

Legal Analysis of the Application of the Principle of Balance in Marriage Agreements (Study of Supreme Court Decision Number 1362 K/Pdt/2024)

Patrick Fransseda Naibaho¹⁾, Janpatar Simamora²⁾ & Roida Nababan³⁾

¹⁾Faculty of Law, Universitas HKBP Nommensen Medan, E-Mail: patrick.naibaho@student.uhn.co.id

²⁾Faculty of Law, Universitas HKBP Nommensen Medan, E-Mail: patarmora@uhn.ac.id

³⁾Faculty of Law, Universitas HKBP Nommensen Medan, E-Mail: roida.nababan@uhn.ac.id

Abstract. *This study aims to analyze the regulation and implementation of marital agreements under the Indonesian Marriage Law and to examine the legal considerations of the Supreme Court in Decision Number 1362 K/Pdt/2024. This research employs a normative juridical method. The findings indicate that in Decision Number 1362 K/Pdt/2024, the Supreme Court affirmed that a prenuptial agreement containing an imbalanced clause where all marital assets become the wife's property while all obligations are imposed upon the husband contradicts the principle of balance (the principle of equality). This decision emphasizes that freedom of contract in marital agreements is not absolute, but must be limited by the principles of substantive justice and the protection of the weaker party.*

Keywords: *Agreement; Balance; Equality; Prenuptial; Validity.*

1. Introduction

According to Article 1 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of

1974 concerning Marriage, marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Almighty God. This formulation emphasizes that marriage in Indonesian national law is not merely a civil event, but a sacred institution that has very strong spiritual, moral, and social dimensions. The concept of "physical and spiritual bond" shows that marriage contains two fundamental aspects: the physical aspect relating to the formal legal relationship between husband and wife and state recognition of marital status, and the spiritual aspect reflecting emotional, spiritual commitment, and religious values as the foundation for forming a harmonious and prosperous family. Thus, every arrangement in marriage, including the arrangement of assets through a marriage agreement, cannot be separated from this noble goal, namely to create a happy, eternal, and just family for both parties.

The purpose of marriage under Indonesian law is not only oriented towards establishing a family, but also reflects the nation's philosophical values, grounded in Pancasila and the belief in One Almighty God. It is to produce legitimate offspring to continue the family's legacy.

In general, a marriage contract contains provisions for the assets of the prospective husband and wife. 6 The purpose of creating a marriage contract is to regulate the legal consequences of marriage regarding assets. 7 "A valid marriage, recognized by both religion and the state, forms the basis of a stable and harmonious family" 8 and becomes a means of having children who are recognized by law and religion. Thus, marriage is not only an institution to fulfill personal needs, but also a form of worship and social responsibility bound by legal norms, religious norms, and ethical values that must be maintained throughout the journey of the household.

In the context of civil law, Article 1313 of the Civil Code (KUHPerdata) defines an agreement as an act by which one or more people bind themselves to one or more other people.¹⁰ This definition provides a legal basis for every form of agreement that arises from the agreement of the parties, including a marriage agreement which is a special form of agreement in the realm of family law. Although a marriage agreement gives the parties the freedom to determine their own arrangement of their assets (the principle of freedom of contract), in practice there is often

an imbalance in the position between husband and wife when making the agreement, resulting in clauses that are unbalanced and potentially detrimental to one of the parties. The agreement can be null and void because all elements and conditions are not in accordance with applicable laws and the basic foundation of the state, namely Pancasila. There are several articles in the Civil Code that explain the invalidity of an agreement. As explained in Article 1322 of the Civil Code regarding errors, what is meant in this article is that if an error is made in the misuse of the circumstances, it is a factor in invalidating a valid agreement.

The urgency of creating a prenuptial agreement is increasingly evident in Indonesian legal practice, given its highly strategic function as a preventive instrument to prevent future property disputes while also providing clear legal protection for each party, both during the marriage and in the event of divorce or death of one of the parties. Thus, it can be said that couples who enter into an agreement receive guarantees during the marriage and after marriage, so that if the marriage is later terminated it will also mean violating the agreement and this rarely happens considering the legal consequences that will arise, usually there are sanctions given to the party who violates the agreement. It is clear that prenuptial agreements play an important role in providing certainty and legal protection for husbands and wives in carrying out marital relations, especially regarding the arrangement of property. However, in practice, the regulation and implementation of prenuptial agreements are not always understood and applied uniformly by the public or law enforcement officials.¹³ This raises the need to re-examine how applicable regulations in the Marriage Law, the Civil Code, and court decisions regulate and direct the implementation of prenuptial agreements. On the other hand, the dynamics of the application of marriage agreements in concrete cases show that legal principles, particularly the principle of balance between husband and wife, are not always realized in the formation of the contents of the agreement.¹⁴ This is clearly illustrated in Supreme Court Decision Number 1362 K/Pdt/2024, in which the Panel of Judges considered that there was an unequal position between the parties so that the marriage agreement was declared invalid and null and void. This decision demonstrates the importance of the judiciary's role in interpreting and applying the principle of balance in disputes related to marriage agreements.

2. Research Methods

This study includes an analysis of the normative provisions governing marriage contracts, the procedures for drafting and ratifying marriage contracts, the substance that can be regulated in marriage contracts, and the implementation of these provisions in marriage law practice in Indonesia. Second, this study analyzes the legal considerations of the Supreme Court in Decision Number 1362 K/Pdt/2024, particularly those related to the application of the principle of balance in marriage contracts. Normative legal research focuses on the study of doctrine, legal principles, legal theory, and the synchronization between norms within the legal system. To answer the problem formulation, this study uses several approaches, namely: Statute Approach. A statutory approach is used to examine various applicable positive legal provisions directly related to the research problem. In this study, this approach is carried out by examining Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, the Civil Code, the Compilation of Islamic Law, and other regulations governing marriage agreements and the principles of agreements. Case Approach. A case study approach is used to analyze court decisions as primary legal material reflecting the application of norms in practice. Through this approach, the research examines the legal considerations and application of the principle of agreement in Supreme Court Decision Number 1362 K/Pdt/2024, thus gaining an understanding of how courts apply legal provisions related to marriage agreements. Conceptual Approach. The conceptual approach is carried out by examining the concepts, principles, and doctrines in legal science that are relevant to the research problem. In the context of this research, the conceptual approach is used to understand the principle of freedom of contract, the principle of consensualism, the principle of pacta sunt servanda, the principle of good faith, and the concept of a marriage agreement according to the views of civil law experts. In the context of the research entitled "Juridical Analysis of the Application of the Principles of Marriage Agreements (Study of Supreme Court Decision Number 1362 K/Pdt/2024)", the type of normative legal research was chosen because this research aims to examine the provisions of marriage agreements in the Marriage Law, the Civil Code, and how the legal principles of

agreements are applied in the juridical considerations of the Supreme Court. This research uses secondary data obtained from reliable sources relevant to the research topic. The availability of data and data sources are crucial because they determine the validity and reliability of the research findings, ensuring scientific accountability.

3. Results and Discussion

3.1. Settings and Implementation of Marriage Agreements Based on Law Number 16 of 2019 concerning Marriage in Indonesia

A prenuptial agreement is essentially an agreement between a prospective husband and wife, made before or during the marriage, to regulate the legal consequences of the marriage, particularly regarding the parties' assets. The existence of a prenuptial agreement in the Indonesian legal system is explicitly regulated in Article 29 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

- 1) At the time or before the marriage takes place, both parties with mutual consent can enter into a written agreement which is ratified by a marriage registrar, after which the contents also apply to third parties as long as the third party is involved.
- 2) The agreement cannot be ratified if it violates legal, religious and moral boundaries.
- 3) The agreement comes into effect from the time the marriage takes place.
- 4) During the marriage, the agreement cannot be changed, unless both parties agree to change it and the change does not harm a third party.

This shows that a marriage agreement has a narrower scope than agreements in general in the Civil Code, because the substance of its regulations is specifically directed at regulating the assets of husband and wife, both regarding ownership, management, and separation of assets, and does not include the regulation of the parties' personal rights and obligations outside the aspect of assets. This regulation is then strengthened by the provisions of Articles 139 to 154 of the Civil Code which regulate more technically the form, content, and legal consequences of a

marriage agreement, thus providing a clear normative basis for its implementation in the practice of marriage law in Indonesia. Based on this approach, the analysis of the regulation of marriage agreements will begin from the provisions in the Marriage Law as *lex specialis* in Indonesian family law.

In addition to being regulated in the Marriage Law, provisions regarding marriage agreements have also historically been regulated in the Civil Code (*Burgerlijk Wetboek*), specifically in Articles 139 to 154 which provide more technical and detailed regulations regarding the form, substance, and legal consequences of marriage agreements. Based on the provisions of Articles 139 to 154 of the Civil Code, a marriage agreement is made by the prospective husband and wife before the marriage takes place, must not violate public order and morality, is valid from the time the marriage takes place, and in principle cannot be changed after the marriage takes place.

Separation of assets in a marriage agreement is permitted as long as it does not conflict with Constitutional Court Decision Number 69/PUU-XIII/2015, which interprets Article 29 of the Marriage Law progressively by stating that a marriage agreement can not only be made before or during the marriage, but also during the marriage bond. This decision provides legal certainty that the separation of assets can be carried out postnuptial, as long as it is agreed by both parties and does not harm third parties, thus expanding legal protection for the interests of both husband and wife.²¹ So that each party still has full authority over the assets they own without interference from other parties, including in terms of management, use, or transfer of said assets to third parties.

In contrast to the concept of separation of assets which emphasizes the independence and autonomy of each party over their assets, the Civil Code also recognizes the concept of unity of assets (*gemeenschap van goederen*) which places the assets of husband and wife in one inseparable unit. Joint assets are the results and income of the husband during the marriage and the results and income of the wife during the marriage, joint assets are assets obtained during the marriage. Joint assets differ from assets brought in, because assets brought in, gifts,

and inheritances remain under the control of each party, unless otherwise agreed. Thus, unity of assets is not an absolute mixing of all assets, but rather a limited mixing that arises because of the marriage and lasts as long as the marriage exists. This concept aims to reflect the principles of togetherness, justice, and balance of the roles of husband and wife in the household.

The existence of a prenuptial agreement provides legal certainty regarding the status and management of the husband and wife's assets during the marriage, reflecting the application of the principles of freedom of contract and the principle of balance in civil law. The parties are given the freedom to regulate their legal relationship fairly and proportionally, without placing either party in a weaker position. With a written agreement, assets owned before marriage, as well as assets obtained through inheritance or gifts, can be maintained as personal property and are not automatically mixed into joint assets. This guarantees protection of the individual rights of both husband and wife, especially for those who owned assets or businesses before marriage.

3.2. Legal Considerations of the Supreme Court in Decision Number 1362 K/Pdt/2024 Regarding the Application of the Principle of Balance in Marriage Agreements

Supreme Court Decision Number 1362 K/Pdt/2024 is a landmark ruling in the realm of marriage law, particularly regarding the validity of marriage agreements and the application of the principle of equality between husband and wife. This case began with a dispute regarding a marriage agreement made by the parties before a notary, the validity of which was then questioned because it was deemed to contain a clause that placed one of the parties in an unequal position. The dispute was examined and decided by the courts of first instance and appeal, which essentially declared the marriage agreement invalid and null and void, and was upheld at the cassation level by the Supreme Court.

During the marriage, the parties then entered into a prenuptial agreement before a notary, which was intended to regulate the legal relationship regarding assets and obligations during the marriage. The prenuptial agreement was made on February 9, 2019, and formally meets the requirements as an authentic deed. However, the substance of the prenuptial agreement made

by the parties actually gave rise to legal issues, because it contained very unequal provisions regarding the rights and obligations of husband and wife. Based on the facts revealed in the trial, the agreement contained a clause stating that all assets acquired during the marriage became the right of Defendant I, while the obligations arising from the marriage were borne by the Plaintiff.

This inequality then becomes a source of dispute when the parties' marital relationship experiences conflict. This case demonstrates that marriage not only creates physical and spiritual bonds, but also gives rise to complex civil legal relationships, particularly regarding the management of property and the parties' responsibilities. This decision emphasizes that the regulation of legal relations in marriage through a prenuptial agreement must remain based on the principles of balance, equality, and justice, as are the primary objectives of marriage law in Indonesia.

Marriage Agreement Number 02 of 2019 contains several crucial clauses that are the subject of dispute in Supreme Court Decision Number 1362 K/Pdt/2024. The most prominent clause is the provision stating that all property acquired during the marriage becomes the right of Defendant I (wife). This clause substantially deviates from the general principle of marriage law which stipulates that property acquired during the marriage is essentially joint property, unless otherwise agreed upon while still paying attention to the principles of justice and balance. Although the marriage agreement allows for deviations from the system of unity of property, the unilateral transfer of all rights to joint property to one party indicates a dominant interest that has the potential to harm the other party. In addition, the marriage agreement also contains a clause stating that all obligations arising from the marriage are borne by the Plaintiff (husband).

This clause further emphasizes the imbalance in the arrangement of the rights and obligations of the parties, because when the economic rights to the marital assets were transferred entirely to Defendant I, the responsibility and burden of obligations were placed on the Plaintiff. This arrangement creates a disproportionate condition and contradicts the principle of equality of

husband and wife in marriage. The combination of these two clauses shows that the prenuptial agreement no longer functions as a fair regulatory instrument, but rather as a means that places one party in a very advantaged position, while the other party is in a structurally disadvantaged position. Therefore, the Supreme Court considers that these clauses violate the principles of balance and a sense of justice, so that the prenuptial agreement does not meet the objective requirements of an agreement and is declared null and void.

In his primary petition, the Plaintiff requested that the court declare Marriage Agreement Number 02 of 2019 null and void or at least invalid and without binding legal force. This petition for annulment is based on the argument that the marriage agreement contains a clause that is very detrimental to the Plaintiff, because all assets acquired during the marriage are given to Defendant I (wife), while the marital obligations are entirely borne by the Plaintiff (husband). Thus, from the outset the Plaintiff argued that the agreement does not reflect justice and balance, and is contrary to the legal objectives of marriage. This petition for annulment is the core of the dispute, because the Plaintiff does not question the existence of the marriage, but rather the validity of the regulation of civil legal relations in the marriage as outlined in the marriage agreement.

Judex facti The first level of reasoning held that even though the marriage contract was formally drawn up before a notary, the judge was not bound solely by the formal aspects. The court assessed the substance of the agreement's clauses by examining whether the contents of the agreement were in line with applicable marriage law principles.

Court The first level of law asserts that freedom of contract within a prenuptial agreement is not absolute, but rather must be limited by the principles of justice, propriety, and balance between husband and wife. Based on these considerations, the primary reason for annulling a prenuptial agreement is that it fails to meet the objective requirements of a contract, particularly regarding a lawful cause. The content of the agreement is deemed contrary to public order and a sense of justice, as it places one party at a significant structural disadvantage. In other words, the prenuptial agreement violates the principle of equality, a fundamental principle of marriage law.

Legal Analysis From a positive legal perspective, this Supreme Court decision is very relevant to the provisions of Article 29 paragraph (2) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, the Supreme Court in its considerations also emphasized that the marriage agreement did not meet the objective requirements of an agreement as regulated in Article 1320 of the Civil Code, especially regarding lawful causes. From the perspective of the general contract law system, this decision shows that the principle of freedom of contract, which is one of the fundamental principles in contract law, is not absolute or absolute.

Non-Juridical Analysis From a non-juridical perspective, the Supreme Court Decision Number 1362 K/Pdt/2024 reflects the social reality that in Indonesian society there are still practices of making marriage agreements that are unbalanced and tend to be exploitative towards one of the parties, usually the party with a weaker bargaining position. has a very significant social impact in changing the public perception that marriage agreements are not an instrument to exploit partners, but must be based on the principles of equality, justice, and balanced partnership between husband and wife in building a household life.

Author's Analysis As a student of the Faculty of Law who reviewed the Supreme Court Decision Number 1362 K/Pdt/2024, he is of the opinion that this decision has succeeded in achieving the right balance between the principle of freedom of contract (*pacta sunt servanda*) with the principle of substantive justice and protection of the weaker party, where the freedom of the parties to manage assets through a marriage agreement remains respected as long as it does not violate the principle of balance (equality) and does not create exploitative conditions that are contrary to the noble purpose of marriage as an equal and harmonious partnership. This decision also reflects the balance between formal-procedural legal certainty and material-substantive justice, where even though the agreement is legally made before a notary, the court still has the authority to test the substance of the agreement and cancel it if its contents conflict with the imperative norms in the Marriage Law, especially Article 29 paragraph (2) and Article 31 concerning the balance of the position of husband and wife.

- 1) The rights and position of the wife are balanced with the rights and position of the husband in domestic life and social life together in society.
- 2) Each party has the right to take legal action.
- 3) The husband is the head of the family and the wife is the housewife.

Furthermore, this decision teaches that in the context of Indonesian marriage law which is based on Pancasila and Belief in the One Almighty God, the values of justice, humanity, and morality must be boundaries that cannot be set aside by agreement of the parties, so that harmony is created between the private dimension (individual freedom) and the public dimension (the state's interest in protecting the institution of marriage and family as the foundation of society) in the national marriage law system.

Freedom of contract must be limited by other principles such as balance, propriety, justice, and good faith. In the context of prenuptial agreements, these limitations on freedom of contract are increasingly important, given that prenuptial agreements concern not only the private interests of the parties but also the public interest, as they relate to the institutions of marriage and family, which are the foundations of society. Therefore, the state, through laws and court decisions, has an interest in ensuring that prenuptial agreements entered into by citizens do not conflict with the fundamental values of justice, humanity, and equality.

This ruling also encourages changes in social behavior among prospective married couples to be more careful and consider aspects of justice in drafting marriage agreements, as well as increasing public awareness that despite having the freedom to contract, this freedom is still limited by the norms of morality and propriety that exist in Indonesian society based on the values of Pancasila. Furthermore, this ruling provides a preventive and educational effect to notaries, legal consultants, and the general public to better understand the legal limitations in drafting marriage agreements, so as to prevent similar disputes in the future and strengthen the institution of marriage as the foundation of a harmonious, prosperous, and just family in accordance with the noble purpose of marriage in Law Number 16 of 2019 concerning Marriage.



4. Conclusion

The regulation and implementation of marriage agreements in Indonesia are based on two main legal pillars: Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (particularly Article 29) as a special law (*lex specialis*) and the Civil Code (Articles 139-154) as a technical regulation. Its scope is specifically limited to the regulation of marital assets, including ownership, management, and separation. Its implementation has undergone significant development with the regulation of postnuptial agreements based on Constitutional Court Decision Number 69/PUU-XIII/2015, which allows for the creation or amendment of agreements during the marriage. Thus, this agreement provides legal certainty and protection by giving couples the option to deviate from the default system of community of assets (*gemeenschap van goederen*), thus allowing for the separation of assets and the protection of assets brought, inherited, or gifted as personal property. Ultimately, a marriage contract reflects the application of the principles of freedom of contract and balance in Indonesian marriage law, which aim to safeguard individual rights and create justice in the management of family assets. The *ratio decidendi* applied by the Supreme Court in this decision demonstrates that although the law grants prospective husbands and wives freedom of contract in entering into a marriage contract (the principle of freedom of contract), this freedom is not absolute and must be limited by fundamental principles of marriage law, particularly the principles of balance and equality between husband and wife. This decision also emphasizes the court's active role in protecting the weaker party in an agreement, by not only considering the formalities of the agreement but also assessing the substance of the agreement from the perspective of substantive justice. The legal implications of this decision are far-reaching. This decision can serve as jurisprudence that provides guidance for judges in assessing the validity of marriage contracts, as well as providing a reference for notaries and the public in drafting marriage contract clauses that are balanced and do not conflict with the principles of marriage law.

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