage According to the Compilation of Islamic Law and Its Implementation in Indonesia. *Journal of Law and Public Health*, 3(3), 346-353.

Hamzah, H., & Nurhayati, N. (2025). Marriage law in Islam: A historical and current review. *At-Tasyrih: Jurnal Hukum Islam*, 1(1).

Nasution, B. H., & Pratama, M. R. (2025). Integrating Islamic family law and gender equality: A comparative study of family law reforms in Indonesia and Morocco. *As-Syakhshiyah: Journal of Law and Family Studies*, 7(1), 45–60.

Anam, Saiful, dkk. "Protection of Women's Rights in Marriage: An Islamic Law Perspective on a Case Study in Palangka Raya." *Sign Jurnal Hukum* 7, no. 1 (2025): 45-58.

Munir, Muhammad. "The Rights of Women and the Role of Superior Judiciary in Pakistan with Special Emphasis on Family Law Cases from 2004-2008." *Islamabad Law Review* 2, no. 3-4 (2020): 369-431.

Nasution, K. (2002). Status of women in Southeast Asia: A study of contemporary Muslim marriage legislation in Indonesia and Malaysia. INIS.

Mulia, S. M. (2002). Islam and Women's Reproductive Rights: Toward Gender Justice in the Family. *Sisters in Islam (SIS)*.

Trigiyatno, A, et al. (2025). The Development of Ideas for Reform and Transformation of Islamic Family Law in Various Muslim Countries. *Sajilfas: Sharia and Islamic Family Law Studies*, 2(2), 174.

Al Hairy. (2025). Prenuptial Agreement as A Protection of Wife's Rights: Maqāṣid al-Syarī'ah's Analysis. *Journal of Islamic Law*, 1(2), 185.

Fauzi, A. (2025). Revisiting the Prophetic Traditions on Marriage Stipulations (al-Shurūṭ fī al-Nikāḥ): Empowering Women in Modern Jurisprudence. *International Journal of Sharia and Law*, 2(1), 15–18.

Rahmawati. (2025). Customizing the Marriage Contract: Legal Guarantees for Women's Education and Career Development in Indonesia. *Journal of Gender and Islamic Law*, 4(1), 88–92.

Fitriani. (2025). The Preventive Role of Pre-Marriage Agreements in Mitigating Domestic Conflicts: A Gender Justice Analysis. *Indonesian Journal of Islamic Law*, 7(1), 45–50.

Yosephine, Y., & Ramadhani, D. A. (2024). The Principle of Balances in Prenuptial Agreements to Protect the Rights of Future Spouses. *International Journal of Science and Society (IJSOC)*, 12(12), 101–105.

Fitriani, & Syarif, A. (2025). Reconsidering Legal Protections for Child Marriage Victims: A Maqāṣid al-Sharī'ah Perspective. *Al-Mujtahid: Journal of Islamic Family Law*, 5(1), 45–50.

Abdul Kodir, F. (2019). The Concept of Mubadalah in Islamic Family Law: A Method of Interpretation for Gender Equality. *Musāwah: Jurnal Studi Gender dan Islam*, 18(1), 15–28.

Habudin, I. (2015). Considering the Thematic-Holistic Method in the Reform of Muslim Family Law (A Study of Khoiruddin Nasution's Thought). *Al-Ahwal: Journal of Islamic Family Law*, 8(1), 49–62.

Almakki, H. M. A. (2025). Social Stigma and Normative Barriers to the Implementation of Prenuptial Agreements in Indonesia. *Journal of Psychology, Social, and Education*, 3(2), 102–115.

Ahmadi, & Ruhayah, F. (2025). Effectiveness of Gender Policy in Indonesia: A Review of the Patriarchal Norms and Community Participation. *Journal of Social and Political Issues*, 3(1), 434–445.

Najwah, N. (2025). The Strengthening of Islamic Law Compilation as Material Law in Indonesian Religious Court. *International Journal of Law and Society*, 8(3), 110–125.

Suwarlan, S., Sudarmanto, S., & Dewi, D. (2025). Marriage Agreement As Legal Protection For Both Parties in Marriage. *Journal of Community Service*, 2(2), 1–12.

Arsyad, M., Ismail, H., & Firdawaty, L. (2025). Gender-Based Role Transformation in Contemporary Muslim Families: A Comparative Study of Indonesia, Egypt, and Iran. *SETARA: Journal of Gender and Children's Studies*, 7(2), 167–183.

Salsabila. (2025). The Urgency of Prenuptial Agreements as a Tool for Reconciling Women's Career Autonomy with Post-Marital Domestic Life. *Proceedings of the International Conference on Islamic Law and Social Studies (INCOILS)*, 1–10.

Yuni, L. A., & Haries, A. (2025). Protection of Women's Rights After Divorce in Religious Courts. *Mazahib: Jurnal Pemikiran Hukum Islam*, 24(1), 615–630.

Sariyanto, Lanjar. "Judges' Breakthroughs in Adjudicating Hard Cases Through Judicial Activism." *Jurnal Hukum dan Peradilan* 10, no. 2 (2021): 185-204.

Nurlaelawati, Euis. "Modernizing Islamic Law: Marriage Agreements and the Fulfillment of Women's Rights in Indonesia." *Journal of Indonesian Islam* 13, no. 1 (2019): 105-128.

Azzahra, R., & Farid Sufian Shuaib. "Religious Courts in Indonesia and Malaysia: Histor, Structure, and Jurisdiction." *Indonesian Comparative Law Review* 4, no. 2 (2022): 110-128.

Arifuddin, Q. (2025). Registration of Marriage as Fulfillment of Marriage Requirements According to Islamic Principles: Transparency and Documentation in Surah Al-Baqarah 2:282. *Nurani Jurnal Hukum*, 24(1), 315–330.

Umar, N. (2024). Reconstructing Islamic Family Law in Contemporary Indonesia: A Progressive Jurisprudence Perspective on Gender Justice. *Journal of Islamic Law Reform*, 10(2), 150–165.

Mutmainah, S. (2024). The Dynamics of Post-Nuptial Agreement Recognition in Indonesian Religious Courts: A Legal Analysis of KHI Articles 45-52. *Journal of Family Law and Jurisprudence*, 11(2), 85–102.

Saheeh International. (2010). *The Qur'an: English Meanings and Notes*. Al-Muntada Al-Islami Trust.