



The Relevance of Marriage Agreements from the Perspective of Law Number 1 of 1974

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<p>Bidayatul Inayah Universitas Islam Negeri Sultan Maulana Hasanuddin Banten 242611103.bidayatulinayah@uinbanten.ac.id +62895421884243</p> <p>Sayehu Universitas Islam Negeri Sultan Maulana Hasanuddin Banten sayehu@uinbanten.ac.id +6287871642323</p>	<p>ISSN: 2808-1307 Vol. 5, No. 3, Desember 2025 https://jurnal.ardenjaya.com/index.php/ajsh</p>

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Abstrak

Perjanjian perkawinan (prenuptial agreement) menjadi instrumen hukum yang penting dalam mengatur kedudukan harta dan kewajiban para pihak dalam perkawinan. Dalam kerangka Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan (UU Perkawinan), perjanjian perkawinan diatur dalam Pasal 29, meskipun pengaturannya bersifat terbatas. Kajian ini bertujuan untuk menelaah relevansi perjanjian perkawinan dalam perspektif UU 1/1974, khususnya bagaimana instrumen tersebut memberikan kepastian hukum, perlindungan pihak termasuk pihak ketiga, dan batasan-batasannya. Metode penelitian menggunakan pendekatan yuridis-normatif dengan analisis perangkat perundang-undangan, putusan Mahkamah Konstitusi, literatur akademik terkini, dan data sekunder. Hasil penelitian menunjukkan bahwa meskipun UU 1/1974 memberikan landasan formal bagi perjanjian perkawinan, terdapat ruang interpretasi besar terhadap isi dan waktu pembuatan perjanjian tersebut, serta perlunya pembaharuan regulasi agar lebih responsif terhadap perkembangan sosial dan kompleksitas aset modern. Perjanjian perkawinan terbukti relevan sebagai alat mitigasi konflik harta dalam perceraian dan relasi keluarga, namun efektivitasnya dibatasi oleh kepastian terhadap kepentingan pihak ketiga dan batas norma hukum, agama, serta kesucilaan.

Kata Kunci: Relevansi, Perjanjian Perkawinan, UU No 1 Tahun 1974

Abstract

A marriage agreement (prenuptial agreement) is an important legal instrument to regulate property rights and obligations between spouses. Under Indonesia's Marriage Law (Law No. 1 of 1974, "UU Perkawinan"), marriage agreements are governed in Article 29, though the regulation is limited in scope. This study aims to examine the relevance of marriage agreements from the perspective of UU 1/1974, particularly how such instruments provide legal certainty, protection for parties (including third parties), and inherent limitations. The research method is juridical-normative, involving analysis of legislation, Constitutional Court decisions, the latest academic literature, and secondary data. The findings indicate that although UU 1/1974 provides a formal foundation for marriage agreements, there is significant interpretive space regarding their content and timing, and a need for regulatory reform to better respond to social developments and the complexity of modern assets. Marriage agreements prove relevant as conflict mitigation tools in divorce and family relations, but their effectiveness is constrained by certainty vis-à-vis third parties and normative boundaries of law, religion, and public morality.

Keywords: Relevance, Marriage Agreement, Law No. 1 of 1974

A. Pendahuluan

Marriage, as a social and legal institution, has profound implications for the rights, obligations, and property of the parties within a household. In practice, property disputes often become a major issue when a marriage ends (divorce or death). To mitigate potential conflict, some couples choose to create a prenuptial agreement or agreement before or during the marriage.

Law No. 1 of 1974 concerning Marriage regulates marriage agreements in Article 29. However, these regulations are considered limited and provide broad room for interpretation regarding their content and implementation. (Hukum Online, n.d.) Constitutional Court Decision No. 69/PUU-XIII/2015 stated that the provisions of Article 29 paragraphs (1), (3), and (4) are contrary to the 1945 Constitution, so they do not have binding legal force, and encourages reform of marriage agreement regulations to be clearer and guarantee legal protection. (Bpk, n.d.)

Islamic law reform and modern societal practices (e.g., digital property, joint ventures, joint investments) have given rise to the need for broader and more flexible marriage agreements. Therefore, it is important to evaluate the relevance and effectiveness of marriage agreements within the framework of Law 1/1974, as well as the obstacles and recommendations for regulatory reform.

This research has the following problem formulations: What is the legal basis for marriage agreements in Law No. 1 of 1974 and the interpretation of the Constitutional Court's decision regarding Article 29?, What is the scope and limitations of the contents of marriage agreements according to regulations and practice?, What are the problems and challenges in implementing marriage agreements in Indonesia?

This research aims to analyze the relevance of marriage agreements according to Law No. 1/1974 in providing legal certainty for the parties. To identify the legal limitations and constraints of marriage agreements based on regulations and Constitutional Court decisions. To examine protection for third parties in marriage agreements.

Previous Literature Review entitled "Legal Study of Marriage Agreements According to the Civil Code" Prenuptial agreements in Indonesia are implemented in accordance with the laws applicable to each party (husband and wife), both based on the Civil Code, Law Number 1 of 1974, and the Compilation of Islamic Law. Prenuptial agreements are not mandatory. This means that prenuptial agreements are complementary agreements that are binding only when they have been made. In the draft law, prenuptial agreements have several similarities and differences both in the Civil Code, the Marriage Law, and the Civil Code. The main similarity is that a prenuptial agreement must be made by an authorized official determined by law, in this case by a notary for those subject to the Civil Code, and by a marriage registrar's office for those subject to the Marriage Law and the Civil Code. A prenuptial agreement is formally the same as a general agreement, and the difference lies in the content or object of the agreement itself, in this case the Civil Code is principally about property/wealth, while the provisions of the prenuptial agreement contained in the Marriage Law do not expressly mention the object. It can be

concluded that the agreement can cover various matters, as long as it does not conflict with law, religion, and morality. The provisions of the Compilation of Islamic Law regarding its objects, namely ta'lik, mixing personal assets, and separation of income assets.(Sukardi, 2016)

The next literature review, entitled "Analysis of Marriage Agreements and Their Consequences According to Indonesian Marriage Law" (Sopiyan, 2023), discusses the legal aspects and legal consequences of marriage agreements in practice. It highlights potential conflicts with third parties and questions the validity of agreement clauses made after marriage.(Muhammad Sopiyan, 2023)

The research entitled "Marriage with a Monogamy Principle Clause According to the Marriage Law and Islamic Law (Analysis of the Marriage Agreement Deed Dated March 26)" The results of the study state that a marriage agreement can basically contain anything desired by the parties who make it as long as it does not violate the boundaries of law, religion and morality. Polygamy or anti-polygamy clauses may be included in the marriage agreement deed, only if the parties are not subject to Islamic Law and the Compilation of Islamic Law, while for parties who are subject to Islamic Law and the Compilation of Islamic Law, polygamy and anti-polygamy clauses may not be included in the marriage agreement deed.(Safifah, 2021)

The book "Dynamics of Marriage Contract Law in Indonesia" explores the development of marriage contracts in Indonesia from a regulatory and societal perspective. It highlights the challenges of regional implementation and public perceptions of marriage contracts.(Purnomo & Mayasari, 2021)

"Marriage Agreements in Guaranteeing Women's Rights" (Fauza, 2020) Examines the role of marriage agreements in protecting women's economic rights, especially in marriages with capital disparities.(Fauza & Afandi, 2020) "The Concept of Marriage Agreements in the Perspective of Islamic Law" Examines how Islamic fiqh principles view marriage agreements and their harmonization with national regulations.(Pater et al., 2025)

A. Metodologi

This study uses a qualitative method(Sugiyono, 2021) of juridical-normative nature, focusing on text studies (statutes, jurisprudence, academic literature) and conceptual analysis. Data sources are taken from Primary data: Law No. 1 of 1974 concerning Marriage (along with amendments to Law No. 16 of 2019), Constitutional Court decisions (including MK 69/PUU-XIII/2015), relevant court decisions. Secondary data: scientific articles, books, theses, national/international journals, research reports related to marriage agreements. Data Collection Techniques Library research and documentation.

B. Hasil dan Pembahasan

1. Legal Basis of Marriage Agreement in Law 1/1974

Article 29 of the Marriage Law stipulates that "at the time or before the marriage takes place, both parties may enter into a written agreement that is authorized by the Marriage Registrar".(Hukum Online, n.d.) The article stipulates that the agreement must not violate the law, religion, morality, and that changes can only be made with mutual consent and must not harm a third party.(Sukardi, 2016)

However, with the Constitutional Court Decision No. 69/PUU-XIII/2015, some paragraphs of Article 29 were declared contrary to the 1945 Constitution and no longer have binding legal force.(Bpk, n.d.) Law No. 16 of 2019 as an amendment to the Marriage Law does not explicitly revise Article 29 but includes new aspects in the Marriage Law such as age limits and child protection. The implication: a gap between the original legislative intent and the legal actualization in the marriage agreement.

2. Scope and Content of Marriage Agreement

According to the Civil Code, a marriage agreement may regulate deviations from normal marital property laws as long as they do not conflict with morality/public order (Article 139 of the Civil Code).(Sukardi, 2016)

In practice, the contents of a marriage agreement often include:

- a. separation of assets from the beginning of the marriage (or from a certain period)
- b. distribution of profits from a joint venture
- c. stipulations regarding authority over capital/business investments
- d. clauses exempting the other party from liability for debts

- e. clauses related to inheritance or gifts
- f. (in the Islamic context) conditions for divorce or additional provisions in accordance with religious teachings.

In practice, the contents of a marriage agreement generally cover various financial and legal arrangements between spouses. These may include the separation of assets from the beginning of the marriage or from a specified period, the distribution of profits derived from joint ventures, and stipulations regarding authority and control over capital or business investments. Additionally, such agreements often contain clauses that exempt one party from liability for the other's debts, as well as provisions concerning inheritance or the giving of gifts. In the Islamic context, marriage agreements may also include conditions related to divorce or additional stipulations that align with religious teachings and principles.

The limitations: the content must not conflict with legal norms, religion, or morality; it must not harm third parties; and changes must be based on mutual agreement. The problem: the articles of the law do not specify in detail what may or may not be included in the clauses, leading to disparate interpretations. (Sukardi, I., & Ningsih, 2021)

3. Time of Creation & Changes After Mating

- a. The law requires that it be made at or before marriage (pre-nuptial). (Basyar, 2020)
- b. However, in many practical cases and court decisions, prenuptial agreements are also made after marriage (post-nuptial). Some literature indicates that postnuptial agreements can regulate the separation of assets during the marriage or from a specific point in the agreement (with certain provisions). (Setyaningsih, 2020)
- c. Risks of making postnuptial agreements: potential harm to third parties (creditors) who previously claimed rights to joint assets. (Setyaningsih, 2020)
- d. Amendments to agreements during marriage can be made with mutual consent, but cannot be detrimental to third parties. (Hukum Online, n.d.)

Legally, a marriage agreement is required to be made at or before the time of marriage, commonly known as a prenuptial agreement. However, in practice and through various court decisions, such agreements are also sometimes established after the marriage, referred to as postnuptial agreements. Several scholarly sources suggest that postnuptial agreements may regulate the separation of assets during the marriage or from a specific date determined within the agreement, provided certain conditions are met. Nonetheless, creating postnuptial agreements carries potential risks, particularly the possibility of harming third parties such as creditors who may have prior claims over joint assets. Any amendments or revisions to marriage agreements made during the marriage must be based on mutual consent between the spouses and must not cause disadvantage or harm to third parties.

4. Protection of Third Party Interests

- 1. Legal principle regarding third parties: the contents of a prenuptial agreement apply to third parties to the extent they are related to the contents of the agreement. (Hukum Online, n.d.)
- 2. Problem: Often, prenuptial agreements are not announced or recorded transparently, so third parties (e.g., creditors) are unaware of the agreement. The study "Protection for Third Parties in Hidden Prenuptial Agreements" highlights the potential for conflict if joint assets have been separated in an agreement unknown to creditors. (Hukum Online, n.d.)
- 3. In court decisions, there have been cases where creditors relying on joint assets have been hampered by the prenuptial agreement being used as a defense against their claims.
- 4. Protection options: mandatory announcement, public recording, and transparency requirements in the preparation of prenuptial agreements so that creditors and third parties can access the information.

The legal principle concerning third parties states that the provisions of a prenuptial agreement apply to third parties only insofar as they relate to the contents of the agreement itself. However, problems often arise because many prenuptial agreements are neither publicly announced nor transparently recorded, leaving third parties such as creditors unaware of their existence. The study "Protection for Third Parties in Hidden Prenuptial Agreements" highlights the potential for conflict when joint assets have been separated through an undisclosed agreement, thereby affecting the rights of creditors. In several court decisions, creditors who relied on joint assets have found their claims hindered when the prenuptial

agreement was invoked as a defense. To address this issue, legal protection measures such as mandatory public announcement, official registration, and greater transparency in the drafting and recording of prenuptial agreements are recommended to ensure that creditors and other third parties have access to relevant information.

5. Implementation Obstacles and Challenges

- a. Low public understanding of marriage contracts (concept, benefits, risks).
- b. Legal and social cultures that do not support the creation of family contracts (domestic contracts).
- c. Regulatory limitations: no detailed regulations on what clauses may be included, how to announce them to third parties, and formality standards.
- d. Conflicting interpretations and inconsistent court decisions.
- e. Challenges in notarial and administrative practices (recording, verification, and legalization).
- f. Unaccommodated dynamics of modern wealth (digital assets, shares, domestic and foreign businesses).
- g. Risk of misuse of clauses that disadvantage the weaker party (e.g., a wife who does not understand the impact of the clause).
- h. Difficulty accessing Constitutional Court/court decisions regarding marriage contracts as precedent.(Putri, 2021)

Several challenges hinder the effective implementation of marriage contracts in practice. These include the low level of public understanding regarding the concept, benefits, and potential risks of such agreements, as well as prevailing legal and social cultures that do not encourage the establishment of domestic or family contracts. Regulatory limitations also play a role, as there are no comprehensive provisions detailing permissible clauses, procedures for public disclosure to third parties, or formal standards for validity. Furthermore, conflicting interpretations and inconsistent court rulings create legal uncertainty. Practical difficulties also arise in notarial and administrative processes, such as recording, verification, and legalization of the agreements. The evolving nature of modern wealth such as digital assets, shares, and cross-border business ownership remains largely unaddressed by existing regulations. There is also a risk of misuse of contractual clauses that may disadvantage the weaker party, such as a spouse who lacks full understanding of the legal implications. Lastly, the limited public access to Constitutional Court or judicial decisions concerning marriage contracts makes it difficult to establish clear legal precedents.

6. The Relevance and Benefits of Marriage Agreements in a Contemporary Context

- a. As a conflict mitigation instrument: early clarification of property rights, obligations, and debt risks.
- b. Increasing legal certainty for spouses and heirs.
- c. Encouraging family financial awareness and planning.
- d. Serving as a tool for protecting women and vulnerable parties in marriages with capital disparities.
- e. Supporting accountability in joint ventures and investments with partners.
- f. Serving as a basis for resolving divorce or inheritance disputes.
- g. Serving as a reference for adapting regulations to keep pace with current developments.(Salsiah et al., 2024)

Marriage agreements serve multiple important functions in modern legal and social contexts. They act as instruments for conflict mitigation by clearly defining property rights, responsibilities, and potential debt liabilities from the outset. Such agreements enhance legal certainty for both spouses and their heirs, while also fostering financial awareness and encouraging better family financial planning. Moreover, they serve as protective tools for women and other vulnerable parties, particularly in marriages involving significant economic disparities. Marriage agreements also promote accountability in joint ventures and business investments between spouses or with external partners. In addition, they provide a legal foundation for resolving disputes related to divorce or inheritance. Finally, these agreements can serve as valuable references for legislators and policymakers in adapting and refining regulations to align with contemporary social and economic developments.

7. Regulatory and Policy Recommendations

- a. There is a need for a more comprehensive update of the Marriage Law (or a separate law) that regulates marriage agreements in detail: procedures, formalities, announcements to third parties, and a list of permitted/prohibited clauses.
- b. Regulations for public recording/validation of marriage agreements so that they are accessible to creditors/third parties.(Jane et al., 2025)
- c. Standardization of notarial documents for marriage agreements to ensure clarity and resistance to revocation.
- d. Legal education and outreach to prospective brides and grooms regarding the benefits and risks of marriage agreements.
- e. Ethical guidelines for notaries/PPATs/marriage registrars in examining clauses that are detrimental to one of the parties.
- f. Development of consistent jurisprudence by the Supreme Court and religious/general courts regarding marriage agreements.
- g. Empirical research (interviews, surveys) on the practice of marriage agreements in various regions as a basis for responsive legal reform.(Addinur & Djajaputra, 2024)

There is an urgent need for a more comprehensive revision of the Marriage Law or the establishment of a separate law that provides detailed regulation of marriage agreements, including procedures, formal requirements, public announcements to third parties, and a clear list of permitted and prohibited clauses. Additionally, regulations should mandate the public recording or validation of marriage agreements to ensure accessibility for creditors and other third parties. Standardizing notarial documents for marriage agreements is also essential to guarantee clarity, legal certainty, and protection against unjust revocation. Legal education and public awareness programs for prospective couples should be strengthened to inform them of both the benefits and risks of entering into such agreements. Furthermore, ethical guidelines must be established for notaries, land deed officials (PPATs), and marriage registrars to ensure that no clause unfairly disadvantages either party. Consistent jurisprudence should be developed by the Supreme Court and both religious and general courts to harmonize interpretations and legal practices. Finally, empirical research through interviews and surveys across different regions is necessary to understand the practical realities of marriage agreements and to serve as a foundation for responsive and evidence-based legal reform.

C. Kesimpulan

Formal Basis and Regulatory Loopholes: Law No. 1 of 1974 provides a legal basis for marriage agreements through Article 29. However, this regulation is general and lacks details regarding content, formalities, and application in a modern context. Constitutional Court Decision No. 69/2015 declared that parts of Article 29 contradict the Constitution, necessitating strengthening regulations to maintain legal certainty. **Relevance as a Tool for Mitigating Property Conflicts:** Marriage agreements have proven to be relevant in offering certainty and mitigating potential property conflicts in divorce and inheritance distribution, particularly for couples with complex assets or capital disparities.

Limitations for Third Parties: The effectiveness of prenuptial agreements is often limited when third parties (creditors, external parties) are unaware of the agreement or if it is not recorded transparently. This creates the potential for conflicts of interest and disputes over third-party rights. **Barriers to Real Implementation:** Low public legal literacy, unclear norms regarding permissible clauses, administrative procedural weaknesses, and challenges regarding modern assets are significant obstacles to the practice of prenuptial agreements.

Reform Recommendations: The development of more comprehensive laws or regulatory revisions related to prenuptial agreements (formalities, announcements, standard clauses), education and outreach, professional ethical guidelines, and empirical research as a basis for adaptive policies. Thus, prenuptial agreements remain relevant within the framework of Law 1/1974, but to be truly effective and fair, they must be supported by regulatory improvements, transparent practices, and public legal awareness.

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