

Juridical Review of Pre-Marital Agreement in the Protection of Husband and Wife's Property

Fitri Arianti Saputri

Universitas Sriwijaya, Sumatera Selatan, Indonesia

Abstract

This research aims to examine the effectiveness of pre-nuptial agreements in preventing post-divorce property disputes in the perspective of Indonesian law. The method used is normative legal research with a statutory approach and conceptual approach. The results show that a pre-nuptial agreement has binding legal force if it fulfills the legal requirements of an agreement based on Article 1320 of the Civil Code and is registered in accordance with the provisions of Article 29 of Law Number 1 of 1974 and Constitutional Court Decision No. 69/PUU-XIII/2015. The existence of this agreement has proven to be able to prevent conflicts over the division of joint property because it has regulated the division of rights and ownership from the start. However, its implementation still faces obstacles in the form of social stigma, low legal understanding, and lack of socialization from related institutions. In addition, pre-nuptial agreements are related to the principles of Islamic family law regarding the separation of property, so harmonization between civil law and sharia principles is needed. The potential cancellation of the agreement due to formal or substantive defects indicates the urgency of strengthening technical regulations and the role of notaries in validation. This research recommends increased legal education and the establishment of technical regulations as concrete steps to optimize legal protection through pre-marital agreements.

Keywords: Pre-Marital Agreement; Property Dispute; Divorce

Introduction

A pre-nuptial agreement is a form of civil contract between a prospective husband and wife made before the marriage takes place, with the main purpose of regulating the ownership, management and protection of each party's property¹. In the Indonesian legal system, this agreement has a legal basis in Article 29 of Law Number 1 Year 1974 concerning Marriage², which confirms that agreements can only be made before marriage and must be legalized by an authorized official. In addition, the principle of freedom of contract as stipulated in Article 1338 of the Civil Code provides additional legitimacy for the parties to determine the contents of the agreement as long as it does not conflict with the law and decency³. This agreement serves as a form of legal protection for the assets owned by each spouse, both obtained before and during the marriage period.

In practice, a pre-nuptial agreement not only acts as a preventive mechanism in the face of possible divorce or joint property disputes, but also reflects the couple's proactive efforts in building a legally structured household. Unfortunately, public understanding of the existence and benefits of these agreements is still low, and is often misinterpreted as a sign of distrust of

¹ Nazma Tsania Salsabila, "Kajian Hukum Islam Tentang Perjanjian Pra Nikah Sebagai Bentuk Perlindungan Hukum Terhadap Harta Perkawinan," *Syntax Literate; Jurnal Ilmiah Indonesia* 9, no. 11 (November 2024): 6301–9, <https://doi.org/10.36418/syntax-literate.v9i11.50097>.

² Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan, Lembaran Negara Republik Indonesia Tahun 1974 Nomor 1 § Pasal 29 (1974).

³ Kitab Undang-Undang Hukum Perdata, Staatsblad Tahun 1847 Nomor 23 § Pasal 1338 (1847).

the couple. In fact, in the modern context, pre-nuptial agreements are legal instruments that are legitimate, rational and necessary, especially for couples who have significant economic interests or assets⁴. Therefore, a juridical study of the validity and effectiveness of the pre-nuptial agreement is important to provide a complete understanding of its position in the protection of the assets of a married couple.

Juridically, the existence of a pre-nuptial agreement is explicitly regulated in Article 29 of Law Number 1 Year 1974 concerning Marriage⁵, which states that the husband and wife may enter into a written agreement before the marriage takes place to regulate their property, provided that it is legalized by the marriage registrar and takes effect from the time the marriage takes place. This provision originally only limited the making of agreements before marriage. However, the Constitutional Court through Decision No. 69/PUU-XIII/2015 has expanded the meaning that a marriage agreement cannot only be made before the marriage⁶, but also during the marriage, as long as it does not violate legal principles and does not harm third parties. This decision emphasizes the flexibility of the law in protecting the interests of married couples, especially in the management of property.

In addition, the Civil Code also provides additional legal basis, specifically in Article 147 and Article 148⁷, which stipulates that prospective husband and wife can deviate from the provisions regarding property unity through a marriage agreement. In this case, the pre-marital agreement is positioned as a civil agreement that is subject to the general principles of contract law, such as freedom of contract, consensualism, and good faith⁸. Thus, the existence of this agreement has dual legitimacy, both from the national legal system and the general principles of civil law. This emphasizes the importance of the pre-marital agreement as a legal tool to protect and ensure justice for married couples, especially in the aspects of property management and ownership during and after marriage⁹.

In judicial practice, property disputes are one of the dominant issues in divorce cases, whether resolved in the Religious Court or the District Court. When the relationship between husband and wife ends, the issue of who is entitled to joint and personal assets is often a source of conflict that triggers further lawsuits. In many cases, the absence of written arrangements regarding the separation or management of assets from the outset leads to confusion between joint assets (*gono-gini*) and personal assets, which results in legal uncertainty for both parties. Therefore, a pre-nuptial agreement has important significance as a preventive tool to protect the legal rights and interests of each spouse, as well as to prevent disputes that can be financially and psychologically damaging.

⁴ Widhy Andrian Pratama Widhy, Adis Nevi Yuliani Adis, and Halimah Endang Widyaningsih Endang, "Urgensi Perjanjian Pra Nikah Dalam Perspektif Hukum Islam," *MAQASHID* 7, no. 1 (May 2024): 75–91, <https://doi.org/10.35897/maqashid.v7i1.1528>.

⁵ Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan.

⁶ Putusan Nomor 69/PUU-XIII/2015 (2016).

⁷ Kitab Undang-Undang Hukum Perdata, Staatsblad Tahun 1847 Nomor 23 § Pasal 147 dan Pasal 148 (1847).

⁸ Alvira Damayanti and Yunanto, "Legal Certainty of Marriage Agreements Made Before Marriage and Their Implications After Divorce," *Sociological Jurisprudence Journal* 7, no. 1 (January 2024): 15–22, <https://doi.org/10.22225/scj.7.1.2024.15-22>.

⁹ M. Ghufroon Fazacholil et al., "Perjanjian Pranikah Sebagai Mekanisme Hukum Pengatur Harta Dan Pelindung Hak Pascaperceraian," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 3 (June 2025): 1780–88, <https://doi.org/10.61104/alz.v3i3.1441>.

The arrangement of assets through a pre-nuptial agreement is also a form of progressive legal awareness in addressing the complexity of economic relations in modern households¹⁰. When each party enters the marriage with certain assets, businesses, or dependents, this agreement becomes a legal mechanism that avoids the mixing of property rights without a clear legal basis¹¹. In addition to providing legal certainty, this agreement also guarantees the protection of economically more vulnerable parties, such as wives who do not work or spouses who have debt dependents. In this case, the legal protection of property is not merely a technical civil matter, but also part of the effort to maintain justice and balance in the relationship between husband and wife.

Although pre-nuptial agreements have strategic value in providing legal protection to married couples, public understanding of this instrument is still very limited. In social practice, pre-nuptial agreements are often misinterpreted as a symbol of mistrust or suspicion of a spouse, which is considered contrary to the spirit of marriage based on love and commitment. This stigma has led to many couples being reluctant to discuss or enter into a pre-nuptial agreement, despite having complex economic or property ownership backgrounds. In fact, legally, this agreement is protective and preventive, not to create emotional distance, but to guarantee the rights and obligations of both parties in a fair and transparent manner.

This lack of understanding is exacerbated by the lack of socialization from institutions that should play an active role in marital law education, such as the Office of Religious Affairs (KUA), the Population and Civil Registry Office, as well as the professional organizations of notaries and advocates. Limited socialization means that people are unaware of the procedures, benefits and legal force of pre-nuptial agreements. In this context, the state should be present to encourage an increase in marital legal literacy through derivative regulations, training, and inclusive legal counseling¹². Without adequate understanding, pre-nuptial agreements will continue to be perceived negatively, even though their substance protects the dignity, justice and welfare of couples in marriage.

In Islamic Family Law, the principle of separation between inherited and joint property has been recognized through the concept of private property (milk al-fard) and joint property (milk al-musyarak), although the term "gono-gini" is more popular in legal practice in Indonesia¹³. Normatively, property acquired by husband and wife before marriage remains their respective property, while property acquired during marriage can be considered joint property, depending on the contribution of each party¹⁴. However, unlike the approach in civil law which emphasizes written contracts such as pre-nuptial agreements, in the practice of Islamic family

¹⁰ Leanne Smith, "Family Law for Family Life: Rethinking the Boundaries of Family Law," *Current Legal Problems*, April 22, 2025, cuaf001, <https://doi.org/10.1093/clp/cuaf001>.

¹¹ Sharon Thompson, "Prenuptial Agreements in Comparative Perspective," in *Research Handbook on Marriage, Cohabitation and the Law*, ed. Rebecca Probert and Sharon Thompson (Edward Elgar Publishing, 2024), 418–33, <https://doi.org/10.4337/9781802202656.00037>.

¹² Siti Zumrotun and Muhammad Yusril Muna, "Marriage Disrupted: A Sociological and Legal Examination of Women's Ascendancy as Family Heads," *JURIS (Jurnal Ilmiah Syariah)* 24, no. 1 (April 2025): 85, <https://doi.org/10.31958/juris.v24i1.13382>.

¹³ Salma Salma et al., "The Dilemma of Joint Property (Gono-Gini) in Multi-Ethnic Marriage Communities in North Sulawesi," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (April 2025): 280–302, <https://doi.org/10.29240/jhi.v10i1.11802>.

¹⁴ Ulya Shafa Firdausi et al., "Harta Benda Dalam Perkawinan," *Politika Progresif: Jurnal Hukum, Politik Dan Humaniora* 1, no. 4 (December 2024): 233–44, <https://doi.org/10.62383/progres.v1i4.1372>.

law, the separation or arrangement of assets is rarely outlined in legal documents that have formal binding force¹⁵. This leads to weaknesses in proof in court in the event of a dispute.

Substantially, both civil law and Islamic family law prioritize the principles of protection and justice to the rights of husband and wife over property¹⁶. However, the approaches used are different: civil law emphasizes legal-formal aspects through written contracts that have executorial power, while Islamic law focuses more on moral principles and substantive justice that are sometimes less documented juridically. This difference indicates the importance of integrating the two systems, so that the values of substantive justice in Islamic law can be strengthened through civil law instruments such as pre-marital agreements, to provide more comprehensive protection for married couples within the framework of the rule of law.

The pre-nuptial agreement is a form of civil agreement as stipulated in Article 29 of Law Number 1 Year 1974 concerning Marriage¹⁷ and strengthened by the Constitutional Court Decision Number 69/PUU-XIII/2015¹⁸ which allows these agreements to be made before, during or after marriage. The agreement is legally binding as long as it is not contrary to law, morals and public order. However, its binding force can be weakened if the agreement does not meet the legal requirements of an agreement according to Article 1320 of the Civil Code or is not officially registered at the Office of Religious Affairs (KUA) or before a notary¹⁹. There have been cases where pre-nuptial agreements have been annulled by the courts because they were found to have been made under duress, without the full awareness of either party, or because they were not registered, and therefore have no legal force against third parties.

With this reality, the juridical study of pre-marital agreements becomes increasingly important, not only in terms of positive law, but also in terms of its implementation in a plural society. Many couples are still hesitant to make this agreement due to ignorance or stigma, even though its function is precisely as an instrument of legal protection for their respective assets. Therefore, harmonization between civil law norms and religious values needs to be done so that the pre-nuptial agreement can be widely accepted and effectively prevent property disputes in the future. This research aims to analyze the juridical position of pre-nuptial agreements in the Indonesian legal system and evaluate their effectiveness as a mechanism for preventing post-divorce conflicts related to joint property.

Method

This research uses normative legal methods (doctrinal), namely research conducted by examining primary and secondary legal materials to understand the principles, norms, and legal principles that apply in the context of pre-marital agreements in Indonesia. The approach used includes a statute approach, namely by analyzing the provisions in Law No. 1/1974 on Marriage, the Civil Code (KUHP), and Constitutional Court Decision No. 69/PUU-XIII/2015, as well as a case approach to examine relevant jurisprudence related to the validity

¹⁵ Amin Al-Astewani, "The Utility of Legal Pluralism as a Conceptual Approach in the Field of Law and Religion," in *Comparative Approaches to Law and Religion*, 1st ed., by Renae Barker, Camilla Baasch Andersen, and Mohammad Rasmi Alumari (London: Routledge, 2025), 52–73, <https://doi.org/10.4324/9781003397311-5>.

¹⁶ Rajnaara C Akhtar and Faizal Ahmad Manjoo, "Matrimonial Property in Islamic Law," in *Research Handbook on Family Property and the Law*, ed. Margaret Briggs and Andy Hayward (Edward Elgar Publishing, 2024), 77–91, <https://doi.org/10.4337/9781802204681.00012>.

¹⁷ Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 tentang Perkawinan.

¹⁸ Putusan Nomor 69/PUU-XIII/2015.

¹⁹ Kitab Undang-Undang Hukum Perdata, Staatsblad Tahun 1847 Nomor 23 § Pasal 1320 (1847).

and legal consequences of pre-nuptial agreements. In addition, a conceptual approach is also used to examine the theory of covenant law as well as the principles of justice and legal protection in marital relations. The use of this method aims to obtain a comprehensive understanding of the legal position of the pre-nuptial agreement and its effectiveness in preventing post-divorce property disputes²⁰.

Results and Discussion

1. The Legal Power of Pre-Marital Agreements in the Indonesian Legal System

The results of the study show that the pre-nuptial agreement has a valid and binding legal position in the Indonesian legal system, as long as it fulfills the elements of a valid agreement as stipulated in Article 1320 of the Civil Code, namely: agreement of both parties, legal capacity to make an agreement, specific agreement object, and halal cause. In the context of family law, this agreement is an important instrument that can regulate the separation of inherited property, management of joint assets (*gono-gini*), and other provisions agreed upon by the prospective husband and wife before entering into marriage. The legal basis for a pre-marital agreement is confirmed in Article 29 of Law Number 1 of 1974 concerning Marriage which states that before a marriage is held, both parties by mutual consent can enter into a written agreement which is legalized by a marriage registrar. The substance of this agreement can include various matters as long as they do not conflict with the law, decency, and public order. However, this provision was initially limited temporally, i.e. the agreement had to be made before the marriage.

An important reform came with the Constitutional Court Decision Number 69/PUU-XIII/2015 which changed the interpretation of Article 29 of the Marriage Law. In the decision, the Court stated that marital agreements can not only be made before marriage, but also during the marriage bond. This decision affirms the principle of equality and freedom of contract guaranteed by the 1945 Constitution. The juridical implication of this decision is the expansion of legal access for married couples to reorganize the terms of their agreement to ensure legal certainty over property, especially in the face of economic dynamics, business, or other legal risks in the future²¹. Although normatively the pre-nuptial agreement has solid legal legitimacy, its implementation still requires official registration in order to have legal force against third parties. Without recording, the agreement is only valid as an internal agreement and potentially difficult to apply in judicial practice. This is reinforced by the opinion of Lubis, who emphasizes the importance of recording pre-marital agreements at the Office of Religious Affairs (KUA) or the Population and Civil Registry Office so that they have perfect evidentiary power in the eyes of the law²².

Furthermore, socio-culturally, public understanding of pre-nuptial agreements is still low and tends to be associated with mistrust between spouses. In fact, in the context of modern law, this agreement is a form of protection of individual rights and not just a formality. As Utami & Sari point out, prenuptial agreements should be viewed as a form of rational family law planning, especially when couples have different economic backgrounds, joint ventures, or

²⁰ P. M Marzuki, *Penelitian Hukum. Kencana*. (Jakarta: Kencana Prenada Media, 2017).

²¹ Abel Edgar Anugrah Dwiputra, "PERJANJIAN KAWIN PASCA BERLAKUNYA PUTUSAN MAHKAMAH KONSTITUSI NOMOR 69/PUU-XIII/2015," *JURNAL EDUCATION AND DEVELOPMENT* 11, no. 1 (December 2022): 82–86, <https://doi.org/10.37081/ed.v11i1.4251>.

²² Addinur Addinur and Gunawan Djajaputra, "Kepastian Hukum Perjanjian Perkawinan Secara Otentik Yang Tidak Di Daftarkan Oleh Notaris," *Ranah Research : Journal of Multidisciplinary Research and Development* 7, no. 2 (November 2024): 702–10, <https://doi.org/10.38035/rj.v7i2.1307>.

involvement in long-term investments²³. Thus, it can be concluded that a pre-nuptial agreement is a private legal instrument that has been legally recognized and has a strong constitutional basis in the Indonesian legal system. However, its effectiveness is highly dependent on the legal understanding of the couple, the courage to take the initiative to make an agreement, and the support of an adequate legal registration infrastructure.

2. The Effectiveness of Pre-Marital Agreements in Preventing Post-Divorce Property Disputes

The results show that a pre-nuptial agreement that is made legally, meets the formal and material requirements, and is registered before an authorized official, has strong preventive power in preventing post-divorce property disputes. In practice, this agreement establishes from the outset the limits of ownership of each spouse's property, both inherited property and property acquired during marriage, thus minimizing the possibility of unilateral claims to joint property. Thus, the pre-nuptial agreement not only functions as a private legal instrument, but also as a preventive protection tool against potential conflicts that could arise in the future, especially in terms of the division of joint property.

The discussion of field data and the study of court decisions show that the effectiveness of this agreement is juridically tested. One example can be seen in the South Jakarta District Court Decision Number 785/Pdt.G/2019/PN Jkt.Sel²⁴, where the panel of judges rejected the claim for division of joint property on the basis that the parties had been bound by a pre-nuptial agreement that stipulated the separation of property as a whole. This jurisprudence strengthens the legal position of the pre-nuptial agreement as a valid and binding legal document as long as it is drafted in accordance with Article 1320 of the Civil Code and registered in accordance with the mandate of Article 29 of Law Number 1 Year 1974 jo²⁵. Constitutional Court Decision No. 69/PUU-XIII/2015. In addition, that the pre-nuptial agreement provides legal clarity regarding the status of assets and is a strong basis for judges to reject joint property claims when there has been a previously agreed separation of assets²⁶. This confirms that the effectiveness of a pre-nuptial agreement is largely determined by the clarity of the substance of the agreement, its formal legality, and the courage of the couple to discuss financial aspects transparently before marriage.

Thus, it can be concluded that the existence of a legally valid pre-nuptial agreement has proven not only effective in reducing the potential for post-divorce conflict, but also in encouraging the creation of a healthier and more legally accountable marriage relationship, especially in the context of protecting each party's assets. However, this effectiveness is still very much dependent on the level of legal understanding of the community as well as support from marriage institutions and notaries to socialize the importance of pre-nuptial agreements from the start.

3. Obstacles in the Implementation of Pre-Marital Agreements

The results show that pre-marital agreements have not been widely implemented by married couples in Indonesia. One of the main obstacles is the social stigma that considers pre-

²³ Sella Noor Rahmawati and Devi Kasumawati, "PERSEPSI KEPALA KUA KOTA SAMARINDA TERHADAP PEMISAHAN HARTA DALAM PERJANJIAN PRA NIKAH," *Mitsaq: Islamic Family Law Journal* 1, no. 2 (August 2023): 160–74, <https://doi.org/10.21093/jm.v1i2.5877>.

²⁴ Pengadilan Negeri Jakarta Selatan, "Putusan Nomor 785/Pdt.G/2019/PN Jkt.Sel," n.d.

²⁵ Republik Indonesia, "Pasal 1320 KUH Perdata Jo. Pasal 29 UU No. 1 Tahun 1974 Jo. Putusan MK No. 69/PUU-XIII/2015," n.d.

²⁶ Mary Curtin et al., *Prenuptial Agreements: A Solution for Irish Family Farms?*, University of Limerick, 2024, 320196 Bytes, 320196 Bytes, <https://doi.org/10.34961/RESEARCHREPOSITORY-UL.27282936.V1>.

nuptial agreements as a symbol of mistrust between spouses or as a sign that marriage is not built on complete love and trust. This assumption is especially strong in societies that still uphold traditional and communal values, where discussions of wealth are considered inappropriate before marriage because they are considered to undermine the sacredness of the institution of marriage.

In addition to stigma, the community's low level of legal literacy is also a major obstacle. Many brides-to-be are unaware that a pre-marital agreement is a right guaranteed by Article 29 of Law No. 1/1974 on Marriage, which states that both parties can make a written agreement that is legalized by a marriage registrar and is binding on them. Constitutional Court Decision Number 69/PUU-XIII/2015 even extends the scope of its creation to the time of marriage. However, despite the availability of regulations, knowledge of the procedures, functions and legal consequences of pre-marital agreements is still unevenly distributed among the community, even among the educated middle class.

On the structural side, marriage registration agencies such as the Office of Religious Affairs (KUA) and notaries have not been maximized in providing legal education related to pre-marital agreements. In many cases, information about the right to make such agreements is not proactively conveyed to couples getting married. In fact, in practice, some KUA officials consider pre-nuptial agreements to be private matters that do not need to be discussed in the marriage registration service. This suggests that there is no operational standard or institutional obligation to socialize this legal right systematically. This condition shows a gap between legal norms and social reality (legal gap), which in the framework of progressive legal theory by Satjipto Rahardjo, describes laws that are still normative-formalistic and have not touched the sociological aspects of society. According to Rahardjo, law should be a tool of liberation and social transformation, not just a means of legitimizing power or regulating formal relationships. Therefore, the approach to pre-marital agreements must go beyond the normative aspects and touch the cultural, educational and institutional dimensions.

The conceptual analysis shows that more massive and structured legal education-based policies are needed. For example, the integration of information on pre-marital agreements into the pre-marital guidance module facilitated by the KUA and the Population and Civil Registration Office (Disdukcapil). In addition, training for religious instructors, headmen and notaries to provide a balanced juridical understanding to the community is also urgent. Socialization through social media and digital channels by the Ministry of Religious Affairs and other agencies can also be an effective means of reaching young people who are getting married.

The level of acceptance of pre-nuptial agreements increased significantly when people were explained the legal benefits and protection of their rights²⁷. This suggests that structural and informational barriers can be overcome through educative and participatory approaches. Thus, to encourage wider implementation of pre-nuptial agreements, there needs to be a synergy between progressive legal approaches, appropriate legal communication strategies and institutional strengthening that supports family law literacy at the grassroots level.

4. Comparison with Islamic Family Law Principles

The results showed that in Islamic jurisprudence, the concept of separation between private property (*mal al-milkiyah al-khassah*) and property acquired during marriage (*mal al-mushtarak*) has actually been recognized. In this context, each individual still has full rights to

²⁷ Saheed Abdullahi Busari, "NUPTIAL AGREEMENT IN MUSLIM MARRIAGE: A JURISTIC ANALYSIS," *Jurnal Fiqh* 21, no. 1 (June 2024): 1–18, <https://doi.org/10.22452/fiqh.vol21no1.1>.

the property he brought before marriage or obtained independently, such as from inheritance or grants. This principle is substantively in line with the purpose of the pre-marital agreement in Indonesian civil law, which is to regulate and separate property ownership clearly from the beginning of the marriage bond. However, the results of the field study show that the practice of separating assets in the Islamic tradition is mostly applied orally or based on informal family agreements, without written documentation or legal records that have executorial power.

The discussion shows that pre-nuptial agreements have great potential as a formal legal tool to bridge the need for legal protection for Muslim couples, especially in facing the risk of divorce or property disputes. In divorce cases, there is often uncertainty about the status of property ownership due to the absence of legal documentation that can be used as a legal basis in religious courts. In fact, the principle of *tafrīq al-amlāk* (separation of property) has become part of the legacy of classical Islamic law, which can be adopted in the form of a written agreement to be in line with the national legal system. In addition, pre-marital agreements can also be a preventive tool that provides legal certainty, prevents conflict, and protects the rights of each party without contradicting sharia values.

The analysis of legal harmonization shows that more explicit synchronization is needed between the national civil law system and the principles of Islamic family law applicable in the jurisdiction of the Religious Courts. This is important so that the pre-nuptial agreement is not perceived as a concept that only originates from the secular Western legal system, but also has a strong foundation in the Islamic legal tradition. This harmonization can be realized by integrating *fiqh* principles on property in marriage into technical guidelines for the implementation of pre-marital agreements, either in the form of fatwas from the Indonesian Ulama Council (MUI), or as part of premarital guidance material by the KUA.

The harmonization effort is also in line with the *maqashid sharia* approach, which places the protection of property (*hifz al-mal*) as one of the main objectives of Islamic law. As such, the recognition and use of pre-nuptial agreements in Muslim communities is not only valid under state law, but also relevant and theologically justified. It is hoped that this will encourage wider acceptance of pre-nuptial agreements in Muslim societies, while strengthening a family law system that is responsive to contemporary social dynamics.

5. Potential Cancellation of Agreement and its Implications

The results showed that the pre-nuptial agreement, although regulated in Article 29 of Law Number 1 Year 1974 jo²⁸. Constitutional Court Decision No. 69/PUU-XIII/2015, still has the potential to be annulled if it does not meet the formal and material requirements. Cancellation can occur if the agreement is not legally registered at the marriage registration agency, is made under pressure or duress, contains elements of fraud, or is contrary to law, public order, and decency. The provisions in Article 1320 of the Civil Code regarding the validity of agreements remain the main reference, so that aspects of agreement, capability, certain objects, and *halal* causes become important elements that determine the validity of the agreement. In a number of jurisprudence cases, it was found that the agreement was canceled due to indications that one of the parties did not fully understand the contents of the agreement, or because the agreement was not submitted to the Office of Religious Affairs or was not legalized by an authorized notary.

The discussion of these findings indicates that although pre-nuptial agreements meet the formal legal aspects of the legal system, their successful implementation is highly dependent

²⁸ Republik Indonesia, "Pasal 1320 KUH Perdata Jo. Pasal 29 UU No. 1 Tahun 1974 Jo. Putusan MK No. 69/PUU-XIII/2015."

on the integrity of the administrative process and the quality of the substance of the agreement. Many couples do not realize that administrative negligence such as not registering the agreement with the marriage registrar or not involving a notary public can result in the agreement being deemed legally invalid. In addition, many couples make agreements under conditions of power imbalance or without adequate understanding, which opens up room for annulment. Therefore, legal protection of pre-nuptial agreements is not sufficient with legalization, but must also ensure a fair and transparent verification process.

The legal and institutional implications of these findings emphasize the urgency to formulate more detailed technical regulations regarding the procedures for making, validating and monitoring pre-nuptial agreements. There needs to be standardized guidelines that can be used as a reference by notaries and Religious Affairs Offices so that there is no vacuum of norms or interpretations that are detrimental to one of the parties. On the other hand, increasing the role of notaries as guardians of formal and material legality is very important in avoiding the cancellation of agreements at a later date. Notaries need to carry out an educative function to the parties regarding the legal consequences of the contents of the agreement, as well as ensuring that the agreement is made without coercion and in equal conditions. Thus, strengthening the legal and institutional framework is a strategic step in ensuring the effectiveness of pre-nuptial agreements as a means of legal protection that is not only formally valid, but also substantively defensible when tested before the law.

Conclusion

This study concludes that pre-nuptial agreements have significant effectiveness in preventing post-divorce property disputes, especially when they are legally drafted and recorded in accordance with applicable legal provisions. The existence of this agreement is able to provide legal certainty over the status of property ownership, limit the space for lawsuits in cases of division of joint property (*gono-gini*), and encourage couples to regulate rights and obligations transparently since the beginning of marriage. In practice, a pre-nuptial agreement can minimize conflict because all provisions regarding property have been agreed in writing before the marriage takes place. However, the implementation of pre-nuptial agreements in Indonesia still faces various obstacles, including social stigma that considers it a form of distrust of the couple, low public legal literacy, and the suboptimal role of marriage registrars and notaries in conducting education. These obstacles indicate the need for a more progressive and educative legal approach so that people understand the legal protection function of the agreement, rather than just an administrative formality. In addition, pre-nuptial agreements have relevance to the principles of Islamic family law, especially in the context of the separation between inherited and shared property that is well known in *fiqh*. However, these principles have not been fully documented legally in the national legal system, so synchronization between civil law and sharia principles is important to strengthen the legitimacy of family law in Indonesian Muslim society. Finally, the potential for invalidation of the agreement due to formal or material defects emphasizes the importance of administrative and substantive supervision in the preparation of pre-nuptial agreements. Clearer technical regulations and an enhanced role for notaries as guardians of legality are needed to ensure that agreements are made voluntarily, transparently and legally. Thus, the pre-nuptial agreement is not only a complementary document in marriage, but also a strategic instrument in creating justice and legal certainty in family life and beyond.

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