

Marriage Agreement as a Form of Legal Protection for the Wife's Rights to Joint Property

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Abstract. *This study aims to determine the legal provisions regarding marriage agreements in Indonesian positive law and analyze marriage agreements as a form of legal protection for wives' rights to joint property. The research method used in this study is the normative legal research method. The results of the study indicate that marriage agreements are legal instruments that provide certainty and legal protection for the rights of husbands and wives, especially regarding the management of joint property. Regulations regarding marriage agreements in Indonesia are regulated in Law Number 1 of 1974 concerning Marriage, the Civil Code, and the Compilation of Islamic Law. In addition, Constitutional Court Decision Number 69/PUU-XIII/2015 provides an expansion of the implementation of marriage agreements, namely that they can be made before or during the marriage. Marriage agreements can be a form of preventive legal protection for wives to obtain legal certainty regarding rights to joint property and prevent future disputes.*

Keywords: *Joint Property; Legal Protection; Marriage Agreement.*

1. Introduction

The institution of marriage has long been known for its mixing of marital assets. The bride and groom never disputed each other's assets. Mutual trust and understanding of the couple served as the foundation for the unification of marital assets. Foreign cultures, known for their individualistic and materialistic nature, gradually entered Indonesia through colonial rule. Over the centuries, their lifestyles have been passed down to generations of Indonesians. According to Islamic law, marriage, known as Nikah, is one of the primary principles of life in a civilized and perfect society. According to Islam, marriage is not only a noble path to organizing family life and procreation, but also a pathway to the door of introduction between one people and another.

According to Islamic Law, marriage is a contract, namely a contract that allows social interaction (husband and wife relations) and limits the rights and obligations as well as mutual assistance between a man and a woman who are both not mahram, meaning that if a man and a woman agree between them to form a household, then the two prospective husband and wife should first carry out the marriage contract. In Islam, marriage is interpreted as a marriage or a very strong contract or mitsaqahgalidzan to obey Allah's commands and carry it out as worship and marriage aims to create a household life that is sakinah, mawaddah and rahmah (serene, peaceful, loving and affectionate)¹. According to customary law in general in Indonesia, marriage is not only a civil contract, but also a customary contract and at the same time a kinship and neighborly contract.². So the occurrence of a marriage bond does not merely bring consequences to civil relations such as the rights and obligations of husband and wife, joint property, the position of children, the rights and obligations of parents but also concerns customary relations of inheritance, family, kinship and neighborhood as well as concerning traditional and religious ceremonies. In a Marriage Law that applies to all citizens in the territory of the Unitary State of the Republic of Indonesia. As Article 28B of the 1945 Constitution is every person has the right to form a family and continue their descendants through a legal marriage. Furthermore, the descendants in this case mean children have the right to survival, growth, and development and have the right to protection from violence and discrimination. The philosophy of the 1945 Constitution Article 28B paragraph (1) is a guarantee of the protection of fundamental human rights, namely the right of every person to form a family and continue their descendants through a legal marriage. This article is rooted in humanitarian values, which recognize that the family is the most basic and important social unit for the lives of individuals, society, nation, and state. This philosophy is also in line with the principle of the state based on the One Almighty God, which is the legal basis for marriage in Indonesia, as stated in Law Number 1 of 1974.

¹. Ahmad Rofiq, Islamic Law in Indonesia, Raja Grafindo Persada, Jakarta, 1995, p. 60.

². H. Hilman, Hadikusuma, Indonesian Marriage Law According to Customary Law and Religious Law, Mandar Maju, Bandung, 2007, p. 8.

This is based on the fact that Indonesia is a pluralistic nation. Therefore, the Marriage Law is the foundation for creating legal certainty regarding the consequences of a marriage, both from the perspective of family law, property, and legal status. The consequences of a marriage have quite broad dimensions, including social and legal, starting from the time of marriage, during marriage, and after marriage. Because in a marriage, many things will occur and will be obtained, such as; issues of property, offspring, where if there are no clear provisions, especially regarding the distribution of inheritance from the deceased or those who divorce, including the issue of each person's inherited property, it will cause problems. Marriage agreements are starting to be commonly carried out by certain groups working in the self-employed sector. For example, when a company owner's daughter has an affair with one of the staff trusted to manage the company. The agreement is made to maintain their professionalism, relationships, and image, also to avoid accusations that one party or their family wants to obtain the other party's wealth, especially from the distribution of joint property (property obtained after marriage).

Prenuptial agreements are also often chosen by prospective couples where one or both parties have high-risk businesses. For example, a business is managed amidst Indonesia's economic conditions that allow for many unexpected events. When applying for credit, for example, banks consider the assets of a husband and wife to be joint property. Therefore, debts are also a joint responsibility. With a Prenuptial Agreement, the debt application is the responsibility of only the applicant, while the spouse is free from liability. Furthermore, if the debtor is declared bankrupt, both parties still have the assets of their spouses for future ventures and to ensure the financial well-being of both parties, especially children. Therefore, Prenuptial Agreements in this case have many positive values. Furthermore, the article directly related to the issue of agreements in a marriage is Article 104 of the Civil Code, which states that a husband and wife, by binding themselves to marriage, and only by that, are bound by a reciprocal agreement, to care for and educate their children. The consequences of marriage on the assets of husband and wife according to the Civil Code are mixed assets in Article 119 of the Civil Code, assets obtained during the marriage become joint assets, including all marital assets, namely: assets that already exist at the time of marriage, assets obtained during the marriage. The marriage agreement must be made in written form, and made before the marriage takes place, and comes into effect from the time the marriage takes place.

The agreement is attached to the marriage certificate and is an inseparable part of the marriage certificate, and the marriage agreement is made by mutual agreement or will, made in writing, authorized by a civil registry officer, and must not conflict with law, religion and morality. Law of the Republic of Indonesia Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage. The legal background for amending Law Number 1 of 1974 to Law Number 16 of 2019 is the ongoing problem of early marriage, which contradicts the principles of child protection and equal rights between men and women. This change was initiated by a judicial review petition filed with the Constitutional Court, which deemed the minimum age for marriage for women (16) to violate constitutional rights and contradict the Child Protection Law.

It's rare for Indonesians to regulate their respective assets (prospective husband and wife) through a prenuptial agreement. This is understandable, as marriage is a sacred institution that encompasses not only legal aspects but also religious ones. Therefore, creating a prenuptial agreement is considered a violation of the sanctity of marriage itself. However, the Marriage Law provides opportunities for those who wish to regulate this. In relation to the equal status of husband and wife in marriage, the same applies to the protection of inherited assets. Each party may manage these individually after marriage, but a prenuptial agreement must be drawn up first. A prenuptial agreement can also be used as a means to minimize divorce. This is intended, among other things, to provide legal protection for the wife's inherited assets. If a divorce is agreed upon from the outset, one party is burdened with obligations, and they will reconsider filing for divorce. This is because divorce is undesirable in a marriage. A person who is solely interested in wealth will hesitate when presented with a prenuptial agreement. They will certainly reject such a clause, as it will not achieve its goals and could be considered a violation of morality.³.

³. Martiman Prodjohamidjojo, Indonesian Marriage Law, Indonesia Legal Centre Publishing, Jakarta, 2002, p. 30.

A prenuptial agreement is a means of protecting the assets of the bride and groom. Through this agreement, the parties can determine their respective assets. Whether there is a separation of assets from the outset during the marriage or joint assets that are regulated by how they will be divided in the event of a divorce. The assets of each husband and wife, and any assets acquired as gifts or inheritances, are under their respective control, unless the parties specify otherwise. A prenuptial agreement is made in written form or by deed, either privately or in the form of an authentic deed drawn up by an authorized official. A deed is a signed document containing all events that form the basis of a right or obligation, and is made from the outset intentionally for the purpose of proof.⁴. In relation to authentic deeds and the authority of a notary as a public official authorized to make authentic deeds, it can be further seen in Law Number 30 of 2004 concerning the Position of Notary, namely the considerations point b stated that to guarantee legal certainty, order, and legal protection, authentic written evidence is needed regarding the circumstances, events or legal acts carried out through certain positions. Based on the background description above, the objectives to be achieved in this study are as follows: To find out and analyze the legal protection of the wife's rights to joint property in a marriage agreement, to find out and analyze the obstacles in the implementation of a marriage agreement.

2. Research Methods

Based on the research objectives, the approach used is a normative legal approach. The research specifications used are descriptive analytical. The data type in this study is qualitative, while the data sources used are secondary data. Secondary data consists of : Primary legal materials, Legal materials secondary, Legal material tertiary. The data collection method in this study was conducted through library research. Data analysis is a research activity that involves reviewing the results of data processing, supported by a defined legal theory that aligns with the research title, resulting in descriptive data analysis.

3. Results and Discussion

3.1. Legal Protection of a Wife's Rights to Joint Property in a Marriage Agreement

Legal protection of the wife's rights to joint property in a marriage agreement can be carried out by making a written agreement that is legally validated, which regulates the separation or arrangement of the wife's personal property from joint property, as well as the division of said property in the event of a divorce, in accordance with Article 29. Law No. 1 of 1974. This agreement aims to protect the wife's personal assets from her husband's debts and ensure her rights to future joint assets as agreed. Legal protection mechanisms:

⁴. Sudikno Mertokusumo, Civil Procedure Law in Indonesia, Liberty, Yogyakarta, 1986, p. 106.

a. Making a marriage contract.

Couples can make a written agreement before or during marriage to regulate matters related to property, such as the separation of personal property (property brought, inheritance, or gifts) so that it is not mixed into joint property.

b. Determining the separation of assets.

Through an agreement, a couple can agree that each party's personal property, inheritance, or gifts remain personal property and are not included in joint property, thus protecting the wife's personal property from the risk of the husband's debt.

c. Arranging the distribution of assets after divorce.

A marriage agreement can provide a clear legal basis for the division of joint assets in the event of a divorce, preventing future disputes.

d. Legal obligations.

The agreement made must not be contrary to morality and public order, and must be carried out in good faith in accordance with statutory provisions.

e. Legal remedies

If one party does not fulfill the agreement or harms the other party, the injured party can sue the court for implementation of the agreement or compensation.

Meanwhile, the legal basis that regulates this is:

a. Law Number 1 of 1974 concerning Marriage:

- a. Article 29 stipulates that a marriage agreement must be made in writing and can be ratified before marriage, taking into account provisions of law, religion, morality and public order.
- b. Article 35 stipulates that property acquired during marriage is joint property, except for property brought in, gifts or inheritance.

b. Compilation of Islamic Law (KHI):

Article 97 states that a widow or widower is entitled to half of the joint property upon divorce, unless there are other provisions in the marriage agreement.

The advantages of a marriage agreement for the wife are:

a. Protection of personal property

The wife's personal assets (such as inheritance or personal property) will remain hers and she cannot be held responsible for her husband's debts.

b. Clarity of rights to joint property

Provides legal certainty regarding the division of joint assets, especially in the event of divorce.

c. Prevent conflict

Reduce the potential for conflict and disputes regarding property during and after marriage.

3.2. Obstacles Faced in the Implementation of Marriage Agreements

After a marriage contract is drafted before a notary, there are sometimes obstacles in implementing the agreement. The most common obstacles include:

1. Husband and wife act in bad faith in terms of debts to third parties.
2. During the marriage, the husband or wife violates the contents of the agreement.
3. There was a civil dispute regarding the marriage contract.

Another obstacle is complaints from the bride and groom's families during the marriage ceremony, because they feel they were never informed that there was a prenuptial agreement made by the prospective husband and wife, or there are suspicions that the assets during the marriage will be controlled by the prospective husband or wife or by a third party. Therefore, it is not impossible to change the agreement or conversely, the agreement itself cannot be implemented. It turns out that during the marriage itself, one party has debts for assets brought in that were originally managed by each party, exceeding the value of the assets that they brought into the marriage. This could affect the relationship between the parties in managing the assets agreed upon.

Cultural issues and issues related to the belief that marriage is sacred, holy, and noble. Therefore, every couple who will marry must maintain its sanctity from the process leading up to marriage and continue until marriage. A family must defend its marriage with all its might for the sake of its sanctity, holiness, and nobility. Tragically, it is not uncommon for women to fight for their marriage bonds, even though they are constantly experiencing violence by their partners. Not many people are willing to sign marriage agreements/prenups. Until now, prenuptial

agreements have been considered only to separate or mix the assets of husband and wife. As a result, the party who proposes it is considered by society as 'stingy'. Until now, especially in Indonesia and perhaps other Eastern countries, prenuptial agreements are something that is not common and even becomes a sensitive issue when a prospective couple proposes to enter into an agreement.

Ultimately, the main problem in implementing a prenuptial agreement is that one or both parties lack good faith and behave badly in carrying out the agreement. In this case, the marriage can be annulled or a divorce can be filed with the Religious Court or District Court for those non-Muslim. Civil disputes are generally resolved through the courts, although alternative dispute resolution options such as arbitration, good offices, mediation, customary law, or religious law can be considered. In the event of a divorce, the management of assets and child custody issues require careful consideration by both parties. Therefore, the most important aspect of a prenuptial agreement is openness, honesty, and mutual trust between the parties in formulating the agreement that will be documented in the deed. This ensures that neither party feels disadvantaged in the future.

In Indonesian society, with its strong Eastern culture, making a marriage contract is considered taboo for most prospective husbands and wives. However, a marriage contract demonstrates good faith in understanding the rights and obligations regarding the management of marital assets, including child custody, as the purpose of marriage, according to the Marriage Law, is to establish a happy and prosperous family based on the One Almighty God. The main obstacle in implementing a marriage contract is that if a divorce occurs, there is no report. This is understandable, because the parties feel this is a family matter, even though from an administrative perspective, they need to re-register the list of marriage contract records they received, in order to determine the development of the level of public awareness in making and recording marriage contracts. Generally, at least a Bachelor's degree (S1) is required and they are economically well-off. And judging from the beliefs they adhere to, it turns out that those who make marriage contracts are mostly Christians and Buddhists compared to those who are Muslim.

The duties of a notary according to Article 1 paragraph (1) of the Notary Law state that a notary is a Public Official who is authorized to make Authentic Deeds regarding all acts, agreements and provisions required by statutory regulations and/or which are desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide grosee, copies and extracts of the deed, all of this as long as the making of the deed is not assigned or excluded to another official or other person determined by law.

A marriage agreement as an agreement between prospective husband and wife, is basically the same as an agreement in general, because both are bound by Article 1320 of the Civil Code which regulates the conditions for a valid agreement, including agreement, legal capacity, a certain matter and a lawful cause. Because a marriage agreement is the same as an agreement in general, a marriage agreement has legal consequences that apply like a law for the parties who make it, as stated in Article 1338 paragraph (1) of the Civil Code which states that all agreements made legally apply as a law for those who make them.

The parties in the agreement must respect and implement the contents of the agreement, may not commit acts that contradict the contents of the agreement. In making a marriage agreement, it can be done with a notarial deed. The basis of the notary's authority in carrying out his duties and position as a notary to make an authentic deed in this case a marriage agreement deed is regulated in the Republic of Indonesia Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary Article 15 which states that:

"Regarding all acts, agreements and stipulations which are required by statutory regulations and/or which are desired by interested parties to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide grosses, copies and quotations of the deed, all of this as long as the making of the deed is not also assigned or excluded to another official or other person as determined by law."⁵

In the implementation of the making of a marriage agreement deed in the field, a Notary may use the provisions contained in the Civil Code or follow the provisions contained in the Constitutional Court Decision Number 69/PUU-XIII/2015 concerning amendments to Article 29 of Law Number 1 of 1974 which permits a marriage agreement to be made before, during and after the marriage as long as it is still within the marriage period.

The role of a notary in drafting a marriage contract is essential because it regulates many matters, particularly regarding assets. A notary's authority in drafting the deed is limited to the contents of the agreement that have met the requirements for a valid agreement based on Article 1320 of the Civil Code, which states that the requirements for a valid agreement are an agreement between the parties, the parties must be competent to make an agreement, there must be a certain thing, and a lawful cause.

A Notarial Deed will be a piece of evidence that has perfect and irrefutable evidentiary power if in the future undesirable things happen, for example in

⁵ Abdulkadir Muhammad, 2004, Law and Legal Research, 1st Edition, PT Citra Aditya Bakti, Bandung, p. 52 <https://review-unes.com/>, Vol. 6, No. 1, September 2023

deciding divorce cases, the assets of each party, or debts. After the marriage agreement is made by a Notary in the form of a Marriage Agreement Deed, a copy of the deed needs to be recorded and legalized by the Marriage Registrar and the binding power of the marriage agreement will be binding after the Marriage Registrar makes a marginal note on the deed register and the marriage deed extract or issues a Certificate for a marriage agreement made in Indonesia and the marriage registration is carried out in another country.

According to the Marriage Law, when a marriage takes place, that is also when the marriage agreement comes into force for the husband and wife (internal), while for third parties (external), the marriage agreement can also be interpreted to come into force after it is registered with the Marriage Registry Officer in the marriage certificate extract (KUA for Muslims and Dispendukcapil for non-Muslims) as a form of validation by the competent authority, so that it has binding power.⁶

Therefore, a third party cannot deny the marriage agreement if it is clearly stated in the husband and wife's marriage certificate. The legal force of a marriage agreement is binding not only on the husband and wife who made it but also on related third parties if it meets the publicity requirements. A marriage agreement that meets the requirements for a valid agreement in accordance with applicable laws and regulations, is authorized by a Marriage Registrar or notary, and is registered by a Marriage Registrar (PPN), then the marriage agreement has the legal force of an authentic deed.

In the contents of the marriage agreement if it turns out that there are prohibitions against law, religion, and morality, it does not cause the marriage agreement to be void, but only to the extent that clauses that conflict with law, religion, and morality are void by law. The marriage agreement made by a husband and wife in marriage aims to provide preventive and repressive legal protection, namely if a conflict arises, the marriage agreement can be used as a reference and one of the foundations for each partner in implementing, and provides boundaries for rights and obligations between them. The marriage agreement made with a notarial deed is also one of the protection efforts so that the marriage agreement made becomes an authentic deed that has perfect evidentiary power to protect the rights of the parties and third parties. In addition, the related third party has the right to demand compensation if the marriage agreement is made or changed with the intention of harming the third party.

⁶ Sutikno, Gusti Muhammad Faruq Abdul Hakim. (2018). "Legal Force of Marriage Agreement Registration for the Parties". Private Law Journal Vol. VI No. 2. <https://review-unes.com/>, Vol. 6, No. 1, September 2023

4. Conclusion

Based on the results of the discussion above, the following conclusions can be drawn: Legal protection of the wife's rights to property in a marriage agreement can only be carried out when the marriage takes place. Where the marriage agreement is a law for the parties, this is in accordance with Article 1338 of the Civil Code. Furthermore, in the Marriage Law in Article 29, the contents of the agreement must be carried out in good faith by paying attention to the provisions of law, religion, moral norms and public order. If one party does not carry out the marriage agreement and harms the other party, then compensation is requested from the party who feels aggrieved to the Court, both demands regarding the implementation of the agreement, and compensation. Obstacles in the implementation of the marriage agreement with the lack of good faith from the parties and the non-inclusion of rights and obligations in the marriage agreement. This can trigger disputes that lead to divorce so that it can be used as a reason for annulment of the marriage or demanding divorce and compensation in court.

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