

## MATRIMONIAL AGREEMENT AND VALIDATION IN COURT

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### ABSTRACT

The purpose of the research on how a marriage agreement is applied in a legal context, including how the document is made, signed, and executed including parties outside the agreement in the event of a dispute which includes how the provisions for the division of marital property are decided after the end of the marriage, the method used is normative juridical using a descriptive analysis approach, The findings in the study are that the marriage agreement made in accordance with the applicable provisions and has been registered with the marriage registrar is valid and has also bound third parties so that when there is a dispute over marital property, it is the basis for the judge in deciding the case, marriages that have a marriage agreement do not have joint property, control of property.

**Keyword:** Marital Agreement; Court; Marital Property

### Introduction

Preventive action to anticipate conflicts in marriage, especially those related to property, is to make a marriage agreement. More and more Indonesians are aware of the importance of the law for their protection, one form of such protection is to protect the rights in marital relations according to Indonesia's positive law. Marriage agreements in Indonesia have been allowed to be made since the enactment of the Civil Code on May 1, 1848, which was later contained and reaffirmed by the promulgation of Marriage Law Number 1 of 1974 (Arief, 2017).

The marriage agreement can include everything that is agreed that is not limited to property in marriage, in Article 29 of the Marriage Law it is stipulated that the marriage agreement can be made without violating the limits of law, religion, and decency that must be stated in a written agreement at or before the marriage takes place (Tjajindra & Djaja, 2023). Husband and wife are entitled to deviate or circumvent what is prescribed by law regarding marital property law to the consequences of marriage between them (Andasmita, 1987).

In a formal sense, a marriage agreement is any agreement made in accordance with the provisions of the law between prospective husband and wife regarding their marriage, whatever its content, either regarding the union and or separation of each other's personal property which is the object of agreement in the agreement (Pakaya, 2016). Conflicts relating

to marital property cannot be resolved through mediation, even after being processed in the court of first instance, there is a possibility that the process will proceed to the court of appeal and cassation.

The benefit of making a marriage agreement is to assist the panel of judges who adjudicate dispute cases in making the right decision in the divorce process (Zuhdi et al., 2022). Regarding the marriage agreement, in Article 139 of the Civil Code, it is stated that by entering into a marriage agreement the prospective husband and wife have the right to prepare some deviations from the law related to the union of property, waiver of the necessity in the Civil Code provided that the submission does not violate general order, and good decency (Rahmawati, 2023). The marriage agreement is made as a legal protection of the property and property acquired by each husband and wife even though the law does not regulate the purpose of the agreement and what things can be agreed, everything is left to the parties (Susanti, 2018).

Changes to Article 29 of the Marriage Law after the Constitutional Court decision No: 69 / PUU-XIII / 2015 open opportunities not only to prospective husbands or wives but also husbands and wives during and after marriage, this article becomes very vital if it is related to the current state of society that is crawling towards an advanced life order with the main characteristics of awareness of rights and obligations (Hafis et al., 2022). Marriage as a basic human need is with the aim of forming an eternal and happy home based on the one and only godhead, marriage is expected to last a lifetime or is expected to occur only once in a lifetime (M.Hanifah, 2019)

The marriage bond is something sacred (Hedi et al., 2017), Legal norms on marriage apply to all citizens. Marriage itself has an important influence in the lives of the parties who carry out the marriage One of the legal consequences of marriage is the existence of joint property in marriage, regulated in Law Number 1 of 1974 concerning Marriage (Rahman et al., 2020), namely in Chapter VII, Articles 35 to Article 37. Joint property is all property acquired by a husband or wife during the marriage (Zuhdi et al., 2022). This means that the assets acquired by the husband and wife during the marriage last until divorce occurs. In this joint property, the husband or wife can only act if there is agreement from both parties, in other words, the husband can only act on the joint property if he has obtained approval from the wife, and the new wife can act on the joint property if he has received approval from the husband (Djuniarti, 2017).

The description of the case in Appeal Decision Number 509/Pdt/2021/PT DKI is that Jonathan Seow Kian Teck's husband 33 years (plaintiff/copyright defendant) with Yuchin Suriko Sumada's wife 45 years (defendant/patent plaintiff), made a marriage agreement, before the marriage on November 10, 2015 Number: 2 before Notary Eka Purwanti, on January 23, 2016 a marriage based on Christianity was held at the Jakarta International Christian Fellowship Jakarta and has been recorded based on the Marriage Certificate Citation Number: AK.500.0080830, Marriage Certificate Number 16 / AI / PP/ 2016 issued by the DKI Jakarta Provincial Population and Civil Registration Office dated

January 23, 2016, and in the Marriage Certificate Citation a Marriage Agreement has been ratified.

Starting in 2018, the household of the Plaintiff and the Defendant began to be disharmonious, there were disputes and quarrels because they did not have children, the defendant was inattentive, unable to communicate properly, the lawsuit from the plaintiff was rejected by the court of first instance by winning a counterclaim (reconvention) from the wife with a verdict: Punish the defendant of reconvention as the head of the family to pay the income owed to the wife of the plaintiff of the reconvention, Sentencing the husband to return the joint investment funds to the wife, for this reason, the husband appeals the decision of the District Court which is not based on law in deciding the case.

To make a marriage agreement, there is no coercive element, meaning that if there is one party who does not want a marriage agreement, the other party may not force themselves to enter into this agreement. The content of the marriage agreement is left entirely to each party by adhering to the applicable regulations by looking at the limitations set by law without eliminating the rights and obligations of each party (Nabilla, 2022). The marriage agreement generally stipulates the provisions for how the property of the husband and wife is divided in the event of separation either by divorce or cause of death.

Currently the making of a marriage agreement has referred to the Constitutional Court Decision Number 69 / PUU-XIII / 2015, the marriage agreement can be made at the time before it takes place or during the marriage bond, both parties by mutual consent can submit a written agreement ratified by a marriage registrar or notary employee after which the contents also apply to third parties as long as the third party is involved.

The research, previously authored by Zedi Muttaqin and Siti Urwatul Usqak, titled "Resolution Process of Gono Gini Property Disputes Resulting from Divorce of Married Couples in the Mataram Religious Court in 2020." The research focuses on the tasks and roles of religious courts in resolving gono gini property cases as an effort to resolve family conflicts following the termination of marriage. The difference in previous research examined how the division of joint property in religious courts without a marriage agreement while the author conducted research on marital property disputes that have a marriage agreement, classifying based on court decisions the provisions of the agreement that became the background of the decision (Muttaqin & Usqak, 2020).

The second study by Ni Kadek Ani, I Nyoman Putu Budiarta and Ida Ayu Putu Widiati, entitled Marriage Agreement as Legal Protection of Joint Property Due to Divorce in 2021, focuses on research on the legal regulation of marriage agreements in the Marriage Law and legal protection of joint property after the Constitutional Court decision No: 69 / PUU-XIII / 2015 in the event of divorce. Ni Kadek Nyoman Ani, Budiarta I Putu, and Putu Ayu Ida Widiati, "Marriage Agreement as Legal Protection of Joint Property Due to Divorce," n.d.,

<https://doi.org/10.22225/ah.3.1.3021.17-21>. Previous differences in legal protection of joint property due to divorce after the decision of the Constitutional Court No: 69 / PUU-XIII / 2015 while the author conducted research on the judge's consideration of joint property dispute decisions in marriages that have a marriage agreement.

### Research Method

This research is a type of normative legal research. Because in this study, secondary data is used as the main material for research, where the main material of research is in the form of a decision of the DKI Jakarta High Court in 2021 with other supporting data in the form of literature and supporting materials related to the title of this study, Normative legal research is a method based on steps to find a principle, norm, principle or legal doctrine to answer current legal issues Examined using a descriptive analysis approach, which is a method that serves to narrate or describe the object of research through data that has been collected to be processed and analyzed to find descriptive conclusions (Ali, 2021).

### Result And Discussion

#### Marriage with a Matrimonial Agreement

The development of the millennial era today, more and more Indonesians are aware of the importance of the law for self-protection. One form of self-protection is to protect his rights in a marital relationship. Protection of individual rights in marital relations according to Indonesian positive law can be applied by making a marriage agreement with equal recognition of rights and position, the marriage agreement must be made by a notary and registered with a marriage registrar employee (Sopiyan, 2023).

A marriage agreement can include anything agreed upon that is not limited to property in marriage as long as it does not contradict law, religion and decency. The most common marriage agreement only contains an agreement between the prospective husband and wife and / husband and wife regarding the arrangement of property in marriage (Ismail et al., 2019). Prospective husband and wife on the basis of agreement can set aside the principles applicable in marital property by making their own rules by making a marriage agreement as stipulated in Article 29 of the Marriage Law (KATULISTIWI, 2021).

Divorce is the worst possibility that can occur in any marriage because of the problems faced. Divorce allegedly can reduce problems in marriage (Nadhiroh, 2016). Preventive measures to anticipate conflicts in marriage, especially those related to property, are the making of a marriage agreement. The issuance of the Circular Letter of the Directorate General of Dukcapil No. 472.2/5876/Dukcapil/2017 is to follow up on the Constitutional Court Decision No. 69/PUU-XIII/2015 (Johan, 2018), this circular also aims to regulate the technical procedure for registration of marriage agreements based on the Constitutional Court decision made in the form of a notarial deed, the circular follows up the Constitutional Court Decision by requiring the written agreement to be made in the form of a notarial deed in order to have legally binding force (Djaja & Rengkung, 2021)

In general, both Muslims and non-Muslims have the right to make a marriage agreement, because basically the marriage agreement is made to avoid the risk of mixing property (Asnawi & SHI, 2022). According to the applicable law, if a person enters into a marriage and there is no marriage agreement, the mixing of property will apply. The mixing of property means that the property acquired by both husband and wife during marriage will become joint property (Dwisana & Resen, 2021)

The marriage agreement serves as one solution to anticipate or avoid the occurrence of injustice in the court proceedings against the division of property, or acquired property during the marriage bond (Masri & Wahyuni, 2021). In marriages that have a marriage agreement there is no union of joint property, the property acquired by each husband and wife is in the control of each and does not require the consent of each other when wanting to perform legal actions on each other's rights. The application of the marriage agreement to the court process is a legal guideline that is used as a basis for deciding disputes between husband and wife over property in marriage, the marriage agreement registered in the marriage registry is valid in law as the basis for the decision on the division of property that binds the judge in the case at trial. A marriage agreement made before a notary and registered with the marriage registrar is an exception to the rule of law in terms of determining joint property at the breakup of marriage.

#### **Legal Considerations of the Judge of Appeal Decision Number 509/Pdt/2021/PT. Jakarta**

Appeal Decision Number: 509/Pdt.G./2021/PT. DKI judge by considering the evidence in the form of a marriage agreement deed which had previously been completed with a deed of settlement of property separation issues and others made before notary Yobana Samial, because of these considerations, the decision of the Court of First Instance in the money case was filed no longer tenable and must be annulled by accepting the plaintiff's original appeal and comparison by granting the plaintiff's original appeal and cancel the decision of the court in the first instance with Case Number: 911/Pdt.G/2021/PN. Jkt.Barat dated June 9, 2021.

The fact in the Appellate Decision overturning the decision of the court of first instance is in accordance with the rule of law that a marriage has a marriage agreement, there is no other provision that can regulate the procedure for the division of joint property other than in accordance with what has been agreed in the marriage agreement. The appellant in this case cannot claim the income owed to the comparator because even though they are still husband and wife, their respective obligations as husband and wife are no longer carried out because both have separated from home as a result of frequent quarrels.

An aspect that is part of the judge's consideration before deciding a case is that the judge understands well the laws that apply in divorce cases, including marriage law, family law, Agreements made before a notary and registered with a marriage registrar employee are valid as a basis for excluding the division of joint property. The judge

considers the facts underlying the divorce case, such as the marriage contract, prenuptial agreement, and the evidence presented.

The judge reviews the marriage agreement made by the couple before marriage. If the agreement is valid and does not contradict the law and does not violate the principle of justice, the judge will refer to the provisions contained in the agreement. The fulfillment of the legal conditions of a marriage agreement in the case of marital property disputes is embodied in the notarial deed, subjective conditions are included in the beginning of the deed and objective conditions are included in the Deed Body as the contents of the deed, the contents of the deed are the embodiment of Article 1338 concerning freedom of contract. The marriage agreement made in a notarial deed must be made in the form prescribed by law and registered with the marriage registrar employee to obtain the validity of third-party guidelines for deciding based on the agreement of the parties to the agreement

A marriage agreement made in the form of a notarial deed provides legal certainty for all parties, husband and wife and third parties, especially to related third parties so that the agreement that has been made applies as a guideline to break or take action on the marriage bond of the covenant makers, in such case it can be concluded that the marriage agreement made in the form of a notarial deed is perfect and binding not only for the party who made it, but also for related third parties. The third party referred to here is another party who has a legal relationship with the couple who made the marriage agreement. Another advantage of making a marriage agreement in the form of a notarial deed is, as a guideline to act as a prevention of problems that could arise in the future and to ensure legal certainty for all parties including related third parties.

In applying the law of the marriage agreement, the most important footing used as the legal basis of this agreement is the marriage law, as stated in its articles and verses that regulate the mechanism, time and conditions in implementing the marriage agreement, the next application is to carry out every rule in the marriage agreement properly and correctly without changing the slightest agreed rules, But if there is a problem in the content of the marriage agreement, then in this article the relevant party is allowed to change it with conditions, changes can be made by means of consensus between the parties interested in making the marriage agreement, namely husband and wife and third parties of this agreement (Ali Wafa, 2018)

The marriage agreement registered with the marriage registrar has an important position for the husband and wife in maintaining the peace of the household, and if there are problems in the household such as quarrels that result in the breakup of the marriage, then the marriage agreement serves as a settlement medium in the arrangement of property and child custody and their respective responsibilities (Pratiwi et al., 2020). In this case, the marriage agreement before the marriage is valid as a guideline in resolving joint property disputes because the marriage agreement is in accordance with the

provisions of the law, made before a notary and has been registered with the marriage registrar employee.

It can be seen that the existence of joint property can cause problems in the future if it is not legally regulated. The word marriage agreement is defined as a legal relationship regarding property between two parties, where one party promises or is considered to promise to do something, while the other party has the right to demand the implementation of the agreement. The union of joint property does not occur if before or at the time of marriage, a marriage agreement has been made between husband and wife. So, if a marriage agreement has been made, then there is a separation of property.

Judges must uphold the principle of justice, which is to give a fair decision to all parties involved in divorce cases. They must ensure that the rights and interests of each party are protected and respected. Judges should also consider relevant legal and public policy aspects, such as divorce laws that aim to protect the rights of women, children, and the infirm. After conducting a thorough analysis, the judge will issue a decision that they believe is the best solution based on the law and the facts available in the divorce case. This decision must reflect fairness and follow applicable legal principles.

### Conclusion

The judge in deciding cases of marital property disputes is based on a marriage agreement made with legal provisions, namely a marriage agreement made before, during and after the marriage takes place, made before a notary in the form of an authentic deed and registered with the marriage registrar employee. Matrimonial agreements include formal agreements. In agreements classified as formal agreements, non-fulfillment of legal provisions on, such as the form or format of the agreement, the method of making the agreement, or the method of ratifying the agreement, as required by laws and regulations, results in the formal agreement being null and void. Therefore and the arrangements therein, become invalid, and the separation of property (if regulated) will not apply, and what applies is the union of property, Settlement of joint property disputes in the case of Appeal Number 509/Pdt/2021/PT. DKI is to set aside the positive legal rules and make the marriage agreement a rule for the husband and wife

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