

IMPLEMENTATION OF PRE MARITAL AGREEMENTS FOR THE COMMUNITY (Case Study at the Office of Notary Lenny Wibowo, S.H., M.Kn., Batu City)

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ABSTRACT

The aim of this study is to analyze the causes, implementation, and impact of marriage agreements on both spouses in accordance with the provisions of the Indonesian Civil Code and the Code of Law. This research is an empirical study using an empirical Juridical approach method. The data analysis used is Qualitative data analysis. The type of data used is secondary legal data consisting of primary, secondary, and tertiary legal materials. This research is descriptive in nature, and the selection of this method is because the researcher wants to study legal issues, facts, and phenomena that are developing in society by analyzing the existing situations. In this research, the technique used is qualitative technique. The findings lead to the conclusion that a marriage agreement is still rarely encountered because society still thinks that marriage agreements are taboo and have difficulty or confusion in making such agreements. For most people, marriage agreements are still seen as being only about property issues. In fact, marriage agreements are not only used for property or property separation, but marriage agreements can create an agreement that discusses everything as long as it does not violate the law and religious laws. Furthermore, marriage agreements can greatly assist in the sustainability of a harmonious family. They also provide legal protection in case of disputes in marital life.

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INTRODUCTIONS

Human beings, as social creatures, rely on interactions with others to function. The need for social connection has shaped humans to live in groups. Naturally, humans are drawn to the opposite sex to build relationships and form families through marriage. Marriage is seen as a sacred bond between a couple, representing a crucial step in building a family unit. This sacred principle is present in all religious traditions. Through marriage, families can be established in harmony.

According to the provisions of the Marriage Law Number One of 1974, marriage is a sacred bond between a man and a woman based on love, commitment, and religious values, with the aim of building a happy and harmonious family (Burlian, 2019; Setiawati et al., 2025). In an ideal situation, marriage should last forever, but sometimes things

do not go well, leading to a divorce (Fajar & Jaelani, 2021). To date, marriage is influenced by certain issues, such as financial matters or other concerns (Nugroho et al., 2025).

Within a marriage, there are several sensitive issues to be addressed, one of which is the matter of property, which is a joint responsibility (Mahendra & Yustiawan, 2023). In practice, many couples choose to create a prenuptial agreement to protect their personal assets acquired before marriage (Hulukati, 2024; Rosita et al., 2022). Article 139 of the Civil Code allows prospective spouses to make a prenuptial agreement that specifically governs their assets, provided it does not contravene moral norms and public order (Salsiah et al., 2024). This agreement not only deals with the separation of assets, but also allows couples to stipulate their rights and obligations regarding property during the marriage. Prawirohamidjojo (1986) defines a prenuptial agreement as a contract entered into by prospective spouses before or during marriage to regulate all matters relating to their property during and after the marriage.

Marriage agreements, typically executed in the form of a notarial deed, are often sought by individuals with solid financial backgrounds as a means to safeguard their assets and establish rights over shared property in more detailed terms (A'yun & Hidayatullah, 2023). These agreements represent a legal understanding between the prospective spouses regarding how each party will divide their assets or personal property, allowing for differentiation in the event of divorce or death of either party (A'yun & Hidayatullah, 2023).

For individuals who possess considerable wealth presently, a prenuptial agreement has become an imperative necessity. This agreement is crafted to safeguard the personal assets of each partner and provide legal certainty regarding rights to assets during and after marriage (A'yun & Hidayatullah, 2023).

According to Article 29 paragraph (1) of the Marriage Law, couples intending to marry are granted the right to draft a written agreement that can be executed before or during the wedding ceremony. Once the agreement is validated by the marriage registry official, the document gains legal validity. This means that the agreement is not only binding on both parties in the marriage, but also holds sway over third parties with vested interests in the contents of the agreement (Prawirohamidjojo, 1986).

Often, prenuptial agreements are misunderstood as a bad omen. Nevertheless, the main purpose of these agreements is to establish a strong foundation for marriage by clearly defining the rights and obligations of each partner. Consequently, couples can avoid future conflicts and focus on building a harmonious relationship.

The formation of prenuptial agreements is caused by the evolution of societal thinking and the desire to protect their wealth in any situation and condition. This marriage law has been in existence since 1974, as evidenced by Law Number 1 of 1974 concerning marriage (Meliala, 2007).

The uncertainty of the future makes prenuptial agreements vital. These agreements serve as a safeguard for each partner's personal assets, especially in facing the possibility of divorce or death. While the primary purpose of marriage is to build a harmonious family, these agreements can provide a sense of security and financial certainty.

Prenuptial agreements, executed before a notary and registered with the Office of Religious Affairs (KUA) or the Population and Civil Registration Office (Disdukcapil), are often created by individuals with a good understanding of law and finance. They choose to make these agreements to protect their personal assets and ensure that their rights are legally guaranteed, especially when confronted with unforeseen situations such as divorce.

Similarly, there are wealthy individuals who do not create prenuptial agreements because they consider them unnecessary. They seek to avoid the lengthy and exhausting legal processes that often arise due to uncertainty in the management of shared assets (Faradz, 2008). Hence, this research is focused on addressing the issue comprehensively. The objectives of this research are to analyze the factors causing the occurrence of prenuptial agreements in the community around Lenny Wibowo S.H., M.Kn., analyze the implementation of prenuptial agreements in that community, and analyze the impact of prenuptial agreements on both parties according to the provisions in the Compilation of Islamic Law (KHI) and the Civil Code.

RESEARCH METHODS

This study applies a juridical empirical method, also known as “field research.” The field research method utilizes primary data from main sources in the field (Waluyo, 2008) The descriptive research aims to present a specific issue in a certain area, with initial data on the problems already identified by the researcher (Waluyo, 2008). The researcher utilizes qualitative research based on the chosen topic. The researcher describes and analyzes the practice of marriage agreements at the Notary Office Malang Raya.

The research location is at the Notary Office in Malang Raya, specifically at the notary offices in the city of Batu, the city of Malang, and the Notary Office in Malang Regency. This choice is made by the researcher to gather information regarding marriage agreement data presented by experts from various offices located in the cities of Batu, Malang, and Malang Regency. There are specific Notary Offices in the cities of Batu, Malang, and Malang Regency where parties engage in marriage agreements. The researcher aims to conduct the study at the Notary Office Malang Raya in the Malang Raya Region to examine the number of individuals entering into marriage agreements and the public perception of such agreements.

Data for this study was obtained directly from the field through interviews and an understanding of the implementation of marital agreements conducted with the surrounding community members. The primary data in this research was obtained from individual sources directly involved in the process. Additional data sources were gathered from books discussing marital agreements, as well as data from the Notary Office in the Malang Raya area.

In this research, observation techniques were utilized to collect and record information, as well as observe events and situations witnessed during the study at the Notary Office in Malang Raya. Interviews were conducted with Mrs. Lenny Wibowo, S.H.,M.Kn as the notary, and Vivin Novida Kusumawati as the main assistant at Notary Lenny Wibowo, S.H.,M.Kn's office. Document analysis in this study involved gathering data and reviewing various literary materials, including primary legal sources, secondary legal sources, and tertiary legal sources. The document study process began with analyzing primary legal sources, followed by secondary legal sources, and then tertiary legal sources. Data collection involved gathering information from official documents, books, and research findings.

Data analysis involved a series of activities to organize and categorize data into systematic and descriptive patterns. Through this classification, researchers were able to identify key themes and formulate working hypotheses that naturally emerged from the data. This study employed a descriptive approach, focusing on presenting the conditions and characteristics of phenomena without attempting intervention or testing causality.

The choice of this method was due to the researcher's interest in exploring legal issues, facts, and evolving social phenomena through an analysis of the existing situation. The qualitative technique used in this study involved analyzing data significantly aligned with the research questions. Qualitative analysis entailed examining the collected data, classifying it, and connecting it to theoretical frameworks in a systematic and logical manner, facilitating understanding.

RESULT AND DISCUSSIONS

Factors Motivating the Public to Execute Marriage Agreements at the Office of Notary Lenny Wibowo, S.H., M.Kn.

The marriage agreement is inseparable from the legal foundation outlined in Article 1 of Law Number 1 of 1974 concerning Marriage. This law defines marriage as a physical and spiritual bond between a man and a woman, recognized as husband and wife. This union is not just a physical relationship, but also holds a spiritual dimension, with the primary goal of establishing a happy, harmonious, and prosperous household, all based on faith in the Almighty God.

With this understanding, it is hoped that every marriage will serve as the foundation for the creation of a lasting and joyous family life. Ideally, couples should be able to avoid prolonged conflicts and obstacles that may disrupt harmony, while supporting each other in their journey of marriage. These hopes align with the fundamental values that underpin the institution of marriage, namely loyalty, mutual respect, and shared responsibility.

In addition to the social and religious values, marriage also entails legal consequences that are equally important for both parties. Marriage regulates the rights and obligations of spouses, and influences aspects such as joint property management, lineage, and responsibility towards offspring, all of which are protected and governed by law. Thus, a marriage agreement not only symbolizes emotional commitment, but also serves as a legal instrument that guarantees certainty and justice in family life (Satrio, 1993).

Pursuant to the Article 139 of the Civil Code, a marriage agreement is an agreement between prospective spouses to regulate the consequences of marriage on their property. This agreement may include full consolidation of assets, separation, or grouping of assets outside of the union. Such agreements are highly beneficial for the state as they can prevent and reduce conflicts within households. In the event of divorce, this document becomes a key reference point in determining the rights and obligations of each party. Thus, a marriage agreement serves as a legal foundation in addressing potential disputes (Arief, 2017).

Marriage Agreement Prior to Constitutional Court Decision Number 69/PUUXIII/2015

From a legal standpoint, both the Civil Code (KUHPdata) and the Marriage Law do not explicitly define the meaning of a marriage agreement. Due to the lack of a clear definition in the legislation, legal experts have attempted to interpret what is meant by a marriage agreement. One perspective, put forth by R. Soetojo Prawirohamidjojo, states that a marriage agreement, or *Huwelijkse Voorwaarden* in Dutch, is an agreement between prospective spouses made before or at the time of the marriage ceremony, with the purpose of regulating the legal consequences of their wealth during the marriage.

In practice, the regulation of marriage agreements between the Civil Code (KUHPdata) and the Marriage Law shows significant differences. Under Article 147 of the Civil Code, every marriage agreement must be documented in a notarial deed before the marriage ceremony takes place. Failure to comply with this provision results in the automatic nullification of the agreement in the eyes of the law. This obligation is not only meant to validate the agreement, but also to prevent unilateral or hasty decisions, considering that the legal consequences of the agreement will bind both parties for life.

Additionally, recording the agreement through a notarial deed provides legal certainty by creating a valid written record that is not easily disputed. This deed becomes an official document that can be referenced in case of future disputes. Further, this mechanism also serves to prevent smuggling or manipulation of the agreement's contents that contradict Article 149 of the Civil Code, ensuring that the rules set by the law can be effectively upheld.

Formal marriage agreements are legally binding from the day of the marriage ceremony. Article 148 of the Civil Code states that once the ceremony has taken place, the contents of the agreement cannot be altered under any circumstances while the marriage is ongoing. Meanwhile, the Civil Code defaults to the principle of asset mixing between spouses, meaning that all wealth acquired during the marriage is considered communal.

To maintain asset separation and prevent automatic wealth pooling, couples must draft a marriage agreement before the wedding day. Such agreements are particularly useful in various situations, such as when one party enters the marriage with significantly more wealth than the other. Through a written agreement, couples can ensure that their respective assets remain protected.

Similarly, in cases where both parties bring significant assets into the marriage, a marriage agreement can prevent confusion about the origins and ownership of these assets. For couples engaged in independent businesses, asset separation provisions offer additional protection: if one party experiences bankruptcy, creditors cannot seize the assets owned by their spouse.

Further, this agreement is also crucial in governing the responsibilities for existing debts prior to marriage. By agreeing that each party will individually bear all financial obligations owned before the marriage contract, they can avoid situations where past debts burden one party's life in the future. Finally, establishing a prenuptial agreement plays a critical role in maintaining fairness and transparency in asset management between spouses (Prawirohamidjojo, 1986).

The Marriage Law only contains provisions regarding prenuptial agreements in one article, namely Article 29. This article provides flexibility for prospective spouses to draft written agreements, either before the contract or during the marriage ceremony, which will then be formally recognized. Once the marriage is solemnized, the contents of the agreement are binding and cannot be changed, except with joint consent from both parties and the change does not harm any third party with interests. Hence, prenuptial agreements are regulated flexibly; parties can include them in a notarial deed or simply in a private writing.

Moreover, the Marriage Law also distinguishes two categories of assets in a marriage: separate property and communal property. Separate property includes all wealth brought in by each partner before the marriage and remains under their personal management. On the other hand, communal property is assets acquired during the marriage, which are jointly owned regardless of whose name the asset is registered under. With this division, the law ensures clarity of ownership status as well as flexibility in arrangement according to the needs and agreements of the couple (Agustine, 2017).

Marriage Agreement Law Policy Following Constitutional Court Decision Number 69/PUUXIII/2015

The Constitutional Court Decision Number 69/PUU-XIII/2015 signifies a significant change by allowing married couples to make marital agreements at any time during their marriage, not limited to before or during the marriage ceremony, and regardless of nationality. This decision stems from the concern that disputes over assets often lead to tension and even fractures within families, making marital agreements a preventive tool to ensure clarity in the distribution and management of wealth within the household.

The Marriage Law Number 1 of 1974 defines marriage as a physical and spiritual bond between a man and a woman with the purpose of forming a happy, enduring, and spiritually-based family. Within this framework, husbands and wives are expected to support each other, stand as equals, and make decisions together for spiritual and material well-being. Article 29 paragraph (1) of the Marriage Law grants the right to prospective spouses to draft a written agreement, either before or during the marriage ceremony, which is then authenticated by the marriage registrar or a notary, thus binding the parties and relevant third parties.

Although flexible, marital agreements are still subject to positive legal norms, religious principles, and moral standards; any clause conflicting with legal provisions or religious values is considered invalid. By voluntarily agreeing on the content of the agreement and formalizing it in a legal document, couples can minimize the potential for future disputes. As such, marital agreements serve as a pragmatic and legal instrument to ensure order, fairness, and harmony in managing family assets.

In practice, disputes regarding assets that have not been anticipated through a marriage agreement often have extensive impacts, not only on the married couple but also on third parties with legal interests. Frequently, new agreements are only proposed after marriage due to a lack of awareness that Law Number 1 of 1974 has provided an opportunity for the creation of written agreements both before and during the ceremony, as stated in Article 29. Additionally, couples often feel the need to clarify ownership status of personal assets acquired through individual work, to prevent them from being mixed with shared assets and to be recognized as individual property.

The Constitutional Court, in its considerations, asserts that marriage agreements are crucial to protect the rights of both parties (Dwinopianti, 2017). Firstly, by separating assets, each asset brought or obtained individually will remain intact, so that in case of separation, there will be no confusion or dispute over division. Secondly, responsibilities for debts incurred during marriage remain with the respective party, preventing creditors from seizing unrelated assets of the other spouse. Thirdly, the freedom to sell or transfer personal assets can be done without requiring spousal approval, providing flexibility in financial management. Lastly, when applying for credit facilities that require asset collateral, such agreements allow one party to use their own assets without needing approval from their spouse again.

Therefore, post-marriage agreements serve as a preventive instrument that ensures legal certainty and balance of rights, even for third parties, since each provision is transparently drafted and recognized by the state. This step

highlights the importance of awareness of existing rules for a harmonious household, free from asset disputes that threaten family integrity (Agustine, 2017).

It should be noted that marriage agreements have existed since 1974, as stipulated in Article 29 of Law No. 1 of 1974.

There are actually two types of marriage agreements:

Agreement made and agreed upon by both parties

Sighot ta'lik agreement

Both types of agreements are always offered to every prospective bride and groom, giving them the choice of whether or not to enter into a marriage agreement. Based on experience at the notary office, many couples choose to make a marriage agreement, which is then drafted, legalized, and registered by the religious affairs office. In addition, nearly 99% of couples also choose to make a *shighot ta'lik* agreement. Factors causing the marriage agreement to be made at the Batu city notary office:

Managing assets; a prenuptial agreement regulates the assets of the prospective husband and wife. This agreement may deviate from the provisions of the law on joint property, provided that it does not conflict with public morals and order.

Openness about plans and desires; the contents of the prenuptial agreement need to be discussed with the partner beforehand.

The drafting of a marriage agreement offers an opportunity for both prospective spouses to open up about their plans and life goals after the solemnization of the marriage contract (Wulandari, 2023). As its contents often contain very personal and sensitive matters, a healthy negotiation process can actually strengthen emotional bonds and build mutual trust. At the same time, this agreement serves as a preventive measure against the possibility of divorce. With a written agreement on the division of joint assets, including marital property which the couple can avoid prolonged conflicts when the marriage does not meet expectations. Furthermore, when each party has their own business or profession, the provisions in the agreement can ensure that the financial failure of one party does not drag the other into bankruptcy. Similarly, the allocation of responsibility for debts incurred before the marriage contract can be arranged in such a way that each individual bears their financial obligations separately.

In terms of administration, a marriage agreement document must be made in the form of a notarial deed and registered at the authorized District Court Registry Office. The agreement becomes effective from the day the marriage is solemnized and cannot be amended during the marriage, unless there is a mutual agreement that does not disadvantage any third party. In addition to financial aspects, many couples also include clauses to prevent risks in the husband-wife relationship, such as concerns about infidelity, as a way to reaffirm commitment and maintain fidelity.

Thus, a marriage agreement is not solely a legal document, but a strategic tool to create transparency, fairness, and harmony for both parties, while also providing protection for their rights and obligations, both in normal conditions and when facing family challenges.

Implementation of Marriage Agreements Among Residents of Batu City Notary Office of Lenny Wibowo, S.H., M.Kn. Batu City

During the presentation or offer of a marriage agreement, it is conducted by the Office of Religious Affairs staff when the examination and marriage registration are done at the notary. The marriage agreement approved by a notary is rarely done. Only individuals who require a marriage agreement can do so. Many individuals perceive that creating a marriage agreement at the Notary's office requires a substantial amount of money, hence they rarely consider and contemplate multiple times before proceeding to enter into an agreement at the Notary's office.

Many individuals still have misconceptions regarding the creation of marriage agreements, including their location and the procedures involved. Many believe that creating a marriage agreement is done by the employees of

the Office of Religious Affairs. Still, in reality, both parties, the prospective husband and wife, are responsible for creating the marriage agreement. Once several agreements have been agreed upon, they are then taken to the Notary's office for consultation on the next steps. The subsequent step involves the validation of a marriage agreement in front of the Notary and the relevant parties. Once all the processes are completed, the agreement is then taken to the Religious Affairs Office, where the marriage will be carried out and recorded in the marriage book, acknowledging that a marriage agreement has been made by both parties.

In the past, society did not pay much attention to this matter. The older generation even believed that the most important thing was to get married and live together harmoniously until death. Further, individuals who met their partners were considered sufficient and represented the family. Yet, as societal thoughts evolved and progressed over time, some individuals now pay more attention to marriage agreements than before. This is because marriage agreements are made to protect personal assets and households from misfortune.

Similarly, divorce can arise from various factors, not only due to issues or disputes causing the marriage relationship to end, but also due to the death of one of the parties involved. However, most individuals who enter into marriage agreements do so to separate their assets. Hence, some individuals have started to use marriage agreements at notary offices, especially at the Batu notary office. In this case, marriage agreements are rarely carried out by the public. Those initially entering into marriage agreements are individuals with a working background, significant inherited wealth, or higher education. Additionally, some individuals enter into marriage agreements because they are marrying a foreign national. Due to fear of future household issues, they enter into marriage agreements. Marriage agreements are also established due to a lack of trust between the two parties involved.

The reasons behind their decision to create a marriage agreement were not solely based on concerns, but also on a mutual sense of need for each other. The purpose of a marriage agreement is to safeguard each other's assets from unilateral recognition. Some individuals enter into marriage agreements because of requests from their respective parents. Various factors contribute to the cases handled by Notary Lenny Wibowo S.H., M.Kn., such as asset separation, protection of pre-marital assets, freechild, and asset management during marriage. These agreements, which cover not only asset separation but also debts that will be borne by the parties, have been meticulously crafted.

The initial stage of the marriage agreement drafting process involves consultation with a Notary. The consultation begins with a meeting between the prospective husband and wife and the notary. During this stage, the couple will discuss various aspects that they wish to regulate in the marriage agreement, such as asset separation or pooling, division of responsibilities, and rights and obligations of each party in the household. This dialogue is crucial to ensure that all of the couple's desires and needs are included in the agreement.

Afterwards, the notary will provide an explanation regarding the legal aspects related to the marriage agreement. This explanation includes the rules stipulated in Law Number 1 of 1974 concerning Marriage, especially Article 29, which requires that the marriage agreement must be made in writing and notarized to have valid legal force. The notary will also ensure that the contents of the agreement comply with the applicable law, religion, and moral norms (Jati, 2023). The notary will further ensure that the contents of the agreement do not conflict with the prevailing law, religion, or ethical norms.

During the consultation, the notary acts as a mediator assisting the couple in understanding the implications of each provision they wish to include in the agreement. Studies have shown that a clear understanding of this agreement can help couples avoid disputes in the future. The notary also provides legal advice in accordance with the relevant regulations, enabling the couple to make informed decisions based on accurate information.

To consult with a notary in the preparation of a marriage agreement, there are several documents that need to be prepared by the couple. These documents are essential to ensure that the consultation and deed preparation process runs smoothly and in accordance with applicable laws. The following is a list of documents that are generally required: Identity Card (KTP). The KTP of both prospective spouses is required as proof of identity and citizenship.

Family Card (KK). The KK is used to show the family status of each party, as well as to ensure that there is no blood relationship between the prospective spouses.

Birth Certificate. A copy of the birth certificate may be requested to prove the date of birth and identity of each party.

Certificate of Unmarried Status. This document is required to ensure that both parties have not been previously married.

The process of signing a marriage agreement at Lenny Wibowo Notary Office involves several important steps to ensure that the agreement is valid and legally binding. The following are the steps involved:

Document Preparation.

Before signing, the prospective bride and groom must prepare all necessary documents, including their ID cards, family cards, birth certificates, and other relevant documents.

Final Consultation with the Notary.

Before signing, the couple usually has a final consultation with the notary to ensure that all provisions in the deed are in accordance with the agreement and that there are no confusing clauses. The notary will explain the contents of the deed and answer questions from the parties.

Signing of the Deed.

Once all parties are ready, the deed is signed in front of a notary. At this stage, the prospective husband and wife, the notary, and the appointed witnesses will sign the marriage agreement deed.

The validation of the deed by a Notary Public.

After signing, the notary will certify the marriage agreement by affixing an official stamp and signature.

Receipt of Deed Copy.

After the process is complete, the prospective bride and groom will receive a copy of the marriage agreement.

According to the interview results with the Notary, after the couple receives a copy of the deed, the prenuptial agreement must be registered with the relevant institution, such as the Civil Registry Office or other government agencies in accordance with local regulations. This registration is intended to provide legal certainty and ensure that the agreement is officially recognized by the state.

The steps for registering a marriage agreement at the Population and Civil Registration Office are as follows:

Document Preparation

Couples who wish to register their marriage agreement must prepare documents including:

- A marriage agreement document drafted by a notary public.
- Form F-2.01 completed and signed.
- Identity Card (KTP) and Family Card (KK).
- Additional documents as deemed necessary, such as passports for foreigners or other required documentation.

Submission of Application

The prospective husband and wife submit an application for registration of their marriage agreement by submitting all the prepared documents to the Civil Registry Office or KUA. The officer will verify and validate the submitted documents.

Verification Process

After the documents are received, the officer will:

- Checking the completeness and validity of documents.
- Entering data into the population database system.
- If all documents are declared complete, the officer will give a receipt to the applicant.

Recording of Agreements.

After verification is complete, the marriage agreement will be recorded in the marriage register by an official at the KUA or Civil Registry Office. This includes recording information about the agreement in the marriage certificate, if necessary.

Issuance of Deeds and Marginal Notes.

After recording, the officer will:

- Issue a marriage certificate with a marginal note stating the existence of a marriage agreement.
- Submit a copy of the certificate to each spouse as legal proof.

Document Storage

All documents and marriage certificate registers are kept by the KUA or Civil Registry Office for administrative purposes and future reference.

Service Hours and Fees

The registration process usually takes 24 hours if there are no technical issues, and this service is free of charge.

The process of registering marriage agreements made by notaries at the Office of Religious Affairs (KUA) follows the procedures for registering marriage agreements with reference to the Decree of the Director General of Islamic Community Guidance Number 473 of 2020 concerning Technical Guidelines for the Implementation of Marriage Registration.

The Head of the Religious Affairs Office records in the notes column of the marriage certificate and the notes sheet in the marriage book by writing the sentence:

“Perjanjian Perkawinan, nama notaris _____, nomor _____ dan tanggal perjanjian dibuat”.

(“Marriage Agreement, notary name _____, number _____ and date of agreement.”)

The head of the subdistrict KUA (Office of Religious Affairs) fills in the blank column on the foreign marriage registration certificate by writing the sentence:

“Perjanjian Perkawinan, nama notaris _____, nomor _____ dan tanggal perjanjian dibuat”;

(“Marriage Agreement, notary name _____, number _____ and date of agreement”);

Notes on the marriage agreement document are made on a blank page with the sentence:

“Perjanjian Perkawinan ini telah dicatatkan pada tanggal _____ dengan nomor akte nikah _____ atas nama suami _____ dan istri _____ kemudian ditandatangani oleh Kepala KUA Kecamatan.”

(“This Marriage Agreement was registered on _____ with marriage certificate number _____ in the name of the husband _____ and wife _____ and was then signed by the Head of the District Religious Affairs Office.”)



Figure 1. Example of a Marriage Book containing a Marriage Agreement

As shown in Figure 1 about the photograph of the marriage book contains an important note, namely the “Marriage Agreement with Notarial Act.” This note indicates that there is a special agreement that governs the

marriage relationship of the couple which was made before a notary public. It demonstrates the high legal awareness of the couple and can provide better legal protection for them in the future.

Marriage agreements are still uncommon, as some still view the idea of a marriage agreement as taboo, and there are those who do not fully understand the concept of a marriage agreement. As times change, situations and conditions differ from the past when marriage was the starting point of living together.

A marriage agreement documented in a notarial deed holds a valid legal status and receives full legal protection under the law. After the deed is drafted and validated, both prospective spouses must submit copies to the Religious Affairs Office or the Population and Civil Registration Office in the area where the marriage will take place, so that the clauses in the agreement are recorded in the marriage book or marriage certificate. This registration provides legal certainty and prevents potential disputes, whether between spouses or with third parties such as heirs, in case the original document is lost.

The marriage agreement must be executed before or at the latest on the day of the marriage contract, and once the marriage has commenced, its contents cannot be revoked or altered as long as the marriage exists. Since the consequences of the agreement are lifelong, the notary plays a crucial role in ensuring that each provision is properly understood by both parties. Although couples can validate the deed at any notary office within the same domicile, final registration can only be done at the office overseeing the place where they got married.

Through interviews with several notaries, it is revealed that the practice of marriage agreements has long been known, although previously society focused more on the validity of the marriage according to Islamic law without considering property agreements. Over time, awareness of the importance of protecting individual assets and managing joint ownership has increased. The goal is not only to prevent greed for family assets, but also to ensure that individual assets are not mingled with joint assets, so that when one party passes away, inheritance rights are clear and protected. Thus, marriage agreements become a strategic legal instrument to create clarity and harmony in households.

Legal Implications of Marriage Agreements for Both Spouses According to the Compilation of Islamic Law and the Civil Code

Marriage agreement is a legal instrument that allows prospective spouses to establish certain terms or conditions as part of their marriage contract. From a national legal perspective, this agreement is regulated in the Marriage Law and the Civil Code, while in the context of Islamic law in Indonesia, it is referenced through the Compilation of Islamic Law (KHI). Both provide space for the parties to craft agreements that are not contrary to legal and moral norms.

Within the framework of Indonesian legislation, marriage agreements are grounded in two different but complementary legal realms. First, the Compilation of Islamic Law (KHI), although not a formal law that serves as the main guideline in religious courts. The KHI regulates the freedom of the parties to establish specific conditions in the marriage contract, as long as they do not contradict the principles of Islamic law. Articles 47 to 51 affirm that spouses may stipulate provisions regarding property management, maintenance, and clauses prohibiting polygamy. Further, the KHI positions the marriage agreement as part of the “*syurūṭ fi al-‘uqūd*” (conditions in contracts), so the validity of each article depends on its compliance with the *maqāṣid syariah*, which are justice, non-oppression, and preservation of family welfare.

Second, the Civil Code and Law Number 1 of 1974, later amended by Law Number 16 of 2019, have provided formal legality to marriage agreements in the civil law system. Articles 139 to 154 of the Civil Code detail the mechanism of “*huwelijksvoorwaarden*” (marriage conditions), particularly concerning the separation of assets and civil responsibilities of spouses. Meanwhile, Constitutional Court Decision No. 69/PUU-XIII/2015 opens opportunities for couples to draft marriage agreements not only before the marriage contract, but also during the

marriage, as long as they receive court approval. Thus, agreements made by a notary and registered at the civil registry office or the Office of Religious Affairs gain executory power in the eyes of the law.

A prenuptial agreement does not merely add to the administrative record, but changes the landscape of a couple's rights and obligations in various phases.

Perspective on the Compilation of Islamic Law

In the religious perspective, this agreement strengthens the structure of husband and wife responsibilities. By agreeing on the division of financial support or asset management, the couple affirms a household economic framework that is in accordance with Islamic law. For wives, protective clauses, such as the prohibition of polygamy or the guarantee of child custody, have opened the way for them to demand their rights under Islamic law in the event of a violation. The inclusion of these conditions encourages couples to consciously manage their marriage commitments, so that the contract is not just a ritual, but a moral contract that must be fulfilled. If violated, this agreement becomes the basis for the legitimacy of divorce petitions in religious courts, as it is included in the framework of "*al-'uqud wajibatun bil-wafa*" (contracts that must be fulfilled).

Perspectives of the Civil Code and Marriage Law

From a civil law standpoint, the biggest implications are related to civil assets and risks. With a prenuptial agreement, assets acquired before and during marriage can be separated to protect one party from the debts or defaults of the other party. When divorce is inevitable, this agreement becomes the official guideline for the division of property, determination of child custody, or the right to reside in the former shared residence. Because it is formalized through a notarial deed and official registration, a prenuptial agreement has the status of an authentic deed that can be directly enforced. In the event of a breach, the aggrieved party can simply pursue enforcement in accordance with the HIR or Rv, without having to wait for a first instance court decision.

Although both aim to provide certainty and protection, Islamic Law (KHI) and Civil Code (KUHPerdara) emphasize different aspects. From the perspective of KHI, marriage agreements emphasize spiritual and ethical values: justice (*'adl*), non-oppression (*lā zulm*), and benefit (*maṣlahah*). Its form is relatively flexible as long as the content of the agreement does not violate Islamic law, allowing for a broader scope that may cover matters not addressed by positive law, such as provisions related to joint worship or religious education for children.

On the other hand, KUHPerdara offers procedural rigidity: all agreements are impossible to acquire legal force without a notarial deed and official registration. Its focus is narrower on material aspects such as assets, debts, and custody rights without considering moral or sharia values. The advantage of the civil law model lies in its ability to execute the agreement directly: the notarial deed serves as the enforcement basis. Still, this procedural rigidity can sometimes pose challenges for couples who realize they want to regulate their rights and obligations after marriage.

Although different, these two legal frameworks can actually coexist, with KHI providing a moral and spiritual foundation, while KUHPerdara strengthens administrative and legal execution aspects. A deep understanding of both legal sources is crucial for couples intending to solemnize their marriage vows. Through KHI, they gain an ethical framework and sharia protection, while KUHPerdara ensures administrative certainty and ease of execution in case of disputes. Combining these views, sharia justice and legal certainty - between husband and wife, they can draft a marriage agreement that is not only valid in religion but also strong in the eyes of the state law. Ultimately, a well-prepared marriage agreement in both aspects will form the foundation of a fair, harmonious, and protected household.

Legally recognized since 1974, the Marriage Agreement is established by the Marriage Law. However, many people in the past were unaware of the significance of a marriage agreement. For individuals in the past, finding a partner and getting married was everything, without considering the complexities of creating a marriage agreement. Similarly, individuals in the past did not desire impractical or burdensome lifestyles. Likewise, they believed that anything related to legal proceedings or court matters should be avoided. Nevertheless, with the changing times, people have also undergone a shift in mindset. Few individuals engage in marriage agreements despite the evolving times

and thoughts. Moreover, the majority of marriage agreements involve asset separation. Hence, individuals who enter into marriage agreements are highly educated, professional workers, and legally knowledgeable.

In a marriage agreement, they are free to do anything as long as it does not violate the law and religion. Nonetheless, most individuals who do so are concerned with asset separation, whether it be assets given by their parents or assets owned by each party.

Some examples of the contents of a Marriage Agreement include:

This marriage agreement between Mr. F and Mrs. A concerns the division of property. One of the spouses is married to a foreign national. The agreement explains that in the event of a separation between the two parties, there are rights and responsibilities that must be fulfilled by both parties in addition to the division of property. As with property, in the event of a separation or divorce, you must know where the property came from. In cases where assets were acquired before the marriage, such as when he received an inheritance from his parents, they will be considered separate property or personal property and will not be included in the joint property. The same applies to the responsibility for paying child support. Both parties have agreed on a number of cost requirements.

The marriage agreement between Mr. B and Mrs. J not only discusses the separation of property, but also regulates the rights and obligations that must be fulfilled by each party. In other words, all property that they own or receive as gifts is their respective rights or property. Similarly, if there are debts before or after marriage, the responsibility lies with each individual, not jointly. In addition, as the husband's responsibility, the spouse must pay household expenses as well as the costs of educating and maintaining children who are born and still in the womb. And if the two parties separate, all property or belongings, including personal clothing or items used or owned by each party, will remain the property of each party but will become the property of their respective heirs if the marriage ends due to death.

The marriage agreement between Mr. C and Mrs. Y, which also includes the separation of property. Each party will have their own property, as they currently possess or acquire. There will be no property relationship between the two parties after this marriage agreement is drawn up, signed, and certified by a notary. All liabilities and debts incurred by each individual will also be borne by them. The wife will maintain her personal property, both present and future, and is free to use it. The husband is not permitted to manage his wife's property or authority when maintaining their property. Likewise, there is an agreement regarding the husband's responsibility for household expenses and the costs of maintaining and educating children, both those already born and those still in the womb. In addition, both clothing and personal items used on a daily basis will become the property or inheritance of each party if the marriage ends. If there is a dispute or problem in the household, the matter will be resolved through family or kinship deliberation. However, if this cannot be resolved, both parties will agree to settle it at the Malang District Court.

Almost every marriage agreement aims to separate the assets brought in or generated by each party. It is highly uncommon for those entering marriage agreements to not address asset separation issues. There are exceptions, but they are very rare. Families without marriage agreements also have their own reasons for doing so. However, they typically include individuals with excessive wealth and professional backgrounds. They do not enter marriage agreements because the thought simply does not occur to them.

Essentially, the parties entering into marriage agreements generally feel relieved and comfortable in doing so. They feel that there is no discord between them even with the agreement in place, and there is no negativity in their thoughts towards each other. As of now, there have been no marriage agreements that violate the laws or regulations of this country. Throughout history and up to the present, marriage agreements continue to be utilized for asset separation before marriage.

The function and consequences of entering into a marriage contract:

Managing assets

A prenuptial agreement regulates the property of the prospective husband and wife. This agreement may deviate from the provisions of the law on joint property, provided that it does not conflict with public morality and public order.

Openness about Plans and Desires

The contents of a prenuptial agreement need to be discussed with your partner beforehand. That is why this can encourage openness about your plans and goals for life after marriage. Moreover, the contents of a prenuptial agreement are generally more personal and may be quite sensitive. As such, harmony in a relationship is typically built through consistent and mutual compromise.

Preventive measures against divorce

A prenuptial agreement can be a preventive measure in the event of divorce. This agreement can facilitate the division of joint property, thereby preventing prolonged disputes between former spouses.

Each has their own business

A prenuptial agreement can stipulate that each spouse will have their own business. That way, if one spouse goes bankrupt, the other spouse will not be affected.

Liability for debt

A prenuptial agreement can stipulate that each spouse is individually liable for debts incurred before marriage.

CONCLUSION

From the explanation of the research results and discussion, the author can conclude as follows:

Several factors encourage people in the Lenny Wibowo, S.H., M.Kn. Notary Office community to make prenuptial or marriage agreements, namely to maintain the separate ownership status of assets acquired before and during marriage, establishing roles and responsibilities for asset management so that household finances are more structured and fair, preventing disputes over joint property with an agreed division of assets from the outset, and clarifying that any debts incurred by one party are a personal liability without burdening the other spouse, so that both parties have legal certainty and peace of mind in their married life.

In today's society, many people still do not understand that a prenuptial agreement is not only about property, but also covers everything that the parties wish to agree upon as long as it does not violate the law. Some people who enter into marriage agreements do indeed only discuss property. However, to date, no one who has entered into a marriage agreement has violated any laws or regulations.

To determine the legal consequences of the marriage agreement for both parties in accordance with the compilation of Islamic law and the Civil Code.

The analysis therefore suggests that regarding the urgency of the Marriage Agreement, it is important to remember the significance of the Marriage Agreement for prospective Muslim spouses who are planning to marry. They must understand the importance of the marriage agreement before proceeding with the marriage. In addition, it is highly recommended for couples who wish to marry to seek information and clarification about their status, requirements, and procedures, as well as the legal consequences of implementing a marriage contract. Further, it is advisable to seek consultation from the Office of Religious Affairs or a qualified notary if any aspect of the registration or preparation process is unclear. Finally, socialize marriage agreements to the public so that they understand that a marriage agreement does not only discuss property, but can also cover anything that does not violate regulations or laws.

REFERENCES

- A'yun, W. M., & Hidayatullah, A. H. (2023). Perspektif Masalah Dalam Perjanjian Perkawinan Mengenai Harta Dalam Undang-Undang Perkawinan. *Harmoni*, 22(1), 22–47.
- Agustine, O. V. (2017). Politik Hukum Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/Puu-

- Xiii/2015 Dalam Menciptakan Keharmonisan Perkawinan. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 6(1), 53–67.
- Arief, H. (2017). Perjanjian dalam Perkawinan (sebuah telaah terhadap hukum positif di Indonesia). *Al-Adl: Jurnal Hukum*, 9(2), 151–172.
- Burlian, F. (2019). Eksistensi Perkawinan Dan Perceraian Menurut Hukum Islam Dan Pasca Berlakunya UU NO. 1 Tahun 1974. *Mizan: Jurnal Ilmu Hukum*, 8(2), 77–84.
- Dwinopianti, E. (2017). Implikasi dan Akibat Hukum Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 terhadap Pembuatan Akta Perjanjian Perkawinan Setelah Kawin yang Dibuat di Hadapan Notaris. *Lex Renaissance*, 1(2), 16–34.
- Fajar, M. S., & Jaelani, A. Q. (2021). Efficiency Of Implementing Sanctions In Case Of Polygamy In The Modern Islamic World. *POLICY, LAW, NOTARY AND REGULATORY ISSUES (POLRI)*, 1(1), 1–7. <https://doi.org/https://doi.org/10.55047/polri.v1i1.21>
- Faradz, H. (2008). Tujuan dan manfaat perjanjian perkawinan. *Jurnal Dinamika Hukum*, 8(3), 249–252.
- Hulukati, S. A. (2024). Legal Implications of Prenuptial Agreements in Marriage in Indonesia: Between Protection of Rights and Justice. *Estudiante Law Journal*, 6(2), 329–350.
- Jati, I. W. (2023). Peranan Notaris Dalam Pembuatan Akta Otentik Untuk Perjanjian Kawin. *'Aainul Haq: Jurnal Hukum Keluarga Islam*, 3(1), 19–33.
- Mahendra, I. G. M. O., & Yustiawan, D. G. P. (2023). Legal Validity of Land Tenure by Foreigners Through Mixed Marriages Obtained From Inheritance From the UUPA Perspective. *POLICY, LAW, NOTARY AND REGULATORY ISSUES*, 2(2), 187–197. <https://doi.org/10.55047/polri.v2i2.619>
- Meliala, D. S. (2007). *Perkembangan hukum perdata tentang orang dan hukum keluarga*. Nuansa Aulia.
- Nugroho, R. S., Ulami, M. D., Hadi, S., & Handajani, M. (2025). Household Justice in the View of Polygamy Practitioners. *International Journal of Religion, Humanity and Cultural Heritage*, 1(1), 25–34. <https://ojs.projurnal.com/index.php/ijrch/article/view/65>
- Prawirohamidjojo, R. S. (1986). *Pluralisme dalam perundang-undangan perkawinan di Indonesia*. Universitas Airlangga.
- Rosita, D., Novitasari, A., & Zainuddin, M. (2022). Perjanjian pra nikah sebagai bentuk perlindungan hukum terhadap harta bawaan dalam perkawinan. *Smart Law Journal*, 1(1), 64–72.
- Salsiah, L., Putri, E. A., & Saimima, I. D. S. (2024). Perjanjian Perkawinan Dan Akibat Hukumnya Atas Harta Bersama. *Jurnal Hukum Sasana*, 10(2), 181–190.
- Satrio, J. (1993). *Hukum Harta Perkawinan*. Bandung : PT. Citra Aditya Bakti.
- Setiawati, N. F. J. A. S., Resfiani, F. D., & Fitriany, A. K. (2025). Family Dispute Resolution In Civil Law: An Analysis Of Divorce And The Division Of Joint Marital Property. *Tauco: International Journal Of Sosial Sciences and Humanities*, 2(1), 13–20.
- Waluyo, B. (2008). *Penelitian hukum dalam praktek* (1st ed.). Sinar Grafika.
- Wulandari, M. (2023). Perjanjian Perkawinan Sebagai Perlindungan Hukum bagi Kedua Belah Pihak dalam Perkawinan. *Borobudur Law and Society Journal*, 2(3), 94–101.