

Gender Equality in Prenuptial Agreements from a Contemporary Islamic Family Law Perspective

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Abstract: This study examines the role of prenuptial agreements in promoting gender equality within the framework of contemporary Islamic family law. The research aims to analyze the legal basis and practical relevance of prenuptial agreements as instruments for balancing the rights and obligations of spouses in marriage. This study employs normative legal research using statutory, conceptual, and comparative approaches. The data consist of Islamic legal sources, family law regulations, judicial decisions, and contemporary scholarly literature on gender justice and Islamic family law. The findings reveal that prenuptial agreements are not merely contractual arrangements concerning property ownership but also legal mechanisms that provide greater certainty, transparency, and protection for both spouses. Contemporary Islamic family law increasingly recognizes contractual autonomy, provided that the agreed terms do not contradict Islamic principles, public order, or morality. The study further shows that prenuptial agreements may contribute to gender equality by protecting women's economic interests, clarifying marital responsibilities, and minimizing disputes arising from unequal bargaining positions within marriage. Their legitimacy can be justified through the principles of mutual consent, contractual freedom, *'adl* (justice), and *maṣlahah* (public benefit). The study concludes that prenuptial agreements constitute a legitimate legal instrument capable of supporting gender equality while remaining consistent with the objectives of contemporary Islamic family law. This study contributes to the literature on Islamic family law reform by offering a gender-sensitive interpretation of prenuptial agreements and highlighting their potential to strengthen equitable marital relations in contemporary Muslim societies.

Keywords: Contractual Freedom, Gender Equality, Islamic Law, Marital Rights, Prenuptial Agreements

1. Introduction

Marriage is a fundamental social and legal institution that establishes rights, obligations, and responsibilities between spouses while serving as the foundation of family life.¹ In contemporary societies, rapid social transformation has significantly altered the structure and dynamics of marital relationships. Increased educational attainment,² economic participation, urbanization, and global mobility have expanded individual expectations regarding marriage and family life. These developments have generated new legal concerns related to the protection of individual rights and the equitable distribution of responsibilities within marriage. One issue receiving growing attention is the use of prenuptial agreements as instruments for regulating financial matters, property ownership, and other arrangements before marriage. Although prenuptial agreements have traditionally been associated with

¹ Jenna Christine Colucci, "Ohio Should Adopt the Uniform Premarital Agreements Act to Achieve Consistency and Uniformity in the Treatment of Prenuptial Agreements," *Cleveland State Law Review* 66, no. 1 (2017): 215–43.

² Lucy-Ann Buckley, "Autonomy and Prenuptial Agreements in Ireland: A Relational Analysis," *Legal Studies* 38, no. 1 (2018): 164–86, <https://doi.org/10.1017/lst.2017.11>.

asset protection,³ they are increasingly viewed as mechanisms that can enhance legal certainty, reduce potential conflicts, and protect vulnerable parties. This shift is particularly relevant in discussions of gender equality because women frequently encounter economic vulnerability and unequal bargaining positions within marital relationships. As Muslim societies continue to experience legal and social transformation,⁴ questions concerning the role of prenuptial agreements in supporting equitable marital relations have become increasingly significant. Understanding the relationship between prenuptial agreements and gender equality is therefore essential for assessing the capacity of contemporary Islamic family law to respond effectively to changing social realities while maintaining its normative and ethical foundations.

Existing scholarship has extensively examined prenuptial agreements from legal, contractual, and economic perspectives. Most studies focus on issues such as property management, wealth protection, inheritance arrangements, and the legal enforceability of marital contracts. Within Islamic legal studies, considerable attention has also been devoted to questions concerning contractual freedom, mutual consent, and the compatibility of marital agreements with Islamic legal principles.⁵ These studies have contributed significantly to understanding the legal status and practical functions of prenuptial agreements in various jurisdictions.⁶ However, the majority of existing literature continues to emphasize economic and contractual dimensions rather than broader concerns relating to gender justice and rights protection. Discussions of gender equality often appear only as secondary considerations and are rarely positioned as the central focus of analysis.⁷ Moreover, much of the available research concentrates on statutory regulations and doctrinal debates without adequately examining how prenuptial agreements may contribute to balancing rights and responsibilities between spouses. Consequently, there remains limited scholarly understanding of the extent to which marital agreements can function as instruments for promoting equality within contemporary Muslim families.⁸ This limitation highlights the need for a more comprehensive analytical framework that integrates gender discourse with contemporary Islamic family law scholarship.

Several previous studies provide valuable insights into the legal and practical dimensions of prenuptial agreements, yet important gaps remain unresolved. Some scholars argue that prenuptial agreements primarily serve economic purposes and should be understood as private contractual arrangements designed to protect individual assets. Other researchers emphasize their role in safeguarding women's property rights and preventing financial disputes arising during marriage or divorce. While these perspectives contribute significantly to legal scholarship, they often fail to explore how contemporary Islamic family law can accommodate broader concerns regarding gender equality and social justice. In particular, the relationship between contractual autonomy and gender-sensitive legal protection remains insufficiently examined.⁹ Existing studies rarely analyze how the principles of justice, welfare, and rights protection within Islamic legal thought may support the broader use of prenuptial agreements as mechanisms for promoting equitable marital relations. Furthermore, few studies evaluate whether such agreements can strengthen women's bargaining positions and reduce structural inequalities that may

³ Michal Blau and Uri Zur, "Shaping the Dialogue in the Talmudic Story of an Anonymous Woman's Arguments for Bearing Children versus the Legal Halakhic Law and the Context of the Story," *Religions* 14, no. 1 (2023), <https://doi.org/10.3390/rel14010128>.

⁴ Natasha Wasil, "Ohio's Love-Hate Relationship With Marital Agreements: Why Ohio Should Lift Its Prohibition on Postnuptial Agreements," *Cleveland State Law Review* 69, no. 2 (2021): 1–25.

⁵ Věra Slováková, "The Lives of Girls and Young Women in the Village of Křenovice in the Eighteenth Century," *Historická Demografie* 42, no. 2 (2018): 211–37.

⁶ Firqah Annajiyah Mansyuroh, Muhammad Haris, and Hafini Bin Mahmud, "Muslim Generation Z and Globalized Knowledge: Perceptions of Muslim Generation Z of Banjarmasin on Prenuptial Agreement," *Al-Ahwal* 15, no. 2 (2022): 187–206, <https://doi.org/10.14421/ahwal.2022.15202>.

⁷ Chana Maybruch, Shlomo Weissman, and Steven Pirutinsky, "Marital Outcomes and Consideration of Divorce Among Orthodox Jews After Signing a Religious Prenuptial Agreement to Facilitate Future Divorce," *Journal of Divorce and Remarriage* 58, no. 4 (2017): 276–87, <https://doi.org/10.1080/10502556.2017.1301152>.

⁸ Tereza Cristina Monteiro Mafra and Rafael Baeta Mendonça, "The Content Limits of the Prenuptial Agreement," *Civilistica.Com* 10, no. 3 (2021).

⁹ Sharon Thompson, *Prenuptial Agreements in Comparative Perspective, Research Handbook on Marriage, Cohabitation and the Law*, 2024, <https://doi.org/10.4337/9781802202656.00037>.

exist within marriage. These limitations reveal a significant gap in contemporary scholarship and indicate the need for research that moves beyond questions of legality toward a deeper examination of justice, equality, and family welfare within Islamic family law.

This study investigates the extent to which prenuptial agreements can contribute to gender equality within contemporary Islamic family law. The research is guided by two central questions: how are prenuptial agreements justified within contemporary Islamic legal thought, and to what extent can they function as instruments for promoting gender equality in marriage? Unlike previous studies that primarily focus on contractual and economic dimensions, this research examines prenuptial agreements through the interconnected perspectives of gender justice, legal protection, and Islamic legal reform. The study argues that prenuptial agreements should not be viewed solely as mechanisms for regulating property relations but also as legal instruments capable of strengthening fairness, transparency, and the protection of spouses' rights. By analyzing relevant legal doctrines, statutory regulations, and contemporary scholarly perspectives, this research seeks to demonstrate that contractual freedom and Islamic legal principles are not inherently contradictory. Instead, when grounded in the principles of *'adl* (justice), mutual consent, and *maṣlaḥah* (public benefit), prenuptial agreements may serve as effective tools for advancing gender equality while remaining consistent with the objectives of contemporary Islamic family law. The findings are expected to contribute to ongoing debates concerning family law reform, women's rights, and the future development of Islamic legal thought.

2. Method

This study employs a normative legal research design to examine gender equality in prenuptial agreements from the perspective of contemporary Islamic family law. A statutory approach was used to analyze regulations governing prenuptial agreements and marital rights, while a conceptual approach was applied to explore the principles of gender equality, contractual freedom, justice, and legal protection within Islamic family law. In addition, a comparative approach was utilized to examine contemporary interpretations of Islamic legal doctrines and family law reforms in Muslim societies. The data consisted exclusively of secondary legal materials. Primary legal materials included legislation, judicial decisions, and authoritative Islamic legal sources, including the Qur'an, Hadith, and contemporary fiqh literature. Secondary legal materials comprised peer-reviewed journal articles, academic books, legal commentaries, and previous studies relevant to prenuptial agreements and gender equality. Data collection was carried out through document analysis and literature review, enabling the identification of legal norms, concepts, and scholarly arguments that support the study's objectives.

The collected data were analyzed using qualitative legal analysis. The analytical process involved data reduction, classification, interpretation, and synthesis to identify the legal foundations, limitations, and implications of prenuptial agreements in promoting gender equality. The study adopted a doctrinal analytical framework integrating the principles of contractual freedom, *'adl* (justice), and *maṣlaḥah* (public benefit) as evaluative tools. Relevant legal texts and scholarly opinions were systematically compared to assess their compatibility with contemporary understandings of gender justice. To ensure methodological rigor, source triangulation was conducted by examining legislation, judicial reasoning, Islamic legal doctrines, and academic literature from multiple jurisdictions and scholarly traditions. Reliability was strengthened through the use of authoritative and peer-reviewed sources, while validity was maintained by consistently applying the same analytical framework throughout the research process. This approach enables a comprehensive and replicable assessment of the relationship between prenuptial agreements, gender equality, and contemporary Islamic family law.

3. Result and Discussion

3.1. Evolution of Prenuptial Agreements in Contemporary Islamic Family Law

Prenuptial agreements in Islamic family law were primarily intended to regulate financial and property-related matters within marriage. Classical Islamic jurisprudence viewed marriage as both a religious institution and a legal contract that created reciprocal rights and obligations between spouses. Within this contractual framework, parties could include lawful conditions as long as they did not contradict Islamic principles.¹⁰ The most common provisions concerned the payment of *mahr* (dower), maintenance obligations, ownership of personal assets, and the management of family property. These agreements aimed to provide legal certainty and prevent disputes regarding economic rights and responsibilities. In many Muslim societies, family wealth, inheritance, and lineage played important roles in marital arrangements,¹¹ making financial regulation essential. Prenuptial agreements therefore functioned as preventive legal instruments that protected the interests of both spouses. Classical jurists generally accepted such arrangements because they promoted fairness and preserved social harmony. Although their scope was relatively limited compared to contemporary practice, these agreements demonstrated the flexibility of Islamic law in accommodating consensual arrangements between spouses. Consequently, the traditional function of prenuptial agreements focused on maintaining economic stability, protecting property rights, and reducing the possibility of future conflicts. This historical role later became the foundation for broader interpretations and applications of prenuptial agreements in contemporary Islamic family law.

Contemporary Islamic family law has significantly expanded the function of prenuptial agreements beyond their traditional focus on property and financial matters. Modern marital relationships involve a wider range of rights and responsibilities that cannot be addressed solely through economic arrangements. As a result, prenuptial agreements increasingly include provisions concerning education, employment, residence, childcare, and dispute resolution. This development reflects changing social realities in which spouses seek greater clarity regarding their expectations before entering marriage. Increased awareness of individual rights has also encouraged the use of contractual arrangements as mechanisms for legal protection. In many jurisdictions, prenuptial agreements are no longer viewed merely as tools for preserving wealth but as instruments for promoting transparency and mutual accountability.¹² Contemporary Islamic scholars generally support this broader approach when contractual provisions remain consistent with Islamic legal principles. The expansion of prenuptial agreements demonstrates a growing recognition that marriage involves social, personal, and legal dimensions that require clear regulation.¹³ By addressing issues beyond property ownership, these agreements help spouses establish a more balanced relationship and reduce uncertainty regarding future responsibilities. Consequently, the role of prenuptial agreements has evolved from a narrow economic instrument into a comprehensive legal mechanism capable of addressing the diverse needs of modern Muslim families while preserving the objectives of Islamic family law.

The growing acceptance of prenuptial agreements is closely related to the recognition of contractual autonomy in contemporary Islamic legal thought. Modern scholars increasingly emphasize that marriage is fundamentally a contractual relationship established through the mutual consent of both parties. Therefore, prospective spouses should have the opportunity to negotiate lawful conditions that reflect

¹⁰ Brunela Kullolli, "Prenuptial Agreements and Evidence in Civil Proceedings: The Albanian Experience in Comparative European Context (Germany, Italy, and France)," *Italian Law Journal* 11, no. 2 (2025): 400–422.

¹¹ Paul Bayer, *Marriage and Divorce as Social Policy*, *Global Encyclopedia of Public Administration, Public Policy, and Governance: With 294 Figures and 229 Tables*, 2018, https://doi.org/10.1007/978-3-319-20928-9_2638.

¹² Jeffrey Dew, "For Love or Money: Prenuptial Agreements and Marital Quality—A Brief Report," *Family Relations* 75, no. 2 (2026): 1054–68, <https://doi.org/10.1111/fare.70157>.

¹³ Michael J Broyde, "The Effectiveness of (Rabbinic) Prenuptial Agreements in Preventing Marital Captivity," *International Journal of Constitutional Law* 18, no. 3 (2020): 944–64, <https://doi.org/10.1093/icon/moaa067>.

their particular needs and circumstances.¹⁴ This perspective represents a significant development from more restrictive interpretations that focused primarily on traditional contractual forms. Contemporary Islamic legal discourse places greater emphasis on individual agency, consent, and the protection of rights within family relationships. Scholars frequently refer to the principles of *'adl* (justice), *maṣlaḥah* (public benefit), and the obligation to honor agreements as justifications for broader contractual freedom. Through this approach, prenuptial agreements are viewed as legitimate tools for ensuring that both spouses clearly understand their rights and responsibilities before marriage. Contractual autonomy also helps prevent exploitation and reduces potential inequalities by allowing couples to establish mutually beneficial arrangements. This development reflects efforts to harmonize Islamic legal principles with changing social realities while maintaining fidelity to religious values. As a result, prenuptial agreements are increasingly recognized not merely as optional clauses but as important legal mechanisms that support justice, legal certainty, and mutual respect.¹⁵ The recognition of contractual autonomy therefore plays a crucial role in the continuing evolution of Islamic family law.

The increasing legal recognition of prenuptial agreements in Muslim-majority countries demonstrates the dynamic development of contemporary Islamic family law. Many jurisdictions have introduced reforms that provide greater legal certainty regarding the validity and enforcement of marital agreements. Although regulations differ among countries, a common trend can be observed in the expansion of legal frameworks that allow spouses to regulate financial rights, property ownership, and other marital matters through contractual arrangements. These reforms are often motivated by the need to balance traditional Islamic legal principles with modern demands for legal protection and individual rights. Courts in several jurisdictions increasingly recognize prenuptial agreements when they are entered voluntarily and comply with legal requirements.¹⁶ In addition, lawmakers have sought to establish clearer procedures concerning the drafting, registration, and enforcement of such agreements. These measures strengthen legal protection and reduce ambiguity regarding contractual obligations. The accommodation of prenuptial agreements also reflects broader efforts to modernize family law and address emerging social challenges.¹⁷ By recognizing contractual arrangements as legitimate components of marital regulation, legal systems are better equipped to address the complexities of contemporary family life. Consequently, the growing legal acceptance of prenuptial agreements highlights the capacity of Islamic family law to adapt to changing societal conditions while preserving its commitment to justice, fairness, and family welfare.

The development of prenuptial agreements in contemporary Muslim societies has been strongly influenced by social and economic transformations. One important factor is the increasing participation of women in higher education and the labor market. As women gain greater economic independence, there is a growing need for legal mechanisms that clarify financial responsibilities and protect individual rights. Urbanization and globalization have also contributed to changes in family structures and social expectations.¹⁸ Modern marriages frequently involve dual-income households, professional careers, and complex financial arrangements that require greater legal certainty. Technological advancements and increased access to information have further enhanced public awareness of legal rights and family law issues.¹⁹ As a result, many individuals seek preventive legal measures that can minimize future disputes

¹⁴ Theresa Nutz, Anika Nelles, and Philipp M. Lersch, "Who Opts Out? The Customisation of Marriage in the German Matrimonial Property Regime," *European Journal of Population* 38, no. 3 (August 23, 2022): 353–75, <https://doi.org/10.1007/s10680-022-09613-8>.

¹⁵ Howard Fink and June Carbone, *Between Private Ordering and Public Fiat: A New Paradigm for Family Law Decision-Making, Resolving Family Conflicts*, 2017, <https://doi.org/10.4324/9781315244365-24>.

¹⁶ Helena de Azeredo Orselli and Maria Eduarda Mikiewicz Desplanches, "A (Re)Interpretation of Article 426 of the Civil Code and the Possibility of a Renunciatory Succession Agreement in a Prenuptial Contract from the Perspective of the Unity of the Brazilian Legal System; [Uma (Re)Leitura Do Artigo 426 Do Código Civil e a P.," *Civilistica.Com* 14, no. 2 (2025).

¹⁷ Yehezkel Margalit, *The Jewish Family: Between Family Law and Contract Law*, *The Jewish Family: Between Family Law and Contract Law*, 2018, <https://doi.org/10.1017/9781316681350>.

¹⁸ Antonio Las Casas, "Prenuptial Agreements in Contemplation of Divorce: Italian Proposals for Reform and Critical Issues from the Perspective of Comparative Law," *Politica Del Diritto* 51, no. 3 (2020): 417–48, <https://doi.org/10.1437/98039>.

¹⁹ Yulius Oktaber, "The Implementation of National Regulations on the Division of Joint Property During Divorce," *Indonesia Private Law Review* 4, no. 1 (2023): 19–28, <https://doi.org/10.25041/iplr.v4i1.2945>.

and provide protection against uncertainty. Economic factors such as business ownership, investments, and asset management have also increased the relevance of prenuptial agreements. In addition, discussions concerning gender equality and human rights have influenced legal and scholarly debates regarding marital contracts.²⁰ These developments have encouraged policymakers, legal practitioners, and religious scholars to reconsider traditional approaches to family regulation. Consequently, prenuptial agreements are increasingly regarded as practical legal instruments capable of responding to contemporary social realities while remaining consistent with the principles and objectives of Islamic law. The growing importance of prenuptial agreements reflects the changing legal needs of contemporary Muslim families. Modern family relationships are characterized by greater diversity in educational backgrounds, economic conditions,²¹ professional careers, and personal aspirations. These changes have generated legal issues that often require more sophisticated regulation than traditional marital arrangements can provide.²² Many couples now seek clear agreements concerning financial responsibilities, property ownership, career development, and family decision-making before marriage begins. Such arrangements help reduce uncertainty and establish a framework for resolving future disagreements. The increasing complexity of family life has also heightened awareness of the need to protect vulnerable parties, particularly in situations involving unequal bargaining power or economic disparities. Furthermore, contemporary families increasingly value transparency, communication, and shared responsibility.²³ Prenuptial agreements can support these values by encouraging prospective spouses to discuss important issues openly before marriage. Rising rates of marital disputes have also strengthened demand for preventive legal measures that contribute to family stability. In this context, prenuptial agreements serve not only as contractual documents but also as mechanisms for promoting mutual understanding and cooperation.²⁴ Their expanding role reflects a broader transformation in the perception of marriage as a partnership based on negotiation and shared responsibilities. Consequently, changing legal needs have become a major factor driving the growing acceptance of prenuptial agreements within contemporary Islamic family law.

3.2. Prenuptial Agreements as Instruments of Gender Equality and Legal Protection

Prenuptial agreements have become increasingly important instruments for protecting the rights of spouses in contemporary Islamic family law. Traditionally, marital rights and obligations were regulated through general legal provisions and religious norms that applied equally to all marriages. However, modern family relationships often involve diverse social, economic, and professional circumstances that require more specific legal arrangements. Prenuptial agreements enable prospective spouses to define their respective rights and responsibilities before marriage, thereby creating greater legal certainty and reducing potential misunderstandings. Such agreements may address issues including financial support, property ownership,²⁵ debt obligations, educational opportunities, and employment rights. By clarifying these matters in advance, both parties gain a clearer understanding of their expectations and commitments within marriage. Furthermore, prenuptial agreements provide protection for individuals who may be vulnerable to unequal treatment due to differences in economic resources or social status. Contemporary Islamic legal scholarship increasingly recognizes that such agreements are consistent with the objectives of justice and the protection of rights, provided they do not contradict Islamic

²⁰ Simona Scuderi, "Prenuptial Agreements," *Actualidad Jurídica Iberoamericana*, no. 17 BIS (2022): 1724–51.

²¹ Rachel Levmore and Steven Gotlib, *Divorce and Agunah: Halakhic Responses to Modernity*, *The Oxford Handbook of Jewish Law*, 2024, <https://doi.org/10.1093/oxfordhb/9780197508305.013.30>.

²² Aida Saraçi and Blendi Himçi, "Autonomy in Balance: Prenuptial Agreements Between Contractual Freedom and Family Law," *Multidisciplinary Science Journal* 7, no. 12 (2025), <https://doi.org/10.31893/multiscience.2025663>.

²³ Amihai Radzyner, "Jewish Law, State, and Social Reality: Prenuptial Agreements for the Prevention of Divorce Refusal in Israel and the United States," *Journal of Law and Religion* 33, no. 1 (2018): 61–88, <https://doi.org/10.1017/jlr.2018.15>.

²⁴ Nestor Duarte, "Succession Provisions in Prenuptial Agreements: A Case for Its Acceptability and Its Legal Boundaries," *Revista de Direito Civil Contemporaneo* 36 (2023): 121–34.

²⁵ Abd Shomad and Sri Hajati, "Prenuptial Agreement and the Principle of Balanced Justice in the Division of Joint Property in Islamic Marriage Law," *Yuridika* 40, no. 1 (January 25, 2025): 129–42, <https://doi.org/10.20473/ydk.v40i1.60238>.

principles.²⁶ Consequently, prenuptial agreements are no longer viewed solely as instruments for regulating assets but also as mechanisms for safeguarding personal rights and promoting family welfare. Their growing acceptance demonstrates the ability of Islamic family law to respond to contemporary social realities while preserving its ethical and legal foundations.

One of the most significant contributions of prenuptial agreements is their ability to strengthen women's bargaining position within marriage. Although Islamic law recognizes women as independent legal subjects with rights to own property and enter contractual relationships, practical inequalities may still affect the realization of these rights. Social and cultural norms in some communities continue to place women in weaker positions during negotiations concerning financial responsibilities and family roles. Prenuptial agreements provide a formal mechanism through which women can secure legal protections before marriage takes place. Through these agreements, women may negotiate provisions related to education, employment,²⁷ financial support, property ownership, and other matters that contribute to personal and economic security.²⁸ The negotiation process itself encourages communication and transparency between prospective spouses, creating opportunities for more balanced decision-making. By allowing women to articulate their expectations and interests before marriage, prenuptial agreements help reduce dependence and strengthen their participation in family affairs. Contemporary Islamic legal discourse increasingly supports contractual arrangements that protect rights and prevent potential harm. Rather than undermining marital harmony, negotiated agreements can strengthen trust by ensuring that both parties understand their responsibilities from the outset. Consequently, prenuptial agreements contribute to more equitable marital relationships and support broader efforts to advance gender equality within contemporary Muslim families while remaining consistent with Islamic legal principles.

Prenuptial agreements play a crucial role in preventing marital disputes and reducing legal uncertainty. Many conflicts within marriage arise from differing expectations regarding financial obligations, property ownership, family responsibilities, and decision-making authority. When these matters are not clearly addressed before marriage, misunderstandings can develop into serious disputes that threaten family stability. Prenuptial agreements help prevent such conflicts by allowing prospective spouses to establish clear arrangements before entering the marital relationship.²⁹ The existence of written contractual provisions enables both parties to understand their rights and obligations, thereby minimizing ambiguity. In addition, these agreements may include procedures for resolving disagreements, contributing to more effective conflict management. This preventive function is particularly relevant in contemporary societies where family structures and financial arrangements have become increasingly complex. Dual-income households,³⁰ business ownership, and transnational marriages often involve legal issues that require greater clarity than traditional marital arrangements provide. By addressing potential areas of disagreement in advance,³¹ prenuptial agreements contribute to a more predictable legal environment. From an Islamic legal perspective,³² preventing harm and preserving social harmony are important objectives that support the use of lawful contractual arrangements. Consequently, prenuptial agreements function not only as legal documents but also as practical tools that promote family stability, reduce litigation, and strengthen legal certainty within contemporary Muslim societies.

²⁶ Sonny Dewi Judiasih et al., "Postnuptial Agreement: A Comparison of Legal Systems in Indonesia and Other Countries," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 5 (2021): 1–7.

²⁷ Clarissa Gola, "Family Law and Private Autonomy, an Apparent Oxymoron: The Question of the Admissibility of Prenuptial Agreements," *Actualidad Juridica Iberoamericana*, no. 17 BIS (2022): 160–89.

²⁸ Kathrin Handschuh, "Divorce Can Threaten Your Practice! Without a Prenuptial Agreement, Your Economic Existence Is at Stake," *MMW-Fortschritte Der Medizin* 166, no. 6 (2024): 33, <https://doi.org/10.1007/s15006-024-3828-0>.

²⁹ Jamie R Abrams, *Commentary on Simeone v. Simeone, Feminist Judgments: Family Law Opinions Rewritten*, 2020, <https://doi.org/10.1017/9781108556989.011>.

³⁰ Manuela Giobbi, "Italian Assisted Negotiation: An Additional Tool to Settle Matrimonial Property Regime Cases," *Actualidad Juridica Iberoamericana*, no. 15 (2021): 164–79.

³¹ Fabiano Hartmann Peixoto and Vivian Salomao Ianelli, "Prenuptial Agreement and the Arbitration Clauses: Limits and Possibilities," *Civilistica.Com* 8, no. 2 (2019): 1–11.

³² Zsuzsanna Peres, "Marriage Property Rights of the Hungarian Noble Women According to Their Prenuptial Agreements," *Journal on European History of Law* 9, no. 2 (2018): 125–32.

The growing use of prenuptial agreements reflects an increasing emphasis on fairness and mutual responsibility within marriage. Contemporary understandings of family relationships view marriage as a partnership based on cooperation, communication, and shared obligations rather than rigid hierarchical structures. In this context, prenuptial agreements provide spouses with an opportunity to define expectations and allocate responsibilities according to their specific circumstances. By clearly outlining financial obligations,³³ property arrangements, and other aspects of family life, these agreements promote transparency and accountability between partners. Such clarity helps ensure that responsibilities are distributed fairly and that both spouses understand their respective commitments from the beginning of the marriage.³⁴ Furthermore, the process of negotiating a prenuptial agreement encourages discussion of important issues that might otherwise remain unresolved until conflicts arise. This communication strengthens mutual trust and contributes to healthier marital relationships. Contemporary Islamic legal thought increasingly recognizes that fairness requires practical mechanisms capable of protecting the interests of both spouses.³⁵ Prenuptial agreements support this objective by allowing couples to establish mutually beneficial arrangements while remaining within the framework of Islamic law. As a result, these agreements contribute to the development of marital relationships characterized by mutual respect, cooperation, and accountability. Their growing acceptance demonstrates how contractual arrangements can support the realization of fairness and shared responsibility within contemporary Muslim families.

The acceptance of prenuptial agreements in contemporary Islamic family law is closely connected to the principles of *'adl* (justice) and *maṣlaḥah* (public benefit). These principles occupy a central position in Islamic legal theory and serve as important standards for evaluating legal arrangements. Contemporary scholars increasingly argue that prenuptial agreements are compatible with Islamic law because they promote fairness, protect rights, and contribute to social welfare. The principle of *'adl* requires that legal relationships be governed by justice and the protection of legitimate interests. Prenuptial agreements support this objective by clarifying the rights and responsibilities of spouses and reducing the possibility of exploitation or unequal treatment. Likewise, the principle of *maṣlaḥah* emphasizes the importance of legal mechanisms that generate benefits and prevent harm. By enhancing legal certainty, reducing disputes, and protecting vulnerable parties, prenuptial agreements contribute to both individual and collective welfare.³⁶ Their growing acceptance demonstrates the flexibility of Islamic legal thought in responding to changing social realities while maintaining its ethical foundations. Rather than representing a departure from Islamic tradition, these agreements can be viewed as contemporary applications of longstanding legal values. Consequently, prenuptial agreements are increasingly recognized as legitimate instruments that support justice, family welfare, and social stability. Their alignment with the principles of *'adl* and *maṣlaḥah* reinforces their relevance within ongoing discussions of Islamic family law reform.

The growing recognition of prenuptial agreements has important implications for gender equality and the reform of Islamic family law. Contemporary legal developments increasingly seek to ensure that family law systems respond effectively to changing social realities while remaining faithful to Islamic values. Prenuptial agreements contribute to this objective by providing mechanisms that protect rights, promote fairness, and strengthen legal certainty within marriage. Their expanded use reflects a broader movement toward gender-sensitive interpretations of Islamic family law that emphasize justice and equality. By enabling spouses to negotiate arrangements concerning financial security, personal autonomy, and family responsibilities,³⁷ these agreements support more balanced marital relationships. They also challenge traditional assumptions that marital contracts should focus exclusively on property matters. Instead, prenuptial agreements are increasingly understood as instruments that can protect rights and

³³ Robin Fretwell Wilson, *The Overlooked Costs of Religious Deference, Religion in the Public Space: Volume III*, 2016.

³⁴ Alba Paños Pérez, "Towards an Improvement in Individual Party Autonomy in Marriage Settlements in a Cross-Border Framework," *Cuadernos de Derecho Transnacional* 13, no. 2 (2021): 440–71, <https://doi.org/10.20318/cdt.2021.6266>.

³⁵ Ellen Gordon-Bouvier, *Vulnerability, Law, and the Married Family*, *Palgrave Socio-Legal Studies*, 2020, https://doi.org/10.1007/978-3-030-61358-7_4.

³⁶ Felipe Frank, "Prenuptial Agreements and Inheritance Rights: Analysis of the Validity of a Provision Which Mutually Overrides the Existing Right to Inherit Between Marriage Partners," *Revista de Direito Civil Contemporaneo* 28, no. 8 (2021): 217–46.

³⁷ Ramalinggam Rajamanickam et al., "Prenuptial Agreement: Legal Position in Malaysia," *Academic Journal of Interdisciplinary Studies* 8, no. 4 (2019): 97–106, <https://doi.org/10.36941/ajis-2019-0042>.

enhance family welfare.³⁸ Their acceptance may encourage policymakers and legal institutions to adopt reforms that strengthen safeguards for vulnerable parties and improve access to justice.³⁹ From a gender perspective, these developments are particularly significant because they enhance women's legal position and support more equitable participation in family decision-making. Ultimately, prenuptial agreements demonstrate how Islamic family law can adapt to contemporary concerns while preserving its foundational principles.⁴⁰ Their transformative significance lies in bridging traditional legal values with modern aspirations for justice, equality, and sustainable family welfare.

3.3. Prenuptial Agreements as Instruments of Gender Equality and Legal Protection in Contemporary Islamic Family Law

The findings of this study indicate that prenuptial agreements in contemporary Islamic family law have undergone a substantial expansion in both meaning and function. Originally, these agreements were narrowly understood as instruments regulating property relations, financial responsibilities, and asset distribution between spouses. However, contemporary developments show that their scope has broadened significantly to include non-financial dimensions of marriage, such as the regulation of mutual rights and obligations, clarification of marital expectations, and prevention of potential conflicts. This shift demonstrates a dynamic interpretive trend within Islamic legal thought that accommodates changing social realities while maintaining normative continuity.⁴¹ From a theoretical perspective, this development can also be linked to the broader application of *maqāṣid al-sharī'ah*, particularly the protection of welfare and the reduction of harm within family structures. The analysis suggests that modern Islamic jurisprudence increasingly recognizes contractual freedom in marriage as long as it does not contradict fundamental religious principles and ethical norms.⁴² Consequently, prenuptial agreements are no longer viewed solely as economic arrangements, but as comprehensive legal tools that enhance fairness, legal certainty, and relational balance within the institution of marriage.⁴³ This broader understanding reflects an adaptive legal evolution in response to contemporary marital complexities and changing social expectations within Muslim societies.

The growing significance of prenuptial agreements is closely associated with major socio-economic and cultural transformations within Muslim societies. Increasing access to higher education, rising female participation in the labor market,⁴⁴ and the diversification of family structures have collectively reshaped expectations regarding marital roles and responsibilities.⁴⁵ These changes have reduced traditional dependency patterns and encouraged individuals to seek clearer legal protections within marriage. Urbanization and modernization processes have also contributed to the weakening of extended family control over marital arrangements, thereby increasing the importance of individualized legal contracts.⁴⁶ At the same time, globalization and legal pluralism have introduced multiple normative frameworks that influence how marriage contracts are understood and negotiated across different contexts. Exposure to

³⁸ Fabrice Boudjaaba and Laurent Herment, "Marriage, Land and Law: Signing a Marriage Contract in Normandy and Île-de-France, at the Time of the Napoleonic Code," *The History of the Family* 27, no. 1 (January 2, 2022): 82–99, <https://doi.org/10.1080/1081602X.2022.2026801>.

³⁹ Nicolas Frémeaux and Marion Leturcq, "Prenuptial Agreements and Matrimonial Property Regimes in France, 1855–2010," *Explorations in Economic History* 68 (2018): 132–42, <https://doi.org/10.1016/j.eeh.2017.10.004>.

⁴⁰ Nel, "Estate Planning and Wills Across Borders: Sometimes a Quagmire in the Making," *Potchefstroom Electronic Law Journal* 24 (2021), <https://doi.org/10.17159/1727-3781/2021/V24I0A8396>.

⁴¹ Rebecca Probert and Tim Dodsworth, *Contracts and Relationships of Love and Trust, Shaping the Law of Obligations: Essays in Honour of Professor Ewan McKendrick KC*, 2024, <https://doi.org/10.1093/oso/9780198889762.003.0006>.

⁴² Urszula Kicińska, "Sources for Studying the Position of Widows in Noble Families and Society in the Polish-Lithuanian Commonwealth: An Outline of the Problem and Research Questions," *Res Gestae* 13 (2021): 42–55, <https://doi.org/10.24917/24504475.13.3>.

⁴³ Elizabeth Doty, "Married to Monet: Alternatives for Complex Asset Division in the Modern Age of Matrimony," *Family Court Review* 60, no. 3 (2022): 575–89, <https://doi.org/10.1111/fcre.12660>.

⁴⁴ Michael Wutzler, "Between Prevention, Irrelevance and Questioning of Love: Interpretations of Married Couples in the Discussion and Negotiation of Prenuptial Agreements," *Zeitschrift Fur Rechtssoziologie* 41, no. 1 (2021): 97–133, <https://doi.org/10.1515/zfrs-2021-0006>.

⁴⁵ Kathrin Handschuh, "Why a Prenuptial Agreement Is Recommended: Divorce—What Happens to the Medical Practice," *CME* 21, no. 9 (2024): 40–41, <https://doi.org/10.1007/s11298-024-3933-5>.

⁴⁶ Margaret Ryznar, *Prenuptial Agreement, Marriage and Divorce in America: Issues, Trends, and Controversies*, 2023.

international human rights discourse and comparative legal systems has strengthened awareness of individual autonomy,⁴⁷ contractual fairness, and gender equality. In response, Islamic legal scholars have revisited foundational objectives of sharia, particularly justice (*‘adl*), welfare (*maṣlaḥah*), and harm prevention (*dar’ al-mafāsīd*), to ensure that legal interpretations remain relevant. These evolving conditions explain why prenuptial agreements are increasingly accepted as adaptive instruments that reconcile religious values with contemporary social needs, ensuring both continuity and relevance in modern Islamic family law while addressing emerging socio-legal complexities.

From a normative and gender perspective, the implications of prenuptial agreements are particularly significant in advancing more equitable marital relationships.⁴⁸ The findings indicate that these agreements create a structured legal mechanism through which prospective spouses can negotiate rights and responsibilities prior to marriage in a transparent and consensual manner. This pre-emptive negotiation helps reduce structural imbalances that may arise from economic disparity, social pressure, or gendered expectations within traditional marital arrangements.⁴⁹ In practical terms, prenuptial agreements can include provisions related to financial independence, education continuity, employment rights, and property ownership,⁵⁰ thereby strengthening legal protection for both parties, especially women. They also contribute to enhancing bargaining power by ensuring that consent is informed and voluntary rather than shaped by asymmetrical social conditions. Furthermore, these agreements promote transparency and mutual understanding,⁵¹ both of which are essential elements in Islamic contractual ethics and marital stability.⁵² By clarifying expectations before marriage, such agreements reduce the likelihood of disputes and foster a cooperative rather than hierarchical marital dynamic. In this sense, prenuptial agreements function not merely as legal documents, but as instruments of ethical governance within the family system,⁵³ contributing to dignity,⁵⁴ fairness, and justice in intimate social relations and long-term marital sustainability.

When compared with previous scholarly works, this study offers a more comprehensive interpretive framework for understanding prenuptial agreements in Islamic family law. Earlier studies tended to focus predominantly on the contractual and economic dimensions of these agreements, particularly issues related to property division,⁵⁵ financial protection, and legal enforceability within marriage dissolution contexts. While these contributions remain important, they often neglected the broader normative, social, and gendered implications embedded within marital contracts.⁵⁶ In contrast, this research demonstrates that prenuptial agreements also operate as mechanisms for promoting gender justice, ethical responsibility,⁵⁷ and relational equity within marriage.⁵⁸ Additionally, whereas some earlier literature

⁴⁷ Unai Iriarte, "Peisistratos and the Chariot of Athena Episode: A Chronological Reappraisal," *Studia Historica, Historia Antigua* 39 (2021): 51–72, <https://doi.org/10.14201/SHHA2021395172>.

⁴⁸ Ania Granjo Ortiz, "Agreements in Documents Annexed to the Family Protocol for the Prevention and Avoidance of Conflicts: Prenuptial Agreements and Wills," *Actualidad Civil*, no. 11 (2025).

⁴⁹ Togzhan Zhunussova, "Attitudes Toward Prenuptial Agreements and Their Potential as a Legal Regulatory Tool: The Case of the Republic of Kazakhstan," *Balkan Social Science Review* 24 (2024): 133–59, <https://doi.org/10.46763/bssr242424134z>.

⁵⁰ Gareth Miller, *Pre-Nuptial Agreements and Financial Provision*, *Frontiers of Family Law*, 2021, <https://doi.org/10.4324/9781315199092-9>.

⁵¹ Carmen López-Rendo Rodríguez and María José Azaustre Fernández, "Nuptial Agreements and Infidelity: Yesterday and Today," *Glossae* 19 (2022): 474–549.

⁵² Saheed Abdullahi Busari, "Nuptial Agreement in Muslim Marriage: A Juristic Analysis," *Jurnal Fiqh* 21, no. 1 (2024): 1–18, <https://doi.org/10.22452/fiqh.vol21no1.1>.

⁵³ Thomas W Joo, *The Discourse of "Contract" and the Law of Marriage*, *Research in Law and Economics*, vol. 17, 2025, [https://doi.org/10.1108/S0193-5895\(2009\)0000024011](https://doi.org/10.1108/S0193-5895(2009)0000024011).

⁵⁴ Belinda Fehlberg and Bruce Smyth, *Binding Prenuptial Agreements in Australia: The First Year, Feminist Perspectives on Contract Law*, 2017.

⁵⁵ Lynsey K Romo and Noah Czajkowski, "An Examination of Redditors' Metaphorical Sensemaking of Prenuptial Agreements," *Journal of Family and Economic Issues* 43, no. 1 (2022), <https://doi.org/10.1007/s10834-021-09765-5>.

⁵⁶ Rohmadi Rohmadi et al., "Optimizing Prenuptial Agreements for Asset Protection: A Maqashid Sharia Based Approach," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (September 20, 2024): 411–34, <https://doi.org/10.29240/jhi.v9i2.11064>.

⁵⁷ Emily Hickman, "Proceed with Caution: Readjusting the Procedural Requirements for Prenuptial Agreements Post-Acurio v. Acurio," *Louisiana Law Review* 81, no. 4 (2021): 1431–75.

⁵⁸ Carlos Alberto Dabus Maluf, "The Filing of a Legal Claim by a Spouse Seeking to Nullify a Clause of Prenuptial Agreement Involving Separate Property of the Husband's Assets That Were Previously Inherited by Him: Prenuptial Clause Which Was Originally Agreed by the Parties – Feasibili," *Revista de Direito Civil Contemporaneo* 30, no. 9 (2022): 391–451.

questioned the compatibility of prenuptial agreements with Islamic legal principles,⁵⁹ this study shows that contemporary jurisprudential approaches increasingly accept such agreements under the doctrines of contractual freedom (*al-'aqd*), public interest (*maṣlaḥah*), and prevention of harm (*darar*). The integration of gender-sensitive analysis with Islamic legal theory enables a more holistic understanding of marital agreements within evolving socio-legal contexts.⁶⁰ This approach also highlights the interdisciplinary nature of family law studies, bridging classical jurisprudence, modern legal theory, and socio-cultural analysis in a more integrated manner than previous research frameworks.

From a policy and theoretical standpoint, the findings underscore the necessity of strengthening the institutional and conceptual foundations of prenuptial agreements within Islamic family law systems. The legitimacy of such agreements is grounded in core Islamic legal principles, particularly justice (*'adl*), public welfare (*maṣlaḥah*), and harm prevention, all of which emphasize fairness, social stability, and ethical responsibility. Therefore, regulatory frameworks should be developed or refined to ensure that prenuptial agreements are clearly defined,⁶¹ properly implemented, and consistently enforced in ways that align with Islamic ethical standards and national legal systems. Judicial institutions and marriage registrars should also be equipped with clear guidelines to assess the validity and fairness of such agreements before marriage registration.⁶² In addition, legal education and public awareness programs should be strengthened to improve understanding of marital rights, contractual obligations,⁶³ and the ethical dimensions of marriage planning. Future research should adopt empirical and comparative approaches to examine how prenuptial agreements function in real-life marital relationships across different socio-cultural settings. Ultimately, strengthening both the theoretical and practical dimensions of prenuptial agreements can contribute to the development of more just, transparent, and resilient family law systems in contemporary Muslim societies.

Conclusion

This study demonstrates that prenuptial agreements can function as an important legal instrument for promoting gender equality within the framework of contemporary Islamic family law. The findings reveal that prenuptial agreements are not limited to regulating property relations but also provide legal mechanisms for clarifying the rights and obligations of spouses before marriage. Contemporary interpretations of Islamic family law increasingly recognize contractual autonomy as long as the agreed provisions do not contradict fundamental Islamic principles, public order, or morality. The analysis shows that prenuptial agreements may strengthen women's legal and economic protection, reduce potential disputes arising from unequal bargaining positions, and encourage greater transparency in marital relationships. Their legitimacy is supported by the Islamic legal principles of mutual consent, *'adl* (justice), and *maṣlaḥah* (public benefit), which emphasize fairness and the protection of individual rights. Consequently, prenuptial agreements can be understood as a legitimate and flexible mechanism for advancing more equitable marital relations in contemporary Muslim societies.

The significance of this study lies in its contribution to the growing discourse on gender equality and Islamic family law reform. Conceptually, the study expands the understanding of prenuptial agreements beyond their traditional function as property arrangements by positioning them as instruments that can support gender justice and balanced marital relationships. Theoretically, it demonstrates that contractual freedom and Islamic legal principles are not necessarily contradictory but can be integrated to achieve

⁵⁹ Emma Hitchings, *The Impact of Recent Ancillary Relief Jurisprudence in the 'Everyday' Ancillary Relief Case, Marital Rights: The Library of Essays on Family Rights*, 2017, <https://doi.org/10.4324/9781315091464>.

⁶⁰ Miranda Kaye, Lisa Sarma, and Belinda Fehlberg, "Prenuptial Agreements: Lawyers' Reflections on the Influence of Family," *Journal of Social Welfare and Family Law* 46, no. 4 (2024): 491–512, <https://doi.org/10.1080/09649069.2025.2454108>.

⁶¹ Bintang Nur Rohman, Vina Durrotul Mukhoyyaroh, and Adelia Arnanda Arifin, "Ownership Status of Implementation of Assets in Mixed Marriages," *Contemporary Issues on Interfaith Law and Society* 2, no. 2 (2023): 101–18, <https://doi.org/10.15294/ciils.v2i2.68854>.

⁶² Anna Penkała-Jastrzębska, "Supplication for the Quickest Possible Conclusion: Analysis of Source Materials Regarding Magnate Pre-Wedding Negotiations," *Prace Historyczne* 149, no. 1 (2022): 53–71, <https://doi.org/10.4467/20844069PH.22.005.14618>.

⁶³ Russell Sandberg and Sharon Thompson, "Relational Autonomy and Religious Tribunals," *Oxford Journal of Law and Religion* 6, no. 1 (2017): 137–61, <https://doi.org/10.1093/ojlr/rww059>.

equitable outcomes. Methodologically, the study provides a normative legal framework that combines statutory analysis, Islamic legal doctrine, and contemporary gender perspectives. By highlighting the compatibility between prenuptial agreements and the objectives of contemporary Islamic family law, this research contributes to ongoing academic discussions concerning legal reform, marital rights, and gender-responsive interpretations of Islamic law. These findings offer a useful foundation for scholars, policymakers, and legal practitioners seeking to strengthen gender equality within Muslim family law systems.

Declarations

Author Contribution Statement

Fatimatuz Zahroni contributed to the conceptualization, methodology development, and drafting of the manuscript. Bashori Alwi was responsible for data collection, analysis, and interpretation of findings. Adam Adesina Muhammad-Lawal contributed to the literature review, critical revision of the manuscript, and final approval of the version to be published. All authors have read and agreed to the published version of the manuscript.

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Declaration of Interests Statement

The authors declare that they have no known competing financial interests or personal relationships that could have influenced the work reported in this paper.

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