

## **Review of *Hadith* in Marriage Agreements and Its Perspective in Indonesian Positive Law**

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**Abstract.** *Marriage agreements are legal instruments that play a role in regulating the rights and obligations of couples, especially related to property rights, both from the perspective of Islamic law and positive law in Indonesia. This study departs from the urgency of low understanding and application of marriage agreements in society due to social stigma and lack of legal literacy. The formulation of the problem in this study includes how to reconstruct the legality of mixed marriage agreements and their implications for property rights from the perspective of Islamic law and positive law. This study uses an empirical legal method with a qualitative descriptive approach. Primary data were obtained through interviews with informants, while secondary data were obtained from literature studies of applicable legal regulations and studies of hadiths related to marriage agreements. The analysis was carried out using the deductive method and the maqashid sharia approach to understand the relevance of marriage agreements in the context of Islamic law. The results of the study indicate that marriage agreements have a strategic role in providing legal certainty, asset protection, and regulating the rights and obligations of couples, especially in cases of polygamy, divorce, and inheritance. However, the application of this agreement is still limited due to cultural factors and negative perceptions in society. In Islamic law, a marriage contract is permitted as long as it does not conflict with sharia principles, while in positive law it is recognized and has legal implications for the management of joint assets and the financial rights of couples. In conclusion, a marriage contract acts as a legal instrument that can improve the welfare of couples by providing protection for property rights. Therefore, further socialization and an active role from legal and religious authorities are needed to increase public understanding of the benefits of this agreement in building a harmonious and just family.*

**Keywords:** *Agreement; Indonesian; Islamic; Marriage.*

### **1. Introduction**

Marriage is an institution that legally binds two individuals both under state and religious law.(Jahwa, Siregar, Harahap, Mubarak, & Akbar, 2024). In Indonesia, marriage law is regulated in Law No. 1 of 1974, which regulates the procedures for a valid marriage and has religious value from an Islamic perspective. However, although marriage has high

spiritual and social value, in practice various problems often arise, especially those related to the division of joint property, child custody, and other disputes that arise after divorce. To overcome the potential for such conflicts, some couples choose to make a marriage agreement regulated in laws and regulations such as the Compilation of Islamic Law (KHI) and the Civil Code.

However, even though marriage agreements provide legal protection for couples, their understanding and implementation in Indonesia is still limited and is often viewed negatively by society.(Khaq, Za'far, Aisyah, Pratiwi, & Alfanny, 2024). Several previous studies have shown that marriage agreements are often considered as a step that indicates a lack of trust in marriage.(Afandi, 1997; Prawirohamidjojo Soetojo, 1986). This causes many couples to hesitate to make a marriage agreement even though it can be an important tool for financial and legal protection in the future. Therefore, it is important to conduct more in-depth research on the benefits and implementation of a marriage agreement in the context of Indonesian law and Islamic law, and how it can facilitate the achievement of the goals of a *sakinah, mawaddah, and rahmah* marriage.

Although several previous studies have examined the legal aspects of marriage, studies that focus on the comparison of marriage agreements between Islamic law and positive law in Indonesia are still limited. This study aims to fill the gap in the literature by providing a broader perspective on the role of marriage agreements in strengthening marital relationships and as a means of legal protection for couples. This study also identifies the obstacles that couples may face in drafting and implementing marriage agreements, and discusses their benefits in social and legal contexts.

The limitations of this study lie in the limited analysis of marriage agreements in Indonesia, especially from the perspective of Islamic law and positive law, without including perspectives from other countries' cultures or legal systems. This study also does not examine the application of marriage agreements among couples with different social and economic statuses, which may influence the decision to make such agreements. Therefore, this study still needs to be supplemented with further research that covers various social and cultural dimensions.

This study aims to analyze the form and substance of a marriage agreement based on the perspective of Islamic law and positive law in Indonesia. In addition, this study also seeks to uncover the various benefits contained in a marriage agreement, especially in supporting the realization of a harmonious, loving, and prosperous family (*sakinah, mawaddah, wa rahmah*). Thus, the results of this study are expected to contribute theoretically to the development of legal studies, especially in the realm of family law. In addition, this study also aims to provide practical insight for prospective married couples regarding the urgency of a marriage agreement as a form of legal protection in building a strong household based on justice.

## **2. Research Methods**

Scientific research is conducted based on systematic and structured methods, with a specific approach that aims to understand and analyze various legal phenomena. In this study, a descriptive empirical legal research method is used to describe and interpret the findings obtained. The data collected consists of two main categories, namely primary

data obtained through direct interviews with sources, and secondary data covering primary and secondary legal sources. Data collection techniques include literature studies, interviews, and field observations, which are then analyzed using a qualitative approach using deductive thinking patterns. In addition, this study also adopts a literature study of *hadith* by utilizing digital technology, especially Android-based applications such as the Encyclopedia of *Hadith*, to enrich the analysis from an Islamic law perspective.

### 3. Result and Discussion

#### 3.1. *Asbāb al-wurūd* Hadith, Comparison of *Hadith*, and *Istinbath Hadith* Legal Concerning the *Hadith* of Marriage Agreements

The review of *hadiths* carried out includes *Asbāb al-wurūd*, comparison of *hadiths* and *Istinbath* of *hadith* law regarding marriage agreement *hadiths*.

##### The Origin of the *Hadith*

In linguistic studies, the term *asbāb al-wurūd*s categorized as syibh al-jumlah, which is composed of the structure of *mudāf-mudāf ilaih (al-idāfah)*, where *asbāb* functions as *mudāf* and *al-wurūd*as *mudāf ilaih*. The word *asbāb* itself is the plural form of *sabab*, which in Arabic means *al-ḥablu* (rope) (as-Suyūṭī, 1984). This meaning then developed more broadly to include everything that acts as a connector or cause for something else, and generally refers to everything that functions as an intermediary in achieving a goal. Meanwhile, *al-wurūd*s the maṣdar form of the verb *warada-yaridu-wurūdan* and means "drinking place" (*al-manāhil*) or "water that comes or arrives" (Muin, 2013). Thus, etymologically, *asbāb al-wurūd*can be interpreted as factors that cause something to be present or happen. In the discipline of *hadith*, this term refers to various backgrounds or conditions that cause a *hadith* to appear (al-Munawwar & Mustaqim, 2001).

##### Comparison of *Hadith*

Comparison of *hadith* is a study conducted to examine the suitability between *hadiths* that have the same topic or meaning. This study is conducted by comparing the *sanad* (narrator sequence path) and *matan* (content of the *hadith*) to ensure authenticity and understand possible differences in wording. According to Mahmud al-Tahhan, research on the *sanad* of *hadith* includes five main aspects, namely searching for the biography of the narrator, assessing its justice and authenticity, examining the continuity of the *sanad* (*muttashil*), examining the possibility of *syadz* (oddities) and *illat* (hidden defects), and evaluating the entire *sanad* path that exists. (al-Tahhan, 2010).

Meanwhile, the study of the text of the *hadith* is carried out using the *muqaranah* (comparative) method, which aims to see the differences in wording and investigate whether these differences affect the meaning or not. If a *hadith* is found that appears to contradict other *hadith* or verses of the Qur'an, a scientific approach is needed to understand the context. In the study of *hadith* criticism, the historical method is also used to test the validity of the *hadith* based on the social and cultural context when the *hadith* was delivered. This method allows for more in-depth research into the historical background of the *hadith* (*asbāb al-wurūd*), so that the meaning that is more appropriate to the conditions at that time can be known. (Al-Dzikra, 2015).

## ***Istinbath Hadith Law***

*Istinbath* of *hadith* law is the process of exploring and establishing Islamic law from *hadith* with a systematic and structured method. This *Istinbath* is carried out by scholars through the *ushul fiqh* approach, by considering various aspects, such as *maqashid sharia*, fiqh rules, and the relevance of law to the social and cultural context. (Raisuni, 2005). According to Satria Effendi, *hadith* legal *Istinbath* focuses on interpreting sharia propositions sourced from the Qur'an and *hadith* to gain an understanding of law that can be applied in everyday life. This process involves the methods of *qiyas* (analogy), *istihsan* (legal preferences), and *maslahah mursalah* (benefit considerations) in determining Islamic law. (Effendi S., 2005).

Apart from that, in the study of *maqashid sharia*, *hadith* legal *Istinbath* also considers the objectives of legal enactment (*maqashid sharia*), which includes the protection of religion, soul, mind, lineage and property. Wahbah al-Zuhaili emphasized that the aim of legal *Istinbath* is to ensure that laws taken from *hadith* remain relevant to sharia values and can be applied in the lives of Muslims (Zuhaili, 1993).

**Table 1. The Comparison of *Hadith* Reviews**

<b>HADITH</b>	<b>THE ASBĀB AL-WURŪD</b>	<b>COMPARISON OF HADITH</b>	<b>OF ISTINBATH LAW OF HADITH</b>
<p><i>Hadith</i> history of al Bazar and at-Thabrani</p> <p>"Whatever is permissible Allah is lawful, and whatever Allah has forbidden is unlawful, and whatever he has kept silent about is forgiven. So accept from Allah His forgiveness. Indeed, Allah does not forget anything."</p>	<p><i>Hadith</i> Jabir, who was narrated by Bukhari in his sahih, explained that Jabir had sold his camel to Rasulullah SAW by including in the sale and purchase agreement the condition that he could use the camel he had sold to the Prophet to return to Medina.</p>	<p><i>Hadith</i> Jabir, who was narrated by Bukhari in his sahih, explained that Jabir had sold his camel to Rasulullah SAW by including in the sale and purchase agreement the condition that he could use the camel he had sold to the Prophet to return to Medina. Regarding this <i>hadith</i>, scholars have different opinions, some say that Jabir's use of it was <i>tabarru'</i> from the Prophet Muhammad.</p>	<p>In the <i>hadiths</i> there are examples of the Messenger of Allah applying the principle of freedom of contract. The <i>Hadith</i> of Jabir which was narrated by Bukhari in its authentic form explains that Jabir had sold his camel to Rasulullah SAW by including in the sale and purchase agreement the condition that he could use the camel he had sold to the Prophet to return to Medina. Regarding this <i>hadith</i>, scholars differ in their opinions, with some stating that Jabir's use of it was a <i>tabarru'</i> from the Messenger of Allah, while other scholars stated it was a condition included in the sale and purchase contract.</p>

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*Hadith* narration of Bukhari No.5151 which means it is narrated by Hasan bin Ali al-Khalal said, narrated by Abu Amir al-Aqdi said, narrated by Katsir bin Abdullah bin Amru bin Auf al-Muzanni from his grandfather, that the Messenger of Allah SAW said: Making peace with fellow Muslims is permissible except for peace that permits something that is forbidden or forbids something that is permissible. Muslims must fulfill the conditions that have been agreed upon except for the conditions that forbid something that is permissible or permit something that is forbidden (HR. Bukhari).

Bukhari's narration No. 5151 which means it is narrated by Hasan bin Ali al-Khalal said, narrated by Abu Amir al-Aqdi said, narrated by Katsir bin Abdullah bin Amru bin Auf al-Muzanni from his grandfather.

There is a fiqhiyah rule which means, "in principle, everything is permissible until there is a proof that prohibits it." This fiqh rule comes from the following two *hadiths*:

*Hadith* the history of al Bazar and at-Thabrani which means:

"What Allah has made lawful is lawful, and what Allah has forbidden is forbidden, and whatever has been kept quiet is forgiven. So accept from Allah His forgiveness. Indeed, Allah does not forget anything."

The meaning of this *hadith* is that the original law of the conditions that have been agreed upon by Muslims in various contracts that are carried out is permissible. If it contains benefits and there is no prohibition. Because everything is permissible as long as there is no evidence that prohibits it.

In the Fiqhiyah Rules it is also stated that "The origin of everything is permissible until there is an argument that forbids it" *al-ashlu fi al-asya' al-ibahah hatta yadullu al-dalil 'ala al-tahrim*. This rule is agreed upon by all scholars, except the Hanafi school of thought. This rule is based on the *Hadith* above

The contents of a marriage agreement vary, from the separation of assets to the division of child care, the right to work and continue education. From the *hadith* above, the requirements required by a Muslim are permissible, as long as the requirements are agreed upon by both parties and do not allow what is forbidden or forbid what is lawful.

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### 3.2. Form and Content of Marriage Agreement - According to The Perspective of Islamic Law & Positive Law

A marriage contract is an agreement made by a prospective husband and wife before or during the marriage contract. The main purpose of this agreement is to regulate the legal consequences of marriage on certain aspects, especially related to the ownership and management of property. However, the validity of this agreement must still be in accordance with applicable law, not conflict with religious teachings, and not violate

moral norms in society (Istiqamah, 2011).

In the context of Islamic law and positive law in Indonesia, the practice of marriage agreements is still relatively rare. Based on case studies that have been conducted, only a few couples officially make marriage agreements. The agreement is generally stated in the form of a deed made by a notary and then legalized by a marriage registrar (Mutmainah & Fuad, 2024). The contents of this agreement cover various aspects, including the division of assets before and after marriage, the rights and obligations of husband and wife, rules regarding the management of assets in the event of divorce, child custody, provisions regarding the establishment of joint businesses, policies regarding the practice of polygamy, protection from domestic violence (KDRT), and rules regarding the distribution of inheritance (Roring, 2014).

From an Islamic legal perspective, the contents of this agreement do not conflict with sharia principles as long as they do not contain elements that conflict with Islamic law, such as making something haram permissible or forbidding something halal. Therefore, the parties who have agreed to the agreement are obliged to comply with it in accordance with the principles of contracts in Islam which prioritize the principles of justice and mutual agreement (Syah & Tholatif, 2022).

Meanwhile, in Indonesian marriage law, a marriage agreement has been regulated in Law No. 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI). An agreement that is made legally and has met the legal requirements will have binding legal force for both parties. In addition, the existence of a notarial deed and ratification from a marriage registrar further strengthens the legality of the agreement. Thus, a marriage agreement can be a legal instrument that provides certainty and protection for married couples in living their married life.

### **Division of Assets**

In the Indonesian marriage law system, provisions regarding the ownership of husband and wife's property have been regulated in Law No. 1 of 1974, specifically in Article 36. This article states that each spouse has full rights to take legal action over the property they personally own. However, in the case of joint property, any legal decision relating to the asset must be approved by both parties.

Meanwhile, in the Compilation of Islamic Law (KHI), provisions related to marriage agreements are listed in Article 47. This article explains that couples are allowed to make agreements regarding assets in marriage, either in the form of separation or mixing of assets, as long as it does not conflict with the principles of Islamic law. In addition, the agreement can also include the regulation of the authority of each partner in terms of managing joint assets, including the right to determine mortgages on assets owned collectively or known as company assets.

The main principle in Islamic law regarding the ownership of marital property is emphasized in Article 85 of the KHI, which states that legally there is no automatic mixing of the property of the husband and wife after marriage. This means that each individual still has full rights to the property they acquired before marriage, as well as any form of wealth obtained personally after marriage, such as inheritance or gifts. Islam provides guidance that the resolution of property ownership issues in a household should be done

through deliberation and mutual agreement. This principle is known in the Qur'an as *Ash-Shulhu*, which is a form of agreement to reach a harmonious agreement between the two parties, as stated in Surah An-Nisa' verse 128. In addition, the *hadith* of the Prophet Muhammad SAW also emphasizes the importance of fulfilling the conditions that have been agreed upon in marriage, as he said: "The most deserving condition to be fulfilled is the condition by which you make lawful the private parts (of women)."

In the study of family law, Sayuti Thalib in his book *Family Law in Indonesia* explains that joint property is an asset obtained during the marriage, except for property obtained through inheritance or gifts. In other words, all forms of wealth obtained by either husband or wife through efforts during the marriage can be categorized as joint property. This is in line with the jurisprudence that has developed in the Religious Courts, where joint property is defined as an asset obtained during the marriage, whether from the work of the husband or wife (Risanto & Rizka, 2020). This view is also supported by Manan (2006), who states that joint property is the result of cooperation and contribution from both parties in the marriage bond. Thus, both in Islamic law and positive Indonesian law, the concept of ownership of property in marriage is clearly regulated to ensure justice and balance in the relationship between husband and wife. A marriage agreement can be a legal instrument that provides protection for both parties, as long as it is made on the basis of mutual agreement and does not conflict with applicable legal provisions.

### **Husband's Obligations**

In the Indonesian marriage law system, the husband's responsibility towards his wife and family is regulated in Law No. 1 of 1974, specifically in Article 34 paragraph 1. This provision emphasizes that the husband has an obligation to protect his family, provide a sense of security and welfare for his wife and children. Meanwhile, the wife has a primary role in organizing and managing the household as well as possible. If one party does not carry out their obligations properly, causing disharmony or negative impacts in the household, then both the husband and wife have the right to file a lawsuit in court to seek a fair legal solution.

In addition, the Compilation of Islamic Law (KHI) also regulates the obligations of a husband in Article 80 paragraph 2. This article emphasizes that a husband is obliged to provide protection to his wife and meet all the family's living needs according to his ability. This includes economic, emotional, and social aspects that are the foundation for building a harmonious household.

In the study of Islamic jurisprudence, Sayyid Sabiq's opinion in *Fiqh Sunnah* strengthens the principle that a husband is responsible for providing for his wife, whether in the form of clothing, food, or shelter. In addition, for those who practice polygamy, there is an additional obligation for the husband to be fair in fulfilling the rights of his wives without any discriminatory treatment (As-Sayyid, 2003).

From the perspective of Islamic law, the husband's responsibility in marriage is not only limited to the financial aspect, but also includes moral and spiritual aspects. The Prophet Muhammad SAW in various *hadiths* emphasized the importance of a husband to treat his wife well. One *hadith* narrated by Abu Hurairah states that the Prophet SAW said:

*"The best of you are those who are best to their wives, and I am the best of you to my wives." (HR. Tirmidhi)*

From the various regulations and views of the scholars, it can be concluded that in marriage law, the husband holds a great responsibility in ensuring the welfare of the family. This obligation is not only legal-formal as regulated in the legislation, but also has a religious dimension that must be fulfilled in order to realize a household that is *sakinah, mawaddah, and rahmah*.

### **Division of Assets in the Event of Divorce**

In the marriage law applicable in Indonesia, the provisions regarding the division of joint assets after divorce have been regulated in Article 37 of Law No. 1 of 1974 concerning Marriage. This article stipulates that if a marriage ends due to divorce, then the assets owned jointly will be divided based on the laws applicable to each party. If before marriage the couple has drawn up a marriage agreement, then the settlement regarding joint assets will refer to the agreement that has been set out in the agreement. Thus, the marriage agreement has a strategic role in ensuring that the division of assets is carried out in accordance with the agreement that has been approved by both parties.

In the Islamic perspective, the division of property after divorce can be resolved through an agreement between the former husband and wife by prioritizing the principle of justice. This concept is known as *Ash-Shulhu*, which is an effort to reach a peaceful agreement to avoid prolonged disputes. This principle is emphasized in the Qur'an, one of which is in QS. An-Nisa verse 128:

*"If a wife is worried about her husband's inattention or unfair treatment, then there is nothing wrong for both of them to seek a peaceful way. Peace is better, even though humans tend to be dominated by selfishness. But if you do good and are pious, surely Allah is All-Knower of all that you do."*

This verse emphasizes the importance of deliberation and peaceful means in resolving disputes, including in matters of division of property after divorce.

According to Hilman Hadikusuma, the regulations related to joint assets after divorce in Indonesian law basically provide freedom for couples to determine the legal system used in resolving property disputes. If both parties reach an agreement, the judge only acts as a legalizer. However, if no common ground is found, the court has the authority to divide joint assets by considering the principle of justice and the contribution of each party during the marriage (Hadikusuma, 1990).

In the practice of religious courts in Indonesia, the division of joint property is often not only based on applicable legal provisions, but also on the principles of propriety and balance. Judges usually consider factors such as the financial and non-financial contributions of each party during the marriage, including the wife's role in taking care of the household and supporting the family economy. This is in line with the opinion of Manan (2006), who emphasized that joint property in marriage is the result of cooperation between husband and wife, so that its division must reflect a sense of justice for both parties.



In conclusion, both in Islamic law and national marriage law, there is flexibility in resolving post-divorce property disputes. The agreement between the two parties is the main factor in determining the distribution mechanism, while still considering the principles of justice, welfare, and protection of the more vulnerable parties. Therefore, a marriage agreement can be an important legal instrument in ensuring legal certainty and avoiding prolonged conflict after a divorce occurs.

### **Child Care**

In the legal system in Indonesia, the responsibility of parents in educating and raising children is regulated in Law of the Republic of Indonesia Number 23 of 2012. Article 45 paragraph 1 of the Marriage Law (UUP) emphasizes that both parents have an obligation to care for and educate their children as best they can. Therefore, fulfilling children's rights to obtain proper education is not only in line with the principles of Islamic law and marriage law in Indonesia, but also a moral obligation that must be carried out by both parents. If one party is negligent in carrying out this responsibility, then he or she can be subject to sanctions both from a legal aspect and moral accountability before religion and society.

From an Islamic perspective, parents' obligation to provide education to their children is a mandate that cannot be ignored. Rasulullah SAW in a *hadith* narrated by Al-Hakim emphasized:

*"There is no more important gift from parents to their children than a good education."*(HR. Al-Hakim: 7679)

This *hadith* shows that education is a valuable legacy that parents can give to their children, even more valuable than other possessions or materials. The education in question includes intellectual, moral, spiritual, and life skills aspects that will be provisions for children in living their lives.

Amir Syariffudin in his book *Marriage Law in Indonesia* explains that the aspect of child care includes several important dimensions, including post-divorce child custody, financial responsibility in raising children, and the role of parents in ensuring that children get a conducive environment to grow and develop optimally (Syariffudin, 2006). In this context, not only biological aspects are considered in custody rights, but also psychological factors and the child's overall well-being.

In addition, in Islamic law practice, the responsibility for child care is placed on the parents, considering that a father is obliged to provide a living that covers the child's basic needs, such as clothing, food, and education. Meanwhile, the mother plays a role in providing affection, guidance, and educating the child with the correct moral and religious values. This principle is in line with the concept of *hadhanah* in Islam, namely the right to care that prioritizes the welfare and best interests of the child.

In Indonesian positive law, if one party neglects their obligations in the care and education of children, then the injured party can file a lawsuit in court to obtain justice and legal protection for the child. Thus, both in Islamic law and national law, the role of parents in educating and raising children is a responsibility that cannot be ignored and has consequences both in this world and in the hereafter.

## Starting a Business

In the Indonesian marriage legal system, the management of joint assets is clearly regulated in Law No. 1 of 1974 concerning Marriage. Article 36 paragraph (1) states that both husband and wife have the right to take legal action regarding joint assets, but the decision must be made based on the agreement of both parties. This provision shows that joint assets in a marriage are not the individual rights of one of the partners, but rather collective assets whose use requires joint agreement.

Meanwhile, in the Compilation of Islamic Law (KHI), the management of assets in marriage has also been specifically regulated. Article 47 of the KHI states that a marriage agreement may include the authority for each party to bind a mortgage on personal assets or joint assets or company assets. In other words, in Islamic law in Indonesia, a husband and wife have the right to make an agreement regarding the management and use of their assets as long as it does not conflict with sharia principles.

From an Islamic perspective, agreements relating to joint property must still follow the principles set out in the Shari'a. This is confirmed in a *hadith* narrated by At-Tirmidhi, where Rasulullah SAW said:

*"Peace may be made between Muslims, except peace that makes halal unlawful and peace that makes lawful that which is haram."*(HR. At-Tirmidhi)

This *hadith* emphasizes that every agreement made in the context of a marriage contract, including those related to joint property, must remain within the boundaries of Islamic law. This means that a husband and wife have the freedom to regulate their rights and obligations, as long as they do not change the provisions of halal and haram that have been determined by the sharia.

In the realm of business and enterprise law, agreements related to joint assets also have their own implications. Agus Budiarto in his book *Legal Position and Responsibilities of Founders of Limited Liability Companies* explains that agreements regarding joint assets will not cause legal problems as long as the business entity established by a husband and wife complies with applicable legal regulations. This is because a legal entity in a business has separate rights and obligations from its owner or shareholder (Budiarto, 2009). Thus, if a married couple wants to manage joint assets for business purposes, they need to ensure that the legal aspects are in accordance with applicable legal provisions. With the existence of regulations governing the management of joint assets in marriage, both in Islamic law and positive law in Indonesia, married couples have legal protection in drafting agreements related to finances and asset ownership. However, in order for the agreement to have valid legal force, it is important for both parties to confirm their agreement in a written document, such as a notarial deed, so that it can be used as a legal basis in dealing with possible disputes in the future.

## Polygamy in Marriage Law in Indonesia and Islam

In Indonesia, the provisions regarding polygamy are regulated in Law No. 1 of 1974 concerning Marriage and Government Regulation Number 9 of 1975 which serve as

guidelines for its implementation. In principle, marriage law in Indonesia adheres to the principle of monogamy, which means that each man is only allowed to have one wife. However, there are exceptions to the regulation that permit polygamy with certain conditions. A husband who wants to remarry must meet the applicable legal provisions, including obtaining approval from the first wife and obtaining permission from the religious court. This aims to ensure that the decision to have polygamy is not made arbitrarily and still considers justice for all parties involved.

On the other hand, in Indonesian criminal law, there are rules that regulate crimes in marriage. Article 279 of the Criminal Code (KUHP) states that marriages that are carried out without fulfilling applicable legal provisions can be categorized as a criminal act. Therefore, the practice of polygamy that is not legally valid has the potential to result in criminal consequences for the perpetrators.

In Islamic teachings, the relationship between husband and wife is based on the principle of mutual respect and treating the partner well in order to create a harmonious household. Islam does provide space for a man to marry more than once, as explained in the Qur'an. However, polygamy in Islam has strict rules, especially regarding the husband's obligation to be fair to his wives. This is emphasized in the word of Allah SWT in QS. An-Nisa verse 19:

*"And associate with them in a proper manner."*

This verse emphasizes the importance of being fair, full of love and responsibility in married life, including the practice of polygamy. If a husband is unable to be fair, then Islam recommends sticking to the principle of monogamy, as stated in the QS. An-Nisa verse 3.

In the modern context, polygamy is a topic that is often discussed from a religious, social, and legal perspective. Therefore, clear regulations in the legal system in Indonesia aim to maintain a balance between the provisions of Islamic law and the protection of women's rights in marriage.

### **Distribution of Inheritance in the Indonesian and Islamic Legal Systems**

In the Indonesian legal system, the rules regarding the distribution of inherited assets are regulated in the Civil Code (KUH Perdata) Article 852. When someone dies without leaving a will, their inherited assets will be passed on to the legal heirs. The main heirs who are entitled to receive an inheritance are the surviving spouse (husband or wife) and the testator's children. They receive equal shares in accordance with applicable law. If the heir does not have children or a spouse, then the inheritance rights pass to the heir's parents and siblings. In cases like this, the law requires each parent to receive a share of inheritance of at least a quarter of the total assets left behind.

On the other hand, Islamic law also regulates the distribution of inheritance with similar principles, but is more specific in the provisions of its distribution. If someone dies, then his inheritance will be distributed to the heirs according to the provisions of the Qur'an, especially those stated in Surah An-Nisa verses 11 and 12. In Islam, the portion of inheritance is determined based on blood relations and closeness of relationship with

the testator. If the testator has children, then his children become the main recipients of the inheritance. However, if the testator does not have children, then the inheritance rights are given to the closest family, either from the husband or wife, including the testator's parents and siblings.

According to Abu Zahrah in his book *Usul al-Fiqh*, a person's right to receive an inheritance is an absolute right inherent in him, similar to the right to collect receivables or other ownership rights (Dasan, 2020). He also emphasized that violating inheritance rules or taking other people's rights illegally is a form of great injustice. In his view, a person who takes an inheritance in a way that is not in accordance with the provisions of the Shari'a will not have his repentance accepted by Allah SWT, unless he returns the right to the owner or if the owner voluntarily forgives and drops the claim for his right (Effendi, 2005).

In practice, both inheritance laws in the Civil Code and in Islam aim to ensure that inherited property can be fairly inherited by those entitled to receive it. Although there are some differences in the distribution system, both emphasize the importance of respecting the rights of heirs and prohibiting actions that harm other parties in the inheritance distribution process.

### **3.3. Marriage Agreement: Cultural Perspective and Its Benefits in Home Life**

In Eastern societies, marriage agreements are often viewed with skepticism because they are considered contrary to family values and trust in husband and wife relationships (Dahlan, 2008). This concept is still considered unethical by some people, because it is considered an indication of a lack of confidence in one's partner or disregarding the principle of togetherness in the household. However, in modern legal practice, marriage agreements have a significant role in providing legal certainty and protection of assets owned by each partner.

One of the main benefits of having a prenuptial agreement is maintaining clarity regarding ownership of property. With this official document, husband and wife can firmly regulate the separation of assets owned before and during marriage (Sulaiman, 2021). This is especially useful for couples who have businesses, property, or personal investments before marriage, so that these assets are not mixed with joint assets and remain under the control of the original owner.

In addition, a marriage agreement is a solution for couples where one or both have been married before. In a situation like this, if there is no clear arrangement, the new partner can get a share of all the assets from the previous marriage, which has the potential to cause conflict with the children or heirs of the previous partner (Tamengkel, 2015). With an agreement that has been agreed upon from the start, each party can ensure that the inheritance is still distributed to the legitimate heirs without any legal disputes.

Another important benefit is asset protection in the case of divorce. When a marriage ends, disputes often arise regarding the division of joint assets or joint property. A marriage agreement helps reduce the potential for conflict by setting clear provisions

regarding the rights and obligations of each party to assets owned during the marriage (Istrianty & Priambada, 2016). Thus, this agreement acts as a legal instrument that provides certainty and prevents prolonged disputes in the future.

Although still considered controversial in certain cultures, a marriage contract is not something to be avoided. In fact, this document can be a tool that provides a sense of security and legal clarity for couples who want to build a more stable and transparent household life. Therefore, understanding the importance of a marriage contract from a legal perspective and its benefits in family life can help couples make wiser and more mature decisions before getting married.

In married life, the legal aspect plays a significant role in ensuring the welfare and justice for both parties. One of the legal instruments that is often considered before or during marriage is a marriage agreement. This agreement not only functions to regulate property ownership, but also protects the rights of each partner in various aspects of household life, including when polygamy, divorce, or even the death of one of the parties occurs.

In the social and cultural context, marriage agreements are still often viewed negatively because they are considered to be contrary to family values. However, in practice, this agreement actually provides legal certainty, financial protection, and prevents conflicts that may arise in the future. Therefore, a more comprehensive understanding of the benefits and functions of marriage agreements is very important.

**Property Protection in Polygamy.** In Indonesia, although marriage law adheres to the principle of monogamy, Law No. 1 of 1974 concerning Marriage in Article 3 paragraph (2) still permits polygamy with certain conditions, such as obtaining permission from the first wife and fulfilling the requirements of justice for all wives. However, the financial aspects and ownership of property in polygamy are often a source of dispute, especially in cases of divorce or death of the husband. A marriage agreement plays an important role in ensuring that the property owned by a husband before marriage remains his own right, and the property obtained during the marriage can be divided fairly between the wives and children. Thus, this agreement can prevent property disputes between wives and guarantee the financial rights of each party (Payuyu, 2024). In several cases in religious courts, conflicts are often found between the first wife and the second or third wife in determining the rights to the husband's property after his death. If there is no marriage agreement that clearly regulates the division of property, this conflict can lead to prolonged disputes and even lawsuits from the heirs.

Separation of debt and financial responsibility is an important aspect of marriage that is often overlooked. Many couples do not realize that debt incurred by one party during the marriage can be a joint responsibility, especially if there is no agreement regulating the separation of assets and financial obligations. With a marriage agreement, couples can determine that debts incurred before marriage remain the personal responsibility of the parties concerned. In addition, debts incurred during the marriage can also be separated according to mutual agreement, so that couples are not burdened by financial obligations that are not their responsibility, especially in situations of divorce or death of one party (Pratitis & Rebulina, 2023). In terms of law, the absence of a marriage agreement can result in lawsuits against partners who are not involved in taking on debt.

In some cases, even though one party is not involved in managing debt, they can still be asked to pay off their partner's obligations after divorce or death. This can certainly be an unwanted financial burden and has the potential to cause conflict. Therefore, a marriage agreement not only provides clarity in the arrangement of assets but also becomes an instrument of protection for couples so that they are not burdened by financial responsibilities that should not be their obligations.

Certainty in business ownership and management is an important aspect in marriage, especially for couples who have owned a business before marriage or who build a business together after marriage. A marriage agreement can serve as a legal basis that regulates business ownership and profit sharing, thus providing clarity in terms of the rights and responsibilities of each party. Without a marriage agreement, business assets can be considered joint property, which in the case of divorce has the potential to cause disputes in the division. With an agreement, couples can clearly stipulate that business ownership remains in the hands of the party who founded it. In addition, this agreement also allows the distribution of business profits to be adjusted according to the contribution of each party, whether in the form of capital, labor, or ideas. In the event of a divorce, the rights and obligations to the business have been regulated from the start, so that it can avoid prolonged legal conflicts and ensure the continuity of the business without interruption (Astu, Humulhaer, & Zulfikar, 2024). In addition to avoiding disputes, a marriage agreement also provides protection for businesses from financial risks that may arise due to problems in marriage. For example, if one party has personal debt, this agreement can ensure that business assets are not used to pay off those obligations. Thus, a marriage agreement not only provides legal certainty for the couple, but also maintains the stability and sustainability of the business that has been built.

The continuity of inheritance and legacy is often a source of conflict in families, especially when one of the partners dies, especially if there are children from a previous marriage. In situations like this, a marriage agreement can be a solution to avoid disputes regarding inheritance rights and ensure that the distribution of assets is carried out fairly and in accordance with previous agreements. With a marriage agreement, inheritances or gifts received during the marriage remain the personal rights of the recipient and are not considered joint assets. This means that assets obtained from parents or families of each partner will not be mixed with assets owned jointly in the marriage. In addition, this agreement also allows couples to arrange that assets obtained during the marriage can be divided according to agreement, so that they do not automatically become part of the joint assets that must be divided equally between the couple and other heirs. Furthermore, in cases where one of the partners has children from a previous marriage, a marriage agreement can guarantee the rights of these children to the inheritance without having to share it with the new partner. This is very important to avoid injustice in the distribution of inheritance and ensure that the rights of children from previous relationships remain protected (Rosita, Novitasari, & Zainuddin, 2022). Thus, a marriage agreement not only provides legal certainty for the couple, but also protects the interests of the heirs and reduces the potential for family conflicts that often arise in the division of inherited assets.

Child welfare guarantees are an important aspect of a marriage agreement, especially in divorce situations where one parent may neglect their financial responsibilities towards

their child. Without a clear agreement, there are often cases where children do not receive their rights properly, whether in terms of living expenses, education, or other needs. Therefore, a marriage agreement can be a legal instrument that ensures that child welfare is maintained even though there is a separation between the two parents. In a marriage agreement, it can be stipulated that the responsibility for child support must still be met by both parents, without exception. This includes basic needs such as food, clothing, and shelter, as well as educational and health needs which are important factors in a child's growth and development. In addition, the cost of a child's education, from elementary school to higher education, can be included in the agreement so that neither party is left irresponsible after the divorce. Likewise, health costs, including insurance or treatment, must continue to be guaranteed for the child's future welfare. Furthermore, this agreement can provide a legal basis for the court to enforce these responsibilities. If one party does not fulfill their obligations, the court can take legal steps to ensure that the child's rights are still fulfilled in accordance with the agreement made in the marriage agreement (Awaludin & Waluyo, 2023). With a marriage agreement that regulates responsibilities towards children, not only are the rights of the couple protected, but also the future of the children can be better guaranteed, regardless of the state of their parents' relationship.

A marriage agreement is not just a legal document that regulates property ownership, but also an instrument of protection for couples and their children. With this agreement, couples can avoid potential conflicts related to property, debt, inheritance rights, and responsibility for children. Therefore, in facing marriage, couples should consider a marriage agreement as a form of anticipation of various possibilities that may occur in the future. Thus, marriage can be carried out more safely, harmoniously, and without legal uncertainty that can harm one party.

#### **4. Conclusion**

Marriage agreements play an important role in providing legal certainty and protection of the property rights of couples, both in Islamic law and positive law in Indonesia. This study shows that although these agreements can regulate the division of property, financial obligations, child custody, and protection from potential legal conflicts, their implementation is still limited due to social stigma and lack of legal literacy. From the perspective of Islamic law, a marriage contract is valid as long as it does not conflict with sharia principles. The analysis of the *hadith* in this study also confirms the permissibility of drafting a contract with fair conditions and does not conflict with Islamic law. In addition, in the context of positive law, this agreement is recognized and has implications for the management of joint property, financial responsibility, and the division of inheritance and assets in cases of divorce or polygamy. To improve the implementation of marriage agreements, wider socialization and education are needed to change public perception. Clearer regulations and the active role of legal and religious authorities are also needed to ensure that this agreement can function as an effective protection instrument in building a just and harmonious household.

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