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The Urgency of the Sirri Marriage Pre-Marriage Agreement Regarding Joint Property

Nurzannah, Wahda Z. Imam, Faissal Malik
Faculty of Law, Khairun University, Ternate, Indonesia
Email: riskyfatahilla2201@gmail.com, wahdazainalimam@gmail.com, faissalmalik10@gmail.com

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ABSTRACT

This study aims to analyze the urgency of the sirri marriage prenuptial agreement related to joint property and the form of legal protection of joint property in the marriage agreement. The research method used in this study is *normative legal research* as a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced. The results of this study show that the urgency of prenuptial agreements related to sirri marriage and joint property is that in prenuptial agreements, prospective married couples can arrange ownership and separation of property to avoid combining property obtained by each husband and wife during marriage.

INTRODUCTION

A Prenuptial Agreement is known as an agreement made by the bride and groom before entering into a marriage to certify both as husband and wife. On the other hand, people still consider prenuptial agreements taboo and are considered not eastern culture. Because the prenuptial agreement is considered a form of distrust of the couple and is ready to divorce or release the responsibility of the spouse in the event of separation. This agreement seems to be an agreement that seems to pray for separation between the bride and groom.

Marriage is valid if it is performed according to the laws of each religion and belief. Then each marriage is recorded according to the prevailing laws and regulations. So, it is clear that the validity of the marriage carried out must be according to the laws of each religion and belief. Marriages must also be registered. For Muslims, marriages are registered at the Office of Religious Affairs (KUA) by the registrar and for those other than Islam registered at the Civil Registry Office by the marriage registrar.

The principles or principles of marriage also explain that marriage is valid when it is performed according to the laws of each religion and belief, and in addition each marriage must be recorded according to applicable laws and regulations. So it should be underlined, marriage registration is an administrative obligation and does not affect the validity of marriage.

Marriage registration is carried out to provide legal protection for both husbands, wives, and children from the marriage. Indeed, the laws and regulations do not recognize the term serial marriage, so we assume this marriage is carried out only according to their respective religions or beliefs but is not recorded. Thus, serial marriages that are not registered have no legal status (legality) before the state.

It is the development of times and ways of thinking that affect the making of prenuptial agreements, including the influence of mental degradation, declining one's faith and ethics and avoiding marriage only because of a certain interest not based on the sincerity of each party. Such as social status, unification of family business or solely because of wealth. This agreement is binding on both prospective brides and contains the issue of the division of each other's property or relating to the personal property of both parties. So it can be distinguished if one day there is a divorce or the two are separated by death. Thus, although the effect does not support the strength of the household ark built by a person, this agreement equally protects personal property either from the husband or wife later in the event of divorce or death that the agreement (agreement) made by the prospective husband and wife before or at the time of marriage is carried out to regulate the consequences of marriage on their property. The basis for making this Prenup or prenuptial agreement is Article 147 of the Civil Code Law:

The marriage agreement must be made by notarial deed before the marriage takes place, and will become void if it is not made in this way. The agreement shall enter into force at the time of the marriage, no other time shall be specified for it. Court attestation is required if there is a third party listed in the agreement. This is based on Article 152 of the Civil Code (KUH Percivil):

The provisions contained in the marriage agreement, which are deviant and statutory joint property, in whole or in part, shall not apply to third parties before the day on which those provisions are registered in the general register, which shall be held in the registrar of the District Court, in whose jurisdiction the marriage took place.

The content of the prenuptial agreement is free as long as it does not conflict with decency and public order. A prenuptial agreement should not be made because of false and forbidden causa. No promises are made that deviate from the rights arising from the power of the husband as the head of marriage, rights arising from the power of parents (ouder-lijkemacht), rights prescribed by law for the longest living bride (langstlevende echtgenoot) and no agreement is made containing a waiver of rights to the property left by those who derive it the truth of the prenuptial agreement in Indonesia itself is legally protected, namely in Article 29 Paragraph 1 of Law No. 1 of 1974 concerning Marriage which states "At or before the marriage takes place, both parties by mutual consent may submit a written agreement ratified by the employee of the marriage registrar after which the contents also apply to the third party involved."

This means that the law has recognized the validity of a prenuptial agreement that protects between husband and wife. However, no one can be 100% sure about what will happen and happen to others, as evidenced by the number of divorces in Ternate City, from January to November 2021 reaching 500 cases.

The effect of marriage on the property of the husband and wife according to the Civil Code is a round mixed property in article 119 of the Civil Code, property acquired during marriage becomes joint property, including all marital property, namely: property that already exists in

time of marriage, property acquired throughout the marriage. The marriage agreement must be made in writing, and made before the marriage

takes place, and comes into effect from the moment the marriage takes place. The agreement is attached to the marriage certificate and is an integral part of the marriage certificate, and the marriage agreement is made by mutual consent or will, made in writing, ratified by civil registry officials, and must not contradict law, religion and decency.

In Law Number I of 1974, the marriage agreement is regulated in Article 29 paragraph 4 where the marriage agreement that has been made is possible to be changed as long as it does not harm third parties. For Indonesian people to regulate their respective property (prospective husband and wife) in a marriage agreement is still taboo to do, it is understandable because the institution of marriage is something sacred that not only concerns legal aspects but also concerns religious aspects, for that making marriage agreements considered something that tarnishes the sacredness of marriage itself.

Some communities still practice marriage that is not officially registered before the Marriage Registration Officer (PPN) and the Office of Religious Affairs (KUA) known as nikah "sirri" and some call it religious marriage or marriage under hand. "Sirri" marriage is a marriage that basically has a negative impact, especially on the wife and children resulting from the "sirri" marriage. This is because "sirri" marriage from a religious point of view is legal, but in terms of legal protection and economic responsibility and the education of its children still needs to be reviewed. A wife who is married sirri if she has problems in her marriage, for example being mistreated by the husband, the wife certainly does not have legal force as the marriage registered in the KUA, because their marriage does not have written evidence. However, the reality is that not all Islamic communities in Indonesia and still carry out sirri marriages follow the applicable procedures or rules.

However, the Marriage Law has provided opportunities for those who want to regulate it. In relation to the position of husband and wife in marriage is the same, as well as in matters of protection of property, each party may take care of it personally after marriage, but a marriage agreement must be made in advance. One of them, this marriage agreement is intended to know exactly the division of joint property. The purpose of this study is to analyze the urgency of the Sirri Prenuptial Marriage Agreement related to joint property and examine the legal protection of property in the marriage agreement.

METHODS

The type of research used in this study is a type of normative legal research, namely research that refers to the norms contained in laws and regulations. This research is prescriptive, which is a science that studies the purpose of law, the values of justice, the validity of the rule of law, legal concepts and legal norms.

The first step of this research is a discussion about the meaning of law in social life, where legal science not only places law as a social phenomenon viewed from the outside, but enters into an essential,

namely the intrinsic side of law. The author will discuss the role of prenuptial agreements in sirri marriages if there is a division of joint property based on Law Number 1 of 1974 concerning Marriage and the Civil Code (KUHPercivil).

RESULTS AND DISCUSSION

A. Prenuptial Agreement Regarding Sirri Marriage and Joint Property

Nikah *sirri* can be interpreted as a secret or secret marriage. Linguistically, the word sirri means secret which comes from the Arabic "*Sirr*" so we can translate freely that nikah sirri is a form of marriage carried out in a secret way or hidden by couples who are about to marry, in this study, researchers are more likely to use the word nikah sirri or nikah sirri than nikah *sirri* or nikah *sirri* to harmonize with the UUP which uses the word marriage. In the community, there are 3 (three) forms of couples who live together as husband and wife, namely, (1) couples living together with a marriage contract and having a marriage certificate (marriage is valid under religious and state law); (2) couples living together without a marriage contract and without a marriage certificate (kumpul kebo); (3) Couples live together with a marriage contract but without a marriage certificate (sirri) This third form is what is meant by sirri nikah *sirri*.

Facing couples who live together with a marriage contract and have a marriage certificate is very easy because there are no legal problems that need to be solved, while facing couples who live together without a marriage contract and marriage certificate is also easy because it is a violation of all legal components that are total, but facing couples who live together with a marriage contract but without a marriage certificate turns out to be very dilemmatic because they face very complicated and versatile legal problems wrong, that is, there has been a partial violation of the legal component.

Sirri marriage is a marriage carried out by lovers without any notification (recorded) at the Office of Religious Affairs (KUA), *sirri* marriage in this case there are those who have fulfilled the conditions of marriage in that is, fulfilled the pillars and conditions which include two brides, two witnesses, guardians, ijab-qabul and also dowry, however, there are also those who have not fulfilled the conditions of marriage, namely, does not meet the harmony and conditions of marriage. Inaddition, sirri marriage is also divided into sirri marriages that have fulfilled the pillars and conditions of marriage but do not meet administrative requirements or do not have legal force and *sirri* marriages that do not meet the pillars and requirements of marriage and also administrative requirements or do not have legal force, in other words are not valid religiously and also have no legal force according to law country.

Sirri marriage itself in society is often interpreted as; *First*; marriage without guardians. Such marriages are carried out in secret (*siri*) because the female guardians do not agree; or because it considers marriage valid without a guardian; or simply because they want to satisfy their lust without heeding the provisions of the Shari'a; *second*, marriages that are religiously valid (meet the requirements and pillars of marriage) but are not registered at the Office of Religious Affairs (KUA) by marriage registration employees for Muslims and the Civil Registration Office for Non-Muslims*). Third*, marriages that are kept secret because of certain considerations; for example for fear of getting negative stigma from society that already considers marriage taboo *sirri;* or because of complicated considerations that force a person to keep his marriage a secret. Positive law in Indonesia does not recognize the term nikah sirri or nikah sirri, moreover it specifically regulates *sirri* marriage , in a law and regulation.

According to researchers, one thing that should not be forgotten is that in *sirri* marriage there is a valid marriage contract according to Islamic shari'a that cannot be denied because this means denial of religious truth. This dilemmatic situation is what must be faced by judges in religious courts. This dilemmatic state includes three aspects, namely juridical, sociological, and humanist aspects. According to researchers, juridically, judges will face at least two conflicting opinions, namely, between legal and illegitimate. Sociologically, judges will face two equally disadvantaged parties, while humanely, judges will face two equal parties demanding protection and humanitarian guarantees.

In general, *sirri* marriage occurs because of a conflict between certain legal procedures or rules / disciplines that are contrary to the interests of parties who want to perform a marriage contract legally, even though they actually do not experience obstacles to fulfill the material legal requirements of marriage but because of certain legal procedures or organizational rules / disciplines that bind them so that they have difficulty fulfilling the provisions formal law in the form of marriage procedures. For example, members of the TNI/POLRI or civil servants who because of marriage with the first wife do not have children then want to remarry but because organizational discipline does not allow

someone to legally polygamy, they resort to sirri marriage because they do not want to violate religious law.

These things usually encourage them to do *sirri marriage,* as long as the conflict of laws still exists, it is difficult to avoid the occurrence of *sirri* marriage in Indonesia. Previously it has been described that *sirri* marriage in Indonesia is currently understood as:

a) Marriage without a Guardian. Such marriages are carried out in secret (*sirri*) because the female guardian disagrees, or because they consider the marriage valid without a guardian, or simply because they want to satisfy their lust without paying attention to the provisions of the Shari'a.

b) Marriages that are valid in Islam are not, however, registered in the state registry agency. Many factors cause a person not to register his marriage at the state civil registration agency. Some are due to cost factors, unable to pay for the administration of records, some are caused by fear of being caught violating rules that prohibit private or state employees from marrying more than one, and so on.

c) Marriages that are kept secret due to certain considerations. For example, for fear of getting negative stigma from society that already considers marriage taboo *sirri*, or because of complicated considerations that force someone to keep their marriage secret.

The secret sirri marriage is already known among scholars, it's just that the sirri marriage known in the past is different in understanding from *the sirri* marriage today. In the past, what was meant by *sirri* marriage was marriage in accordance with the pillars of marriage and its conditions according to the Shari'a, it's just that witnesses are asked not to notify the occurrence of the marriage to the public, to the community, and by itself there is no *walimatul-"ursy*.

The *sirri* marriage known by the Indonesian people today is a marriage performed by a guardian or deputy guardian and witnessed by witnesses, but it is not carried out before the Marriage Registration Officer (PPN) as an official government official or is not registered at the Office of Religious Affairs for Muslims or at the Civil Registration Office for those who are not Muslim.

Based on the results of research that, like marriage in general, *sirri* marriage is carried out in accordance with the Islamic marriage procession, namely there are prospective brides, guardians, witnesses, ijab qabul, and dowry. The difference is that the marriage was not registered with the Office of Religious Affairs (KUA). Thus, the marriage process is not recorded and supervised by PPN (Marriage Registration Officer) but is simply married to a person who is considered to understand Islam or is figured, such as kiyai. The opinion that has emerged so far that kiai plays a role in the process *of sirri* marriage.

In general, the implementation of *sirri* marriage carried out by most people takes place at home, but there are also those who come to the kiyai residence. Like walimah which is carried out at the wedding ceremony, this *sirri* wedding event is also attended by invitees who on average number 10 to 20 people consisting of family circles, both from the male side and from the female side and neighbors who are near the house. This shows that *sirri* marriage is not a secret anymore because they also do walimah which is basically an announcement about the marriage performed.

Society generally recognizes the existence of people who perform *sirri* marriages without having to question the validity of the marriage. For the validity of *this sirri* marriage to be carried out as is customary marriage in Islam, it is required that there is a guardian who can marry a woman to a man. At the time of marriage most subjects make their own father as the guardian of the marriage, but some use siblings. In addition to marriage, there must be a guardian, another condition that must be fulfilled in marriage is the presence of witnesses. Witnesses who were present in the implementation of sirri marriage in addition to two men there were also subjects who presented two women or one man. Another requirement as one of the requirements for the validity of marriage is ijab qabul or marriage contract. The requirement in his writings states that the madhhabs put ijab qabul as the first absolute condition of marriage.

Ijab qabul is performed between the guardian of the bride and the bridegroom. Ijab qabul in *sirri* marriage is carried out the same as if they marry in front of the devotee, the difference is again there is no recording. In contrast to marriages that are carried out by registration with in the process *of ijab qabul* pronounced sighat *ta'lik*, as stated in the marriage book. If a man leaves his wife for two consecutive years, or does not provide three months' obligatory bread, or harms the wife's body or body, or leaves (indifference) to her six months, then the wife is not pleased and complains to the religious court and pays the prescribed amount, then talaq one falls. If you look at the process of sighat *ta'lik* in Islamic religious regulations, it seems that it is not done by people who perform *sirri* marriages.

Marriage according to Law of the Republic of Indonesia Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (Marriage Law) and then followed by its Implementing

Regulation, precisely in Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage, which is stated in Article 2 paragraph (1) namely Marriage is valid if it is carried out according to religion and belief. From the point of view of positivism where this school prioritizes legal certainty through "law is law", then the editorial of this Article there is no longer any doubt, all are clear and clear that marriage is valid if it is carried out according to religion and belief.

In line with the Marriage Law, the Compilation of Islamic Law (hereinafter abbreviated as KHI) Article 4 of the KHI explains that a valid marriage is valid if it is carried out according to Islamic law in accordance with Article 2 paragraph (1) of the Law. Accordingto Law Number 1 of 1974, the definition of marriage is an inner birth 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 One and Only Godhead. This definition illustrates that marriage is a bond with eternal time, not temporary. Furthermore, Article 2 paragraph (2) of the Marriage Law states that marriages are registered according to applicable laws. This article is clarified in Article 5 paragraph (1) of the KHI, namely:

1) In order to ensure marital order for the Islamic community, every marriage must be recorded.
2) The registration of marriage in paragraph (1) shall be carried out by the marriage registrar officer in accordance with the law.

Article 5 paragraph (1) of the KHI makes it clear that marriages must be registered in accordance with Law No. 22 of 1946 jo Law No. 32 of 1954 concerning Marriage Registration, Talaq, and Reference (hereinafter abbreviated as PNTR Law). KHI Article 5 is clarified again by the provisions of KHI Article 6 which contains the following:

1) To comply with Article 5 of the IHL, the marriage must take place before and under the supervision of the marriage registrar;
2) Marriages performed outside the supervision of the marriage registrar have no legal force.

The provisions of KHI Article 5 and KHI Article 6 paragraph (2) concerning marriage have expressly broken the construction of the provisions of Article 2 paragraph (1) of the Marriage Law that marriage is valid if it is carried out according to religion and belief and the provisions of KHI Article 4 where marriage is valid if carried out according to Islamic law according to Article 1 paragraph (1) jo. Article 14 of the KHI states that to carry out a marriage, there must be a prospective husband, prospective wife, marriage guardian and Kabul ijab.

Referring to the history of the original law of marriage that has been carried out for generations since the time of the Prophet Muhammad SAW, it is not something that is easily negated by providing positivistic understanding. The unwritten understanding of Islamic law that lives in this society is still partly used. The principle used by some people on marriage is not recorded because marriage in the concept of Islamic Law is valid if the pillars and conditions for marriage have been fulfilled and this has never changed since the time of Islam i.e. there must be a bride, male and female, there is a guardian for the bride, there are witnesses, there is a dowry and there is ijab kabulnya. For the bridegroom the requirements are male, Islamic, certain, and do not have 4 wives, there are no marriage barriers, there must be a guardian.

The requirements for guardians are male, Muslim, baliqh, and intelligent. The order in which you are entitled to be a guardian is determined in the Qur'anic Surah An-Nisa verse (32). There must be two witnesses provided that the witnesses are mature, Muslim, not blind, not mute, at least 2 men, physically and mentally healthy. There must be a dowry as mentioned in the Qur'an Sura An-Nisa:4. The dowry requirements must be halal and thayyib, halal goods and halal get it. Dowry can be debt and can be cash. There is ijab kabul which is a contract of surrender of a daughter by her guardian to the bridegroom, if these Pillars and Conditions have been fulfilled, then the marriage is valid according to Islamic law.

Deviations from the provisions of Article 2 paragraph (2) of the Marriage Law and Article 5 and Article 6 of the KHI which gave rise to social terms known as religious marriage, unrecorded marriage, and underhand marriage, there is also a call for serial marriage. Meanwhile, the purpose of marriage in Article 1 of the Marriage Law is "the inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One and Only Godhead". In the above statement explained that this serial marriage is a valid marriage religiously, but not the marriage is not officially registered with the State, this is also recognized by religion but not by its existence by the State.

Indonesia is a country based on the ideology of Pancasila which firmly recognizes the principle of religious freedom. (Subekti, 2002) Therefore, various procedures for conducting marriage in Indonesia vary between different tribes, religions and beliefs. Based on Article 2 paragraph 1 jo. paragraph 2 of the Marriage Law, the validity of marriage occurs if the marriage is carried out according to their respective

religions and local community beliefs, and also the need to register the marriage because this is in accordance with the prevailing laws and regulations in Indonesia.

The terms of this marriage must be clear and include the name, age, religion/belief, occupation and residence of the bride and groom. If one or both of these brides-to-be have ever been married, the name of the ex-husband or wife should also be mentioned. However, in practice there are still some who choose to marry in a way that is not in accordance with the provisions in positive law, namely conducting marriages in religion and belief without being registered by the State or commonly called serial marriages.

The "sirri" marriage is a marriage that basically has a negative impact, especially for the wife and children resulting from the "sirri" marriage. This happens because "sirri" marriages from a religious point of view are valid. However, in terms of legal protection and economic responsibility and the education of their children, it still needs to be reviewed. Serial marriages have no legal force, because they occur without being registered with the authorities, so that the State is not aware of the legal act. This is clearly not in accordance with the law regarding the validity of marriage in Indonesia's positive law, and interferes with the realization of legal certainty for the Indonesian people.

Marriage registration is a necessity that must be carried out by every citizen who will perform a marriage as mandated by law, but in practice not everyone can accept the regulation regarding the necessity of marriage registration considering that marriage registration causes a change in the legal status of marriage, from underhand marriage or Siri to a legal marriage according to the Marriage Law. Thus, in this case it should be understood that Siri's marriage remains valid because it is in accordance with religious law, but it is an invalid marriage (not recognized by applicable law) before the marriage is registered.

The stigma that the sirri marriage is invalid is based on the provisions of Article 2 paragraph (2) of the Marriage Law and Articles 5 and 6 of the KHI which states that marriages that are not recorded are marriages that have no legal force. Thus, marriage registration is an important thing. Marriage registration is a requirement or administrative obligation of couples who will carry out marriage to fulfill legal order, to realize legal certainty. The existence of this recording is the same as administrative order for other legal events, such as births and deaths that are required to be recorded by authorized employees and stated in an official deed. In a registered marriage, the couple will get a marriage book as authentic proof that the marriage has taken place legally in accordance with the provisions of the law.

Based on the description above, it is in the opinion of the author that the marriage of everything arising from the marriage will be considered valid according to law. In religious law in Indonesia serial marriages are considered valid, but legally the country will be legally flawed and have no legal force or no legal protection for those who perform serial marriages.

A marriage agreement or better known as a prenuptial agreement is an agreement made on the agreement of a couple who will marry related to property to be brought into marriage and property obtained in marriage. Will the treasures become a single entity or separate in their respective mastery? In addition, a prenuptial agreement can also contain other matters related to commitments in running a household.

Among Indonesian people, prenuptial agreements are a sensitive and even taboo thing to talk about. Talking about material matters will offend not only the potential spouse but also the extended family as a whole. In addition, psychologically it is very unethical because this prenuptial agreement aims to anticipate if there is a divorce in the future. The marriage has not yet taken place, already alluding to the issue of divorce. The Civil Code (KUHPercivil) does not recognize the concept of common property and existing property is union property. If there is no prenuptial agreement regarding the separation of marital property, then from the moment the marriage takes place, there is a unanimous union of property regardless of who brought the property into the marriage.

In the event of divorce in the future, the union property will be divided in half for each husband and wife. Therefore, in the Civil Code system, this prenuptial agreement becomes very important in order to override the legal provisions regarding the unanimous union of assets, Law Number 1 of 1974 concerning Marriage adopts this marriage agreement as contained in Article 29 of the Marriage Law (UUP). Thus, UUP opens space for Indonesian people who want to make a prenuptial agreement. Considering that the Civil Code only applies to certain groups of people in Indonesia. For example, for the Muslim group of Indonesian society, of course, it is impossible for the prenuptial agreement to be based on the Civil Code.

According to the Civil Code in Article 119, marriage between a man and a woman results in a unanimous union of marital property, in this case, in principle, in the relationship between husband and wife, there is only one type of wealth, namely union property. Deviation from the principle of unity of property is made possible by the provisions of Article 139 of the Civil Code which expressly states that:

"By entering into a marriage agreement, both prospective husband and wife are entitled to prepare some deviations from the laws surrounding the union of property, provided that the agreement does not violate good decency or public order and provided that all provisions are observed".

The provisions of the above Article actually provide an opportunity for husband and wife to make a marriage agreement whose contents regulate the property separately as long as the agreement does not violate good morals or general order. In the legal aspect, marriage is a contract, which is a noble alliance and agreement between husband and wife to build a happy home. As a bond and agreement, both parties are bound by the promises they make, therefore, with the marriage contract gives rise to the rights and obligations of husband and wife.

The concept of a prenuptial agreement comes from the Civil Code and the Marriage Law adopts this provision affirmed in Article 29 of Law Number 1 of 1974 concerning Marriage. However, the prenuptial agreement of the Civil Code still has differences between the two rules. Below will be the author of the significance of differences in marriage agreements according to the Civil Code and Law Number 1 of 1974 concerning Marriage as follows:

1). Based on the Marriage Agreement Clause

a. **Marriage Agreement According to the Civil Code**

Article 149 of the Civil Code states: "after the marriage takes place, the marriage agreement in any way, shall not be changed". From the provisions of Article 149, the Civil Code expressly states that the marriage agreement cannot be changed for whatever reason. Thus, the Civil Code closes the possibility of changing the marriage agreement after the marriage has taken place, even if it is possible for the parties to agree to change it.

Such a provision is not surprising, even if the marriage covenant lies in family law, it is still a covenant. As a covenant, it must certainly be subject to the principles of covenant law. The legal principle of the agreement that must be considered in this case is the principle of binding force of an agreement or the principle of *Pacta Sunt Servanda*. This principle contained in Article 1338 paragraph (1) of the Civil Code states all agreements as long as they are made validly valid as law for those who make them.

The provisions of Article 1338 of the Civil Code hint at the binding force of an agreement. If the parties have fulfilled the conditions for the validity of the agreement as contained in Article 1320 of the Civil Code, the agreement is valid and binding on the parties as the binding force of a law. The bound prospective husband and wife who make a marriage agreement must submit to and be bound by the agreement made before marriage. By equating the binding force of an agreement with the binding force of a law, the framer of the law intends to remind the parties not to violate the agreement that has been agreed.

If the parties wish to amend the marriage agreement even though they agree to do so, then the amended marriage agreement will be null and void because it contradicts the provisions of Article 149 of the Civil Code. Thus, it remains a valid first agreement.

Based on the description above, according to the author, based on the clauses or provisions of the marriage agreement in the Civil Code cannot be changed after the marriage takes place, the arrangements are made in such a way both related to the content and procedure for making it. The Civil Code gives the possibility to change if it is done before the marriage takes place and even then with strict procedures. Article 148 of the Civil Code states that:

"Any amendment in the covenant, which could have been made before the marriage, cannot be made in any other way, but by deed and in the same form, as the deed of the covenant was made."

Further in paragraph (2) it says: so long as there is no change, it may take effect, if its administration is not attended and approved by all those who have attended and agreed to the agreement". Thus, if it is to be amended, the amendment must be made in the form of a deed and approved by the prospective husband and wife and attended by the same witnesses as the witnesses who were present at the time the first deed was made. Meanwhile, according to the provisions of Article 147 of the Civil Code, a marriage agreement must be made with the following conditions:

a. By notarial deed

This is done for the validity of the marriage agreement, as well as:

1) To prevent hasty acts due to the consequences of this covenant will be borne for life.
2) For legal certainty.
3) As legal evidence.

b. At the time before the wedding took place

This condition is held with the intention that after the marriage takes place, it can be known with certainty about the marriage agreement and the contents of the marriage agreement. The marriage

agreement is valid for the duration of the marriage and cannot be changed. So during the marriage there is only one kind of marital property law except when there is a separation of property. Three forms of marriage agreement that can be chosen by prospective husband and wife are:

1) Marriage Agreement with Mutual Gains and Losses

Article 115 of the Civil Code states that:

"If in a marriage agreement by both prospective spouses it is only agreed that in a union of profit and loss, then it means that such an agreement, with absolutely no validity of the union of property wholly according to law, after the end of the union of husband and wife, all benefits to them accrued during the marriage shall be shared between the two of them, as well as all losses to them shall be borne by them"

This provision regarding profit and loss union is not all the property of the husband and wife mixed into the property of the union, but only part of the property of the husband and wife which is the profit and loss incurred during the marriage. The wealth (all profits and debts) of the husband and wife that they carry in marriage and the property they freely acquire (gifts, inheritances) throughout the marriage are permanent capital of the husband or wife and each does not enter into togetherness, so there are three kinds of wealth, namely:

a. Husband's personal property
b. Wife's private property
c. The gains and losses that go into being together

2) **Matrimonial Agreement With Mutual Results and Income**

Regarding the togetherness of proceeds and income (*gameenschap van vruchten en inkomsten*) the law contains only one article (Article 164 BW). The provision in the marriage agreement, stipulates that between husband and wife there will only be a joint yield and income, thus meaning that there will be no unanimous or complete togetherness according to law and there will also be no togetherness of profit and loss. Similarly, in the togetherness of results and income, there is also the possibility of three types of wealth, namely: husband's property, wife's wealth and joint income and income togetherness. Regarding the togetherness of results and gains there used to be many opinions, but now it can be said that in general people argue: togetherness is in many ways the same as togetherness of profit and loss.

The difference is, if the togetherness shows a loss (negative balance), then the husband takes care of the togetherness. In other words, the husband must bear the entire loss. If togetherness causes benefits, then these benefits are shared between husband and wife. This is in accordance with Article 105 of the Civil Code which specifies that, "every husband is the head in the conjugal union. He (the husband) must take care of the property like a good housefather, and therefore be responsible for all omissions in the management".

From this article it can be seen that the Civil Code places the husband with a greater role in the family, so that the losses arising in the practice of marriage agreements in the form of union results and income are borne by the husband.

1) Joint property with marriage agreement

In the Civil Code there is a rule that contains if each party before the marriage does not make a marriage agreement, thus the property obtained by the parties before and after the marriage can be considered as a union of property unanimously or also called joint property. This is in accordance with the provisions stipulated in Article 119 of the Civil Code. As a result of this provision, the wife's property becomes the husband's property, and vice versa the husband's property becomes the wife's property.

Similar to the rules contained in Article 35 Paragraph (1) in Law No. 16 concerning Amendments to Law No. 1 of 1974 concerning Marriage, it is also stated in Article 119 of the Civil Code, if no marriage agreement is made, joint property or property union will arise. Looking at the regulations contained in Article 35 of Law Number 1 of 1974 concerning Marriage, it can be understood that property in marriage can be divided into 3 groups, namely:

a. Joint Property or Unity of property, is property obtained during the marriage. The property can be controlled by the parties and if there is legal action taken on the joint property, it requires the consent of each party.
b. Congenital Property is property acquired by each party before the marriage takes place. Each party has full power over the property without having to obtain consent from their spouse, this is also regulated in Article 36 Paragraph (2) of Law Number 1 of 1974 Jo. Law Number 16 of 2019.
c. Acquired Property, this property can be in the form of grants, inheritances, or gifts obtained by each party. Control of the property remains under the control of each party, where each party has full power over the acquired property. As with property, if one party commits a deviation, including the existence

of a marriage agreement, then control of the property obtained jointly is in line with the content of the marriage agreement agreed by the parties.

Determining the status of marital property is something very important so that marital disputes do not occur in the household in the future. Similarly, in the event of divorce, there must be clarity on which is the husband's right and which is the wife's right, lest the husband take away the wife's rights and vice versa.

The meaning of joint property as in Article 35 of the Marriage Law is that property acquired during marriage becomes joint property. One definition of gono-gini property is the joint property of the husband and wife obtained by both of them during the marriage, just as if someone gives money, other things to the husband and wife, or property purchased by the husband and wife from the money of the two of them, or savings from the husband's salary and the wife's salary that are put together, it can all be categorized as gono-gini property or joint property.

The compilation of Islamic Law in article 1 letter (f) expressly states that "Property in marriage or shirkah is property acquired either individually or together with husband and wife during the marriage bond and hereinafter referred to as joint property, without question registered in the name of anyone. Thus, in principle Islam does not regulate the common property in either the Qur'an, nor in the Hadith.

Even in classical jurisprudence there is no discussion of common property. Therefore, the arrangement is left to each party. In this regard, Islamic jurists differ on the common property.

The first opinion says there is no joint property between husband and wife. This opinion was expressed by Hazairin, Anwar Harjono, and Andoerraoef. While other Islamic jurists argue that it is impossible if Islam does not regulate common property, while other small matters are regulated in detail and fall within the scope of discussion of Islamic law. If it is not mentioned in the Qur'an, then it must be in the hadith. This opinion was put forward by T. Jafizham.

Both opinions each have an argument that basically in Islam there is no known mixture of joint property between husband and wife because of marriage. The wife's property remains the wife's property and is fully controlled by the wife and the husband's property remains the husband's property and is fully controlled by the husband. Therefore, a married woman in Islam is still considered capable of acting without the help of her husband including in taking care of property, so that she can perform legal acts in society,

The argument that there is no joint property between husband and wife except by way of shirkah, among others Sura Annisa verse 34:

The men are the leaders of the women, because Allah has favored one part of them (men) over the other part (women), and because they (men) have spent part of their property.

And the Qur'an surah At-Thalak verse 6, as follows:

"Place them (wives) where you live according to your ability, and do not trouble them to constrict them. "

Because the wife gets good protection regarding physical, mental, moral and material support, shelter, maintenance costs and children's education, it is the full responsibility of the husband as the head of the family. This means that the wife is considered passive in receiving what comes from the husband, so that there is no joint property between husband and wife. As long as what is given by the husband to the wife outside of household expenses and children's education, such as gifts in the form of jewelry, that is the right of the wife and should not be contested by the husband. What is sought by the husband remains the property of the husband unless there is a shirkah.

The high needs in the household make the demands of spending more heavy, especially when coupled with an excessive lifestyle but income is not appropriate, so that debt becomes an alternative solution to meet and meet these needs. Debt in marriage itself is divided into 2 types, namely:

a. Union Debt

Association debt is all debts and expenses made either by husband or wife or jointly for the needs of domestic life, including daily expenses. Such expenditure will be a burden on the union's property.

b. Personal Debt

Personal debt is a debt that is attached to the personal property of each party and is not included in the union of property.

Related to joint property can occur because of debts made by husband and wife. The occurrence of this unity debt can be seen in domestic life, such as children's educational needs, repairing the house owned together, and others that are used for common interests. Meanwhile, personal debt is debt made on personal volition with a third party. Then there are also personal debts in a union, for example such as expenses or debts intended for property from grants or inheritances where the grantor or testator asks that the property not be included in the marriage property union. So in this case, the responsible party or the party who bears is the grantee or beneficiary.

If there is a marriage without a marriage agreement related to the separation of property, then all types of debts made after the marriage takes place are considered as joint debts. Generally, financial institutions ask spouses to co-sign debt documents. In other words, if there is a failure in the payment of debt installments from the debtor, the financial institution has the right to collect debts to the debtor or his spouse.

In the event of bankruptcy, when there is no marriage agreement related to the separation of property, the creditor can take all joint property owned, so that the spouse will be affected. When a person is married and then one of the parties applies for bankruptcy determination, the application must be based on the consent of the spouse if in marriage they both enter into a union of property. If during the marriage the husband and wife do not make a marriage agreement that regulates the separation of property, then if one of the husbands or wives falls bankrupt then the property included in the bankruptcy boedel is joint property obtained during the marriage. However, if before or at the time of marriage both parties have made a marriage agreement, then the property that enters the bankrupt boedel is only the property of the debtor who fell bankrupt.

Debtors who fall bankrupt if they are in a marriage bond with a mixture of property, then the bankruptcy results in the bankruptcy of the property of the husband or wife that has been obtained during the course of the marriage. Article 23 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment states that if the debtor falls bankrupt, the debtor's husband or wife is also bankrupt who marries in a mixture of assets. By looking at these provisions, it can be understood that all assets that have been acquired both in the name of husband and wife at the time of marriage that are included in the mixture of assets will be subject to bankruptcy, thus the property is included in bankruptcy assets.

Regarding the legal consequences of bankruptcy on the assets of each party in marriage, it has been regulated in Article 64 Paragraph (1) which states that:

"The bankruptcy of a husband or wife who marries in a union of property, is required as the bankruptcy of the union of property".

In bankruptcy provisions related to joint property, both in the concept of the Marriage Law, there are no significant differences. In this case, the bankruptcy of the husband or wife also results in the bankruptcy of the husband or wife who has a marriage with a union of property or in other words the property he owns is not based on a marriage agreement or separation of property in their marriage. Article 62 of Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations states that:

Paragraph (1):

"In the event that a husband or wife is declared bankrupt, the wife or husband shall have the right to take back all movable and immovable property which is the property of the wife or husband and the property acquired respectively as a gift or inheritance".

Paragraph (2):

"If the property of the wife or husband has been sold by the husband or wife and the price has not been paid or the money from the sale has not been mixed in the bankruptcy property, then the wife or husband has the right to take back the money from the sale".

Article 37 of Law No . 16 on Amendments to Law No. 1 of 1974 on Marriage clearly states that:

"If a marriage breaks up due to divorce, joint property is governed by its own laws".

Each of the laws is religious law, customary law, or other laws. This division according to their respective laws will be a conflict in the use of applicable law known as conflict of *law* because the arrangement of marital property and the division of joint property after divorce according to different religious and customary laws that have their own rules. In practice in society, the use of religious law or customary law depends on the religion and ethnicity of the husband and wife. If a husband and wife who break up due to divorce follow Islam, they always divide property according to Islamic law, but also do not rule out the possibility of division based on customary law. For non-Islamic religions, the division of property due to divorce is always subject to customary law if they are of the same tribe, and if no agreement is settled according to customary law then positive law applies.

If joint property is transferred or pledged by one of the parties from the husband and wife for debt without the consent of the spouse, it can be canceled by law for the act. The consideration is to protect third parties in good faith and if the spouse's legal actions are intended for the mutual benefit of the husband and wife.

It is different if the control of personal property is absolutely controlled by the husband or wife himself. So, if the owner of personal property or property wants to take legal action on his personal property, then there is no need to ask for consent from his spouse. Between the two parties, the husband or wife is free to take legal action for his property and is lawful.

A. Legalprotection of property in the marriage agreement.

The conception of a marriage agreement is an agreement that is based on the word agreement and gives rise to rights and obligations but the agreement only has legal effects in family law and these rights and obligations exist outside the law of wealth except those in the field of marital property law). The real life process between humans with one another is certainly impossible to separate. Just as the relationship of husband and wife must be able to meet their physical and spiritual needs with each other and also in addition to the fulfillment of physical and spiritual needs, of course there is a relationship of wealth as the basis for meeting the needs for human survival.

The problem of wealth in the social environment has always been a separate scope for everyone to be able to manage it properly and correctly, namely by forming agreements related to the management of assets owned. This can be related to wealth before the marriage took place or related to wealth after the marriage took place or commonly referred to as gono gini property.

The relationship between husband and wife who must manage finances into a unit, is the right of everyone as a consequence of the implementation of marriage in accordance with Article 28 B Paragraph (1) of the Constitution of the Republic of Indonesia Year 1945 has explained that everyone has the right to form a family and continue offspring through legal marriage.

The explanation of the article indirectly explains the legal consequences of marriage, including the legal consequences on the property and third parties of the married couple. The legal consequences related to the management of assets of married couples have a system, along with the principle of a whole entity or using a separate system either partially or wholly which provides a way for husband and wife to be able to regulate / make agreements regarding the management of assets.

Agreements related to the management of property carried out by husband and wife are also called marriage agreements. The marriage agreement has been regulated in Article 29 of Law Number 1 of 1974 concerning Marriage, which discusses the prenuptial agreement. In addition to these regulations, there has been a regulation that directly allows the making of a marriage agreement after the marriage takes place, namely with the issuance of the Constitutional Court decision Number 69 / PUU-XIII / 2015.

Based on these two regulations, it is actually very clear that the State of Indonesia supports the establishment of a marriage agreement to continue to protect the property of husband and wife and third parties concerned. Joint property acquired during marriage may not be an issue in a marital divorce. This is different from inherited property and acquired property whose nature of control is the same depending on which law the husband and wife agree on. The agreement should be written into a marriage agreement so as not to cause problems in the future.

Related to the division or position of property in marriage at any time occurs if there are problems or conflicts either related to inheritance, joint property or called gono-gini property, and so on. Property has been regulated by the Marriage Law in Article 35 paragraph (1) and paragraph (2), that property obtained during the marriage bond will become joint property while property obtained before the marriage bond occurs will become the control of each husband or wife.

The birth of the Constitutional Court Decision No.46/PUU-VIII/2010 states that children who come from serial marriages will have a civil relationship with their biological mother and biological mother's family, but also have a civil relationship with their father, but must first be able to prove using sophisticated science and technology or be able to use other evidence so that the civil relationship between the child and the father and mother can be protected by law.

Related to the division or position of property in marriage at any time occurs if there are problems or conflicts either related to inheritance, joint property or called gono-gini property, and so on. Property has been regulated by the Marriage Law in Article 35 paragraph (1) and paragraph (2), that property obtained during the marriage bond will become joint property while property obtained before the marriage bond occurs will become the control of each husband or wife.

A prenuptial agreement is an agreement that binds both prospective brides and contains the issue of the division of each other's property or relates to the personal property of both parties. So it can be distinguished if one day there is a divorce or the two are separated by death. Thus, although the impression does not support the strength of the household ark built by someone, this agreement equally protects personal property from both husband and wife later in the event of divorce or death. The content of the prenuptial agreement is free as long as it does not conflict with decency and public order.

A prenuptial agreement should not be made because of false and forbidden causa. No promises are made that deviate from the rights arising from the power of the husband as head of marriage, rights arising from the power of parents (*ouder-lijkemacht*), the rights prescribed by law for the longest living bride (*langstlevende echtgenoot*) and no agreement is made containing a waiver of the property of the persons who descended it

The truth of the prenuptial agreement in Indonesia itself is legally protected, namely in Article 29 Paragraph 1 of Law No. 1 of 1974 concerning Marriage which states "At or before the marriage takes place, both parties by mutual consent may submit a written agreement ratified by the marriage registrar employee after which the contents also apply to the third party involved." This means that the law has recognized the validity of a prenuptial agreement that protects between husband and wife. Based on Article 35 paragraph (1) of Law No. 1 of 1974 concerning Marriage states that:

"Property acquired in the marriage bond is joint property so that later if one of the married couples wants to sell or transfer property acquired during marriage, they must obtain prior consent from their spouses".

The prenuptial agreement in the article regulates several things, including:

1. Separation of Property

Separation of property may occur when the wife's position is cornered due to the following 3 reasons:

a. The husband is declared to have misbehaved, namely by wasting joint property for personal gain.
b. The husband is declared to take care of his own property, not giving a proper share to his wife so that the wife's rights are lost.
c. It is known that there is a very large negligence in managing marital property so that it has the possibility of loss of joint property.

2. Matrimonial Agreement (*huwelijks voorwaarden*)

This agreement is made by the bride and groom to arrange the consequences that may arise regarding the joint property. In this agreement third parties may be included. Things that should obviously be considered when making this marriage agreement are:

a. The agreement must not be contrary to decency and public order.
b. The covenant is not made to deviate from: (1) rights arising from the power of the husband, (2) rights arising from the power of parents.
c. The treaty does not contain a waiver of rights to the relics of those who bequeathed it.
d. The agreement should not promise that one party must pay a portion of the debt greater than its share.
e. The agreement should not be made a promise that their marriage would be governed by foreign law.

This marriage agreement must be made a deed of agreement (*prenup*) between the couple who will perform the marriage and made by an authorized official, namely a Notary. The prenup deed must be made before the date of the marriage. Made by a Notary Public and authorized by him. Some say the prenup should also be authorized by the local District Court. Actually, the prenup made by a Notary is strong enough for the law, because the position of Notary is appointed by the government and is tasked with carrying out public service functions in the legal field. Notaries are empowered by law to make a deed that has a perfect and specific evidentiary value. Everything he wrote and established was true. After the marriage takes place, there must also be no change in any way and apply until the end of the marriage which may be caused by divorce, death, or even the making of a marriage agreement during the marriage period resulting in changes in the legal status of property and debts contained or acquired in the marriage that are closely related to third parties.

CONCLUSION

This study concluded that the prenuptial agreement related to sirri marriage and joint property is that in the prenuptial agreement, prospective married couples can arrange ownership and separation of property to avoid combining property obtained by each husband and wife during the marriage. In essence, property acquired during marriage is joint property, unless there is a prenuptial agreement between husband and wife. Thus, in the prenuptial agreement, the prospective spouse affirms that the property acquired during the marriage by each husband or wife belongs to the husband or wife who acquired the property. Not only that, with the separation of property, prospective married couples can also arrange debt separation. Thus, husbands / wives who do not owe debt will not bear the debt jointly or jointly responsibility, but are their respective responsibilities.

2. Legal protection of property in the marriage agreement. Separating wealth between husband and wife so that their property does not mix; The debts owed by the husband or wife will be the responsibility of each; If one intends to sell his property then there is no need to seek the consent of his spouse; In the event that the husband or wife will apply for a credit facility, there is no need to seek the consent of his spouse to pledge the price of his wealth; Guarantee the continuity of family property; Protect the interests of the wife if the husband practices polygamy; and Avoiding unhealthy marital motivations. In addition, the matters that can be regulated in the Marriage Agreement are Congenital property in marriage, whether property obtained from each other's efforts or from grants or inheritances, All debts and receivables carried

by husbands or wives in their marriage, so that they will remain the responsibility of each or the responsibility of both with certain restrictions; The right of the wife to take care of her personal worth, both movable and immovable, with the duty of enjoying the fruits and income of her own work or from other sources; The authority of the wife in managing her property, so as not to need assistance or transfer of power from the husband.

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