

LEGAL PROTECTION OF MARRIAGE AGREEMENTS FOR HUSBAND AND WIFE

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Abstract

A marriage agreement is made with the aim of providing legal protection for parties with good intentions from other parties with bad intentions. In addition to separating assets brought before marriage, marriage agreements made before and after marriage are basically aimed at separating assets brought and joint assets due to legal Marriage between a man and a woman will have legal consequences, especially in relation to property. Many problems occur when a husband and wife separate regarding the property they have acquired, so the solution that can be done is to make a marriage agreement. A marriage agreement is made with the aim of providing legal protection for parties with good intentions from other parties with bad intentions. In addition to separating property brought before marriage, marriage agreements made before and after marriage are basically aimed at separating property brought and joint property due to the legal consequences that occur to their marital property. A marriage agreement made before marriage aims to prevent problems regarding property brought and joint property, so a marriage agreement is needed as a legal basis for separating them. Meanwhile, a marriage agreement made after marriage is made with the aim of regulating the legal consequences that arise for their property. The legal consequences of making a marriage agreement in the event of a separation between husband and wife certainly provide protection for each party's property brought so that it can be distinguished which property is brought (which is not divided) and which is joint property (which must be divided). This study was conducted to examine marriage agreements using normative legal methods using primary and secondary materials referring to marriage law consequences that occur to their marital assets. A marriage agreement made before marriage aims to prevent problems arising regarding assets brought and joint assets so that a marriage agreement is needed as a legal basis for separating them. Meanwhile, a marriage agreement made after marriage is made with the aim of regulating the legal consequences that arise to their assets.

Keywords: Legal Protection, Marriage Agreement, Marriage Law

INTRODUCTION

Article 1 of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage explains that Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the Almighty God. Marriage that occurs between a man and a woman will have legal consequences for society and the assets obtained during the marriage.

Although marriage is intended for eternity, there are times when certain things happen that cause the marriage to not be able to continue. Even in today's era of increasingly fading religious values, norms and ethics in society, it is not uncommon for a marriage to be motivated by a certain interest, namely for the sake of status, business interests, getting protection and so on.

Marriage is a very essential problem for human life because besides marriage as a means to form a family, marriage not only contains elements of human relations with humans but also concerns civil relations, marriage also contains elements of sacredness, namely the relationship between humans and their God. (Wasman and Wardah Nuroniyah; 2011; 29)

With the increasing number of divorces, people's desire to make a marriage agreement is also growing in line with the increasing number of people realizing that marriage is also a financial commitment like the importance of the love relationship itself. Where the end of a marriage due to divorce does not mean the end of all marriage problems. The problem when a divorce occurs is about how to divide the joint property, or how to separate the property brought by the parties (husband and wife) from the joint property obtained during the marriage.

A marriage agreement or prenuptial agreement is an agreement made between prospective couples before the marriage is carried out. This agreement guarantees that if a divorce occurs, no one will be harmed and contains elements agreed upon by both parties. In general, a marriage agreement is an agreement made before the marriage is carried out by the prospective couple. After the prenuptial agreement is made, a legal relationship arises between the husband and wife, namely the creation of rights and obligations between husband and wife that must be obeyed.

For this reason, a marriage agreement can function as preparation for entering the household. A marriage agreement is an agreement made before the marriage takes place. The history of the marriage agreement itself was born from Western culture. In Indonesia, Eastern customs are still highly respected. In fact, society considers this agreement to be a sensitive issue, unusual and considered unusual, materialistic, unethical, not in accordance with Eastern customs and so on. (Happy Susanto; 2008; 83)

Marriage agreements are still considered unusual by some people, some say that if marriage is based on love and affection, there does not have to be a division of property because the property already belongs to both of them, other statements also reveal that marriage agreements are made in preparation for divorce. However, behind each person's opinion, marriage agreements emphasize legal certainty to protect couples from possible lawsuits that arise in the event of divorce or separation due to death.

Article 29 of Law Number 1 of 1974 concerning Marriage in conjunction with Constitutional Court Decision Number 69 of 2015 states that before entering into a marriage or during the marriage bond, both parties with mutual consent can make a written agreement that is legalized by a Marriage Registrar or Notary as long as it does not violate the limits of law, religion and morality and also applies to the third party involved.

Constitutional Court Decision Number 69/PUU-XIII/2015 expands the meaning of a marriage agreement so that a marriage agreement is no longer interpreted only as an agreement made before marriage (prenuptial agreement) but can also be made during the marriage bond (postnuptial agreement).

The contents regulated in the marriage agreement depend on the prospective husband and wife, as long as it does not conflict with the law, religion and propriety or morality. The form and content of the marriage agreement, as with agreements in general, are given freedom to both parties as long as it does not conflict with the law, morality or does not violate public order.

A marriage agreement is an agreement between the parties who will enter into a marriage based on a mutual desire to regulate the rights of both parties, both before and after the marriage takes place, including regarding marital property (Sri lin Hartini et al., 2023; 57).

The impact on married couples making a marriage agreement is first if there is a gift or testament from parents to the husband or wife with the intention of not being included in the mix of joint assets during their marriage. Second, to protect the family economy. If the husband or wife's business is destroyed, then the wife or husband's business does not need to be a victim so that there is still capital to finance the child's education and reorganize life. Third, as a preventive measure to prevent greater losses, especially for the husband or wife who works in his position as a director of a

Limited Liability Company that has debts to the bank so that if there is an error or negligence, only the husband's personal assets or the wife's personal assets can be collected for repayment. Initially, the existence of a marriage agreement in Indonesia was not very popular, because making a marriage agreement regarding the assets of the prospective husband and wife was considered by the community as something inappropriate and could be considered offensive to each other.

In Indonesia, the rules regarding marriage agreements are regulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law and the Civil Code. Specifically, the marriage agreement is regulated in Article 29 of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 and Article 45 of the Compilation of Islamic Law (KHI).

In the developments that occur in society today, there are many problems faced by husband and wife in carrying out their married life, especially in terms of assets obtained by each party during the marriage, so that the marriage agreement becomes a solution to protect the assets of each party.

With various considerations and reasons, of course every couple who wants to get married must prepare themselves so that they do not encounter difficulties after the marriage occurs. Moreover, with different backgrounds, thorough preparation is very important as a legal aspect to protect the rights of each party.

RESEARCH METHOD

The method used in this study is normative legal research, namely research conducted by examining using secondary data with a regulatory approach related to marriage agreements. Secondary data is data obtained from existing documents, research results in the form of reports, books related to the object of research and regulations. From the results of this study, a conclusion will be drawn by describing general rules and concluded more specifically to answer the problems in this study.

RESULTS AND DISCUSSION

Marriage agreements are often also called prenuptial agreements or Prenuptial Agreements (English) are generally rare in native Indonesian society, because of the close kinship relationship and mutual trust between prospective husband and wife, because marriage agreements are still considered taboo which is still very rarely practiced in Indonesian marriages. Marriage agreements originally came from Western society which has individualistic and capitalist characteristics. Individualistic because through a marriage agreement it recognizes the independence of the husband and wife's assets. Capitalistic because its purpose is to protect the household from bankruptcy in the business world, meaning that if one party between the husband and wife goes bankrupt, the other can still be saved. (R. Soetojo Prawirohamidjojo; 1988; 4)

There is no standard definition of a marriage agreement either according to language or terminology. However, according to the Indonesian dictionary, an agreement can be interpreted as an agreement, condition, time limit, agreement either verbally or in writing made by two or more parties to be fulfilled. While marriage is interpreted as marriage or things related to marriage. (Peter Salim and Yenny Salim; 1995; 601)

An agreement is a legal relationship regarding property between two parties who promise or are deemed to have promised to carry out something while the other party has the right to carry out the promise. (Wirjono Prodjodikoro; 2011; 4)

So the marriage contract is a form of obligation and the agreement is binding and becomes law. This is regulated in Article 1338 of the Civil Code which states that all agreements made legally apply as law for those who make them. Agreements must be carried out in good faith.

So a marriage must be based on an agreement or consent between a man and a woman as prospective husband and wife. This is emphasized in Article 6 paragraph (1) of the Marriage Law which states that "Marriage must be based on the consent of both prospective bride and groom." The word agreement is one of the elements in the requirements for the validity of an agreement which is regulated in Article 1320 of the Civil Code, namely:

1. There is an agreement between them that binds them
2. Ability to make agreements
3. A certain thing or a certain object
4. There is a lawful cause

Marriage agreements are usually made for the purpose of legal protection of the assets brought by each husband or wife, although the law does not regulate the purpose of marriage agreements and what can be agreed upon, everything is left to both parties.

Article 29 of Law Number 1 of 1974 concerning Marriage states that before entering into marriage, both parties can make a written agreement that is ratified by a marriage registrar as long as it does not violate legal, religious and moral boundaries.

The function of making a marriage agreement according to Moch. Isnaeni is: (Moch. Isnaeni; 2016; 38)

1. Created to legally protect property, both the assets inherited by each party and joint assets.
2. Guidelines that regulate the rights and obligations of husbands and wives regarding the future of the family, both regarding children's education, business, residence and so on as long as they do not conflict with law and morality.
3. Protecting family members from the threat of domestic violence.

The ideal marriage agreement is a marriage agreement that can protect and provide justice for the parties in the marriage. According to Soekarno Aburaera, a sense of justice sometimes lives outside the law, so it will be difficult for the law to balance that sense of justice. As a result, the law itself will be felt to be unfair. (Soekarno Aburarera; 2013; 179)

The legal protection contained in a marriage agreement has tended to regulate property, so that its essence is indeed aimed at the party with more property. However, parties with less property or no property can still use a marriage agreement as a means of legal protection. As previously explained, the contents of a marriage agreement can be expanded not only to regulate property alone, but also to regulate other things that may occur in household life.

A marriage agreement is made to regulate assets in a marriage against the provisions on joint assets as in Article 119 of the Civil Code. The parties are free to determine what they want for the assets that are the object. Legal protection of assets in a marriage agreement applies when the marriage is carried out with the aim of protecting the assets of the husband and wife, where the parties can determine the assets brought by each. Is there a separation of assets in the marriage or is there joint assets but the method of division is regulated in the event of a divorce.

The marriage agreement ratified by the Marriage Registrar is valid and binding as a law for the prospective husband and wife and the third party involved. If the marriage agreement that has been made is not implemented or there is a violation of the agreement made, then it automatically gives the wife the right to request annulment of the marriage or as a reason for a divorce suit. Based on Article 52 of the Compilation of Islamic Law, a violation of the marriage agreement gives the wife the right to request annulment of the marriage or submit it as a reason for a divorce suit to the Court.

So, the marriage agreement regulated in Article 29 paragraph (1) to paragraph (4) of Law Number 1 of 1974 and regulated in Article 45 to Article 52 of the Compilation of Islamic Law is a means of legal protection for the parties who make the marriage agreement.

The position of the pre-marital agreement is stronger than the regulations in the Marriage Law. Because the agreement can protect the rights of both parties. If there is a divorce and dispute between the two, the marriage agreement can be used as a reference for settlement. Even what is regulated by the marriage law can be canceled by the marriage agreement.

A marriage agreement is made with the aim of providing legal protection for parties who have good intentions from other parties who do not have good intentions. If at another time a problem arises between the parties, the marriage agreement can be a basis for each party, namely husband and wife, to implement and provide limitations on rights and obligations between them.

In addition to the separation of marital assets, the marriage agreement made before the marriage or after the marriage is basically aimed at separating the legal consequences that occur to their marital assets, but the marriage agreement made before the marriage aims to prevent problems arising regarding their marital assets so that a marriage agreement is needed to separate from the beginning the marital assets and matters that are mutually agreed upon. While the agreement made after the marriage aims to prevent problems arising regarding their marital assets by separating the marital assets and matters that are mutually agreed upon after the marriage is conducted and after the agreement has permanent legal force.

Regarding joint property, husband and wife can act with the consent of both parties. Meanwhile, regarding their respective assets, husband and wife have full rights to take legal action regarding their assets. The right of husband and wife to use or use joint property with the mutual consent of both parties is reasonable, considering the rights and position of husband and wife in domestic and social life, where each party has the right to take legal action.

In accordance with the purpose of the law, a marriage agreement must have a value of benefit for the parties in the marriage. In addition to being a legal protection for the parties, a marriage agreement also provides benefits in the event of a conflict in the courts when a divorce occurs.

Article 147 of the Civil Code stipulates that a marriage agreement must be made with a Notarial Deed with the threat of nullity. This is intended so that the marriage agreement is stated in the form of

an authentic deed because it has broad consequences and concerns the interests of the parties so that it cannot be changed. The requirement for making a marriage agreement with a Notarial deed is to obtain certainty of the date of making the marriage agreement, because if the marriage agreement is made with a private deed, then there is a possibility that the date can be postponed and the contents of the marriage agreement can be changed so as to harm a third party. In addition, so that the marriage agreement has the power of proof and legal certainty regarding the rights and obligations of the prospective husband and wife over their property.

There are differences regarding the provisions of the marriage agreement between the Civil Code and Article 29 of the Marriage Law. The Civil Code formulates the provisions of the marriage agreement in concrete terms, but the scope of the agreement is not expressly regulated. In terms of procedures, according to the Civil Code, the marriage agreement is ratified by a notary and cannot be changed without exception. This is different from Law Number 1 of 1974, which stipulates that the marriage agreement is ratified by the Marriage Registrar and it is possible to change it as long as there is the consent of the husband and wife and the change does not harm a third party.

According to Article 10 paragraph (2) of Law Number 1 of 1974, it is stipulated that a marriage agreement cannot be validated if it violates the boundaries of law, religion and morality. Thus, the validity of a marriage agreement is if it has been registered at the District Court Clerk's Office and the existence of the Marriage Agreement is recorded in the marriage certificate by the Civil Registry Office Officer.

For Indonesian people who are not so familiar with regulating their respective assets in a marriage agreement, it is certainly understandable because the institution of marriage is something sacred that not only concerns legal aspects but also religious aspects so that making a marriage agreement is considered to be able to tarnish the sanctity of a marriage, but the marriage law has provided opportunities for those who want to regulate it as long as it does not conflict with the boundaries of law, religion and morality.

Marriage agreement as one of the efforts towards someone's guarantee regarding their property must be based on principles and not contradict the nature of marriage. The importance of marriage agreement as one of the tools to anticipate disputes in the future, especially in property issues that often cause disputes between husband and wife when a divorce occurs.

Therefore, by entering into a marriage agreement, it will clarify the status of assets in the marriage, which ones are the husband's rights and which are the wife's rights, thereby providing certainty, guarantees and legal protection, especially regarding the property rights of each party.

CONCLUSION

A marriage agreement is an agreement or consent made by a prospective husband and wife to regulate assets in a marriage with the intention of deviating from the provisions on joint assets. Legal protection of assets in a marriage agreement applies when the marriage is carried out with the aim of carrying out each party's assets. Whether from the beginning there is a separation of assets in the marriage or there is joint assets but the method of division is regulated in the event of a divorce. A marriage agreement that is ratified is binding as a law for the prospective husband and wife and the third parties involved. If the marriage agreement that has been made is not implemented or there is a violation, it automatically gives the wife the right to request annulment of the marriage or as a reason for a divorce suit.

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