

The Marriage Agreement as an Effort to Prevent Domestic Violence (KDRT)

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Abstract. *Marriage is the first step for someone in forming a harmonious and happy family, because the realization of a sakinah, mawadah wa rahmah household is the true goal of marriage. This is what makes marriage a sacred agreement that must be maintained and its existence maintained. Although in marriage every couple has the goal of a peaceful, safe and peaceful family, in reality not all marriages can realize the goals of marriage itself. This can be caused by many factors, one of which is Domestic Violence (KDRT) committed by one of the parties, either the husband or the wife. A marriage agreement is generally known as a legal instrument that regulates the division of property between husband and wife. However, its role can be expanded to become a preventive tool in preventing domestic violence (KDRT). This study aims to examine the strategic role of a marriage agreement in forming a healthy and just household relationship. By using a normative approach and qualitative analysis of legal regulations and doctrines, it was found that a marriage agreement has the potential to provide a legal basis for protection for parties vulnerable to violence. However, its implementation still faces cultural and structural obstacles that need to be overcome through legal education and institutional strengthening.*

Keywords: *Agreement; Domestic; Marriage; Protection; Violence.*

1. Introduction

Every Indonesian citizen basically has the same rights and obligations under the law, which we can find in Article 27 of the 1945 Constitution (UUDNRI 1945) which states that "Every citizen has the same position before the law and government and is obliged to uphold the law and government without exception". From Article 27 we can learn together that men and women have the same position before the law, the same rights, obligations and opportunities in every aspect of life including in marriage. A household is a life that aims to create a human relationship to form a family and create offspring through marriage.

Family is the first group in social life for everyone, so that within the scope of a family it is necessary to build concepts and behaviors based on faith and piety. Family life is not only a place to live, but also a peaceful, safe place and can build a harmonious and romantic household.

Marriage is the first step for someone in forming a harmonious and happy family, because the realization of a *sakinah, mawadah wa rahmah* household is the true goal of marriage. This is what makes marriage a sacred agreement that must be maintained and its existence maintained. The marriage contract is not merely a transactional agreement, but a sacred bond that is closely related to piety and faith in Allah SWT, or in other words, there is a dimension of worship in a marriage (Amiur Nurudin, 2004).

In marriage there are horizontal and vertical relationships between humans, the horizontal aspect consists of the relationship between a man and a woman who bind themselves, both physically and mentally as husband and wife to form a household, while the vertical aspect is related to the relationship between a person personally with his God with piety and faith. These two things are what make marriage a sacred bond or a noble and holy contract between a man and a woman that has a scope not only of worship but also of social areas (Sudarsono, 2005).

Although in marriage every couple has the goal of a peaceful, safe and secure family, in reality not all marriages can realize the goal of the marriage itself. This can be caused by many factors, one of which is Domestic Violence (KDRT) committed by one of the parties, either the husband or wife. According to Adeela Shabazz, a marriage that is carried out in conditions that are less conducive or not harmonious, especially if it is colored by destructive behavior or often referred to as domestic violence, is unacceptable (Ali Hosien Hakeem, et.al., 2005) and if this cannot be overcome then maintaining the marriage is futile, and in the end it will be the cause of divorce.

Domestic Violence (DV) is a serious problem that has a direct impact on victims, especially women and children. Data from the National Commission on Violence Against Women shows that cases of domestic violence still dominate forms of violence against women every year. In an effort to prevent domestic violence, a preventive legal approach is important. One approach that can be taken is through a prenuptial agreement, which not only regulates joint property, but also the relationship between husband and wife in a more structured and fair manner.

Efforts to overcome domestic violence have generally been carried out through a repressive approach, namely through the legal process after the violence has occurred. However, a preventive approach that is preventive from the start needs to be prioritized. One form of prevention that can be taken is through a prenuptial agreement, which allows couples to draw up a legal agreement before or during the marriage. A prenuptial agreement not only discusses the separation of property, but can also regulate the roles, responsibilities, and principles of a healthy relationship between husband and wife. With clear rights and obligations, this agreement has the potential to prevent conflicts that can lead to Domestic Violence (DV).

Through the above considerations, this study aims to further examine how a marriage agreement can be used as a strategic effort in preventing Domestic Violence (KDRT) and a legal study is needed that is specifically at the theoretical level regarding the prevention of domestic violence through a marriage agreement as a tool or legal umbrella to provide protection and certainty in guaranteeing the rights and obligations of not only wives and children but also husbands in order to realize the goals of the household and Human Rights (HAM).

2. Research Methods

This study uses a statute approach and a conceptual approach. The statute approach is used to examine the applicable legal norms related to marriage agreements and protection of victims of domestic violence. The conceptual approach is used to explore legal theories and thoughts on preventive legal protection in the institution of marriage. The specifications of this research are descriptive-analytical in nature with the aim of describing the applicable laws and legal theories related to marriage agreements, then analyzing them in the context of preventing domestic violence. Data is analyzed qualitatively, namely by reviewing, grouping, and concluding data based on relevant laws and legal doctrines to answer the legal problems being studied.

3. Results and Discussion

3.1. Legal Position of Marriage Agreements in Indonesia

Marriage can occur if there is a bond between a man and a woman. The marriage occurs to continue the lineage, to become the longest worship. However, in carrying out marriage, of course there are many conflicts in it. Therefore, as a preventive measure, many couples make an agreement before the marriage takes place. This is to prevent something unwanted from happening, such as divorce. So that the rights of each are still protected from each other and the division of these rights is clear.

Marriage Agreement is a term taken from the title of Chapter V of Law No. 1 of 1974 in article 29. Regarding the definition of a marriage agreement, it is not explained in the regulation. The law only regulates when the marriage agreement is made, regulates its validity, when it comes into effect and when the agreement can be changed. So the law does not regulate the material of the agreement as regulated in the Civil Code and the contents of the agreement must be agreed upon by both parties and must not violate the law, morals, or religion.

According to Happy Susanto, a marriage contract is an agreement made by a prospective bride and groom, both male and female, before their marriage takes place, the contents of which bind their marriage relationship (Happy Susanto, 2008). In general, a marriage agreement contains the arrangement of the assets of the prospective husband and wife. In addition, a marriage agreement is an agreement (agreement) made by the prospective husband and wife, before or at the time of the marriage to regulate the consequences of their assets that will occur after the marriage (Soetojo Prawirohamidjojo, 1986).

A marriage agreement is not only limited to agreeing on financial/property matters, there are other important things that need to be agreed upon, for example domestic violence, agreeing that one party will continue their studies even though they are married, and so on (Muchsin, 2008).

Marriage agreements usually regulate the division of assets in the event of a separation or death. This agreement occurs or contains matters relating to the interests of the future of the household during the marriage. This is regulated in Article 29 of Law No. 1 of 1974 concerning Marriage.

Article 29 of Law No. 1 of 1974 concerning marriage agreements states:

Article (1) which reads:

"At the time or before the marriage takes place, both parties with mutual consent can submit a written agreement which is legalized by a marriage registrar, after its contents are entered it also applies to the third party involved."

Article (2) which reads:

"The agreement cannot be ratified if it violates legal boundaries.

religion and morality"

Article (3) which reads:

"The agreement comes into force from the time the marriage takes place"

Verse (4) reads:

"During the marriage, the agreement cannot be changed except by

both parties have an agreement to change and the changes are not detrimental

third party"

In Law No. 1 of 1974 concerning Marriage, there is no explicit regulation regarding the marriage agreement, it is only stated that both parties can enter into a written agreement, namely a marriage agreement. Therefore, the agreement does not regulate clear limitations. So it can be said that this marriage agreement concerns many things.

Apart from that, this marriage law does not regulate further regarding the law regarding the marriage agreement in question (Djaja S. Meliala, 2006). In addition, Government Regulation Number 9 of 1975 concerning the implementation of Law No. 1 of 1974 concerning marriage does not regulate further regarding the marriage agreement in question, it only states that if there is a marriage agreement, it must be included in the marriage certificate as contained in Article 12 (K. Wantjik Saleh, 1980).

In addition, the marriage agreement is also regulated in the Civil Code Article 119-198. In this article it can be concluded that there are 3 types of marriage agreements, namely:

1. Marriage agreement separates the assets brought by each husband or wife. This separation of assets is separated from the assets brought by each husband and wife that were obtained before the marriage relationship. So the assets obtained before marriage become the property of each while the assets obtained after marriage become joint assets.

2. Marriage agreement on separation of profits and losses. This separation includes separation if there is a profit after the marriage relationship then it is divided equally if there is a loss then it will be borne by each of the husband or wife.

3. Marriage agreement for separation of assets in full or complete. This separation of assets means that all assets in the marriage or assets that existed before the marriage relationship or assets that arise throughout the marriage relationship become the rights of each husband and wife. With the separation of assets in the marriage agreement in full, both of them can carry out legal acts themselves from their assets without the consent of the husband/wife. In general, a marriage agreement is made for:

a. When there is a greater amount of assets on one party than on the other party

- b. Both parties each brought considerable input.
- c. Each has their own business so that if one goes bankrupt the others are not involved.
- d. For the debts they incurred before getting married, each will be responsible individually.

Articles 139-143 of the Civil Code regulate provisions that may not be included in a marriage agreement, namely:

1. Marriage agreements must not conflict with decency and public order.
2. The marriage agreement must not interfere with the rights delegated to the husband in his position as head of the household.
3. The marriage agreement must not interfere with the rights given by law to the husband or wife or longest living partner.
4. A marriage agreement cannot discharge legal obligations regarding the inheritance of descendants and cannot regulate the inheritance of descendants.
5. A marriage contract may not stipulate that one party is responsible for a greater share of the debts of the joint property than the other.
6. The parties may not agree that their marriage will be governed by foreign laws and customs that were previously in force in Indonesia and its colonial areas.

The agreement must be made before the marriage takes place and must be made an authentic deed in front of a notary, the deed is very important because it can be used as evidence in court proceedings if there is a dispute about each person's property. If there is no marriage agreement made before the marriage is carried out, all the property of the husband and wife will be mixed. A marriage agreement is justified by laws and regulations as long as it does not violate the morals and public order that apply in society (Abdul Manan, 2003).

The marriage agreement must be stated in the form of an authentic deed. According to Pitlo, a deed is a signed letter, made to be used as evidence, and to be used by the person for whose purposes the letter was made (Pitlo, 1986). According to Sudikno Mertokusumo, a deed is a signed letter containing events that form the basis of a right or obligation that was made from the start intentionally for proof (Sudikno Mertokusumo, 1988). According to Subekti, a deed is different from a letter, but must be interpreted as a legal act derived from the word *acta* which in French means act (Subekti, 2005). Therefore, with the many definitions from several experts, a deed contains a legal act made by the parties which can be used as evidence that a bond has occurred.

There are several functions of deeds for several parties, namely:

1. Conditions for stating the existence of a legal act;
2. Means of proof;
3. The only means of proof.

According to Article 1867 of the Civil Code, it is determined that proof by writing is carried out using authentic writings or handwriting. A private deed is a deed that is deliberately

made by the parties themselves, not made by a public official who has the authority to make a deed. If a legal action occurs then this deed can be used by the parties. A private deed has the power of proof if the maker of the deed acknowledges the contents and signature of the deed. An authentic deed is a deed in the form determined by law, made by or in the presence of public officials who have authority in the place where the deed is made.

The existence of this authentic word provides protection and legal certainty for the community if there is a legal dispute related to the issue of evidence. This authentic deed has perfect evidentiary power. The marriage agreement made with this authentic deed is expected to be one of the protection efforts so that the marriage agreement made has perfect evidence so that it protects the rights of the parties.

3.2. Marriage Agreement as an Instrument for Preventing Domestic Violence

The implementation of a marriage agreement for a husband and wife before getting married certainly has benefits and goals for the husband and wife who are going to get married. Judging from the goals and benefits, it provides a positive aspect for the prospective husband and wife, but there are still few people who view this agreement. This is because it is still taboo for society. Only a portion of society can accept the concept of making a marriage agreement. In addition, there are still many people who view this marriage agreement negatively because this marriage agreement is considered something that is not common, unethical and selfish, not in accordance with the existing culture.

The positive impact of a marriage agreement can provide preventive legal protection regarding the consequences of marriage on assets (Soetojo Prawirohamidjojo, 1988). Marriage agreements are not as bad as they seem. With this marriage agreement, it can minimize the problems that occur if there is a divorce. Without a marriage agreement, the process of dividing marital property can become a dispute. Therefore, the benefits of this marriage agreement are:

1. Regarding the separation of assets if there is no joint property, the requirement is that it must be made before marriage and must be registered at the marriage registration office. With the separation of assets, it can legally protect the assets brought by each party. This marriage agreement will explain the difference between which is joint property and which is each party's personal property.
2. Regarding the separation of debts in the marriage agreement, it can be regulated regarding the issue of debts that will be the responsibility of the party carrying the debt. The debts in question are debts that occurred before marriage, during marriage, after divorce and even death.
3. Responsibility for children resulting from the marriage, especially regarding the cost of living for the child, and the cost of their education must be arranged in such a way as to be equal to the contribution of each parent, in this case the aim is to ensure the welfare of the child.
4. This marriage agreement also has benefits for women so that the rights and justice for wives can be protected and can be used as a guide so that husbands do not monopolize their wives' marital property and personal assets. This agreement can be a tool for protecting women from all possible occurrences of domestic violence (KDRT).

4. Conclusion

Marriage agreements have the potential to be a preventive legal tool in preventing domestic violence. By regulating rights, obligations, and principles of equality from the start, couples can form a healthy, open relationship and avoid unilateral domination that leads to violence. Although still facing various challenges, this agreement is worth considering in the larger framework of legal protection for victims of domestic violence. Marriage agreements in society are still considered taboo, so many people have not used this marriage agreement. The marriage law also does not clearly regulate the meaning of the marriage agreement itself. This marriage agreement contains the division of husband or wife's assets both before and during marriage, and can also contain debts before and during marriage. A marriage agreement made in writing which is stated in a notarial deed is an authentic deed whose evidentiary power is the most perfect so that if a dispute occurs in marriage, this deed is perfect evidence. Therefore, by making this deed, it provides legal protection for the related parties related to each party's assets so that the rights of each party are safe. The purpose of making this marriage agreement is to regulate the consequences of marriage concerning marital assets. In addition, there are various benefits in making a marriage agreement, namely it will explain the difference between joint property during the marriage and the property of each party, explain about debts during the marriage that are the responsibility of the individual or together in the marriage, besides that it also provides protection of rights for women in the event of a divorce.

5. References

- Ali Hosien Hakeem, et.al., (2005), *Membela Perempuan*, Jakarta: Al-Huda
- Amiur Nurudin & Azhari Akmal Tarigan, (2004), *Hukum Perdata Islam di Indonesia*, Jakarta: Kencana
- Christiani, Widowati, (2013), *Hukum Sebagai Norma Sosial Memiliki Sifat Mewajibkan*, Adil Jurnal Hukum
- Manan, Abdul, (2003), *Aneka Masalah Hukum Material dalam Praktek Peradilan Agama*, Jakarta: Pustaka Bangsa
- Meliala, Djaja S, (2006), *Perkembangan Hukum Perdata tentang Orang & Hukum Keluarga*. Bandung: Nuansa Aulia
- Mertokusumo, Sudikno, (1988), *Hukum Acara Perdata Indonesia*, Yogyakarta: Liberty
- Moch, Isnaeni, (2016), *Hukum Perkawinan Indonesia*, Surabaya: PT. Revka Petra Media
- Muchsin, (2008), *Perjanjian Perkawinan Dalam Perspektif Hukum Nasional*, Jakarta: Varia Peradilan edisi Agustus
- Nasution, Bahder Johan, (2008), *Metode Penelitian Ilmu Hukum*, Bandung: Mandar Maju

- Pitlo, (ahli bahasa M. Isa Arief), (1986), *Pembuktian & Daluwarsa Menurut Kitab Undang-Undang Hukum Perdata Belanda*, Jakarta: Intermasa
- Prawirohamidjojo, Soetojo, (1986), *Plurarisme Dalam Perundang-Undangan Perkawinan di Indonesia*, Surabaya: Airlangga University Press
- Prawirohamidjojo, Soetojo, (1988), *Hukum Orang & Keluarga*, Surabaya: Airlangga University Press
- Saleh, K. Wantjik, (1980), *Hukum Perkawinan Indonesia*, Jakarta: Ghalia Indonesia
- Soemitro, Ronny Hanitijo, (1988), *Metodelogi Penelitian Hukum & Jumetri*, Jakarta: Ghalia Indonesia
- Subekti, (2005), *Hukum Perjanjian*, Jakarta: Intermasa
- Sudarsono, (2005), *Hukum Perkawinan Nasional*, Jakarta: Rhineka Cipta
- Susanto, Happy, (2008), *Pembagian Harta Gono-Gini Saat Terjadinya Perceraian*, Jakarta: Visimedia.