

MARRIAGE AGREEMENT: IS IT A SOLUTION OR A DILEMMATIC

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ABSTRAK

Pada penelitian yang dilaksanakan mengkaji konsep dan implementasi perjanjian pranikah dalam konteks hukum di Indonesia, secara khusus dalam Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan dan Kompilasi Hukum Islam. Perkawinan di Indonesia pada dasarnya diakui sebagai ikatan lahir batin antara seorang pria dan wanita dengan tujuan membentuk keluarga yang bahagia dan kekal berdasarkan Ketuhanan Yang Maha Esa. Seiring perkembangan zaman, perjanjian pranikah mulai dianggap penting oleh sebagian pasangan, terkhusus yang memiliki kekayaan signifikan atau kewajiban finansial tertentu. Perjanjian ini diatur dalam Pasal 1320 Kitab Undang-Undang Hukum Perdata yang mensyaratkan kesepakatan, kecakapan, objek tertentu, dan sebab yang halal. Putusan MK 69/2015 memperluas cakupan perjanjian pranikah sehingga dapat dibuat sebelum atau selama perkawinan. Selain itu, Kompilasi Hukum Islam juga mengatur perjanjian perkawinan, termasuk taklik talak dan perjanjian lainnya yang tidak bertentangan dengan syariat Islam. Meskipun demikian, perjanjian pranikah masih dianggap tabu dan menimbulkan perdebatan mengenai keefektifannya. Beberapa pihak berpendapat bahwa perjanjian ini dapat menimbulkan prasangka buruk terhadap keutuhan pernikahan. Namun, perjanjian pranikah diakui dapat memberikan rasa aman dan kesadaran tentang hak dan kewajiban dalam pernikahan. Penelitian ini bertujuan untuk mengeksplorasi apakah perjanjian perkawinan merupakan solusi atau dilematis dalam kehidupan rumah tangga, dengan mempertimbangkan berbagai pandangan dan implikasi hukum yang ada.

Kata Kunci: *Hukum Islam, Perkawinan, Perjanjian Pra-nikah*

ABSTRACT

The research carried out examines the concept and implementation of prenuptial agreements in the legal context in Indonesia, specifically in Law Number 1 of 1974 concerning Marriage and the Compilation of Islamic Law. Marriage in Indonesia is basically recognized as an inner and outer bond between a man and a woman with the aim of forming a happy and eternal family based on the belief in the Almighty God. As time goes by, prenuptial companies are starting to be considered important by some couples, especially those who have significant wealth or certain financial obligations. This agreement is regulated in Article 1320 of the Civil Code which requires agreement, skill, certain objects and lawful causes. MK Decision 69/2015 expands the scope of prenuptial agreements so that they can be made before or during marriage. Apart from that, the Compilation of Islamic Law also regulates marriage agreements, including divorce agreements and other agreements that do not conflict with Islamic law. Despite this, prenuptial agreements are still considered taboo and have raised issues regarding their effectiveness. Some parties argue that this agreement can prejudice the integrity of the marriage. However, a prenuptial agreement is recognized as providing a sense of security and awareness of the rights and obligations in marriage. This research aims to explore whether a marriage agreement is a solution or a dilemma in domestic life, by considering various views and existing legal enforcement.

Keywords: *Islamic Law, Marriage, Pre-nuptial Agreement*

PENDAHULUAN

Every human being on this earth has the right to form a household through marriage and continue their offspring in accordance with the regulations in force in that country. In Indonesia, marriage is regulated in Law Number 1 of 1974 concerning Marriage. This law provides a definition of marriage in Article 1, namely that marriage is a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty Godhead. Marriage is sunnatullah and is one way for humans to tie a bond so that it becomes a halal relationship. Marriage is a bond between a man and a woman which is carried out through a verbal process and witnessed by witnesses or what is often known as Ijab Qabul, so that the relationship becomes legal and halal according to Islamic teachings and halal in the eyes of Allah, Allah ordains marriage. as one way to establish a relationship between a man and a woman so that there is order in living life. The formulation of marriage principles in the Compilation of Islamic Law is a development of marriage law, because the position of the Compilation of Islamic Law itself is an explanation of marriage law.

Although the Compilation of Islamic Law remains anticipatory towards developments and demands of times such as the current modern era. However, as time goes by, some people interpret marriage as a contractual bond between one human being and another human being. So a prenuptial agreement is considered important for some people, usually for those who have a greater amount of assets on one party, both have quite large incomes, each party has their own business in this case the agreement is made so that the other party is not involved if the other party is bankrupt, and one or both parties have debts before the marriage and want to be responsible themselves.

When making a prenuptial agreement, of course it must fulfill the conditions for the validity of the agreement. These are agreement, skill, certain things and a lawful cause, as specified in Article 1320 of the Civil Code. By fulfilling the four conditions for the validity of the agreement, an agreement becomes valid and legally binding for the parties making it. An agreement in Islamic law is valid if it fulfills the terms and conditions. Rukun is something that must be in the contract. Meanwhile, conditions are requirements that must be fulfilled by these pillars. The agreement made by the prospective bride and groom must not violate the boundaries prohibited by Islamic law. Apart from that, the agreement must also be made on the basis of mutual agreement between the prospective groom and the prospective bride, meaning that it is not carried out due to coercion from either party.

According to the Marriage Law, a marriage agreement can be made and executed at the time of the marriage or before the marriage. The agreement comes into force when the marriage takes place. This is reaffirmed through Constitutional Court Decision 69/2015 which has expanded the meaning of a marriage agreement, so that a marriage agreement is not only made before the marriage (prenuptial agreement) but can also be made after the marriage takes place (postnuptial agreement).

A prenuptial agreement is an agreement made by a couple who wants to get married and functions to bind their relationship. The definition of a marriage agreement itself is an agreement made by both parties, husband and wife, and has been decided or considered together. In Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, it is stated in Chapter V Article 29 that a Marriage Agreement is a joint agreement between a husband and wife whose contents do not violate legal boundaries, which is carried out in writing and ratified by a Marriage Registrar employee. In the Civil Code and Marriage Law, there are rules governing the making of prenuptial agreements. Article 139 of the Civil Code states that couples who are getting married can deviate from legal regulations regarding joint property as long as this does not conflict with good morals, public order or a number of

applicable provisions. The regulations regarding joint assets that can be set aside are as explained in Article 35 of the Marriage Law which includes two things. First, joint assets or assets acquired during marriage. Second, property obtained by each as a gift or inheritance is under their respective control as long as the parties do not determine otherwise (in an agreement). However, it is also important to know that a prenuptial agreement is an optional choice and is not required to be made if it is not desired, as explained in Article 146 of the Civil Code, that the wife's earnings and income fall under her husband's control.

This prenuptial agreement is considered a way to provide a sense of security for the couple, especially regarding property. Especially for those who have a large income, this agreement before marriage is quite important. Apart from that, this agreement can also help in increasing husband and wife's awareness of their rights and obligations in marriage. Even so, making prenuptial agreements or prenuptial agreements is still relatively unfamiliar in society. On the other hand, some people who are Muslim consider that a prenuptial agreement is something that is still considered taboo. Marriage is a holy and sacred bond whose responsibility is directly to Allah. This is the debate about why there should be a prenuptial agreement? A prenuptial agreement is seen as a lack of mutual trust between the couple and is considered a bad prejudice that the two partners will divorce at any time. And another opinion says that a pre-nuptial agreement is an inappropriate thing to do and is unethical to write at a sacred event. Because in general this prenuptial agreement regulates the distribution of assets after the separation of the relationship between the two parties, either due to divorce or death. Not only does it contain issues regarding the division of assets, but this agreement also discusses domestic violence, and other agreements related to the interests of the future of the household of both prospective bride and groom. The debate regarding the effectiveness of prenuptial agreements has invited many positive and negative views in people's lives. Therefore, we are interested in discussing this matter with the title we have adopted, namely "Is a marriage agreement a solution or a dilemma".

METODE PENELITIAN

The research method used is the normative-empirical legal research method, namely a research method that combines normative research methods with empirical research methods as part of improvements in finding more comprehensive legal truths. The normative-empirical legal research method is research that examines the implementation of positive legal provisions and written documents contained in every legal event that occurs. This research method aims to ensure that the application of law to legal events is in accordance or not in accordance with applicable regulations and as it should be. Normative-empirical legal research not only examines the norm system in statutory regulations, but also observes how the norm system interacts in people's lives.

HASIL DAN PEMBAHASAN

Every human being on this earth has the right to form a household through marriage and continue their offspring in accordance with the regulations in force in that country. In religious terms, marriage is called "Nikah" where the Hanafi School defines marriage as having intercourse according to its original meaning. Marriage is actually stated in the Al-Qur'an, namely in surah An-nisa verse 3 which reads:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثَلِيٍّ وَتِلْكَ أَرْبَعٌ فَإِنْ خِفْتُمْ
أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ذَلِكَ آدَنَىٰ أَلَّا تَعُولُوا ﴿٣﴾

If you are worried that you will not be able to do justice to (the rights of) orphaned women (if you marry them), marry (other) women that you like: two, three, or four. However, if you are worried that you will not be able to do justice, (marry) just one person or a female slave that you have. This is closer to not committing injustice

The purpose of marriage itself is clearly stated in Law Number 1 of 1974 concerning Marriage Article 1 and Article 3 of the Compilation of Islamic Law (KHI) which states that the purpose of marriage is to form a happy and eternal household based on the one and only God, which in turn The Compilation of Islamic Law (KHI) states that marriage is solely aimed at creating a household life that is *sakinah, mawaddah and rahmah*.

A marriage agreement is an agreement ratified by a marriage registrar which is made with the mutual consent of the two candidates before the marriage takes place, and both candidates have agreed to promise to comply with the entire contents of the agreement.

Prior to the issuance of Constitutional Court Decision No. 69/PUU-XIII/2015, a marriage agreement can only be made before the wedding or in other terms with a pre-nuptial agreement which is in accordance with Law Number 1 of 1974 concerning Marriage in Article 29 paragraph (1) which initially reads:

"At or before the marriage takes place, the bride and groom can make a written agreement ratified by the Marriage Registrar regarding the position of assets in the marriage."

However, after the issuance of Constitutional Court Decision No. 69/PUU-XIII/2015 Article 29 of Law Number 1 of 1974 concerning Marriage is amended to read:

"At any time, before the marriage takes place or during the marriage, both parties, by mutual agreement, can submit a written agreement that is ratified by a marriage registrar or notary, after which the contents also apply to third parties as long as the third party is involved."

Article 1 letter e of the Compilation of Islamic Law states that *taklik-taklak* is an agreement made by the prospective groom after the marriage ceremony which is included in the marriage certificate in the form of a promise of divorce which is dependent on certain circumstances that may occur in the future.

Etymologically, *taklik* means temporary suspension, according to the KBBI, divorce is the release of the bond between husband and wife. Basically, *taklik-talak* is directed at the wife if the husband has committed an act regulated in the *sighat taklik* which he deems displeased, then the wife can file a complaint with the religious court and it will be confirmed and accepted by the court.

If among these things a husband has treated his wife in the manner mentioned above, then the wife who feels dissatisfied with her husband's actions can legally complain about her husband's treatment to the religious court and must be accepted by the court. Furthermore, a husband whose wife has complained to the religious court must issue a divorce against his wife. This is as regulated in Article 46 paragraph (2) which reads:

If the conditions required in the divorce agreement actually occur later, the divorce does not automatically occur. In order for divorce to actually occur, the wife must submit the matter to the Religious Court.

A marriage agreement that regulates the assets of each husband and wife has the main objective of ensuring the continuity of a long-lasting and stable marriage. Thus, this agreement functions as a preventive measure that helps avoid family conflicts that often arise from property issues. In this agreement, the couple can determine how their assets will be managed and managed, thus ensuring that the interests of each party are met and the stability of the marriage is guaranteed.

Furthermore, Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage explains that a marriage agreement that has been ratified by a marriage registrar's officer, apart from being valid for the husband and wife, also applies to a third party if the third party is involved in the agreement. This is also made clear in Article 50 paragraph (1) of the Compilation of Islamic Law (KHI) that the agreement will be binding on the parties and third parties starting from the date the marriage takes place in the presence of a marriage registrar.

Referring again to Law Number 1 of 1974 concerning Marriage, in Article 29 paragraph (4) of the law, there is a provision that explains that the agreement cannot be changed, unless there is an agreement between the two parties involved and it does not harm third parties concerned. Thus, the agreement can only be changed if a valid agreement is reached and does not result in losses to other parties who are not directly involved in changing the agreement.

KESIMPULAN

As humans, we have the right to form a household through marriage, which is one of the ways humans tie a bond so that it becomes a halal relationship and produces offspring. As time goes by, marriage is considered a contractual bond between one human being and another human being. So a prenuptial agreement is considered important for some people who each have a certain amount of wealth. Based on the Marriage Law, a prenuptial agreement can be made and implemented at the time of marriage and before the marriage and is carried out on the basis of an agreement between both parties without any element of coercion from either party. However, it is important to know that a prenuptial agreement is not mandatory and is an optional choice. On the other hand, some people, especially those who are Muslim, consider that prenuptial agreements are still taboo and this is still a matter of debate. Prenuptial agreements certainly have positive and negative sides.

In some situations, prenuptial agreements have negative implications, especially for wives who do not have their own income and are dependent on their husbands. In the case of a wife who is financially dependent on her husband, if she is not careful in making an agreement, it can result in a wife losing the rights she should receive. Therefore, wives who are financially dependent on their husbands must be careful in making marriage agreements.

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