

The Legal Position and Urgency of Postnuptial Agreements in the Perspective of Civil Law and Islamic Law (Indonesian Civil Code and The Compilation Of Islamic Law)

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Abstract

Marriage, a fundamental human right, establishes a legal bond between a man and a woman, a bond that is recorded by the state in accordance with their respective religions and beliefs. Throughout the duration of a marital relationship, a variety of domestic issues may emerge. In recent times, domestic issues such as infidelity, online gambling, and domestic violence (DV) have become increasingly prevalent. The present study employs a doctrinal legal research method, utilizing both primary and secondary data sources. The primary sources consulted for this study include Law No. 1 of 1974, the Indonesian Civil Code (KUHPerdata), and the Compilation of Islamic Law. Analytical approach (civil law comparison and maqāsid al-syari'ah analysis) : Civil Law Comparison can happen after marriage (after Constitutional Court Decision 69/2015), Legal certainty and separation of material assets.. Maqasid al syariah analysis is permitted as a form of new agreement, Creating benefits (maslahah) and preventing harm (daruriyyat). The secondary sources, which consist of supporting materials such as books, journals, and websites related to marital agreements, were also reviewed. The initial research finding indicates that, after the Constitutional Court Decision No. 69/PUU-XIII/2015, marital agreements can be executed not only prior to or concurrently with the initiation of marriage but also after the formal establishment of marital bonds. This signifies that postnuptial agreements are legally acknowledged and can be utilized to regulate the management of property and the responsibilities of spouses during marriage. A postnuptial agreement plays a crucial role in modifying legal provisions related to the separation of premarital property and inherited property within marriage. Marital agreements regulate wealth and may include additional clauses based on the principle of freedom of contract, if they do not contradict statutory law as specified in Article 1338(1) of the Civil Code. The second research finding indicates that the provisions of a postnuptial agreement offer numerous advantages under both positive law and the concept of maqasid al-syari'ah. These advantages include the protection of each spouse's assets, the prevention of financially detrimental actions, and the mitigation of the repercussions of domestic disputes.

Keywords:

Legal Position; Urgency of Postnuptial Agreements; Civil Law Perspective; Maqasid al-Syari'ah

Introduction

Indonesia recognizes marriage as a form of human rights as stipulated in Article 28B (1) of the 1945 Constitution of the Republic of Indonesia. Marriage is a state-recognized institution that establishes a legitimate and lasting family based on religion and belief. Marriage is a formal union between a man and a woman as husband and wife, with the purpose of creating a harmonious and enduring family grounded in faith in the Almighty Allah¹. “Enduring” implies that marriage is expected not to dissolve and to last indefinitely². A valid marriage gives rise to legal consequences for the rights and obligations of the spouses, including matters related to children, joint property, and each spouse’s separate property.

The legal consequences of marriage must be understood by both husband and wife to prevent future disputes. In domestic life, various issues may disturb marital harmony. This is reflected in the high rate of marital problems leading to a decline in the number of marriages in Indonesia. In 2024, there were 1,478,302 marriages recorded, a 6.3% decrease from the previous year. This decline is largely attributed to the high divorce rate of 390,000 cases in 2024³. The predominant causes include household quarrels (251,125 cases), economic problems (100,198 cases), abandonment (31,265 cases), domestic violence (7,256 cases), and gambling (2,889 cases)⁴. These factors are interrelated and contribute to the rising divorce rate.

To preserve marital bonds, it is essential for couples to have agreements that provide clarity and protection over their respective rights and obligations, particularly concerning property management. This underscores the urgency of marital agreements, including postnuptial agreements, as preventive measures to minimize potential economic and legal conflicts that could lead to divorce.

Law No. 1 of 1974 defines marital agreements as consensual arrangements between two or more parties, similar to general contractual agreements⁵. There are two types of marital agreements: prenuptial agreements and postnuptial agreements. Both serve the same purpose, to provide legal protection and prevent harm to either spouse. The difference lies in timing. A prenuptial agreement protects from the outset before marriage, while a postnuptial agreement is made after marriage, often in response to indications of potential violations of marital rights or obligations.

Postnuptial agreements were officially recognized following Constitutional Court Decision No. 69/PUU-XIII/2015, which reinterpreted the provisions of Law No. 1 of 1974 on Marriage. Previously, marital agreements could only be executed before or at the time of marriage. This decision reflects the state’s commitment to protecting the rights and obligations of married individuals. However, the urgency of postnuptial agreements is still not widely understood in Indonesian society, particularly among Muslims, where such agreements are often considered taboo. Research problem : What is the legal position and urgency of postnuptial agreements from the perspective of civil law? And How is the

¹ Dwi Atmoko, Ahmad Baihaki, *Hukum Perkawinan Dan Keluarga* (CV.Literasi Nusantara Abadi, 2022). Hal :20

² Dadan Herdiana and Dian Ekawati, ‘Kepastian Hukum Perkawinan Beda Agama Pasca Terbitnya Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023 Dalam Mengadili Perkara Permohonan Pencatatan Perkawinan’, *Jurnal Kewarganegaraan*, 8.1 (2024).

³ Wandu, ‘Angka Perkawinan Anak Dan Dewasa Di Indonesia: Perubahan Sosial Dan Kesadaran Kolektif’, 2025 <<https://indonesia.go.id/kategori/feature/9735/angka-perkawinan-anak-dan-dewasa-di-indonesia-perubahan-sosial-dan-kesadaran>>.

⁴ M Zaid Wahyuni, ‘Jumlah Perkawinan Turun 30 Persen Dalam Satu Dekade, Apa Imbasnya?’, *Kompas*, 2025 <<https://www.kompas.id/artikel/jumlah-perkawinan-turun-30-persen-dalam-satu-dekade-apa-imbasnya>>.

⁵ Wardah Nuroniyah Wasman, *Hukum Perkawinan Islam Di Indonesia Perbandingan Fiqih Dan Hukum Positif* (Teras, 2011), p. 172.

purpose of postnuptial agreements understood within Islamic law under the framework of maqāṣid al-syarī'ah?

Research Methods

This research employs a doctrinal method. Doctrinal research is a form of legal research conducted with the aim of discovering the principles or doctrines of applicable positive law⁶. The data collection process is the most strategic step in legal research because its objective is to generate reliable data⁷. Data sources are the subjects from which the data are obtained and consist of primary and secondary sources. Primary legal materials are authoritative sources, meaning they hold legal authority⁸. Primary sources include Law No. 1 of 1974, the Indonesian Civil Code (KUHPPerdata), and the Compilation of Islamic Law. Secondary legal materials are supporting data that complement and strengthen the explanation of the primary sources in this study⁹.

Results And Discussion

The Legal Position and Urgency of Postnuptial Agreements on Property as an Object in the Perspective of Civil Law

According to Article 1 of Law No. 1 of 1974 on Marriage, marriage is defined as a physical and spiritual bond between a man and a woman to establish a happy and eternal household (family) based on the belief in God Almighty. The status of the wife must be equal to that of the husband, both in domestic life and in social interactions. Equality in the household includes matters concerning property, which often become a factor in family disputes when problems arise.

Property in marriage, according to Article 35 paragraph (1) of Law No. 1 of 1974 on Marriage, is considered joint property if acquired during the marriage, unless a prenuptial or postnuptial agreement exists. Article 35 paragraph (2) of the same law stipulates that property brought into the marriage by each spouse, as well as property individually acquired as gifts or inheritance, remains under the control of each respective party, unless otherwise determined in a marital agreement¹⁰.

Marital property, according to Article 119 of the Indonesian Civil Code (KUHPPerdata), adheres to the principle of community of property, where all property brought by each party into the marriage, as well as property acquired during the marriage, is regarded as a single joint estate. From that point forward, the property becomes joint property and, in the event of divorce, is divided equally. According to Subekti, this principle of community encompasses all assets and liabilities, both those brought into the marriage and those acquired during the marriage. Therefore, all forms of wealth, whether assets or debts, become part of the joint property (*gemeenschap*).

In the perspective of Indonesian national marriage law, the principle of joint property division (*gono-gini*) generally applies, ensuring fair and equal distribution between husband and wife. However, the existence of a marital agreement negates the automatic accumulation of joint property. If the husband or wife wishes to maintain separate property, a marital agreement must be made in the form of a notarial deed, agreed upon by both parties and signed before a notary as a third party. This is regulated under Article 29 paragraph (1) of the Marriage Law in conjunction with Constitutional Court Decision No. 69 of 2015. The Constitutional Court decision broadens the meaning of a marital agreement so that it is no

⁶ Soetandyo Wignjosoebroto. 2000. *Penelitian Hukum Sebuah Tipologi*. Malang : Setara Press. Hal 65.

⁷ Sugiyono. 2022. *Metode Penelitian Kuantitatif Dan R&D*. Bandung. Alfabeta. Hal 75

⁸ Muhaimin. 2020. *Metode Penelitian Hukum*. Mataram University Press. Hal 65 .

⁹ Ibid, Hal 75

¹⁰ Happy Susanto. 2008 *Pembagian Harta Gono Gini Saat Terjadi Perceraian Jakarta* : Visimedia. Hal 74

longer limited to agreements made before marriage (prenuptial agreements) but can also be made during the marriage (postnuptial agreements). The contents of the marital agreement also apply to third parties, insofar as those third parties are involved.

The forms of marital agreements, according to R. Soetarjo Prawirohamidjojo and Marthalena Pohan in family law, consist of three types:

- a. Marital agreement with profit and loss sharing (not all of the spouses' assets are merged into joint property, only part of their assets is shared), where the profits or losses accrued during the marriage are included. Property brought into the marriage and property acquired during the marriage remain individually owned.
- b. Marital agreement with income and revenue sharing (Article 164 KUHPerdata): an agreement between husband and wife where only income and revenues are combined, without full community of property or joint profit and loss. Article 105 KUHPerdata establishes the husband as the head of the household, obligated to assist and manage property, including his wife's separate property. He bears responsibility for any negligence in management and cannot transfer or encumber his wife's assets without her consent. In this form, any loss arising from the income and revenue sharing agreement is borne by the husband.
- c. Marital agreement eliminating joint property (full separation of property throughout the marriage), in which no property or joint estate is shared between husband and wife.

Marital agreements govern matters such as:

- a. According to Article 157 KUHPerdata, profit (winst) refers to the increase in wealth derived from each party's property, work, or craftsmanship. Over time, experts have relaxed adherence to this concept because non-inherited active assets are generally considered jointly owned.
- b. *Gemeenschap Van Vruchten en Inkomsten*, equivalent to *winst en verlies*, is made to prevent the wife from suffering losses due to the husband's debts.
- c. In a *gemeenschap winst en verlies*, both spouses bear losses jointly, whereas in a *gemeenschap vruchten en inkomsten*, the wife does not cover losses and cannot be held liable for the husband's debts.

A postnuptial agreement may regulate property separation, which can apply either to all assets acquired during the marriage or only to assets obtained after the agreement is made. If the postnuptial agreement does not specify its effective date, then legally it is deemed effective from the date of the marriage. Consequently, the status of joint property automatically becomes separate if both parties have agreed to such terms in the agreement, without requiring a court decision on property separation¹¹. Conversely, if the postnuptial agreement specifies that it only applies to property acquired after the agreement is made, then all property acquired by the spouses prior to the agreement remains joint property. This arrangement aims primarily to protect marital assets, ensuring that not all property is subject to enforcement if one spouse faces debt collection or execution.

A more critical assessment of practical challenges in implementing postnuptial agreements : Post-marital agreements include low legal knowledge, Social Stigma: There is a negative stigma in society which considers that making a marriage agreement (both pre- and post-marital) shows a lack of trust in the partner or damages household harmony. Administrative Procedures: Postnuptial agreements must be drawn up in the form of a notarial deed, which is then registered with the local Office of Religious Affairs (KUA) or the Population and Civil Registry Office, depending on where the marriage was registered. This process requires additional costs and time, as well as coordination between the notary and the

¹¹ Habib Adjie. 2022. *Pembuatan Akta Perjanjian Praperkawinan Dan Pasca Perkawinan Oleh Notaris*, ed. by Rachmi. Kesatu. Bandung : PT Refika Aditama, 2022. Hal 56.

relevant registration agency. Absence of Clear Derivative Regulations: Although Constitutional Court Decision No. 69/PUU-XIII/2015 allows marriage agreements to be made after marriage, the absence of detailed derivative regulations regarding the technical implementation can lead to legal uncertainty in the practice of implementing them. Involving Third Parties (Notary and Marriage Registrar): The process cannot be carried out personally by the couple, but must involve a notary and a marriage registrar, which may be considered troublesome by some parties.

The main practical challenges in implementing a postnuptial agreement include issues of financial transparency, potential coercion or emotional distress, legal ambiguity (especially regarding third parties), and fiduciary obligations between spouses. Full Financial Disclosure Failure to fully disclose all assets, liabilities, and income in a transparent manner can render the agreement void in court. If one spouse claims they were not given a complete picture of the other's financial situation, the agreement can be challenged, Duress and emotional Distress, Agreements must be signed voluntarily. Allegations of duress or undue emotional distress, such as threats of divorce if you do not sign, can cause the court to invalidate the agreement. Vagueness and unfairness, agreements that are highly one-sided or "unconscionable," where one party does not receive a fair share of assets or support, may be invalidated by the court. Courts apply greater scrutiny to postnuptial agreements to ensure that neither party is taking advantage of the marital relationship.

The scope of a postnuptial agreement is not limited to the separation of property, as stipulated in Article 139 of the Indonesian Civil Code (KUHPerdata). A marital agreement may also address non-financial matters, such as domestic issues, potential misconduct, and career arrangements, even after the marriage has taken place. According to Article 29 paragraph (1) of Law No. 1 of 1974 on Marriage, as interpreted by Constitutional Court Decision No. 69/PUU-XIII/2015, marital agreements can be executed both before and after marriage. However, such agreements must be registered to fulfill the element of publicity, ensuring that third parties are aware of and bound by the terms of the agreement.

If a marital agreement is not registered, it fails to meet the publicity requirement and only binds the spouses themselves. For example, in the event of divorce (*cerai hidup*) or death (*cerai mati*), the marital agreement remains valid, but spousal consent is still required if either party wishes to sell or encumber property¹². If the couple executes a marital agreement but forgets to register it, they must first obtain registration approval from the District Court (*Pengadilan Negeri*) before completing the registration process with the relevant authority¹³. The registration of a marital agreement constitutes its administrative recording with the designated institution. For Muslim couples, registration is carried out in accordance with the Circular Letter of the Director General of Islamic Community Guidance, Ministry of Religious Affairs of the Republic of Indonesia No. B.2674/DJ.III/KW.00/9/2017, which, in Annex I, outlines the requirements and procedures for reporting marital agreements made before marriage, at the time of marriage, or during marriage (postnuptial agreements), which specifies the requirements and procedures for reporting marital agreements made before, at, or after marriage:

- a. The husband and/or wife must submit:
 - 1) Photocopy of ID card (KTP)
 - 2) Photocopy of Family Card (KK)
 - 3) Legalized copy of the notarial marital agreement
 - 4) Marriage book of the husband and wife
- b. The Head of the District KUA, as the Marriage Registrar, makes a note in the lower

¹² Ibid.

¹³ Ibid, hal 41

column of the marriage certificate and the marital status column in the marriage book with the statement:

“Perjanjian Perkawinan dengan akta notaris ... nomor ... telah dicatat dalam akta nikah pada tanggal ...”

which is translated as

“The Marital Agreement with Notarial Deed No. ... has been recorded in the marriage certificate on ...”

or issues a certificate for marriages registered abroad with an agreement made in Indonesia.

- c. Notes on the marital agreement document are made on the back of the last page, stating: “Perjanjian perkawinan ini telah dicatatkan pada akta nikah nomor: .../.../.../... atas nama ... dengan ... tanggal ...”

which is translated as

“This marital agreement has been recorded in the marriage certificate No. .../.../.../... in the name of ... and ... dated ...”

signed by the Marriage Registrar.

- d. The marriage books with the recorded agreement or certificate are returned to each spouse.

For non-Muslim couples, registration is conducted according to Circular Letter of the Director General of Population and Civil Registration, Ministry of Home Affairs No. 472.2/5876/DUKCAPIL, which also details the requirements and procedures for postnuptial agreement registration:

- 1) Submission of required documents (photocopy of e-KTP, KK, notarized marital agreement with original, and marriage certificate)
- 2) The Civil Registry Officer at the implementing institution records the annotation in the register and on the marriage certificate
- 3) The annotated marriage certificate or certificate of registration is returned to each spouse

Maqasid Al-Syari’ah Review as the Purpose of Making Postnuptial Agreements

The Religious Affairs Office (KUA), as a technical implementing unit under the Ministry of Religious Affairs of the Republic of Indonesia and responsible to the Directorate General of Islamic Community Guidance (Bimas Islam), has one of its duties stated in Article 2 of the Regulation of the Minister of Religious Affairs No. 19 of 2018 concerning the Registration of Marriages Among Muslims. This regulation explains that the registration of marriage between a Muslim man and woman is conducted by the Head of the District KUA. This registration includes the registration of the intention to marry, document verification, announcement of the intention to marry, the marriage registration process, and the issuance of the Marriage Book.

Thus, KUA plays an important role in the administrative process of marriage in Indonesia, including archiving marital agreements made by husband and wife. In this context, Islamic law provides a clear basis for the importance of marital agreements, which aim to protect the rights and obligations of both parties in building a harmonious household (sakinah, mawaddah, wa rahmah) by safeguarding the rights and obligations of the husband and wife. As stated in the Qur’an, Surah Ar-Rum [30]: 21:

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

“And one of His signs is that He created for you spouses from among yourselves so that you may find comfort in them. And He has placed between you compassion and mercy. Surely

in this are signs for people who reflect.” (QS. 30 [Ar-Rum]: 21)¹⁴.

This verse shows that the primary purpose of marriage is to establish a family of *sakinah*, *mawaddah*, and *rahmah*, based on mutual protection of rights and obligations.

In Islamic teachings, keeping promises and fulfilling agreements is a fundamental principle that reflects the integrity of a Muslim. Agreements, whether between humans or with Allah, are a form of commitment that must be respected as an expression of faith and piety. Every agreement carries consequences and violating it affects not only interpersonal relationships but also a person’s relationship with Allah.

This is emphasized in the Qur’an, Surah Al-Isra’ [17]: 34:

وَلَا تَقْرُبُوا مَالَ الْيَتِيمِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ حَتَّىٰ يَبْلُغَ أَشُدَّهُ وَأَوْفُوا بِالْعَهْدِ إِنَّ الْعَهْدَ كَانَ مَسْئُولًا

“Do not come near the wealth of the orphan—unless intending to enhance it—until they attain maturity. Honour ‘your’ pledges, for you will surely be accountable for them.” (QS. 17 [Al-Isra’]: 34)¹⁵

In addition to the Qur’an, Prophet Muhammad also emphasized the importance of fulfilling promises, as mentioned in *Tuhfatu al-Ahwadzi* by Al-Imam Muhammad Abdurrahman bin Abdurrahim al-Mubarakfuri:

حَدَّثَنَا الْحَسَنُ بْنُ عَلِيٍّ الْخَلَّالُ حَدَّثَنَا أَبُو عَامِرٍ الْعَقَدِيُّ حَدَّثَنَا كَثِيرٌ بْنُ عَبْدِ اللَّهِ بْنِ عَمْرٍو بْنِ عَوْفٍ الْمَزَنِيُّ عَنْ أَبِيهِ عَنْ جَدِّهِ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ الصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إِلَّا صُلْحًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ إِلَّا شَرْطًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا قَالَ أَبُو عَيْسَى هَذَا حَدِيثٌ حَسَنٌ صَحِيحٌ (رَوَاهُ حَسَنٌ)

“Al-Hasan bin ‘Ali al-Khallāl narrated to us, Abu ‘Āmir al-‘Uqadī narrated to us, Kathīr bin ‘Abdullāh bin ‘Amr bin ‘Awf al-Muzanī narrated to us, from his father, from his grandfather, that the Messenger of Allah said: ‘Reconciliation is permissible among Muslims, except for a reconciliation that makes lawful what is forbidden or forbids what is lawful. Muslims are bound by their conditions, except for a condition that makes lawful what is forbidden or forbids what is lawful.’”

Abu ‘Isa said: This hadith is *hasan shahih* (good and authentic)¹⁶.”

From the hadith above, several points can be concluded, including the permissibility of reconciliation. The term *shulḥ* used in the hadith signifies that reconciliation among Muslims is permissible in Islam, as long as it does not violate the rules of Sharia. The permissible boundary for reconciliation is that it does not alter the laws established by Allah, such as forbidding what is lawful or permitting what is unlawful.

The phrase *شُرُوطِهِمْ عَلَى شُرُوطِهِمْ إِلَّا شَرْطًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا* emphasizes the obligation to fulfill any agreement or condition that has been mutually agreed upon¹⁷.

In classical *fiqh*, the term marital agreement does not explicitly exist. What is found instead is the discussion of “conditions in marriage” (*asy-syurūṭ fī al-nikāḥ*). This refers to conditions that must be fulfilled by the party entering into the agreement, meaning that the party making the promise is obliged to fulfill the specified conditions¹⁸.

¹⁴ Tim Penerjemah, Al-Qur’an Dan Terjemahnya (Lajnah Pentashihan Myshaf Al-Qur’an, 2019).585.

¹⁵ Penerjemah.397.

¹⁶ Muhammad Abdurrahman Bin Abdurrahim Al-Mubarakfuri, 1995. *Tuhfatu Al-Ahdzawi Bi Syarhi Jami’ At-Tirmidzi*.Beirut : Dar Al-Fikr. Hal 43

¹⁷ *ibid*. Hal 584.

¹⁸ Mardani, 2016. *Hukum Keluarga Islam Di Indonesia* (Jakarta : Kencana. Hal 81

A marital agreement is a mutual consent made by the prospective spouses at the time of or prior to the marriage, in which each party promises to comply with the provisions of the agreement, as ratified by the marriage registrar, as long as it does not contradict Islamic Sharia or the essence of marriage¹⁹.

From the Islamic legal perspective, Muslims are granted the freedom to make agreements, including the conclusion of postnuptial agreements. The Prophet Muhammad emphasized the permissibility of making agreements, but with limitations that align with Sharia principles.

In the context of marriage, fiqh maxims (qawā'id fiqhiyyah) can be applied to understand postnuptial agreements, which may cover various aspects such as rights and obligations in family life. Accordingly, such agreements can be associated with several fiqh maxims²⁰, including:

- a. **دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصْلِحِ** (Preventing harm takes precedence over attaining benefit). In this context, a marital agreement made during marriage focuses on preventing potential conflicts and household damage, particularly concerning joint property and the rights and obligations of the spouses.
- b. **الْمَشَقَّةُ تُجَلِّبُ التَّيْسِيرَ** (Hardship necessitates ease). In this context, a marital agreement made by the spouses often aims to facilitate their domestic life, particularly to resolve difficulties or potential issues that may arise between them. By considering this legal maxim, a marital agreement made during marriage, which is based on the reasons previously mentioned, serves as an appropriate solution to address household problems.
- c. **تَقْدِيمُ الْمَصْلَحَةِ الْعَامَّةِ عَلَى مَصْلَحَةِ الْخَاصَّةِ** (Actions that encompass the interests of others take precedence over those that serve only personal interests). Considering that a marital agreement made during marriage is a form of mutual consent between both parties in written form, its content covers the interests of each spouse and is formulated to ensure the fulfillment of their respective rights and obligations. Thus, this agreement serves as an appropriate solution to minimize misunderstandings regarding the rights and obligations of both parties.
- d. **الْحُكْمُ يَتَوَرُّ مَعَ الْمَصْلَحَةِ وَجُودًا وَعَدَمًا** (Legal rulings revolve around benefit (maṣlaḥah), existing when the benefit exists and absent when it is absent). Considering the numerous benefits derived from making a marital agreement during marriage, this practice is not only applicable and beneficial to the spouses themselves but also to the wider community. Such benefits may include the protection of the self, children, and property in the future.
- e. **مَا لَا يَنْتَهِي الْوَجِبُ إِلَّا بِهِ فَهُوَ وَاجِبٌ** (Whatever is necessary to complete an obligation becomes obligatory). If making a marital agreement during marriage can ensure the protection of an individual, which is both a right and a duty in Islam, then the instrument of the marital agreement also becomes obligatory. This is because the agreement functions to ensure the fulfillment of the duty to safeguard rights and protect the interests of family members, which is part of the husband's and wife's obligations in carrying out family life in accordance with Sharia.
- f. **الضَّرَرُ يُزَالُ** (Harm must be removed). The basis of this legal maxim is the saying of Prophet Muhammad **لَا ضَرَارَ وَلَا ضَرَارَ** Do not harm yourself and do not harm others. Considering that the foundation of a marital agreement made during marriage is mutual consent, the content of the agreement must be formulated in such a way that no party is harmed.
- g. **الْحُكْمُ يَتَغَيَّرُ بِتَغْيِيرِ الزَّمَانِ وَالْمَكَانِ وَلَا جَوَالٍ** (Legal rulings may change with changes in time,

¹⁹ Abdul Rahman Ghozali, 2012, *FIQH MUNAKAHAT*. Jakarta: Kencana. h. 32

²⁰ Erman Gani Miftahul Haq, Jumni Nelli, "Perjanjian Perkawinan Berdasarkan Kaidah Fiqhiyah Dan Hukum Positif Di Indonesia" 2 (2023).10.

place, and circumstance). This maxim aligns with the dynamic function of law in society. A marital agreement made during marriage began to be formally recognized after the issuance of Constitutional Court Decision No. 69/PUU-XIII/2015, which amended the provisions of the Marriage Law. Previously, such agreements were considered invalid if made after the marriage had taken place. However, with the Constitutional Court decision, husband and wife are now given the opportunity to make agreements regulating property separation and their respective responsibilities, which helps prevent future disputes. This development demonstrates that legal rulings can evolve in accordance with changes in time, place, and social conditions, reflecting the needs of society.

- h. *تَصَرُّفُ الْإِمَامِ عَلَى الرَّعِيَّةِ مَنُوطٌ بِالْمَصْلَحَةِ* (A ruler's policy toward his people must be based on public interest). Following the issuance of the Constitutional Court Decision, it becomes clear that the government plays a highly influential role in regulating and amending the law regarding marital agreements, thereby providing a direct impact on legal certainty and the protection of the rights of both parties.
- i. *الْأَصْلُ فِي الْأَصْلِ فِي الْإِبَاحَةِ* (The original ruling for things is permissibility (mubah).) In Islam, the basic principle for making agreements is that they are permissible (mubāḥ). This principle also applies to marital agreements made during marriage, as long as they do not violate Sharia provisions and principles, such agreements remain permissible.

On the other hand, *maqāṣid al-syarī'ah* provides the main foundation for *fiqh* principles in ensuring that every legal ruling supports the objectives of Sharia. According to Imam al-Syatibi, known as the father of *maqāṣid al-syarī'ah*, the purpose of *maqāṣid al-syarī'ah* can be seen in two aspects, namely the purpose of Allah in legislating Sharia law and the purpose of humans in being obligated by Sharia²¹.

Imam al-Syatibi divides *maqāṣid* into two categories, namely *maqāṣid al-syāri'* and *maqāṣid al-mukallaf*. *Maqāṣid al-syāri'* refers to the objective of Allah in revealing Sharia, while *maqāṣid al-mukallaf* refers to the objective of humans in performing all worldly actions under Sharia. Imam al-Syatibi further divides *maqāṣid al-mukallaf* into three levels, namely *al-ḍarūriyyāt* (primary needs), *al-ḥājjiyyāt* (secondary needs), and *al-taḥsīniyyāt* (tertiary needs)²².

The first level, *al-ḍarūriyyāt*, consists of everything that must exist to preserve human existence and ensure the establishment of public benefit in religious and worldly life. If these necessities are not fulfilled, human life will be corrupted in both the world and the hereafter. *Al-ḍarūriyyāt* represents the essential objectives of human life in achieving *maṣlaḥah* (benefit).

Islamic law in the form of *al-ḍarūriyyāt* requires the preservation of the five fundamental necessities, namely²³:

- a. *Hifzh al-Dīn* (protection of religion)
- b. *Hifzh al-Māl* (protection of wealth)
- c. *Hifzh al-Nasl* (protection of lineage)
- d. *Hifzh al-Nafs* (protection of life)
- e. *Hifzh al-'Aql* (protection of intellect)

The second level, *al-ḥājjiyyāt*, consists of needs in human life that do not threaten its existence. Fulfillment of these needs provides ease and removes hardship. Some provisions of Sharia provide legal dispensations (*rukhsah*) to facilitate human life. However, if these

²¹ Kurniawan, Agung, And Hamsah Hudafi. "Konsep Maqashid Syariah Imam Asy-Syatibi Dalam Kitab Al-Muwafaqat." *Al-Mabsut: Jurnal Studi Islam Dan Sosial* 15.1 (2021). 37.

²² *Ibid.*, 106

²³ Agung Kurniawan And Hamsah Hudafi, 'Konsep Maqashid Syariah Imam Asy-Syatibi Dalam Kitab Al-Muwafaqat'. 35.

needs are not fulfilled, life will become difficult²⁴.

The third level, *al-tahsīniyyāt*, consists of supportive needs for human life, both in social interaction and in the sight of Allah under His Sharia. If these needs are not fulfilled, they will not endanger human life or cause serious hardship but fulfilling them enhances dignity and moral refinement²⁵.

From the Islamic perspective, the content of a postnuptial agreement can be reviewed based on *maqāṣid al-syarī'ah* as follows:

- a. Provisions on property separation in a postnuptial agreement state that there will be no joint property under any designation, whether community property under the law, profit-and-loss sharing, or income sharing. Therefore, all property of any kind brought into the marriage by the parties or acquired in any way remains the individual property of the spouse who owns or acquires it. This aligns with the concept of *maqāṣid al-syarī'ah*, namely *hifzh al-māl* (protection of wealth). Property is a source of life, and therefore protecting property is a religious obligation. Islamic law regulates ownership, trade, and transactions to maintain justice and prevent harm.
- b. Provisions on the rights and obligations of the spouses include the prohibition of Domestic Violence (KDRT) in any form, whether physical, psychological, sexual abuse, or neglect of the household. This aligns with *hifzh al-nafs* (protection of life) and *hifzh al-'aql* (protection of intellect). Islamic law highly emphasizes the protection of human life and intellect. Any harmful act, either physical or psychological, such as murder, abuse, stress, trauma, or actions that harm health, is prohibited in Islam. Likewise, Islamic laws on food, drink, and medicine aim to safeguard human life and intellect.
- c. Provisions on the rights and obligations of the parties also include that the second party (husband) is obliged to finance the education of the children born from the marriage. This is in line with *hifzh al-nasl* (protection of lineage). Lineage is the continuity of human generations, and in Islamic law, rules on marriage, divorce, inheritance, and child rights are established to preserve family continuity and well-being.
If all these elements are properly protected, then *hifzh al-dīn* (protection of religion) will also be preserved, because its foundation, which includes life, intellect, wealth, and lineage, is already secured.

Conclusion

A postnuptial agreement has a valid legal standing in the Indonesian civil law system, particularly after the issuance of Constitutional Court Decision No. 69/PUU-XIII/2015, which expands the interpretation of Article 29 of Law No. 1 of 1974 on Marriage. This agreement serves as a legal instrument to protect married couples in arranging the separation or management of property during the marriage. To bind third parties, such agreements must be registered at the Office of Religious Affairs (KUA) or the Civil Registry Office (Disdukcapil). A marital agreement made during marriage, referred to as a postnuptial agreement, is executed before a notary and ratified by the Marriage Registrar at the KUA. This agreement must align with the principles of *maqāṣid al-syarī'ah*, which include *hifzh al-māl* (protection of wealth), *hifzh al-nafs* (protection of life), *hifzh al-'aql* (protection of intellect), *hifzh al-nasl* (protection of lineage), and *hifzh al-dīn* (protection of religion). If the postnuptial agreement is formulated in accordance with the perspective of *maqāṣid al-syarī'ah*, then *hifzh al-dīn* (protection of religion) will be preserved, because its foundation, which includes life, intellect, property, and lineage, is already safeguarded. In this way, the rights and obligations of the parties in making

²⁴ *Ibid.*, 36.

²⁵ *Ibid.*, 117.

a postnuptial agreement are fulfilled from the perspective of Islamic law. Public education is needed regarding the benefits of marital agreements so that the community understands and realizes that such agreements are not a form of distrust toward one's spouse, but rather a conscious legal step for justice and certainty in family life. In the perspective of Islamic law, it is recommended that married couples understand the values of maqāsid al-syarī'ah before making a postnuptial agreement to ensure that it complies with Islamic legal principles.

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