



THE URGENCY OF THE PRENUPTIAL AGREEMENT FOR HUSBAND AND WIFE IN INDONESIAN MARRIAGE LAW

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Abstract: This study aims to determine the prenuptial agreement on the separation of assets in marriage carried out by husband and wife in marriage law in Indonesia. Divorced married couples will fight over the separation of joint assets. This can be deviated by making a prenuptial agreement. The problems in this study are (1) How is the prenuptial agreement on the separation of assets in marriage? (2) What is the urgency of a prenuptial agreement for husband and wife in marriage law in Indonesia? This research is normative juridical, namely legal research using library materials by analyzing various provisions of the law or by using secondary data. The study results indicate that (1) a prenuptial agreement on the separation of assets in a marriage is carried out by both parties with mutual consent and can enter into a written agreement legalized by the marriage registrar. The agreement takes effect from the moment the marriage takes place. (2) The urgency of a prenuptial agreement for husband and wife in marriage law in Indonesia can be made before the marriage occurs. Since the decision of the Constitutional Court Number 69/PUU-XIII/2015, a marriage agreement can be made as long as it is within the marriage bond, as long as it does not violate applicable legal rules, religious rules, and moral norms. Husband and wife can express their will and agree on assets to carry out the pooling of assets and separation of assets.

Keywords: Marriage Law; Prenuptial Agreement; Husband and wife.

Abstrak: Penelitian ini bertujuan untuk mengetahui perjanjian pranikah terhadap pemisahan harta kekayaan dalam perkawinan dilakukan oleh suami istri dalam hukum perkawinan di Indonesia. Pasangan suami istri yang bercerai akan meributkan pemisahan harta kekayaan bersama, hal ini dapat disimpangi dengan membuat perjanjian pranikah. Permasalahan dalam penelitian ini adalah (1) Bagaimana perjanjian pranikah terhadap pemisahan harta kekayaan dalam perkawinan. (2) Bagaimana urgensi perjanjian pranikah bagi suami istri dalam hukum perkawinan di Indonesia. Penelitian ini adalah yuridis normatif yakni penelitian hukum dengan menggunakan bahan kepustakaan dengan menganalisa berbagai ketentuan undang-undang atau dengan menggunakan data sekunder. Hasil penelitian menunjukkan bahwa (1) Perjanjian pranikah terhadap pemisahan harta kekayaan dalam perkawinan dilakukan oleh kedua pihak atas persetujuan bersama dapat mengadakan perjanjian tertulis yang di sahkan oleh Pegawai pencatat perkawinan. Perjanjian tersebut mulai berlaku sejak perkawinan di langungkan. (2) Urgensi perjanjian pranikah bagi suami istri dalam hukum perkawinan di Indonesiadapat dibuat sebelum, saat dilanggunakan perkawinan. Sejak adanya Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 maka perjanjian perkawinan dapat dibuat sepanjang dalam ikatan perkawinan, asalkan tidak melanggar aturan hukum yang berlaku, aturan agama, dan norma kesusilaan. Suami istri dapat menyatakan kehendak dan bersepakat terhadap harta kekayaan untuk melakukan penyatuan harta, dan pemisahan harta.

Kata Kunci: Hukum Perkawinan; Perjanjian Pranikah; Suami Istri.

A. Introduction

Humans are naturally social creatures who cannot live alone. The family is the smallest social group of a society, which is expected to maintain the continuity of human life in the world. In human life, there will always be interests between one individual and another. Humans always have the instinct to live together and interact with each other, including gathering or living together with the opposite sex to form a family. (Sayuti Thalib, 2009)

Marriage gives rise to rights and obligations that must be fulfilled by husband and wife who are bound by marriage. Human nature as a creature created by classifying the sexes of men and women, one with another will be attracted to each other and then unite themselves in the bond of marriage. (Moch Isnaeni, 2016) Based on Article 1 of Law Number 1 of 1974 concerning Marriage, it is stated that marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family or household based on Faith in God Almighty. It is clear how thick the nuances of religion color the marriage law made by the government. This choice is based, among other things, on the fact that the Indonesian nation, based on Pancasila, really must be the basis when making the rule of law, including the time to gather. (Hanafi, 2015)

Marriage is one of the crucial events in human life. A marriage between a man and a woman has physical and spiritual consequences both on the family of each community and the assets obtained between them both before and during the marriage. (Sukardi, 2016) Based on the arrangement in the Compilation of Islamic Law (KHI) Article 47 of Law Number 1 of 1974 concerning Marriage states that: (Gunawan, 2016)

- 1) At or before the marriage occurs, the two prospective brides can make a written agreement ratified by the Marriage Registrar regarding the property's position in the marriage.
- 2) The agreement referred to in paragraph (1) may include mixing personal assets and separating their respective livelihood assets as long as it does not conflict with Islamic law.
- 3) In the provisions of paragraphs (1) and (2) above, it is also permissible for the contents of the agreement to stipulate the respective authority to enter into a mortgage bond on personal property and joint property or property of the company.

The principles specified in the Civil Code (KUHPperdata) state that prospective husbands and wives are free to determine the content of the marriage agreement they want. Article 139 of the Civil Code stipulates that in a marriage agreement, both prospective husband and wife can deviate from the provisions specified in the togetherness of assets, provided that the deviations do not conflict with decency and public order. (Wahyono Darmabrata dan Surini Ahlan Syajarif, 2004)

The contents of the marriage agreement in Article 29 of Law Number 1 of 1974 concerning Marriage, namely the content of the marriage agreement, must not reduce the rights and obligations between husband and wife so that in the future, it does not cause conflict. In anticipating conflict to create a sense of justice during the marriage bond. Because of the lack of freedom in determining which content is still based on the basic marriage agreement, namely between rights and obligations in the field of property during the marriage. (Ahmad, 2018)

A marriage agreement is an agreement made by the prospective bride and groom before the marriage takes place. The contents of the agreement bind the marital

relationship between the couple. (Happy Susanto, 2008) The meaning contained in the word “before” is that the marriage agreement was made before the marriage was carried out according to the religious law and beliefs of the prospective husband and wife following the validity of the marriage according to Article 2 paragraph (1) and paragraph (2) of Law Number 1 of 1974 concerning Marriage. While the word “when the marriage takes place” is a marriage agreement that is made at the time the marriage takes place, namely when the marriage is legal according to the religious law and beliefs of the prospective husband and wife and after that it is immediately recorded in front of the marriage registrar. (Ningsih et al., 2017)

Based on the provisions of Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage, the Marriage Agreement is 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 which the contents also apply to the third party involved. In Law Number 1 of 1974 concerning Marriage, it has not been comprehensively regulated because there are still flaws in it, it is marked in Article 29 paragraph (4), namely: “As long as the marriage is held the agreement cannot be changed, except if from both parties there is an agreement to change and the changes do not harm third parties. (Suwardiyati, 2020)

The concept of a marriage agreement before marriage is regulated in the Civil Code but is refined by Law Number 1 of 1974 concerning Marriage. The difference in the Civil Code emphasizes that marriage agreements are made only limited to the unity of property, while the marriage law does not explicitly regulate the things or contents that are agreed upon in the marriage agreement. The marriage agreement is valid since marriage is held. During the marriage, husband and wife cannot make changes to the marriage agreement unless there is an agreement by both parties to make changes.

In the provisions of Article 45 of the KHI, it is stated that both parties can make a marriage agreement in the ta'lik talak agreement and other agreements without violating Islamic law. Before and when the marriage is carried out, both parties enter into and make a written agreement. The Marriage Registrar ratifies the agreement, which contains the position of the property of both parties. Since the enactment of the Marriage Law in Indonesia, what is regulated in the Civil Code is no longer enforced except for those not regulated in the Marriage Law. Differences in the arrangement of marriage agreements in the Civil Code, Marriage Law, and KHI in the Constitutional Court Decision Number 69/PUU-XIII/2015, the arrangements regarding marriage agreements contained in the Marriage Law are amended that marriage agreements can not only be made before when the marriage takes place but can be made throughout the marriage.

After the issuance of the Constitutional Court Decision Number 69/PUU-XIII/2015 in Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it does not have binding legal force as long as it is not interpreted “At the time before it takes place or during the second marriage bond of both parties with mutual consent can submit a written agreement ratified by a marriage registrar or notary, after which the contents also apply to third parties as long as the third party is involved.” In this case, as long as the marriage agreement still binds them, both parties/husband and wife can submit directly to the marriage registrar or notary when there is a problem, such as the distribution of assets.

A marriage agreement is an agreement made by the prospective bride and groom at the time or before the marriage takes place (R. Soetojo Prawirohamidjojo dan Marthalena Pohan, 2008), and each promises to obey what is in agreement ratified by the marriage registrar. The marriage agreement must be made in written form and completed before the marriage takes place and comes into effect from when the marriage takes place. The agreement is placed on the marriage certificate. It is an inseparable part of the marriage certificate. The marriage agreement is made by mutual consent, made in writing, ratified by the civil registration officer, and does not conflict with law, religion, and decency. It is interesting to research with the title “The Urgency of Prenuptial Agreements for Husband and Wife in Indonesian Marriage Law.” (Efa Rahmatika & Khisni, 2017)

B. Formulation of the Problem

Based on the description of the background above, it can be concluded that there are two problems, namely as follows:

1. How is the prenuptial agreement on the separation of assets in marriage?
2. What is the urgency of a prenuptial agreement for husband and wife in marriage law in Indonesia?

C. Research Method

The research method used is normative juridical, namely legal research using library materials by analyzing various statutory provisions or using secondary data. The data sources used include secondary data consisting of primary legal materials, binding legal materials, secondary legal materials providing explanations for primary legal materials, and tertiary legal materials. These, namely, legal materials, provide explanations for primary and secondary legal materials. Normative legal research includes legal principles, legal systems, horizontal and vertical synchronization levels, legal comparisons, and legal history. (Soerjono Soekanto & Sri Mamudji, 1985) This research contains analytical descriptive by providing an overview, detailed and systematic explanation of a condition and phenomenon under study based on the legislation.

D. Discussion

1. Prenuptial Agreement on Separation of Wealth in Marriage

a. Definition of Prenuptial Agreement for Husband and Wife

Marriage agreements that are often also Prenuptial Agreements are generally rare in native Indonesian society because of the close kinship relationship and mutual trust between the prospective husband and wife. Marriage agreements are still considered taboo, which is still very rarely practiced in Indonesian marriages. The marriage agreement originally came from a Western society that has an individualistic and capitalistic nature. Individualistic because a marriage agreement recognizes the independence of the husband's property and wife's property. Capitalistic because the goal is to protect households from bankruptcy in the business world, meaning that if one party between husband and wife goes bankrupt, the other can still be saved. (R. Soetojo Prawirohamidjojo, 2003)

A prenuptial agreement is an agreement made before the marriage takes place and binds the two prospective brides who will be married. The content is about the

problem of 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 related to the property of each party to be able to distinguish which is the property of the prospective wife and which is the property of the future husband, in the event of a divorce or death in one of the spouses.

A prenuptial agreement is also known as a marriage agreement. If described etymologically, it can refer to two root words, covenant, and marriage. In Arabic, a promise or agreement is usually referred to as *uqud*, which can be interpreted as an agreement made by two or more parties, written or oral, each of whom agrees to comply with the contents of the agreement that has been made together. Usually, a prenuptial agreement is made for the sake of legal protection of each other's property, husband or wife. Indeed, in the beginning, prenuptial agreements were chosen by many upper-class people who had large inheritances.

The Marriage Agreement according to Law Number 1 of 1974 concerning Marriage is regulated in Chapter V, Article 29, namely: (Murdan, 2018)

- 1) At or before the marriage takes place, both parties with mutual consent may enter into a written agreement ratified by the Marriage Registrar, after which the contents shall also apply to third parties, as long as the third party is involved;
- 2) The agreement cannot be ratified if it violates the boundaries of law, religion, and morality;
- 3) The agreement takes effect from the time the marriage takes place;
- 4) As long as the marriage lasts, the agreement cannot be changed unless both parties agree to change and the change does not harm a third party.

The meaning in Article 29 is nothing but intended to make the marriage agreement, which is similar in meaning to Article 139 of the Civil Code, namely the approval of the separation of assets in a marriage.

In religion, especially Islam, it is stated in the Qur'an Surah Al-Baqarah verse (2) and the Hadith that every believer is bound by their respective agreements. That is, if a believer has made a promise, it must be carried out. A prenuptial agreement is not allowed if the agreement permits the unlawful and forbids the lawful, for example, a prenuptial agreement which contains, if the husband dies. They are not blessed with children, and the absolute inheritance falls to his wife. Whereas in Islam, the property of a husband who dies without having a child does not entirely fall to the wife, there are still siblings from the husband's side of the husband's parents who are still alive. (Putri, 2021)

Marriage is a contract, namely a noble engagement and agreement between husband and wife to build a happy household. As a bond and agreement, both parties are bound by the promises they made. Therefore, the marriage contract creates the rights and obligations of husband and wife. Marriage will give rise to rights and obligations between parents and children, children and their parents, as a noble and strong bond. As explained in the Qur'an, Surah An-Nisa verse (4) means, "How are you going to take it back, even though some of you have mixed (mixed) with others as husband and wife."

b. Prenuptial Agreement against Separation of Wealth in Marriage

Marriage agreements are not explained in Law Number 1 of 1974 concerning Marriage. The Civil Code does not state clearly and unequivocally the meaning of the marriage agreement and the contents of the marriage agreement itself. The marriage agreement in Law Number 1 of 1974 concerning Marriage is regulated in Chapter V and Article 29. Before the marriage takes place, both parties with mutual consent can enter into a written agreement legalized by the Marriage Registrar. The contents also apply to third parties as long as the third party is involved. According to Article 139 of the Civil Code, a prospective husband and wife can agree before marriage. The marriage agreement is an agreement between the future husband and wife to regulate the consequences of marriage on joint assets.

The Marriage Agreement is regulated in Law Number 1 of 1974 concerning Marriage. There is only 1 (one) article that discusses the marriage agreement, namely Article 29 of Law Number 1 of 1974 concerning Marriage which consists of 4 (four) paragraphs. The provisions of Article 29 of the Marriage Law are: (1) At or before the marriage takes place, the two parties with mutual consent may enter into a written agreement ratified by the marriage registrar, after which the contents also apply to the third party involved. (2) The agreement cannot be ratified if it violates the boundaries of law, religion, and morality. (3) The agreement comes into force from the time the marriage takes place. (4) As long as the marriage takes place, the marriage agreement cannot be changed unless there is an agreement to change it from both parties, and the change does not harm a third party.

The Prenuptial Agreement is regulated in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law (KHI). The following will explain further about the prenuptial agreement in Law Number 1 of 1974 concerning Marriage. The Prenuptial Agreement in Law Number 1 of 1974 concerning Marriage is regulated in Chapter V and Article 29, which consists of 4 paragraphs, as follows:

1. At or before the marriage takes place, the two parties with mutual consent may enter into a written agreement ratified by the marriage registrar, after which the contents shall also apply to third parties as long as the third party is involved.
2. The agreement cannot be ratified if it violates the boundaries of law, religion, and morality.
3. The agreement takes effect from the time the marriage takes place.
4. The agreement cannot be changed during the marriage unless there is an agreement to change from both parties and the changes are not binding on third parties.

The contents of the marriage agreement are regulated in Article 11, detailed by Articles 45 to 52 of the Compilation of Islamic Law (KHI), namely the two prospective brides can enter into a marriage agreement in the form of ta'lik talak and other agreements that do not conflict with Islamic law. According to Martiman Prodjohamidjodho, the agreement in Article 29 is much narrower because it only covers "Verbintenisseeen," which is based on approval only (overenkomsten) and acts that are not against the law, so it does not include "Verbintenisseeen uit dewet allen." It is said to be narrower because the marriage agreement in this law does not have ta'lik talak as contained in the marriage certificate.

Every marriage cannot be separated from the existence of the property, whether obtained before marriage, during the marriage or obtained during being husband and wife in a marriage bond. Law Number 1 of 1974 concerning Marriage distinguishes property in marriage which is regulated in Article 35, that:

- a) Property acquired during the marriage becomes joint property.
- b) The property obtained by each as a gift or inheritance is under the supervision of each as long as the parties do not specify otherwise.

The difference in the types of property in the marriage affects how the management is carried out. Joint assets are managed jointly by husband and wife. In operating the joint property, they can act with the consent of both parties.

2. The Urgency of the Prenuptial Agreement for Husband and Wife in Indonesian Marriage Law

a. Prenuptial Agreement for Husband and Wife in the Compilation of Islamic Law

The KHI regarding prenuptial agreements is regulated in Chapter VII Articles 45 to 52 concerning marriage agreements. Article 45 of the KHI states that “both prospective brides can enter into a marriage agreement in the form of a. Ta’lik talak; b. Another agreement that does not conflict with Islamic law.” This article contradicts Article 29 of Law Number 1 of 1974 concerning Marriage which states that “What is meant by an agreement in this article does not include “ta’lik talak.” In the form of other agreements that do not conflict with Islamic law.” The prenuptial agreement as described by Article 29 of Law Number 1 of 1974 concerning Marriage has been amended, or at least it is implemented that ta’lik talak is included as one of the marriage agreements in the Articles of Compilation of Islamic Law as described below:

1. The content of ta’lik talak must not conflict with Islamic law.
2. If the conditions required in the ta’lik talak occur later, it does not automatically fall into divorce. For a divorce to fall, the wife must submit the matter to the Religious Court.
3. The ta’lik talak agreement is not an agreement that must be held in every marriage, but once the ta’lik talak has been agreed, it cannot be revoked.

In paragraph (3), KHI above contradicts Article 29 paragraph (4) of Law Number 1 of 1974 concerning Marriage which states that as long as the marriage lasts, the agreement cannot be changed unless there is agreement from both parties and does not harm a third party. The explanation is attached to a copy of the marriage certificate which the husband has signed. The divorce agreement cannot be revoked. Implementing the marriage contract for the registrar needs to research the prenuptial agreement made by the two prospective brides, materially and the contents of the agreement, and technically how the agreement has been mutually agreed upon. As long as the agreement is in the form of ta’lik talak, the Minister of Religion has set it up. (Gesa, 2012)

In addition, both parties can make prenuptial agreements regarding joint assets and other matters as long as they do not conflict with Islamic law. Pre-marital agreements related to joint property issues and things that can be obtained during the marriage are explained in Article 47 of the KHI as follows:

- a) At or before the marriage takes place, the prospective bride and groom can make a written agreement that the marriage registrar ratifies regarding the position of property in the marriage.
- b) The agreement in paragraph 1 may include the mixing of personal assets and the separation of their respective livelihood assets as long as it does not conflict with Islam.
- c) In addition to the provisions in paragraphs 1 and 2 above, the agreement's contents may also stipulate the respective authority to make mortgage decisions on personal property, joint property, or company property.

The prenuptial agreement, according to KHI, is not only limited to the assets obtained during the marriage but includes the innate property of each husband and wife. Whereas what is meant by a prenuptial agreement on joint assets is a written agreement that the marriage registrar legalizes, the agreement is made by the prospective husband and wife to unite or separate their respective personal assets during the marriage, depending on what is agreed upon by the parties who made the agreement. The agreement's contents also apply to third parties to the extent that the third party is involved.

The prenuptial agreement made between the prospective husband and wife regarding the separation of joint property or property of the company may not eliminate the husband's obligation to continue to meet household needs. If after the agreement is made, it does not fulfill the provisions of the husband's debts to meet the needs of the household, according to Article 48 paragraph (2) of the KHI, "If a marriage agreement is made that does not meet the provisions in paragraph 1, it is considered that the separation of joint assets or property of the company is still going on with the husband's obligation to bear the costs of the household needs" is considered to continue to occur in the separation of joint assets or property of the company with the husband's obligation to continue to bear the costs of household needs.

Holding a written agreement ratified by the marriage registrar, after which the contents also apply to third parties as long as the third party is involved, then the validity of the prenuptial agreement is sufficient before the marriage registrar. The difference between Chapter VII of the Civil Code and Law Number 1 of 1974 concerning Marriage, Article 29 lies in third parties' validity and binding power. Third parties, as explained in Article 152 Chapter VII of the Civil Code concerning prenuptial agreements that do not apply to third parties before being registered at the Registrar's Office of the District Court in the area where the marriage takes place or if the marriage takes place abroad, then at the Registrar's Office where the marriage certificate is recorded.

After the marriage, the prenuptial agreement cannot be changed whatsoever (Article 149 of the Civil Code). If there is a divorce and then remarry, it should not be used as an excuse to change the prenuptial agreement first. (Yanggo T. Ehu Zaimah, 2004) Whereas in the KHI Article 47, that prenuptial agreements can be made as long as they do not conflict with Islamic law, for example, prenuptial agreements which regulate personal property, separation of their respective livelihoods, and determine each other's authority to enter into mortgage ties on personal property and joint property.

b. The Urgency of a Prenuptial Agreement for Husband and Wife in Indonesian Marriage Law

A prenuptial agreement is an agreement that regulates the consequences of a marriage in the field of property, as for the forms of prenuptial agreements that have been regulated in the Civil Code, which adheres to a system of mixing assets between husband and wife (*Aighele Gemeenscchap Van Goederen*) when the marriage occurs. Article 147 of the Civil Code states, “Prenuptial agreements must be made with a notarial deed and must be made before the marriage takes place. The prenuptial agreement comes into force at the time the marriage takes place.”

The form and content of the Marriage Agreement in the Marriage Law state that the prenuptial agreement in this article does not include *ta'lik talak*. In layman's terms and broadly speaking, prenuptial agreements can be classified into 2 (two) types: Pure Asset Separation Agreements and Congenital Assets Agreements. Pure Property Agreement, in the sense of completely separating all types of property of both parties during the marriage, including income earned, debts, and all kinds of assets, both obtained before the marriage and those obtained after the marriage.

Congenital Assets Agreement in this agreement which is the object of the agreement, is only the innate property belonging to the parties before being bound by the marriage rope. While the assets obtained after the marriage become a joint price (*gono-gini assets*), and routine family expenses are discussed together. There are three forms of marriage agreements that the prospective husband and wife can choose, namely: (Nurinayah, 2020)

1) Marriage Agreement with Mutual Profit and Loss

In Article 115 of the Civil Code it is stated: If in the marriage agreement by the two prospective husband and wife it is only agreed that in the union of profit and loss, then it means that such an agreement, in no way does the merger of assets apply entirely according to the law, after the union of husband and wife ends, all the gains to them that are obtained during the marriage must be divided between the two of them, just as both of them must bear all the losses.

2) Marriage Agreement With Mutual Results and Income

Regarding the togetherness of results and income (*gameenschap van vruchten en inkomsten*), the law only contains one article (Article 164 BW). The provisions in the marriage agreement determine that between husband and wife, there will only be joint results and income. According to the law, there will be no complete or complete togetherness, and there will be no joint profit and loss. Article 105 of the Civil Code stipulates that “every husband is the head of a husband and wife union. The husband must take care of the property as a good housewife and therefore is responsible for all negligence in the management.” In the Civil Code, the husband has a more significant role in the family so that the losses that arise in the practice of marriage agreements in the form of a union of results and income are borne by the husband.

3) The Elimination of Every Togetherness of Wealth

This form of the agreement requires a complete separation of the wealth of the prospective husband and wife throughout the marriage, so the marriage

agreement made must state that between the future husband and wife, there will be no mixing of assets, and it is expressly stated that there is no profit and loss union. Meanwhile, the contents of the prenuptial agreement are left to the prospective couple who will marry on the condition that the contents do not conflict with public order, morality, law, and religion, as explained above. The prenuptial agreement is a form of agreement, so it is included in the contract law book III of the Civil Code, as Article 1338: parties who promise to be free to make agreements as long as they do not violate decency, public order, and the law.

The Marriage Law is regulated according to the pattern adopted by customary and Islamic law. Namely, innate assets and assets obtained as gifts or inheritance remain under the control of each husband and wife, while the joint assets are only property acquired during the marriage (Article 35 of Law Number 1 of 1974 concerning Marriage) through a prenuptial agreement, husband and wife can deviate from the provisions of the marriage law above and if desired can make an agreement to mix personal assets, as follows:

- a) All personal assets both obtained before the marriage and during the marriage.
- b) Only limited to personal property when the marriage is carried out (personal assets obtained during the marriage remain the property of each party). On the other hand, mixing personal property is only when the marriage takes place (innate property/personal property before the marriage takes place belongs to each).

In the KHI, as already mentioned in Article 29 of Law Number 1 of 1974 concerning Marriage, it is stated that the agreement in the article does not include ta'lik talak. In the Regulation of the Minister of Religion Number 3 of 1975, Article 11 mentions one contradictory rule:

- 1) Prospective husband and wife can enter into a marriage agreement as long as it does not conflict with Islamic law.
- 2) An agreement in ta'lik talak is considered valid if the agreement is pronounced and signed by the husband after the marriage contract is held.
- 3) The Sighat ta'lik talak is determined by the Minister of Religion. In addition to the form of a ta'lik talak marriage agreement, the Compilation of Islamic Law also regulates the form of a marriage agreement concerning the mixing of personal assets and the separation of livelihood assets.

The content of the prenuptial agreement is crucial for the common good between the two parties, both based on Law Number 1 of 1974 concerning Marriage and based on the Compilation of Islamic Law. The contents of a prenuptial agreement can involve all matters that do not conflict with the agreement's provisions in general. Only the agreement was approved in front of the marriage registrar. According to Abdul Kadir Muhammad, the contents of the marriage agreement as regulated in Law Number 1 of 1974 concerning Marriage can know everything, as long as it does not violate the boundaries of law, religion, and decency. (Damanhuri H. R, 2014) The contents of the marriage agreement include a. the pooling of the assets of husband and wife; b. Control, supervision, and care of the wife's property by the husband; c. Wife or husband continue to study together. In marriage, husband and wife agree to carry out family planning.

The arrangement of the marriage agreement is contained in 3 (three) statutory products, namely the Civil Code, the Marriage Law, and the KHI. The Civil Code concerning marriage agreements is generally contained in the provisions of Article 139 to Article 154. Both parties have the right to deviate from the requirements of the law relating to the union of assets, as long as the agreement does not violate good social order. (Hilman Hadikusuma, 2007) The Civil Code requires that the marriage agreement must be made notarial, including its amendments; otherwise, the marriage agreement will be threatened with nullification by law. Regarding changes to the contents of the marriage agreement, it must also be made in the form of a deed and is the same as the marriage agreement that has been made before.

The marriage agreement is valid since the marriage took place with legal consequences for both parties, including third parties involved in the marriage agreement. The marriage agreement, according to Article 29 of the Marriage Law, is:

1. During or before the marriage takes place, and both parties can make a written agreement with mutual consent ratified by the Marriage Registrar.
2. A marriage agreement cannot be ratified against the law, religion, and decency.
3. The agreement is valid since the marriage is carried out or held.
4. As long as the marriage lasts, the agreement cannot be changed, except by agreement of both parties.

The arrangement of the marriage agreement in the Civil Code with Law Number 1 of 1974 concerning Marriage, namely:

1. The Civil Code stipulates that making a marriage agreement must not conflict with decency and public order. In the Marriage Law, the marriage agreement must not violate the law, religious rules, or morality.
2. The Civil Code requires the marriage agreement to be made in a notary deed, while the law does not require the marriage agreement to be made in a notary deed but only by a written agreement.
3. In the Civil Code, the entry into force of a marriage agreement to a third party since it is recorded in a general register in the District Court where the marriage is held, while in the Marriage Law, a marriage agreement applies to a third party from the moment it is recorded and the civil registry office's marriage registrar ratifies the agreement.
4. The Civil Code regulates that marriage agreements are made prenuptial, while the Marriage Law regulates that marriage agreements can be made at or before marriage.
5. The Civil Code stipulates that changes to the marriage agreement may not be made after the marriage. Meanwhile, Law Number 1 of 1974 concerning Marriage specifies that after the marriage takes place, the marriage agreement cannot be changed unless both parties agree to make changes without causing harm to the third parties involved in the marriage agreement.

Property or property in marriage as regulated in the Civil Code is also different from Law Number 1 of 1974 concerning Marriage. The Civil Code applies unanimous property union to the wealth of husband and wife since the marriage took place. Unity assets can be in the form of immovable objects (fixed objects) such as land, houses, and movable objects such as shares, gold, and others. If a

prospective husband and wife do not make a prenuptial agreement, then by law, the husband and wife's assets become joint property without having to make a surrender or a legal action. This unanimous union of assets has legal consequences, namely all legal actions against these assets must be carried out jointly by husband and wife. The husband is given the authority to manage the unanimous property union and must carry out a legal action with the wife's approval.

Law Number 1 of 1974 concerning marriage regulates innate property (personal property) and joint property. Congenital assets have existed since prenuptial brought by each husband and wife into marriage, including gifts, grants, and inheritance obtained by each partner either before or during the marriage. In marriage law in Indonesia, a prenuptial agreement is an agreement on the separation of assets in the marriage or an agreement that regulates the limits of each individual's responsibility.

The prenuptial agreement is made in writing before a notary and legalized by the Office of Religious Affairs (KUA). Since the decision of the Constitutional Court Number 69/PUU-XIII/2015, the meaning of the marriage agreement has been increasingly relaxed so that a marriage agreement can not only be made before, during the marriage but can be made as long as it is within the marriage bond, as long as it does not violate the applicable legal rules, religious rules, and moral norms. In a marriage agreement, both husband and wife can express their will and agree to unite and separate assets.

The husband and wife have complete control of these innate assets and have the full right to carry out legal actions without the spouse's consent. Meanwhile, the joint property, which is commonly known as gono gini property, is property obtained by a husband and wife during their marriage apart from the assets of the two spouses. Joint assets, husband and wife, can take legal actions with the consent of the spouse. Legal action on the joint property cannot be carried out without the consent of the spouse.

E. Closing

Based on the description of the discussion above, it can be concluded as follows:

1. Both parties carry out a prenuptial agreement on the separation of assets in a marriage with mutual consent, which can enter into a written agreement ratified by the marriage registrar and also applies to third parties as long as the third party is involved. The agreement cannot be valid if it violates the boundaries of law, religion, and morality. The agreement takes effect from the time the marriage takes place. The agreement cannot be changed during the marriage unless there is an agreement to change from both parties and the changes are not binding on third parties. After the marriage agreement is made, it can minimize the occurrence of disputes when the marriage breaks up.
2. The urgency of a prenuptial agreement for husband and wife in marriage law in Indonesia is made by the two prospective brides at the time before the marriage takes place, and each promises to comply with what is stated in the agreement, which is ratified by the prenuptial agreement by the marriage registrar. In marriage law in Indonesia, a prenuptial agreement on the separation of assets in the marriage. The prenuptial agreement is made in writing in front of a notary and ratified by the Office of Religious Affairs

(KUA). Since the decision of the Constitutional Court Number 69/PUU-XIII/2015, the meaning of a marriage agreement can not only be made before, during the marriage. Still, it can be made as long as it is within the marriage bond, as long as it does not violate the applicable legal rules, religious rules, and moral norms. Husband and wife can express their will and agree on assets to carry out the pooling of assets and separation of assets.

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