

YOUNG COUPLES' VIEWS ON PREMARITAL AGREEMENTS REVIEWED FROM THE SOCIAL, GENDER AND POSITIVE LEGAL ASPECTS

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Abstract

Prenuptial agreement in Indonesia can be understood not only within the framework of positive law, but also from social and gender perspectives. In society, prenuptial agreements are often viewed as a form of protection for economic rights, bargaining positions, and individual autonomy, particularly for women within the household. Social analysis shows that increasing awareness of gender equality encourages couples to negotiate rights and obligations more fairly even before marriage takes place. From a gender perspective, prenuptial agreements function as instruments to prevent the subordination of women, while affirming their rights in managing property and increasingly decisions in marriage. Interviews with couples of productive age individuals that the motivation for drafting prenuptial agreements is not solely related to asset protection but also reflects modern rationality in household relations. In the context of Indonesian positive law, prenuptial agreements are regulated under the Marriage Law and its implementing regulations, thus providing legal legitimacy for such practices. Thus, this study seeks to explain prenuptial agreements as a social phenomenon, an instrument of gender equality, and a legally recognized practice within the legal system.

Keywords: Young Generation, Prenuptial Agreement, Social Gender, Positive Law

Abstrak

Perjanjian pra-nikah di Indonesia tidak hanya dapat dipahami dalam kerangka hukum positif, tetapi juga dalam perspektif sosial dan gender. Dalam masyarakat, perjanjian pra-nikah kerap dipandang sebagai bentuk proteksi terhadap hak ekonomi, posisi tawar, dan kemandirian individu, terutama Perempuan dalam rumah tangga. Analisis sosial menunjukkan bahwa kesadaran mengenai pentingnya kesetaraan gender mendorong pasangan untuk menegosiasikan hak dan kewajiban secara lebih adil sejak sebelum pernikahan berlangsung. Perspektif gender memperlihatkan bahwa perjanjian pra-nikah berfungsi sebagai instrumen untuk mencegah subordinasi perempuan, sekaligus menegaskan hak mereka dalam mengelola harta maupun mengambil keputusan dalam perkawinan. Hasil wawancara dengan pasangan usia produktif menunjukkan bahwa motivasi penyusunan perjanjian pra-nikah tidak hanya terkait perlindungan harta, tetapi juga sebagai wujud rasionalitas modern terhadap relasi rumah tangga. Adapun dalam konteks hukum positif Indonesia, perjanjian pra-nikah diatur dalam Undang-Undang Perkawinan dan berbagai peraturan pelaksanaannya, sehingga memberikan legitimasi yuridis atas praktik tersebut. Dengan demikian, penelitian ini berupaya menguraikan perjanjian pra-nikah sebagai fenomena sosial, instrumen kesetaraan gender, sekaligus praktik hukum yang sah dalam sistem hukum.

Kata Kunci: Generasi Muda, Perjanjian Pra-nikah, Sosial Gender, Hukum Positif



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INTRODUCTION

According to Article 1 of Law Number 1 of 1974, marriage is a physical and spiritual bond between a man and a woman as husband and wife, with the aim of establishing a happy, eternal, and harmonious family or household based on the One Almighty God. This bond is not only spiritual but also manifested physically through a legal relationship according to applicable law.¹

In social life, marriage has a complex dimension, involving numerous aspects and obligations between husband and wife. The process of uniting two individuals from different family backgrounds often presents challenges, both culturally and in terms of mindset, as well as economic issues. These challenges cannot always be resolved individually, but often involve the role of the extended family. Therefore, a harmonious understanding and agreement between the prospective husband and wife are necessary to anticipate potential problems that often make divorce the last resort in resolving marital conflict.

Prenuptial Agreements (PNA) have emerged and developed as a legal instrument with significant relevance in modern marriage practices. A PNA is a written agreement made by a prospective husband and wife before marriage, which serves to regulate rights and obligations, specifically regarding financial aspects, both during the marriage and in the event of divorce or separation. In Indonesia's marital law system, PNAs reflect a new dimension in how marriage is managed.²

The existence of prenuptial agreements in marriages in Indonesia is legally legitimized, as stated in Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which stipulates that a husband and wife may enter into a written agreement based on mutual agreement, drawn up at or before the marriage takes place. This agreement is not only binding on the parties, but also applies to interested third parties. Thus, the law recognizes the validity of prenuptial agreements as a legal instrument that functions to protect the rights and interests of both husband and wife.

According to the Civil Code (KUH Perdata), the scope of a prenuptial agreement is limited to property matters. However, the Marriage Law provides broader provisions, allowing for arrangements beyond property matters as long as they do not conflict with law, religion, morality, or customs. The existence of a prenuptial agreement is expected to be a useful instrument if a conflict arises between husband and wife in the future, even though neither partner fundamentally desires a dispute. In the event of a divorce, a prenuptial agreement can serve as a legal basis that provides clarity regarding the rights and obligations of each party. Furthermore, this agreement also

¹ Nuyun Nurillah, "Tinjauan Yuridis Perjanjian Pra-Nikah dalam Perspektif Hukum Islam dan Hukum Positif Indonesia," *Ilmiah Wahana Pendidikan* 9, no. 2 (2023).

² Ribka Bunga Satya Banjarnahor, "Aspek-Aspek dan Penerapan Hukum Prenuptial Agreement di Indonesia," *Kampus Akademik Publishing Jurnal Sains Student Research* 1, no. 1 (2023).

plays a role in protecting the wife's separated assets, especially if problems arise regarding debts incurred by the husband, whether arising before or after the marriage.³

The implementation of provisions regarding prenuptial agreements in Indonesia has not been optimal. This is due to negative perceptions within society, which consider prenuptial agreements taboo and inconsistent with prevailing cultural values. However, along with the development of mindsets and the transformation of values in modern society, particularly among the younger generation in urban areas, prenuptial agreements are beginning to be viewed as an important legal instrument. This awareness arises from the understanding that prenuptial agreements can provide clearer protection for the rights and obligations of each party, particularly for women, in safeguarding their rights both during the marriage and in the event of divorce.

Furthermore, prenuptial agreements can also be viewed from a socio-gender perspective. Women are often in a vulnerable position in marital relationships, particularly in terms of access to assets, economic control, and the division of domestic roles.⁴ With a prenuptial agreement, women have a stronger legal instrument to protect their economic interests while simultaneously fighting for equality within the household. In this context, a prenuptial agreement can serve not only as a legal protection mechanism but also as a symbol of gender awareness, reflecting the values of equality between men and women in modern marriage.

Thus, prenuptial agreements are no longer considered taboo, but have become a practical necessity in managing modern household life. Therefore, this study seeks to delve deeper through interviews with couples who have implemented prenuptial agreements, to determine the extent to which they assess the urgency of such agreements, what aspects they consider important to include in them, and the reasons behind their decision to make such agreements. These matters will be examined through a positive legal perspective as the main foundation, while this study also highlights gender/social aspects, particularly related to the younger generation's increasingly open-minded awareness of prenuptial agreements.

RESEARCH METHODS

This research is normative-empirical, combining written legal studies with field findings. The normative approach is used to examine prenuptial agreements based on the provisions of applicable laws and regulations as the basis for their legality. Meanwhile, the empirical approach is used to examine the practices and views of society, particularly the younger generation, regarding the urgency of prenuptial agreements. This research is descriptive-analytical, meaning it not only

³ Nurillah, "Tinjauan Yuridis Perjanjian Pra-Nikah dalam Perspektif Hukum Islam dan Hukum Positif Indonesia."

⁴ Sylvia Chant, "Gender in a Changing Global Economy: Feminist Perspectives on Growth, Sustainability and Globalisation," *Gender & Development* 20, no. 1 (2012).

examines legal regulations textually but also connects them to social facts on the ground. In this context, the researcher seeks to understand the reasons why some young people have begun to view prenuptial agreements as an important instrument in building household agreements. Social aspects and gender perspectives are part of the analysis, as perspectives on prenuptial agreements are often influenced by cultural constructions, gender roles in the household, and changes in the mindset of the younger generation regarding equality and the protection of the rights of each party.

RESULTS AND DISCUSSION

A Social and Gender Review of Pre-Nuptial Agreements

Socially, the existence of prenuptial agreements in Indonesia still faces resistance because they are considered contrary to cultural and religious values that view marriage as a sacred bond based on love and trust. Some people believe that discussing prenuptial agreements reduces marriage to a materialistic contract that emphasizes economic aspects over emotional and spiritual bonds. This view aligns with the social construct that positions marriage as a total union between husband and wife, both in terms of life and property, making any form of separation considered a deviation from the general norms of Indonesian society, which tend to be communal.⁵

However, upon closer examination, prenuptial agreements can actually serve as a social instrument to minimize the potential for marital conflict. According to the Central Statistics Agency, one of the main factors causing divorce is economic and property issues.⁶ With a prenuptial agreement, couples can anticipate potential disputes early on, allowing the marriage to proceed more rationally and openly. This aligns with the concept of modernization, which emphasizes rationality in decision-making, including within the family institution.⁷

From a gender perspective, prenuptial agreements have significant implications for power relations between men and women. In a patriarchal society, women are often placed in subordinate positions, both in the public and domestic spheres. Women's economic dependence on their husbands weakens their bargaining position in cases of divorce or polygamy.⁸ Prenuptial agreements provide women with the opportunity to protect their assets, guarantee their financial rights, and assert their economic independence. Thus, these agreements serve as a means of women's empowerment within marriage.⁹

⁵ Koentjaraningrat, *Pengantar Ilmu Antropologi* (Rineka Cipta, 2009).

⁶ Badan Pusat Statistik, "Statistik Perceraian di Indonesia 2022," 2022, <https://www.bps.go.id>.

⁷ Anthony Giddens, *Sociology* (Polity Press, 2013).

⁸ Ratna Saptari dan Saskia Wieringa, *Perempuan, Kerja, dan Perubahan Sosial di Indonesia* (Kalyanamitra, 1996).

⁹ N. P. Dewi, "Perjanjian Pra-Nikah sebagai Bentuk Perlindungan Hak Perempuan dalam Perkawinan," *Jurnal Hukum dan Gender* 5, no. 2 (2021).

However, the practice is not always gender-neutral. Sometimes, the content of the agreement is dominated by men who have greater social and economic power, so women are simply asked to sign without going through a fair negotiation process. In such cases, prenuptial agreements have the potential to become a tool for legitimizing gender inequality. Therefore, the principles of free and informed consent and substantive equality must be absolute requirements in their drafting.¹⁰

In the contemporary social context, the growing awareness of prenuptial agreements among the younger generation indicates a shift in values. Marriage is no longer understood as a total union of identity and assets, but rather as a partnership that respects the independence and individual rights of each party. This aligns with the liberal feminist perspective, which emphasizes the importance of individual freedom, independence, and equal rights in marital relationships.¹¹ Thus, prenuptial agreements can be seen as a social instrument that reflects the transformation of gender relations towards a more egalitarian form.

Empirical Aspects: Young Generation's Views on Prenuptial Agreements

This empirical aspect presents the results of interviews with young couples aged 25-30 who both work and have separate incomes. The data obtained from the informants is presented in narrative form, while the researcher critically analyzes it by connecting it to relevant theories and literature reviews. Thus, the discussion not only describes the views and experiences of young couples regarding prenuptial agreements but also places them within a positive legal framework, as well as social and gender perspectives.

1. The Urgency of Prenuptial Agreements for Young Couples

- a. First Informant: "In my opinion, a prenuptial agreement is very important, especially for women, to protect their property. Humans are dynamic, so there's no guarantee about how our partners will behave in the future. Therefore, from the start, before we got married, I told my partner that I still wanted to pursue a career and be financially independent. As I understand, prenuptial agreements generally prioritize the separation of property. For me, this is actually a preventative measure in case something happens, such as divorce, although I hope my partner and I will be together forever. But it's okay if we make a prenuptial agreement. It's actually a shield for each of us, not just for me but for my partner as well. This prenuptial agreement doesn't mean there's no trust in

¹⁰ S. Nurhayati, "Analisis Gender terhadap Perjanjian Perkawinan dalam Perspektif Hukum Islam dan Hukum Nasional," *Al-Manahij: Jurnal Kajian Hukum Islam* 12, no. 2 (2018).

¹¹ Tong Rosemarie, *Feminist Thought: A More Comprehensive Introduction* (Westview Press, 2009).

the relationship, but it should be considered as self-protection for things that could happen in the future that we don't know what risks they might pose to us." (Interview, 2025 in South Jakarta)

- b. Second Informant: "Personally, I'm still in the middle of assessing whether a prenuptial agreement is important or not, because in my opinion, if we've decided to have a relationship, especially to the point of marriage, it means that we already have trust in each other. It's a bit contradictory if we continue to want to make a prenuptial agreement just to be on the safe side. But, again, I can't judge this unilaterally, because I already have a partner, and even though I didn't agree at first, there were arguments from my partner that made me believe that this agreement is important, because we don't know the tests we'll face later and we don't know at that time whether our mindset will be wise or not in facing those problems. This prenuptial agreement, as far as I know, is generally related to property. But it's also important in cases of infidelity or domestic violence, which actually can't be discussed in terms of gender, only men do, but there are women who can do things like that. So, a prenuptial agreement could be said to be important to protect against losses, such as mental, especially for victims such as domestic violence/infidelity." (Interview 2025 in South Jakarta)
- c. Third Informant: "I personally see this prenuptial agreement as a form of protection and preparedness, actually. Young couples like us, who have a rational and open perspective and are also critical and realistic, tend to think of prenuptial agreements as a form of long-term planning and preventative action. We view the substance of this agreement not as a lack of trust, but as a way to ensure clarity and fairness in the future." (Interview 2025 in South Jakarta)
- d. Fourth Informant: "Personally, I agree with prenuptial agreements because of my more modern, realistic, and open perspective on marriage. First, it represents responsibility and openness. For many young couples, a prenuptial agreement isn't a sign of distrust, but rather a form of financial transparency and shared responsibility. We see this as a mature step to discuss finances, assets, and obligations before marriage. This means we're marrying not only for love, but also for a readiness to manage our lives together rationally. I personally believe this also aims to avoid future conflict. By having an agreement from the start, couples like us feel more at ease because the potential for future financial conflict can be minimized. This can also avoid misunderstandings if the marriage ends or financial circumstances change, meaning we're making an agreement now when we both love each other, not later when problems arise." (Interview 2025 in South Jakarta)

- e. Informant Five: "We no longer view prenuptial agreements as a sign of distrust, but rather as part of careful wedding planning. In many countries, this is commonplace, so why should we consider it taboo? With a prenuptial agreement, we also feel that our relationship is more sincere, because we know that marriage is not driven by financial interests. So, if we marry for love, this agreement actually makes it clear that money is not the main reason." (Interview 2025 in South Jakarta)

The five informants' perspectives demonstrate that the urgency of prenuptial agreements for young couples is understood from different yet complementary perspectives. All informants emphasized the importance of prenuptial agreements as a protective instrument, particularly for women, in maintaining property ownership and economic independence. They argued that the dynamic nature of human relationships means there are no guarantees regarding a partner's future behavior, necessitating preventive measures. In this regard, prenuptial agreements are positioned not as a form of distrust toward their partner, but rather as a shield that protects each party's rights in the event of a divorce.

Meanwhile, one of the five informants initially viewed prenuptial agreements as contradictory to the meaning of marriage, which is built on trust. However, after considering the reality that marriage is not free from various unpredictable trials, he realized that prenuptial agreements also have important value. For him, the protection provided by prenuptial agreements is not limited to the separation of assets, but can also encompass non-material aspects, such as protection from the risk of infidelity and domestic violence (KDRT), which impact psychological and emotional harm to victims.

Thus, the urgency of prenuptial agreements is understood not only from an economic perspective, but also from a legal and psychological perspective. This perspective demonstrates a shift in young couples' perspectives on marriage, from a prior emphasis on traditional religious values to a modern perspective that emphasizes rationality, preparedness, and multidimensional protection in building a household.

2. Substance in Prenuptial Agreements for Young Couples

- a. First Informant: "The contents of the agreement are actually not only about the separation of assets, but also about domestic violence or infidelity. I can't explain the details further, because this is a private matter. For details, I can only answer that the separation of assets is more about the assets we obtain from each of our hard work, namely, some of which are joint assets, but for the other part, it is the right of each of us. Then, for example, if there are assets, whether in the form of

objects or in the form of money, for example, those given by parents, it is more about who the parents gave it to. For example, if my parents gave me jewelry, it becomes my personal ownership. Likewise, if my partner receives assets in the form of, for example, a vehicle, it becomes his ownership. It's more about that, so the separation here doesn't mean that the income we earn is for each of us, no. It's more about us receiving our rights from our hard work, and not having the right to completely become the property of our partner. Because realistically, there is "It's our own hard work and struggle, right? Well, maybe that's all there is to it. As for domestic violence or infidelity, it's more of a personal matter, so I can't explain it in detail." (Interview 2025 in South Jakarta)

- b. Second Informant: "The contents of the agreement are the consequences that each party will face if, for example, there is an affair or domestic violence, although we pray that it doesn't come to that. So, the agreement states the risks that will be incurred if one of the parties commits an act that we agree is something that cannot be tolerated. As for assets, that's actually not an important thing to include, because my partner and I both work, so we already know that our goal in working is to meet our shared needs. Even if, God forbid, there is a divorce or something like that in the future, the asset issue will be processed through a joint settlement." (Interview 2025 in South Jakarta)
- c. Third Informant: "The substance of this agreement includes the regulation of inherited and joint assets. It also addresses responsibility for personal debts or obligations, business ownership or shares, inheritance or gift rights, and arrangements in the event of divorce or death. This is very relevant to us as a young couple who both work or have their own assets, and who aim to maintain financial transparency." (Interview, 2025, South Jakarta)
- d. Fourth Informant: "The content of this prenuptial agreement has the most important purpose: asset protection. As we all see, young couples today generally already have jobs, businesses, or personal assets before marriage. A prenuptial agreement is a way to protect each other's rights in the event of future events (such as divorce or debt issues)." (Interview, 2025, South Jakarta)
- e. Fifth Informant: "I view this prenuptial agreement as an initial form of preparedness. Young couples like us, who have a rational and open perspective, tend to think of a prenuptial agreement as a form of planning to ensure things go according to plan and are fair. The substance we consider in this agreement

includes asset management, provisions if one of us has a personal business, and the protection of personal assets." (Interview 2025 in South Jakarta)

Based on the statements of the five informants, it can be seen that the substance of a prenuptial agreement is not only related to the separation of assets, but also includes clauses regarding protection from domestic violence (KDRT) and infidelity. All four informants emphasized that the prenuptial agreement serves to regulate asset ownership more clearly. Assets earned by each party's hard work are regulated so that some can become joint property, while others remain private property. Likewise, gifts from parents, whether in the form of money, jewelry, or vehicles, will remain the personal property of the recipient. For these informants, this is important to appreciate individual hard work and ensure fairness in asset ownership.

Meanwhile, another informant emphasized the non-material aspects of prenuptial agreements, namely the provisions regarding consequences in the event of violations such as infidelity or domestic violence (KDRT). For him, this clause is more crucial than the issue of property, as property can be regulated later through the legal mechanism of marital settlement in the event of a divorce. Thus, prenuptial agreements are positioned as a preventative instrument to maintain the integrity of the marital relationship, while also providing certainty regarding sanctions in the event of actions deemed intolerable.

From these five perspectives, it is clear that the contents of a prenuptial agreement can function multidimensionally, providing legal certainty in the economic sphere through the separation of assets, and providing social and psychological protection by establishing consequences for behavior that damages the relationship. This demonstrates that a prenuptial agreement is not simply a formal document, but rather an instrument that can balance the rights, obligations, and protections of each party within a marriage.

3. Implementation of Prenuptial Agreements for Young Couples

- a. First Informant: "In my opinion, to commit to making a prenuptial agreement, it should be officially legalized according to legal procedures. The problem is, if it is merely an agreement between the couple without notarization, the agreement will not have binding legal force. As a result, the agreement can lose its meaning because it cannot be used as a legal basis when needed for legal protection or proof. My partner and I decided to legally legalize this prenuptial agreement by visiting and consulting directly with a notary, as the authorized party. For us, this step is a form of seriousness and shared responsibility to ensure that the agreement we draft is not just a personal agreement, but also has valid legal force. That way, the

contents of the agreement can truly provide certainty and protection for both of us in the future." (Interview 2025 in South Jakarta)

- b. Second Informant: "It should be noted that my partner and I have been married for less than a year, and we are currently considering officially notarizing this prenuptial agreement. However, we believe that the draft agreement we have created still has the power and significance because it was signed by both of us on stamped paper, and witnessed by witnesses who also signed it. The witnesses involved are also legally competent, so we still carried out the drafting process with full awareness and responsibility. Furthermore, according to my friend who is studying law, it is now also possible to draft or notarize an agreement after marriage. So, I think it's okay if we don't have it notarized right away. When we're ready, we can still bring the draft to be officially notarized even though we are married." (Interview 2025 in South Jakarta)
- c. Third Informant: "As a young couple, we view a prenuptial agreement as a form of legal protection. We view this prenuptial agreement as a legal tool that protects the rights of both parties, especially in the context of inherited property, inheritance, and debt responsibilities. This means that with this agreement, everything is clear on paper and is also validated by a notary with the power of attorney to issue an authentic deed regarding this prenuptial agreement, so that neither I nor my partner are disadvantaged." (Interview 2025 in South Jakarta)
- d. Fourth Informant: "For a young couple like me, making a prenuptial agreement can actually show that we are able to discuss things openly and maturely. Not only marrying for love, but also being ready for legal and financial responsibilities, and respecting each other's rights. And no less importantly, making a prenuptial agreement through a notary for us makes something very relevant in the modern era like today. In an era where many couples both work and have their own assets from a young age, this agreement is even more relevant because many young couples marry at a more established age or when they already have property, shares, or businesses. Moreover, not all couples automatically want a "joint property" system, and modern life like today demands legal clarity to avoid disputes. (Interview 2025 in South Jakarta)
- e. Fifth Informant: "The importance of a prenuptial agreement is that it aims to reduce future conflict. Prenuptial agreements are crucial, especially for legal and financial protection. This ensures that in the event of a separation (divorce), everything is clearly written down, eliminating the need to fight over assets, allowing for a

quicker and more peaceful divorce process, and protecting children. However, from the perspective I've outlined, we need to be careful. This means avoiding the impression of "distrust" of your partner. Therefore, this agreement must be made based on mutual agreement, not pressure. This agreement must also be made with the involvement of legal counsel to ensure it is legally valid in our country (Indonesia), and then validated by a notary and/or court." (Interview 2025 in South Jakarta)

Based on the results of interviews with informants, it can be concluded that prenuptial agreements are viewed not only as legal documents, but also as a form of social awareness and shared responsibility in building an equal and transparent household. In terms of legal understanding, most informants emphasized the importance of notarizing prenuptial agreements to ensure their legal force, which is a key factor in guaranteeing protection and certainty in the future. In essence, prenuptial agreements validated by a notary have stronger legal force because they fulfill the provisions of Article 29 of Law Number 1 of 1974 concerning marriage and are in the form of an authentic deed in accordance with Article 1868 of the Civil Code. This deed provides legal certainty, protection for each party, and can be used as valid evidence in court if a dispute arises later.

However, one informant also held a more flexible view. As expressed by the second informant, prenuptial agreements still have moral value and are a valid agreement even if they haven't been notarized, as long as they are made consciously, in writing, and accompanied by stamped signatures and authorized witnesses.

Interview results indicate that the informants have a rational and progressive understanding of prenuptial agreements. They view them as a preventative measure that does not conflict with moral values, as long as they are made on the basis of agreement, equality, and good faith. Furthermore, the informants legitimize them through positive law, which they consider a crucial step in ensuring legal certainty and protection for both parties.

Normative Review of Pre-Nuptial Agreements

Marriage in Indonesia is strictly regulated by Law Number 1 of 1974 concerning Marriage. This regulation provides a clear legal basis for marriage, allowing couples contemplating marriage to proceed in accordance with the law. Provisions regarding marriage in Indonesia generally refer to religious law and customary norms adopted by each partner. One implementation of these legal provisions, which provide protection for couples contemplating marriage, is through the drafting of a legally binding prenuptial agreement. This agreement is drawn up based on discussions and the agreement of both parties entering into the marriage.

Article 29 of Law Number 1 of 1974 concerning Marriage states that “At the time or before the marriage takes place, both parties may, by mutual consent, enter into a written agreement authorized by the Marriage Registrar, after which its contents shall also apply to third parties as long as they are involved.” The wording of this article emphasizes that a prenuptial agreement can only be made before or during the marriage. However, this provision was amended through Constitutional Court Decision Number 69/PUU-XIII/2015, which expanded its provisions by allowing married couples to draw up a prenuptial agreement even after the marriage has taken place. This change in legal norms provides space for couples to continue to obtain legal protection for personal assets through agreements drawn up after the marriage bond, thereby minimizing the potential for disputes or struggles over rights to joint assets. However, the creation of a prenuptial agreement must still be based on the free, independent, deliberate, and voluntary will of the parties. If there is an element of coercion, threats, or fraud, the agreement can be declared legally invalid.

The regulation regarding marital assets has its own mechanism as stated in Law Number 1 of 1974 concerning marriage. In this provision, the division of marital assets is divided into two categories, namely joint assets and inherited assets. Joint assets are assets acquired during the marriage by both husband and wife, while inherited assets refer to assets owned by each party before the marriage or those obtained personally, such as inheritance or gifts. Furthermore, Article 35 paragraph (2) of Law Number 1 of 1974 emphasizes that inherited assets are fully under the control and rights of each owner, both husband and wife, as long as it is not stipulated otherwise in an agreement.¹²

In practice, a prenuptial agreement serves as a legal instrument to clarify the status of assets, both acquired and jointly held. However, civil law stipulates that if the contents of a prenuptial agreement do not align with the wishes of either party, changes can only be made before the marriage takes place. Once a marriage is legally valid, the prenuptial agreement cannot be changed unilaterally or jointly, unless the couple first divorces and then enters into a new marriage with an adjusted agreement. This demonstrates that the status of a prenuptial agreement in the Indonesian marriage legal system is binding and final once the marriage bond is formed.

Property obtained for free, such as inheritance or gifts, remains the personal property of the recipient. It is excluded from joint property, unless otherwise stipulated by the testator or donor. According to Article 126 of the Civil Code (KUHPdata), joint property between husband and wife can be terminated by law upon death, remarriage after the death of one partner, separation, divorce, or separation of assets. Meanwhile, Law No. 1 of 1974 stipulates that the distribution of

¹² M. Elmi, “Konsepsi Harta Benda dalam Perkawinan,” *Jurnal Hukum Keluarga dan Pemikiran Hukum Islam* 2, no. 2 (2022).

joint property resulting from divorce is subject to the provisions of religious law, customary law, or other applicable regulations.¹³

A prenuptial agreement is essentially intended to provide legal protection for married couples, particularly regarding the management of marital assets. This instrument is seen as an effort to maintain the continuity of a marriage, especially for couples with high incomes, while simultaneously increasing awareness of each party's rights and obligations. In practice, a prenuptial agreement may contain an agreement to limit or eliminate the mixing of assets and must be drawn up before a notary, as stipulated in Article 147 of the Civil Code (KUHPerdata).¹⁴ However, a prenuptial agreement is not mandatory for every couple who is going to get married.

Furthermore, although positive legal regulations in Indonesia place greater emphasis on property, prenuptial agreements need not be limited to this. Constitutional Court Decision No. 69/PUU-XIII/2015 stipulates that prenuptial agreements may encompass other agreements as long as they do not conflict with law, religion, or morality. Therefore, couples are essentially allowed to formulate clauses regarding the consequences of serious violations in their marriage, such as domestic violence (KDRT) or infidelity. Although this is not explicitly stated in the law, such arrangements remain valid as long as they are based on free agreement and set out in an authentic deed. This demonstrates that prenuptial agreements have a broader dimension, not only providing legal certainty in the economic sphere but also serving as an instrument of social and psychological protection for the parties.¹⁵

CONCLUSION

From The results of this study conclude that prenuptial agreements have a broader meaning than simply regulating marital property. From a social and gender perspective, prenuptial agreements are understood as an instrument capable of creating a balanced relationship between husband and wife. In a society that still adheres to patriarchal principles, the existence of prenuptial agreements strengthens women's bargaining power, particularly in terms of economic control and protection against potential injustice within the household. Furthermore, these agreements also serve as a mechanism for preventing domestic conflict, whether related to financial issues, domestic violence (DV), or infidelity.

Results Interviews with young couples indicate a shift in perspectives on prenuptial agreements. The younger generation tends to view them not as a manifestation of mistrust, but as a

¹³ Hilman Hadikusuma, *Hukum Perkawinan Indonesia* (Mandar Maju, 2022).

¹⁴ Achmad Farid dan Anggrita Esthi Suhessyani, "Perlindungan Hukum terhadap Harta dalam Perkawinan dengan Pembuatan Akta Perjanjian Kawin," *Jurnal Judiciary* 11, no. 1 (2022).

¹⁵ Sri Wahyuni, "Perjanjian Perkawinan dalam Perspektif Hukum Keluarga di Indonesia," *Jurnal Yuridis* 6, no. 2 (2019).

rational step to protect themselves and their partners. This awareness is driven by the understanding that marriage is not only based on emotion and trust but also requires a legal instrument that can provide certainty for the future.

The implementation of the discourse of making a prenuptial agreement carried out by young couples shows that on average, the informants, they legalized the prenuptial agreement before a notary who made the prenuptial agreement have stronger legal force because it is in the form of an authentic deed, as this has been regulated in Article 1868 of the Civil Code (KUHPerdota), so that it has legal certainty and can be used as valid evidence in court. However, on the other hand, if the prenuptial agreement is only signed on the material without notary approval, it is classified as a private deed whose legal force depends on the recognition of the parties.

From a positive legal perspective, prenuptial agreements are legitimized by Law Number 1 of 1974 concerning Marriage and Constitutional Court Decision Number 69/PUU-XIII/2015, which broadens the scope and timeframe for their preparation. This regulation emphasizes that the contents of a prenuptial agreement are not limited to the separation of assets alone, but may also include other clauses as long as they do not conflict with law, religion, or morality. Thus, prenuptial agreements can be viewed as multidimensional legal and social instruments, playing a role in maintaining the continuity of marriage in a more just, egalitarian, and modern manner.

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