



Ratio Legis for Making a Marriage Agreement as a Legal Protection Means Against Intended Assets

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Abstract

This type of legal research in this study uses juridical-normative. Whereas in the structure and characteristics of property in marriage, there are two types of assets, namely, first: joint property along with its characteristics are assets that are jointly owned by the wife and husband. So that in the management of joint assets, it must be through the approval of both parties as stipulated in the provisions of the Marriage Law Article 36 paragraph 1 and the Provisions for the Compilation of Islamic Law Articles 91 and Article 92. The second type of property is innate property, gifts received personally by each party and the inheritance obtained by each party. With respect to this type of property, the right to control and manage it is absolutely the private property of each husband and wife unless a deviation is determined through a marriage agreement. As stipulated in the provisions of Article 36 paragraph 2 of the Marriage Law and the provisions of Article 87 of the Compilation of Islamic Law.

Keywords: *Ratio Legis; Marriage; Protection*

Introduction

Marriage as a legal act which is an act that contains rights and obligations for the individuals who do it. (Antman et al., 2021) However, in carrying out a marriage, there will be legal consequences, namely regarding the legal relationship between husband and wife and regarding marital property and their income. Along with the passage of time in navigating the ark of life, husband and wife don't always run smoothly, because there is no domestic harmony so that eventually divorce occurs. As a result of the divorce law, there are new problems, namely disputes over the distribution of joint assets, because it is known that in every marriage, each party of the husband or wife has property that was brought and obtained before they married. Husbands and wives who have married also have assets acquired during the marriage, namely joint property.

The phenomenon mentioned above makes it difficult for the Religious Courts to decide cases related to the distribution of joint property, because they don't have proof of a marriage agreement, so they don't have data related to the personal property of husband and wife. This phenomenon is the cause of the birth of a marriage agreement.

According to the provisions of Article 1313 of the Civil Code that "agreement is an act by which one or more persons bind themselves to one or more other persons". In Article 29 of Law no. 1 of 1974 concerning Marriage, it is stated that the Marriage Agreement is an agreement made at or before the marriage takes place and it is further explained that the Marriage Agreement must be ratified by the marriage registrar.

Actually the making of this marriage agreement is important to implement, because the aim is to protect the husband's innate property or the wife's innate property, besides that it can also be used for the distribution of joint property in the event of a divorce or in other words as a result of divorce law.

Making a marriage agreement as an effort to protect the law against inherited assets, therefore, legal protection for the community must be realized in the form of legal certainty. Legal protection is something that protects legal subjects through applicable laws and regulations and enforced its implementation with a sanction. (Arwinilita et al., 2021)

The problem is, most of the people who marry have never made a marriage agreement, this is because eastern traditions are still considered taboo and contrary to the values that exist in eastern society, so that Indonesian people in general rarely have a husband or wife candidate before or after marriage. After the marriage, make a marriage agreement at the notary's office. As a result, at the time of the divorce, on the one hand a dispute arises on the distribution of joint property. On the other hand, the Religious Courts have difficulty deciding the case, because the two parties didn't make a marriage agreement, so the Religious Courts do not have authentic evidence about the origin of the husband's property and the origin of the wife's property.

Based on the background of the problem, in this study two formulations of the problem were formulated, namely the characteristics of the structure of the regulation of marital property in the marriage law and the ratio legis of making a marriage agreement as an effort to protect the law against innate property.

Research Method

This type of legal research in this study uses juridical-normative. (Pratidina & Michael, 2019)

Research Results and Discussion

Characteristics of the Structure of Marriage Asset Management in the Marriage Law

Juridically, the law is regulated in Article 35 paragraph (1) of Law Number 1 of 1974, it has been emphasized that property acquired during a marriage is joint property, this means that the joint property is formed from the date of the marriage or since the marriage contract is held until the marriage takes place break up good break up because of death. Paragraph (2) The innate assets of each husband and wife and the property obtained by each as a gift or inheritance are under the control of each as long as the parties don't specify otherwise.

In the provisions of Article 36 paragraph 2 of the Marriage Law, it is stated that regarding each other's property, husband and wife have the full right to take legal actions regarding their property. This provision explicitly confirms the existence of each party's innate property in the marital property component. This provision also provides an overview of the nature of inherited property which is different from joint property, namely that each party is given the freedom to regulate it. Article 37, if the marriage is dissolved due to divorce, the joint property is regulated according to their respective laws.

The property acquired during the marriage becomes joint property, the explanation of Article 37 of the Marriage Law which means the respective laws are religious law and customary law and other laws, namely the law that applies to the marriage.

This shows that the Marriage Law does not clearly regulate the distribution of joint assets if the marriage is dissolved due to divorce. This means that the settlement of joint property disputes is based on the applicable law in an area, meaning that if the area adheres to customary law, the settlement of joint property is settled based on customary law.

There are types of marital property, namely: Joint Assets and Congenital Assets. Joint assets are assets acquired during marriage. (Mykhalniuk, 2021) While the innate property of each husband and wife. Inherited assets are under the control of each party as long as the parties do not determine otherwise and the property obtained by each as a gift or inheritance is under the control of each as long as the parties don't specify otherwise.

Assets acquired during the marriage period but don't become joint property are usually called acquired assets. Acquired assets are the assets of each husband and wife which they have after they are in a marital relationship. This property is obtained not from their efforts either individually or jointly, but is a gift, will or inheritance of each. Basically the control of this acquired property is the same as innate property, namely husband and wife are fully entitled to take legal actions regarding their respective assets. (APIK, n.d.)

Assets acquired during the marriage period and whose status is the personal property of each husband and wife are: 1) inheritance received by each party during the marriage period; 2) gifts or gifts received personally during the marriage period. This is based on the provisions of Article 35 paragraph 2 of the Marriage Law which states: The innate property of each husband and wife and the property obtained by each as a gift or inheritance, are under the control of each as long as the parties don't specify otherwise.

According to Andi Hartanto J. such terms and conditions are reasonable and legally justified, because as the owner of the goods the grantor or heir can determine that the assets that will later be given to the recipient of the grant/inheritance are for the personal interests and benefits of the recipient of the grant/inheritance, not for the benefit of others, including not being owned or taken advantage of by the husband/wife of the recipient of the grant/inheritance. (Hartanto, 2012)

In order to create a legal function as an orderly society, it is necessary to have the availability of law in the sense of rules or regulations as well as guarantees for the realization of the legal rules referred to in legal practice, in other words, there is a guarantee of good and fair law enforcement for all Indonesian people without discriminating against ethnicity, race and social position and don't discriminate against gender.

From this explanation, it can be seen that the regulation of marital property according to Article 37 is not clear, because what is meant by each law is religious law, customary law, and other laws, namely the law that applies to the marriage. This shows that the Marriage Law doesn't clearly regulate the distribution of joint assets if the marriage is dissolved due to divorce. This means that the settlement of joint property disputes is based on the applicable law in an area, meaning that if the area adheres to customary law, the settlement of joint property is settled based on customary law. (Nadia & Noval, 2021)

Ratio Legis Making Marriage Agreements as Legal Protection Efforts Against Congenital Property

Marriage agreement according to Law Number 1 of 1974 concerning Marriage, namely that the prospective husband and wife before the marriage is held for joint livelihoods can enter into a marriage agreement (*huwelijke voorwaarden*), namely:

- a. The approval of the marriage agreement is made in writing;
- b. The written agreement is ratified by the Marriage Registrar;
- c. Since the ratification by the registrar, the contents of the provisions of the agreement become valid to the husband and wife and third parties as long as the contents of the provisions relate to third parties (Article 29 paragraph (1));
- d. The Marriage Agreement shall come into force as from the date on which the marriage takes place (Article 29 paragraph (3));
- e. The marriage agreement cannot be changed during the marriage, if the changes are made unilaterally (Article 29 paragraph (4));
- f. A marriage agreement cannot be ratified if the contents of the agreement violate legal, religious and moral boundaries.

Marriage Agreement, according to Article 119, Article 147 of the Civil Code. The explanation is as follows:

Article 119 states that from the time the marriage takes place, by law, a unanimous union between husband and wife's assets shall apply, only regarding this matter with the marriage agreement, no other provisions are made. The unanimous union between husband and wife assets throughout the marriage may not be abolished or changed with the consent of the husband and wife. Article 147 states that the marriage agreement must be made with a notarial deed before the marriage takes place, and will be void if it is not made in this way. The agreement will enter into force at the time the marriage takes place, no other time may be determined for that.

Article 47 The Compilation of Islamic Law also regulates the marriage agreement, the explanation of which is as follows: The Compilation of Islamic Law also regulates the marriage agreement, which reads: Paragraph (1) At or before the marriage takes place, the two prospective brides can make a written agreement ratified by the Registrar. Marriage regarding the position of property in marriage; Paragraph (2) The agreement referred to in paragraph (1) may include the mixing of personal assets and the separation of their respective livelihood assets as long as it doesn't conflict with Islamic law: Paragraph (3) In addition to the provisions in paragraphs (1) and (2) above, It is also permissible for the contents of the agreement to stipulate the respective authority to enter into a mortgage bond on personal property and joint property.

From the article above, it can be seen that the Compilation of Islamic Law views the marriage agreement not only as joint property obtained during the marriage, but also includes the property of each husband and wife. The marriage agreement is also not only to separate assets, but can also unite assets, depending on what is agreed upon by the parties. The existence of this marriage agreement doesn't eliminate the husband's obligation to continue to meet household needs.

Two things are important about making this marriage contract. First, this agreement is not mandatory. Even without a marriage agreement, marriage can still be carried out. In other words, a

marriage agreement is only an institution that is prepared if there are parties who feel the need to make an agreement to avoid disputes later on, for example regarding the separation between personal property and joint property. Second, with regard to the contents of the agreement, although it is basically freed, it must not conflict with the rules of the Shari'ah. (Tarigan, 2004) This is in line with Article 139 of the Civil Code, which states that legal protection of property in marriage is given the freedom to determine the contents of the marriage agreement to make deviations from the regulations of the Civil Code concerning the unity of assets but with the limitation that the marriage agreement doesn't may be contrary to decency and public order.

Aspects of legal certainty, where existing regulations are expected to provide legal certainty to husband and wife who are disputing related to the distribution of joint property due to divorce, so that order and justice can be realized.

Aspects of legal certainty, that the marriage agreement is regulated in Article 29 of Law no. 1/1974 concerning Marriage. With the existence of legal certainty, the community gets protection from arbitrary actions from various law enforcement officers in carrying out their duties in society.

The purpose of making a marriage is to provide legal protection, namely as a law for parties with good faith intentions. If a conflict arises between the parties, it can be used as a reference and one of the foundations for each partner in carrying out, and providing boundaries of rights and obligations between them.

Based on the description above, the consideration of making a marriage agreement relating to marital property is to avoid any losses that will be suffered by one or the other parties.

Conclusion

Whereas in the structure and characteristics of property in marriage, there are two types of assets, namely, first: joint property along with its characteristics are assets that are jointly owned by the wife and husband. So that in the management of joint assets, it must be through the approval of both parties as stipulated in the provisions of the Marriage Law Article 36 paragraph 1 and the Provisions for the Compilation of Islamic Law Articles 91 and Article 92. The second type of property is innate property, gifts received personally by each party and the inheritance obtained by each party. With respect to this type of property, the right to control and manage it is absolutely the private property of each husband and wife unless a deviation is determined through a marriage agreement. As stipulated in the provisions of Article 36 paragraph 2 of the Marriage Law and the provisions of Article 87 of the Compilation of Islamic Law.

A marriage agreement is an agreement or agreement made by a prospective husband and wife, before or at the time the marriage takes place to regulate the consequences of marriage on their assets. Theoretically, the marriage agreement is an instrument of legal protection for the innate property of each husband and wife. The validity of the agreement that adheres to the principle of *pacta sunt servanda* which is binding on the parties making the agreement and its validity is the same as the law will provide certainty regarding the status of the innate property itself.

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