



Marriage Agreement As Legal Protection For Both Parties in Marriage

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Abstract. *This study aims to analyze the marriage agreement as an instrument of legal protection for both parties in a marriage, especially in terms of property ownership and financial responsibility. This study uses a sociological juridical method, with primary data obtained through interviews with a notary and secondary data from various legal literature, including Law Number 1 of 1974 concerning Marriage, the Civil Code, and the Constitutional Court Decision Number 69/PUU-XIII/2015. The results of the study indicate that the marriage agreement plays a role in preventing potential legal conflicts in marriage, both in monogamous and polygamous systems, and provides legal certainty for third parties, such as creditors or heirs. This agreement not only protects the rights and obligations of the husband and wife, but also ensures legal clarity in the division of assets and financial responsibility during and after the marriage.*

Keywords: *Agreement, Marriage, Law.*

Abstrak. Penelitian ini bertujuan untuk menganalisis perjanjian perkawinan sebagai instrumen perlindungan hukum bagi kedua belah pihak dalam perkawinan, khususnya dalam aspek kepemilikan harta dan tanggung jawab finansial. Penelitian ini menggunakan metode yuridis sosiologis, dengan data primer yang diperoleh melalui wawancara dengan seorang notaris serta data sekunder dari berbagai literatur hukum, termasuk Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Kitab Undang-Undang Hukum Perdata (KUH Perdata), dan Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015. Hasil penelitian menunjukkan bahwa perjanjian perkawinan berperan dalam mencegah potensi konflik hukum dalam perkawinan, baik dalam sistem monogami maupun poligami, serta memberikan kepastian hukum terhadap pihak ketiga, seperti kreditor atau ahli waris. Perjanjian ini tidak hanya melindungi hak dan kewajiban pasangan suami istri, tetapi juga memastikan kejelasan hukum dalam pembagian aset dan tanggung jawab finansial selama dan setelah perkawinan berlangsung.

Kata Kunci: Perjanjian, Perkawinan, Hukum.

1. BACKGROUND

Marriage is a social institution that is not only based on emotional and spiritual aspects, but also has legal consequences that bind both parties. In Indonesian law, marriage is regulated in Law Number 1 of 1974 concerning Marriage which regulates the rights and obligations of husband and wife (Suwarlan et al., 2025) . According to Sudarmanto et al., (2021) , marriage is a marriage agreement, which can be made by the couple before or during the marriage bond. This agreement aims to regulate various matters, including the separation of assets and financial responsibilities, in order to provide legal protection for both parties.

Marital agreements are becoming increasingly relevant along with the increasing legal awareness in society regarding rights in marriage. In Indonesia, marriage law initially adheres to the joint property system (*gemeinschaft van goederen*), where all property obtained during marriage becomes joint property, unless there is another agreement that regulates its division

(Dewi, 2022) . However, with the increasing complexity of economic and social life, many couples choose to make a marriage agreement to regulate the separation of assets to avoid disputes in the future (Umam et al., 2023) .

The existence of a marriage agreement not only benefits couples in the financial aspect, but also provides legal guarantees for the parties involved, including children born from the marriage (Putri & Artikel, 2024) . With a marriage agreement, couples can avoid legal problems related to asset ownership in the event of divorce or other problems involving third parties, such as creditors or extended family. This shows that a marriage agreement is not just an administrative document, but also a form of legal protection that can minimize the risk of conflict (Asyatama & Ridwan, 2021) .

In many countries, the concept of a prenuptial agreement has become commonplace before couples get married. In countries that adhere to the Anglo-Saxon legal system, prenuptial agreements are even mandatory documents for couples with substantial economic interests. In Indonesia, the existence of a prenuptial agreement has been a topic of debate, especially in the context of Islamic and customary law. However, the Constitutional Court through Decision Number 69/PUU-XIII/2015 has provided more space for couples to make marital agreements, including those made after the marriage takes place (Sopiyan, 2023) .

Although marital agreements provide many benefits, there are still many people who do not understand their function. Most couples think that making a marital agreement can damage trust in the relationship, so they are reluctant to discuss this topic before marriage. In fact, this agreement can actually clarify the rights and obligations of each party and create a more transparent and healthy relationship in marriage (Arief, 2017) . Therefore, further socialization is needed so that people understand that a marriage agreement is not a form of distrust, but rather a preventive measure to protect the legal interests of both parties.

There are several legal issues that still arise in the implementation of marriage agreements in Indonesia. One of them is how the mechanism for recording and validating this agreement at the relevant institutions, as well as how it is applied in inheritance and banking law (Kurniawan, 2020) . In some cases, couples who have made a marriage agreement still experience obstacles when they want to apply for bank loans or take care of asset ownership documents because there is no uniform understanding among marriage registration officials and other legal authorities.

From a legal perspective, a marital agreement can be an effective tool in resolving disputes that may arise in the future. Without a clear agreement, many divorce cases end up with conflicts over the division of property, debts, and child custody (Novany & Putra, 2023)

. With a marriage agreement, couples can avoid prolonged disputes and resolve legal issues more quickly and fairly.

The importance of marital agreements can also be seen from the aspect of legal protection for women. In some cases, women are often in a more economically vulnerable position than men, especially if they do not have access to adequate financial resources after divorce. With a marital agreement, women can obtain legal certainty regarding their rights to joint property, alimony, and other aspects related to life after divorce.

By considering these various aspects, this research aims to analyze how a marriage agreement can function as legal protection for both parties in marriage. In addition, this research will discuss the legal obstacles that are still faced in the implementation of the marriage agreement and offer recommendations for couples who want to make this agreement in order to obtain maximum legal benefits further under the title "Marriage Agreement as Legal Protection for Both Parties in Marriage".

2. RESEARCH METHODS

This study uses a juridical sociological research approach by examining primary data sources obtained through interviews with Ms. Siti Rahmawati, S.H., M.Kn., a Notary in Semarang City who has been practicing for more than 10 years in the field of civil law, especially related to marriage agreements. The interview was conducted to obtain an in-depth understanding of the limitations of the contents of the marriage agreement and its implications in legal practice in Indonesia (Sembiring et al., 2023) .

In addition, secondary data were collected from various sources of literature and legal material documents, such as books, scientific journals, and relevant laws and regulations, including Law Number 1 of 1974 concerning Marriage, the Civil Code (KUH Perdata), and Constitutional Court Decision Number 69/PUU-XIII/2015. This research aims to analyze the extent to which a marriage agreement can provide legal protection for married couples and how it is applied in notary practice in Indonesia.

3. DISCUSSION

Limitations on the Content of Marital Agreements in General

A marriage agreement is a written agreement made by a husband and wife before or during marriage to regulate rights and obligations in marriage, especially regarding property. In practice, this agreement must fulfill the provisions stipulated in the laws and regulations to be valid and enforceable. Based on the results of an interview with Ms. Siti Rahmawati, S.H.,

M.Kn., a Notary in Semarang City, the limitations of the contents of a marriage agreement are regulated in Article 29 of Law Number 1 of 1974 concerning Marriage and in the Civil Code (KUH Perdata) Articles 139-147

In addition, after the Constitutional Court Decision No. 69/PUU-XIII/2015, marital agreements can now be made both before and after the marriage takes place, thus providing more flexibility for couples in regulating their economic relationship. However, there are some limitations that must be considered in drafting this agreement, as explained below:

a. Does Not Remove Husband-Wife Rights and Obligations

A marriage agreement must not eliminate the basic rights and obligations attached to husband and wife. As affirmed in Article 31 paragraphs (1) and (3) of Law Number 1 Year 1974 concerning Marriage, husband and wife have an equal position in the household and are obliged to love, respect, and help each other. In an interview, Notary Rini Setiawan, S.H., M.Kn. said that *"a marriage agreement should not override the legal obligations attached to the couple, such as the husband's obligation to provide maintenance or the wife's right to protection and welfare."* Therefore, if the agreement contains a clause that exempts one of the parties from the main obligations in marriage, then the agreement is potentially against the law and can be canceled.

b. Organize Wealth Clearly

One of the main aspects regulated in the marriage agreement is the property of the spouses. Article 35 of the Marriage Law states that property in marriage is divided into joint property and property owned by each spouse. According to Rini Setiawan, S.H., M.Kn., *"a marital agreement allows couples to set up a system of separation or pooling of assets from the beginning of the marriage to avoid conflicts in the future."* This agreement can determine whether the couple wants to apply a full property separation system, partial separation, or still follow the joint property system as stipulated in the Civil Code (KUH Perdata). However, this arrangement must be made with the principle of fairness and must not harm either party.

c. Not Contrary to the Law of Inheritance

A marriage agreement should not remove the inheritance rights of one of the spouses without a clear legal basis. Based on Article 852 of the Civil Code, a surviving husband or wife is entitled to be an heir, unless there are certain conditions that cause a person to lose their inheritance rights, such as marriage annulment or court decisions. Rini Setiawan, S.H., M.Kn. emphasizes that *"although couples have the freedom to organize their assets in a marital*

agreement, inheritance rights must still be considered so as not to cause disputes in the future."

Therefore, if the marital agreement contains a clause that violates the spouse's inheritance rights, then the clause can be considered invalid and has no legal force.

d. Does not conflict with the interests of the child

The marriage agreement must also not include provisions that conflict with the interests of the children born from the marriage. Article 45 of the Marriage Law states that children who are not yet adults are under the authority of their parents and are entitled to protection, education, and fulfillment of life needs. In an interview, Rini Setiawan, S.H., M.Kn. mentioned that *"agreements that stipulate child custody without considering the best interest of the child can be null and void, because they are contrary to the principles of child protection."* Therefore, arrangements regarding child custody in marriage agreements must still refer to the Child Protection Law Number 35 of 2014 and pay attention to the needs and welfare of children.

e. May Contain Provisions on Financial Obligations

In a marital agreement, married couples can regulate their financial obligations, such as the division of debts or the management of assets acquired during marriage. Based on Article 36 paragraph (1) of the Marriage Law, husband and wife have the right to manage joint assets as long as it is not specified otherwise in the marriage agreement. Rini Setiawan, S.H., M.Kn. explains that *"many couples choose to include financial arrangements in the marital agreement to avoid financial conflicts, especially related to debts and division of assets in the event of divorce."* However, the content of this agreement must still be fair and must not harm either party unilaterally.

f. Not Contrary to Public Order and Decency

The content of the marriage agreement must not conflict with public order and decency as stipulated in Article 1337 of the Civil Code. This article states that an agreement is considered invalid if it conflicts with the law, norms, or public interests. Rini Setiawan, S.H., M.Kn. asserts that *"agreements that unreasonably restrict the freedom of the spouses or set forth inhumane provisions, such as the right to divorce under any circumstances, may be deemed invalid and void."* Therefore, couples must ensure that the marriage agreement made remains within the corridors of the applicable law and does not violate basic human rights.

By taking into account these provisions, a marriage agreement can be an effective instrument in providing legal protection for both parties in marriage. However, in drafting it, couples need to consult with a notary or legal expert so that the contents of the agreement do not conflict with the applicable laws and regulations.

In addition to interviews with Notaries, this research also refers to the results of academic studies that discuss the limits of marital agreements. In a study conducted by Zulkarnain & Hakim (2024) , it is explained that the limits of marital agreements are not only determined by civil law, but also must consider moral values and public interests. They explained that the limitations in marital agreements are not only derived from the Civil Code, but also from moral and ethical values recognized in society. Therefore, a marriage agreement must not eliminate the rights and obligations of husband and wife, must clearly regulate property, must not conflict with inheritance law and the interests of children, and must not conflict with public order and decency

Furthermore, research from Wulandari & Sulistyarningsih (2023) , discusses an overview of the contents of marriage agreements in general and how these agreements can function as legal protection in marriage. Based on sociological juridical research conducted with primary data sources from respondents, informants, and resource persons at relevant agencies, it was found that marriage agreements registered at the Department of Population and Civil Registration (DISDUKCAPIL) of Magelang City as well as those made through Notary Priyo Haryatmoko, S.H., generally contain a separation between inherited property and joint property in marriage. In addition, this agreement also covers other aspects such as the protection of the responsibilities of both parties in the marriage as well as arrangements regarding the care and financing of children born from the marriage. This shows that marriage agreements are not only related to financial aspects, but also have an important role in creating legal certainty and maintaining the balance of rights and obligations in the household.

g. Marriage Agreement as Legal Protection for Both Parties in Marriage

A marriage agreement has an important role in providing legal protection for both parties in a marriage. Based on an interview with Rini Setiawan, S.H., M.Kn., a Notary in Semarang City, this agreement serves to clearly regulate the rights and obligations of spouses since the beginning of marriage, especially in the aspects of property ownership and financial responsibility. According to her, *"many couples do not initially consider the importance of a marital agreement, but when conflict or divorce occurs, they only realize that not being*

prepared for this legal arrangement can cause major problems." Therefore, a marital agreement can help avoid prolonged disputes by providing clarity on the rights of each party.

In addition, a marital agreement can also provide protection against financial risks that may occur during the marriage. Rini Setiawan, S.H., M.Kn. explains that *"in practice, many couples choose to make a marital agreement to ensure that their inherited assets remain protected and not mixed with joint assets."* This is especially important for couples who have their own businesses or assets acquired before marriage. With a marital agreement, each party has legal certainty regarding the ownership and responsibility of their assets, thus avoiding legal issues in the event of divorce or financial disputes in the future.

Thus, a marriage agreement has a very important role in providing legal protection for both parties in a marriage. In addition to avoiding potential conflicts and disputes, this agreement also ensures that the rights and obligations of husband and wife are clearly regulated, especially in terms of property ownership and financial responsibility. In practice, this agreement is not only beneficial for couples who have assets before marriage, but also provides legal security for women in the economic aspect after divorce. With clarity in the marriage agreement, couples can live their household life more calmly and have strong legal certainty if problems occur in the future.

In addition to interviews with Notaries, this research also refers to academic studies that discuss the role of marriage agreements as an instrument of legal protection in marriage. Not only in monogamous marriages, marriage agreements also have an important role in polygamous marriages. Based on research conducted by Pawitasari (2019) , a marriage agreement in a polygamous marriage serves to regulate property ownership and ensure that the wife's rights remain protected.

In polygamous marriages in Indonesia, which are regulated in Law Number 1 of 1974 concerning Marriage and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law, the first wife is entitled to property obtained during her marriage to her husband, while the second wife and so on have no rights to previously obtained property. With a marriage agreement, each wife has clarity regarding asset ownership, so that potential disputes can be minimized. This research also emphasizes that a marriage agreement in a polygamous marriage not only protects the rights of the wife, but also provides legal certainty for the husband in regulating the distribution of assets fairly in accordance with positive law and Islamic law (Pawitasari, 2019) .

According to Putra (2024) , the marriage agreement not only functions to regulate the relationship between husband and wife in terms of property ownership, but also has an impact

on third parties, such as creditors or heirs. The Constitutional Court Decision Number 69 / PUU-XIII / 2015 expands the scope of the marriage agreement, which previously could only be made before marriage, to be made during the ongoing marriage bond. Sopiyan (2023) , in his research, a marriage agreement has an important role in regulating the legal relationship between husband and wife, especially in the aspect of asset ownership. This agreement has been regulated in Article 29 of Law Number 1 Year 1974 concerning Marriage, which initially stipulates that a marriage agreement can only be made before the marriage takes place. However, after the Constitutional Court Decision Number 69/PUU-XIII/2015, there is a significant change where a marital agreement can now be made during the marriage, thus providing more flexibility for couples in regulating their rights and obligations.

4. CONCLUSIONS

Based on the results of the research, it can be concluded that the marriage agreement has an important role in providing legal protection for both parties in marriage. This agreement serves to regulate property ownership, financial responsibilities, and the rights and obligations of each spouse, so as to avoid potential conflicts that may arise in the future. The Constitutional Court Decision Number 69/PUU-XIII/2015 provides more flexibility for couples by allowing marriage agreements to be made both before and after the marriage takes place, thus further strengthening its function as a legal instrument that provides certainty and protection.

In addition, marriage agreements also have broader legal implications, including in the context of polygamous marriages and the protection of third parties. In polygamous marriages, these agreements can ensure a fair division of property and protect the rights of wives. Meanwhile, for third parties such as creditors or business partners, a marriage agreement provides legal certainty regarding the ownership of the couple's assets, thus avoiding disputes in the future. Thus, a marital agreement is not just an administrative document, but also an effective legal instrument in creating a more transparent and structured marital relationship and providing clear legal protection for all parties involved.

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