

The Urgency of a Marriage Agreement as an Agreement For Couples Who Will Get Married

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Abstract. *This study discusses the urgency of a prenuptial agreement as an agreement for couples who are going to get married. The background of this study is based on the high divorce rate in Semarang, where in 2024 there were around 2230 divorce cases with the details of the most cases being continuous disputes (1771 cases), economic cases (198 cases), and leaving one party (209 cases). The type of research used is empirical law, the approach method in this research is qualitative, the data collection method is by interview and observation, with a descriptive data analysis method. The results of the study show that a marriage agreement has important urgency as: (1) a form of legal protection for married couples, (2) an instrument for regulating household finances, (3) a tool for preventing conflict, and (4) a guideline for dividing assets in the event of a divorce. The main obstacles in making a marriage agreement include: (1) family factors in the form of negative views and social stigma, (2) the cost factor of making an agreement that can be burdensome for couples with lower middleclass economies, and (3) the factor of financial inequality between couples that can cause tension in the process of making an agreement.*

Keywords: Agreement; Divorce; Legal; Marriage Property.

1. Introduction

Marriage has a very noble purpose in human life which aims to build a life with a partner even for biological needs, namely to continue the offspring by obtaining from the marriage, therefore humans in living social life are apparently inseparable from interdependence between one human and another, this is because of the position of humans as social beings who tend to group or be

friends with other humans, so that humans are said to be in addition to being individual creatures as well as social creatures.¹

Marriage agreements are usually used for certain interests. However, many Indonesian people do not understand how to make a marriage agreement, the benefits of making a marriage agreement, and even many people who know about the basic concept of a marriage agreement but do not understand the flow and legality of making it, because of the idea that the process is very long and does not rule out the possibility of games or falsification of the contents of the agreement by one party by taking advantage of the weak party. Joint assets obtained during marriage may not be a problem in a divorce in a marriage. This is different from assets brought and acquired assets whose control is the same depending on which law the husband and wife agree to. This agreement should be stated in a marriage agreement so as not to cause problems in the future.²

However, many marriages also end in divorce. Data sourced from the Semarang Religious Court Case Tracking Information System (SIPP) shows that in 2024 there were around 1590 divorce cases with details of the most cases being due to economic factors with 161 cases, continuous household disputes with 1235 cases, leaving one of the parties 163 cases.³

The cause of divorce is not only due to economic factors, but also because of a hedonistic lifestyle. Many wives sue their husbands for divorce because their husbands cannot fulfill their wives' wishes. In addition, wives sue their husbands for divorce because their husbands have debts. Previously, the couple in this household started a business and borrowed money to develop their business. However, over time the business did not develop and caused the capital not to be returned and debt to accumulate.⁴

The next factor for divorce is the imbalance between work demands and family responsibilities often triggers conflict where the time and energy spent on work interferes with the role in the household, in this increasingly advanced era not all work in the household is burdened on the men now in the household many women also work When couples cannot balance these two roles, tensions can

¹Suruni Ahlan, Wahyono Dhambarata, 2009, *Marriage Regulations in Indonesia*, Lecture Training, Faculty of Law, University of Indonesia, p. 7.

²Sanjaya, JB, & Slamet, RM 2021. *Legal Analysis of the Importance of Making a Marriage Agreement Based on a Civil Law Perspective*. *Lex Generalis Law Journal*, Vol 2 no 6. p. 484.

³Semarang Religious Court Case Tracking Information System (SIPP) <https://pa-semarang.go.id/id/kepaniteraan/statistik-perkara/besar-perceraian-tahun>. Accessed September 23, 2024.

⁴Manna, NS, Doriza, S., & Oktaviani, M. 2021. *Divorce lawsuit: Study of the causes of divorce in families in Indonesia*. *Al-Azhar Indonesia Journal Humanities Series*, Vol 6 no 1, p. 11-21.

increase, leading to arguments and dissatisfaction in the relationship and leading to divorce.⁵

A marriage agreement is an interesting thing because the agreement concerns the rights of each candidate, indeed in Indonesia a marriage agreement is still not common in the eyes of the public, because there are many negative stigmas that say that marriage is a sacred thing but not yet married already make an agreement. A marriage agreement is very necessary because it will be useful when getting married because the agreement discusses the rights and obligations of a marriage agreement can also be called an agreement between two brides and grooms to express something in terms of each other's interests to be implemented in their marriage after taking place in a legal manner.

The importance of prenuptial agreements is influenced by a person's socio-economic progress. The increasing number of women involved in the workforce and business has changed the dynamics of household finances. The dual role of women, both as career women and housewives, adds new difficulties in managing family finances, which requires a clear and fair prenuptial agreement.⁶

2. Research methods

The empirical legal methodology research method, meaning that the existence of law cannot be separated from the social conditions of society and human behavior related to the legal institution.⁷The research specifications use descriptive analytical research, namely research that provides a description, writes and reports an event object and will also draw general conclusions from the problems discussed, the data collection method comes from primary data.

3. Results and discussion

3.1. Why is a prenuptial agreement important as an agreement for those who want to get married?

A marriage agreement is very necessary because it will be useful when getting married because the agreement discusses rights and obligations. This agreement is to protect the rights and obligations of each because after marriage the property of both husband and wife will become joint property unless there is an agreement before marriage. In addition to property, the marriage agreement also contains other things that have been mutually agreed upon.

⁵Wongpy, N., & Setiawan, JL 2019. Work-family conflict in couples with dual roles. *Journal of Theoretical and Applied Psychology*, Vol. 10, No. 1, p. 6.

⁶Nurhayati, N. 2019. The Dual Role of Women and Gender Equality in the Perspective of Islamic Law. *Al-'Adl Journal*, Vol 12 no1, p. 74.

⁷Mukti Fajar, ND, & Achmad, Y, 2010, *Dualism of legal research: normative & empirical*. Pustaka mahasiswa, Yogyakarta, p. 44.

The high divorce rate in Semarang shows how important the marriage agreement is, seen from the figures in 2024 there were 2230 divorce cases with details of the most cases, Continuous disputes with 1771 cases, economic cases with 198 cases and leaving one of the parties 209 cases.⁸

A marriage agreement is very important for the future of a person's household because it guarantees mutual interests if at some point something undesirable happens, meaning a divorce. Divorce is something that is not desired in a marriage, but it can happen over time. Indonesia itself is a country where the divorce rate is quite high, therefore an agreement is actually needed before getting married to protect the rights of each party before they are united in a bond called marriage.

Marriage agreements are still something that has not been touched by the general public. There are people who can accept the concept of thinking about making this marriage agreement, but there are still many people who cannot accept it. In reality, there are still few prospective bride and groom couples who view this as something positive. This idea is still considered negative, so it often causes arguments between prospective brides and grooms. Due to this negative view, our society is still allergic to this. In fact, our society still considers marriage agreements to be something that is unusual, materialistic, unethical, not in accordance with Islamic customs and civilization, emphasizes egoism alone, and other assumptions.⁹

Agreement Every prospective husband and wife who will make a marriage agreement must be based on a clear purpose. This purpose will direct their interests in determining what provisions need to be included in the contents of the agreement. Without a clear purpose, the agreement becomes a guideline that means nothing.¹⁰

There are several stages or processes in making a prenuptial agreement, including: Writing down each party's wishes. Each party can discuss what will be agreed upon in their future marriage. This agreement is free but only relates to contracts that have been approved by a notary.

Bringing a legal consultant, Parties who will enter into a prenuptial agreement are allowed to consult with an authorized institution or understand this matter to make it easier for each party to write what is desired in the prenuptial

⁸Semarang Religious Court Case Tracking Information System (SIPP) <https://pa-semarang.go.id/id/kepaniteraan/statistik-perkara/besar-perceraian-tahun>. Accessed on January 07, 2025.

⁹Sulaiman, E. 2021. Urgency and Function of Marriage Agreement. Ash-Shahabah: Journal of Islamic Education and Studies, vol 7 No, 2 p 165.

¹⁰ Syah, A., & Tholatif, I., 2022. The Urgency of Prenuptial Agreement as an Initial Agreement of Marriage. *Legal Standing: Journal of Legal Science*, Vol 6 No 2. Page 117.

agreement. After the parties have written an agreement for their marriage, simply bring it to a notary to ratify the agreement, no need to take it to court because the notary already has sufficient legal force.

after they bring their agreement to the notary, they can still change it again if there is still something that they want to change in the contents of the agreement because the notary gives the opportunity in other words before it is legalized into a deed then bring the deed to the Marriage Registry Agency. Not just anyone can bring their prenuptial agreement deed to the Marriage Registry Agency, there are provisions that have been regulated by law that if they are Muslim, they must be brought to the Religious Affairs Office, which is an institution that only handles people who are Muslim and for people who are non-Muslim, they can be brought to the Civil Registry Agency to be included in their marriage book, and the submission of this prenuptial agreement must be submitted to the authorized institution before the *ijab qabul*.

Based on the results of the research into the facts within the household, there are several important points that were put forward by the couples who have made this marriage agreement, including the following.

1) Legal Protection

A prenuptial agreement serves as legal protection for a married couple. In the event of divorce or death, this agreement provides clear guidelines regarding the division of assets and responsibilities of each party. Without this agreement, disputes often arise regarding joint assets which can complicate the divorce process.¹¹

2) Financial Management in the Household

The couple that the author interviewed said the importance of making a marriage agreement is one of them to manage finances in the household in today's era many schools whose fees are increasing and basic necessities are increasing if the household cannot manage finances then divorce can occur, Many wives sue their husbands for divorce because the husband cannot fulfill the wishes of his family. Although in today's era many women work to support their families, the terms of the marriage agreement must not eliminate the husband's obligation to earn a living.¹²

3) Prevent Conflict

¹¹The results of the interview with Disa and Bagus as the couple who made the marriage agreement, on December 7, 2024.

¹²The results of the interview with Disa and Bagus as the couple who made the marriage agreement, on December 7, 2024.

There are several problems in the household such as debt problems can also be included in the marriage agreement. If one or both have debts before marriage then it can not be involved with the other, So in general the existence of this prenuptial agreement is related to the problem of wealth, property itself is indeed quite important in building a household, but property can also be the main problem. The existence of an agreement before marriage can minimize disputes in the future.

4) Division of assets if something undesirable happens, such as divorce

In this form, the married couple can include clauses or points regarding the division of assets specifically and comprehensively, both for movable and immovable goods. The core of a prenuptial agreement can be reached on the agreement that there will be no mixing of income and assets, both during the marriage and in the event of separation, divorce, or death. Such an agreement is a protection for the wife, against the possibility of her being held liable for the assets, against debts made by the husband and vice versa.¹³

Overall, a prenuptial agreement plays a crucial role in maintaining a harmonious husband and wife relationship by providing legal protection and clarity regarding the rights and obligations of each party. Thus, the creation of a prenuptial agreement should be considered a positive step that supports the sustainability of a healthy and harmonious household.

There are several consequences that arise from making a marriage agreement, including:

a) Psychological consequences

- 1) Causes distrust between husband and wife regarding property.
- 2) There is a feeling that if there is a violation of the agreement to demand fulfillment for divorce.
- 3) Causing a feeling of anxiety which ultimately results in discomfort in the household.

b) Sociological consequences

- 1) Sociologically, marriage agreements are still seen as unethical by cultures such as Indonesian society.
- 2) Seen as only concerned with wealth.

¹³Results of an interview with Raesa and Putra as the couple who made the marriage agreement, on November 15, 2024.

3) The legal consequences are for each partner who is bound, and whoever violates it will have legal consequences if proven to have violated it, such as divorce or lawsuits or even annulment of the marriage.¹⁴

Although a prenuptial agreement is important, the decision to make one still comes down to the agreement of both prospective couples. The most important thing is to have open communication and honesty in discussing this issue before marriage. If you decide to make a prenuptial agreement, it is best to consult a notary to get a more detailed understanding of the legal aspects and to ensure that the agreement is made in accordance with applicable provisions.

3.1 What are the obstacles faced in the marriage agreement for those who want to get married?

1) Obstacles in making a marriage agreement

After the marriage agreement is made before a notary, sometimes in the implementation of the contents of the marriage agreement there are obstacles to complaints in making a marriage agreement, several aspects need to be considered, namely openness regarding all financial conditions and other matters before marriage, whether or not each party has debts, what the potential debt is after marriage and who is responsible for paying it off.

The goal is for the parties to know what will be received and what will be sacrificed during the marriage so that no party feels disadvantaged. Many prospective brides and grooms may not have access to adequate information about the importance of a marriage contract and the procedure for making it, so they are unaware of the benefits of the agreement.

It is important for a notary to have good knowledge in marriage agreements, be objective, have a good reputation so that in making the deed it can protect both parties from abuse of circumstances or imbalance of position in the agreement. As long as it is agreed, it is good for the parties to determine the points of the agreement as well as possible and as completely as possible. Such as things like polygamy, dowry, divorce, finance, education, and child care are important points that must be stated in the marriage agreement.¹⁵

Based on the results of the factual research Based on the notary's view, the making of a marriage agreement deed can be done without any obstacles, as long as it does not conflict with applicable laws. The notary is of the opinion that as long as the making of a marriage agreement deed does not violate existing laws, there are no obstacles that must be faced as long as it does not violate

¹⁴Aris Prio Agus Santoso et al., 2021, *Introduction to Marriage Law*, Pustakabarupress, Yogyakarta, p. 64.

¹⁵ Tuti, YAD, & Mustafida, L. 2021, Legal Protection of Assets in Marriage by Making a Marriage Agreement Deed Before Marriage. *Fortiori Law Journal*, vol 1 no 02, p. 11.

applicable legal provisions, the process of making a marriage agreement deed can take place without any obstacles. In the notary's view, there are no obstacles in preparing a marriage agreement deed as long as all legal provisions are complied with.¹⁶

There are several important points about the obstacles to marriage agreements, including:

1) Family factors

In addition to being considered taboo, marriage agreements are often misunderstood, both by couples who are getting married and by their parents. There are still many parents or prospective couples who view marriage agreements negatively, especially since marriage is not just for the couple but unites two families with their respective egos.

This kind of view is the general view of most of our society. For society in general, a marriage agreement is still necessary, but not in the sense of material interests as is generally the case with artists, officials, or businessmen. A marriage agreement is needed to make it easier to separate what is joint property and what is not so that if a divorce occurs, the division of joint property can be easily resolved. Through this path, disputes between former divorced husband and wife do not need to be prolonged. Moreover, they have to solve other problems that terminate their marriage relationship.¹⁷

Parents often provide legitimacy to their children's decision to marry and enter into a prenuptial agreement. Moral support from parents can increase the couple's confidence in making this important agreement, making them feel more secure and supported in their new life. Parents often have more life experience, including in marriage and managing assets. They can provide valuable advice on aspects to consider in a prenuptial agreement, such as the management of assets, debts, and future responsibilities to children.

But regarding the influence of the family, from the results of the interview that I conducted with the couple who had made a marriage agreement, the parents of both parties had agreed to make the agreement, evenThe families of both parents of the couple are present as witnesses and support the making of the agreement. Parents can act as mediators if there is a conflict between the couple regarding the contents of the marriage agreement. With their experience and wisdom, parents can help find a fair and beneficial solution for both parties.

Parental involvement in the marriage contract also reflects the family values that have been taught to their children. This can form the basis for couples to live a

¹⁶Results of Interview with Notary Dr. Dahniarti, SH.,M.kn, on November 25, 2024.

¹⁷ Sulaiman, E.op cit page 173.

harmonious and respectful household life, and understand the importance of commitment in marriage. Overall, parental support in the marriage contract not only provides legal legitimacy but also strengthens the emotional and social bonds between the couple, thus facilitating their transition into married life better.¹⁸

2) Cost factor.

Making a marriage contract also requires costs, such as notary fees and legal consultations. For some couples, especially those with financial constraints, these costs can be an additional burden that must be considered before making an agreement. Costs can vary depending on location, the notary's reputation, and the complexity of the agreement's contents.

The couple the author interviewed were from an upper middleclass economy, so the couple had no problems in making it.¹⁹

Some notaries may charge higher rates for more detailed services or for their experience from the results of an interview with Notary Dr. Dahniarti, SH., M.kn, the cost of making a marriage agreement deed starts from IDR 5,000,000. (Five Million Rupiah), with the cost generally not too big and not too small.²⁰

For couples in the lower middle class, these costs can be very burdensome, especially when they have to spend additional costs for various other wedding needs. Without adequate access to affordable legal services, low-income couples may be forced to forgo drafting a prenuptial agreement, which in turn can create legal risks in the future in the event of a divorce or property dispute.

Low UMP can limit the financial ability of couples to pay the costs required to make a marriage contract. This can result in couples choosing not to make a marriage contract or delaying the marriage process. In addition to notary fees, there are also registration fees for the agreement at the Office of Religious Affairs (KUA) or civil registration institutions, which although not too large, still add to the cost burden.

For the less fortunate people, the cost can be said to be burdensome for couples who will make a marriage agreement, marriage itself requires a lot of money and it can be said that if it is too high, the couple will prioritize other needs, for example in Semarang itself the Minimum Wage of Semarang City is Rp. 3,243,969.00 (Three million two hundred and forty three thousand nine hundred and sixty nine rupiah), this value is relatively small compared to other cities.

¹⁸The results of the interview with Disa and Bagus as the couple who made the marriage agreement, on December 7, 2024.

¹⁹The results of the interview with Disa and Bagus as the couple who made the marriage agreement, on December 7, 2024.

²⁰Results of Interview with Notary Dr. Dahniarti, SH.,M.kn, on November 25, 2024.

3) Financial inequality factors

The economically weaker party often feels inferior and is afraid to make proposals in the agreement. Tension and uncertainty often arise because of the inequality of wealth between partners. For example, if one partner has much more assets than they have together, this can raise concerns about how the assets will be divided and managed in the event of a divorce. Because of this inequality, one party may be pressured into agreeing to terms that are not in their favor.

Based on the results of the interview with the couple, there were no obstacles in making the marriage agreement because both had equal financial conditions at the middle to upper level. The problem of financial inequality usually arises in couples with significant differences in economic status, where one party has much greater assets or income than the other party.²¹

When one spouse has significantly more income or assets than the other, this disparity can create tension and discomfort in prenuptial agreement discussions. The spouse with more wealth may feel the need to protect their assets, while the less wealthy spouse may feel underappreciated or worried that the agreement favors the wealthier spouse.

Financial disparities can make one partner feel that the prenuptial agreement will be unfairly biased toward the other partner, which can create emotional distress or even worsen the relationship. This unfairness can be a barrier to discussing and agreeing to an agreement.

2) Solutions to overcome obstacles in making marriage agreements

Analyze and provide solutions to overcome obstacles in making a marriage agreement. The following are solutions that can be applied to each obstacle factor.

a. Solutions for family factors

One way to make a happy family is by good or effective communication. Good communication means establishing a good relationship. Therefore, before getting married, a husband and wife should make a marriage agreement, especially an agreement so that both of them always maintain good communication. So that with this communication, it is hoped that openness and

²¹The results of the interview with Disa and Bagus as the couple who made the marriage agreement, on December 7, 2024.

honesty will emerge, so that suspicion between partners can be avoided. Communication here is interpreted as the process of exchanging information and feelings between two or more people.

- a) Conducting education and outreach to families about the importance of marriage agreements as an instrument of legal protection, not as a sign of distrust.
- b) Involving parents in the process of discussing and making marriage agreements to provide a sense of security and moral support.
- c) Bringing in a marriage counselor or mediator who can help explain the benefits of a prenuptial agreement to the family.
- d) Explaining that a prenuptial agreement can help prevent prolonged conflict if problems arise later on.

b. Cost factor solution.

Before deciding to make a marriage contract, couples can have an initial consultation with a notary to understand the estimated costs and processes involved. This helps couples plan their budget better and avoid unexpected costs. Before choosing a notary, couples should compare several notaries to find one that offers more competitive rates and adequate services. This also gives them the opportunity to get recommendations from friends or family.

- a) Providing legal aid or notary services at more affordable costs for couples with lower middle incomes
- b) Create an installment payment system for the costs of making a marriage contract
- c) Proposing a government subsidy policy for the preparation of marriage agreements for underprivileged communities.
- d) Create a more reasonable standardization of the cost of making a marriage contract according to regional economic conditions.

c. Solutions to financial inequality.

A marriage agreement is made with several factors, namely: A number of assets that are greater in number on one party than the other party; Both parties each bring in a fairly large income; and the existence of debts that they made before the marriage took place. Marriage agreements that contain deviations from complete unity are usually made by prospective husbands and wives whose wealth is very unbalanced, for example, a prospective husband who is categorized as very capable, while the prospective wife is very lacking, or vice versa.

the solution is:

- a) Engage an independent financial consultant to help draft an agreement that is fair to both parties.
- b) Create clauses that guarantee financial protection for economically weaker parties.
- c) Providing a mediator who can assist in objectively negotiating the terms of the agreement.
- d) Create agreements that are dynamic and can be reviewed after a certain period of time to adjust to changes in financial conditions.

4. Conclusion

The process of making a marriage agreement involves several stages, namely, Writing the wishes of each party, Consultation with a legal expert, Notarization, Registration at the authorized institution (KUA for Muslims, Civil Registry for non-Muslims) Although it has benefits, a marriage agreement is still considered taboo by some Indonesian people because it is considered materialistic and not in accordance with customs. However, the decision to make a marriage agreement still returns to the agreement of the two prospective couples by considering open communication and honesty before marriage. From a notary's perspective, the making of a marriage contract deed can be carried out without significant obstacles as long as it does not conflict with applicable legal provisions. However, in practice there are several obstacles faced by couples who want to make a marriage contract. There are three main factors that are obstacles in making a marriage contract: Family factors, with obstacles of negative views with the existence of a marriage contract, cost factors with high costs The cost of making a marriage contract deed is quite high (around IDR 5,000,000). Financial inequality factors Significant differences in economic status between couples can cause tension.

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