Marriage Agreements as Legal Protection of Collective Property

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Abstract. Marriage is a legal act in which an act contains rights and obligations for the individuals who commit it. In living the life of a household, it is not uncommon for problems to arise which cause disputes between husband and wife and end in divorce. Dissolution of marriage will cause problems, one of which is related to property (assets) in the marriage. This study aims to map the arrangement of the marriage agreement in Law No. 1 of 1974 concerning marriage and to analyze the legal protection of joint assets in the marriage agreement. The type of research used in this study is normative juridical, by collecting data using the literature and applicable laws and regulations. To get the results of this study, the author use descriptive data analysis to describe the nature of the problems studied. The results of this study indicate that the marriage agreement was held at the time or before the marriage took place, the two parties with mutual consent can enter into a written agreement which is legalized by the marriage registrar, after which the contents also apply to third parties as long as the third party is concerned. Legal protection of joint assets with a marriage certificate before the marriage takes place. The deed is made in writing which is legalized by the marriage registration officer, namely the Office of Religious Affairs (Muslim) and Civil Registry (Non-Muslim).

Keywords: Marriage Agreement, Legal protection, and Collective Property

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INTRODUCTION
Every human being in his life experiences very important legal events including birth, marriage, divorce, death and other important events¹. As social beings, humans have the instinct to live side by side and interact with society in general or with each other. Marriage can occur because there

¹ M. Anshary, Criminal Law in Indonesia, (Yogyakarta: Student Library, 2010), 10.
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Marriage is a form of living together between two people, namely a man and a woman that is legally recognized by the State and protected by applicable law. Based on the provisions of pasal 1 of Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage stipulates 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 family or household and eternal based on Belief in the One and Only God. As for the purpose as a country based on Pancasila, where the first precept is Belief in the One and Only God, then marriage has a close relationship with religion or spirituality, so that marriage not only has an external element but also an important role in the heart. Meanwhile, according to the Compilation of Islamic Law, marriage is a very strong contract or miistaqon ghaliidzo to obey Allah's commands and its implementation is worship. The purpose of marriage itself is to realize a household life that is sakinah, mawaddah and rahmah. According to Wijono Prodjodikoro stated that marriage is a necessity of life in society, so clear regulations are needed for marriage regarding conditions, implementation, continuation and termination of marriage.

Household life can be categorized as a form of social interaction, which of course cannot be separated. It is the same with husband and wife relationships that must be able to meet each other's physical and spiritual needs. In addition to meeting physical and spiritual needs, there are assets as the basis for fulfilling the needs for human survival. The problem of wealth in the social environment has always been a separate scope for everyone to be able to manage it properly and correctly, namely by forming an agreement related to the management of the assets owned. This can be related to assets before the marriage took place, such as inherited assets and joint assets during marriage which are called gono gini assets. Gono gini assets are assets that are jointly acquired by a husband and wife during the period in which they are married.

The relationship between husband and wife who must manage finances into a single unit, is the right of everyone as a consequence of the marriage being carried out in accordance with Pasal 28 B paragraph (1) of the 1945 Constitution which has explained that everyone has the right to form a family and continue offspring through a legal marriage. The elucidation of the article indirectly explains the legal consequences of marriage, including the legal consequences for assets and third parties of the husband and wife. Legal consequences related to the management of assets of a married couple having a joint system with the principle of a unified whole or using a separate system either partially or completely which gives way to husbands and wives to be able to arrange/make agreements regarding the management of assets.

Agreements related to the management of assets carried out by husband and wife are called marriage agreements. The existence of a marriage agreement between husband and wife will have the opportunity to be open to each other. It can also share a sense of the wishes to be agreed upon without having to harm one of the parties. If you look at the legal status of the marriage agreement, its nature and law are neither obligatory nor forbidden. This means that the marriage agreement has the nature and law is mubah (permissible). However, with the existence of a marriage agreement, the husband and wife relationship will feel secure because if one day the relationship between the two partners cracks and even ends in divorce, then there is something that can be used as a reference and legal basis.

The consequences of a marriage have quite broad dimensions, so at the time of marriage, during marriage and after marriage,

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because in a marriage bond many things will happen and will be obtained, such as; problems of property, heredity, where if there are no clear provisions, especially the problem of the inheritance of the deceased or the problem of wealth that will carry out the divorce. The problem in this research is How is the regulation of the Marriage Agreement in Law Number 1 of 1974 concerning Marriage? And how is the legal protection of joint assets in a marriage agreement?.

With regard to the state of the art, according to the author, there has never been an article with the same title and subject matter found. However, it was found that there were several studies or scientific works that had similarities but with different problems. The research in question is entitled "Marriage Agreement as a Form of Protection for Wealth in Marriage" by Sriono, S.H, M.Kn. This research is related to the legal protection of inherited assets. This research focuses on the object of the marriage agreement and the forms of protection of innate assets in the marriage agreement. Meanwhile, in this study, the authors focused on how to regulate marriage agreements and legal protection of joint assets in marriage agreements. If seen from the studies in this study there are differences in the formulation of the problem so that it has different aims, objectives and results of analysis. So thus this research is interesting to discuss in order to add insight and find out more about the Marriage Agreement as Legal Protection for Joint Assets.

METHOD

The research method used is normative juridical research, in which law is conceptualized as what is written in laws and regulations (law in books) or law is conceptualized as rules or norms which are standards of human behavior that are considered appropriate. By collecting data using applicable laws and regulations. Based on the statutory approach, the rule of law, elucidation of articles, and reviewing written law from various aspects can then be used as a reference in the application of law and its implementation. This research is descriptive in nature, in which the author will describe the phenomenon of the problem under study. The legal materials used in this research are primary legal materials and secondary legal materials. Primary legal material is obtained by studying legal materials that have binding power such as statutory regulations, one of which is Law Number 1 of 1974 concerning Marriage. Secondary legal materials come from data that provide an explanation of primary materials, including books, research results, scientific papers related to the subject matter of this research.

RESULTS AND DISCUSSION

Marriage is a way for humans of the opposite sex to bind themselves with the aim of building a household and giving birth to offspring for the survival of the human being himself. Marriage is included as a basic need for every human being, whose goal is to form a happy and eternal family or household based on Belief in the One and Only God. The marriage itself lasts a lifetime or the marriage is expected to occur only once in human life which lasts a lifetime or forever and cannot be terminated just like that.

Marriage according to the Civil Code is a legal relationship between subjects who bind themselves in marriage. The relationship is based on an agreement between them and binds one another. The agreement referred to here is not an agreement contained in book III of the Civil Code, although in this case the marriage agreement with the agreement generally contains the same elements, namely the existence of a bond between the two parties, but there are differences in terms of the form and content of the agreement. A marriage is not in the field of contract law, but family law as something that is really on the will that is agreed or mutually agreed upon between the two parties concerned without the interference of other parties.
In Law Number 1 of 1974 concerning Marriage which is formulated in pasal (1) which reads: "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on Belief in One Almighty God". The provision of the article states that marriage does not only involve external elements, but also involves internal elements. The existence of an inner and outer bond in a marriage according to the marriage law is very important. This seems to be reaffirmed in the elucidation of pasal (1) which reads: "As a country based on Pancasila, where the first precept is Belief in the One and Only God, marriage has a very close relationship with religion or spirituality, so marriage is not only has a physical or physical element but an inner or spiritual element also has a very important role.

In accordance with the formulation of the marriage agreement there are 3 main elements contained in it, namely as follows:

a. Marriage is an inner and outer bond between a man and a woman.

b. Marriage aims to form a happy and eternal family.

c. Marriage is based on Belief in the One and Only God.

Based on the formulation of the marriage agreement, it is known that the formation of a happy and eternal family is based on Belief in One Almighty God. Therefore, marriage must be based on each other's religion and beliefs. Because of this, pasal 2 paragraph (1) states: "Marriage is valid if it is carried out according to the laws of each religion and belief".

In marriage, apart from having the goal of obtaining offspring, it also has the goal of being able to live together in a community in kinship ties. In order to survive together, worldly wealth is needed in the form of marital assets which will be used for daily life and capital in marriage. Since the marriage between the husband and wife takes place, there is total joint property between the husband and wife, as long as the provisions in the marriage agreement are not made. As long as the marriage is running, the joint property may not be held or changed by an agreement between the husband and wife. The joint property includes movable and immovable property of the husband and wife, both existing and future, as well as items that they get for free.

Not all marriages are as expected in realizing a family life (household) that is peaceful, happy, harmonious, and lasts forever. Sometimes factors that are incompatible with each other often affect household life in a marriage, there is a sense of concern for the husband and wife about things that might happen in the household which can lead to divorce. So that currently there are not a few married couples who tie their marriages with an agreement as a step in anticipation of things that are not desirable in a marriage. Of course, they hope that the marriage process will run smoothly and be happy forever in accordance with the principles or principles of a marriage.

Marriage as a legal institution has very important legal consequences in the life of the parties (prospective husband and prospective wife) who are getting married. The agreement in a marriage is an agreement that regulates the consequences of the marriage bond, one of which is in the field of wealth. The marriage agreement according to R. Subekti is an agreement regarding the property of husband and wife during their marriage which deviates from the principle or pattern established by law. According to Gatot Supramono, a marriage agreement is an agreement made by a husband and wife at the time or before the marriage takes place, an agreement made in writing and ratified by a Marriage Registrar and its contents also apply to third parties as long as it is agreed. Soetojo Prawirohamidjojo and Asis Safioedin said that a marriage agreement is
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An agreement or agreement made by the prospective husband and wife before or when the marriage takes place to regulate the consequences of marriage on their assets.

An agreement is an act in which one person or more binds himself to another person or an agreement is a legal event and an agreement is a legal relationship. According to Sudikno Metrokusumo that an agreement is a legal relationship between two or more parties based on an agreement to cause legal consequences, both parties agree to determine rules or methods or rights and obligations, which are binding on them to be obeyed and explained. The agreement here is to give rise to legal consequences, give rise to rights and obligations and if the agreement is violated then there are legal consequences, then the violator will be subject to sanctions.

A marriage agreement is an agreement and therefore must meet the general requirements of an agreement, unless specifically stipulated otherwise. The general requirements are about the legal terms of an agreement. Like, the agreement of the parties involved, the ability to make an agreement, regarding a certain matter and a lawful cause. Pasal 1338 of the Civil Code says that all agreements made in accordance with the law apply as laws to those who make them. The agreement cannot be withdrawn other than by agreement of both parties or for reasons determined by law, and the agreement must be carried out in good faith.

Discussion regarding assets in marriage, basically assets acquired during marriage become one joint property. Based on Law Number 1 of 1974 pasal 35 paragraph (1) confirms that wealth acquired during marriage will form joint property. Then it is continued in paragraph (2) which defines the assets carried by each party which are obtained as heirs or others, which are under the authority of each party concerned.

The pasal above provides an opportunity for married couples if they decide to determine other things, such as they can make deviations from the provisions of the applicable laws and regulations by entering into a marriage agreement. The marriage agreement can provide legal protection for the husband and wife for their assets if they have to divorce for some reason. Because basically the marriage agreement is a form of protection or protection if in the future something unwanted happens in the marriage such as divorce, death or one of the parties experiencing bankruptcy.

The position of assets in marriage, especially assets acquired by each husband and wife, cannot be said to be joint property if it is determined in the marriage agreement. Before the marriage is carried out on the basis of mutual consent, the prospective husband and wife can enter into a written agreement regarding assets, provided that the existence of the marriage agreement does not conflict with law, religion and public order.

The making of a marriage agreement by Law Number 1 of 1974 is specifically stated in Pasal 29 paragraph (1), stating that a marriage agreement may be held on and or before the date of marriage by the couple who is carrying out the marriage, the basis for holding this agreement is the agreement of both parties (husband and wife) which allows it to be stated in writing to be registered with the competent agency for recording, which then has legal consequences for third parties. It is understood that the Law says that:

a. At the time or before the marriage takes place, both the wife and the husband on mutual agreement can enter into a written agreement which is ratified by the Marriage Registration Officer after which the contents also apply to third parties as long as the third party has an interest,

b. if the marriage agreement made violates the boundaries of law,

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religion and decency, then the marriage agreement cannot be legalized.

c. The marriage agreement is valid from the time the marriage takes place,

d. The marriage agreement made and ratified cannot be changed as long as the marriage is still in progress, changes can only be made if both parties (husband and wife) agree to change them and these changes may not be detrimental to interested third parties.

Marriage agreements may not conflict with decency and public order, this is stated in Pasal 139 of the Civil Code as follows:

1. In the agreement no promises are made that deviate from:
   a) Rights arising from the power of the husband (maritale macht), for example to determine the place of residence or the right of the husband to manage the marital property union.
   b) Rights that arise from parental authority (outderlijk macht), for example the right to manage children's wealth or children's education.
   c) Rights determined by law for the husband and wife who live the longest, for example to become guardians or appoint guardians.

2. No promises were made containing the waiver of the rights to the inheritance of the people who handed them down.

3. It is not permissible to promise that one party must pay a portion of the debt that is greater than its share in the profits of the union.

4. No promises may be made that the marriage will be governed by foreign law.

Pasal 147 of the Civil Code states that every marriage agreement must be made with a notarial deed before the marriage takes place, the marriage agreement takes effect from the time the marriage takes place and cannot be withdrawn or cannot be changed in any way during the marriage. This article aims to provide legal certainty and legal protection for husbands and wives as well as for third parties, especially creditors, so that they cannot be faced with changing situations that could harm them at any time.

As the terms of the marriage agreement are as follows: made at the time or before the marriage takes place; made in written form legalized by the marriage registrar; the contents of the agreement do not violate the boundaries of law, religion and decency; effective since the marriage took place; as long as the marriage lasts, the agreement cannot be changed; and the marriage agreement contained in the marriage certificate.

Ratification of the previous marriage agreement was carried out at the District Court Registrar's Office which was usually recorded in a registration book specially provided for that purpose. Then after the issuance of Law no. 1 of 1974 concerning marriage, the registration of marriage agreements is no longer done at the Registrar's Office of the District Court, but directly at the Civil Registry Office for Non-Muslims and the Office for Religious Affairs for Muslims. And the termination of a marriage agreement can be carried out on the basis of the agreement of the parties which is then agreed to be revoked jointly. The cancellation of the marriage agreement is carried out through a court decision. The existence of a marriage agreement to facilitate the separation of assets, both joint assets and assets obtained before marriage, so that in the event of a divorce, the distribution of joint assets can be easily resolved. With this, disputes between divorced ex-spouses will be more easily resolved and not prolonged.

5 Damanhari, HR., *Legal Aspects of Joint Property Marriage Agreements*, (Bandung: Mandar Maju, 2007). 19
There are legal consequences of making the marriage agreement itself as follows:\(^6\):

- Legally the marriage agreement will bind the parties,
- The marriage agreement also forces third parties to respect it as long as the marriage agreement fulfills legal procedures,
- Changes to a marriage agreement are only possible if there is an agreement between the parties who made it, and in principle the changes made may not be detrimental to other third parties, and must go through a validation process regulated in the applicable laws and regulations.

Legal protection for assets in marriage according to the Civil Code is given freedom in determining the contents of the marriage agreement to make deviations from the Civil Code regulations regarding the union of assets but with limitations, namely that the marriage agreement must not conflict with decency and public order, as described above. Legal protection for assets including innate property in a marriage agreement is also regulated in the Compilation of Islamic Law, as follows:\(^7\):

1. In the event that the husband and wife have bad intentions in terms of debts owed to third parties. Based on MA Number 1081 K/SIP/1978 that there was a marriage agreement between husband and wife which was not notified to the creditor at the time the transactions took place, it is clear that the husband and wife had bad intentions to take refuge in the marriage agreement to avoid lawsuits from the debtor. Where this is contrary to the rule of law, so that the agreement must be declared null and void and does not have binding legal force for the creditor in good faith. Thus the husband and wife with their personal assets are jointly and severally responsible or owed by the husband or wife with all the legal consequences.

2. If the husband violates the contents of the agreement after the marriage agreement is made and it turns out that before the marriage took place, the prospective husband violated the marriage agreement, the prospective wife can request an annulment of the marriage. This is explained in Article 51 KHI which reads: "Breach of the marriage agreement gives the wife the right to request an annulment of marriage".

3. If during the course of the marriage the husband violates the contents of the marriage agreement, the wife can file a divorce suit at the Religious Court.

4. If there is a civil dispute regarding the contents of the marriage agreement.

Legal protection for joint assets after the Constitutional Court decision No. 69/PUU-XIII/2015 in the event of a divorce, which can be done by making a marriage agreement, which can be made after the marriage between husband and wife takes place and the marriage agreement must be recorded so that it is binding for the parties third, in addition to binding on both husband and wife. In addition, the marriage agreement also provides legal protection for the husband and wife for their assets if in the future they have to divorce for some reason.

Basically, the marriage agreement is not as bad as society thinks it is. This\(^6\) Esther Masri and Sri Wahyuni, "Implementation of Marriage Agreements Before, During, and After Marriage", Journal of Scientific Studies, Vol. 21, Number 1, (January 2021).

happens because the marriage agreement for most people is unethical and not in accordance with eastern culture. The marriage agreement turned out to be quite a lot of benefits. The benefits of the marriage agreement for the state are enormous. The existence of a marriage agreement provides boundaries for married couples to prevent and reduce conflicts, especially those that occur within the marriage institution. The marriage agreement can be used as a reference if one day a conflict arises, even if the conflict is unwanted. But when there is also a conflict that must end in divorce, then the marriage agreement can be used as a reference or reference so that each knows their rights and obligations. With the existence of a marriage agreement, couples who are actually experiencing divorce will not have any difficulties or difficulties about how much each of them gets the marital property they have. It is hoped that the distribution of gono gini assets or joint assets will be carried out in a fair way so that it can provide a sense of justice for both parties (husband and wife). A marriage agreement can also provide peace of mind for couples by providing a clear legal framework for managing finances and property during the marriage.

Thus the arrangement regarding the marriage agreement as stated in Article 29 of Law Number 1 of 1974 concerning marriage, that the marriage agreement was made before the marriage took place. The marriage agreement made by husband and wife is not allowed to harm the parties including third parties. As long as the marriage lasts, the marriage agreement cannot be changed, except if both parties have an agreement to change the agreement and the changes made are not detrimental to third parties. This includes legal protection of joint assets, with legal protection of marriage agreements related to joint assets that have been agreed upon by husband and wife, will be protected. If in the future there is a dispute between husband and wife which results in having to separate, then the marriage agreement that has been made in writing or recorded in the form of a deed by a notary, becomes a form of protection for assets acquired by the husband and wife during the marriage.

CONCLUSION

Based on the descriptions above, it can be concluded that the marriage agreement is an agreement made between the prospective husband and the prospective wife before or at the time of marriage and takes effect after the marriage takes place. Marriage agreements are made usually regarding marital assets because marital assets can cause problems when there is a divorce between husband and wife or there is bad faith between the couple. The purpose of the marriage agreement, among other things, is the validity of the marriage to prevent hasty acts due to the consequences of the marriage for life, for legal certainty, valid evidence, and to prevent law smuggling. Having a marriage agreement will make it easier to distribute assets in the event of a divorce between husband and wife. With this agreement, disputes between ex-husband and wife divorced do not need to be prolonged.

Legal protection for joint assets in a marriage agreement can only be carried out when the marriage takes place. Where the marriage agreement is a law for the parties, this is in accordance with Article 29 the contents of the agreement must be carried out in good faith by taking into account the provisions of law, religion, moral norms and public order. If one of the parties does not carry out the marriage agreement and harms the other party, compensation is requested from the party who feels disadvantaged to the Court, both demands regarding the implementation of the agreement and compensation.

Indonesian society is strong with its Eastern culture, making a marriage agreement is considered taboo for most prospective husband and wife. Even though the marriage agreement shows good faith to
understand the rights and obligations in managing assets in marriage, including the management of children because the purpose of marriage is to form a happy and prosperous family. For this reason, it is better if the marriage agreement is made before the marriage takes place, so that there will be no disputes between husband and wife when something unexpected happens, such as divorce.

REFERENCES