

EXAMINING LEGAL SAFEGUARDS FOR WIVES AGAINST DOMESTIC VIOLENCE AND MARITAL INFIDELITY VIA PRENUPTIAL AGREEMENTS IN INDONESIA: AN ISLAMIC FAMILY LAW PERSPECTIVE

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Abstract

This study examines the legal protection of wives under Islamic family law in Indonesia, particularly in cases involving domestic violence and infidelity despite the existence of a prenuptial agreement. The case under review, which took place in the city of Padang, is notable because the husband violated the terms of the prenuptial agreement—an agreement that not only regulated property rights but also explicitly prohibited acts of violence and adultery. The objective of this research is to explore the dynamics of the case by analyzing it through the lenses of Indonesia's positive law, Islamic law as applied in Indonesia, and relevant fiqh principles. The study adopts a qualitative design with a socio-juridical approach. Primary data were obtained through in-depth interviews with the victim (RA, 32 years old), the victim's lawyer, and a judge from the Class 1A Religious Court in Padang City. Secondary data were collected from literature reviews of legislation, classical fiqh texts, and prior studies. Data analysis followed the Miles & Huberman and Robert E. Stake models, involving data collection, reduction, presentation, conclusion drawing, and interpretation. The findings reveal that the legal protection afforded to the wife is supported by multiple overlapping legal frameworks, including the Compilation of Islamic Law (KHI), the Civil Code (KUHPdata), the Criminal Code (KUHP), the Marriage Law, the Law on the Elimination of Domestic Violence, and other related regulations. Fiqh principles such as *al-umūr bi maqāṣidihā* (actions are judged by intentions) and *ad-dharar yuzāl* (harm must be eliminated) further reinforce this protection. The study concludes that, in this and similar cases, the legal protection of wives has strong legitimacy under civil, criminal, and Islamic law, thereby empowering women to pursue legal action, file reports, and seek judicial remedies without fear.

Keywords: *Islamic Law; Domestic Violence; Prenuptial Agreement; Infidelity; Perselingkuhan; Wife Protection.*

Abstrak

Penelitian ini membahas perlindungan hukum bagi istri dalam hukum keluarga Islam di Indonesia, khususnya pada kasus kekerasan dan perselingkuhan meskipun telah ada perjanjian pranikah. Kasus yang terjadi di Kota Padang ini menjadi sorotan karena sang suami melanggar isi perjanjian pranikah yang tidak hanya mengatur izin harta, tetapi juga mencakup larangan atas kekerasan dan perselingkuhan. Tujuan penelitian ini adalah untuk mengkaji dinamika kasus tersebut dengan menelaah aspek hukum positif Indonesia, hukum Islam Indonesia, dan kaidah-

kaidah fiqh yang relevan. Metode penelitian yang digunakan adalah pendekatan kualitatif dengan pendekatan yuridis sosiologis. Data primer dikumpulkan melalui wawancara mendalam dengan korban (RA, 32 tahun), pengacara korban, dan seorang hakim Pengadilan Agama Kelas 1A Kota Padang. Sementara itu, data sekunder diperoleh dari studi pustaka terhadap peraturan-undangan, kitab fiqh, dan penelitian terdahulu. Analisis data menggunakan pendekatan Miles & Huberman serta Robert E. Stake dengan tahapan: pengumpulan data, reduksi data, penyajian data, penarikan kesimpulan, dan interpretasi. Temuan penelitian menunjukkan bahwa perlindungan hukum bagi korban didukung oleh berbagai landasan hukum yang tumpang tindih, termasuk ketentuan Kompilasi Hukum Islam (KHI), KUHPdata, KUHP, UU Perkawinan, UU Kekerasan Dalam Rumah Tangga, dan peraturan terkait lainnya. Prinsip fiqh seperti *al-umur bi maqashidiha* (semuanya tergantung pada niat) dan *ad-dharar yuzal* (bahaya harus dihilangkan) juga memperkuat perlindungan ini. Dampak penelitian dalam kasus ini maupun kasus serupa, perlindungan hukum terhadap istri memiliki legitimasi kuat dari sisi hukum perdata, pidana, dan hukum Islam, sehingga istri tidak perlu takut untuk melakukan penuntutan, pelaporan, maupun permohonan hukum.

Kata Kunci: *Hukum Islam; Kekerasan dalam Rumah Tangga; Perjanjian Pranikah; Perselingkuhan; Perlindungan Istri*

INTRODUCTION

A prenuptial agreement represents a formal written contract between prospective spouses, established prior to the solemnization of marriage. Within the Indonesian legal framework, its validity is explicitly recognized under Article 29 of the Marriage Law.¹ Such agreements typically delineate various aspects of marital life, encompassing asset distribution, spousal responsibilities, and rights pertaining to potential divorce proceedings.² Given the increasing prevalence of domestic violence and marital infidelity, prenuptial agreements are emerging as a crucial legal mechanism to safeguard women's rights within marriage, particularly when they confront abuse or infidelity from their partners.³⁴

The practical implications of this legal and social phenomenon are starkly illustrated by the case of an individual identified as RA and her husband, whose marriage commenced on February 14, 2020. During their marriage, the husband's demeanor underwent a significant transformation, leading to systemic and sustained psychological abuse. This abuse included

¹ President of the Republic of Indonesia, 'Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage', 1974.

² Martitah Martitah et al., 'Insufficient Criminal Justice System Response to the Severity of Domestic Violence during the Pandemic in Indonesia', *Hell* 10, no. 14 (July 2024): e33719, <https://doi.org/10.1016/j.heliyon.2024.e33719>.

³ Kimberly Dalve et al., 'Suicide-Related Behavior and Firearm Access among Perpetrators of Domestic Violence Subject to Domestic Violence Protection Orders', *Preventive Medicine Reports* 37 (January 2024): 102560, <https://doi.org/10.1016/j.pmedr.2023.102560>.

⁴ Pebri, 'Komnas Perempuan Reports 400,000 Cases of Violence against Women in 2023', *NATIONAL, OBSERVER - the Latest Information about Indonesian News and Social Culture*, 7 March 2024, <https://observerid.com/komnas-perempuan-reports-400000-cases-of-violence-against-women-in-2023/>.

daily verbal insults and threats, culminating in instances such as confining RA to a room for two days over minor issues. The escalation of violence reached a critical point when RA suffered physical abuse, resulting in a miscarriage during the second month of her pregnancy. Furthermore, in mid-2022, RA uncovered evidence of her husband's infidelity with his personal secretary. This evidence comprised digital communications, photographic documentation of their relationship, and audio recordings containing threats of violence, including the husband's explicit declaration of intent to commit femicide should RA pursue divorce. Additional corroborating evidence was provided by third-party witnesses who observed the husband engaged in an extramarital affair while ostensibly on official travel.⁵

This compelling case raises significant questions regarding the efficacy of prenuptial agreements within the Indonesian Islamic family law system. Despite Islamic law's profound emphasis on justice and the protection of women, its practical implementation frequently encounters various impediments. Indeed, the principles of *maqāṣid al-syarī'ah* underscore the imperative of protecting life (*ḥifẓ al-naḥs*), honor (*ḥifẓ al-'ird*), and women's rights as foundational Islamic values.⁶ Consequently, a critical examination is warranted to ascertain the extent to which Indonesia's positive laws, encompassing both Islamic and national legal frameworks, effectively provide such protection.⁷ Ultimately, legal protection for wives who are victims of violence and infidelity transcends mere defense; it embodies a fulfillment of constitutional mandates and cherished religious tenets.⁸

Previous scholarly endeavors have explored related themes. Rosmita et al. investigated the protection of wives from domestic violence within Islamic law through the affirmation of spousal rights and duties, and the pivotal roles of family mediators and religious institutions.⁹ Hasibuan examined aspects of *fiqh jinayah* as a basis for sanctions against domestic violence, including infidelity, focusing primarily on punitive measures such as *qishash* and *diyat* rather than preventive mechanisms like prenuptial agreements.¹⁰ Usup analyzed *walimah al-'urs* as a

⁵ Muhammad Anwar, 'Interview with the Victim's Lawyer (RA:32) Violence and Infidelity', 10 July 2025.

⁶ Salela Sumarwanti, 'Analysis of Positive Legal Protection and Islamic Criminal Law against Wives as Victims of Domestic Violence' (Thesis, UIN Sunan Ampel Surabaya, 2022).

⁷ Miftahul Huda and Tri Wahyu Hidayati, 'An Analysis Of The Results Of The 33rd Nu Congress 2015 On The Protection Of Indonesian Migrant Workers And Marriage Registration For Muslim Migrant Workers Abroad.', *Islamic Law* 24, no. 2 (January 2025): 2, <https://doi.org/10.24014/hi.v24i2.24567>.

⁸ Huda and Hidayati.

⁹ Rosmita Rosmita, Dewi Indriani, and Harniah Harniah, 'The Concept of Wives Protection in Domestic Violence (KDRT) from the Perspective of Islamic Law', *AL-QIBLAH: Journal of Islamic Studies and Arabic Language* 3, no. 3 (2024): 283–95, <https://journal.stiba.ac.id/index.php/qiblah/article/view/1436>.

¹⁰ Boying Hasibuan and Boying Hasibuan, 'Protection of Victims of Domestic Violence in the Analysis of Islamic Criminal Law in the City of Medan', *Al-Qanun: Journal of Social Studies and Islamic Law* 2 (2021): 47–62,

symbol of social control in marriage but did not address post-marital violence and infidelity.¹¹ Musyahidah and Rustina highlighted women's resilience in the face of divorce and their societal role as single mothers, without delving into legal instruments such as prenuptial agreements for pre-divorce protection.¹² Nasrullah and Rustam discussed the police's role in infidelity investigations, primarily within the context of criminal law, thereby not addressing the complexities of domestic relations under civil and sharia law.¹³

Based on this review of prior research, a discernible gap exists concerning the legal protection afforded to wives against domestic violence and infidelity, particularly when a prenuptial agreement is in place. This study aims to bridge this gap by highlighting the dynamics of domestic conflict leading to divorce, the significance of evidence pertaining to violence and infidelity—especially when serious threats to the wife's safety are involved—and the legal validity of claims substantiated by prenuptial agreements. This research will further explore infidelity as a violation of the marriage contract and how provisions articulated in prenuptial agreements serve as a foundation for divorce petitions and formal rights claims. Consequently, this study offers a novel contribution by integrating approaches from both Islamic law and Indonesian positive law to address domestic conflicts involving violence and infidelity, positioning the prenuptial agreement as a central element in safeguarding wives who experience marital injustice.

METHOD

This study employs a qualitative methodology with a sociological-juridical approach. This choice was made to not only interpret legal texts normatively but also to critically examine their practical application within real-world social contexts, particularly regarding instances of domestic violence and infidelity in marriages featuring prenuptial agreements. Primary data were gathered through in-depth, semi-structured interviews with three key informants: RA, a female victim currently involved in divorce proceedings at a religious court; her legal counsel, Muhammad Anwar, SH, MH; and Bachruddin, MH, a legal practitioner affiliated with the Padang City Class 1A Religious Court, who is experienced in such

<http://download.garuda.kemdikbud.go.id/article.php?article=3357566&val=29450&title=Perlindungan%20Korban%20Tindak%20Pidana%20Kekerasan%20Dalam%20Rumah%20Tangga%20Dalam%20Analisis%20Hukum%20Pidana%20Islam%20Di%20Kota%20Medan>.

¹¹ Jamila Usup, 'Walimah Al-'Urs and Legal Protection of Wives in Manado City', *Transformasi* 5, no. 1 (2023): 1–19, <https://transformasi.kemenag.go.id/index.php/journal/article/view/282>.

¹² Sitti Musyahidah and Rustina, 'Women's Response in Responding to Divorce Cases Due to Infidelity from a Family Law Perspective', *Musawa: Journal for Gender Studies* 15, no. 1 (2023): 60–89, <https://jurnal.uindatokarama.ac.id/index.php/msw/article/view/2069>.

¹³ Nasrullah Nasrullah and Rustam Rustam, 'Investigators' Efforts to Uncover Affair with Alleged Adultery (Patilaggio Police Case Study)', *Perfecto: Journal of Legal Sciences* 1, no. 2 (2023): 73–82, <http://jurnal.ideaspublishing.co.id/index.php/jih/article/view/1439>.

cases. These interviews aimed to elicit contextual and reflective insights concerning the legal, social, and personal dimensions of the victim's experiences.

RA, the primary victim, recounted her direct experiences with domestic violence and marital infidelity at the hands of her husband. Her legal counsel, Muhammad Anwar, SH, MH, provided insights as RA's representative and also functioned as a key witness to both the case particulars and the prenuptial agreement between RA and her husband. Bachruddin, MH, offered information pertinent to the statutory provisions governing RA's case. Secondary data were sourced from various legal documents, including Law Number 1 of 1974 concerning Marriage, Law Number 23 of 2004 concerning the Elimination of Domestic Violence, the Compilation of Islamic Law, and additional legislative and regulatory instruments, alongside pertinent supporting documentation. Furthermore, prior research findings and relevant academic literature were utilized to fortify the theoretical underpinnings and analytical framework of this study.

Data analysis was conducted employing the Miles and Huberman technique, comprising data reduction, data display, and conclusion drawing. Data reduction involved meticulously filtering pertinent information from interviews and legal documents, subsequently presented as thematic narratives to facilitate pattern identification. Conclusions were then derived through direct interpretation, informed by Robert E. Stake's case study approach. This approach emphasizes a profound understanding of the case context, acknowledges the subject's emotional involvement and experiences, and prioritizes the extraction of meaning from the specific situation under investigation. This interpretive process aimed to generate conclusions that were not merely descriptive but also reflected the intricate social and legal realities confronting the victim.

RESULTS AND DISCUSSION

The Dynamics of Domestic Violence and Marital Infidelity: A Case Study Perspective

The case of RA vividly illustrates the degradation of a marital relationship, transforming from an initial state of equality to one characterized by significant power asymmetry, ultimately culminating in acts of violence. In the second year of their marriage, RA's husband initiated a pattern of abusive behavior, encompassing both verbal and psychological forms. This behavior included frequent verbal abuse, shouting, and demeaning remarks, which progressively eroded RA's self-esteem as both a spouse and a professional. Her husband reportedly called RA "useless" and blamed marital conflicts on her profession as a lawyer. The relationship was characterized by systematic psychological abuse, which subsequently escalated to physical violence. Instances of physical violence included slapping, hair-pulling, and a two-day confinement of RA for a delayed response to messages. This distressing situation tragically led to a miscarriage during RA's second month of pregnancy. RA articulated that "the verbal, psychological, and physical violence experienced caused severe trauma and turned the

household into an unsafe environment,” thus compelling her to seek legal recourse using instruments established at the marriage's inception.¹⁴

The prenuptial agreement served as the pivotal document for RA's initiation of legal proceedings. This legally ratified agreement incorporated a clause empowering the victim to pursue divorce in cases of violence or infidelity.¹⁵ RA confirmed that these stipulated conditions aligned with her lived experiences. Furthermore, RA uncovered evidence of her husband's infidelity, accompanied by threats, including a voice recording in which he stated he would “throw RA off the balcony” if she filed for divorce. The violence evolved into a multifaceted pattern of terror, transforming the domestic sphere into an environment perilous to life and limb. Despite the presence of robust legal documentation, RA observed challenges in the practical application of the legal system, noting that protection regulations do exist, but they have not been implemented in real terms on the ground, especially when the perpetrators are in power.¹⁶ This observation underscores a persistent gap between the promulgation of legal protections and their effective enforcement for victims.¹⁷

RA's legal counsel affirmed the prenuptial agreement as a valid and highly probative legal instrument in divorce cases involving violence and infidelity. The counsel emphasized that the agreement acquires legal enforceability when “made before the marriage contract, ratified by a notary, and recorded in the KUA”¹⁸ consistent with the Civil Code and Law Number 1 of 1974 concerning Marriage.¹⁹

Beyond its formal attributes, the agreement holds substantive significance due to its protective clauses prohibiting violence and infidelity. RA's lawyer elaborated that “prenuptial agreements that contain a prohibition of violence or infidelity strengthen the victim's legal position in filing a divorce lawsuit.”²⁰ These clauses, when corroborated by supporting evidence such as voice recordings, digital communications, or third-party testimonies, are admissible as valid evidence during legal proceedings.²¹

¹⁴ R A, 'Interview with Victims (RA:32) Violence and Infidelity', 10 July 2025.

¹⁵ Firdaus Firdaus et al., 'The Principles of the Concept of Maslahah in Islamic Family Law of a Wife Looking for Living Husband Taking Care of Household Work', *Al-Istinbath: Journal of Islamic Law* 9, no. 1 (2024): 1, <https://doi.org/10.29240/jhi.v9i1.8464>.

¹⁶ R A, 'Interview with Victims (RA:32) Violence and Infidelity', 10 July 2025.

¹⁷ Miftahul Haq, Jumni Nelli, and Erman Gani, 'Marriage Agreements Based on Fiqhiyah Rules and Positive Law in Indonesia', *Jotika Research in Business Law* 2, no. 2 (2023): 55–65, <https://doi.org/10.56445/jrb1.v2i2.93>.

¹⁸ Muhammad Anwar, 'Interview with the Victim's Lawyer (RA:32) Violence and Infidelity', 10 July 2025.

¹⁹ Indonesia, 'Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage'.

²⁰ Anwar, To the Victim's Lawyer (RA:32) Violence and Infidelity.

²¹ Rosmita, Indriani, and Harniah, 'The Concept of Wife Protection in Domestic Violence (KDRT) from an Islamic Legal Perspective'.

From a jurisprudential perspective, the agreement is deemed permissible provided it does not contravene the principles of Islamic law. The fiqh rule, *al-dharar yuzal*, furnishes a legitimate Islamic legal basis for such protective provisions.²² Consequently, the existence of this agreement reflects a dual commitment to legal and moral protection within the marital context.²³ In legal practice, RA's counsel primarily referenced Law Number 23 of 2004 concerning the Elimination of Domestic Violence, alongside the Law on the Eradication of Sexual Violence, the Compilation of Islamic Law, and the Criminal Code for criminal offenses.²⁴ Nevertheless, challenges in legal implementation were highlighted, with the counsel asserting that “the implementation of legal harmonization is highly dependent on the courage of victims in accessing justice and the sensitivity of law enforcement officials.”²⁵ Many victims encounter obstacles to justice due to limited information and potential influence exerted by perpetrators' legal representatives, thus rendering existing legal instruments not universally accessible.²⁶

A judge from the Padang City Class IA Religious Court corroborated the prenuptial agreement's legal strength and relevance in divorce cases arising from violence and infidelity. The judge clarified that “a prenuptial agreement has significant legal force if it is made before the marriage contract, notarized by a notary, and recorded in the KUA”.²⁷ This agreement can serve as a foundational element for judicial considerations in granting divorce petitions, as well as in determining child custody and moral compensation for the wife. From the perspective of Islamic law, the judge indicated that the agreement's content is evaluated against Articles 45 and 51 of the KHI.²⁸ Provided its clauses do not conflict with sharia principles, the agreement is considered valid and constitutes a robust legal basis.²⁹ This assessment is further reinforced by the fiqh rule of *dar'u al-mafâsid*, which provides religious legitimacy for the prevention of harm within a household.³⁰

²² Wildan Jauhari, *Fiqh Rules; Dhararu Yuzal*, 1st ed. (South Jakarta: Rumah Fiqh Publishing, 2018).

²³ Muhammad Anwar, 'Interview with the Victim's Lawyer (RA:32) Violence and Infidelity', 10 July 2025.

²⁴ President of the Republic of Indonesia, 'Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Violence in the Ladder', 2004.

²⁵ Muhammad Anwar, 'Interview with the Victim's Lawyer (RA:32) Violence and Infidelity', 10 July 2025.

²⁶ Nandita Banerjee Dhawan and Harshita Bhasin, 'Combating Domestic Violence in West Bengal, India: Gendered Norms and Legal Regulations', *International Journal of Educational Research Open* 7 (December 2024): 100352, <https://doi.org/10.1016/j.ijedro.2024.100352>.

²⁷ Bachruddin Bachruddin, 'Interview with the Judge of the Class 1A Religious Court of Padang City', 10 July 2025.

²⁸ Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code (2023).

²⁹ Bachruddin Bachruddin, 'Interview with the Judge of the Class 1A Religious Court of Padang City', 10 July 2025.

³⁰ Abd. Rahman Dahlan, *Ushul Fiqh* (Jakarta: Amzah, 2010).

In assessing acts of violence and infidelity, the religious court referenced Law Number 23 of 2004 concerning PKDRT, Article 116 of the KHI, and principles of human rights protection enshrined in national law and human rights legislation. This approach demonstrates an integrated understanding that spans national legal frameworks, religious tenets, and fiqh. The judge additionally underscored the imperative for premarital education that includes comprehensive information about prenuptial agreements, stating that “prenuptial agreements have high urgency, and should even be part of prenuptial education at KUA”.³¹ The broad dissemination of knowledge regarding these agreements is essential to ensure their understanding extends beyond a select elite to empower young couples with crucial protective provisions.³²

A Socio-Juridical Analysis of Violence and Infidelity Cases

Drawing from the case of RA, a victim of domestic violence and infidelity, a substantive legal analysis across both Indonesian Islamic law and positive law affirms that such actions constitute violations of human rights, familial norms, and established legal principles.³³ This examination highlights the legal system's capacity to provide effective safeguards for women subjected to domestic injustice.³⁴ Research by Mamlu'atur Rohmah, for instance, demonstrates that prenuptial agreements function as a spousal commitment, encompassing protections such as property separation, the elimination of domestic violence, prohibitions against polygamy, and infidelity, all notarized by a public notary. Rohmah's study links a rise in divorce cases in Indonesia to a lack of marital commitment, with infidelity and domestic violence accounting for a substantial 259,150 cases in 2017.³⁵

Consistent with this perspective, Muhazzir & Firmansyah underscore Islam's categorical prohibition of all forms of domestic violence, as they contradict the marital objective of

³¹ Bachruddin Bachruddin, 'Interview with the Judge of the Class 1A Religious Court of Padang City', 10 July 2025.

³² Martitah et al., 'Insufficient Criminal Justice System Response to the Severity of Domestic Violence during the Pandemic in Indonesia'.

³³ Firdaus Firdaus, Syaflin Halim, and Isral Naska, 'The Protection of Islamic Women in Indonesia: Evaluation of Polygamy Sanctions and Its Implications', *KARSA Journal of Social and Islamic Culture* 31, no. 1 (2023): 79–108, <https://ejournal.iainmadura.ac.id/index.php/karsa/article/view/10611>.

³⁴ Iffah Fathiah, 'Itsbat Nikah Polygamy Perspective of Marriage and Sema Law No. 3 of 2018', *Mawaddah: Journal of Islamic Family Law* 1, no. 1 (2023): 1, <https://doi.org/10.52496/mjhki.v1i1.2>.

³⁵ Mamlu'atur Rohmah, 'Commitment in Prenuptial Agreements as an Effort to Protect Women and Minimize Divorce', *Maliki Interdisciplinary Journal* 1, no. 6 (2023): 575–82, <https://urj.uin-malang.ac.id/index.php/mij/article/download/4702/2085>.

fostering *mawaddah wa rahmah*.³⁶ Similarly, Devi's research indicates that infidelity frequently precipitates domestic violence, leading to divorce. The Kediri case concerning infidelity and domestic violence illustrates the significant influence of normative sanctions in deterring perpetrators and offering initial protection to victims.³⁷ From a juridical standpoint, Hasibuan et al. emphasize that prenuptial agreements extend beyond property division to include protective clauses against violence and infidelity, rendering violations of these clauses valid grounds for legal action.³⁸ Pratitis & Rehulina further note that despite low public awareness, a consensus suggests prenuptial agreements are effective instruments for preventing domestic conflicts, including domestic violence.³⁹

Under Indonesian Islamic law, the Compilation of Islamic Law serves as a foundational legal text for family cases. Article 116 of the KHI stipulates that legitimate grounds for divorce include instances where one party commits cruelty or gross mistreatment endangering the other, or engages in adultery.⁴⁰ This aligns with the fiqh principle of *al-dharar yuzal*, which mandates the eradication of all forms of *harm*.⁴¹ Al-Mansur et al. explain that infidelity and violence often arise from both internal and external factors, such as mutual attraction, close relationships, and other erotic influences. Such behaviors are unequivocally condemned by religious tenets, as they undermine the marital bond. These cases frequently involve a third party affecting either spouse, leading to infidelity, polygamy, or violence.⁴²

Furthermore, KHI Articles 45 and 47 recognize the validity of marriage agreements provided they do not contravene Islamic law, and Article 51 explicitly states that breaches of a marriage agreement's terms can serve as grounds for a lawsuit seeking annulment or divorce.⁴³

³⁶ Muhammad Muhazzir and Heri Firmansyah, 'The Practice of Prenuptial Oral Agreements in Hinai Kiri Village, Secanggang District, Langkat Regency in the Perspective of Islamic Law and Family Law in Indonesia', *KABILAH: Journal of Social Community* 8, no. 1 (2023): 920–34, <https://ejournal.kopertais4.or.id/madura/index.php/kabilah/article/view/7208>.

³⁷ Elin Kusuma Devi, 'The Role of Normative Sanctions in Preventing Infidelity as a Trigger for Domestic Violence: A Juridical-Sociological Study in the Religious Court of Kediri Regency', *HARISA: Journal of Law, Sharia, and Social* 2, no. 1 (2025): 186–99, <https://ejournal.eddhucenter.com/index.php/harisa/article/view/71>.

³⁸ Nurmazidah Hasanah Hasibuan et al., 'Marriage Agreements in Civil Law', *Journal of Friends of ISNU SU* 2, no. 1 (2025): 139–46, <https://journal.isnu-sumut.org/index.php/jfisnu/article/view/748>.

³⁹ Sugih Ayu Pratitis and Rehulina Rehulina, 'The Validity of Prenuptial Agreements and Their Legal Consequences Reviewed from a Legal Perspective', *JOURNAL OF LAW, POLITICS AND SOCIAL SCIENCES* 2, no. 2 (2023): 60–71, <https://doi.org/10.55606/jhpis.v2i2.1593>.

⁴⁰ President of the Republic of Indonesia, 'Compilation of Islamic Law' (1991).

⁴¹ Abdul Hakim and Ali Alkosibati, 'The Distinction Between Nusyūz And Domestic Violence: The Relevance of Muhammad Sa'id Ramadhan Al-Buthi Thought in Contemporary Context', *Al-Ahwal: Journal of Islamic Family Law* 15, no. 1 (2022): 1, <https://doi.org/10.14421/ahwal.2022.15103>.

⁴² Muhammad Al Mansur, Saim Saim, and Rino Riyaldi, 'Factors Causing Spousal Infidelity and Efforts to Handle It in KUA Rupert District', *TAHKIM* 17, no. 1 (2021): 62–82, https://www.academia.edu/download/68651587/05_Mansur_Perselingkuhan_OK.pdf.

⁴³ President of the Republic of Indonesia, 'Compilation of Islamic Law', 1991.

Within Indonesia's positive legal framework, a broad array of regulations pertains to these issues. Law Number 1 of 1974 concerning Marriage, Article 39 Paragraph 2 letters a and d, establishes adultery or dangerous cruelty as bases for filing a divorce lawsuit. Article 29 also governs the validity of prenuptial agreements executed before marriage and ratified by authorized officials.⁴⁴

The Civil Code similarly asserts that gross violence and adultery can form the basis for a divorce lawsuit. Regarding prenuptial agreements, Articles 139 and 147 of the Civil Code guarantee their validity, provided they adhere to public order and morality and are formalized via a notary deed.⁴⁵ In a criminal context, Law Number 1 of 2023 concerning the Criminal Code designates infidelity or adultery as criminal offenses, while violence endangering lives or causing physical and psychological suffering is also criminalized.⁴⁶

Law Number 23 of 2004 concerning the Elimination of Domestic Violence acts as a specialized legal framework protecting victims of domestic violence. Article 1 prohibits and mandates action against physical, sexual, psychological, and neglect-based violence. Articles 6 and 7 delineate forms of physical and psychological violence, including those leading to severe psychological suffering and loss of security.⁴⁷ This law ensures protection orders and legal assistance for victims, although RA's experience demonstrates that its implementation is often suboptimal.⁴⁸ Moreover, Law No. 39 of 1999 on Human Rights reinforces women's rights to reproductive safety, autonomy, and rights to children and joint property post-divorce, all explicitly violated in the RA case.⁴⁹ In practice, many women are unable to secure these rights due to power imbalances influenced by socially and economically dominant actors.⁵⁰

In terms of marriage administration, the Regulation of the Minister of Religion of the Republic of Indonesia Number 20 of 2019 validates prenuptial agreements made either before or during marriage. Article 22 mandates that such agreements be notarized and recorded at the

⁴⁴ President of the Republic of Indonesia, 'Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code', 2023.

⁴⁵ President of the Republic of Indonesia, 'Burgerlijk Wetboek voor Indonesie', 1847.

⁴⁶ Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code.

⁴⁷ Law of the Republic of Indonesia Number 23 of 2004 concerning the Elimination of Violence in Rimah Tangga (2004).

⁴⁸ Ahmad Amiruddin, Tali Tulab, and Ahmad Zaenur Rosyid, 'The Tradition Of "Muter Punden" After The Marriage Contract On The North Coast Of Pati Based On The Perspective Of Islamic Law', *Islamic Law* 23, no. 1 (July 2023): 1, <https://doi.org/10.24014/jhi.v23i1.22114>.

⁴⁹ President of the Republic of Indonesia, 'Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights' (1999).

⁵⁰ Debora De Souza Santos et al., 'Domestic Violence against Women during the Covid-19 Pandemic: A Scoping Review', *Forensic Science International: Reports* 5 (July 2022): 100276, <https://doi.org/10.1016/j.fsir.2022.100276>.

Office of Religious Affairs, a requirement reiterated in Article 23.⁵¹ Within the context of women's protection, the Regulation of the Minister of Women's Empowerment and Child Protection of the Republic of Indonesia Number 13 of 2020 defines Gender-Based Violence as a human rights violation causing physical, psychological, or sexual suffering to women in both private and public spheres.⁵² This definition precisely describes RA's systematic experience of physical, psychological, and terroristic violence.⁵³

Based on this juridical and sociological review of the RA case, it can be concluded that domestic violence and infidelity contravene Islamic law, as stipulated in KHI Article 116 and the principle of *dar'u al-mafâsid*. They are also inconsistent with the Civil Code, the Criminal Code, the Marriage Law, the Human Rights Law, the Domestic Violence Law, and the TPKS Law. Prenuptial agreements executed in accordance with Article 147 of the Civil Code, Article 29 of the Marriage Law, KHI Articles 47 and 51, and Permenag No. 20 of 2019 are legally valid and binding as both preventive and repressive legal instruments. Effective legal protection necessitates regulatory synergy and a clear bias towards victims.

The Significance of Prenuptial Agreements in Safeguarding Victims within the Islamic Family Law Paradigm

The case of RA, a victim of domestic violence and infidelity, underscores the critical importance of thoroughly examining prenuptial agreements within the framework of Islamic family law. From a fiqh perspective, these agreements are more than mere administrative formalities; they tangibly embody Sharia's protective provisions against potential marital hazards.⁵⁴ In situations like RA's, a legally constituted and ratified prenuptial agreement offers not only formal legal standing but also legitimate protection under an Islamic legal framework dedicated to upholding justice and ensuring personal safety.⁵⁵ The following table presents

⁵¹ Regulation of the Minister of Religion of the Republic of Indonesia Number 20 of 2019 concerning Marriage Registration (2019).

⁵² Regulation of the Minister of Women's Empowerment and Child Protection of the Republic of Indonesia Number 13 of 2020 concerning the Protection of Women and the Protection of Children from Gender-Based Violence in Disasters (2020).

⁵³ Siti Maharani and Tajul Arifin, 'Unraveling the Veil of Infidelity: The Perspective of Abu Daud Hadith No.1692 and Criminal Code 284', *Progressive Politics : Journal of Law, Politics and Humanities* 1, no. 3 (June 2024): 23–37, <https://doi.org/10.62383/progres.v1i3.383>.

⁵⁴ Dalve et al., 'Suicide-Related Behavior and Firearm Access among Perpetrators of Domestic Violence Subject to Domestic Violence Protection Orders'.

⁵⁵ 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: Journal of Islamic Family Law* 15, no. 2 (2022): 2, <https://doi.org/10.14421/ahwal.2022.15202>.

analogous cases to RA's, where judges sanctioned divorce proceedings based on the violation of prenuptial agreements:⁵⁶

Table 1. Verdict on Cases of Violence and Infidelity Due to Prenuptial Agreement

Yes	Case Number	Contents
1	133/Pdt.G/2020/PA. Btm	The Plaintiff and the Defendant were married on October 26, 2018, under a marriage agreement. The conflict arose when the Defendant secretly entered into another marriage without the Plaintiff's consent, an act that was deemed a violation of the agreed-upon terms. The Defendant's continual absence from court proceedings rendered mediation impossible. Consequently, the panel of judges ruled in favor of the Plaintiff, granting the divorce petition based on the proven breach of the marriage agreement and the validity of the supporting evidence.
2	13/Pdt.G/2020/PA. Kmn	The Plaintiff and the Defendant, who entered marriage with a prenuptial agreement outlining property arrangements and prohibiting domestic violence, later encountered severe marital issues. The Defendant was found to have repeatedly committed physical abuse, constituting a clear breach of the agreement's provisions. Family reconciliation and mediation efforts failed to improve the situation. The panel of judges concluded that the Defendant's conduct represented a substantial violation of the marriage agreement and therefore granted the Plaintiff's divorce petition, declaring the dissolution of marriage legally effective.
3	54/PDT.G/2022/PA. Mdo	In another case, the Respondent embraced Islam one week prior to the marriage, which was legally solemnized on November 2, 2002, under a marriage agreement. However, the couple's relationship deteriorated after it was discovered that the Respondent engaged in an extramarital affair and secretly reverted to her former religion. These actions led to an ongoing marital conflict that could not be resolved through family or judicial mediation. Given the failure of reconciliation and the confirmed breach of marital vows, the court decided in favor of the Petitioner's divorce claim. The judgment affirmed that the violation of marital covenants and acts of infidelity constitute legitimate grounds for legal dissolution of marriage.

Based on these illustrative cases, prenuptial agreements clearly offer crucial legal protection to victims. While applicable to both men and women, this study particularly focuses on women. For RA, the primary resolution likely involves divorce. Her legal protection stems not only from the normative aspects of legally ratified marriage agreements but is also strongly

⁵⁶ Futum Khafidzah Azzahro Susanto, 'Analysis of the Impact and Influence of Violations of Marriage Agreements (Pre-Marriage)' (Thesis, Islamic University of Indonesia, 2024), <https://dspace.uui.ac.id/handle/123456789/49633>.

reinforced by Islamic legal instruments and positive Indonesian law. Specifically, clauses within the agreement explicitly prohibiting infidelity and violence provide RA with a robust legal foundation to initiate divorce proceedings. This aligns with KHI Article 116 and Law No. 23 of 2004 concerning the Eradication of Domestic Violence, which empower victims to exit detrimental and perilous marital circumstances. Consequently, the prenuptial agreement in this context serves as both a preventive and repressive instrument, ensuring legal certainty and safeguarding women who are victims of domestic injustice.

Turning to the spiritual and moral dimensions, Surah An-Nisa verse 19 of the Qur'an explicitly states: "... and get along well with them." This verse establishes a fundamental moral principle for marital relationships, advocating for affection and protection rather than dominance and aggression. The psychological, physical, and symbolic forms of violence endured by RA—including threats, confinement, and physical assaults leading to miscarriage—fall under the category of *jarimah ta'zir*, which can be subject to punitive measures based on judicial *ijtihad*. Furthermore, Allah's Word in QS. al-Hujurat verse 9 proclaims:

وَإِنْ طَائِفَتَانِ مِنَ الْمُؤْمِنِينَ اقْتَتَلُوا فَأَصْلِحُوا بَيْنَهُمَا فَإِنْ بَغَتْ إِحْدَاهُمَا عَلَى الْأُخْرَىٰ فَقَاتِلُوا الَّتِي تَبْغِي حَتَّىٰ تَفِيءَ إِلَىٰ أَمْرِ اللَّهِ فَإِنْ فَاءَتْ فَأَصْلِحُوا بَيْنَهُمَا بِالْعَدْلِ وَأَقْسِطُوا إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ

And if two factions among the believers should fight, then make settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allah. And if it returns, then make settlement between them in justice and act justly. Indeed, Allah loves those who act justly [al-Hujarat 49:9].

The verse is also an affirmation to reconcile the parties who disagree, but if someone commits tyranny, then he must be resisted until he returns to justice.⁵⁷ Turning to the aspect of disbelief, the hadith of Abu Daud number 1692 reads:

حَدَّثَنَا مُحَمَّدُ بْنُ كَثِيرٍ، أَخْبَرَنَا سُفْيَانُ، حَدَّثَنَا أَبُو إِسْحَاقَ، عَنْ وَهْبِ بْنِ جَابِرٍ الْحِمْيَوَانِيِّ، عَنْ عَبْدِ اللَّهِ بْنِ عَمْرٍو، قَالَ: قَالَ رَسُولُ اللَّهِ ﷺ: كَفَى بِالْمَرْءِ إِثْمًا أَنْ يُضَيِّعَ مَنْ يَفْقُوتُ

"It is enough for a person to sin if he squanders the wealth of the one who is his dependent" (*Abī Dāwūd* 1692, narrated by '*Abd Allāh ibn 'Amr*').⁵⁸ In this framework, infidelity

⁵⁷ Sumarwanti, 'Analysis of Positive Legal Protection and Islamic Criminal Law on Wives as Victims of Domestic Violence'.

⁵⁸ Musyahidah and Rustina, 'Women's Response in Responding to Divorce Cases Due to Infidelity from a Family Law Perspective'.

fundamentally undermines the marital contract and the trust vested in the head of the household, both morally and legally. Consequently, RA possesses legitimate grounds to seek justice for this breach, a basis for divorce explicitly recognized by Article 116 of the Compilation of Islamic Law.⁵⁹

The legal standing of such a prenuptial agreement within Islamic jurisprudence is supported by several key Islamic legal principles. *Firstly*, the principle of *al-Umur bi maqashidiha* (matters are judged by their intentions) confirms that the agreement serves as a protective measure, not a sign of distrust.⁶⁰ As RA's lawyer affirmed, the agreement was meticulously drafted "as a form of legal protection from the outset of the marriage." Thus, Sharia mandates upholding this positive intent, which inherently seeks to prevent oppression. *Secondly*, the rule that "Losses must be eliminated" is highly pertinent. RA has suffered extensive physical and psychological harm from various forms of violence and betrayal. A prenuptial agreement with explicit clauses against violence and infidelity therefore offers a religiously valid legal foundation for her to seek release from an unjust marital situation. This position is consistent with Article 51 of the KHI, which empowers a wife to file a lawsuit when an agreement is violated.⁶¹ *Thirdly*, the principle of "Narrowness brings ease" posits that in acutely distressing and threatening domestic circumstances, women are justified in seeking resolutions to protect themselves and their future.⁶²

This process finds legitimacy not only in the KHI and the Law on the Eradication of Domestic Violence but also in fiqh principles that prioritize the preservation of life. *Fourthly*, the maxim "belief cannot be eliminated by doubt" strongly supports RA's reliance on prenuptial documents for her lawsuit. Her claim cannot be invalidated simply by underestimating the husband's confession or dismissing the agreement as a mere formality. In Islamic legal reasoning, a valid document's legal force must always be upheld.⁶⁴ *Finally*, the rule that "*custom can be the basis of law*" grants legal recognition to prenuptial agreements. These are

⁵⁹ A Compilation of Islamic Law.

⁶⁰ Dear Andy, *The Science of Qawaid Fiqiyah: A Practical Guide in Responding to Contemporary Islamic Legal Problems*, 1st ed. (Yogyakarta: Sukses Offset, 2011).

⁶¹ A Compilation of Islamic Law.

⁶² Firdaus Firdaus, Desminar Desminar, and Ika Anggreni, 'The Validity of Talak Through Social Media in Decision Number 101/Pdt.G/2013/PAJB: Juridical Analysis in the Perspective of Contemporary Fiqh', *AHKAM: Journal of Islamic Law and Humanities* 4, no. 2 (2025): 712–26, <https://doi.org/10.58578/ahkam.v4i2.6492>.

⁶³ Firdaus Firdaus et al., 'The Indo-Pacific Child Trafficking Dynamics: Islamic and Cultural Viewpoints', *KARSA Journal of Social and Islamic Culture* 31, no. 2 (2023): 202–45, <https://doi.org/10.19105/karsa.v31i2.12391>.

⁶⁴ Nano Romadlon Auliya Akbar, Suwandi Suwandi, and Fakhruddin Fakhruddin, 'The Implications of Making a Marriage Agreement on the Purpose of Marriage (Review of Maqâshid Al-Syarī'ah Ibn 'Âsyûr)', *Islamic Law* 22, no. 1 (June 2022): 1, <https://doi.org/10.24014/jhi.v22i1.16578>.

seen as beneficial practices in modern societies that acknowledge the importance of legal protection. This is further reinforced by Permenag Number 20 of 2019 and Article 147 of the Civil Code, which require such agreements to be notarized and officially recorded.

CONCLUSION

The comprehensive testimony from the wife, legal counsel, and the presiding judge of the Class 1A Religious Court of Padang City unequivocally demonstrates that robust legal safeguards exist for wives who are victims of violence and infidelity, both within positive Indonesian law and prevailing Islamic law. *Firstly*, prenuptial agreements containing protective clauses against violence and infidelity hold legal validity under Article 29 of Law No. 1 of 1974, Article 147 of the Civil Code, and Article 47 of the Compilation of Islamic Law. Such agreements substantially strengthen the wife's position during divorce proceedings and in the equitable division of post-divorce assets. *Secondly*, legal provisions address and protect victims from various forms of violence, including physical, psychological, and verbal abuse. This protection is primarily afforded through Law No. 23 of 2004 concerning the Eradication of Domestic Violence and Article 156 of the 2023 Criminal Code, further reinforced by Article 116 of the Criminal Code and Islamic legal principles like *al-dharar yuzal*. *Thirdly*, legally proven acts of infidelity are likewise subject to legal protection under Article 411 of the 2023 Criminal Code, Article 210 of the Civil Code, and Article 116 of the Civil Code. Additionally, Islamic law provides moral and legal legitimacy for wives' rights through the principle of *ta'zir* and the imperative to safeguard family honor. Consequently, the synergistic interplay of prenuptial agreements, established protective legal frameworks, and Islamic legal principles collectively ensures comprehensive justice and protection for victimized wives.

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