

## Marriage agreement in a positive legal perspective on inheritance division

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### ABSTRACT

This study examines the legal position and implications of marriage agreements in the division of inheritance within the Indonesian legal system. A marriage agreement, as regulated in the Civil Code and Law Number 1 of 1974 concerning Marriage, provides autonomy for spouses to arrange the separation of property based on the principle of freedom of contract, while still adhering to legal requirements and public order. Using a normative juridical approach, this research analyzes relevant laws, legal doctrines, and scholarly literature to understand the impact of such agreements. The findings reveal that marriage agreements have both internal implications between spouses and external implications involving third parties, particularly in matters of debt liability and inheritance distribution. Despite offering legal certainty, the application of marriage agreements remains limited by juridical constraints to ensure fairness and balance. The study highlights the need for regulatory reform to better accommodate evolving social dynamics and recognize both monetary and non-monetary contributions in household life, thereby promoting substantive justice in inheritance division.

**Keyword: marriage agreement; inheritance law; property separation; legal certainty; Indonesia**

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## 1. INTRODUCTION

Marriage is a social and legal construction that regulates relationships between individuals within a family. In Indonesia, marriage is not only governed by state law but also by customary and religious norms that apply in each community. The cultural plurality in Indonesia results in various forms of marriage, each with its own unique characteristics and values. The concept of joint property in Indonesian marriage law refers to all assets acquired during the marriage period, where both parties have equal rights. However, the practice of distributing joint property across different regions is often influenced by local customs, leading to variations in legal application (Bagenda, 2021).

A lack of understanding regarding the applicable regulations on joint property can hinder a fair and transparent distribution process. Marriage, as defined in Law Number 1 of 1974, is a legal bond between a man and a woman aimed at forming a family. In this context, joint property plays a crucial role in supporting family life.

The principles contained in the Civil Code may still be subject to misuse through the establishment of marriage agreements, particularly those related to property arrangements. A marriage agreement is an agreement made at the time of marriage, especially concerning the union or separation of property. According to the Civil Code, inheritance encompasses not only tangible assets but also rights and obligations that can be valued in monetary terms.

The inheritance system under the Civil Code does not distinguish between personal property and marital property (*gono-gini*). Instead, it adopts the concept of a unified estate, whereby all assets, regardless of their origin, are treated as a single entity and transferred entirely to the heirs. This is stipulated in Article 849 of the Civil Code, which states that the law does not consider the nature or origin of assets in regulating inheritance (Toatubun, 2016).

The law explicitly provides that all property acquired during marriage becomes joint property unless otherwise stipulated in a marriage agreement. Amendments to Law Number 1 of 1974 through Law Number 16 of 2019 have updated provisions related to marriage, including aspects of joint property. Legal consequences arising from marriage, such as child custody, alimony, and the division of joint property, are clearly regulated. Furthermore, the Constitutional Court Decision Number 69/PUU-XIII/2015 introduces flexibility by allowing marriage agreements to be made not only before but also during the marriage, accommodating the evolving needs of spouses (Butar et al., 2024).

A marriage agreement may be amended or revoked at any time, provided that it fulfills both formal and material requirements, including mutual consent and the protection of third-party rights. Regarding its form and content, Law Number 1 of 1974 grants parties the freedom to determine the substance of the agreement, as long as it does not conflict with legal provisions or public order. To ensure legal certainty, a marriage agreement must be ratified by an authorized official, such as a Marriage Registrar or a Notary, thereby granting it the same legal force as an authentic deed.

The legal consequences of marriage extend beyond personal relationships between spouses and also affect property ownership. The Civil Code regulates in detail the management of property in marriage, including inherited property, joint property, and authority over such assets. In general, there are two systems of property management in marriage: community property (mixing of assets) and separation of property (Endoh, 2018).

## 2. RESEARCH METHOD

This study employs normative legal research (normative juridical). Normative legal research, also known as doctrinal legal research, conceptualizes law as it is written in laws and regulations (law in books). The nature of this research is descriptive-analytical, utilizing secondary data as the primary source. The study collects data relevant to the research problem and analyzes it comprehensively to identify issues and formulate appropriate solutions.

The data sources consist of three categories of legal materials: primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations. Secondary legal materials consist of scholarly works such as journal articles, books, and other relevant literature that explain primary legal materials. Tertiary legal materials include legal dictionaries, encyclopedias, and internet sources that provide guidance and clarification related to the research topic (Muhaimin, 2020; Syuhada, 2019; Sujarweni, 2014).

Data collection techniques in this study are conducted through library research (documentary research). This research adopts a normative juridical method with legislative and conceptual approaches. Secondary data are obtained from primary legal materials such as Law Number 1 of 1974 concerning Marriage and the Civil Code (KUHPperdata), as well as secondary legal materials in the form of legal literature, academic journals, and related documents.

The data analysis technique used is qualitative analysis, which involves selecting relevant theories, principles, norms, doctrines, and legal provisions. The data are systematically organized to produce conclusions that correspond to the research problem. Data collection is carried out through documentation techniques, including note-taking, citation, and literature review from both offline and online sources (Rifa'i, 2023; Koto & Faisal, 2021).

Finally, data analysis is conducted qualitatively by interpreting legal rules and doctrines to understand the implementation and implications of property separation agreements in marriage, particularly their influence on inheritance distribution and the rights of spouses.

## 3. RESULTS AND DISCUSSION

The separation of property provides flexibility for married couples to manage their assets independently. Both before and during marriage, a mutual agreement may serve as the basis for asset separation, with a marriage agreement functioning as the legal instrument governing such arrangements. The management of matrimonial property may terminate due to several legal events, including death, divorce, judicially authorized remarriage following the absence of a spouse, as well as separation of bed and property, as stipulated in Article 126 of the Civil Code.

Joint property owned by spouses may be divided in the event of divorce, generally in equal proportions. However, if the dissolution of marriage occurs due to the death of one party, the joint property remains intact and is controlled by the surviving spouse. Law Number 1 of 1974 concerning Marriage distinguishes between joint property—assets acquired during the marriage—and personal (innate) property, which is brought into the marriage and remains under the control of each spouse unless otherwise agreed.

Article 37 of the Marriage Law further stipulates that in the event of divorce, joint property is distributed according to the applicable legal system of the parties, including religious, customary, or other relevant laws. During the marriage, any legal act concerning joint property generally requires the consent of both spouses. However, after divorce, such consent is no longer required, as the division of property follows the respective legal frameworks of the parties. This reflects the pluralistic nature of Indonesian law, which accommodates diverse legal traditions. Nevertheless, this flexibility may lead to inconsistencies, particularly when applied within different kinship systems, such as parental, patrilineal, or matrilineal structures (Nafisa, 2023).

A property separation agreement does not eliminate shared financial responsibilities within marriage. Although individual assets may be separated, obligations such as household expenses and children's education remain jointly borne. Article 119 of the Civil Code affirms that marriage, by default, creates a community of property unless otherwise stipulated in a marriage agreement. The principle of freedom of contract, as provided in Article 1338 of the Civil Code, serves as the legal foundation for such agreements, granting binding force to valid contracts (Yustiaridinia, 2017; Toatubun, 2016).

The validity of a marriage agreement is subject to the general requirements of contracts as stipulated in Article 1320 of the Civil Code. These include: (1) mutual consent without coercion; (2) legal capacity of the parties; (3) a clearly defined object; and (4) a lawful cause that does not conflict with legal norms, public order, or morality (Purboningtias et al., 2013).

For marriages conducted prior to the enactment of the Marriage Law, property was generally considered fully unified, resulting in a single form of joint property unless otherwise stipulated by the parties. In contrast, marriages conducted after the enactment of the Marriage Law recognize a classification of assets into joint property—assets acquired during the marriage—and personal (innate) property, which includes assets obtained prior to marriage, as well as gifts and inheritances, unless otherwise agreed.

The Civil Code regulates inheritance rights for each legal heir, providing a framework for the transfer of property upon death. In this context, a marriage agreement possesses both internal and external legal dimensions. Internally, it governs the legal relationship between spouses and becomes effective upon civil registration. Externally, it affects third parties and requires registration with the court to ensure legal protection and enforceability.

To prevent potential harm to third parties, the law prohibits clauses in marriage agreements that are uncertain, conditional, or legally ambiguous. Furthermore, such agreements must comply with generally applicable legal principles and statutory provisions. The application of marriage law in Indonesia is universal, applying to all citizens regardless of social or economic class. Article 29 paragraphs (1)–(4) of Law Number 1 of 1974 regulates the formation and validity of marriage agreements.

A marriage agreement is not limited to the regulation of property but may also encompass mutual responsibilities, including care, support, honesty, and transparency between spouses in managing financial and personal matters. However, in practice, marriage agreements are sometimes misused as instruments to circumvent legal obligations related to marital property.

Additionally, Article 1338 of the Civil Code emphasizes the binding nature of agreements based on the principle of freedom of contract. Nevertheless, this freedom is not absolute, as certain types of marriage agreements are prohibited by law, particularly those that conflict with legal provisions governing the division of property and the rights and obligations of spouses (Toatubun, 2016; Nafisa, 2023).

Marriage agreements that violate fundamental rights or adopt foreign legal provisions without clear legal basis are considered invalid. In practice, two commonly recognized forms of agreements—profit-sharing and income-sharing arrangements—have been regulated within the legal framework. Over time, the interpretation of income-sharing agreements has evolved from a restrictive perspective to a more flexible and adaptive approach.

The regulation of household property, including inheritance distribution, is significantly influenced by the limitations imposed on the content of marriage agreements, as stipulated in Articles 139–143 of the Civil Code. These provisions establish that marriage agreements must not: (1) violate fundamental human rights or harm public interests; (2) disregard the legal role of the husband as head of the family; (3) neglect the rights and obligations of parents toward their children; (4) eliminate the inheritance rights of lawful heirs; or (5) impose disproportionate financial obligations on either party. Furthermore, agreements must not contain vague or uncertain clauses, nor broadly refer to unspecified foreign laws or customs, as such provisions may create

legal uncertainty. Violations of a marriage agreement may constitute grounds for annulment or divorce, as provided in Article 51 of the Compilation of Islamic Law (KHI) (Endoh, 2018; Bagenda, 2021).

In general, the division of joint property is carried out equally between spouses, particularly in cases of divorce or death. However, such equal distribution does not always reflect substantive justice, especially when there is an imbalance in contributions during the marriage. While both spouses have equal rights over joint property and may act upon it with mutual consent, the principle of fairness requires a more contextual assessment.

Article 35 paragraph (2) of Law Number 1 of 1974 distinguishes personal property—such as assets owned prior to marriage, as well as gifts and inheritances—from joint property. In practice, however, rigid equal division may lead to injustice, particularly when one spouse contributes significantly more, either financially or through non-monetary roles. Contributions such as household management and childcare should be recognized as having equal value to financial contributions.

In certain cases, a proportional distribution of assets may be more appropriate. For instance, where one spouse neglects their responsibilities or engages in harmful behavior, it may be unjust to apply an equal division of property. Local legal concepts, such as *sak gendong sak pikul*, provide a normative basis for achieving a more balanced and equitable distribution of joint property.

Although marriage agreements—whether concerning property separation or joint property—offer legal certainty in asset division, studies examining their impact on inheritance distribution remain limited. Existing research has largely focused on judicial disputes over joint property, while broader issues of fairness and proportionality in inheritance distribution have yet to be comprehensively explored. This gap highlights the need for further legal development that emphasizes substantive justice and recognizes both economic and non-economic contributions within marriage (Ma'rifat, 2024; Jayanti, 2025; Farid 2022; Nafisa, 2023; Mahadewi & Putra, 2020; Hamid, 2016).

#### 4. CONCLUSION

A marriage agreement is a legal instrument that holds a strategic position within the Indonesian legal system, as regulated in the Civil Code and Law Number 1 of 1974 concerning Marriage. Through the principle of freedom of contract, spouses are granted autonomy to regulate the separation of property in accordance with their needs and interests. However, such freedom is not absolute, as it remains subject to the legal requirements of agreements and limitations related to public order and morality.

Normatively, a marriage agreement affects not only the internal legal relationship between husband and wife but also extends to third parties, particularly in matters of debt liability and inheritance distribution. This indicates that marriage agreements carry broad legal consequences and therefore require a comprehensive understanding to prevent legal uncertainty and potential disputes.

Accordingly, there is a need for regulatory reform that is more adaptive and oriented toward substantive justice, especially in the context of property separation and inheritance distribution. A more responsive legal framework is expected to accommodate evolving social dynamics and recognize both monetary and non-monetary contributions within the household, thereby ensuring a more equitable balance of rights and obligations between the parties.

#### REFERENCES

- Bagenda, C. (2021). Tinjauan tentang perjanjian perkawinan dalam pandangan hukum nasional. *Ganaya: Jurnal Ilmu Sosial dan Humaniora*, 4(1), 258–268.
- Butarbutar, T. M., Erdawati, L., & Sitorus, Y. L. (2024). Konsep pembagian harta warisan bersama apabila suami atau istri meninggal dunia. *Jurnal Kajian Hukum dan Kebijakan Publik*, 1(2), 272–278. <https://doi.org/10.62379/q94x2h05>
- Endoh, R. M. (2018). Legal consequences of marriage agreements on inheritance property. *Lex Privatum*, 6(5), 89–97.
- Farid, A., & Suhessyani, A. E. (2022). Perlindungan hukum terhadap harta dalam perkawinan dengan pembuatan akta perjanjian kawin. *Judiciary: Jurnal Hukum dan Keadilan*, 11(1), 20–34.
- Hamid, D. (2016). Perlindungan hukum terhadap anak sebagai korban kejahatan perdagangan orang (trafficking) (studi kasus di Pengadilan Negeri Surabaya). *Jurnal Hukum dan Keadilan*, 5(1), 91–115.
- Jayanti, H. D. (2025, April 1). Pembagian harta bersama tidak selalu dibagi rata dalam perceraian. *Hukumonline*. <https://www.hukumonline.com/berita/a/pembagian-harta-bersama-tidak-selalu-dibagi-rata-dalam-perceraian-lt67ec1d15a28dc/>
- Koto, I., & Faisal, F. (2021). Penerapan eksekusi jaminan fidusia pada benda bergerak terhadap debitur wanprestasi. *Journal of Education, Humaniora and Social Sciences (JEHSS)*, 4(2), 774–781. <https://doi.org/10.34007/jehss.v4i2.739>

- Ma'rifat, M. A. (2024). Penggunaan harta bersama (gono-gini) harus melalui persetujuan suami dan istri. *Justicia Journal*, 13(2), 232–255. <https://doi.org/10.32492/jj.v13i2.13210>
- Mahadewi, I. A. P. K., & Putra, D. N. R. A. (2023). Akibat hukum serta penyelesaian terhadap harta bersama berdasarkan hukum perkawinan. *Jurnal Kertha Semaya*, 9(1), 112–120. <https://doi.org/10.24843/KS.2020.v09.i01.p10>
- Muhaimin. (2020). *Metode penelitian hukum*. Mataram University Press.
- Nafisa, F., & Suparto, S. (2024). Pemisahan harta bersama melalui perjanjian perkawinan yang dibuat oleh pasangan perkawinan campuran setelah perkawinan dilangsungkan dikaitkan dengan Undang-Undang Perkawinan dan putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015. *J Birokrasi: Jurnal Ilmu Hukum dan Tata Negara*, 2(1), 28–40. <https://doi.org/10.55606/birokrasi.v2i1.882>
- Purboningias, W., Sugijono, & Widiyanti, I. D. (2013). Hubungan perjanjian kawin terhadap pembagian harta waris apabila salah satu pihak meninggal dunia ditinjau dari KUHPerdara dan Undang-Undang Nomor 1 Tahun 1974. *Journal of Private Law*, 1–9.
- Rifa'i, I. J., Purwoto, A., Ramadhani, M., Rusydi, M. T., Harahap, N. K., Mardiyanto, I., ... Surasa, A. (2023). *Metodologi penelitian hukum*. Sada Kurnia Pustaka.
- Sujarweni, V. W. (2014). *Research methodology*. Pustaka Baru Press.
- Syuhada, T. (2019). Pelaksanaan sita jaminan terhadap objek sengketa yang berada di tangan pihak ketiga dalam penanganan perkara perdata. *De Lega Lata: Jurnal Ilmu Hukum*, 4(1), 42–53. <https://doi.org/10.30596/dll.v4i1.3163>
- Toatubun, H. (2016). Hukum penyelesaian sengketa tapal batas wilayah antara Kabupaten Biak Numfor dan Kabupaten Supiori Papua. *Jurnal Ilmu Hukum Kyadiren*, 1(1), 49–57.
- Yustiaridinia, R. (2017). *Kedudukan ahli waris terhadap harta peninggalan dalam perkawinan dengan perjanjian pisah harta (Putusan MA Nomor 804/PK/PDT/2009)*. [Tesis magister, Universitas Sumatera Utara].