

Legal Analysis of Legal Protection of Assets in Marriage Agreements Due to Divorce

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Abstract

Legal protection of assets in a marital agreement due to divorce is regulated in Law Number 1 of 1974 concerning Marriage, which allows couples to make a written agreement (marriage agreement) to regulate their assets, including assets, before or during marriage. This study aims to analyze the Legal Protection of Assets in Marital Agreements Due to Divorce. This study uses a normative juridical method with a regulatory approach, legal literature, and case studies of decisions related to marital assets and divorce. Data were obtained through literature review and explained descriptively-analytical, namely describing and explaining and analyzing facts through a regulatory approach. The results of this study indicate that, in principle, Law Number 1 of 1974 concerning Marriage adheres to the principle of unity of property. Marriage agreements are still rarely implemented in the general Indonesian community due to the perception that they are taboo, selfish, and materialistic, as well as a lack of understanding of their benefits and legal basis. Legal protection for assets in a marriage agreement during divorce is a specific regulation regarding inherited and joint assets, which provides legal certainty to each party to protect personal assets from division. The form of legal settlement for assets in a marriage agreement when a couple depends on the contents of the agreement and applicable law, such as the Civil Code or the Compilation of Islamic Law. If there is no agreement, joint assets are divided equally. However, if there is a marriage agreement, such as a separation of assets agreement, then assets will be divided according to the agreement.

Keywords: Legal Protection, Assets, Marriage Agreement, Divorce.

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Introduction

Paragraph (2) states that “*every marriage shall be registered in accordance with the prevailing laws and regulations.*” Therefore, for a marriage to be legally valid, in addition to meeting religious requirements, it must also be registered with the authorized Marriage Registrar so that the marriage obtains legal force and can serve as evidence recognized by the State (Sandy, 2019).

Legal protection of assets in a marital agreement due to divorce is governed by Law Number 16 of 2019 on Marriage, which allows couples to make a written agreement (marital agreement) regulating their assets including limitations on property either before or during the marriage (UU 16/2019). This agreement becomes effective after approval by the Marriage Registrar and separates each spouse’s individual property while also regulating joint assets to prevent disputes during divorce. However, the agreement must not contradict morality, public order, or statutory rights. Law Number 16 of 2019 is an amendment to the Marriage Law that raises the minimum marriage age to 19 for both men and women, aiming to protect children from the negative effects of early marriage and to harmonize the marriageable age of both genders. Parents may apply for a court dispensation if there are urgent circumstances supported by sufficient evidence.

Divorce itself is defined as the dissolution of a marital relationship between husband and wife through a series of procedures regulated by law and religious principles. The division of joint property after divorce is regulated by the Marriage Law and the Compilation of Islamic Law (KHI) for Muslims, which generally stipulates that joint property must be divided equally (50% each). However, the division may also be conducted through deliberation or negotiation; if no agreement is reached, the court may decide by considering factors such as each spouse’s contribution and economic condition to ensure proportional fairness. Individual property (owned before marriage, or obtained as gifts or inheritance) does not constitute joint property. *Harta gono-gini* refers to property acquired during the marriage and must be divided. In general, joint property must be equally divided between husband and wife. However, this provision does not apply if the couple has entered into a property-separation agreement approved before or at the time of marriage (Salsiah et.al, 2024).

The Indonesian Civil Code (KUHPdata) states that marriage results in a universal community of property, meaning that all assets owned by each spouse whether brought into the marriage or acquired during the marriage become joint marital property (KUHPdata). Nevertheless, couples are allowed to deviate from this arrangement by making a marital agreement prior to the marriage. This deviation is regulated in Constitutional Court Decision No. 69/PUU-XIII/2015, which interprets Article 29 paragraphs (1), (3), and (4) of the Marriage Law.

The importance of a marital or prenuptial agreement lies in providing legal certainty, protecting personal assets, ensuring transparent financial arrangements, minimizing potential disputes in the future, and offering a sense of security for both spouses. Despite negative perceptions, such agreements are important especially for individuals who own businesses, personal assets, or have existing debts prior to marriage, as they clarify financial expectations and long-term goals (Rahmayanti, 2023).

Marital agreements generally regulate the mixing or separation of assets and may be made either before or during the marriage. They may also contain *ta’lik talak* (a conditional divorce statement) declared after the marriage contract or written separately (Thea, 2021). However, marital agreements are still uncommon in Indonesia because many people consider them taboo. Only a small number of Indonesians recognize the importance of written marital agreements, despite their legal function in protecting individuals from potential claims that may arise during divorce or upon the death of a spouse (Ismaidar, 2023). When marital property is not regulated

through an agreement, disputes may arise during divorce, particularly concerning the division of *harta gono-gini*.

Prenuptial agreements remain unfamiliar in Indonesia because they are perceived as taboo and contrary to Eastern cultural values, which view marriage as a sacred bond of love rather than a financial arrangement or anticipation of divorce. The general public also lacks understanding of the importance and benefits of marital agreements, resulting in their adoption mainly among certain groups such as entrepreneurs and public figures. Limited legal awareness and insufficient public education further contribute to this issue (Oscar L. et.al, 2020). These perceptions also arise from the belief that such agreements appear selfish, materialistic, or suggest a prediction of divorce ideas that contrast with Eastern cultural views of marriage as a sacred union that should not involve financial calculations.

Based on the above background, the formulation of the research problems is as follows:

1. How can a marital agreement serve as a preventive measure to avoid divorce and disputes over *harta gono-gini*?
2. How is a marital agreement created as a form of asset protection for each party, preventing divorce and maintaining professionalism, relationships, and the image of the married couple?
3. What is the form of legal protection for assets in a marital agreement in the event of divorce?

The purpose of this study is to analyze legal protection of assets in marital agreements due to divorce (Rabbani, nd). With a marital agreement in place, disputes concerning marital assets can be resolved properly because there is written evidence specifying the party entitled to the property. Issues regarding the division of joint assets after divorce can be seen, for example, in Decision No. 304/Pdt.G/2024/PA.Mlg, where a divorcing couple disputed the division of joint property, leading to a cassation request by one party who felt disadvantaged (Zulfani, 2015). Such disputes may occur due to the absence of a marital agreement governing joint assets.

Method

This research uses a qualitative descriptive method. The qualitative approach analyzes the research results by collecting descriptive data, including written and oral data, as well as actual behavior, which is thoroughly researched and studied. This research uses a normative juridical method with a statutory regulatory approach, legal literature, and case studies of court decisions related to marital property and divorce. Data were obtained through a literature review and analyzed descriptively and analytically, describing, explaining, and analyzing the facts through a statutory regulatory approach (Ali, 2022).

The materials used in this research are:

1. Primary legal materials, namely binding legal materials, including Law Number 16 of 2019, Law Number 39 of 1999 concerning Human Rights, and the Compilation of Islamic Law (KHI). Secondary legal materials consist of legal materials that can explain primary law, such as books.
2. Tertiary law, namely law that provides guidance or meaningful explanations of primary and secondary legal materials, such as dictionaries, encyclopedias, and others.

Results

3.1 Prenuptial Agreements as a Preventive Measure to Avoid Disputes Over Joint Property (Harta Gono-Gini)

In principle, Law Number 16 of 2019 on Marriage adheres to the principle of *unity of property*. According to Abdul Kadir Muhammad, the concept of joint property as part of marital

assets can be examined from both economic and legal perspectives. Although these perspectives differ, they remain interconnected, with the economic view focusing on the legal rules that govern property relations. This provision emphasizes that even if only one spouse works, ownership of property during the marriage is held jointly by both husband and wife, including responsibility for debts incurred during the marriage. Once a marriage has taken place, all property acquired both before and after the marriage functions as the economic foundation of the household.

Joint property, or *harta gono-gini*, acquired during the marriage is divided between former spouses. This division is generally carried out equally (fifty-fifty) in accordance with the Marriage Law. However, the division may be unequal if there is a prenuptial or marital agreement, or if the court considers factors such as each spouse's contribution or legal reasons such as domestic violence (KDRT), in line with the principle of fairness. The legal basis for the division of joint property is found in Article 35(1) of the Marriage Law, which states that property acquired during the marriage constitutes joint marital property.

The main principle is equal distribution of property after divorce, unless a marital agreement stipulates otherwise or special circumstances justify a different distribution based on contributions. Property acquired before the marriage, or obtained as gifts or inheritance, remains the individual right of each spouse. The court may decide on an unequal division if one spouse has contributed significantly more to the acquisition of joint property, or if legal grounds such as domestic violence are present.

The division of joint property is also guided by "the applicable law," which may refer to religious law, customary law, or other relevant legal frameworks. If no mutual agreement is reached, the court determines the division. Factors influencing the division include each spouse's contribution to the household such as income generation and domestic duties and whether a prenuptial agreement exists specifying separation of assets. Acts of domestic violence affecting the physical or psychological condition of one spouse may also influence the court's decision to deviate from equal distribution.

The legal basis for the division of joint assets under Law Number 16 of 2019 includes Article 35(1), which defines joint property; Article 36(1), which states that actions upon joint property require mutual consent; and Article 37, which regulates the division of joint property upon divorce.

3.2 Regulations Concerning Prenuptial Agreements in Indonesia

Marriage is a social institution that holds significant importance, as it legalizes the relationship between a man and a woman. Once a marriage takes place, property functions as the support for both spouses' lives. Assets may be acquired before or during the marriage. If a divorce occurs, individual property is returned to each spouse, whereas joint property is governed by applicable customary law if no marital agreement exists. The concept of individual property can be examined legally and economically; although these perspectives differ, they are interconnected. Legally, the focus lies on statutory regulations, whereas economically it emphasizes the utility or value of the property.

Prenuptial agreements remain uncommon in Indonesian society due to the perception that they are taboo, selfish, and materialistic, and because many people lack understanding of their benefits and legal basis. The romantic atmosphere before marriage also makes couples reluctant to discuss such matters, preventing them from realizing the preventive function of marital

agreements in protecting their rights and future assets, both during the marriage and in the event of divorce.

One major reason for the rarity of prenuptial agreements is that they are often viewed as a sign of distrust or pessimism toward the relationship, which contradicts the sacred and collective values of marriage. Moreover, the general public lacks clarity regarding what a marital agreement is, how it works, and the legal foundations governing it. The romantic euphoria before marriage also discourages couples from discussing potential issues such as future asset division.

The perception that marital agreements deal only with money often results in negative views, although such agreements can also regulate responsibilities and child-related matters. Technical difficulties with reporting or registering marital agreements after the wedding ceremony can also pose challenges. Despite these issues, marital agreements provide several benefits, such as separating each spouse's assets and debts ensuring that one spouse is not affected by the other's financial problems or insolvency and protecting individual property. They also function as legal guidelines for defining rights and obligations within the marriage and serve as a foundation for resolving disputes over property after divorce. Marital agreements may also be designed to protect the interests of spouses and children, especially regarding financial responsibilities and child education.

3.3 Legal Protection of Assets in Marital Agreements Due to Divorce

Article 119 of the Civil Code (KUHPerdata) defines marriage as resulting in a universal community of property, meaning that in marital relations there is essentially only one form of wealth: joint marital property. Deviation from this principle is allowed under Article 139 of the Civil Code, which grants spouses the right to create a marital agreement regulating their property separately, provided it does not violate morality or public order. Marital agreements that deviate from full community of property are typically made by couples with significant economic disparities, or when one spouse may be marrying with the intention of gaining financial advantage, or when one or both spouses have substantial debts prior to marriage.

Such marital agreements are created to avoid the risk of the other spouse's property being seized due to debt. The Civil Code contains the principle that both parties have the freedom to determine the content of their marital agreement. Article 139 allows the parties to deviate from statutory provisions on joint property as long as such deviations do not conflict with morality or public order. A marital agreement whether under the Civil Code or the Marriage Law is essentially an agreement regarding marital assets during the marriage that differs from the statutory principle of joint property.

Legal protection of assets in a marital agreement during divorce is provided through specific arrangements regarding individual and joint property, offering legal certainty and protecting personal assets from being subject to equitable distribution. This protection consists of a written agreement made before or during the marriage, which may include full separation of assets or alternative arrangements for managing joint property, as long as these do not violate morality or public order.

Article 29 of the Marriage Law and Article 139 of the Civil Code allow couples to make a marital agreement stating that assets brought into the marriage remain the personal property of each spouse. Such an agreement prevents individual property from becoming joint property and ensures that personal assets are not liable for the other spouse's debts. Couples may agree

to complete separation of assets, ensuring that all property acquired during marriage does not become joint property (*harta gono-gini*). This may include pure separation or regulation of income and profits acquired during marriage. A marital agreement may also explicitly define how joint property should be divided in the event of divorce, even if the arrangement differs from the equal division provided under general law.

Discussion

In principle, Law Number 16 of 2019 on Marriage adheres to the principle of *unity of property*. According to Abdul Kadir Muhammad, the concept of joint property as part of marital assets can be examined from both economic and legal perspectives. Although the economic and legal viewpoints differ, they remain interconnected, with the economic perspective emphasizing the legal rules governing property relations.

Prenuptial agreements are still rarely implemented in Indonesian society due to perceptions that they are taboo, selfish, and materialistic, as well as a general lack of understanding regarding their benefits and legal foundations. Furthermore, the romantic atmosphere before marriage often discourages couples from discussing matters related to such agreements, causing many to overlook their preventive role in protecting rights and assets in the future, whether during the marriage or in the event of separation or divorce.

Legal protection of assets in a marital agreement during divorce refers to specific arrangements concerning individual and joint property, which provide legal certainty for both parties and protect personal assets from being subject to division. This protection is realized through a written agreement approved before or during the marriage, which may take the form of complete asset separation or alternative arrangements for dividing joint property, as long as they do not violate morality or public order.

The method of resolving issues related to marital property depends on the contents of the marital agreement and the applicable law, such as the Civil Code (KUHPerdata) or the Compilation of Islamic Law (KHI). If no agreement exists, joint property is divided equally between the spouses. However, if a marital agreement such as a separation-of-assets agreement has been executed, the division of property follows the terms agreed upon by the parties. Dispute resolution may be conducted amicably before a notary or, in the event of conflict or invalidity, through litigation in court.

Conclusion

A prenuptial agreement serves as a preventive measure to avoid disputes over joint property (*harta gono-gini*) by providing legal clarity regarding individual property (*harta bawaan*) and joint marital property. It minimizes conflict during divorce or death and is executed in an authentic notarial deed, regulating the separation or mixing of assets. The agreement is legally binding under Article 1338 of the Indonesian Civil Code (KUHPerdata).

Regulations governing prenuptial agreements in Indonesia are found in Article 29 of the Marriage Law (Law No. 1 of 1974 and its amendments) and Article 139 of the Civil Code, which allow prospective spouses to create a written agreement concerning property prior to marriage. The agreement must be approved by a notary and registered with the marriage registrar to be legally recognized.

Legal protection for assets within a marital agreement in the event of divorce is achieved through specific asset arrangements agreed upon by the parties. These arrangements are legally

valid and binding as long as they do not violate morality, public order, or fundamental family rights, such as parental authority. This ensures transparency and safeguards individual assets from compulsory distribution.

Recommendations

1. Unmarried couples should ensure that their marital agreement explicitly states the separation of assets, including both premarital property (assets owned prior to marriage or obtained through inheritance/gifts) and property acquired during the marriage.
2. Couples should be informed that a marital agreement must be executed in the form of a notarial deed to be legally valid, in accordance with Article 29 of the Marriage Law and Constitutional Court Decision No. 69/2015.
3. The agreement must clearly emphasize that premarital property and assets obtained through inheritance or gifts remain individual property, not part of joint marital property. Couples should be encouraged to involve a notary in drafting the agreement to ensure compliance with applicable legal provisions.

References

- [1] -, Gianni Fathin Rabbani. "Konstruksi Makna Nikah Muda Pada Pasangan Nikah Muda Di Jawa Barat." *Bandung Conference Series: Public Relations*, 2022. <https://doi.org/10.29313/bcspr.v2i2.4651>.
- [2] Ali, Zainuddin. *Metode Penelitian Hukum*, Jakarta. Sinar Grafika, 2022.
- [3] Alvandi, Agung, Nasya Aliyyah Putri, Yusabbihi Zafarina Sadiyah, Yohanes, and Muhammad Dhava Dienullah. "Akibat Hukum Perceraian Dalam Perkawinan Campuran Antar Warga Negara." *Indonesian Journal of Law and Justice*, 2024. <https://doi.org/10.47134/ijlj.v1i4.2132>.
- [4] Binti, Nur Amanina Fahami. "Nikah Siri Dan Implikasinya Terhadap Pembagian Harta Bersama Menurut Enakmen Keluarga Islam Negeri Kedah." *Skripsi Universitas Islam Negeri Ar-Raniry Darussalam-Banda Aceh*, 2018.
- [5] Djuniarti, Evi. "Perkawinan 'Pada Gelahang' Serta Aspek Hukum Pembagian Harta Warisannya Di Bali." *Jurnal Penelitian Hukum De Jure*, 2020. <https://doi.org/10.30641/dejure.2020.v20.459-471>.
- [6] Gowasa, Dodo Faebolo, Dina Andiza, and Mochammad Erwin Radityo. "Akibat Hukum Perceraian Terhadap Anak Ditinjau Menurut Hukum Perdata." *Nusantara : Jurnal Ilmu Pengetahuan Sosial* 11, no. 8 (2024). <https://doi.org/https://doi.org/10.31604/jips.v11i8.2024.3457-3470>.
- [7] Isa Indrawan, Muhammad, Bhakti Alamsyah, Irma Fatmawati, Samrin, Rusiadi, Sri Shindi Indira, Surya Nita, et al. "UNPAB Lecturer Assessment and Performance Model Based on Indonesia Science and Technology Index." In *Journal of Physics: Conference Series*, 2019. <https://doi.org/10.1088/1742-6596/1175/1/012268>.
- [8] Ismaidar, Ismaidar, and Rahmayanti Rahmayanti. "Legal Protection for Children as Victims of Domestic Violence." *Randwick International of Social Science Journal*, 2023. <https://doi.org/10.47175/rissj.v4i1.628>.
- [9] Lontoh, Frederich Oscar L., Hendrick Lusikooy, and Jonathan Octavianus. "Pandangan Gereja Di Indonesia Terhadap Perjanjian Pra-Nikah." *THRONOS: Jurnal Teologi Kristen*, 2020. <https://doi.org/10.55884/thron.v1i1.8>.
- [10] Mukti, Fajar, and Yulianto Achmad. *Dualisme Penelitian Hukum : Normatif Dan Empiris*. 1st ed. Yogyakarta: Pustaka Pelajar, 2010.
- [11] Nurdin, Abidin. "Pembagian Harta Bersama Dan Pemenuhan Hak-Hak Perempuan Di Aceh Menurut Hukum Islam." *El-USRAH: Jurnal Hukum Keluarga*, 2020. <https://doi.org/10.22373/ujhk.v2i2.7652>.
- [12] Pintabar, Andar Jimmy, Fitri Rafianti, and Yasmirah Mandasari Saragih. "Health

- Services for Prisoners With Tuberculosis in a Class II B Community Institution , Sintang,” no. 22 (2024): 136–41.
- [13] Pintabar, Andar Jimmy, Fitri Rafianti, Yasmirah Mandasari Saragih, Magister Hukum, and Universitas Panca. “Implementasi Sistem Pelayanan Kesehatan Terhadap Pemenuhan Hak Kesehatan Bagi Warga Binaan Pemasyarakatan” 7, no. 1 (2024): 475–89.
- [14] Putri, Elfirda Ade, and Windy Sri Wahyuni. “Penyelesaian Sengketa Harta Bersama Setelah Perceraian Dalam Hukum Positif Di Indonesia.” *JURNAL MERCATORIA*, 2021. <https://doi.org/10.31289/mercatoria.v14i2.5692>.
- [15] Fitri Rafianti. “Pemberian Izin Poligami Oleh Pengadilan Agama Di Indonesia.” *DE LEGA LATA: Jurnal Ilmu Hukum*, 2019. <https://doi.org/10.30596/dll.v4i1.3167>.
- [16] Rahmayanti, Rahmayanti, and Ismaidar Ismaidar. “Pengaruh Kekerasan Dalam Rumah Tangga (KDRT) Terhadap Tingkat Keharmonisan Keluarga.” *Randwick International of Social Science Journal*, 2023.
- [17] Rouf, ABD, and Nynda Fatmawati Octarina. “Perjanjian Perkawinan Dalam Upaya Perlindungan Hak-Hak Perempuan.” *Concept: Journal of Social Humanities and Education* 3, no. 2 (2024): 146–51. <https://doi.org/10.55606/concept.v3i2.1215>.
- [18] Salsiah, Lia, Elfirda Ade Putri, and Ika Dewi Sartika Saimima. “Perjanjian Perkawinan Dan Akibat Hukumnya Atas Harta Bersama.” *Jurnal Hukum Sasana* 10, no. 2 (2024): 181–90. <https://doi.org/10.31599/sasana.v10i2.3505>.
- [19] Sendy, Beby. “Hak Yang Diperoleh Anak Dari Perkawinan Tidak Dicatat.” *Jurnal Hukum Responsif FH UNPAB* 7, no. 7 (2019): 1–13.
- [20] Sumarno, Ismaidar, Abdullah Syafi, and Dwintoro. “Legal Study on the Criminal Liability Offenders of the Environment.” *International Journal of Civil Engineering and Technology*, 2018.
- [21] Sumaryono, Qadryan R. “Kewenangan Notaris Dalam Membuat Akta Perjanjian Perkawinan Menurut UU No. 2 Tahun 2014 Jo. UU No. 30 Tahun 2004 Tentang Jabatan Notaris.” *Lex Privatum*, 2017.
- [22] Tarigan, Rolina Dedi Br. “Tinjauan Yuridis Terhadap Harta Sebelum Dan Sesudah Perkawinan Pasca Terjadinya Perceraian.” *JURNAL RECTUM: Tinjauan Yuridis Penanganan Tindak Pidana*, 2021.
- [23] Thea, Ady. “Perjanjian Pranikah Demi Melindungi Pasangan Suami-Istri.” <https://www.hukumonline.com/>, 2021. <https://www.hukumonline.com/berita/a/perjanjian-pra-nikah-demi-melindungi-pasangan-suami-istri-lt609b6d57ad308/>.
- [24] Zulfiani. “PERLINDUNGAN HUKUM TERHADAP PENGUASAAN HARTA BAWAAN DAN HARTA BERSAMA SETELAH PERCERAIAN MENURUT UU NO. 1 TAHUN 1974 TENTANG PERKAWINAN BERBASIS KEADILAN.” *Jurnal Pembaharuan Hukum*, 2015.