



Agreement Benefits and Function Analysis in Marriage

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ABSTRACT

The marriage agreement is a means to protect the property of the bride and groom. Through this agreement, the parties can determine their respective assets. Marriage agreements are also for the people of Indonesia is an unusual thing even though it has been regulated in the Marriage Law. This is because, the problem of marriage can't be separated from customs. An understanding based on traditional thinking that marriage is a bond that cannot be separated/broken except for death by the will of God Almighty. The type of research used in this paper is normative legal research. The approach used by the author is a statute approach. The data sources in this study are divided into two, namely primary law and secondary law. The method used to collect legal materials is through literature study to make a marriage agreement, the parties, in this case the husband and wife who carry out the marriage, are free to determine the desired legal form for the assets that are the object. The marriage agreement is not an obstacle in marriage but can actually help in marriage. However, in order to be useful, the making of the agreement must be in accordance with the applicable legal rules or regulations. The marriage agreement has a useful value for the parties to the marriage. Apart from being a legal protection for the parties, the marriage agreement also provides benefits in the event of a conflict in the court institution when a divorce occurs.

ABSTRAK

Perjanjian pernikahan adalah sarana untuk melindungi properti kedua mempelai. Melalui perjanjian ini, para pihak dapat menentukan aset masing-masing. Perjanjian pernikahan juga bagi masyarakat Indonesia merupakan hal yang tidak biasa meskipun sudah diatur dalam UU Perkawinan. Sebab, masalah pernikahan tidak lepas dari adat istiadat. Pemahaman yang didasarkan pada pemikiran tradisional bahwa pernikahan adalah ikatan yang tidak dapat dipisahkan/diputus kecuali kematian oleh kehendak Tuhan Yang Maha Esa. Jenis penelitian yang digunakan dalam tulisan ini adalah penelitian hukum normatif. Pendekatan yang digunakan oleh penulis adalah pendekatan statuta. Sumber data dalam penelitian ini dibagi menjadi dua, yaitu hukum primer dan hukum sekunder. Metode yang digunakan untuk mengumpulkan bahan hukum adalah melalui studi literatur untuk membuat perjanjian perkawinan, para pihak, dalam hal ini suami istri yang melaksanakan perkawinan, bebas menentukan bentuk hukum yang diinginkan atas harta yang menjadi objek. Perjanjian pernikahan bukanlah halangan dalam pernikahan tetapi sebenarnya dapat membantu dalam pernikahan. Namun, agar bermanfaat, pembuatan perjanjian harus sesuai dengan aturan atau ketentuan hukum yang berlaku. Perjanjian perkawinan memiliki nilai guna bagi para pihak dalam perkawinan. Selain sebagai perlindungan hukum bagi para pihak, perjanjian perkawinan juga memberikan manfaat apabila terjadi konflik di lembaga pengadilan ketika terjadi perceraian.

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I. INTRODUCTION

Humans, by nature, have a desire to live together, engage with one another, and have children. Humans marry for this reason. Marriage is carried out between two different human sexes, namely male and female, and is generally preceded by a shared desire to live together (Arief, 2017).

In Law Number I of 1974, the marriage agreement is regulated in Article 29 paragraph 4 where it is possible to change the marriage agreement that has been made as long as it does not harm a third party. According to Article 29, the marriage agreement made by the husband is a written agreement, except for ta'lik talak, which is legalized by the Marriage Registrar, whatever is agreed as long as it does not violate legal, religious and religious boundaries, and morality, and if there is an agreement marriage, then it is legalized. by the Marriage Registrar, the agreement cannot be called an agreement but a mutually recognized agreement.

The marriage agreement serves to protect the property of the bride and groom. The parties can identify each other's assets through this agreement. Is there a separation of property in the marriage from the start, or is there a mechanism for dividing property in the event of a divorce. As long as the parties do not decide otherwise, each husband's property and property obtained as a gift or inheritance remains under his control.

To form a marriage agreement, Indonesian people rarely control their respective assets (prospective husband and wife). This is understandable because the institution of marriage is something valuable which not only contains elements of law but also elements of religion. believed to be something that tarnishes the sanctity of marriage itself

Marriage agreements are also rare in Indonesian society, although they are regulated in the Marriage Law. This is because the issue of marriage cannot be separated from the issue of tradition. This idea is based on the ancient belief that marriage is inseparable unless it is against the will of God Almighty.

Divorce is no longer a disaster for the Indonesian people, but will have an impact on the lives of their descendants. The existence of discrepancies due to the activities of each party is one of the causes of divorce. Therefore, a marriage agreement is needed to ensure harmony and shared responsibility between husband and wife. The marriage contract between husband and wife serves to determine the rights and obligations as well as property in a marriage.

II. METHOD

The author's research techniques are divided into four categories: types of research, research approaches, legal materials, and methods of collecting legal sources. This research uses normative legal research, which is to examine and assess the law on the subject matter or legal problem to determine its suitability with applicable legal principles (Jonaedi , 2018). This is based on logical and coherent

thinking in its implementation by reviewing normatively the articles of marriage agreements in Law Number 1 of 1974 concerning Marriage concerning legal issues of marriage agreements as a way of legal protection for the parties in marriage.

The author's approach is a legal approach. The legal approach is carried out by analyzing the laws and regulations relating to the legal issues being considered. The legislative approach is a method of legislation and regulation, so that items issued by real and certain administrative authorities, such as Presidential Decrees, Ministerial Decrees, Regent Decrees, and others, can be used in the use-invitation approach (Qamar, 2017).

The data sources in this study are divided into two, namely primary law which consists of statutory regulations, official records or minutes in making legislation and judges' decisions, namely

1. 1945 Constitution of the Republic of Indonesia
2. Law Number 1 of 1974 concerning Marriage
3. Code of Civil law.

The next source of data is secondary legal material, which is legal material in the form of all publications on law which are official documents (Djulaeka & Devi, 2020). Publications on the law include textbooks, legal dictionaries, legal journals, and commentaries on court decisions.

The method of collecting legal materials is through library research. The collection of legal resources needed to study legal issues presented through laws, books, language dictionaries, legal dictionaries, literature, and other library items related to the mentioned legal issues or issues is known as literature study.

III. RESULTD AND DISCUSSION

Benefits of Covenant in Marriage

Marriage agreements are regulated in Article 29 of Law Number 1 of 1974 and Articles 139 to 154 of the Civil Code. What is meant by a marriage agreement is an agreement made by a prospective husband and wife before or at the time the marriage takes place to regulate the consequences of the marriage on their assets. The marriage agreement is made before or at the time of the marriage. The marriage agreement must be made in the form of a notary deed.

In his dissertation, Henry Lee A Weng said that the marriage agreement is broad from "*huwelijksche voorwaarden*" which is regulated in civil law. The agreement not only discusses the issue of property due to marriage, but also the requirements or desires that must be fulfilled by both parties without violating the boundaries of law, religion, and morality.

The marriage agreement is made with the aim of the validity of the marriage, to prevent hasty actions, because the consequences of the marriage are for life, for the sake of legal certainty, as legal evidence, and prevent legal evasion.

The momentum for the entry into force of the marriage agreement is from the date the marriage takes place. Since then the marriage agreement is binding on the parties and third parties. According to Henry Lee A Weng in his dissertation, he stated that the marriage agreement was broad from "*huwelijksche voorwaarden*" as regulated in civil law. The marriage agreement is not only concerned with the issue of property due to marriage, but also includes the conditions or desires that must be fulfilled by both parties as long as it does not violate the boundaries of law, religion and decency (Tarigan, 2021).

The Marriage Agreement generally regulates the provisions on how their assets will be divided in the event of a separation between the two of them, be it due to divorce or death (Faradz, 2008). The Marriage Agreement also contains matters relating to the future interests of their household. This is as stated in Article 29 of Law No.1 of 1974.

Article 29 of Law No.1 of 1974 concerning marriage agreements states:

Paragraph (1) "At or before the marriage takes place, both parties with mutual consent can submit a written agreement which is legalized by the marriage registrar, after entering the contents it also applies to the third party involved".

Paragraph (2) "The agreement cannot be ratified if it violates the boundaries of religious law and morality".

Paragraph (3) "The agreement is effective from the time the marriage takes place."

Paragraph (4) "As long as the marriage lasts the agreement cannot be changed, unless from both parties there is an agreement to change and the change does not harm a third party."

Basically, the Marriage Agreement is not as bad as people think (Faradz, 2008). This happens because the Marriage Agreement for most people is less ethical and not in accordance with eastern culture. Given the importance of the Marriage Agreement, it turns out that there are quite a lot of benefits for husband and wife. Without a Marriage Agreement, in the process of dividing the property, conflicts often occur. Therefore, the benefit of the Marriage Agreement is that it can regulate the resolution of problems that will approximately arise during the marriage, including:

- a. If there are no conditions, the separation of assets must be carried out before the marriage and registered at the place of registration of the marriage. In the case of debt, the marriage agreement may include provisions for financial distress that will remain with the party handling the debt. Debt in question is debt that arises before marriage, after marriage, after divorce, and even after death.
- b. Responsibilities to children from marriage, particularly in terms of the child's living expenses and school fees, must be controlled to determine how much each parent pays; in this situation, the aim is to protect the welfare of the child (Rini).
- c. The parties, in this case the husband and wife who carry out the marriage, are free to choose the legal form of the property that is the object by making a marriage agreement. A husband and wife may agree that there will be no or restricted assets in their marriage.

The marriage agreement is not a hindrance to marriage but it may actually help it. However, for the agreement to be useful, it must be made in accordance with the appropriate rules or legal provisions (Hairutami & Dewi, 2021). As previously explained regarding the conditions for the validity of the agreement, an agreement must be made based on the basic words of the agreement from the parties made. In a general agreement regulated in Article 1313 of the Civil Code, an agreement can be made by at least two people, but an agreement is made by more than two people, but in a marriage agreement, the parties cannot be made by more than two people.

In the agreement regulated in the Third Book of the Civil Code, it is stated that the parties who make the agreement are given the freedom to choose when the agreement comes into force, whether since the agreement was made or at a certain period agreed in the agreement. The ability to vote at the time the agreement enters into force, on the other hand, is not included in the marriage agreement; even prospective husbands are prohibited from voting when the marriage agreement they make is valid.

According to Happy Susanto's opinion in his book, the contents of a marriage agreement can vary, in the form of:

- a. Separation of pure assets, both parties agree to separate all assets, obligations, and income earned both before and after the marriage. Even if the property of a husband is pure or intact, he is still obliged to provide for his wife and children.
- b. Separation of assets for inheritance In contrast to the separation of pure assets, both parties, namely husband and wife, only agree on their respective assets, meaning assets and obligations obtained before marriage, in a marriage agreement. With this arrangement, the intrinsic property of each husband or wife remains under their respective authority.
- c. Pooling of Assets In a marriage agreement, the prospective husband and wife may agree to combine their assets, which may include inheritance and property acquired during the marriage period.

The issue of the content of the marriage agreement is that the prospective husband and wife who will enter into a marriage agreement are free to determine what they will agree on in the marriage agreement. However, because of the association or proximity to other principles, the Act also limits certain freedoms. Therefore, in making the marriage agreement deed, it is necessary to pay attention to the elements that should not be included in the marriage agreement, including the following:

- a. Must not conflict with public order (public policy) and decency (moral).
- b. Matters as regulated in Article 140 of the Civil Code, such as may not violate the marital rights of the husband, namely the rights of the husband in his status as husband; Must not violate parental rights; It must not violate the rights granted by law to the husband or wife who has lived the longest.
- c. May not violate the rights granted by law to the husband or wife who has lived the longest.

Covenant Function in Marriage

Marriage agreements are included in the category of preventive legal protection. The marriage agreement can be started at the time of marriage; However, the terms of time must be interpreted after the marriage is recorded. Because recording guarantees legal certainty, the marriage will have valid documentation, namely a marriage certificate (Kualaria, 2015).

According to CST Kansil, legal protection is a narrowing of the meaning of protection, in this case only protection by law. The protection provided by law is also related to the existence of rights and obligations, in this case that is owned by humans as legal subjects in their interactions with fellow humans and their environment. As legal subjects, humans have rights and obligations to take legal action (Muryatini & Nyoman, 2019).

Legal protection is an illustration of how the function of law works to achieve legal goals such as justice, expediency, and legal certainty. Legal protection is protection given to legal subjects in accordance with the rule of law, both preventive and repressive (coercion), both written and unwritten in the context of legal regulation.

The ideal marriage agreement is an agreement that protects and provides justice for the parties to the marriage. According to Soekarno Aburaera, the sense of justice exists outside the law, so the law cannot show that sense of justice. The result of the law will be considered unfair.

M. Rezfah Omar in Dahlan (2008) said that "the position of the agreement before marriage is stronger than the existing regulations in Law No. 1 of 1974 concerning Marriage. Because the agreement can protect the rights of both parties. If there is a divorce and a dispute between the two, the prenuptial agreement can be used as a guide for settlement. In fact, what is regulated by the Marriage Law can be canceled by a prenuptial agreement.

M. Rezfah Omar's opinion is very relevant when linked to article 1338 paragraph (1) which states that "an agreement made legally, applies as law for those who make it". Even Sayeed Sabiq thinks that "respect for a legal agreement is mandatory, if the agreement has a positive effect, its role is very large in maintaining peace, and very urgent in overcoming difficulties, resolving disputes and creating harmony".

Marriage covenants are meant to protect couples with good intentions from people with bad intentions. If a conflict arises between the parties at another time, the marriage agreement can be the basis for each party, especially the husband and wife, to exercise and limit their rights and obligations.

In accordance with the theory of legal objectives from Gustav Radbruch, a marriage agreement must have a useful value for the parties to the marriage (Kualaria, 2015). A marriage contract designed to protect a couple with good intentions from bad people If a subsequent dispute arises between the spouses, the marriage agreement can be the basis for each party, especially the woman, to exercise and limit their rights and obligations.

IV. CONCLUSION

Conflicts often arise during the procedure for the division of property in the absence of a Marriage Agreement. As a result, the Marriage Agreement has the advantage of facilitating the resolution of any difficulties that may develop during the marriage. The parties, in this case the husband and wife who carry out the marriage, are free to choose the legal form of the property that is the object by making a marriage agreement. They (husband and wife) can decide whether not to. The marriage agreement is intended to provide legal protection for couples who have good intentions from other parties who have bad intentions. If a conflict arises between the parties at a later time, the marriage agreement can be the basis for each party, especially husband and wife, to exercise and limit their rights and obligations to each other.

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