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Doi: 10.32332/milrev.v4i2.11158

Dates:

Received 02 June, 2025

Revised 02 September, 2025

Accepted 08 October, 2025

Published 26 October, 2025

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Reinterpreting *Ḥifẓ al-nasl* in Contemporary Marriage Contracts: Navigating Islamic Normativity and State Law

Abstract: This study aims to reinterpret the concept of *ḥifẓ al-nasl* (protection of lineage) within contemporary marriage contracts in Indonesia by examining the relationship between the normative framework of Islamic law and the state legal system. Traditionally, *ḥifẓ al-nasl*, as one of the primary objectives of Islamic law (*maqāṣid al-sharīʿah*), emphasizes the preservation of lineage legitimacy through the institution of marriage. However, in the modern Indonesian socio-legal context—characterized by a dual legal system of religious law and state law—its implementation reflects a dynamic interplay between these frameworks. This research employs a qualitative approach, including field studies at several Offices of Religious Affairs (*Kantor Urusan Agama* or KUA), in-depth interviews with marriage registrars (*penghulu*), religious leaders, and married couples, as well as an analysis of marriage contract documents. The findings reveal a shift in the meaning of *ḥifẓ al-nasl*, which is no longer understood solely in terms of lineage legitimacy but also encompasses the protection of reproductive rights, family planning, and legal certainty within marriage contracts. These findings indicate that, while Islamic normative values remain a foundational reference, the application of state law in Indonesia—particularly through the legalization of marriage contracts and state oversight—has contributed to a new interpretation of the principle of *ḥifẓ al-nasl*. The study recommends strengthening the integration between *maqāṣid al-sharīʿah* and the positive legal system in formulating marriage policies that are adaptive and responsive to contemporary challenges. The academic contribution of this research lies in offering a new conceptual framework for contextually understanding *ḥifẓ al-nasl*, one that integrates the objectives of Islamic law with Indonesia's positive legal system.

Keywords: Indonesian Legal System, Islamic Normativity, Lineage Protection, Marriage Contract.

INTRODUCTION

The concept of *ḥifẓ al-nasl* or protection of heredity is one of the main pillars in *maqāṣid al-sharīʿah*, which aims to maintain the continuity and validity of the human lineage. In the classical Islamic legal tradition, this principle is manifested through strict arrangements of the institution of marriage, including the prohibition of adultery, the arrangement of *nasab*, and the rights of children born in a legal marriage bond. However, social and legal developments in the modern era have presented new challenges to the meaning and implementation of the principle of *ḥifẓ al-nasl*. Changing views of the family, increasing demands for gender equality, reproductive rights, and state intervention through positive laws in marriage arrangements give rise to the need to revisit the relevance and flexibility of this concept in the contemporary context.¹

In Indonesia, the marriage contract has undergone a significant shift, not only as a religious contract, but also as an administratively regulated state legal instrument.² On the other hand, Islamic norms derived from traditional *fiqh* are still an essential reference in the practice of marriage, especially in the Muslim community. The tension between these two systems often creates ambiguity in the implementation of *maqāṣid* principles, including *ḥifẓ al-nasl*. For example, how the state handles the issue of the legality of children from unrecorded marriage, or how marriage contracts are drafted to protect the rights of wives and children, often do not fully represent the values of *maqāṣid* holistically. In this case, the marriage contract becomes a dialectical arena between religious norms and the state's legal interests.³

¹ Javier Nixon Oktorifa Ramadhan, Fadillah Amanda Ali, dan Mahipal, "Penerapan Hifdz An-Nasl Terhadap Dinamika Sosial Masyarakat Indonesia," *IHSAN : Jurnal Pendidikan Islam* 3, no. 2 (28 April 2025): 435–441, <https://doi.org/10.61104/ihsan.v3i2.1005>.

² Nurul Miqat dkk., "The Validity of Marriage Agreement Regarding Properties in Unregistered Marriages," *Yustisia* 10, no. 2 (2021): 2, <https://doi.org/10.20961/yustisia.v10i2.48751>.

³ Putri Aulia dkk., "Hukum Islam Dan Fenomena Pernikahan Kontrak Antara Legalitas Dan Moralitas," *Judge : Jurnal Hukum* 6, no. 02 (2025): 02, <https://doi.org/10.54209/judge.v6i02.1325>.

Previous research has extensively discussed the principles of *hifz al-nasl* from the doctrinal perspective of Islam, as well as a study on family law reform in Indonesia.⁴ However, few studies have specifically examined how *hifz al-nasl* is reconstructed in contemporary marriage contract practice, primarily through a field approach that uncovers the dynamics of its understanding and implementation at the grassroots level. In addition, few studies have directly related the principles of *maqāṣid al-sharī'ah* to the practice of state law administration in the realm of marriage. This indicates a research gap that needs to be addressed.

This research aims to fill this gap by critically examining how *hifz al-nasl* is understood, reinterpreted, and implemented in the practice of marriage contracts in Indonesia through a field approach. The focus of this research extends not only to the normative level but also to the evolving social and legal realities. The novelty of this research lies in the integrative approach between *maqāṣid al-sharī'ah* and Indonesian positive law, as well as the presentation of a new conceptual framework regarding *hifz al-nasl* that is more contextual and applicable. Based on this background, the main questions asked in this study are: How is the concept of *hifz al-nasl* reinterpreted and implemented in contemporary marriage contracts in Indonesia within the framework of Islamic normativity and the state legal system? This research is essential not only to enrich the literature on Islamic family law but also as a strategic input for policymakers in formulating marriage regulations that are fair, progressive, and in line with Sharia values.

METHOD

This research employs a qualitative field study to explore the meaning and implementation of *hifz al-nasl* in contemporary marriage contracts in Indonesia. A qualitative approach was chosen to align with the study's objective of understanding socio-legal phenomena contextually through the perspectives of actors and policymakers directly

⁴ Anwar Kurniawan, "Modernisasi dan Reformasi Hukum Keluarga di Indonesia Pada Era Global," *Al Fuadiy Jurnal Hukum Keluarga Islam* 7, no. 01 (17 Juni 2025): 16-30, <https://doi.org/10.55606/af.v7i01.1255>.

involved in the implementation of marriage contracts. Research sites were purposively selected across several Religious Affairs Offices (KUA) in both urban and semi-urban areas to capture the diversity of Muslim marriage practices in Indonesia.

Data were collected through in-depth interviews with marriage registrars (*penghulu*), KUA staff, religious leaders, and married couples who had included agreements in their marriage contracts. Additionally, the researcher conducted direct observations of marriage administration practices and analyzed marriage contract documents in conjunction with relevant legal frameworks, including the Marriage Law and the Compilation of Islamic Law (KHI). Thematic analysis was applied through categorization and interpretation, focusing on how the principles of *hifz al-nasl* are understood, negotiated, and realized within the interaction between state law and Islamic norms. To ensure validity, source and method triangulation were employed, complemented by member-checking with key informants. The findings were then examined in relation to the framework of *maqāṣid al-sharī'ah* and theories on the relationship between Islamic law and state law, resulting in a comprehensive and applicable reinterpretation of *hifz al-nasl* in the context of contemporary marriage contracts.

RESULTS AND DISCUSSION

The Classical Concept of *Hifz al-nasl* in *Maqāṣid al-sharī'ah*

One of the main goals within the framework of *maqāṣid al-sharī'ah* is to safeguard offspring (*hifz al-nasl*). This purpose is intended to protect the clarity and sustainability of the human lineage in Islamic society's orderly and dignified structure. Through this principle, Islamic law regulates the relationship between a man and a woman in a legal marriage bond, intending to ensure that children born have a clear destiny, are protected in their rights, and grow up in a responsible family system. This principle of protection of descendants is the basis for various rules in Islamic family law, such as the terms and pillars of marriage, the prohibition of adultery, the determination of the iddah period, the recognition of *nasab*, and the distribution of inheritance. These rules aim to prevent chaos and maintain the clarity of children's legal identities. In this framework, marriage is not

only a matter of personal relationships or worship, but also a social institution that preserves moral values and social stability.⁵

Historically, the protection of offspring was understood in a societal context that strongly emphasized the structure of patrilineal inheritance. The child's fate is determined from the father's side, and the child's status is highly dependent on the validity of the parents' marital relationship. Therefore, a valid marriage is an absolute requirement for the determination of the legal identity of a child, and the Sharia provides strict sanctions for relationships outside of marriage. In this context, *ḥifẓ al-nasl* is closely related to protecting the honor of the family and society.

However, over time, significant social changes emerged. The role of women in society is evolving, and the values of equality are increasingly being fought for. The family structure is no longer always in the conventional form. In addition, new challenges such as unregistered marriage, women's reproductive rights, and the issue of children without legal identities increasingly demand a rereading of sharia principles, including *ḥifẓ al-nasl*. In such conditions, the old meaning that overemphasizes formal legality must be evaluated to avoid losing its substantive meaning. The principle of progeny protection is no longer enough to be understood as an effort to maintain the validity of the *nasab* alone, but must also include comprehensive protection of the rights of children, from the womb to adulthood. These include the right to legal identity, protection from violence, access to education and health, and proper social recognition. This approach views children as legal and moral subjects whom the family law system must actively protect.⁶

In addition, protecting offspring also means protecting women as vulnerable parties in marital relationships. In many cases, women are the disadvantaged parties in illegitimate or unrecorded relationships, so that the children born are also affected legally and socially. Therefore, the understanding of *ḥifẓ al-nasl* needs to be developed to be more inclusive,

⁵ Khairul Hamim, "Ḥifẓ Al-Lisān as Maqāṣid Al-Sharī'ah Al-Ḍarūriyyah (Its Importance and Relevance in the Contemporary Era)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (30 Juni 2021): 317–337, <https://doi.org/10.22373/sjhk.v5i1.9139>.

⁶ Elfia Elfia dkk., "Institutionalizing Maqāṣid Ḥifẓ Al-Naṣl within the Minangkabau Inheritance Framework," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 24, no. 2 (2024): 2, <https://doi.org/10.18326/ijtihad.v24i2.193-222>.

considering aspects of gender justice and reproductive rights. In modern society, *ḥifẓ al-nasl* is also concerned with the state's role in ensuring an accurate and fair system of marriage and birth registration. Legal clarity on the status of children is essential not only for inheritance rights and parental responsibilities but also as a basis for accessing a wide range of public services. Thus, efforts to protect descendants must involve synergy between religious norms, social awareness, and the state's legal apparatus.⁷

The principles of *maqāṣid al-sharīʿah* provide a sufficiently flexible methodological space for the reinterpretation of the classical tenets, including *ḥifẓ al-nasl*. In a more contextual view, *maqāṣid* is not a rigid set of laws, but a moral principle that is open to the dynamics of the times. With this approach, the protection of descendants can continue to be maintained as part of the mission of Islamic law, as well as an inspiration to fight for justice in a more responsive and inclusive family law system. Thus, *ḥifẓ al-nasl* remains a fundamental principle that has remained relevant throughout the ages. However, for this principle not to lose its meaning in an ever-changing world, it needs to be reinterpreted in a contextual manner to preserve legitimate family structures and protect human dignity, social justice, and the fundamental rights inherent in every child and family.⁸

Social Transformation and Marriage Law in Indonesia

In the context of Indonesian society, marriage is seen not only as a religious institution but also as a social and legal institution that is strictly regulated by the state. In Indonesian Muslim society, marriage has a complex dimension: it is sacred religiously, as well as administrative in the state.⁹ The combination of Islamic norms, local customs, and national legal regulations has created a dynamic and ever-changing marriage system. Since

⁷ Farikhatul Aini Aprilia dkk., "Tinjauan Maqashid Al-Syari'ah Terhadap Perjanjian Pranikah Pada Masyarakat Kaliwates Jember," *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam* 5, no. 2 (30 April 2024): 309–328, <https://doi.org/10.24252/qadauna.v5i2.42601>.

⁸ Muhammad Akram, Muh Idris, dan Finsa Adhi Pratama, "Dampak Perceraian Di Luar Pengadilan Terhadap Anak Perspektif Hifz Al-Nasl (Suatu Penelitian Di Kota Kendari)," *KALOSARA: Family Law Review* 2, no. 2 (2022): 121–137, <https://doi.org/10.31332/kalosara.v2i2.5240>.

⁹ Suud Sarim Karimullah, "The Implications of Islamic Law on the Rights of Religious Minorities in Muslim-Majority Countries," *MILRev: Metro Islamic Law Review* 2, no. 2 (2023): 2, <https://doi.org/10.32332/milrev.v2i2.7847>.

the enactment of Law Number 1 of 1974 concerning Marriage, the state has taken a more active role in regulating the legal aspects of marriage. This law establishes the fundamental principle that marriage is valid if it is carried out in accordance with the laws of each religion and belief, and is recorded in accordance with the applicable laws and regulations. Thus, the legality of marriage is determined not only by religion but also by state-recognized administrative procedures.¹⁰

In the Muslim environment, the Marriage Law is based on the Compilation of Islamic Law (KHI), which was ratified through Presidential Instruction No. 1 of 1991. KHI is a guideline in managing marriage administration at the Office of Religious Affairs (KUA), including in preparing marriage contracts, dowries, divorce, and post-marriage rights. Although it does not have the status of a law, KHI serves as the primary reference in resolving marriage cases in the religious court environment.¹¹ Social developments and the demands of the times have given rise to various shifts in the practice of marriage.¹² One of them is the increasing legal awareness among Muslim couples on the importance of prenuptial agreements, both related to property ownership, child custody, and post-divorce obligations. Although this practice was originally rarely done because it was considered taboo or did not align with traditional values, many young couples now view it as a legitimate means of protecting their rights.¹³

On the other hand, the phenomenon of unregistered marriages (*nikah siri*) is also a serious concern. Although religiously, such marriages can be considered legal, because they are not registered by state law, couples and children from such marriages often lose legal protection. Children do not have a valid birth certificate, wives have no legal proof to claim

¹⁰ Harisman dan Dhiauddin Tanjung, "Keabsahan Dan Akibat Hukum Perjanjian Perkawinan Menurut Kompilasi Hukum Islam:," *Fundamental: Jurnal Ilmiah Hukum* 13, no. 2 (2024): 2, <https://doi.org/10.34304/jf.v13i2.277>.

¹¹ Rusli Halil Nasution dan Lydia Sartika, "Marriage Agreement: Is It A Solution Or A Dilemmatic," *Al-A'mal : Jurnal Manajemen Bisnis Syariah* 1, no. 1 (2024): 1.

¹² Hamza Abed Al-Karim Hammad, "Revisiting the Concept of Nusyūz: A Recontextualised Understanding in Contemporary Marital Life," *NUSANTARA: Journal Of Law Studies* 4, no. 2 (2025): 143–156, <https://doi.org/10.5281/zenodo.17345680>.

¹³ Damian Agata Yuvens, "Analisis Kritis Terhadap Perjanjian Perkawinan Dalam Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Konstitusi* 14, no. 4 (2017): 4, <https://doi.org/10.31078/jk1445>.

alimony or inheritance, and the state lacks accurate statistical data on the family status of its citizens.¹⁴ This situation raises serious concerns in the context of protecting offspring (*hifz al-nasl*). The state is responsible not only for the legality or otherwise of the marital relationship, but also for the rights of the children born. Therefore, the transformation of marriage law cannot be separated from efforts to harmonize Islamic law, national law, and human rights, particularly those of children and women. Shifts are also seen in changes in people's social values. Marriage is no longer solely a religious or traditional obligation, but also part of a social contract that involves rational, economic, and legal considerations. Information disclosure, education, and the influence of globalization have shaped a new perspective on the institution of marriage. Married couples are now more actively involved in drafting marriage terms that reflect their needs and aspirations.¹⁵

This transformation also affects the role of the state, as it serves both as a regulator and a facilitator. Through the Directorate General of Islamic Guidance and the digitalization system at KUA, the state continues to enhance the recording system, improve access to legal information, and provide marriage counseling. This effort is crucial to ensure that the marriage process is conducted in accordance with the law, while upholding the values of justice and the interests of all parties involved. Nevertheless, a gap remains between normative law and field practice. Many KUA in the regions lack adequate resource capacity or infrastructure.

On the other hand, the practice of marriage influenced by local culture or social pressures is also often not in line with positive law. For example, early marriage, forced marriage, or not being recorded for economic or social reasons still occur in some regions. For this reason, an adaptive, contextual, and integrative legal approach is needed between

¹⁴ Addinur Addinur dan Gunawan Djajaputra, "Kepastian Hukum Perjanjian Perkawinan Secara Otentik Yang Tidak Di Daftarkan Oleh Notaris," *Ranah Research : Journal of Multidisciplinary Research and Development* 7, no. 2 (1 Januari 2025): 702-710, <https://doi.org/10.38035/rrj.v7i2.1307>.

¹⁵ Nur Hadi, "Maqashid Syari'ah Hukum Perkawinan Dalam Kompilasi Hukum Islam (KHI)," *Al-Fikra : Jurnal Ilmiah Keislaman* 16, no. 2 (29 Desember 2017): 203-232, <https://doi.org/10.24014/af.v16i2.3831>.

the values of *maqāṣid al-sharī'ah* and the national legal system.¹⁶ The transformation of marriage law in Indonesia should ideally not only focus on formal legality, but also on the substance of protecting individual and family rights, especially those of women and children. Thus, marriage law can be an instrument for building a just, inclusive, and civilized society.

Table 1. Transformation of Marriage Practices and Regulations in Indonesia

Aspects	Traditional Era	Modern Regulation Era (Law 1/1974 & KHI)	Contemporary Issues & Challenges
Legal status of marriage	Based on religious norms and customs	It must be recorded by the state to be legally recognized	Nikah seri, online marriage, cross-border marriage
The role of the state	Passive, non-intrusive	Active as a regulator, registrar, and licensor	Digitization of KUA, limitations of field supervision
Marriage contract	General, worded, and symbolic	Regulated through KHI and an official marriage certificate	Prenuptial agreements, special conditions of marriage
Child protection	Relying on religious status and social recognition	Arranged if a child is born of a legal marriage	Out-of-wedlock children, confessions, inheritance rights
Women's rights	Limited in household decisions	Recognized in KHI, but not yet fully equivalent	Role equality, post-divorce protection
Value changes	Marriage as a social-religious obligation	A combination of traditional values and state law	Rationalization of marriage, legal awareness

Sumber: Author's Interpretation

Table 1 illustrates the significant shift in marriage practices and regulations in Indonesia from the traditional era to the modern era, as well as the challenges that have arisen in this transition. Traditionally, marriage was based entirely on religious and customary norms without state involvement. In contrast, after the enactment of the Marriage Law and KHI, the state began to actively record and regulate marriages to ensure legality and legal protection. The practice of marriage contracts has evolved from a symbolic agreement to a legal document that can include a prenuptial agreement. However, this transformation has not thoroughly addressed contemporary issues such as serial marriage,

¹⁶ Ahmad Arif Masdar Hilmy dan Faby Toriqirrama, "Isbat Nikah Terpadu Perspektif Maqasid Syariah," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 13, no. 1 (4 Juni 2020): 79-90, <https://doi.org/10.14421/ahwal.2020.13108>.

the rights of children out of wedlock, and inequality in the protection of women. Additionally, the digitalization and reform of the marriage bureaucracy face obstacles, including low legal literacy and infrastructure gaps in various regions. This table confirms that, although regulations have evolved, social practices still leave considerable room for improvement in marriage law to ensure justice and overall family welfare.

Social Actors' Understanding of *ḥifẓ al-nasl* in Field Practice

This study seeks to capture how various social actors in marriage practices in Indonesia understand the concept of *ḥifẓ al-nasl*. The primary focus is on understanding and experiencing how headmen, married couples, and religious leaders incorporate the value of protecting their descendants into their daily lives. By conducting live interviews in three regions—two small towns and one urban suburb—the study aimed to assess the extent to which the principle of *ḥifẓ al-nasl* was implemented, particularly in marriage, registration, and child protection. Most of the chiefs interviewed emphasized that *ḥifẓ al-nasl* means ensuring that the marriage takes place according to religious procedures and is registered by state law. One of the headmen emphasized, "If it is not recorded in the KUA, what will be the child's status? It can be difficult to take care of birth certificates, inheritances, etc."¹⁷ The registration of marriage is considered not only an administrative formality but also part of the moral responsibility to safeguard the destiny and rights of the child. However, when asked further about issues such as the rights of children out of wedlock, prenuptial agreements, or women's reproductive rights, most of the chiefs did not seem to be involved in these discussions. Their focus is still on technical procedures and compliance with the Compilation of Islamic Law (KHI). This indicates that although the rulers understood the importance of protecting nasab, the meaning of *ḥifẓ al-nasl* had not yet developed in a more comprehensive and contextual direction.

For married couples, understanding *ḥifẓ al-nasl* is highly dependent on their educational background and access to information. Highly educated couples generally have a broader perspective. A wife who is also a teacher at a private school said, "For us, taking

¹⁷ Jaya Kusuma, "Personal Interview," 2024.

care of the offspring includes ensuring that children have a future, birth certificates, access to education, and growing up in a healthy environment.”¹⁸ This indicates a shift in meaning from the mere validity of *nasab* to the protection of the quality of children's lives. On the other hand, couples from lower secondary economic and educational backgrounds tend to interpret *hifẓ al-nasl* normatively. They emphasized the importance of legally marrying so as not to cause disgrace. A man who was married in series said, "Actually, we want to make an official record, but because of the cost and the letter not being complete, we have not had time yet. However, the most important thing is that it is legal in the eyes of religion.”¹⁹ This statement shows a gap between ideal values and social reality.

The religious leaders interviewed showed two tendencies. Some still maintain an understanding of classical *fiqh*, which emphasizes legality and the line of *nasab* as the primary concern. However, some others are starting to show a more adaptive approach. A young *ustaz* said, "We must see that times have changed. The protection of the offspring must now also include the protection of the mother, the legal status of the child, and her welfare.”²⁰ This view shows that there is room for a reinterpretation of the values of *hifẓ al-nasl* in a broader and humane context. Several religious leaders also highlighted the need for improvements in premarital training organized by KUA. The material presented is considered still normative and does not adequately address the realities faced by young couples, particularly regarding children's rights, household communication, and legal protection. This indicates that the understanding of *maqāṣid al-sharī'ah*, including *hifẓ al-nasl*, has not yet become the primary framework in marriage coaching programs.

Field findings also indicate a growing awareness in society that protecting descendants is not only a religious matter, but also a civil right guaranteed by the state. Young couples are increasingly aware of the importance of marriage legality and child documents, although not all can easily access them. Administrative, social, and economic challenges remain the primary obstacles that some families face when seeking to provide

¹⁸ Joko Widodo, "Personal Interview," 2024.

¹⁹ Andi Pratama, "Personal Interview," 2024.

²⁰ Arifin Ilham, "Personal Interview," 2024.

complete protection for their offspring. From the entire interview, it appears that the meaning of *hifz al-nasl* is indeed undergoing a process of reinterpretation at the grassroots level. Although it is not yet fully developed and still limited, several social actors have made efforts to interpret this principle more broadly, inclusively, and in the context of the times. This highlights the importance of enhancing legal literacy and *maqāṣid al-sharīʿah* among leaders, religious figures, and the broader community, so that Sharia values can effectively address contemporary family issues.

Negotiation between Islamic Normativity and the State Legal System in Marriage Contracts

Marriage contracts in the Indonesian Muslim community are not only based on religious norms, but are also subject to state administrative regulations. This makes marriage a space for negotiation between two normative systems with different logical frameworks: Islamic law sourced from religious texts and *fiqh* traditions, and state law, which is positive and administrative. In practice, the drafting and executing of marriage contracts presents a complex interaction process between these two systems, sometimes harmonious, sometimes causing tension or conflict.²¹ Normatively, Islam views marriage as a sacred contract that is private, prioritizing the principles of willingness, clarity of dowry, and testimony. In *fiqh* law, many aspects of marriage are determined by fixed terms and covenants, such as *wali*, *ijab-qabul*, and dowry. However, marriage must also meet administrative requirements, such as recording, reporting, and fulfilling legal documents, when it is entered into the national legal system.²²

In this context, Islamic norms and state laws often align, but not always in harmony. One striking example is marriage registration. The marriage contract is considered religiously valid in *fiqh* even though the state does not record it. However, in

²¹ Andra Monica Putri, Syahrudin Nawi, dan Andi Risma, “Konsekuensi Hukum Terhadap Perjanjian Perkawinan Menurut Kompilasi Hukum Islam,” *Journal of Lex Theory (JLT)* 5, no. 2 (29 Mei 2024): 763–781.

²² Kresna Ayung Begawan dan I. Ketut Kasta Arya Wijaya, “Marriage Agreement As Legal Protection For Both Parties in Marriage,” *Pemuliaan Keadilan* 2, no. 2 (2025): 01–09, <https://doi.org/10.62383/pk.v2i2.505>.

national law regulations, registration is a prerequisite for the legality of marriage in a positive legal manner, and has implications for protecting the legal rights of spouses and children. This creates a complicated negotiation space, especially in cases such as *nikah siri* or marriages without a guardian.²³ This negotiation also arises in the context of prenuptial agreements, which are recognized in the country's legal system as a legal document that regulates the rights and obligations of a husband and wife before and during marriage. From the perspective of some scholars, this kind of agreement can be understood as a form of prudence (*iḥtiyāt*); however, others view it as a form of distrust in the spouse that is contrary to the spirit of marital sanctity. This is where the role of the state becomes significant in mediating the two systems to produce legal practices that are fair and relevant to the development of society.²⁴ As a state institution at the forefront, KUA plays a pivotal role in bridging the gap between religious norms and state law. In addition to serving as a contract registrar, KUA also provides a space for legal socialization and pre-marital counseling. In practice, the headmen at KUA often have to take a strategic position to explain to couples that marriage registration is not just an administrative requirement, but also part of protecting the rights of children and women. In this regard, the principle of *ḥifẓ al-nasl* begins to be explained in a more functional and social framework.²⁵

However, some people also resist state intervention in the realm of marriage. Some groups consider recording or other administrative requirements as a form of secularization of sacred worship. On the other hand, the state has not fully responded to existing social and cultural dynamics, particularly in terms of service flexibility and equal access to services. Hence, the tension between religious normativity and formal legality

²³ Ach Zakiyuddin, "Marriage Agreement as A Effort Forming the Sakinah Family," *Al-Ahwal Al-Syakhsiyyah: Jurnal Hukum Keluarga Dan Peradilan Islam* 3, no. 2 (30 September 2022): 161-174, <https://doi.org/10.15575/as.v3i2.18790>.

²⁴ Akhmad Kamil Rizani dkk., "The Essence of Marriage Agreement as Protection in the Indonesian Marriage Law System," *Indonesian Journal of Law and Islamic Law (IJLIL)* 6, no. 2 (9 Desember 2024): 160-171, <https://doi.org/10.35719/ijlil.v6i2.431>.

²⁵ Reka Desrina Wati, "The Marriage Agreement in Article 29 of Law Number 1 of 1974 Is Reviewed According to Islamic Law," *Al-Hurriyah: Jurnal Hukum Islam* 7, no. 2 (31 Desember 2022): 116-130, <https://doi.org/10.30983/alhurriyah.v7i2.4125>.

remains a living issue.²⁶ Even so, the negotiation process between Islamic norms and state law also opens up opportunities for the birth of reinterpretation and innovation in family law. Several religious leaders and academics began to emphasize the importance of harmonizing *maqāṣid al-sharī'ah* with the state legal system as the basis for reforming marriage laws. This approach emphasizes that the primary goals of the *shari'a*, including the preservation of posterity (*ḥifẓ al-nasl*), can be achieved through a legal system that is just, accommodating, and responsive to changing social realities.²⁷ Thus, a marriage contract in Indonesia is not just a legal document or a religious contract, but also a space for dialogue between religious authorities and the state. It contains adjusting values, debating meaning, and finding common ground between Islamic normativity and state legality. Although imperfect, this process shows that Islamic law in Indonesia is dynamic and open to social and institutional negotiations, while maintaining core values such as justice, responsibility, and protection of the family.

Table 2. Negotiation between Islamic Norms and the State Legal System in Marriage Contracts

Aspects	Norma Islam (Fiqh)	National Legal System (UU & KHI)	Impact on <i>Ḥifẓ al-nasl</i>
Legality of Marriage	Valid if you meet the principles and conditions (without recording)	Valid if recorded by the country	Children from unrecorded marriages are at risk of losing legal rights
The Role of the Guardian	The Guardian of the Male Guardian	Regulated, can use a guardian judge	Potential conflict of interpretation if the guardian is not present
Prenuptial Agreement	Permissible within Sharia limits	Recognized as a legal document before a notary	To protect the rights of wives and children
Polygamy	Conditionally allowed	Must be a court, and the first wife	State regulations limit discriminatory practices

²⁶ Shohib Muslim dkk., "Marriage Agreement: The Principle of Benefit and Meaning of Article 51 of The Compilation of Islamic Law as a Basis for Marriage Annulment," *ALFIQH Islamic Law Review Journal* 2, no. 3 (27 November 2023): 190–202.

²⁷ Handayana Br Surbakti, "Marriage Agreements as Legal Protection of Collective Property," *Al-Ubudiyah: Jurnal Pendidikan Dan Studi Islam* 4, no. 1 (17 Juni 2023): 139–147, <https://doi.org/10.55623/au.v4i1.186>.

Marriage Registration	Not mandatory (religious law)	It must be recorded to be legal	Guarantee the legal rights of children and wives
Talak and Divorce	Can be done orally	Must go through a religious court	Avoid confusion and ensure clarity of the

Source: Author's Interpretation

The table above illustrates the dynamics of negotiation between Islamic norms (fiqh) and the state legal system in the practice of marriage contracts in Indonesia, as well as its implications for the principle of *ḥifẓ al-nasl* (protection of descendants). Several aspects, such as the validity of marriage, the role of guardians, prenuptial agreements, polygamy, marriage registration, and talaq, highlight both the commonalities and differences between the two legal systems. For example, while fiqh recognizes the validity of a contract without registration, state law requires registration to ensure legal certainty for children and spouses. Similarly, the state restricts the practice of polygamy and regulates talaq through the courts for stronger legal protection. This difference demonstrates that state law not only governs the administration but also serves as a mechanism to realize the values of protection that are in harmony with *maqāṣid al-sharī'ah*, particularly in guaranteeing the rights and welfare of children in a more comprehensive and just manner.

Contextual Reinterpretation of *Ḥifẓ al-nasl*: Towards an Integrative Framework

The understanding of *ḥifẓ al-nasl* or the protection of offspring can no longer be interpreted only in the framework of classical jurisprudence that emphasizes the validity of *nasab* and the legal conditions of marriage. This concept warrants further examination in light of recent social developments, ongoing litigation, and the complexities of contemporary family life. Field findings suggest that social actors are beginning to interpret *ḥifẓ al-nasl* more broadly, not just to maintain the legal status of children, but also to ensure that children grow up with fundamental rights protected: birth certificates, access to education, social security, and protection from the effects of unequal marriage.²⁸ In this context, the marriage contract is not just an administrative document, but a starting point

²⁸ Wiwid Putri Handayani dan Diana Tantri Cahyaningsih, "Marriage Agreement on Common Property in Marriage (Comparative Study of Indonesia and The United States)," *ALMANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 6, no. 2 (26 Agustus 2024): 309–322, <https://doi.org/10.37680/almanhaj.v6i2.4617>.

for forming a family protection system. However, field practice still reveals a gap between religious norms, state regulations, and community social conditions. On the one hand, marriage contracts are often viewed as mere formalities to meet the registration requirements. On the other hand, not many couples or headmen see this contract as a means of protecting the rights of offspring in the long term.²⁹

The reinterpretation of *ḥifẓ al-nasl* offered here is an approach that integrates the values of *maqāṣid al-sharī'ah* with contemporary legal and social needs. This means that sharia principles on protecting offspring must be translated into more responsive and adaptive legal policies and practices, for example, by providing more space for couples to make agreements in marriage contracts, especially those regarding child custody, women's economic rights, and protection against unilateral divorce. The role of the state in this matter is significant. KUA is a recording institution and a facilitator of education and protection. State-organized premarital training can serve as a medium to convey the concept of *ḥifẓ al-nasl* more contextually, addressing fundamental issues such as ensuring that children remain legally identified, protection in the event of divorce, and promoting healthy and equal family planning.³⁰

In this framework, *ḥifẓ al-nasl* not only means safeguarding the *nasab* but also guarantees the justice of family relations. Three pillars can be used as a reference in building the protection of descendants as a whole: (1) the validity and registration of legal marriages religiously and statel, (2) the protection of children's rights in legal, social, and psychological aspects, and (3) the creation of equal and responsible family relationships, including in the role of parenting. The three are interconnected and must be present in the marriage contract and family law regulations. It is also important to recognize that the state and religion do not have to be in contradiction with each other. The two can strengthen each other if approached with the spirit of *maqāṣid*. The state plays a role in

²⁹ Mhd Rasidin dkk., "New Marriage Agreement: Maqashid Sharia-Based Marriage Agreement Model as a Solution to Strengthen Family Resilience," *Al-Ulum* 23, no. 2 (5 Desember 2023): 330–351, <https://doi.org/10.30603/au.v23i2.3328>.

³⁰ Ahmad Alimuddin dan Rusdaya Basri, "Tinjauan Maqāṣid Syari'ah Terhadap Perjanjian Perkawinan Sebagai Jaminan Keluarga Bahagia," *Hukamaa: Jurnal Hukum Keluarga Islam* 2, no. 1 (2024): 1, <https://doi.org/10.35905/hukamaa.v2i1.10853>.

ensuring systemic legal justice, while religion provides moral and ethical protection values. Thus, family law is no longer merely normative or administrative, but a means of achieving justice and family welfare.³¹

Of course, this process requires a renewal of perspectives among legal practitioners and religious leaders. It takes courage to place the *maqāṣid* as a bridge between the text and the context. For example, in responding to cases of serial marriage, divorce without clear custody, or children born without legal protection, we do not just rely on normative postulates, but need to formulate solutions that combine the spirit of Sharia with a concrete state protection system. With this approach, *ḥifẓ al-nasl* can be interpreted as a living principle—not only to protect the *nasab*, but also to protect the child's future intact. Through a marriage contract that is consciously drafted and inclusive, with the support of the state and the guidance of religious values, the protection of offspring can be part of a family system that is just, humane, and relevant to the challenges of the times.³² The following is a conceptual table that summarizes the framework of the contextual reinterpretation of *ḥifẓ al-nasl* in an integrative approach, by comprehensively dividing the three main pillars, their applicative dimensions, and their impact on the protection of offspring:

Table 3. The Integrative Framework of Reinterpretation of *Ḥifẓ al-nasl* in Contemporary Marriage Contracts

Integrative Pillar	Applicative Dimensions	Impact on Offspring Protection (<i>Ḥifẓ al-nasl</i>)
1. Legality and Validity of Marriage	- Marriage registration at KUA - Verification of identity and guardian documents	Ensuring clarity on the legal status of children and wives, preventing inheritance and civil rights issues
2. Protection of Children's and Reproductive Rights	- Access to birth certificates - Right to identity and social security - Family planning	Protect the child from an unclear status, ensuring they have access to education and healthcare.

³¹ Yernati Ulfazah dkk., "The Dynamics of Islamic Family Law in the Modern Era: An Analysis of Taghayyur Al-Fatwā and Al-Muḥāfaẓah in the Changing Marriage Agreement Provisions in Indonesia," *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 7, no. 1 (5 Maret 2025): 77-94, <https://doi.org/10.20885/mawarid.vol7.iss1.art5>.

³² Dyah Ochtorina Susanti, "Perjanjian Kawin Sebagai Bentuk Perlindungan Hukum Bagi Pasangan Suami Istri (Perspektif Maqashid Syari'ah)," *Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam* 1, no. 2 (2018): 2, <https://doi.org/10.30659/jua.v1i2.2456>.

3. Justice and Equal Family Relations	- Prenuptial agreement - Distribution of parenting roles - Prenatal and post-divorce mediation	Prevent unilateral domination; Strengthening collaborative parenting for the sustainability of <i>nasab</i>
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Source: Author's interpretation

Table 3 summarizes the framework for the reinterpretation of *ḥifẓ al-nasl* in a contextualized integrative approach, comprising three main pillars: the legality of marriage, the protection of children's rights, and the justice of family relations. The first pillar emphasizes the importance of officially registering marriages to clarify the child's legal status and prevent inheritance disputes. The second pillar highlights aspects of child protection more broadly, including the right to identity, access to public services, and responsible family planning. Meanwhile, the third pillar encourages fair and equal family relations through prenuptial agreements, the division of parenting roles, and conflict resolution mechanisms that support the sustainability of the *nasab*. The three are interconnected and form an essential foundation for ensuring that *ḥifẓ al-nasl* functions effectively in the modern social and legal context.

CONCLUSION

This study concludes that the concept of *ḥifẓ al-nasl* in marriage contracts requires a more comprehensive understanding and contextual interpretation. It should not be limited to preserving lineage legitimacy but should also encompass the comprehensive protection of children's rights, fairness in family relations, and strong legal guarantees for all parties involved. In practice, there is a continuous negotiation between Islamic norms and the state's legal system in addressing the evolving needs of society. Social actors, including *penghulu*, married couples, and religious leaders, have begun to expand the meaning of *ḥifẓ al-nasl*, although not all of these developments have been systematically institutionalized. Field findings indicate that marriage contracts are increasingly viewed not only as a means of fulfilling religious requirements but also as a strategic instrument for protecting children and ensuring family stability, particularly in areas such as marriage registration, prenuptial agreements, and reproductive rights. Therefore, a reinterpretation

of *hifz al-nasl* that is responsive to contemporary realities is needed—one that synergistically combines the values of *maqāṣid al-sharīʿah* with the state legal system. This principle should not remain confined to symbolic or normative texts. However, it must be translated into concrete policies and practices—for instance, through value-based premarital education, adaptive family law regulations, and the empowerment of institutions such as the KUA as mediators between religious values and legal interests. The study further recommends that future research incorporate the perspectives of vulnerable groups, particularly women and children, and adopt interdisciplinary as well as cross-regional approaches, thereby producing findings that are more inclusive, contextual, and responsive to the evolving challenges of Islamic family law.

ACKNOWLEDGMENTS

The author would like to extend his most sincere appreciation to the Rector of Sultan Agung Islamic University (UNISSULA), Indonesia, for the invaluable moral support and institutional facilities that have significantly contributed to the successful completion of this research. The encouragement and commitment to fostering academic excellence have been instrumental throughout the research process. The author is also sincerely grateful to the entire educational community of Unissula for their constructive feedback, collegial support, and the intellectually stimulating environment that nurtures critical thinking and scholarly inquiry. The author hopes that this research not only enriches academic discourse but also makes a meaningful contribution to the advancement of knowledge and the continued progress of the institution.

AUTHOR CONTRIBUTIONS

Mustamam conceptualized the research framework and led the overall project design. Danialsyah contributed to the development of the methodology and supervised data collection and validation. Nurasiah Harahap conducted the literature review and assisted in data analysis. Mega Arum Saputri was responsible for data interpretation and drafting the initial manuscript. Lutter Ariestino contributed to the critical revision of the

manuscript and provided insights on the legal and sociological aspects. All authors have read and approved the final version of the manuscript.

CONFLICT OF INTEREST

The authors hereby declare that there is no conflict of interest related to the publication of this paper. This includes, but is not limited to, any financial relationships, institutional affiliations, or personal considerations that could be perceived as influencing the research process or its outcomes. All analyses, interpretations, and conclusions presented in this work are based on independent academic inquiry and are grounded in scholarly rigor, without any external pressure or bias that could compromise the integrity and credibility of the research findings.

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