

## Legal Framework and Practical Effectiveness of Prenuptial Agreements in Indonesian Marriages

Rr. Salma Almira Khairunnisa<sup>1\*</sup>, Tjempaka<sup>2</sup>

<sup>1</sup>Universitas Tarumanagara, Indonesia

<sup>2</sup>Universitas Tarumanagara, Indonesia

\*Corresponding Author: [rرسالmaalmira15@gmail.com](mailto:rرسالmaalmira15@gmail.com)

### Article History:

Submitted:

12-11-2024

Received:

21-11-2024

Accepted:

29-12-2024

### Keywords:

prenuptial agreement;  
marriage; asset  
division; protection

### Abstract

In the context of marriage in Indonesia, the term "Prenuptial Agreement" is recognized as an important legal instrument that regulates the rights and obligations between husband and wife before a marriage takes place. This instrument is designed to protect the individual economic interests of each spouse by specifically arranging both premarital assets and assets acquired during the marriage. This study aims to analyze the legal framework regarding prenuptial agreements in Indonesia and its role in post-marital life, particularly concerning asset division, dispute resolution, and protection of the economic rights of spouses. It also assesses the extent to which the current legal framework is adequate in addressing increasingly complex social and economic changes, and how the implementation of prenuptial agreements is applied in Indonesia. This study examines the relevant legal provisions through a normative juridical research method. The findings show that prenuptial agreements have legitimate legal force and are recognized by the state. These agreements provide legal security for couples in terms of asset distribution and financial obligations and can minimize potential disputes in the future. Additionally, prenuptial agreements serve as a preventive instrument that protects each party's financial interests. Substantively, the effectiveness of prenuptial agreements is influenced by clear and fair provisions concerning the rights and obligations of the spouses. Structurally, the agreement must be drafted and executed in compliance with applicable legal requirements. With a well-structured prenuptial agreement, couples can obtain optimal legal protection, thereby minimizing the potential for conflicts regarding economic rights within marriage.

## 1. Introduction

A prenuptial agreement, or more commonly known as a "Prenuptial Agreement," is an important document in regulating various legal and financial aspects of a marriage. With the existence of such an agreement, couples can detail their rights and obligations, especially concerning property, financial responsibilities, and asset division in the event of divorce or death. In a prenuptial agreement, couples can stipulate how inheritance will be distributed if one of them passes away. This can prevent disputes among family members in case of an undesirable event. The importance of a prenuptial agreement lies in providing legal certainty, protecting personal assets, avoiding potential conflicts, and preparing oneself mentally and legally before marriage. However, this agreement must also be made in good faith and comply with the applicable rules in Indonesian marriage law<sup>1</sup>. Prenuptial agreements are explicitly regulated in Article 29 of Law No. 1 of 1974 concerning Marriage (hereinafter referred to as Law No. 1/1974). This provision allows prospective husbands and wives to create a written agreement that can be agreed upon either before or during the marriage. The agreement, once

<sup>1</sup> Esti Royani et al., "Juridical Review Of Prenuptial Agreements," *Awang Long Law Review* 6, no. 2 (May 9, 2024), <https://doi.org/10.56301/awl.v6i2.1168>.

ratified, will have binding legal force on both parties during the marriage. Thus, a prenuptial agreement has a valid legal standing in Indonesia, as long as the agreement complies with applicable laws and does not violate the ethical principles highly upheld in social life<sup>2</sup>.

Before the enactment of Law No. 1 of 1974, the laws governing marriage in Indonesia largely derived from the Continental European legal system, which recognized the separation of property between husband and wife unless otherwise agreed upon in a contract. Under Dutch legal influence, prenuptial agreements were known as "*huwelijks voorwaarden*" or "*huwelijksvoorwaarden*," which means "marriage conditions." The purpose of these prenuptial agreements was to govern each partner's separate property, whether acquired before or during the marriage. With the enactment of Law No. 1 of 1974, prenuptial agreements have become increasingly relevant in Indonesia's modern society, where men and women are approaching equality in social and economic roles. Modern women are more likely to possess financial independence and make significant economic contributions, making equitable and transparent property arrangements a necessity. Similarly, in cases of marriage between a foreign national and an Indonesian citizen, prenuptial agreements serve as an essential instrument to protect the interests of both parties, including matters of property ownership within Indonesia, which are strictly regulated for foreign nationals<sup>3</sup>.

Nevertheless, the implementation of prenuptial agreements in Indonesia still faces several legal and social challenges. One common issue is the lack of public understanding regarding the functions and benefits of these agreements. Many couples consider prenuptial agreements relevant only for individuals with substantial wealth, fostering the perception that such agreements do not align with Indonesian marital culture, which emphasizes trust and unity between husband and wife. As a result, the general public often overlooks prenuptial agreements, and only a small percentage of couples in Indonesia establish a prenuptial agreement before marriage. This phenomenon is attributed to various factors, including limited socialization about the advantages of prenuptial agreements and negative perceptions that view such agreements as indicative of mistrust between spouses. However, with the increasing complexity of marital relationships in the modern era, the need for prenuptial agreements is being felt more acutely by many couples, especially those who possess significant assets before marriage. A prenuptial agreement not only protects the individual interests of each spouse but also provides legal assurance to third parties who may be involved, such as creditors or investors, particularly in cases where one spouse holds business interests or assets connected to outside parties. Moreover, a prenuptial agreement offers legal certainty in the event of divorce, which often leads to prolonged conflicts over the division of jointly owned property. Generally, prenuptial agreements in Indonesia aim to separate the personal assets each party brings into the marriage, thereby preventing them from merging with assets acquired during the marriage, known as joint property. In practice, this concept allows each party to independently manage their assets without interference from the other spouse. For instance, an entrepreneur with significant wealth before marriage may wish to

---

<sup>2</sup> Erica Sinurat Amelia Ruth, "Eksistensi Perjanjian Pranikah Dalam Pembagian Harta Menurut Undang-Undang Perkawinan Nomor 1 Tahun 1974," *Lex Privatum* 5, no. 7 (September 2017): 36-42.

<sup>3</sup> Amalia Syafira Hulukati, "Legal Implications of Prenuptial Agreements in Marriage in Indonesia: Between Protection of Rights and Justice," *Estudiante Law Journal* 6, no. 2 (June 2024): 329-50.

ensure that such assets remain separate and are not included as joint property in the event of a divorce.

A prenuptial agreement constitutes a civil contract subject to the general validity requirements of an agreement as stipulated in Article 1320 of the Indonesian Civil Code (KUHPerdata). One of the primary conditions is the mutual consent of both parties. Such consent must be given voluntarily, free from any form of coercion or pressure. Additionally, the object of the agreement must be clear and comprehensible to both parties. In this regard, the assets regulated in the prenuptial agreement must be explicitly specified, encompassing both premarital assets and assets acquired during the marriage. Some couples perceive that having such an agreement provides security and protection for personal assets<sup>4</sup>. There are 3 comparisons from researchers who study similar issues, namely, the first with the title "Judicial Review Regarding Prenuptial Agreements in Oral Form"<sup>5</sup>. This research discusses pre-nuptial agreements made orally, where pre-nuptial agreements made if something undesirable happens are difficult to prove and can be filed as a lawsuit. Second, with the title "Protection of Women Through Prenuptial Agreements (Response to Legal and Gender Issues)"<sup>6</sup>. This research discusses efforts to reveal the importance of pre-nuptial agreements to protect women's interests and respond to contemporary legal and gender issues by showing that women's protection can be minimized and anticipated with pre-nuptial agreements. Third, with the title "Review of Islamic Law and Positive Law Regarding Prenuptial Agreements"<sup>7</sup> this research discusses how this agreement is implemented and its position in Islamic and positive law. Meanwhile, this research discusses how the understanding of the role of prenuptial agreements in increasingly complex husband-wife relationships. This study focuses on the legal regulation of prenuptial agreements in Indonesia and their role after the marriage takes place. Through an in-depth study related to asset division, potential disputes, and the protection of the economic rights of couples, this research evaluates the extent to which the current legal regulations address increasingly dynamic social and economic changes. This approach not only focuses on legal aspects but also on the role of prenuptial agreements in addressing challenges within the framework of modern law.

## 2. Methods

This research employs a normative juridical method, a legal approach aimed at theoretically analyzing the applicable legal norms. This method utilizes both a conceptual approach and a statutory approach. Secondary data serves as the primary source for this research, so the author does not conduct field research such as interviews or observations; rather, data is collected through a literature review. The sources used include books, scientific journals, articles, and other documents relevant to the topic. Through this literature

---

<sup>4</sup> Subekti, *Hukum Perjanjian* (Jakarta: Internasa, 2001).

<sup>5</sup> Rana Tsamara Tsani and Adhitya Kartika Widya, "Tinjauan Yuridis Mengenai Perjanjian Pra Nikah Dalam Bentuk Lisan," *Kabilah: Journal of Social Community* 9, no. 1 (June 2024): 65–80.

<sup>6</sup> Muhammad Muttaqin Ngizzul and Miftah Rosadi, "Perlindungan Perempuan Melalui Perjanjian Pra Nikah (Respon Terhadap Isu Hukum Dan Gender)," *AL-MAIYYAH Media Transformasi Gender Dalam Paradigma Sosial Keagamaan* 13, no. 1 (June 2020).

<sup>7</sup> Ahmad, Assidik, "Tinjauan Hukum Islam Dan Hukum Positif Terhadap Prenuptial Agreement Atau Perjanjian Pranikah" (Skripsi, UIN Alauddin, 2017).

review, the author can gain a deep and comprehensive understanding of the legal system based on the findings and prior studies related to the research topic<sup>8</sup>.

### 3. Results and Discussion

#### 3.1. Regulation of Prenuptial Agreements in the Indonesian Legal System

The basic right of individuals to form a family and continue their lineage, as guaranteed in Article 28B paragraph 1 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 UUD NRI), serves as an important foundation in the context of marriage. Marriage is a legal and social bond between two individuals recognized by the state, religion, or customs, and is usually based on a mutual agreement to live together as husband and wife. Marriage is considered valid if it is conducted according to the religious laws and beliefs of each party. Marriage law in Islam is an important aspect of the lives of Muslims that governs the relationship between husband and wife based on the principles of Islamic religion. In marriage, there is a commitment to live together as husband and wife to build a family, supporting each other, and share responsibilities<sup>9</sup>.

This reflects respect for individual choices in leading personal lives, including determining certain arrangements through prenuptial agreements before entering into a legitimate marriage. In positive law in Indonesia, 3 (three) legal products regulate prenuptial agreements, namely, the Civil Code (KUHPerdata)/BW, Law Number 1 of 1974 on Marriage (hereinafter referred to as Law No. 1/1974), the Compilation of Islamic Law (KHI), and Constitutional Court Decision Number 69/PUU-XIII/2015. In Articles 1313 and 1320 of the Civil Code, it is explained that an agreement begins with a consensus where one or more parties bind themselves to another party, thus creating a strong legal relationship for prospective spouses to agree on their rights and obligations before marriage. The valid conditions of the agreement that must be fulfilled as regulated in Article 1320 of the Civil Code, namely:

1. Mutual consent of the parties
2. Legal capacity
3. A specific object
4. A lawful cause

Article 1338 of the Civil Code, explains the principle of freedom of contract which provides flexibility for couples to draft the contents of the agreement according to their needs, as long as it does not conflict with applicable laws and norms. The principle of freedom of contract becomes the main basis that allows couples to regulate their rights and obligations. Prenuptial agreements in Indonesian law become legal products that can ensure justice and certainty in marital relationships. Thus, prenuptial agreements serve as a form of respect for the constitutional rights of couples in family matters<sup>10</sup>. A prenuptial agreement will be legally

---

<sup>8</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media Group, 2016).

<sup>9</sup> Muhammad Ad Waul Khaq et al., "Implikasi Hukum Perjanjian Dalam Penyelesaian Konflik Rumah Tangga," *As-Sakinah Jurnal Hukum Keluarga Islam* 2, no. 2 (November 2024): 87-101.

<sup>10</sup> Hulukati, "Legal Implications of Prenuptial Agreements in Marriage in Indonesia: Between Protection of Rights and Justice."

valid if the marriage is conducted lawfully in accordance with the prevailing laws and regulations in Indonesia<sup>11</sup>.

There are reasons for creating a prenuptial agreement, such as the imbalance in wealth between both parties and significant income, which necessitates protecting the assets of the party with greater wealth from being mixed with their partner's property, as well as agreeing on the management and arrangement of the assets owned before marriage, in order to maintain ownership rights that must be managed independently. A prenuptial agreement will guarantee that each party's premarital assets will not automatically be mixed into the joint property after marriage. A prenuptial agreement is also necessary for businesses owned by each party, with the responsibility for debts incurred before marriage requiring additional protection if one party experiences bankruptcy. With this agreement, the party's assets not involved in bankruptcy will remain safe and will not be dragged into the debt settlement process. This creates clear boundaries regarding each party's financial obligations, protecting the partner's assets from potential risks or claims due to personal debts<sup>12</sup>.

In drafting a prenuptial agreement, both partners need to consider key aspects to ensure fairness, emphasizing the importance of financial transparency both before and after marriage. This includes the value and details of the assets owned before marriage, the potential increase in wealth from income, or the possibility of inheritance received in the future. In addition, disclosing any pre-existing debts and the potential for new debts that may arise after marriage. This agreement will help if the marriage ends, allowing each party to clearly understand what they possess and their responsibilities, in order to avoid disputes or feelings of being wronged in the future. Both parties must agree without any pressure or coercion from either side, so the role of an official with a good and objective reputation is essential to maintain balance and fairness for both parties, ensuring that the contents of the agreement reflect equal and fair rights and obligations. This agreement must be signed by each party with full awareness and without any coercion from the other party. If there are elements of coercion, threats, or pressure, then the agreement may be considered invalid and potentially void. A prenuptial agreement requires notarization and official recording to have legal validity. After that, the agreement must be registered with official institutions, such as the Office of Religious Affairs (KUA) or the Civil Registry Office, as an official document at the time of the marriage ceremony.

Based on Article 1868 of the Civil Code, explains that an authentic deed is a deed made in the presence of an authorized Public Officer. The Public Officer referred to in Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning the Notary Position (hereinafter referred to as Law No. 2/2014) in Article 1, paragraph 1 of Law No. 2/2014 is a Notary, who is a public official authorized to draft notarial deeds and perform other functions regulated in Law No. 2/2014. Notaries have the role of issuing authentic deeds recognized as primary evidence following the provisions of the Civil Code. An authentic deed can provide full

<sup>11</sup> Jumriyani, Rusdin Alauddin, and Baharuddin HI, "Analysis of Legal Urgency of Premarriage Agreements Related to Gono Gini's Assets in Ternate Religious Court," *Legal Brief by IHSA Institute* 11, no. 4 (October 12, 2022): 2526–33, <https://doi.org/DOI: 10.35335/legal>.

<sup>12</sup> Handayana Br Surbakti, "Marriage Agreements as Legal Protection of Collective Property," *Al-Ubudiyah: Jurnal Pendidikan Dan Studi Islam* 4, no. 1 (2023): 139–47, <https://doi.org/https://doi.org/10.55623>.



evidentiary power regarding the validity of the contents of the agreement, such as the presence of dates and signatures of the parties, which guarantee legal certainty and protection for the parties involved. Couples who create a prenuptial agreement can register it at the Office of Religious Affairs (KUA) for Muslim couples or the Civil Registry Office (Disdukcapil) for non-Muslim couples. This registration is intended to inform third parties that the prenuptial agreement is binding not only on the parties involved but also on other interested parties. If there is no agreement, then all property acquired during the marriage will be considered joint property. By considering these aspects, a marriage agreement will function more effectively as a protection for the rights and interests of both parties in living together<sup>13</sup>. The purpose of this agreement is to regulate the legal consequences of marriage, especially regarding property matters<sup>14</sup>. The provisions regarding prenuptial agreements in Indonesia are specifically regulated in Article 29 of Law No. 1/1974, which states:

Article 29(1) of Law No. 1/1974

At the time of or before the marriage, both parties, by mutual agreement, may enter into a written agreement which shall be legalized by the marriage registrar, after which the contents shall also apply to third parties insofar as third parties are involved.

Article 29(2) of Law No. 1/1974

Such agreement shall not be legalized if it contravenes legal boundaries, religious principles, or morality.

Article 29(3) of Law No. 1/1974

The agreement shall take effect from the time the marriage is solemnized.

Article 29(4) of Law No. 1/1974

During the marriage, the agreement cannot be altered, except by mutual consent of both parties and provided that such modification does not harm any third party.

According to civil law, prenuptial agreements are regulated in more detail in Articles 139 to 154 of the Civil Code. This article provides an important legal framework regarding agreements on property and the obligations of husband and wife, with a discussion of the key points of these articles. First, the general provisions of the marriage agreement, Article 139 of the Civil Code explains that prospective spouses can agree on a marriage contract that deviates from legal provisions, as long as it does not contradict public morals and order. Article 140 of the Civil Code explains that the agreement must not reduce the husband's rights as the head of the family and father, as well as the wife's right to manage her personal property and income. Second, the rights and obligations in the marriage agreement, Article 141 of the Civil Code explains that it is not allowed to waive the right to inheritance for descendants and to regulate that inheritance. Article 142 of the Civil Code explains that there should be no agreement that burdens one party with more debt than their share of the joint property profits. Third, the limitation of agreements, Article 143 of the Civil Code explains that agreements regulating marriage bonds with foreign laws or customs that are no longer applicable in Indonesia are not allowed. Article 144 of the Civil Code explains that the absence

---

<sup>13</sup> Imam Wahyu Jati, "Peranan Notaris Dalam Pembuatan Akta Otentik Untuk Perjanjian Kawin," *Aainil Haq: Jurnal Hukum Keluarga Islam* 3, no. 1 (June 2023): 19–33.

<sup>14</sup> Hartanto Andy, *Hukum Harta Kekayaan Perkawinan* (Yogyakarta: Laksbang Grafika, 2012).

of joint property does not eliminate shared profits and losses unless explicitly stated. Fourth, the regulation of joint property and the wife's obligations, Article 145 of the Civil Code explains that in the absence of joint property, the amount the wife must contribute to household and children's education can be determined. Article 146 of the Civil Code explains that if there is no agreement, the results and income from the wife's property become the husband's control. Fifth, the form and validity of the marriage agreement, Article 147 of the Civil Code explains that the marriage agreement must be made in a notarial deed before the marriage and is void if not done so. Article 148 of the Civil Code explains that changes to the agreement must be made with the same notarial deed and must be in the presence of all parties involved. Article 149 of the Civil Code explains that after marriage, the marriage agreement cannot be changed in any way.

Sixth, proof and approval, Article 150 of the Civil Code explains that movable property not regulated in the marriage agreement cannot be proven by any means other than those stated in the marriage agreement. Article 151 of the Civil Code explains that minors can give consent to the marriage agreement with the assistance of an authorized party. Seventh, regarding the effect on third parties, Article 152 of the Civil Code explains: provisions deviating from the law regarding joint property do not apply to third parties before being registered. Article 153 of the Civil Code explains that provisions regarding the combination of joint property apply as long as there are no deviations in the agreement. Lastly, the eighth, the validity of the marriage agreement, Article 154 of the Civil Code explains that marriage agreements and gifts related to marriage do not apply if not followed by marriage.

In Article 141 Civil Kode, it is considered less relevant and less flexible for couples with more complex assets when applied in modern practice, such as the first, the Prohibition of Inheritance Arrangement (Article 141 of the Civil Code), which explains the prohibition for couples to arrange inheritance in a prenuptial agreement. This prohibition poses a challenge in the modern era, as many couples have more complex cross-border assets that require more flexible arrangements. As a result, many couples often seek solutions through additional legal documents such as wills, even though this prohibition still applies in Indonesia. In international law, couples still use agreements known as choice of law clauses or arrange asset distribution based on the legal framework of the country that is more relevant to the assets owned. Second, Adaptation to Modern Complexities, which explains that this Article only provides a general framework that cannot fully cover cross-border assets. Therefore, couples in making agreements can use the principle of freedom of contract (Article 1338 of the Civil Code) to draft more adaptive agreements, with the assistance of legal experts who ensure validity across various jurisdictions.

Third, the Division of Rights and Obligations of Husband and Wife explains the rights and obligations between husband and wife (Articles 140-149 of the Civil Code), ensuring that the party who is economically more vulnerable continues to receive legal protection. This article also stipulates that the agreement must not violate the provisions regarding the husband's status as the head of the family or require one party to bear debts unfairly. Fourth, the Benefit of Legal Certainty, which explains the legal certainty related to asset management and conflict resolution in the future with the fulfillment of the valid agreement requirements (Article 1320 of the Civil Code), allows couples to obtain legal protection. Therefore, a revision

of provisions such as Article 141 needs to be considered to provide flexibility for couples in asset division<sup>15</sup>.

Prenuptial agreements in Indonesia are regulated by Article 29 of Law No. 1/1974 and Article 47 of the Compilation of Islamic Law (KHI). In the KHI, agreements are permitted under Islamic law, which can cover various matters, such as discussions about property, as well as the rights and obligations of both husband and wife. Prenuptial agreements must comply with religious norms and morality. Article 29 paragraph (2) of Law No. 1/1974 prohibits agreements that are contrary to religious principles. This creates ambiguity in the application of the rules, especially when moral standards vary among individuals and different societal groups. Ambiguity for couples of different nationalities highlights the need for a deeper understanding of the interaction between positive law and moral values, making it important for prospective partners to consider these aspects when drafting a prenuptial agreement<sup>16</sup>.

In the Constitutional Court Decision No. 69/PUU-XIII/2015, prenuptial agreements underwent development. This decision brings about a change by allowing prenuptial agreements to be made after the marriage has taken place. This applies the principle of freedom of contract as a constitutional right for married couples, so couples who previously did not have the opportunity to make a prenuptial agreement can agree after the marriage has taken place. The principle of freedom of contract (Article 1338 of the Civil Code) explains that couples can draft a prenuptial agreement by fulfilling the valid agreement requirements and applicable norms. The Constitutional Court Decision No. 69/PUU-XIII/2015 has several important implications, such as Flexibility in Spousal Asset Management, which allows for prenuptial agreements that include the management of joint assets acquired during the marriage, and Equality in Drafting Prenuptial Agreements, where both husband and wife have equal rights to manage joint wealth. Furthermore, clearer Legal Certainty can reduce the potential for future conflicts, as the rights and obligations that both parties must fulfill are more clearly defined, and the Relevance to Human Rights Principles in this Decision, particularly the individual's right to determine the fate of their wealth. The Constitutional Court Decision No. 69/PUU-XIII/2015 has brought significant changes to the prenuptial agreement law in Indonesia. By allowing the creation of prenuptial agreements after marriage, which not only aligns the law with social realities but also provides space for married couples to more freely manage their wealth, ultimately supporting the principles of justice and equality in marriage.

### 3.2. The Role and Effectiveness of Prenuptial Agreements in Protecting the Rights of Husband and Wife after Marriage

Indonesian cultural values and social norms play an important role in the acceptance of prenuptial agreements. In many communities, this agreement is still considered taboo or selfish, which creates resistance to its implementation. The couple's awareness of the

---

<sup>15</sup> Achmad Asfi Burhanudin, "Konsep Perjanjian Perkawinan Dalam Perspektif Perbandingan Hukum," *El-Faqih: Jurnal Pemikiran Dan Hukum Islam* 5, no. 2 (October 30, 2019): 133-52, <https://doi.org/10.29062/faqih.v5i2.69>.

<sup>16</sup> D. A Harimurti, "Perbandingan Pembagian Harta Bersama Menurut Hukum Positif Dan Hukum Islam," *Jurnal Gagasan Hukum* 3, no. 2 (2021).



importance of this agreement is often influenced by factors such as education, social class, and religion. For example, couples with higher education are more likely to understand and appreciate the legal protection offered by a prenuptial agreement compared to those from lower educational backgrounds. Prenuptial agreements are regulated under Article 29 of Law No. 1/1974 and must comply with the provisions of the Civil Code. For Muslim couples, prenuptial agreements are regulated under the KHI, which governs certain aspects in the context of Sharia<sup>17</sup>. A prenuptial agreement is an important legal instrument that protects the rights of both spouses after marriage. In the context of Indonesian law, this agreement serves to establish provisions agreed upon by both parties before entering into the marital bond. Through a prenuptial agreement, couples can regulate various aspects related to property, obligations, and each other's rights, thereby reducing the potential for disputes in the future. It also provides legal certainty for the couple regarding the status of their property, whether acquired before or during the marriage<sup>18</sup>.

After marriage, this agreement plays a role in the management of inheritance and gifts. Although inheritance law has its own rules, arrangements regarding the distribution of inheritance or gifts can be agreed upon in a prenuptial agreement. Furthermore, the importance of dividing financial responsibilities for household expenses, children's education, insurance, and other family needs. This agreement is essential in the division of assets after divorce, as it can provide clear guidelines on how the asset division should be conducted. This is very important to avoid prolonged disputes and reduce emotional stress for both parties. Additionally, prenuptial agreements can serve as a preventive instrument to protect each party's financial interests. Such agreements not only safeguard individual rights but also promote transparency and mutual understanding between spouses, which can, in turn, strengthen the foundation of the marital relationship<sup>19</sup>. Thus, in the event of a divorce, the asset division process can be carried out more fairly and transparently, reducing the likelihood of disputes in court. Additionally, a prenuptial agreement can protect personal rights, such as inheritance rights or rights related to business management, which can be crucial in maintaining financial and emotional stability for the couple during and after the marriage. The effectiveness of a prenuptial agreement in protecting the rights of spouses after marriage can be analyzed from two perspectives: substantive and structural<sup>20</sup>. The following is an explanation of these two aspects:

#### 1. Substantial Effectiveness

Substantial effectiveness refers to the ability of a prenuptial agreement to protect the material and non-material rights of the spouses after marriage. Several points that can be explained in this context include:

---

<sup>17</sup> Fithriatus Shalihah, *Sosiologi Hukum* (Depok: Rajawali Pers, 2017).

<sup>18</sup> Padma Liman Dewi and Aulia Rifai, "Legal Implication of Marriage Prenuptial Agreement Padma Dewi Liman," *Jurnal Magister Hukum Udayana* 12, no. 3 (September 2023): 539-52, <https://doi.org/https://doi.org/10.24843/JMHU.2023.v12.i03.p05>.

<sup>19</sup> Hayyinatul Wafda, "Efektivitas Bimbingan Perkawinan Bagi Pemuda Di Kabupaten Jombang" (Universitas Islam Negeri Sunan Ampel, 2018).

<sup>20</sup> Andrean Syah and Ilham Tholatif, "Urgensi Perjanjian Pranikah Sebagai Kesepakatan Awal Perkawinan," *Legal Standing Jurnal Hukum* 6, no. 2 (September 2022): 115-28, <https://doi.org/10.24269/lh.v6i1.5017>.

- b. Formulating clear rules in the agreement
- c. Reducing future conflicts
- d. Protection for the more vulnerable party:

Prenuptial agreements must be drafted clearly and in detail regarding the rights and obligations of each party, as well as the division of property that can provide legal protection for both parties, which includes the importance of regulating joint and separate property, as well as the right to maintenance. With the existence of a prenuptial agreement, couples can minimize the possibility of conflicts related to property and responsibilities in the future. When there is an agreement that has been made before marriage, the couple will be more likely to adhere to that agreement. In some cases, one partner may be in a more vulnerable position, such as the non-working partner or the one who is more financially dependent. Therefore, a prenuptial agreement can provide better protection for that party by ensuring their rights are recognized and respected.

## 2. Structural Effectiveness

The structural effectiveness of prenuptial agreements pertains to how these agreements are recognized, applied, and upheld within Indonesia's legal system. Several aspects must be considered to ensure that prenuptial agreements function effectively, including:

- a. Compliance with Legal Regulations:
- b. Registration and Validation:
- c. Legal Awareness and Education

Prenuptial agreements must comply with the provisions of the Civil Code. The agreement is considered invalid if it contradicts existing regulations. It is important to register the prenuptial agreement at the Civil Registry Office or the KUA, in accordance with the applicable procedures. This registration is not just an administrative procedure, but it also grants full legal force to the agreement. Awareness of the importance of prenuptial agreements that play a role in marriage. If the couple does not understand the importance of this agreement, they will not reap its benefits optimally. However, if there is a lack of supervision over the implementation of prenuptial agreements and low legal literacy among the public, it can cause some couples to be unaware of the importance of creating an authentic deed of the prenuptial agreement before a notary.

The process of registering and ratifying a prenuptial agreement is often complicated and time-consuming, leaving couples unable to legally authenticate their agreement. There are concerns that these agreements can be misused to protect one party's assets at the expense of the more vulnerable other. In this case, the application of legal sanctions for violations of prenuptial agreements is often ineffective, leaving couples feeling that there are no real consequences if one party does not comply with the agreed terms. The Indonesian legal system also shows weaknesses in the implementation of prenuptial agreements. Low legal literacy among the public means that many couples are unaware of the importance of notarizing their prenuptial agreements before a notary. This creates a gap between legal theory and practice in the field. The enforcement of prenuptial agreements in Indonesia can be strengthened by enhancing legal education on prenuptial agreements, expanding notary services for couples from low-income groups to facilitate the creation of agreements into authentic deeds before a

notary, and reforming prenuptial agreement regulations in the validation and registration process to make them simpler and more effective.

This refers to case studies or related court decisions, which highlight the legal challenges in the implementation of this agreement. One of the relevant case studies on how this agreement is applied in legal practice is the Supreme Court Decision on Review Number 598 PK/Pdt/2016. In that case, the Supreme Court's Decision on Review Number 598 PK/Pdt/2016 stated that the Marriage Agreement Deed made before a Notary is considered null and void with all its legal consequences, and all property acquired during the marriage is considered joint property and equally divided between the husband and wife. This marriage agreement is considered to violate Law No. 1/1974 and the Civil Code, because it was not registered at the Office of Population and Civil Registration, resulting in the agreement being formally and materially defective. In the ruling, the issue arose regarding the validity of the agreement deed made before a notary that was not registered. This ruling emphasizes the importance of formal requirements in prenuptial agreements to ensure the legal strength of the agreement and to avoid property disputes in marriage<sup>21</sup>. Overall, the effectiveness of prenuptial agreements in protecting the rights of spouses after marriage is greatly influenced by both substantial and structural aspects that work in tandem. The substantial aspect involves clear and fair provisions regarding the division of assets and responsibilities within the marriage, while the structural aspect concerns how the agreement is drafted and implemented, including the fulfillment of applicable legal requirements<sup>22</sup>. A well-drafted prenuptial agreement that complies with legal requirements will provide optimal legal protection for the couple, preventing potential disputes in the future. Furthermore, the legal awareness of the couple regarding the content and purpose of the agreement is crucial, as it will enhance adherence to and respect for the provisions that have been agreed upon<sup>23</sup>.

#### 4. Conclusions

The Prenuptial agreements play a significant role in regulating and protecting individual rights within marriage under the legal system in Indonesia. These agreements allow couples to formulate arrangements concerning asset management, financial obligations, and other rights, which are considered essential in supporting the sustainability of the marriage. By fulfilling the requirements outlined in Articles 1313 and 1320 of the Civil Code and Article 29 of Law No. 1/1974, prenuptial agreements hold legal force and are enforceable against third parties if notarized. The Constitutional Court's Decision No. 69/PUU-XIII/2015 adds flexibility to prenuptial agreements, including allowing their creation after marriage, thus providing couples the opportunity to adjust their asset arrangements more dynamically during the marriage. From a substantive perspective, prenuptial agreements offer greater legal certainty concerning the rights and obligations of spouses, while reducing the potential for

---

<sup>21</sup> Amrizal, "Analisis Yuridis Keabsahan Akta Perjanjian Perkawinan Yang Dibuat Dihadapan Notaris Yang Tidak Diregistrasi (Studi Putusan Mahkamah Agung Nomor 598 PK/PDT/2016 Tanggal 24 Nopember 2016)" (Universitas Sumatera Utara, 2018).

<sup>22</sup> Dian Rosita, Arina Novitasari, and Muhammad Zainuddin, "Pre-Marriage Agreement As A Form of Legal Protection Against Individual Assets In Marriage," *Jurnal Smart Law* 1, no. 1 (February 2022): 64–72.

<sup>23</sup> Haedah Faradz, "Tujuan Dan Manfaat Perjanjian Perkawinan," *Jurnal Dinamika Hukum* 8, no. 3 (September 25, 2008), <https://doi.org/10.20884/1.jdh.2008.8.3.82>.

future conflicts. Structurally, the effectiveness of a prenuptial agreement depends on compliance with the applicable legal procedures, including proper registration and notarization. With proper drafting and sufficient legal awareness, this agreement can function as a preventive instrument to maintain financial stability and safeguard individual rights within marriage. Therefore, couples must consider prenuptial agreements as part of responsible marriage planning, to achieve justice and equality in marital relationships.

## 5. References

- Achmad Asfi Burhanudin. "Konsep Perjanjian Perkawinan Dalam Perspektif Perbandingan Hukum." *El-Faqih: Jurnal Pemikiran Dan Hukum Islam* 5, no. 2 (October 30, 2019): 133–52. <https://doi.org/10.29062/faqih.v5i2.69>.
- Ad Waul Khaq, Muhammad, Yanuar Aditya Za'far, Yoghiana Nur Aisyah, and Mochammad Fajar Ikhsan Alfanny. "Implikasi Hukum Perjanjian Dalam Penyelesaian Konflik Rumah Tangga." *As-Sakinah Jurnal Hukum Keluarga Islam* 2, no. 2 (November 2024): 87–101.
- Amrizal. "Analisis Yuridis Keabsahan Akta Perjanjian Perkawinan Yang Dibuat Dihadapan Notaris Yang Tidak Diregistrasi (Studi Putusan Mahkamah Agung Nomor 598 PK/PDT/2016 Tanggal 24 Nopember 2016)." Universitas Sumatera Utara, 2018.
- Andrean Syah, and Ilham Tholatif. "Urgensi Perjanjian Pranikah Sebagai Kesepakatan Awal Perkawinan." *Legal Standing Jurnal Hukum* 6, no. 2 (September 2022): 115–28. <https://doi.org/10.24269/lis.v6i1.5017>.
- Andy, Hartanto. *Hukum Harta Kekayaan Perkawinan*. Yogyakarta: Laksbang Grafika, 2012.
- Assidik, Ahmad,. "Tinjauan Hukum Islam Dan Hukum Positif Terhadap Prenuptial Agreement Atau Perjanjian Pranikah." Skripsi, UIN Alauddin , 2017.
- Br Surbakti, Handayana. "Marriage Agreements as Legal Protection of Collective Property." *Al-Ubudiyah: Jurnal Pendidikan Dan Studi Islam* 4, no. 1 (2023): 139–47. <https://doi.org/https://doi.org/10.55623>.
- Faradz, Haedah. "Tujuan Dan Manfaat Perjanjian Perkawinan." *Jurnal Dinamika Hukum* 8, no. 3 (September 25, 2008). <https://doi.org/10.20884/1.jdh.2008.8.3.82>.
- Harimurti, D. A. "Perbandingan Pembagian Harta Bersama Menurut Hukum Positif Dan Hukum Islam." *Jurnal Gagasan Hukum* 3, no. 2 (2021). <https://doi.org/https://doi.org/10.31849/jgh.v3i02.8908>.
- Hulukati, Amalia Syafira. "Legal Implications of Prenuptial Agreements in Marriage in Indonesia: Between Protection of Rights and Justice." *Estudiante Law Journal* 6, no. 2 (June 2024): 329–50.
- Jumriyani, Rusdin Alauddin, and Baharuddin HI. "Analysis of Legal Urgency of Premarriage Agreements Related to Gono Gini's Assets in Ternate Religious Court." *Legal Brief by IHSA Institute* 11, no. 4 (October 12, 2022): 2526–33. <https://doi.org/DOI:10.35335/legal>.
- Liman Dewi, Padma, and Aulia Rifai. "Legal Implication of Marriage Prenuptial Agreement Padma Dewi Liman." *Jurnal Magister Hukum Udayana* 12, no. 3 (September 2023): 539–52. <https://doi.org/https://doi.org/10.24843/JMHU.2023.v12.i03.p05>.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Prenada Media Group, 2016.
- Muttaqin Ngizzul, Muhammad, and Miftah Rosadi. "Perlindungan Perempuan Melalui Perjanjian Pra Nikah (Respon Terhadap Isu Hukum Dan Gender)." *AL-MAIYYAH Media Transformasi Gender Dalam Paradigma Sosial Keagamaan* 13, no. 1 (June 2020).
- Rosita, Dian, Arina Novitasari, and Muhammad Zainuddin. "Pre-Marriage Agreement As A Form of Legal Protection Against Individual Assets In Marriage." *Jurnal Smart Law* 1, no. 1 (February 2022): 64–72.
- Royani, Esti, Arief Nortjahjo, Bobur Sobirov, and Astri Triana. "Juridical Review Of Prenuptial Agreements." *Awang Long Law Review* 6, no. 2 (May 9, 2024). <https://doi.org/10.56301/awl.v6i2.1168>.



- Shalihah, Fithriatus. *Sosiologi Hukum*. Depok: Rajawali Pers, 2017.
- Sinurat Amelia Ruth, Erica. "Eksistensi Perjanjian Pranikah Dalam Pembagian Harta Menurut Undang-Undang Perkawinan Nomor 1 Tahun 1974." *Lex Privatum* 5, no. 7 (September 2017): 36–42.
- Subekti. *Hukum Perjanjian*. Jakarta: Internasa, 2001.
- Tsamara Tsani, Rana, and Adhitya Kartika Widya. "Tinjauan Yuridis Mengenai Perjanjian Pra Nikah Dalam Bentuk Lisan." *Kabilah: Journal of Social Community* 9, no. 1 (June 2024): 65–80.
- Wafda, Hayyinatul. "Efektivitas Bimbingan Perkawinan Bagi Pemuda Di Kabupaten Jombang." Universitas Islam Negeri Sunan Ampel, 2018.
- Wahyu Jati, Imam. "Peranan Notaris Dalam Pembuatan Akta Otentik Untuk Perjanjian Kawin." *Aainil Haq: Jurnal Hukum Keluarga Islam* 3, no. 1 (June 2023): 19–33.