

Arrangement of Marriage Agreements Outside of Marital Treasure in Keeping the Household

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Abstract

A concrete law is needed to protect and guarantee the rights and obligations of husbands, wives, and children in fostering a household. Because it regulates agreements related to treasure matters and other important matters, this concrete law aims to achieve the purpose of marriage under the applicable laws and regulations, such as a marriage agreement. Many people are unaware that the marriage agreement regulates marital treasure and outside treasure if both parties agree and it does not conflict with the law, morality, or public order.

Keywords: Marriage, Marriage Agreement, Treasure

INTRODUCTION

Every Indonesian Citizen has the same basic rights and responsibilities, as stated in Article 27 of the 1945 Constitution (UUDNRI 1945), which states that "Every citizen in law and government holds the same position and is obligated to uphold the law and that government without exception." What is meant by Human Rights (HAM), according to Article 1 paragraph 1 of Law No. 39 of 1999, is "A set of rights that are inherent in the nature and existence of humans as creatures of God Almighty, and are His gifts, which must be respected, upheld, and protected by the State, law, and government, as well as everyone, for the sake of honouring and protecting human dignity and worth." These two rules demonstrate that men and women have the same legal standing before the law. Women are equal partners to men and vice versa in terms of equal rights and obligations, and opportunities in every field of life, including in the household. The household is a web of life that aims to form a human association to form a family and produce offspring through marriage.

Because the family is everyone's first social group, it is necessary to instil basic concepts and behaviours, such as faith and piety, within the confines of the family where the family is not only a place to live, but also a safe, peaceful, and reassuring place for the soul to adjust, which is a way to build a household.¹

In Indonesia, violence has frequently occurred in people's lives, and it occurs not only in public areas but also in private or domestic areas, namely domestic violence. The relationship between husband and wife that should be built with harmony and happiness, but does not work, is caused by problems in the household that are difficult to solve optimally, giving rise to physical, psychological, sexual and economic violence. Because it is taboo in society to discuss private problems, the emergence of the phenomenon of domestic violence that is visible on the surface is not as much as the cases that occur in the field.² Even though the goal of marriage is to have a family for life, there are times when events occur that make it impossible to continue the marriage, resulting in its dissolution. For example, one party may have an affair with another, or there may be a fight that causes victims. The destruction of the family is caused by violence between husband and wife or against their children.

It is necessary to apply concrete laws to provide protection and ensure certainty of the rights and obligations of husbands, wives, and children in fostering households to achieve the purpose of marriage under applicable laws and regulations. Because it is not limited to agreeing on treasure matters, it is similar to a marriage agreement in that there are other things to agree on, such as domestic violence, promising one party to continue studying even though he is married, and so on.³

Because a marriage agreement serves as a tool or legal protection to provide protection and certainty in guaranteeing the rights and obligations of not only the wife and children but also the husband and wife, in order to achieve household goals, a legal study is needed, specifically at the theoretical level regarding the regulation of marriage agreements outside of the marital treasure.

RESEARCH METHOD

This study employs normative legal research methods, such as research into written and unwritten positive law. This study uses a descriptive type of research, meaning it aims to accurately describe the nature, circumstances, and symptoms of a specific individual or group or determine the frequency of a symptom. This study uses secondary data types.

RESULTS AND DISCUSSION

Arrangement of Marriage Agreements Based on the Laws and Regulations Applicable in Indonesia.

¹ Annur Saputri, Hamsir, Fadli Andi Natsif, "Putusan Hakim Terhadap Tindak Pidana Melakukan Kekerasan Fisik Dalam Lingkup Rumah Tangga yang Mengakibatkan Luka Berat", *Vol. 1 No. 3* (November 2019): 2.

² Evi Tri Jayanthi, "Faktor-Faktor Penyebab Terjadinya Kekerasan dalam Rumah Tangga pada Survivor yang Ditangani oleh Lembaga Sahabat Perempuan Magelang", *Dimensia, Vol 3, No. 2*, (September 2009): 39.

³ Muchsin, *Perjanjian Perkawinan Dalam Perspektif Hukum Nasional*, (Jakarta: Varia Peradilan No. 273 edisi Agustus 2008), hal. 7.

Marriage Definition

According to Scholten's definition of marriage in his book *Handleiding Tot De Beoefening Van Het Nederlands Burgerlijk Recht* Volume 1, 7th printing, page 42, "Marriage is an association or association between a man and a woman that is recognized as legal by the laws and regulations."⁴ It is a state invitation to form and nurture eternal and eternal family life. *Marriage* is defined as an inner bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the God Almighty⁵, according to Article 1 paragraph (1) of Law No. 1 of 1974 concerning Marriage (UUP). In this case, marriage refers to religion or religious elements, one of which is the establishment of physical and spiritual bonds as a solid foundation in the construction and maintenance of a happy and eternal family.⁶

Marriage Agreement

In general, a marriage agreement is a written agreement between a prospective husband and wife who are married, which deviates from the principle or pattern established by law regarding treasure during their marriage and the consequences of their divorce.⁷ A marriage agreement is an agreement (agreement) made by a prospective husband and prospective wife before or at the time of marriage to regulate the effects of marriage on their assets, according to Soetojo Prawirohamidjojo.⁸ According to Article 139 of the Civil Code (KUHPer), the prospective husband and wife have the right to prepare several deviations from the statutory regulations regarding asset mixing by entering into a marriage agreement. As long as the agreement does not violate good morals or the general order and all existing provisions, it is acceptable.⁹ According to Article 147 of the Civil Code, the purpose of making this marriage agreement is to avoid the system stipulated in the Civil Code regarding the system of asset mixing in marriage.¹⁰ Arrangements for marriage agreements are also regulated by Presidential Instruction No. 1 of 1991 concerning the Compilation of Islamic Law (KHI), where the marriage agreement regarding joint treasure is stated in Article 47, that the marriage agreement is not only limited to joint assets obtained during the marriage, but also the treasure of each husband and wife.

According to the explanation above, the marriage agreement is a deviation from the principle of joint treasure/treasure in order to avoid the presence of an excess amount of treasure from one party compared to the other party in a marriage made by the prospective husband and wife before the marriage or at the time the marriage takes place.

Although the marriage agreement is a deviation from the principle of treasure, according to Article 1338 of the Civil Code, there is the principle of freedom of contract where the contents of the marriage agreement are not always about the treasure but can also regulate the rights and obligations of husband and wife which are usually commonly included.

Legal Terms of Marriage Agreement

To be able to make a marriage agreement, there are legal terms and conditions stipulated in the law, including:

1. Subjective Requirements

- a. This provision follows the rules in Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974, namely that the age limit for men and women to marry is 19 years, and according to Article 330 of the Civil Code, namely 21 years old.
- b. Those who have not reached the regulated age limit can still do so under the following conditions, according to Article 151 of the Civil Code:

⁴ Wahyono Darmabarata, *Buku Hukum Perkawinan Perdata Jilid 1*, (Jakarta: Rizkita), hal. 54-55.

⁵ Indonesia, *Undang-Undang tentang Perkawinan*, UU No. No. 1 Tahun 1974 tentang Perkawinan.

⁶ Mohammad Daud Ali, *Hukum Islam dan Peradilan Agama (Kumpulan Tulisan)*, (Jakarta: PT Rajagrafindo Persada, 2002), hal. 27.

⁷ Aditya P. Manjorang *et. al*, *The Law of Love*, (Jakarta: Visimedia, 2015), hal. 32.

⁸ R. Soetojo Prawirohamidjojo *et al*, *Hukum Orang dan Keluarga*, (Bandung: Alumni, 1980), hal. 57.

⁹ R. Subekti dan R. Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata*, (Jakarta: Pradnya Paramita, 1978), hal. 51.

¹⁰ Wienarsih Imam Subekti dan Sri Soesilowati, *Hukum Perorangan dan Kekeluargaan Perdata Barat*, (Jakarta: Ditama Jaya Jakarta, 2005), hal. 101.

- i. The person concerned has met the requirements to marry.
 - ii. With the assistance of those whose consent is required to marry.
 - iii. The court must approve the proposed marriage agreement (the concept) if the marriage takes place with the judge's permission.
 - iv. Requirements for the method of drafting and entering into force a marriage contract.
- c. An agreement that serves as the foundation for another agreement must be reached based on the freedom to make one's own decisions.

2. Formal Requirements

The formal requirement for a marriage agreement is to be made in front of a notary with an authentic deed or notarial deed, as stated in Article 147 of the Civil Code. If a notarial deed does not accompany a marriage contract, the contract is null and void. According to Article 29 of the UUP, both parties can submit a written agreement ratified by the marriage registrar at or before the wedding, and the contents will apply to any third parties involved. If it is not ratified or registered following Article 29 paragraph (1) of the UUP, the agreement is not binding on third parties.

3. Material Requirements

This requirement relates to the contents of the marriage agreement, which refers to the law. The contents of the marriage contract are entirely up to the future husband and wife who will carry out the marriage.

In Article 139-142 of the Civil Code, the Civil Code has also determined in detail several provisions that may not be an element in the requirements in the marriage agreement, including:

- a. Not violate decency or public order (Article 139 of the Civil Code).
- b. It may not include provisions that remove the husband's status as the family's head of household and provisions that state that the wife will live separately in her own home and not follow the husband's (Article 140 of the Civil Code).
- c. It is not permitted to include agreements that deviate from the law's provisions regarding inheritance for their descendants, nor is it permitted to regulate the inheritance of their descendants. It is impossible to agree that one of the parties must bear a debt greater than the profits derived from the joint wealth (Article 141 of the Civil Code).

Furthermore, do not forget the conditions for the validity of the general agreement that applies based on Article 1320 of the Civil Code, namely:

- a. The agreement must clearly state that it is about something specific.
- b. The parties must agree on something that is legal and does not violate the law, public order, or morality.

According to UUP Article 29, one of the material requirements in a marriage contract is that it does not violate the boundaries of law, religion, or decency.¹¹

The conclusion that emerges is that the marriage agreement's material conditions contain the principle of contract freedom, which can determine the agreement's contents. As a result, both parties who agree as well as those who implement it have the most freedom—by implementing the following matters, namely meeting the requirements for agreement validity, not violating customary provisions and norms in several ways, meeting the requirements for agreement validity, not violating applicable customary provisions and norms, and acting in good faith.¹²

According to Abdul Kadir Muhammad, the terms of the marriage agreement, in addition to the legal conditions outlined in the law, are as follows:¹³

- a. Conceived at or before the wedding.¹⁴

¹¹Libertus Jehani, *Tanya Jawab Hukum Perkawinan Pedoman Perjanjian Perkawinan Bagian Dari Lapangan Hukum Keluarga Yang Harus Patuh Pada Ketentuan Bagi (Calon) Suami Istri*, (Jakarta: Rana Pustaka, 2012), hal. 29-30.

¹²Munir Fuady, *Konsep Hukum Perdata*, (Jakarta: Rajawali Pers, 2014), hal. 181.

¹³HR. Damanhuri HR, *Segi-Segi Hukum Perjanjian Perkawinan Harta Bersama*, (Bandung: Mandar Maju, 2007), hal. 19.

- b. The marriage registrar is carried out in a written form that the marriage registrar legalizes.¹⁵
- c. The agreement's contents do not cross legal, religious, or moral boundaries.

Types of Marriage Agreements

The following are examples of marriage agreements based on the Civil Code:

1. Marriage agreements with a union of benefits and drawbacks. According to Article 157 of the Civil Code, profit is an increase in wealth resulting from assets and the results of work and crafts. Meanwhile, the loss term refers to any decrease in assets due to expenses exceeding income.
2. Where the prospective husband and wife do not want their assets regulated by the form of a profit and loss union and will deviate from the law of marital treasure, the marriage agreement with the union of results and income is regulated in Article 164 of the Civil Code.

While marriage agreements based on Articles 45-48 of the KHI are as follows:

1. The Taklik Talak agreement is not an agreement that must exist in every marriage, but it cannot cancel the agreement once there is a Taklik Talak agreement. The provisions in Taklik Talak must not conflict with Islamic law, and they are usually already included in the marriage book in standard form. If the conditions required in Taklik Talak occur later, divorce does not automatically fall. For a divorce to fall, the wife submits the matter to the Religious Court. As a result, if her husband violates the content of Taklik Talak, a wife may file a lawsuit in the Religious Court.
2. Apart from taklik talak in the KHI, other agreements that do not conflict with Islamic law regulate the provisions of the marriage agreement, but the marriage agreement is made at or before the two prospective husbands and wives are married. This marriage contract is signed in writing and legalized by the marriage registrar. As long as this does not conflict with Islamic law, the agreement's contents may include mixing personal assets and separating their respective livelihood assets. When making a marriage agreement regarding the separation of joint assets, the agreement may not eliminate the husband's obligation to meet household needs

Arrangement of Marriage Agreements Outside of Marital Assets in Maintaining the Household

There must be legal protection to protect and ensure the certainty of husband and wife's rights and obligations in fostering household continuity to achieve the goal of marriage, which is to form a happy and eternal family.¹⁶ A marriage agreement is one type of legal protection that can assist in achieving the goal of a happy and eternal marriage by requiring concrete agreements and understandings. In a formal sense, a marriage agreement is any marriage agreement between prospective husbands and wives regarding their marriage that is carried out under the provisions of the law, regardless of its contents.¹⁷

Although the KUHPer and KHI regulate the marriage agreement and have types of standard agreements, it is possible to make a marriage agreement based on contract freedom. The marriage agreement specifies the limitations of husband and wife's rights and obligations, which are based on mutual agreement and do not conflict with the law, decency, or public order. The purpose of the marriage agreement is to prevent future disputes at the time of marriage or when the marriage ends.

Because it has legal force, a marriage agreement can be used outside of the marital treasure as a legal instrument to prevent domestic violence. Plus, because an authorized official with a deed notarizes it, the proof is ideal for married couples seeking legal certainty so that they do not commit domestic violence and can properly carry out their rights and obligations in the home. With this marriage agreement, every husband and wife have limits in how they act in the home, based on what both parties have agreed upon, one of which is not to commit violence during the marriage period, even if they are in trouble, and to resolve any problems without using violence, both verbal and nonverbal. So that the marriage agreement can be used as a basis by both parties to prevent a divorce or if forced to go through the process of ending the marriage.

¹⁴ Happy Susanto, *Pembagian Harta Gono-Gini Saat Terjadi Perceraian*, (Jakarta: Visimedia, 2008), hal. 97

¹⁵ *ibid.*

¹⁶ Sudarsono, *Hukum Perkawinan Nasional*, (Jakarta: Rineka Cipta, 2010), hal. 7.

¹⁷ HR. Damanhuri HR, *Op cit*, hal. 1.

The following example is about a way of life. Lifestyle has a broad meaning, but it does not escape being one of the clauses in the marriage agreement, such as infidelity. Couples should include lifestyle clauses in their contracts as a deterrent to bad behaviour and assurances that their partner will pay for cheating or other inappropriate acts that endanger the marriage.¹⁸ Because infidelity has such a broad definition, the clause must clearly define infidelity and how to prove it.¹⁹ When infidelity occurs, one of the sanctions or payments can be interpreted as an agreement to pay certain financial payments (or other important values) if the spouse cheats again.²⁰

If the marriage ends, another example of a marriage agreement outside the marital treasure is child custody. The concept of child protection is regulated by Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 Concerning Child Protection, which ensures and protects children and their rights so that they can live, grow, develop, and participate to their full potential following their dignity and human dignity, and are free from violence and discrimination.²¹ Children living in divorced family care are different from children living in normal family environments.²² One of the effects of divorce on children is that the loss of a significant figure in the child's life makes the child-sensitive and irritable,²³ especially if the child has entered a difficult adolescent period. Parents must be able to maintain or provide discipline to their children in order for them to grow up to be good children.²⁴ Several laws govern the custody of children in Indonesia. As in Articles 105 and 156 of the KHI, the biological mother has priority for child custody. Because the mother has the right to care for a child under 12 years old, the child over 12 years old has the right to choose between the mother and the father as the holder of custody.²⁵ In addition to KHI, Article 47 of the UUUP governs child custody, stating that children under the age of 18 are in the custody of their parents unless their parents revoke custody. These two rules allow parents to decide for themselves who will have custody of their children in the event of a divorce, avoiding a custody battle after the divorce.

CONCLUSION

Following are some key conclusions drawn from the previous discussion:

In Indonesia, the Civil Code, Law No. 1 of 1974 Concerning Marriage, Government Regulation No. 9 of 1975 Concerning Implementing Law No. 1 of 1974 Concerning Marriage, and Presidential Instruction of the Republic of Indonesia Number 1 of 1991 Concerning the Compilation of Islamic Law regulate marriage agreements in general. These regulations regulate the conditions for the marriage agreement's validity and several other provisions.

The marriage agreement governs marital treasure and non-marital treasure if both parties agree and it does not violate the law, morality, or public order. This clause can regulate the time of marriage as a legal instrument to prevent domestic violence and a lifestyle that focuses on the issue of infidelity. Meanwhile, it has the power to regulate child custody at the end of the marriage. Because of the principle of contract freedom, the three examples do not rule out the possibility of regulating various types of things.

¹⁸ Deborah Hope Wayne, *Prenups and the Elephant in the Room: A Handbook for the Prenup Process*, (United States of America: Deborah Hope Wayne, P.C. 2018), hal. 56.

¹⁹ Kristine C. James, *How To Catch A Cheating Spouse & Survive Infidelity: Proven Strategies Uncover the Truth & Steps to Recover from Affair*, (Washington: Smashwords. Inc), hal. 69.

²⁰ Marni Feuerman, *Does an Infidelity Postnuptial Agreement Prevent Cheating*, <https://www.verywellmind.com/does-infidelity-postnuptial-agreement-prevent-cheating-4034424>. 1 Maret 2022.

²¹ Tim Visi Yustisia, *Konsolidasi Undang Undang Perlindungan Anak*, (Jakarta: Visimedia, 2016), hal. 9.

²² Yeni Rachmawati, *Pengembangan Sosial Emosional*, (Jakarta: Universitas Terbuka, 2008), hal. 16.

²³ Wiyani, *Mengelola dan Mengembangkan Kecerdasan Sosial dan Emosi Anak Usia Dini*, (Yogyakarta: Ar-Ruzz Media, 2014), hal. 65.

²⁴ Jaqueline Mitchell, *How to Be a Good Parent*, (New York: Bodleian Librari, 2015), hal. 64

²⁵ Rahmadi Indra Tektona, "Kepastian Hukum Terhadap Perlindungan Hak Anak Korban Perceraian", *Jurnal Muwazah Vol. 4 No. 1*;:22-28.

The community, particularly those who wish to be married by the government, certain organizations, or related parties such as notaries, requires socialization to understand that a marriage agreement is an important requirement for married couples to realize the purpose of marriage.

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