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Marriage Contracts as a Form of Legal Protection for Married Couples

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Abstract: Article 29(2) of the Marriage Law and Article 139 of the Civil Code do not explicitly regulate the substance of clauses that may be included in a prenuptial agreement, thereby creating ambiguity in the legal norms and leading to multiple interpretations in their application. This study examines two issues: the regulation of clauses in prenuptial agreements for married couples and the role of such clauses in ensuring legal protection for married couples. This study employs a normative legal research method using a statutory and conceptual approach, as well as qualitative analysis of legal materials through a literature review. The results of the study indicate that the regulation of marriage agreement clauses is based on the Civil Code, the Marriage Law, the Compilation of Islamic Law, and Constitutional Court Decision No. 69/PUU-XIII/2015. Based on the principle of freedom of contract, the parties may include clauses regarding the separation of assets or the protection of the parties' interests, provided they do not conflict with the law, religion, and public morality. The clauses in a marriage contract serve as a means of preventive and repressive legal protection that ensures legal certainty, justice, and public benefit—including the protection of assets, protection in the event of divorce, and protection against third parties through the principle of publicity regarding the registration of marriage contracts.

Keyword: Marriage Agreements, Legal Protection, Husband and Wife

INTRODUCTION

Indonesia is a nation governed by the rule of law, which places the law as the highest foundation for the conduct of national and state affairs (Syuhada, 2021). All actions taken by the government and citizens must be based on applicable laws and regulations (Rais, 2022), thereby fostering justice, legal certainty, and order. As social beings, humans will naturally always need the involvement of others in their daily lives. This is because no human can ever fully meet their own needs without the help of others; thus, it is in human nature to instinctively communicate and interact with one another, to live together, and to ensure the continuation of

their lineage (Arief, 2017). To obtain what they need, people form social relationships with others. One form of such a social relationship is marriage.

The marriage of one person to another (between a man and a woman) is a legal act that gives rise to rights and obligations to be acquired and fulfilled by both parties. The definition of marriage is set forth in Chapter I, Article 1 of Law No. 1 of 1974 on Marriage (hereinafter referred to as the Marriage Law). Marriage falls under the category of a legal act. In today's context, many engaged couples or legally married spouses feel the need to protect the legal aspects of their marriage by entering into a prenuptial agreement. A prenuptial agreement is a form of protection designed to safeguard individual rights following the marriage. Through a prenuptial agreement, the rights of each spouse can be protected in the event of undesirable circumstances, such as the dissolution of the marriage whether due to divorce or death. In Indonesia, a marriage can be dissolved due to three factors: death, divorce, and a court ruling (Kharlie, 2022).

Marriage agreements, known as prenuptial agreements in Indonesia, are still not commonly entered into. In a social context, people view marriage agreements as taboo and inappropriate to enter into (Hadi et al., 2025). In recent years, prenuptial agreements have become a hot topic of discussion among the public and are now even viewed as a necessity. However, there are still many engaged couples or married couples who are reluctant to enter into a prenuptial agreement because they consider it a sensitive matter that could actually lead to mistrust between them. However, it is not uncommon for prospective spouses to have a more open-minded view regarding the need for a prenuptial agreement in a marital relationship.

Prenuptial agreements are also frequently chosen by prospective couples where one or both partners own a business with a high level of risk. For example, a business operated amid Indonesia's economic conditions, which are prone to many unforeseen events. For instance, when applying for a loan, the bank (lender) considers the couple's assets to be joint property, so the loan (debt) is also considered a joint liability. With a prenuptial agreement in place, prior consent from the spouse is not required for the husband or wife to apply for a loan using assets registered in their own name as collateral (Sopiyan, 2023).

Even when it comes to applying for a loan (debt), the only party liable (on behalf of the debtor) is the one who applied for it. The spouse, however, is free from any obligation—meaning they are not required to share in the responsibility for that loan. If the debtor is declared in default (failing to fulfill obligations) to the point of bankruptcy, both parties still retain other assets. This ensures the financial well-being of both parties, particularly the children. Thus, a prenuptial agreement in this context offers significant benefits.

The regulation of marital property through a prenuptial agreement has been recognized since the enactment of the Civil Code (hereinafter referred to as the Civil Code), which governs prenuptial agreements in Chapter VII, Articles 139 through 154 of the Civil Code, as agreements that regulate the legal consequences of marriage regarding property. According to the provisions of Article 139 of the Civil Code, "Prospective spouses may, through a prenuptial agreement, deviate from the statutory provisions regarding joint property, provided that such deviation does not conflict with good morals or public order and the following provisions are also observed." Referring to the Civil Code, this is because once a marriage takes place, all property automatically becomes joint property. If property acquired before the marriage is not to be included in the joint property, a prenuptial agreement must be drawn up between the prospective husband and wife before the marriage ceremony takes place (Jamaluddin & Nanda, 2016).

In fact, the Marriage Law does not explicitly regulate what matters (substance) should be addressed in a prenuptial agreement. Article 29 of the Marriage Law provides the legal basis for prospective spouses to enter into a written agreement before or at the time the marriage takes place, which is certified by the marriage registrar and is also binding on third parties to

the extent they have an interest. One of the key principles inherent in this provision is the principle of equality of rights and status between husband and wife, whereby each party, in principle, may independently engage in legal acts, including entering into an agreement to deviate from the default community property regime that applies in the absence of a prenuptial agreement. Thus, a prenuptial agreement is essentially a manifestation of the principle of freedom of contract within the scope of family law, provided it does not conflict with the law, religion, or public morality.

Article 29(2) of the Marriage Law also states that a prenuptial agreement is considered valid as long as it does not violate the limits set by law, religion, and public morality. There are several differing views regarding the content (substance) of a prenuptial agreement. A significant development occurred after the Constitutional Court issued Decision No. 69/PUU XIII/2015, which corrected the interpretation of Article 29 of the Marriage Law. Prior to that decision, marriage agreements were understood to be valid only if entered into before or at the time of the marriage ceremony, and they took effect upon the marriage taking place. The Constitutional Court's decision subsequently expanded the provisions so that a prenuptial agreement may be entered into not only before and at the time of the marriage, but also during the course of the marriage, provided it is agreed upon by both parties and certified by a marriage registrar or a notary. This expansion has an important consequence: couples who have been married for a long time but have only recently realized the need for separation or property arrangements can still obtain legal protection by entering into a prenuptial agreement, and the authority to authenticate such agreements which previously rested solely with the marriage registrar now also lies with a notary.

Generally, the clauses outlined above typically include compensation to be paid if one party takes such action. Such compensation often takes the form of a fine that must be paid and the threat of divorce. By including these clauses along with compensation provisions, it is hoped that the prenuptial agreement can serve as a guarantee of legal certainty for married couples. As an example, consider the analysis of a case involving a compensation clause in a prenuptial agreement, as outlined in Decision No. 0172/Pdt.G/2018/PA.Tgrs. The prenuptial agreement was established by the married couple because the husband had previously committed adultery. The prenuptial agreement takes effect in the event of a divorce between the husband and wife.

Based on the above case example, the author believes that a legal issue arises regarding the ambiguity of the provision in Article 139 of the Civil Code, which states that “prospective spouses may enter into a prenuptial agreement to deviate from the legal provisions regarding joint property, provided that it does not conflict with public morality and public order, and meets certain requirements, is essentially intended to regulate the separation of property (separate property and marital property) or to determine the model of property ownership during the marriage. This agreement may address the separation of separate property, marital property, debts, income, and even other matters such as education or career, provided it does not violate the law and continues to take into account the interests of third parties.” Furthermore, Article 29(2) of the Marriage Law states that “Such an agreement cannot be validated if it violates the limits of law, religion, and public morality.”

Upon analyzing the phrase in the aforementioned articles namely, “provided that it does not conflict with the law, religion, and public morality” the author believes this phrase still allows for multiple interpretations (multitafsir) in determining which provisions are permitted or prohibited in a prenuptial agreement. Given current developments, the substance of a prenuptial agreement no longer concerns only property matters but also non-financial matters. Neither the Civil Code nor the Marriage Law explicitly defines or details the specific provisions that may be included in such an agreement. This gives rise to multiple interpretations regarding the extent to which freedom of contract can be exercised without violating other legal

provisions or causing harm to third parties, particularly regarding restrictions on the content (substance) of marriage agreements.

Therefore, the focus of this study is on the regulation of the content (substance) or the matters that may be included in a prenuptial agreement. Given that the content of prenuptial agreements is not restricted by the Marriage Law or other legislation, the question arises as to the urgency of regulating the content (substance) of marriage agreements, even though, in practice, they increasingly include clauses such as compensation clauses, infidelity clauses, or other non-financial matters—which constitute a form of implementing the principle of freedom of contract. Furthermore, the drafting of a prenuptial agreement must also take into account the principles of *pacta sunt servanda* and good faith. Therefore, the study proposed in this thesis aims to analyze the urgency of regulating the clauses in prenuptial agreements.

METHOD

This study employs a normative legal research methodology, specifically addressing the ambiguity of the provisions in Article 139 of the Civil Code and Article 29(2) of the Marriage Law regarding the substantive limitations of marriage agreements. The approaches used are the statutory approach and the analytical and conceptual approach. The sources of legal materials consist of primary legal sources (including the 1945 Constitution of the Republic of Indonesia, the Civil Code, the Marriage Law, the Notary Public Law, the Compilation of Islamic Law, and Constitutional Court Decision No. 69/PUU-XIII/2015), secondary legal sources (textbooks, legal journals, and case commentaries), as well as tertiary legal sources (dictionaries and encyclopedias). Legal materials were collected through library research, while the analysis of these materials was conducted qualitatively and comprehensively using descriptive, evaluative, and argumentative techniques based on legal reasoning.

RESULTS AND DISCUSSION

Provisions in a Marriage Agreement for Married Couples

A contract is generally a legal event in which two or more parties mutually commit themselves to do or refrain from doing something, thereby creating a legal relationship (Iliyin et al., 2023). Article 1338 of the Civil Code states that all agreements made in accordance with the law are binding on the parties who enter into them. This principle indicates that contract law in Indonesia is based on the principles of freedom of contract and the binding nature of agreements (*pacta sunt servanda*) (Budi, 2025).

A prenuptial agreement (*huwelijksvoorwaarden*) comes from the Dutch language and means “terms of marriage” (Arief, 2017). It is a mutual agreement made in writing by both parties who intend to marry or have already married, which is then certified by a marriage registrar or notary, to regulate the legal consequences of marriage concerning property, the terms of which are also binding on third parties to the extent that such third parties are involved. The primary purpose of a prenuptial agreement is to limit the provisions of the automatic community property regime under Article 119 of the Civil Code in conjunction with Article 35(1) of the Marriage Law, which states that property acquired during the marriage becomes joint property.

The legal basis for prenuptial agreements in Indonesia stems from several complementary legal instruments:

1. Civil Code (Articles 139–185): Prospective spouses may, by means of a prenuptial agreement, deviate from the statutory provisions regarding community property, provided that such deviation does not conflict with public morality and public order.
2. Law No. 1 of 1974 as amended by Law No. 16 of 2019 on Marriage (Article 29): Both parties may, by mutual consent, enter into a written agreement certified by a marriage

registrar, which is also binding on third parties to the extent that such third parties are involved.

3. Compilation of Islamic Law (KHI) (Articles 45–52): regulates marriage agreements for Muslims in the form of taklik talak and other agreements that do not conflict with Islamic law.
4. Constitutional Court Decision No. 69/PUU-XIII/2015: a significant milestone that expands the timeframe for entering into marriage agreements so that they may be made not only before and at the time of marriage, but also while the marriage is still in effect.

The law establishes certain requirements that must be met for a contract to be recognized as valid (Sitinjak et al., 2025). As a special contract subject to general contract law, a marriage contract must meet the requirements for the validity of a contract as set forth in Article 1320 of the Civil Code (Yasyfa et al., 2024). The four requirements are:

1. Consent: The parties freely and without any coercion express their consent to the terms of the agreement to be entered into. Valid consent requires the absence of any defect of consent, such as mistake, duress, or fraud. (Putra et al., 2026).
2. Legal capacity: a person's ability to perform legal acts on their own behalf. A contract entered into by a party lacking legal capacity may be rescinded. (Kania & Khoerudin, 2025).
3. Specific subject matter: The subject matter of the agreement must be clearly and precisely defined, including separate property, property acquired during the marriage, debts and claims, and other matters related to the economic aspects of the marriage.
4. Lawful grounds: The contents of a prenuptial agreement must not violate the limits of law, religion, and public morality, as emphasized in Article 29(2) of the Marriage Law.

"Drafting" refers to the process of preparing and signing the marriage agreement, while the "effectiveness" of the marriage agreement relates to the point at which the agreement begins to have legal effect (Erlina & Fathinnuddin, 2025). There are two models based on when they were made:

1. *Prenuptial Agreement*

The most common form of a marriage agreement is one entered into before the marriage takes place; in international law, this is known as a prenuptial agreement or premarital agreement (Lestari et al., 2025). Pursuant to Article 147 of the Civil Code, this agreement must be recorded in a notarial deed and takes effect as soon as the marriage is solemnized before a marriage registrar. Its main advantage is that it provides legal certainty from the very beginning of the marriage (Amalia & Erliyani, 2024).

2. *Postnuptial Agreement*

Following Constitutional Court Decision No. 69/PUU-XIII/2015, a marriage agreement may be entered into by a married couple at any time while the marriage is still in effect, without requiring a court order. This agreement may take effect from the date of the marriage or from a specific date specified in the agreement. For the agreement to be enforceable against third parties, it must be officially recorded or registered with the marriage registration authority in accordance with the principle of publicity.

Prenuptial agreements are highly flexible in terms of their content, as long as they do not violate the limits set by law, religion, and prevailing moral norms (Suhayati et al., 2025). This flexibility is a logical consequence of the application of the principle of freedom of contract, as implied in Article 1338(1) of the Civil Code (Ramadhani, 2022). Under the Civil Code, the terms of a marriage agreement may include:

1. Complete separation of assets (no pooling of assets and liabilities whatsoever);
2. Pooling of profits and losses and pooling of earnings and income only;
3. Separation of separate property only;
4. Separation of profits and losses only; or

5. Other arrangements based on the principle of freedom of contract (Agung & Sukandia, 2021).

In the event of a divorce, joint property is divided equally, while separate property remains the property of the party who owns it (Anri, 2023). The most common type of clause is the full separation of property clause, under which any property acquired by the husband or wife becomes their exclusive personal property.

Clauses regarding the inventory of separate property are also commonly found in practice (Pradana & Endah Hartati, 2024). The issue of debts and credits is no less important in the asset separation clause. The primary purpose of a prenuptial agreement is to provide legal protection for both parties both reciprocally and with respect to the interests of any third parties who may be involved (Saputra & Primantari, 2025). This protection covers three key areas:

1. Protection of each party's personal assets;
2. Protection in the event of divorce; and
3. Protection of third-party interests through the principle of publicity (Rivaldi & Dwi Aryanti Ramadhani, 2025).

A notary is a public official authorized to draw up authentic deeds pursuant to Law No. 30 of 2004 as amended by Law No. 2 of 2014 on the Office of the Notary (UUJN) (Ningsih et al., 2022). Notaries are not only accountable to the parties who seek their services, but also to the general public and to the law itself. In carrying out their duties, notaries are required to act with honesty, diligence, independence, and impartiality, and to safeguard the interests of all parties involved.

Following Constitutional Court Decision No. 69/PUU-XIII/2015, the notary's authority was expanded so that they not only draw up marriage agreements but also authenticate them. In exercising this authority, notaries are bound by the principle of due diligence, which is reflected in:

1. Verification of the parties' identities and legal capacity;
2. Verification of the completeness and validity of the documents;
3. Understanding the parties' intentions;
4. Drafting of legally compliant clauses; and
5. Reading and explaining the deed to the parties before signing.

The legal consequences of a prenuptial agreement affect not only the legal relationship between husband and wife, but also have implications for third parties (Rambe, 2025). The main legal consequences of a marriage contract include:

1. Regarding property ownership: each party's property remains their separate property; each party has full authority to manage, transfer, or encumber their separate property without requiring their spouse's consent.
2. Regarding debts and claims: the personal debts of one party are the sole responsibility of that party; in the event of bankruptcy, the spouse's separate property as defined by the marriage agreement cannot be seized by the trustee.
3. After divorce and death: the division of property follows the terms of the agreement, not Article 128 of the Civil Code; a prenuptial agreement does not eliminate inheritance rights between husband and wife.
4. With respect to third parties: once a prenuptial agreement is registered, the principle of publicity applies; an unregistered agreement is binding only on the parties internally.

Marriage Agreement Clauses in Ensuring Legal Protection for Married Couples

In the tradition of contemporary legal philosophy, at least three primary objectives of law are most widely recognized: legal certainty, justice, and utility. Gustav Radbruch held the view that these three legal values must be understood as an indivisible whole, and that legal certainty must take precedence unless the resulting injustice becomes intolerable.

According to Lon Fuller in *The Morality of Law*, legal certainty requires that the law satisfy eight principles, including: consisting of rules that are publicly announced; not being retroactive; being formulated in terms that are generally understood; containing no conflicting rules; and ensuring consistency between the rules and their day-to-day application. In the context of marriage contracts, legal certainty is manifested in:

1. Certainty Regarding The Ownership Status Of Property;
2. Certainty Regarding Legal Liability;
3. Certainty In Dispute Resolution; And
4. Legal Certainty For Third Parties Through The Principle Of Publicity.

A prenuptial agreement is a means of protecting the assets of the bride and groom; it is entered into by mutual consent, certified by a civil registrar or notary, and must not conflict with the law, religion, or public morality. Fairness in a prenuptial agreement must accommodate the interests of all parties not only the parties entering into the agreement but also any third parties affected by its creation. (Harisman & Tanjung, 2024).

To achieve the goal of optimal legal protection, a marriage contract must be based on four main principles:

1. The Principle of Freedom of Contract: grants the parties the freedom to enter into or refrain from entering into an agreement, to enter into an agreement with anyone, and to determine the content, implementation, and terms of the agreement. This freedom is not absolute; it is limited by the provisions of Article 29(2) of the Marriage Law, which requires that the content of the agreement not violate the limits of law, religion, and public morality. (Santoso & Hermanto, 2026).
2. The Principle of Balance: This principle requires that the provisions of a prenuptial agreement not benefit only one party, but must take into account the interests of both the husband and the wife in a proportionate manner.
3. The Principle of Good Faith: as set forth in Article 1338(3) of the Civil Code, this principle requires the parties to perform a contract in good faith and without the intent to harm the other party (Alatas & Sa'adah, 2026). An agreement must not be used as a legal device to conceal assets from creditors or to deceive third parties.
4. The Principle of Legal Certainty: This is realized through the requirement to register marriage agreements with the competent authority so that they are enforceable against third parties, and is closely linked to the principle of *pacta sunt servanda*.

Philipus M. Hadjon classifies two forms of legal protection:

1. Preventive Legal Protection

A prenuptial agreement serves as the most concrete preventive protection measure by explicitly defining the status, limitations, and management of assets before or during the marriage. This protection includes: protection of each party's separate property under Article 35(2) of the Marriage Law; protection of financial independence; and protection from the risk of a spouse's debt, since the separation of property ensures that one party cannot be forced to bear the debt incurred by the other party.

2. Repressive Legal Protection

In the context of divorce, a prenuptial agreement serves as a crucial protective measure. The parties do not need to rely entirely on the general provisions of Article 97 of the Compilation of Islamic Law, which stipulates that joint property be divided equally between the spouses, nor on Article 128 of the Civil Code. A prenuptial agreement ensures that the wife's right to spousal support, her right to her separate property, and her right to a share of the joint property are legally protected even without a lengthy court dispute.

The protection of personal assets is the most fundamental protective function of the property separation clause in a prenuptial agreement. Legally, the protection of personal assets encompasses two categories: (1) protection of pre-marital assets under Article 35(2) of the

Marriage Law; and (2) protection of assets acquired during the marriage, whereby assets acquired by each party through their own efforts remain personal property.

One of the most practical protective functions is protection against a spouse's debts. Without a prenuptial agreement, the principle of community of property applies, which opens the possibility that joint property may be used to pay off one party's debts. In the event of bankruptcy, the trustee has the authority to seize and liquidate joint property, even if part of that property stems from the efforts or ownership of the non-bankrupt spouse. Asset protection is particularly relevant for entrepreneurial couples who need to separate business risks; couples with significant differences in economic status; and mixed-nationality marriages between Indonesian citizens and foreign nationals, where a prenuptial agreement serves as a legal requirement for the Indonesian citizen to retain ownership rights to land held under the "Hak Milik" title.

Divorce is one of the most complex legal events in married life and one that most requires legal protection. Without a prenuptial agreement, the division of assets in a divorce is governed by Article 37 of the Marriage Law in conjunction with Article 97 of the Islamic Family Law (each party receives one-half) and Article 128 of the Civil Code—provisions that often lead to protracted disputes because the parties disagree on the status and value of their joint assets.

The legal consequences of a prenuptial agreement regarding the division of assets following a divorce are:

1. If a prenuptial agreement contains a full separation of property clause, there is no property to be divided in a divorce because no joint property was formed during the marriage.
2. If a prenuptial agreement provides for the separation of only certain property, the division applies only to property not included within the scope of the specified separation.
3. A prenuptial agreement supersedes the provisions of Article 97 of the Indonesian Family Code (KHI), so the judge is obligated to refer to the terms of the valid prenuptial agreement, rather than to the general division provisions.
4. A prenuptial agreement may include specific clauses regarding compensation for a party who gave up their career for the sake of the family, the right to a residence after divorce, and the management of assets for the benefit of the children.

The discussion of legal protection through a prenuptial agreement cannot be limited solely to the internal relationship between husband and wife. Before extending credit, a prudent creditor must verify the existence of a prenuptial agreement as part of the pre-credit due diligence process, which can be done by requesting a copy of the prenuptial agreement or verifying its existence with the relevant marriage registration authority. Protection for third parties is ensured through the principle of publicity, namely the obligation to register and record the prenuptial agreement with the competent authority so that its existence is known to the public.

CONCLUSION

Based on the results of the research conducted on the two research questions in this thesis, it can be concluded that the provisions of prenuptial agreements for married couples in Indonesia are based on the Civil Code (Articles 139–185), the Marriage Law (Article 29), the Compilation of Islamic Law (Articles 45–52), and Constitutional Court Decision No. 69/PUU-XIII/2015. Based on the principle of freedom of contract, the parties may include various clauses in a marriage agreement whether clauses regarding the separation of property or clauses protecting the interests of the parties as long as they do not conflict with the limits of law, religion, and public morality as stipulated in Article 29(2) of the Marriage Law. A prenuptial agreement may be entered into before, at the time of, or during the marriage; it must meet the validity requirements of Article 1320 of the Civil Code and be executed as an authentic instrument before a notary or certified by a marriage registrar to be enforceable against third

parties, with the primary legal effect being the separation of property ownership and liability for each party's debts. The clauses of a prenuptial agreement serve as a means of legal protection—both preventive and repressive in ensuring legal certainty, justice, and the welfare of the married couple. This legal protection includes safeguarding assets through property separation clauses that prevent the commingling of separate property and marital property, protection in the event of divorce through clauses governing the orderly and equitable division of assets, deviating from Article 97 of the Islamic Family Law (KHI) and Article 128 of the Civil Code, as well as protection against third parties through the principle of publicity regarding the registration of marriage agreements with the competent authorities, thereby preventing creditors from seizing the personal assets of a debtor's spouse.

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