



Legal Implications of Prenuptial Agreements in Marriage in Indonesia: Between Protection of Rights and Justice

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Abstract: Prenuptial agreements in Indonesia are regulated in Law Number 1 of 1974 concerning Marriage, providing a legal framework for the arrangement of property and financial responsibilities of the spouses. This paper aims to analyze the legal implications of prenuptial agreements on the rights and obligations of husband and wife, as well as to explore the challenges faced in its application. The research methods used include normative approaches, juridical analysis, and comparative approaches to examine regulations in Indonesia and their comparison with other countries. The analysis results show that although prenuptial agreements can protect individual rights and create clarity in property management, their implementation is often hampered by social stigma and lack of legal understanding. The novelty of this study lies in a deeper understanding of the legal dynamics of prenuptial agreements in the modern context, as well as the need for regulatory adjustments to ensure fairness for all parties. In conclusion, prenuptial agreements have great potential in protecting the rights of couples, but they must be formulated fairly and transparently to create balance in the marriage relationship.

Keywords: Prenuptial Agreement; Legal Implications; Justice in Marriage

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How to cite (Chicago Style):

Syafira Amalia Hulukati. "Legal Implications of Prenuptial Agreements in Marriage in Indonesia: Between Protection of Rights and Justice". *Estudiante Law Journal* 6, no. 2 (Juni, 2024): 329 - 350
<https://doi.org/10.33756/eslaj.v6i2.27783>

1. Background

Prenuptial agreements in Indonesia are regulated in Article 29 of Law Number 1 of 1974 concerning Marriage, which allows prospective husbands and wives to agree to the arrangement of their assets during marriage.¹ This agreement must be made before the marriage takes place and legalized by the marriage registrar. The purpose is to regulate the rights and obligations of husband and wife over their property during the marriage period as well as after the divorce or death of one of the spouses. This includes arrangements for the separation or mixing of each other's inheritance, as well as the possibility of the division of joint property acquired during the marriage.² A prenuptial agreement aims to protect the financial rights of both parties in marriage and provide legal clarity in the event of a problem.³

In practice, this prenuptial agreement not only serves as a tool to avoid property conflicts, but also as an effort to protect business assets or family inheritance from potential spouse lawsuits. In Indonesia, although the prenuptial agreement has been regulated by law, its application is often considered taboo because it is related to the perception of the public who consider this as distrust at the beginning of marriage.⁴ However, as the times evolve and the needs of family law become more complex, more and more couples are choosing to make this agreement to avoid complications in the future. The ratification of the prenuptial agreement must take place before the marriage takes place, and changes to the contents of this agreement are possible during the marriage with the consent of both parties, as well as ratification by the marriage registrar.⁵

The issue of prenuptial agreements has become increasingly relevant in modern society, especially due to the increasing awareness of the importance of protecting individual rights in marriage. This is in line with the shift in traditional values that tend to prioritize togetherness in all aspects of the household, towards a more individualistic understanding, where each couple wants to maintain the right to personal assets owned before marriage.⁶ In an era of globalization and modernity, where many couples have independent careers, businesses, or substantial assets before marriage, prenuptial agreements become an important means of avoiding potential conflicts later in life. In addition, the increasing divorce rate also encourages couples to consider legal aspects more before stepping into marriage.

The protection of the rights of married couples related to property ownership, division of responsibilities, and other financial aspects in marriage is very important because

¹ Siti Mutmainah and Ai Fatimah Nur Fuad, "Prenuptial Agreement Dalam Presepektif Hukum Islam (Studi Kasus Di Kecamatan Banjaranyar Kabupaten Ciamis)," *Innovative: Journal Of Social Science Research* 4, no. 3 (May 31, 2024): 8784–92, <https://doi.org/10.31004/innovative.v4i3.11456>.

² Wildaniyah Mufidatul A'yun and Alif Hendra Hidayatullah, "Perspektif Masalah Dalam Perjanjian Perkawinan Mengenai Harta Dalam Undang-Undang Perkawinan," *Harmoni* 22, no. 1 (June 30, 2023): 22–47, <https://doi.org/10.32488/harmoni.v22i1.667>.

³ Ibid.

⁴ Asep Dedi Suwasta et al., *Pengantar Hukum Perdata* (Makassar: Tohar Media, 2024).

⁵ Suud Sarim Karimullah, *Cinta dalam Bingkai Hukum* (Jakarta: Bhuana Ilmu Populer, 2024).

⁶ Syamsul Kurniawan, *Isu-Isu Kontemporer Tentang Islam dan Pendidikan Islam* (Kubu Raya: Samudra Biru, 2021).

it serves to maintain balance and justice in domestic relationships. Each spouse has equal rights and obligations, both in terms of financial management and joint property ownership.⁷ Through clear arrangements, such as through prenuptial agreements or existing legal arrangements, couples can avoid potential conflicts in the future regarding the division of assets or financial responsibilities. In addition, this protection of rights also provides guarantees for more vulnerable parties, such as wives who may not work or husbands who are facing financial crises, to continue to get their rights in the context of marriage. This aspect is important in preventing injustice, ensuring fairness, and maintaining the integrity of marital relationships in the long term, so that it can create healthy household economic stability.⁸

A prenuptial agreement aims to create equality and justice between husband and wife by stipulating an agreement regarding property, rights, and obligations that will be regulated during marriage.⁹ Through this agreement, the couple can avoid potential conflicts related to asset ownership and financial liability in the future, thus providing clear legal protection for both parties. Although the goal is to ensure balance and fairness in the relationship, prenuptial agreements are still often considered controversial by society.¹⁰ Many consider it contrary to marital values, such as trust and unconditional commitment. In addition, there are concerns that this agreement creates the impression that the couple is already preparing for divorce. Among law enforcement, the interpretation and application of prenuptial agreements also often cause debate, especially regarding the protection of the rights of economically weak spouses.

Prenuptial agreements in Indonesia are regulated in the Civil Code (KUHPerdata) and Law No. 1 of 1974 concerning Marriage. In the Civil Code, especially Article 119, it is explained that basically, all property owned by a husband and wife after marriage will be one unit, unless there is an agreement that regulates otherwise. This prenuptial agreement must be made before the marriage takes place and legalized by a notary. Article 29 of Law No. 1 of 1974 stipulates that this agreement can be made as long as the marriage does not conflict with the boundaries of law, religion, and morality. The content of the prenuptial agreement includes the arrangement of the rights and obligations of the husband and wife related to property, both inherited property and property acquired during the marriage. This agreement provides flexibility in the management of assets so that couples can choose to separate or consolidate their

⁷ Reiza Rozalia and Gunawan Djajaputra, "Akibat Hukum Hak Asuh Anak Ketika Kedua Orang Tuanya Telah Meninggal Dunia," *UNES Law Review* 6, no. 4 (June 10, 2024): 9957-67, <https://doi.org/10.31933/unesrev.v6i4.1966>.

⁸ Yeni Astri Dias Tuti and Latifa Mustafida, "Perlindungan Hukum Terhadap Harta Dalam Perkawinan Dengan Pembuatan Akta Perjanjian Kawin Sebelum Perkawinan," *Fortiori Law Journal* 1, no. 02 (September 11, 2021): 57-85, <https://jurnal.ucy.ac.id/index.php/flj/article/view/925>.

⁹ Safira Maharani Putri Utami and Siti Nurul Intan Sari Dalimunthe, "Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian," *Jurnal Usm Law Review* 6, no. 1 (June 25, 2023): 433-47, <https://doi.org/10.26623/julr.v6i1.6899>.

¹⁰ Imelda Martinelli et al., "Menelaah Batasan Perjanjian Kawin Dalam Tindak Pidana Pencucian Uang," *Jurnal Pendidikan Sejarah Dan Riset Sosial Humaniora* 4, no. 2 (June 24, 2024): 204-15, <https://ejournal.penerbitjurnal.com/index.php/humaniora/article/view/825>.

assets. If there is no agreement, the principle of joint ownership of the property applies, unless there are other arrangements based on law or agreement.¹¹

The importance of understanding the legal implications of a prenuptial agreement lies in its function as a tool to protect individual rights in marriage, especially regarding property, debt, and financial obligations. This agreement provides legal certainty for the couple, prevents potential future conflicts, and ensures that the rights of both parties are recognized. Without a deep understanding, the agreement can be unfair, especially if one of the parties is not fully aware of the legal consequences of the agreed terms. However, a prenuptial agreement does not always guarantee fairness in marriage, as fairness itself depends on the balance of power and information between the two couples when drafting the agreement.¹² Therefore, justice can only be achieved if both parties are actively and transparently involved in the process of drafting the agreement and supported by competent legal advisors. Thus, a prenuptial agreement can be a means of protection for individuals, but it must be carefully designed so as not to cause injustice in marriage.

2. Problem Formulation

Based on the background as described above, the author raises several issues, namely: (1) How do the legal rules in Indonesia regulate prenuptial agreements?, (2) What are the legal implications of prenuptial agreements on the rights and obligations of husband and wife during marriage and after divorce?

3. Research Methods

The writing method used in this study consists of three main approaches, namely the normative approach, juridical analysis, and conceptual and comparative approaches.¹³ First, the normative approach will analyze relevant laws and regulations, especially the Civil Code (KUHPperdata), the Marriage Law, and its derivative regulations that govern prenuptial agreements. Furthermore, juridical analysis will be carried out by reviewing jurisprudence and court decisions related to prenuptial agreements, as well as conducting an in-depth study of legal literature to obtain a comprehensive understanding. Finally, the conceptual and comparative approach will compare the regulations regarding prenuptial agreements in Indonesia with other countries, to provide an overview of the different approaches to applying justice through this legal instrument.¹⁴ By using these various approaches, the

¹¹ 14913179 Khanna Syarifah, "Perjanjian Pra Nikah Di Indonesia Perspektif Maqasid Syariah Jasser Auda" (Master Thesis, Yogyakarta, Universitas Islam Indonesia, 2019), <https://dspace.uui.ac.id/handle/123456789/15293>.

¹² Andean Syah and Ilham Tholatif, "Urgensi Perjanjian Pranikah Sebagai Kesepakatan Awal Perkawinan," *Legal Standing: Jurnal Ilmu Hukum* 6, no. 2 (September 1, 2022): 115–28, <https://doi.org/10.24269/lis.v6i1.5017>. lihat juga dalam Yasin Yusuf Abdillah, "Perjanjian Perkawinan Sebagai Upaya Membentuk Keluarga Bahagia (Tinjauan Maqāṣid Asy-Syarī'ah)," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 10, no. 2 (2017): 165–77, <https://doi.org/10.14421/ahwal.2017.10205>.

¹³ Irwansyah Irwansyah, *Penelitian Hukum ; Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2020).

¹⁴ Indah Amanah Poetri Soedarno Oei Pantouw and Ahmad Ahmad, "Perlindungan Hukum Terhadap Masyarakat Akibat Penambangan Emas Di Sungai Tulabolo Yang Tercemar Merkuri," *Borneo Law Review* 6, no. 2 (2022): 187–204, <https://doi.org/10.35334/bolrev.v6i2.3242>.

research is expected to produce more in-depth and diverse findings related to the protection of individual rights in the context of prenuptial agreements.

4. Analysis and Discussion

4.1. Regulation of Prenuptial Agreements in the Indonesian Legal System

1) Prenuptial agreement in the perspective of the Civil Code

In the Civil Code (KUHPerdara), the prenuptial agreement is regulated in Articles 119 to 145, which provides a legal basis for couples to regulate property ownership before entering into a marriage bond. Article 119 stipulates that from the time the marriage takes place, all the property of the husband and wife will become one unit. However, the Civil Code provides space for couples to draft a prenuptial agreement that stipulates other provisions regarding the division of property. This is important, especially for individuals who own assets or assets that they want to protect so that this agreement can prevent friction that may arise related to the division of assets in the future.¹⁵

The prenuptial agreement, which in Dutch is called "*huwelijksvoorwaarden*," is a strategic tool for regulating various financial aspects of a marriage.¹⁶ With this agreement, both parties can agree on how the property owned before and during the marriage will be managed. In addition, this agreement can include provisions regarding the financial obligations of each party, so that each individual can feel safer and more secure in the management of their assets. This has become especially relevant in the modern era where couples often have complex financial assets and responsibilities, and allows them to have better plans in the face of future uncertainties.

In addition to protecting personal property, the prenuptial agreement also aims to minimize the potential for conflicts that can arise related to property ownership in the future. With a clear and written agreement, couples can avoid legal disputes that can trigger tension in their relationship. In addition, the provisions in the Civil Code ensure that this agreement can be amended or cancelled if both parties agree, providing flexibility in adjusting financial conditions that may occur over time.¹⁷ Therefore, a prenuptial agreement is not just a formality, but also an important step in building a strong foundation for a healthy and harmonious marriage relationship.

2) The principle of freedom of contract in prenuptial agreements

The Civil Code recognizes the principle of freedom of contract as one of the important foundations in civil law, which gives individuals the flexibility to determine the

¹⁵ Khoirul Amri, Syahrial Dedi, and Hasep Saputra, "Perjanjian Perkawinan Dalam Perundang-undangan Di Indonesia (Analisis Maqashid Syari'ah)" (masters, Bengkulu, IAIN Curup, 2020), <https://e-theses.iaincurup.ac.id/2745/>.

¹⁶ Mesraini, Ida Novianti, and Sadari, *Marriage Diaspora and Women's Rights: A Comparative Analysis on Islamic Family Law in Indonesia and Russia* (Tangerang Selatan: CV. Iqralana, 2022).

¹⁷ Nur Hidayah and Nurmiati Muhiddin, "Analisis Yuridis Perjanjian Pra Nikah Dan Akibat Hukumnya," *Jurnal Pustaka Cendekia Hukum Dan Ilmu Sosial* 1, no. 1 (2023), <https://doi.org/10.70292/pchukumsosial.v1i1.44>.

content of the agreement made.¹⁸ In the context of a prenuptial agreement, this freedom provides an opportunity for prospective husband and wife to formulate provisions that are by their respective needs and goals. Article 1313 of the Civil Code emphasizes that every agreement must be based on agreement between the parties involved, thus guaranteeing the right to negotiate and agree on the desired terms. Therefore, a prenuptial agreement not only serves as a formal document but also as an instrument that reflects the agreement and commitment between the couple.

As a contractual document, a prenuptial agreement has reliable legal force to protect the rights of each party in the marriage relationship.¹⁹ This means that married couples can determine the division of property, financial responsibilities, and other arrangements relevant to living together. For example, they can agree that the property acquired during the marriage will be jointly owned or remain separate based on the agreed terms. The availability of this option is important to avoid disputes in the future, especially in the case of property separation or when divorce occurs. Thus, a prenuptial agreement is not just a formality, but a tool to better manage the family's economic life.

However, it is important to remember that the freedom of contract in a prenuptial agreement must still pay attention to the limits of law, decency, and public order. In this case, the agreed provisions must not harm third parties or violate applicable social norms. For example, if an agreement agrees to waive children's rights in the distribution of property, this will be contrary to the principle of child protection regulated in the law. Therefore, to ensure the validity and enforceability of the prenuptial agreement, it is recommended that the couple involve legal counsel or a notary in the process of drafting it. With this step, the prenuptial agreement will not only be a valid document but also serve effectively in protecting the interests of all parties involved.

3) Valid conditions for a prenuptial agreement according to the Civil Code

To be legally valid, a prenuptial agreement must meet several conditions stipulated in the Civil Code. First, the agreement must be made before the marriage takes place. It is important to ensure that the couple has considered and agreed on the terms that will govern their assets and financial responsibilities before committing themselves to marriage. The prenuptial agreement stipulated in Article 147 of the Civil Code must also be recorded before a notary to make it an authentic deed. Authentic deeds have stronger legal force compared to deeds under hand, thus providing legal certainty for both parties. With an authentic deed, the prenuptial agreement can be recognized in court and reduce the risk of future disputes.²⁰

¹⁸ Chami Yassine et al., "Admissibility of Lawsuits Based on Interest under Algerian Civil and Administrative Procedures," *Jambura Law Review* 6, no. 2 (July 22, 2024): 286-303, <https://doi.org/10.33756/jlr.v6i2.24309>.

¹⁹ 140402078 Eva Ramadhani, "Kesiapan Calon Pengantin Pra Nikah (Studi Deskriptif Analisis Pada Kesiapan Bimbingan Pra Nikah Di KUA Kecamatan Syiah Kuala Kota Banda Aceh" (masters, Aceh, Universitas Islam Negeri Ar-raniry, 2021), <https://repository.ar-raniry.ac.id/>.

²⁰ Sofian Syaiful Rizal, "Kekuatan Hukum Akta Notaris Tentang Perjanjian Perkawinan Terhadap Penetapan Perkara Perdata No. 264/Pdt.P/2010 Di Pengadilan Negeri Probolinggo," *VOICE*

Second, the prenuptial agreement must not regulate matters that are contrary to law, decency, or public order. This means that the provisions contained in the prenuptial agreement must be in line with the norms that apply in society and must not violate the provisions of the law. For example, an agreement that contains a clause that is detrimental to one party or regulates unethical things may be considered invalid. If these conditions are not met, then the prenuptial agreement can be declared null and void. Therefore, it is important for prospective spouses to consult with a legal expert or notary in drafting a prenuptial agreement to ensure that all desired provisions meet the applicable legal requirements.²¹

Thus, in order for the prenuptial agreement to have legal force, the couple must carefully prepare the document and comply with all the provisions in the Civil Code. This careful arrangement will not only protect the rights of both parties, but also provide a sense of security and clarity regarding the arrangement of property during and after the marriage. Additionally, a valid prenuptial agreement can help prevent disputes from occurring later in life, which often occurs when couples face problems in their relationship. By understanding and complying with these legal requirements, couples can ensure that their prenuptial agreement will be recognized and respected by the applicable legal system.

4) Prenuptial agreement according to the Marriage Law

Law Number 1 of 1974 concerning Marriage (Marriage Law) specifically regulates prenuptial agreements in Article 29. This article emphasizes that before or at the time of marriage, the prospective husband and wife can make a written agreement that is ratified by the marriage registrar. This shows the importance of formality in the process of making an agreement, where ratification by authorized officials provides legal certainty for both parties. In addition, with this arrangement, the Marriage Law provides recognition of the rights of individuals in formulating agreements related to property and responsibility, which can avoid disputes in the future.²²

A prenuptial agreement made based on the provisions of Article 29 must not violate the boundaries of law, religion, and morality. This means that the content of the agreement must be in accordance with the norms that prevail in society and not contradict religious principles. For example, an agreement that regulates the unfair division of property or that creates inequality between husband and wife may be considered to violate this provision. As such, this arrangement aims to protect the interests of both parties as well as ensure that any agreement taken is fair and ethical.

The prenuptial agreement stipulated in the Marriage Law takes effect from the time the marriage takes place and can only be amended with mutual consent from both

JUSTISIA : Jurnal Hukum Dan Keadilan 3, no. 1 (2019): 107-31, <https://journal.uim.ac.id/index.php/justisia/article/view/829>.

²¹ Edy Sumarno, "Hakekat Perjanjian Kawin Menurut Hukum Perdata Kaitannya Dengan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Di Indonesia," *IUS : Jurnal Ilmiah Fakultas Hukum* 3, no. 1 (April 22, 2015): 19-28, <https://doi.org/10.51747/ius.v3i1.390>.

²² Sugih Ayu Pratitis and Rezulina Rezulina, "Keabsahan Perjanjian Pra Nikah Dan Akibat Hukumnya Ditinjau Dari Perspektif Hukum," *Jurnal Hukum, Politik Dan Ilmu Sosial* 2, no. 2 (May 6, 2023): 56-73, <https://doi.org/10.55606/jhps.v2i2.1593>.

parties. This provision provides stability and legal certainty in the marital relationship, as any changes in the agreement must be mutually agreed upon and cannot be made unilaterally.²³ This is important for maintaining trust between couples and preventing potential conflicts that can arise as a result of unilateral changes in financial arrangements. Thus, the Marriage Law not only functions as a regulator of social and legal relations, but also as a tool to ensure harmony and justice in married life.

5) Renewal in the Marriage Law related to prenuptial agreements

Along with the times, the Marriage Law has undergone several important updates related to prenuptial agreements, especially through the Constitutional Court decision Number 69/PUU-XIII/2015. This ruling changes the paradigm regarding marriage agreements by giving married couples the opportunity to make or amend such agreements, including prenuptial agreements, even if they have been bound by marriage bonds. Previously, the Marriage Law stipulated that a prenuptial agreement must be made before or at the time of marriage. However, with this ruling, the time limit has been removed, giving couples more freedom to manage their assets and responsibilities.²⁴

This update provides significant flexibility in arranging property relationships during marriage. Couples can now formulate new terms that suit their needs and financial conditions that may change over time. For example, if one of the spouses acquires new property or if there is a major change in the financial situation, they may enter into or amend the agreement to reflect those circumstances. It also allows couples to draft more fair and transparent provisions, thereby reducing the potential for conflicts that may arise in the future, especially when it comes to the division of property upon divorce.

On the other hand, this Constitutional Court decision also has an impact on legal protection for couples who want to ensure their personal property is protected. With the option to amend or enter into a marriage agreement at any time, couples no longer need to feel bound by initial provisions that may no longer be relevant. This creates a space for couples to discuss and reach mutually beneficial agreements, thus increasing trust and communication in the relationship. Having a clear agreement can also help in reducing the stress and tension that often arise when dealing with financial or material problems.²⁵

In the social context, this change reflects a change in people's views on prenuptial agreements. While there is still a stigma regarding prenuptial agreements, this update shows that more and more couples are realizing the importance of having a clear agreement before and during marriage. Awareness of the need for legal regulation in

²³ Hidayah and Muhiddin, "Analisis Yuridis Perjanjian Pra Nikah Dan Akibat Hukumnya."

²⁴ 160101009 Ade Nanda Phonna, "Persepsi Ulama Dayah Di Kec. Ingin Jaya Kab. Aceh Besar Tentang Perjanjian Perkawinan" (masters, Aceh, UIN Ar-Raniry, 2021), <https://repository.ar-raniry.ac.id/id/eprint/33467/http://repository.ar-raniry.ac.id>.

²⁵ Nur Ainun, "Dampak Hukum Perjanjian Pranikah Dengan Pengajuan Syarat Untuk Tidak Poligami Di Pengadilan Agama" (Tesis, Riau, Universitas Islam Riau, 2018), <https://repository.uir.ac.id/3855/>.

marriage relationships can strengthen stability and peace in the family. Thus, the Constitutional Court's decision No. 69/PUU-XIII/2015 not only provides legal benefits, but also creates social awareness about the importance of prenuptial agreements in maintaining domestic harmony.

6) Legal and social implications of prenuptial agreements

Prenuptial agreements have significant legal implications in the context of the division of property and financial responsibilities of husband and wife. In divorce situations, where emotions often influence decision-making, the existence of a prenuptial agreement provides clarity and certainty. An agreement that has been made before the marriage can be a strong guideline for resolving issues related to the division of assets. As such, these agreements can help avoid protracted disputes, reduce tensions between divorced couples, and speed up the dispute resolution process. In addition, in the legal context, a prenuptial agreement serves as a binding document, where its provisions can be applied in court if necessary.²⁶

On the other hand, from a social perspective, prenuptial agreements are often considered taboo. Many people feel that drafting a prenuptial agreement indicates a lack of trust between couples, as if they doubt the future of their relationship. This view can be attributed to the social norms that develop in society, where marriage is seen as a sacred bond that should not need to be regulated by legal documents.²⁷ Although this stigma still exists, more and more couples are realizing the importance of prenuptial agreements as a proactive step to protect each other's interests. With the increasing awareness of the importance of financial management and asset protection, prenuptial agreements are starting to be accepted more widely.

In the context of personal property protection, a prenuptial agreement gives couples the opportunity to formulate provisions that suit their needs and financial situation.²⁸ For example, couples who own businesses, investments, or other significant assets can use this agreement to determine how the property will be divided in the event of a divorce. With a prenuptial agreement, the risk of losing property that has been obtained before marriage can be minimized. In addition, this agreement can also regulate financial responsibilities during the marriage, so that each party has clarity regarding their contribution to the joint finances. This can help create better communication between couples regarding financial matters.

Finally, it is important to highlight that a prenuptial agreement is not only about the protection of property but also about creating a solid foundation for healthy

²⁶ Indi Asqia Az-zahra and Milhan, "Dinamika Penyelesaian Harta Bersama: Perbedaan Pandangan Tokoh Agama Di Kecamatan Bagan Sinembah," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan Dan Ekonomi Islam* 16, no. 2 (August 28, 2024): 394-407, <https://doi.org/10.32505/jurisprudensi.v16i2.8774>.

²⁷ Suwito et al., "Contemplating the Morality of Law Enforcement in Indonesia," *Journal of Law and Sustainable Development* 11, no. 10 (October 25, 2023): e1261-e1261, <https://doi.org/10.55908/sdgs.v11i10.1261>.

²⁸ Asep Ubaidillah, "Untung Rugi Perjanjian Pra-Nikah: Analisis Yuridis Islam Dan Hukum Positif," *Qonuni: Jurnal Hukum Dan Pengkajian Islam* 3, no. 2 (December 31, 2023): 121-31, <https://doi.org/10.59833/qonuni.v3i2.1663>.

communication in the relationship.²⁹ By discussing expectations and conditions early in marriage, couples can strengthen their understanding and trust in each other. The process of drafting a prenuptial agreement can be an opportunity for couples to discuss important issues that may have been overlooked, such as financial goals, family plans, and individual responsibilities. Through this open dialogue, couples can build a stronger foundation for their relationship, as well as reduce the potential for future conflicts. Thus, a prenuptial agreement can be seen as a positive step that not only protects assets but also strengthens the marriage bond.

Prenuptial agreement agreements in Indonesia have an important role in regulating the ownership of property and financial responsibilities of the couple before and during the marriage. Regulated in the Civil Code and the Marriage Law, prenuptial agreements provide freedom of contract that allows couples to formulate provisions according to their respective needs, provided that they do not conflict with applicable laws and norms. The existence of this agreement can prevent potential conflicts in the future, provide clarity in the division of property, and create healthy communication between couples. The updates resulting from the Constitutional Court's ruling also provide more flexibility in formulating or amending agreements, reflecting the changing public view of the importance of legal arrangements in marriage relationships. Thus, a prenuptial agreement is not just a formality, but a strategic step to ensure justice, security, and harmony in the relationship between husband and wife.

Here are some of the things that cause the current legal limitations in protecting both parties fairly in a prenuptial agreement, namely:

1) Limitations in the Legal Arrangement of Prenuptial Agreements

One of the significant legal limitations in protecting both parties fairly in a prenuptial agreement is the lack of clarity regarding the provisions regulated in the Civil Code (KUHPerdata) and the Marriage Law. Although the Civil Code recognizes the existence of a prenuptial agreement, its regulation is still limited to the property aspect and does not cover in-depth issues such as rights and obligations in the marital relationship. For example, Article 119 of the Civil Code only emphasizes the division of assets without paying attention to other aspects such as the moral or emotional responsibility of each party. This makes many couples feel unprotected, especially when one of the parties feels disadvantaged in the arrangement.³⁰

2) Lack of Minimum Standards in Prenuptial Agreements

²⁹ A'yun and Hidayatullah, "Perspektif Masalah Dalam Perjanjian Perkawinan Mengenai Harta Dalam Undang-Undang Perkawinan."

³⁰ Pandapotan Damanik and Shem Yafet Cundus Pratama Damanik, "Legal Protection of Land Rights in Mixed Marriages Ending in Divorce;" *Indonesian Journal of Law and Economics Review* 19, no. 3 (August 19, 2024): 10.21070/ijler.v19i3.1149-10.21070/ijler.v19i3.1149, <https://doi.org/10.21070/ijler.v19i3.1149>.

Another limitation in legal protection is the lack of minimum standards that must be met in a prenuptial agreement.³¹ Article 147 of the Civil Code requires a prenuptial agreement to be made in the form of an authentic deed, but there are no clear provisions regarding the content or substance of the agreement. As a result, many of the agreements drafted do not cover all the aspects necessary to protect the interests of both parties in a balanced manner. For example, if one party is more experienced in law or finance, there is a risk that they could take advantage of this position to draft provisions that are more favourable to themselves. This has the potential to cause injustice in the prenuptial agreement which should aim to protect all parties.

3) Challenges in Enforcement of Prenuptial Agreements

Another problem faced is the challenge in enforcing the prenuptial agreement in court. Although these agreements are considered valid, there are many cases where courts have not recognized or enforced the provisions of a prenuptial agreement, especially if there is evidence that the agreement was made under pressure or manipulation. This suggests that even if the agreement has been well drafted, there is a possibility that the court will ignore the agreement in favor of substantive justice, which in turn could be detrimental to one of the parties who has fulfilled all the legal requirements.³²

4) Public Policy and Legal Protection That Are Not Optimal

At the public policy level, legal protection of prenuptial agreements is still not optimal. Existing regulations tend not to pay attention to the changing dynamics of social and economic relations, so they are unable to answer the new challenges faced by modern couples. For example, overseas prenuptial agreements often include provisions on child custody and post-marital financial support, which are not yet fully accommodated in Indonesian law.³³ This fact shows that there is an urgent need to revise and update existing regulations in order to provide better and fairer protection for both parties to the prenuptial agreement. By making this update, it is hoped that every couple can feel safer and have their rights in the marriage relationship.

The legal regulation of prenuptial agreements in Indonesia still has various significant limitations. First, the lack of clarity in the provisions of the Civil Code and the Marriage Law regarding rights and obligations outside the property aspect makes couples feel less protected. Second, the lack of minimum standards in the drafting of

³¹ Frizzy Dhafin Bachri, "Pemenuhan Hak Anak Hasil Pernikahan Campuran Yang Dilakukan Secara Sirri Antara Warga Negara Indonesia Dengan Warga Negara Malaysia" (bachelorThesis, Jakarta, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta, 2024), <https://repository.uinjkt.ac.id/dspace/handle/123456789/80505>.

³² Raisa Fatnisary, "Perjanjian Kawin Selain Mengenai Harta Perkawinan Berdasarkan Asas Kebebasan Berkontrak (Studi Banding Dengan Negara Amerika Serikat)," *Indonesian Notary* 3, no. 1 (March 31, 2021), <https://scholarhub.ui.ac.id/notary/vol3/iss1/35>.

³³ M. Shidqi, "Perjanjian Perkawinan Pemisahan Harta Bagi Pasangan Suami Istri Dalam Putusan Mahkamah Konstitusi No.69/PUU-XIII/2015 Prespektif Maqasid Al Syari'ah" (masters, IAIN Ponorogo, 2021), <https://etheses.iainponorogo.ac.id/15653/>.

agreements leads to injustice, especially when one party has an advantage in legal or financial knowledge. In addition, challenges in enforcing the agreement in court also indicate that even if the prenuptial agreement is valid, the court may ignore it in order to achieve substantive justice. Finally, legal protection at the public policy level is not adequate to cover changing social and economic dynamics, so it requires regulatory revision so that prenuptial agreements can provide better and balanced protection for both parties. The update of regulations is expected to increase the sense of security and legal certainty for couples in marriage.

4.2. Comparison of prenuptial agreement arrangements in several countries

Just like a prenuptial agreement, a postnuptial agreement is drafted after the marriage takes place, not before. In contrast to separation agreements that are drafted with the possibility of divorce in mind, postnuptial agreements are designed to regulate the conditions of the ongoing marriage. Some common reasons why people draft a postnuptial agreement include a lack of time to prepare a prenuptial agreement before marriage, a desire to amend an existing prenuptial agreement, a significant change in net assets, or the existence of a problem in the marital relationship that is expected to be resolved.³⁴

In the Netherlands, in accordance with the provisions of the Civil Code, a marriage agreement can be made during the marriage. In the context of marriage law in the Netherlands, the regulations regarding marriage contracts are regulated in the Nieuw Burgerlijk Wetboek (NBW) or the Dutch Civil Code which is still in force. Article 114 of the NBW confirms that prospective married couples have the right to draw up a marriage contract both before they get married and during the marriage period. It provides flexibility for couples to arrange their rights and obligations according to their respective needs and conditions.³⁵

However, to ensure the validity of the contract, Article 115 paragraph (1) of the NBW states that the marriage contract must be drafted in the form of a notary deed. This provision aims to provide legal certainty and protect the rights of each party by involving the competent legal authorities. Thus, the process of drafting a marriage contract becomes more official and legally recognized, so that it can reduce the potential for disputes in the future.

In the United States, although some people doubt the importance of marriage, a study shows that the majority of international students living in the United States believe that marriage is important. Strong gender cultural pressures from their home countries, religious affiliations, and the importance of parental input remain major factors in their aspirations for marriage. In America, prenuptial agreements are often viewed with skepticism because of the notion that they can encourage divorce and

³⁴ Christopher Ulfers, "Is a Postmarital Agreement in Your Best Interest? Why Louisiana Civil Code Article 2329 Should Let You Decide," *Louisiana Law Review* 75, no. 4 (May 15, 2015), <https://digitalcommons.law.lsu.edu/lalrev/vol75/iss4/16>.

³⁵ Sonny Dewi Judiasih et al., "Postnuptial Agreement: A Comparison of Legal Systems in Indonesia and Other Countries," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 5 (June 1, 2021): 1-716, <https://www.abacademies.org/abstract/postnuptial-agreement-a-comparison-of-legal-systems-in-indonesia-and-other-countries-11075.html>.

undermine the sanctity of marriage. However, a marriage agreement that regulates the situation of the death of one of the spouses is widely accepted and has never been rejected, as this agreement is considered to protect the values of marriage.³⁶

In the legal system in the United States, a postnuptial agreement functions similarly to a prenuptial agreement, and can include the terms desired by both parties in the event of a divorce or when the marriage ends. In general, almost all states in the U.S. recognize prenuptial agreements, but only a few have the concept of a postnuptial agreement.

In the U.S., there is the Uniform Prenuptial Agreement Act (UPAA) approved by the National Conference of Uniform State Law Commissioners, and it has currently been adopted by half of the states. Like other contracts, a prenuptial agreement is an agreement between two parties, with an obligation to fulfill the agreed terms. If one party breaches such obligations, this may result in legal liability.³⁷

The position of the prenuptial agreement in the US is quite stable. The agreement is acceptable in all 50 states, although its characteristics and procedural requirements vary from state to state. The National Conference of Commissioners on Uniform State Law drafted the Uniform Prenuptial Agreement Act (UPAA) in 1983, which has been adopted by 26 states to date. Other states have their own laws or apply general procedures for prenuptial agreements. While there are various provisions between states, there are some general requirements that must be met in order for a prenuptial agreement to have legal force. These basic requirements include: the existence of honest and complete asset surrender from both parties, an agreement made voluntarily and without prejudice, access to independent legal advice, and executed before the marriage and not contrary to public policy.³⁸

In the United Kingdom, courts generally rule that prenuptial agreements cannot be enforced due to public policy considerations. The United Kingdom implements the Marriage Cases Act 1973 which regulates the marriage process, maintenance agreements, and divorce. A prenuptial agreement is considered to violate Article 25 (1) of the law governing the jurisdiction of the court. Furthermore, the prenuptial agreement is considered invalid because it restricts the right to obtain a court order regarding financial arrangements under Article 34 (1) of the same law.³⁹

In Ireland, prenuptial agreements cannot be enforced for public policy reasons. The Irish Constitution affirms the value of the family, providing basic rights, including in the context of the family. This is seen in Article 41 of the Constitution, which guarantees the protection of the family, especially in the case of the formation of

³⁶ Andrew F. Jr Gann, "Prenuptial Agreements and Fraud on the Widow's Share: A Look at Virginia's Law on Premarital Agreement Enforcement at Death," *Virginia Journal of Social Policy & the Law* 23 (2016): 231,
<https://heinonline.org/HOL/Page?handle=hein.journals/vajsplw23&id=237&div=&collection=>

³⁷ Matisa Majumder, "Prenuptial Agreement: Enforcing Marriage in the Eyes of Law," *International Journal of Law and Legal Jurisprudence Studies* 3, no. 2 (2016): 472-96.

³⁸ Judiasih et al., "Postnuptial Agreement."

³⁹ Ibid.

marriages and grants divorce only in circumstances where there is no alternative settlement, as provided for in the law.⁴⁰

In Australia, changes to the Family Law in December 2000 allowed for binding financial agreements, both made before, during, and after marriage. Previously, prenuptial agreements were not legally recognized. The purpose of the amendment is to provide an opportunity for individuals to draw up a contractually binding agreement, addressing the authority of the family court over financial matters. This legal reform is considered a progressive step, with agreed terms and conditions.⁴¹

In Malaysia, the Law Reform (Marriage and Divorce) Act 1976 (LRA 1976) regulates marriage and divorce, adopting principles from English law. There is a misconception that prenuptial agreements are not acceptable in Malaysia. However, the court may consider the agreement when determining the distribution of marital assets, provided it does not conflict with the provisions of the LRA 1976.⁴²

4.3. Legal Implications of Prenuptial Agreements on the Rights and Obligations of Husband and Wife During Marriage and After Divorce

In the context of marriage, this agreement serves as a guideline that establishes the rights and obligations of each party, including the division of property, financial responsibilities, and other arrangements relevant to married life. In addition, the prenuptial agreement also has significant implications in divorce situations, where the agreed terms can be a reference for resolving disputes that arise related to joint property and financial obligations. Thus, a deep understanding of the legal implications of a prenuptial agreement is essential to ensure the protection of the rights of each party, as well as to create stability and justice in the marital relationship.

- 1) A prenuptial agreement can protect individual rights, such as the right to personal property, common property, and other economic interests

A prenuptial agreement serves as a very important legal tool to protect individual rights, especially in the context of personal property and joint property. According to Article 119 of the Civil Code, property obtained by a husband and wife during marriage becomes joint property, unless there are other provisions agreed in the prenuptial agreement. In this case, the couple can formulate clear provisions regarding the property that is considered personal property, namely property owned before marriage or property obtained through inheritance and gifts. With a prenuptial agreement, the right to this personal property can be maintained even if a divorce occurs, thereby reducing the risk of conflict in the future.⁴³

In addition, a prenuptial agreement can also regulate the division of joint property in a fair way and agreed upon by both parties. In Article 147 of the Civil Code, a prenuptial agreement must be made in the form of an authentic deed to have binding

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Dede Mirza et al., *Hukum Perdata: Perspektif Hukum Perdata di Indonesia* (Jambi: PT. Sonpedia Publishing Indonesia, 2024).

legal force.⁴⁴ This means that the couple can determine the percentage of the share of joint property based on each other's contributions during the marriage. For example, if one of the spouses contributes more financially, they can formulate provisions in the agreement to reflect that contribution. With this provision, each party has certainty about their rights to common property, and can avoid disputes regarding the division of assets if the relationship ends.

In addition to the protection of property, a prenuptial agreement also protects other economic interests, such as financial liability and debt arrangements.⁴⁵ In marriage, it is often the case that the couple will share responsibility for debts and financial obligations. However, with a prenuptial agreement, they can agree on how the debt taken out during the marriage will be handled, as well as how the responsibility will be divided. For example, couples can agree that debts taken by one party during the marriage will not burden the other party, thus preventing potential conflicts in the future.⁴⁶ In this case, a prenuptial agreement serves as a preventive measure that protects individual rights and ensures that both have a clear understanding of their economic rights and obligations during and after the marriage.

2) Prenuptial agreements affect the division of joint property during marriage and in the divorce process

The prenuptial agreement has a significant influence on the division of joint property during marriage. Through this agreement, the couple can clearly define the arrangement of property, including personal property and joint property acquired during the marriage.⁴⁷ Based on Article 119 of the Civil Code, all property obtained during marriage becomes joint property, unless there are other provisions that regulate in the prenuptial agreement. For example, couples may agree to stipulate that the property acquired by each other during the marriage remains their personal property. Thus, a prenuptial agreement allows both parties to protect individual assets and govern their rights without having to rely on default provisions set by law.

In the divorce process, the prenuptial agreement is a crucial document to determine how the joint property will be divided. In the case of divorce, the provisions contained in the prenuptial agreement are binding legal references.⁴⁸ For example, if the couple has agreed on a certain division of assets and financial obligations in the prenuptial agreement, the court is likely to respect and enforce those provisions, as long as they do not conflict with applicable law. Based on Article 146 of the Civil Code, if an agreement is considered valid and does not violate legal provisions, then the

⁴⁴ Lukman et al., "Perjanjian Perkawinan Sebagai Perlindungan Hukum Terhadap Harta Bersama Akibat Perceraian," *Tabayyun: Journal Of Islamic Studies* 2, no. 01 (June 27, 2024), <https://journal.tabayanu.com/index.php/tabayyun/article/view/35>.

⁴⁵ Pratitis and Rehulina, "Keabsahan Perjanjian Pra Nikah Dan Akibat Hukumnya Ditinjau Dari Perspektif Hukum."

⁴⁶ Dian Ekawaty Ismail et al., "Collocation of Restorative Justice with Human Rights in Indonesia," *Legality: Jurnal Ilmiah Hukum* 32, no. 2 (September 20, 2024): 394-417, <https://doi.org/10.22219/ljih.v32i2.35374>.

⁴⁷ Utami and Dalimunthe, "Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian."

⁴⁸ Dian Dewi Khasanah et al., *Hukum Perdata* (Banten: Sada Kurnia Pustaka, 2023).

agreement remains valid even if the marriage ends. This creates legal certainty for both parties and reduces the potential for disputes in court.

However, while a prenuptial agreement can provide protection and clarity, there are times when the court can still intervene, especially if there is an element of injustice or if the agreement is drafted in a way that is detrimental to either party. In the decision of the Constitutional Court Number 69/PUU-XIII/2015, it is explained that the provisions in the prenuptial agreement must not harm the basic rights of the spouse.⁴⁹ For example, if there is a provision in the prenuptial agreement that is very biased or detrimental to one of the parties, the court has the authority to declare the provision invalid. Thus, while a prenuptial agreement serves to provide clear arrangements in the division of property, it is still important for couples to draft the agreement carefully and avoid provisions that could be considered detrimental to either party.

3) The impact of prenuptial agreements on marital maintenance rights, inheritance rights, and financial obligations

Prenuptial agreements have a significant impact on the right to alimony in marriage. Maintenance is the husband's obligation to provide financial support to his wife during marriage.⁵⁰ With a prenuptial agreement, both parties can clearly formulate provisions regarding alimony rights, including the amount and method of fulfilling the alimony. For example, the couple can agree to determine the amount of alimony based on the husband's income or take into account the wife's financial contribution in the household. This provides legal certainty and prevents disputes in the future. According to Article 31 of the Marriage Law, the husband is obliged to provide maintenance to his wife, but the prenuptial agreement can modify this obligation so that it is more in accordance with the condition of each couple.

Inheritance rights are an important aspect that can be influenced by a prenuptial agreement. In inheritance law, married couples are entitled to each other's inheritance.⁵¹ However, through a prenuptial agreement, the couple can clearly regulate the division of inheritance that will be received by each party. For example, the couple can agree that certain assets remain the personal property of one of the parties and will not be part of the inheritance. This is especially important, especially in cases where one of the parties has significant property before the marriage. According to Article 830 of the Civil Code, an agreement regarding inheritance can be made with a notary deed, and a prenuptial agreement can be a legal basis to regulate the distribution of inheritance according to the wishes of both parties.

⁴⁹ Ahmad Ahmad, Viorizza Suciani Putri, and Mohamad Hidayat Muhtar, "Antara Otoritas dan Otonomi: Pertautan Hak Asasi Manusia dalam Praktik Eksekusi Putusan PTUN: Perlindungan HAM dalam Eksekusi Upaya Paksa Terhadap Putusan Peradilan Tata Usaha Negara," *Jurnal Konstitusi* 21, no. 3 (September 1, 2024): 392–412, <https://doi.org/10.31078/jk2133>.

⁵⁰ Umar Rizqullah and Fokky Fuad, "Perbandingan Hukum dalam Pembagian Royalti Sebagai Harta Bersama dalam Perkawinan: Indonesia, Malaysia, dan Amerika Serikat," *UNES Law Review* 7, no. 1 (September 9, 2024): 158–68, <https://doi.org/10.31933/unesrev.v7i1.2263>.

⁵¹ Yuyut Prayuti et al., *Menjawab Kompleksitas Hukum Di Tengah Masyarakat Waris, Perlindungan Konsumen, Dan Perjanjian* (Bandung: Penerbit Widina, 2024).

The prenuptial agreement also affects the financial obligations between the husband and wife during the marriage period. In this agreement, the spouse can regulate how financial expenses and income will be managed, including their respective responsibilities in terms of debt and household expenses.⁵² For example, a couple may agree to split living expenses based on a certain percentage of each other's income, or stipulate that one of the parties is responsible for certain payments such as installments or debts. This provision will help prevent misunderstandings and conflicts related to financial management. Article 119 of the Civil Code also emphasizes the importance of this agreement in determining the arrangement of property during marriage, which in turn will affect the financial obligations of the husband and wife. With a prenuptial agreement, both parties can have a clear foundation and understand each other regarding their financial responsibilities.

Legal instruments play a crucial role in determining the rights and obligations of married couples, especially in the aspects of property division and financial responsibility. By referring to the provisions stipulated in the Civil Code, the prenuptial agreement provides a clear legal basis for the couple to protect individual rights, including personal property and joint property. The existence of this agreement not only serves as a guideline in living married life, but also as a binding legal reference in divorce situations. This creates certainty and reduces the potential for conflicts that can arise related to the division of assets and financial liabilities. However, it is important to note that the prenuptial agreement must be carefully drafted to avoid provisions that could be detrimental to either party, as the court has the authority to reject provisions that are deemed unfair. As such, a deep understanding of the legal implications and the need for balance in a prenuptial agreement is essential to ensure that the rights of both parties are protected, as well as to create fairness in the marital relationship.

5. Conclusion

The regulation of prenuptial agreements in the Indonesian legal system includes several important aspects. First, the prenuptial agreement is regulated in the Civil Code and the Marriage Law, providing a legal basis for regulating the couple's assets and financial responsibilities. Second, the principle of freedom of contract allows couples to formulate provisions that suit their respective needs, as long as they do not conflict with applicable laws and norms. Third, the legal conditions for a prenuptial agreement include making it before marriage and legalizing it by a notary. However, there are limitations in regulation and law enforcement, as well as a lack of education that makes couples vulnerable to injustice. The renewal of regulations through the Constitutional Court's decision also shows the importance of flexibility in formulating prenuptial agreements to create justice and harmony in the household.

In a comparison of prenuptial agreement arrangements in several countries such as the Philippines, Malaysia, Thailand, Vietnam, and France, it can be seen that there is a diversity of approaches that reflect the legal and cultural contexts of each other. Although all of these countries recognize the validity of prenuptial agreements, the

⁵² Suwasta et al., *Pengantar Hukum Perdata*.

way they are implemented varies. In the Philippines, although prenuptial agreements are recognized, many couples do not make full use of them due to the prohibition on divorce. Malaysia, with its mixed legal system, provides more flexibility but there are still injustices in practice. Thailand and Vietnam also have legitimate arrangements but face cultural challenges that hinder the use of the agreement. France offers a more comprehensive approach with a legal system that allows for detailed adjustments to prenuptial agreements, creating clarity regarding rights and obligations in marriage.

A prenuptial agreement serves as an important legal instrument to protect individual rights and establish financial obligations between husband and wife. With this agreement, the couple can clearly define the rights to personal property and joint property, as well as divide financial responsibilities during the marriage and in the case of divorce. This creates legal certainty and reduces the potential for conflict in the future. However, it is important to formulate the agreement fairly and not to the detriment of either party, as the court has the right to overturn the unbalanced provisions. Thus, a deep understanding of the legal implications of a prenuptial agreement is key to creating justice in the marriage relationship, as well as protecting the rights of both parties.

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