

The Effectiveness of Notarial Deeds on Marriage Agreements In Reducing The Divorce Rate In Jepara Regency

Ziyadatul Ula

Faculty of Law, Universitas Islam Sultan Agung, Semarang, Indonesia, E-mail:
ziyadatulula2642@gmail.com

Abstract. *A marriage contract is a legal instrument that can provide legal certainty and protection for husband and wife, particularly in managing assets, debts, and economic responsibilities within the household. The existence of a marriage contract is expected to prevent conflicts that could potentially lead to divorce. This study aims to analyze the effectiveness of notarial deeds on marriage contracts in reducing the divorce rate in Jepara Regency. This study uses an empirical legal research method with a cultural and economic approach. Data were obtained through interviews, observations, and literature studies, then analyzed descriptively. The results of the study indicate that normatively, a marriage contract has a clear legal basis and can function as a preventive instrument in providing protection for the rights and interests of husband and wife, especially regarding assets and economic responsibilities. However, empirically, notarial deeds on marriage contracts have not been effective in reducing the divorce rate in Jepara Regency. This is evident from the still low use of marriage contracts and the absence of divorce cases in the Jepara Religious Court involving couples with marriage contracts in the form of notarial deeds. This condition is influenced by the low understanding and legal awareness of the community, minimal socialization, and the cultural view that marriage contracts are a form of distrust towards partners. Therefore, it is necessary to increase socialization and legal education to the public regarding the function and benefits of marriage agreements as an instrument of legal protection and prevention of domestic conflict.*

Keywords: Agreement; Effectiveness; Legal; Marriage; Regency.

1. Introduction

Marriage is a physical and spiritual bond between a man and a woman as husband and wife whose aim is to form a happy and eternal family based on the belief in the Almighty God.¹ From a legal perspective, marriage not only creates a personal

¹Muhtar, S, Rachman, A., Thalib, P, 2020, Indonesian Marriage Law from the Perspective of Civil Law, Islamic Law, and Administrative Law. Prenada Media Group, Jakarta, p. 6

relationship between husband and wife, but also gives rise to various legal consequences in the form of rights and obligations, including those related to the status and management of marital assets. Based on Article 35 of Law Number 1 of 1974 concerning Marriage, assets acquired during marriage essentially become joint assets, while assets brought in, gifts, and inheritances are under the control of each party unless otherwise specified.

Arranging marital assets can create problems if the husband and wife don't have a clear agreement regarding the management and ownership of the assets. One legal instrument that can be used to provide certainty in this regard is a prenuptial agreement.² A marriage agreement provides an opportunity for couples to regulate their rights and obligations, as well as the status of their assets, based on mutual agreement. Its existence can provide legal protection and anticipate disputes, especially those related to joint assets, debts, or actions. The regulation of marriage agreements is contained in Article 29 of Law Number 1 of 1974 concerning Marriage and has developed following the Constitutional Court Decision Number 69/PUU-XIII/2015. This decision provides an extension to the timeframe for making a marriage agreement, namely it can be made before, during, or during the marriage based on the agreement of both parties. The agreement can be validated by a marriage registrar or a notary and is valid for third parties as long as the third party is interested. The regulation of marriage agreements is also contained in Articles 45 and 47 of the Compilation of Islamic Law, which provides space for prospective brides and grooms to make agreements regarding the status of assets in marriage as long as they do not conflict with Islamic law.

Ideally, a prenuptial agreement can be a preventative tool to minimize domestic conflict, particularly those related to economic and property issues. However, in practice, prenuptial agreements are not widely recognized and utilized by the public. This is evident in Jepara Regency, which still has a relatively high divorce rate. According to data from the Jepara Religious Court, in 2023, there were 2,149 divorce cases, 2,015 in 2024, and 2,015 in 2025. These cases were dominated by divorce lawsuits filed by the wife.³

Based on interviews with judges at the Jepara Religious Court, divorce in Jepara Regency is influenced by economic factors, persistent arguments, domestic violence, infidelity, and online loans and gambling. Furthermore, Jepara residents still rarely enter into prenuptial agreements due to a lack of understanding of their function and benefits. Prenuptial agreements are even still considered taboo by some, as they are believed to undermine trust in marital relationships.

²Elisabeth Nurhaini Butarbutar, 2012, *Property Law According to the Civil Code Systematics and Its Development*, PT. Refika Aditama, Bandung, p. 22.

³Annual Report of the Jepara Religious Court

A prenuptial agreement can clarify the rights and obligations of husband and wife and serve as a guideline for dealing with various contingencies that arise during a marriage. Agreements regarding asset management, debt responsibilities, and ownership of each party's assets can provide legal certainty and reduce the potential for conflict in the event of a dispute or divorce. Thus, a prenuptial agreement serves not only as a tool for managing assets but can also be viewed as a preventative measure to anticipate conflicts that could potentially disrupt the integrity of the household.

Based on this background, the researcher is interested in discussing a study entitled The Effectiveness of Notarial Deeds on Marriage Agreements in Reducing the Divorce Rate in Jepara Regency.

2. Research Methods

This study employs empirical legal research, that is, research that examines legal phenomena based on conditions and facts occurring in society. This study employs cultural and economic approaches to analyze societal views on prenuptial agreements and the economic factors related to their use as a legal protection instrument in married life. The data sources in this study consist of primary and secondary data. Primary data were obtained through interviews with the Jepara Religious Court and informants relevant to the research object. Secondary data were obtained through primary, secondary, and tertiary legal materials, including legislation, the Compilation of Islamic Law, Constitutional Court Decision Number 69/PUU-XIII/2015, books, journals, and other literature sources related to the research. Data collection techniques included interviews, observation, and literature review. Interviews were conducted in a free, guided manner to obtain information from relevant parties, while observations were used to gain insight into conditions and phenomena occurring in the field. Literature review was conducted by reviewing various laws and regulations, books, journals, court decisions, and relevant literature. The data obtained were then analyzed descriptively through the stages of data collection, data reduction, data presentation, and drawing conclusions. The analysis was conducted by linking the data obtained in the field with relevant legal provisions and concepts to obtain a picture of the effectiveness of notarial deeds regarding marriage agreements in reducing the divorce rate in Jepara Regency.

3. Results and Discussion

3.1. Legal Consequences of Marriage Agreements

A marriage contract is an agreement made by a prospective husband and wife, or by a married couple, to regulate their legal relationship, particularly regarding property and other agreed-upon matters, as long as they do not conflict with law, religion, morality, or public order. In practice, a marriage contract can be set out

in an authentic deed drawn up by a notary, thus providing certainty and evidentiary force for the parties.⁴

Legally, a prenuptial agreement creates a legally binding relationship between husband and wife. Based on the principle of *pacta sunt servanda*, a legally created agreement is enforceable as law for the parties making it. Furthermore, a prenuptial agreement can determine the separation of assets, debts, and economic responsibilities of each party. With this separation, the assets and liabilities acquired by each partner remain their personal responsibility, in accordance with the agreement.

A prenuptial agreement also has consequences for asset management and settlement in the event of divorce. Clear arrangements from the outset can reduce the potential for disputes regarding joint assets because each party is aware of their rights and obligations. Furthermore, a prenuptial agreement can provide legal certainty for third parties in economic relationships involving one of the partners, especially if the agreement is drawn up in an authentic deed and complies with applicable legal requirements.⁵

From a legal protection perspective, a prenuptial agreement can function both preventively and repressively. Preventively, the agreement provides clarity regarding the rights, obligations, management of assets, debts, and economic responsibilities of each party, thereby preventing disputes. Repressively, the agreement can be used as a basis for resolving disputes during or after the marriage. Thus, a prenuptial agreement serves not only to regulate assets but also as an instrument of legal protection for both husband and wife.

However, research at the Jepara Religious Court shows that the use of prenuptial agreements remains very low. Based on an interview with Jepara Religious Court Judge Drs. Nadjib, SH, the community still views marriage as a relationship based on trust and togetherness. Therefore, agreements governing the separation of assets before marriage are still perceived by some as a sign of distrust.⁶

On the other hand, divorce cases in Jepara Regency are still influenced by infidelity, gambling, online loans, and differences in economic circumstances between husband and wife. Persistent economic conflicts can escalate into irreconcilable disputes and ultimately lead to divorce.

This situation demonstrates a gap between the normative benefits of a marriage contract and its implementation in society. In fact, a marriage contract can be used as a preventive instrument to provide clarity regarding the management of assets

⁴Muhammad Amri Pratama et al., 2024, "Prenuptial Agreements in the Perspective of Civil Law in Indonesia." *As-Syirkah: Islamic Economic & Financial Journal* Vol 3, No. 3, pp. 80-90.

⁵Ahmad Assidik, and A. Qadir Gassing. 2019, "Review of Islamic Law and Positive Law on Prenuptial Agreements." *Qadauna: Scientific Journal of Islamic Family Law Students* Vol. 1, No. 1, pp. 1-16.

⁶Interview with Drs. Nadjib, SH, Judge of the Jepara Religious Court, on May 25, 2026 at 10:00 WIB.

and the economic responsibilities of each partner. The research also shows that no couples filed for divorce at the Jepara Religious Court using a marriage contract. This suggests that a marriage contract has not yet become a commonly used legal instrument in Jepara, despite its potential to minimize domestic conflict.

Thus, based on the theory of legal protection, a prenuptial agreement serves a preventive function because it provides certainty regarding the parties' rights and obligations before a conflict arises. However, once a conflict has already occurred, the agreement can serve as a repressive basis for dispute resolution. Therefore, a prenuptial agreement can protect the interests of both husband and wife and serve as a tool to minimize potential conflicts related to property and economic responsibilities within the household.

3.2. The Effectiveness of Marriage Agreement Deeds in Reducing the Divorce Rate in Jepara Regency

A prenuptial agreement is a legal instrument that allows a husband and wife to regulate their rights, obligations, and property rights within the marriage. This regulation is contained in Article 29 of Law Number 1 of 1974 concerning Marriage and was further developed through Constitutional Court Decision Number 69/PUU-XIII/2015, which allows couples to enter into a prenuptial agreement before, during, or during the marriage. This agreement essentially provides legal certainty and protection, particularly in regulating each party's assets, debts, and economic responsibilities.⁷

Theoretically, a prenuptial agreement can be a preventative measure to reduce the potential for economic conflict in the household. This is particularly relevant in Jepara Regency, where, based on interviews with judges at the Jepara Religious Court, divorce cases are still high. Economic factors are a key contributing factor, including income differences between husband and wife, conflicts over asset management, online loans, gambling, and the inability to meet family financial obligations. A prenuptial agreement can provide clarity regarding the separation of assets, debt responsibility, and financial management, thereby minimizing the potential for economic disputes.

However, research results indicate that marriage contracts are not widely used by the people of Jepara Regency. The Jepara Religious Court judge stated that during his duties, he had almost never encountered a divorce case in which the parties had a marriage contract authentically drawn up before a notary. One agreement was found to be privately drawn up and stamped, but not a marriage contract in the form of a notarial deed. This situation indicates that public understanding of

⁷Darmawan Sarizal and Mahfud, 2019, "The Position of Marriage Agreements Regarding Separation of Joint Assets After Marriage in Relation to Constitutional Court Decision Number 69/PUU-XIII/2015 Concerning the Time of Making Marriage Agreements." *Syiah Kuala Law Journal* Vol 3 No.2, p. 299.

marriage contracts and the importance of creating an authentic deed is still limited.

The low use of prenuptial agreements is also evident in public perception. Interviews with several married couples in Jepara Regency revealed differing understandings. Some considered prenuptial agreements unnecessary because marriage is based on trust and commitment. Others only learned about prenuptial agreements after receiving information from social media or the internet and understood that they can protect a family's assets and financial responsibilities. Furthermore, after receiving an explanation of their function and legal consequences, respondents believed that prenuptial agreements are important for clarifying the rights and obligations of husband and wife.

The phenomenon of online loans and gambling, which are contributing to financial conflict in marriages, further demonstrates the importance of managing assets and debts within a marriage. Through a prenuptial agreement, couples can determine the division of assets and responsibility for each other's debts. However, a prenuptial agreement cannot directly prevent gambling or online lending. Its function is more to provide certainty regarding the legal consequences and responsibilities of each party's economic actions and to protect the other party's assets in accordance with the agreement.

To assess the effectiveness of marriage agreements in reducing the divorce rate in Jepara Regency, this study uses Soerjono Soekanto's theory of legal effectiveness which consists of five factors, namely legal factors, law enforcement, means or facilities, society, and culture.

a. First, legal factors.

Normatively, the provisions regarding prenuptial agreements provide a fairly clear legal basis. Article 29 of the Marriage Law, as interpreted through Constitutional Court Decision Number 69/PUU-XIII/2015, provides broader scope for couples to enter into prenuptial agreements. This provision allows couples to enter into agreements during the marriage, providing flexibility to accommodate the legal needs of the parties. However, research shows that some members of the public are unaware of changes and developments in these provisions. Therefore, from a legal perspective, the substance of the regulations is supportive, but their effectiveness is still influenced by the level of public understanding.

b. Second, the law enforcement factor.

Notaries play a crucial role in the preparation of marriage contracts because they have the authority to create authentic deeds that provide certainty and evidentiary force for the parties. Religious Court judges also play a role in providing understanding of marriage law issues through the examination and resolution of cases. However, research shows that this role has not been able to encourage

optimal use of marriage contracts because the number of people who utilize them is still very small.

c. Third, the facilities and infrastructure factors.

The implementation of marriage contracts is supported by the presence of notaries and access to various sources of legal information. However, the public still faces limited information and outreach regarding the function, procedures, and benefits of marriage contracts. The perception that the cost of obtaining a marriage deed is also a barrier. This situation indicates that the available legal resources are not yet fully utilized by the public.

d. Fourth, social factors.

Societal factors are a major obstacle. Some people in Jepara Regency still view prenuptial agreements as a sign of distrust or something unconventional in marriage. This view makes couples reluctant to discuss or enter into prenuptial agreements. On the other hand, some people are beginning to understand that prenuptial agreements can provide legal protection and certainty regarding the rights and obligations of husband and wife. This difference in understanding indicates that legal awareness remains unequal among the public.

e. Fifth, cultural factors.

The strong culture of family and trust within the households of Jepara Regency also influences the acceptance of marriage contracts. Discussing the division of assets, debts, or potential conflict before or during marriage is still considered inconsistent with the values of trust within the household. However, advances in information and increased legal awareness, particularly among younger generations, are beginning to encourage a shift in attitudes toward marriage contracts.

Based on these five factors, it can be concluded that notarial deeds regarding marriage agreements normatively have the potential to provide legal protection and reduce domestic conflicts related to property and economic issues, but empirically cannot be said to be effective in reducing the divorce rate in Jepara Regency. This is caused by the low use of marriage agreements, limited public understanding, minimal socialization, and the existence of a cultural view that considers marriage agreements to be a form of distrust towards the partner. Thus, the effectiveness of marriage agreements depends not only on the existence of legal regulations, but also on public awareness, the role of notaries and related institutions, the availability of information, and changes in the legal culture of society.

4. Conclusion

Based on the results of research on the effectiveness of notarial deeds regarding marriage agreements in reducing the divorce rate in Jepara Regency, it can be

concluded that normatively, marriage agreements have a clear legal basis and can provide protection and legal certainty for husbands and wives, particularly in regulating the assets, debts, and economic responsibilities of each party. Marriage agreements also have a preventive function because they can provide clarity on rights and obligations and minimize the potential for household conflict related to economic issues. However, empirically, notarial deeds regarding marriage agreements cannot be said to be effective in reducing the divorce rate in Jepara Regency. This is evident from the still low use of marriage agreements and the absence of divorce cases in the Jepara Religious Court involving couples with marriage agreements in the form of notarial deeds. This low effectiveness is influenced by several factors, namely the still limited understanding and legal awareness of the community, minimal socialization regarding the benefits and procedures of marriage agreements, and the existence of a cultural view that considers marriage agreements to be a form of distrust towards partners. Thus, the existence of marriage agreements basically has the potential to be an instrument of protection and prevention of economic conflict in the household, but its implementation in Jepara Regency is not optimal, so its contribution to reducing the divorce rate cannot be seen clearly.

5. References

- Adjie, Habib, 2022, *Implementasi Pembuatan Akta Perjanjian Praperkawinan dan Pascaperkawinan oleh Notaris*, PT. Refika Aditama, Bandung.
- Butarbutar, Elisabeth Nurhaini, 2012, *Hukum Harta Kekayaan Menurut Sistematika KUHPerdara dan Perkembangannya*, PT. Refika Aditama, Bandung.
- Kusmarini, Emi, 2023, "Analisis Perjanjian Perkawinan Menurut Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan", *Jurnal Fatwa Hukum*, Vol. 6, No. 2.
- Laporan Tahunan Pengadilan Agama Jepara accessed from <https://pa-jepara.go.id>
Accessed on 12 June 2026
- Maulana, Rahul, I Nyoman Putu Budiarta, dan Ni Made Puspasutari Ujianti, 2021, "Peranan Perjanjian Perkawinan yang Dilakukan Sebelum Perkawinan Berlangsung Studi Komparatif Hukum Islam dan Undang-Undang Perkawinan", *Jurnal Analogi Hukum*, Vol. 3, No. 3.
- Pakaya, Susisusanti G., 2016, "Perlindungan Hukum terhadap Harta Bawaan dengan Akta Perjanjian Perkawinan", *Jurnal Ilmu Hukum Legal Opinion*, Vol. 4, No. 2.
- Interview by the author with Drs. Nadjib, S.H., a judge at the Jepara Religious Court, on May 25, 2026.
- Yasyfa, Hasna, Sonny Dewi Judiasih, dan Elis Nurhayati, 2024, "Akibat Hukum Perjanjian Kawin Pada Perkawinan Sejenis", *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan*, Vol. 8, No. 1.