

Legal Consequences of Pre-Marriage Agreement Regarding Joint Assets in the Form of an Authentic Deed

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Abstract. The research objective is to find out and explain the agreement on pre-marital joint property in front of a notary in the Purwokerto jurisdiction, and to find out and explain the legal consequences of pre-marital joint property agreements in front of a notary in the Purwokerto. Juridical sociological approach method. The specification used in this research is descriptive research. Based on the qualitative analysis, it is known the legal consequences of pre-marital joint property agreements in front of a notary public and legalized by a marriage / marriage registrar are binding and valid as law for the prospective husband and wife and third parties, as far as the party is concerned. If the Marriage Agreement that has been made by the husband and wife is not implemented or there is a violation of the agreement made, it automatically gives the wife the right to request an annulment of the marriage or as a reason for a divorce suit.

Keywords: Legal Consequences; Pre-Marriage Agreement; Joint Property; Authentic Deed.

1. Introduction

Based on Article 29, the marriage agreement made by the husband and wife is a written agreement. For Indonesian people today, it is rarely done to regulate their respective assets in a marriage agreement, this is because the institution of marriage is something sacred that does not only involve legal aspects. However, the law has provided opportunities for those who want to regulate it. The marriage agreement can also be used as a means to minimize the occurrence of a divorce. Because, if from the beginning it was agreed that if there was a divorce, each party felt burdened by the obligations in an agreement so that he would think again about filing for a divorce.

The pre-marriage agreement is made either in written form or deed, either under hand or in the form of an authentic deed made by an authorized official. What is meant by deed is a letter which is signed, which contains all events which are used as the basis of a right or engagement, and was made from the beginning on purpose to prove.² The Marriage Agreement regulates the provisions on how their assets (husband and wife) will be distributed if there is a separation of the relationship between the two, whether it is due to divorce or death. The Marriage Agreement also contains matters relating to the future interests of their household³.

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² Sudikno Mertokusumo, 1996, *Hukum Acara Perdata di Indonesia*, Yogyakarta: Liberty, p. 106.

³ Wisda Rauyani Efa Rahmatika and Akhmad Khisni, "Analisis Yuridis Atas Perjanjian Perkawinan Ditinjau Dari Undang-Undang No.1 Tahun 1974 Tentang Perkawinan Dan Implikasi Putusan MK NO.69/PUU-XIII/2015", *JURNAL AKTA: Vol. 4 No. 3 September 2017*, 366. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/1809>

One of the consequences that often arise from a marriage today is property. According to the Civil Code, the assets that are mixed together in article 119 of the Civil Code, assets obtained during the marriage become joint assets, including all marital assets, namely: assets that existed at the time of marriage, assets acquired during the marriage. In Act No. 1 of 1974, the marriage agreement is regulated in Article 29 paragraph 4 where the marriage agreement has been made possible to be changed as long as it does not harm the third party⁴.

With regard to authentic deeds and the authority of notaries as public officials who are authorized to make authentic deeds, it can be further seen in Act No. 30 of 2004 concerning the Position of Notary Public, namely the consideration of point b states that to guarantee legal certainty, order and legal protection, written evidence is needed. Authentic regarding conditions, events or legal actions carried out through certain positions⁵.

Thus, obtaining a pre-marriage agreement with a deed made under hand can create legal uncertainty, because the community (third party) does not know about the existence of the marriage agreement and the power of proof is still not strong, because it can still be disputed, whereas if it is admitted it only has the power of proof perfect for the party. Furthermore, when the marriage agreement has been made, it must be registered at the District Court Registrar's Office in which the marriage is carried out. Its purpose is to fulfill the principle of publicity.

Based on the above background, the author will carry out research with the title Legal Consequences About the Pre-Marriage Agreement About Collective Property Made By Authentic Deed. Based on the description above, the following problems can be formulated What is the agreement regarding pre-marital joint property before a notary in the Purwokerto jurisdiction? And What are the legal consequences of pre-marital joint property agreements before a notary in the Purwokerto jurisdiction.

2. Method

This research is a qualitative research with a sociological juridical approach. This qualitative research was chosen based on the reasons that; (1) Law in this study is defined as symbolic meanings as manifested and listened to in and from the actions and interactions of citizens, (2) in order to reveal and obtain deep and detailed meanings of research objects and informants.⁶ The specification used in this research

⁴Adigita, Monicha R., Ma'ruf, Umar., & Witasari, Aryani. (2019). The Role and Protection of Laws to Notary Related To the Dispute That Made Between the Parties. AKTA JOURNAL: Vol. 6, No. 4, 783-788. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7631>

⁵Yensih, & Sukarmi, Hanim, Lathifah. (2019). The Law Strength Of Under Hand Deed That Has Passed By Notary as an Authentic Deed in the Proof of Civil Case in District Court of Cirebon. AKTA JOURNAL: Vol. 6, No. 4, 661-668. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7596>

⁶Sanapiah Faesal, 1990. *Qualitative Research, Basics and Applications*, Asih Asah Asuh Foundation (Y A3), Malang. h. 21-22

is descriptive research, namely what the respondent states in writing or orally, as well as his real behavior, which is researched and studied as something intact.⁷

3. Results and Discussion

3.1 Agreement regarding pre-marital joint property before a notary in the legal area of Purwokerto

The Prenuptial Agreement is an agreement made before the marriage takes place and binds the two prospective brides to be married, the contents regarding the distribution of assets between husband and wife which includes what belongs to the husband or wife and what is the responsibility of the husband and wife, or is related to the inheritance of each party in order to differentiate between the assets of the prospective wife and the assets of the prospective husband, in the event of divorce or death in one of the partners and child care if the husband is not an Indonesian citizen. Usually the pre-marriage agreement is made for the purpose of legal protection of the inheritance of each husband or wife as well as other things that become the habit of husband / wife couples who do not want to be restricted by their partners.⁸

Making a pre-marriage agreement is allowed as long as it does not conflict with religious laws and morals, moral values and customs. This has been regulated in accordance with Article 29 paragraph 1 of Act No.1 / 1974 concerning Marriage, namely: third party snagged ". In the elucidation of article 29 of Act No.1 / 1975 concerning marriage, it is said that what is meant by agreement in this article does not include divorce law. In verse 2 it says: the agreement cannot be ratified if it violates the boundaries of religious law and morality⁹.

In addition, the Islamic Law Compilation also allows the pre-marriage agreement as stated in article 47 paragraph: "At the time or before the marriage takes place, the two prospective brides can make a written agreement that is validated by the Marriage Registration Officer regarding the position of assets in the marriage".

Agreements are usually made for the purpose of legal protection of each other's assets, husband or wife, although the law does not regulate the purpose of the marriage agreement and what can be agreed, everything is left to both parties³⁶.

Legal protection of assets in a marriage agreement is valid when the marriage is held which aims to protect the assets of the bride and groom, where the parties can determine their respective assets. Whether from the beginning there was a separation

⁷Soerjono Soekanto, 1982. *Kesadaran Hukum dan Kepatuhan Hukum*, CV. Rajawali, Jakarta. p.250

⁸Arrohim, Mohammad B., & Wahyuningsih, Sri Endah. (2020). Analysis of Judicial Application of Criminal Penalty Against Notary / Land Deed Officials Conducting Making Crime of the Fake Authentic Deed in State Court of Semarang. AKTA JOURNAL: Vol. 7, No. 2, 183-188. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7891>

⁹Nofita S., Putri, Chalim, Munsharif A., & Setyawati. (2020). Legal Protection Against Substitute Notary in Semarang Based on Act No. 2 of 2014 Amendment Act No. 30 of 2004 concerning Notary. AKTA JOURNAL: Vol. 7, No. 2, 195-200. Retrieved from <http://jurnal.unissula.ac.id/index.php/akta/article/view/7901>

of assets in marriage or joint assets, but the method of distribution was arranged in case of divorce.

The inheritance of each husband and wife and property that is obtained by each as a gift or inheritance, is under their respective control as long as the parties do not determine otherwise. Although the law does not explicitly determine what the purpose and content of the marriage agreement is, as a public official, a notary in carrying out his duties and powers in making a deed of agreement may formulate laws regarding the principles, principles, form and content of the intended marriage agreement. . Likewise, the Notary finds any criteria that are said to be public order in a marriage agreement which is considered a prohibition other than matters of religion and social and human values. The marriage agreement is made to provide legal protection, namely as law for parties with good faith intentions. If at any time a conflict arises between the parties, it can be used as a reference and one of the bases for each partner in carrying out, and providing limits on the rights and obligations between them.

As a result of marriage on the husband and wife's property according to the Civil Code is mixed assets in article 119 of the Civil Code. The purpose of making this marriage agreement is to deviate from the provisions concerning joint assets as stipulated in Article 119 of the Civil Code, the parties are free to determine the form of law they want on the assets that are their objects. They can decide, that in their marriage there will be absolutely no shared assets (*uitsluiting van gemeenschap van goederen*) or limited togetherness of assets (*bepaalde gemeenschap van goederen*). However, there are exceptions that the property is not a round mix of assets, namely if there is: Marriage agreement, There is a grant / inheritance, which is determined by the heir of Article 120 of the Civil Code.

Legal protection for assets in marriage according to the Civil Code is given freedom in determining the contents of the marriage agreement to deviate from the provisions of the Civil Code regarding the association of assets but with the following limitations:

The marriage agreement must not conflict with decency and public order (Article 139 of the Civil Code).

- a. In that Agreement there is no promise made that deviates from:
 - 1) Rights arising from the husband's power (*maritale macht*): for example to determine the place of residence or the right of the husband to administer the union of marital assets.
 - 2) Rights arising from parental powers (*ouderlijk macht*), for example, the right to take care of children's wealth or children's education.
 - 3) Rights defined by law for husband and wife who live the longest. For example, becoming a guardian or appointing a guardian (Article 140 of the Civil Code).
- b. No promises were made containing the relinquishment of rights over the inheritance of the people who lowered them (Article 141 of the Civil Code);

- 1) They must not promise that one party has to pay a portion of the debt that is greater than its share in the profit of the association (Article 142 of the Civil Code).
- 2) No promise can be made that their marriage will be regulated by foreign law (Article 143 of the Civil Code).

Actually, the marriage agreement is needed by the parties, where they already have property, and during the marriage expect to get property. The considerations for conducting a marriage agreement include:

- a. In a marriage with unanimous united assets, the aim is that the wife is protected from the possible actions of the husband's beheer which is not good, *beschikking* of immovable property and certain valuable documents belonging to the wife.
- b. In marriage with separate assets the objectives are:
 - 1) So that certain items or all items brought by the husband or wife in the marriage are not included in the union of marital assets and thus remain private assets. The existence of such an agreement is a protection for the wife, against the possibility of the assets being accounted for, for the debts made by the husband and vice versa, the defendant cannot be responsible for the debts made by the late husband, because in fact the defendant was married / married by entering into a marriage agreement " .
 - 2) So that these personal assets are separated from the husband's beheer and the wife can take care of the assets themselves³⁷.

The marriage agreement must be made with a notary deed before the marriage takes place, otherwise it is null and void (*van rechtswege nietig*). And it starts to take effect from the time the marriage takes place, another time for that it cannot be determined.

Legal protection of assets in a marriage agreement can be seen in the compilation of Islamic law, including:

- a. In the case of a husband and wife having bad faith in terms of debts and receivables from third parties.

Based on the Supreme Court Decision Number 1081 K / SIP / 1978 that the existence of a marriage agreement between husband and wife that was not notified to the debtor during the transactions, it is clear that the husband and wife have bad intentions to protect the marriage agreement to avoid legal claims from the debtor. Which is contrary to legal order, so that the agreement must be declared invalid and has no binding legal force for the debtor with good intentions. Thus husband and wife with their personal assets are jointly responsible or liable for the husband or wife with all the legal consequences.
- b. If there is a breach of the contents of the agreement by the husband.

After the marriage agreement deed is drawn up and it turns out that before the marriage takes place, the prospective husband violates the contents of the marriage agreement, the prospective wife can request an annulment of the marriage. This can be explained in Article 51 KHI which states "violation of the marriage agreement gives the wife the right to request an annulment of the marriage".

- c. If during the marriage the husband violates the contents of the marriage agreement, then the wife can file a divorce suit at the Religious Court (Article 51 KHI).
- d. If there is a civil dispute regarding the contents of the marriage agreement.

In this case, it is necessary to stipulate in the last article in the marriage agreement deed that "regarding this deed with all its consequences and implementation, the parties have chosen a common legal residence and remain at the Office of the Clerk of the District Court in which the marriage is carried out, or a choice of law is made.

From the contents of the marriage agreement they made, it turns out that the rights and obligations of the parties to the management of marital assets do not explicitly state. In fact, in order to provide legal protection, it is better if the rights and obligations of the parties are included, so that the implementation of the marriage agreement does not occur detrimental to the parties. Likewise, in the matter of dispute resolution over marital property, it is not stated in the clause of the choice of law which court will resolve their case in the event of a dispute. In this context, then based on the applicable provisions the Court will use the place where the marriage takes place.

Furthermore, the marriage agreement will have authentic deed power if immediately after the signing of the deed is registered with the Registrar of Marriages, if not then this deed will be the deed under hand. As a notary, he advised to immediately register and legalize their marriage to the court so that later the marriage agreement certificate can be recorded.

Marriage agreements that have been ratified by the Marriage Registration Officer are binding and valid as law, for the parties and third parties as far as the parties are involved. If the marriage agreement that has been made is not implemented or there is a violation of the agreement made, it automatically gives the wife the right to request an annulment of the marriage or as a reason for a divorce suit, as stated in Article 51 KHI which reads in full as follows: "Violation of the marriage agreement gives the wife the right to request the annulment of the marriage or to file it as an excuse for divorce lawsuit to the Religious Court".

Efforts to maintain a marriage agreement that has been legalized are the rights of all parties who promise. Cases regarding marriage agreement disputes must be resolved by authorized law enforcers because the objectives of the law are:

- a. To regulate rights and obligations which are reciprocal on the basis of authority which is open to everyone;
- b. To set the conditions required for each authority;
- c. To regulate prohibitions, to prevent actions that are contrary to the terms of authority or contrary to the rights and obligations arising from authority

In Article 1338 of the KUHPerata it states that all agreements made legally are valid as law for those who make them. The agreements cannot be withdrawn other than by

the agreement of both parties, or for reasons which are stated by law to be sufficient for this reason, the agreements must be executed in good faith.

Thus, if one of the parties does not carry out the marriage agreement and harms the other party, then the party who feels aggrieved is requested to the Court, both for the implementation of the agreement and the claim for compensation.

From the description above, it can be seen that penalties for parties who do not fulfill their obligations in accordance with the contents of the agreement, are threatened with compensation in lieu of rights that have been injured. However, this does not necessarily happen, but if in this case there is a prosecution in the form of an invitation for the defendant to carry out the agreement or in the form of other penalties according to the agreement of the parties who promised. And vice versa Article 1374 of the Civil Code states that:

"By not reducing the obligation to provide compensation, the defendant can prevent the fulfillment of the demands mentioned in the previous article, by offering and actually doing it in public before the Judge a statement stating that he is sorry for the act he has committed, that he is apologize for it, and consider the offended as an honorable person.

From these articles it can be concluded that the most important meaning of the marriage agreement must be carried out in good faith and obedience. If there is a violation or deviation that the parties do not want, then the violation of the agreement can be used as an excuse to sue for divorce to the Religious Court.

Based on Act No. 1 of 1974 as well as the compilation of Islamic law, the contents of the Marriage Agreement can involve anything that does not contradict the provisions of the agreement in general, only the agreement is legalized in front of a Marriage Registration Officer. According to Abdul Kadir Muhammad, the contents of the Marriage Agreement as stipulated in Act No. 1 of 1974 can be about everything, as long as it does not violate the boundaries of law, religion and morality.

The contents of the Marriage Agreement include:

- a. The union of husband and wife's assets.
- b. Control, supervision and care of the wife's assets by the husband.
- c. The wife or husband continues to study at a shared cost.
- d. In their marriage they agree to carry out family planning.

3.2 Legal consequences of pre-marital joint property agreements in front of a notary in the Purwokerto jurisdiction

According to the author's opinion, the Pre-Marriage Agreement examined in this study that was made before the marriage cannot be changed again when the marriage has taken place, this is because if the contents of the agreement are changed then it is not the Pre-Marriage Agreement anymore. In the sense that if you want to change the contents of the agreement, the parties (husband / wife) must divorce and then remarry. This is different from the regulation in the Civil Code which does not allow

changes to the Marriage Agreement at all. As long as the marriage has not been carried out, the marriage agreement that has been made can still be changed. Changes in the marriage agreement are only valid if it is mutually agreed upon by those who are parties to the making of the marriage agreement. including those who provide "assistance" and this must also be done with a notarial deed (Article 148 of the Civil Code). Meanwhile, if a marriage has been carried out, the marriage agreement cannot be changed by both parties, because it will be detrimental to the third party, besides that it is also to ensure legal certainty regarding the integrity of the marital assets which cannot be changed by changing the marriage agreement. The marriage agreement must be made before the marriage takes place and must be made with a notarial deed, otherwise the marriage agreement is automatically canceled (article 147 paragraph 1 of the Civil Code). The marriage agreement is valid between husband and wife when the marriage is carried out, a marriage agreement cannot be changed in any way (article 147 paragraph 2 and article 149 of the Civil Code). 13 The provisions of the marriage agreement shall come into effect on the third party from the day they are registered in the general register at the Registrar's Office of the District Court in the jurisdiction where the marriage is to take place. Meanwhile, if the marriage is paid off abroad, it must be registered at the Registrar's Office of the District Court in the jurisdiction where the marriage certificate has been registered (Article 152 of the Civil Code). Regarding the provisions governing the registration of a Marriage Agreement in a public register should not be taken lightly, because it is also an important matter, because if all of them are not registered in the public register or only part of them are registered in the public register, then the third party is wholly or part of the provisions in the marriage agreement that are not registered,

In every marriage, basically, assets are needed which are the material basis for family life. These assets are called family assets or sexual assets or marital assets. Marriage assets include:

- a. Husband's property or wife's property acquired before marriage or as an inheritance (= *gawan* (Javanese) or original property / inheritance).
- b. Husband's and wife's assets obtained from their business before or during marriage (= celibacy or waiting assets / acquired assets).
- c. Assets acquired by husband and wife together during marriage (= *gono-gini* (Javanese) / joint property).
- d. Treasure given to the bride and groom when married.

The former are usually called original assets, while the second, third and fourth (to a limited extent) are referred to as joint assets. So joint assets are assets that are obtained by husband and wife individually or together during the marriage, except for assets that are gifted and inherited. The existence of joint assets depends on the following conditions:

- a. Husband and wife live together,
- b. The position of husband and wife is equal,
- c. Not influenced by Islamic law.

In the event of a divorce, the assets are controlled and under the control of the respective owners, unless otherwise stipulated in the Marriage Agreement⁴⁷. Through the marriage agreement, the parties can declare that there is no mixing of assets between them and besides it can also be explicitly stated that they do not want a profit-loss union. With the complete separation of assets, the assets of each party (husband and wife) remain the owner of the items they bring into the marriage. In addition, because they have excluded every form of union, the results they (husband and wife) receive throughout the marriage, whether in the form of business results or results from personal assets, remain the private property of each husband and wife.

So through a marriage agreement it can be arranged so that any mixture of assets according to the law is completely eliminated. In the event that the mixing of property is completely eliminated, then between husband and wife there are only two kinds of assets, namely:

- a. Personal husband's assets, and
- b. Personal wife's wealth.

The impact of making a Pre-Marriage Agreement can be in the form of a relationship between husband and wife, the problem of the relationship between parents and children and the most striking problem, namely regarding the property of each party making the agreement. Regarding the arrangement can be seen in the Marriage Law. Each of these problems is in Chapter VI, namely regarding the rights and obligations of husband and wife, Chapter IX regarding the position of the child, Chapter X regarding the rights and obligations of parents and children and the last in Chapter VII regarding property in marriage.

Thus, if one party does not carry out the agreement and harms the other party, then the injured party can claim his rights to the Court, both claims regarding the implementation of the agreement and claims for compensation. In article 51 of the Islamic Law Compilation, it is stated that violations of the Marriage Agreement give the wife the right to request an annulment of the marriage or file it as an excuse for a divorce lawsuit to the Religious Court. Whereas regarding claims for compensation, if it is seen as pure default of an agreement it can be submitted to the District Court to demand compensation for an agreement that was not implemented or not fulfilled⁵².

The description above can be seen from the penalties for parties who do not fulfill their obligations in accordance with the contents of the agreement, they are threatened with compensation in lieu of the rights of the injured party. However, this does not happen automatically, but if in this case there is a prosecution in the form of an invitation for the defendant to implement the agreement or in the form of other penalties in accordance with the agreement of the promised parties. And on the contrary, article 1374 of the Civil Code states: "Without reducing his obligation to provide compensation, the defendant can prevent the fulfillment of the demands mentioned in the previous article, by offering and actually doing it in public before the judge a statement stating that he regrets that he will the deeds he has done; that he apologized for it, considering the offender as an honorable person.

From the explanation of Article 1374 of the Civil Code and it can be learned that the most important meaning is that these agreements must be carried out by the parties in good faith and compliance. If there is a violation of the Marriage Agreement, then the breach of the Marriage Agreement can be used as a reason to file a divorce suit to the Court. The reason for making a Pre-Marriage Agreement is not to divorce in the future but tends to protect the parties (husband / wife) in the event of undesirable things during the marriage.

There are several positive impacts of this pre-marriage agreement for the parties who make it, namely:

- a. Everything is clearly arranged
With the prenuptial agreement, household life becomes clearer so there is no need to worry about either party.
- b. Possessions and debts
The problem of property and debt can become a complicated problem when a husband and wife decide to separate, with this letter clearly stipulates that the husband's assets and debts belong to and the husband's responsibility is the same as what happens to the wife.
- c. Make an effort
With this agreement, a married couple can easily and professionally make a new business. This happens because the wealth that is counted is not in the name of one person, but in the name of each.

The Marriage Agreement / Pre-Marriage Agreement is a legal event that has consequences that have been regulated by applicable laws / laws. Marriage / Pre-Marriage Agreement includes:

- a. The agreement binds the husband and wife,
- b. The agreement binds the third parties concerned,
- c. The agreement can only be changed with the consent of both husband and wife, and does not harm the interests of the third party, and is legalized by a marriage registrar.

4. Closing

4.1 Conclusion

In Act No. 1 of 1974 concerning Marriage, Article 29 which states that the contents of the Agreement regarding pre-marital joint property before a notary may not violate legal, religious and moral boundaries, meaning that it can involve anything including those concerning the separation of joint assets, and So far, the agreement does not contain things that are prohibited or forbidden and contrary to the essence and purpose of the marriage itself. If the Marriage Agreement that has been made by the husband and wife is not implemented or there is a violation of the agreement made, it automatically gives the wife the right to request an annulment of the marriage.

4.2 Suggestion

It is better if the contents of the agreement are carried out in good faith so that the deed is not detrimental to the third party by paying attention to legal, religious, decency and general understanding aspects and for the notary, it is best to ensure that the deed he has made has been registered at the authorized office so that the deed he makes is ensured as an authentic deed so as not to harm the parties . If not, the deed is made only as an underhand agreement deed.

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