



Marriage Agreements as a Form of Legal Protection For Parties To a Marriage

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Abstract

This research is reviewed from the Marriage Law and Compilation of Islamic Law. Positive Law and Islamic Law only recognize open monogamous marriages, but it does not rule out the possibility for a husband to have a polygamy marriage with the conditions as stated in Article 4 paragraph (2) of the Marriage Law by submitting an application to the Religious Court. The problem formulation is first, how is the application of shared assets in polygamy marriages in Indonesia? Second, how is the legal protection of assets in the polygamy marriage agreement? This research is a normative-juridical study with the aim of finding the coherent truth. The legal force of a marriage agreement is binding not only upon the spouses who execute it but also upon related third parties, provided that the element of publicity has been satisfied. Where a marriage agreement is executed in fulfillment of the validity requirements for agreements in accordance with applicable statutory regulations, ratified by a Marriage Recording Officer or a notary, and recorded by the Marriage Recording Officer, said marriage agreement possesses legal force equivalent to that of an authentic deed. A marriage agreement executed via a notarial deed also constitutes a protective measure ensuring that the agreement becomes an authentic deed possessing perfect probative force to safeguard the rights of the contracting parties as well as third parties. Furthermore, related third parties are entitled to claim compensation should the marriage agreement be executed or amended with the intent to prejudice said third parties.

Keywords: Marriage Agreement, Legal Force, Legal Protection.



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I. INTRODUCTION

It is inherent in human nature to live side-by-side with one another and strive to continue their lineage by entering into marriage. In Islamic jurisprudence (*fiqh*), marriage is referred to as *nikah*, which bears two meanings: linguistically, it denotes union or coitus; terminologically, it is a contract (*akad*) or agreement involving a specific utterance between a man and a woman to live together as husband and wife.¹ Based on Article 1 of Law Number 16 of 2019 concerning the Amendment to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the "Marriage Law"), marriage is a physical and spiritual bond between a man and a woman as husband and wife with the purpose of forming a happy and eternal household based on the One Almighty God.²

According to Article 2 of the Compilation of Islamic Law, defined as a very strong contract or "*Mitsaaqan Ghalidzan*" to obey the commands of Allah SWT, and the execution thereof constitutes an act of worship.³ Article 3 states that marriage aims to realize a household life that is *sakinah* (tranquil), *mawaddah* (loving), and *rahmah* (merciful). The purpose of marriage is elucidated in QS. Ar-Ruum verse 21, which means: "*And of His signs is that He created for you from yourselves mates that you may find tranquillity in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought.*" (QS. Ar-Ruum/30:21).

To achieve the validity of a marriage, several matters must be observed in its execution, namely the pillars (*rukun*) and conditions (*syarat*) of marriage. A marriage shall not be valid unless the pillars and conditions are fulfilled.⁴ The pillars of marriage are: the bride or prospective wife, the groom or prospective husband, the guardian (*wali*) of the prospective wife, two witnesses, and the *shighat* or the utterance of offer and acceptance (*ijab* and *qabul*).⁵

¹ Muhammad Romli et al., "Legal Status of Overseas Marriage Registration in the Perspective of Indonesian Marriage Law," *Technium Soc. Sci. J.* 14 (2020): 260.

² Herni Widanarti, "Tinjauan Yuridis Akibat Perkawinan Campuran Terhadap Anak," *Diponegoro Private Law Review* 4, no. 1 (2019).

³ Atika Sandra Dewi and Isdiana Syafitri, "Analisis Perkawinan Campuran Dan Akibat Hukumnya," *Juripol (Jurnal Institusi Politeknik Ganesha Medan)* 5, no. 1 (2022): 179–91, <https://doi.org/10.33395/juripol.v5i1.11323>.

⁴ Rahmat Fauzi, "Perkawinan Campuran Dan Dampak Terhadap Kewarganegaraan Dan Status Anak Menurut Undang-Undang Di Indonesia," *Soumatera Law Review* 1, no. 1 (2018): 153–75.

⁵ Moh. Ali and Nurin Dyasti Pratiwi, "Akibat Hukum Cerai Talak Terhadap Harta Bersama Pra Ikrar Talak," *Jurnal Ilmu Kenotariatan* 1, no. 1 (2020): 1–14, <https://doi.org/10.19184/jik.v1i1.18234>.

Marriage is a contract that legitimizes the husband-wife relationship and sets limits on interactions between opposite sexes that were previously unlawful (*haram*). Therefore, if a man and a woman intend to build a family, they must perform the marriage contract (*akad nikah*). The marriage contract constitutes a highly significant legal act entailing consequences determined by Islamic law. Consequently, a marriage contract executed without adhering to the rules established by Islamic law represents a futile act; it is also an unlawful act and must be prevented by those aware of it, or remedied through annulment if the marriage has already been performed.⁶

Marriage law is an integral part of Islamic law, intertwined with Islamic faith and morality. Marriage entered into by a man and a woman gives rise to physical and spiritual consequences regarding the family, social life, and assets acquired before and during the marriage. To realize a harmonious, prosperous, happy, and eternal family in a physical and spiritual bond between two individuals, every marriage fundamentally requires assets as basic necessities for family life.

The issue of assets in a marital household often receives insufficient attention from the husband and wife, as they enter marriage assuming it is forever. They think the marriage will be enduring, problem-free, and that their life and relationship will always proceed affectionately. Consequently, they do not scrutinize their respective rights, such as what belongs to the husband, what belongs to the wife, and what constitutes joint property. However, in reality, marriages do not always proceed as hoped; it is possible for them to divorce later, leading them to dispute their respective rights, particularly the division of joint property.

Marriage does not always proceed according to expectations, namely the realization of a peaceful and eternal household life that is *sakinah*, *mawaddah*, and *rahmah*. Incompatibility often arises only when the couple begins navigating married life. Occasionally, concerns emerge regarding the partner concerning matters that may lead to divorce.⁷ The legal consequences of divorce will certainly loom over the assets brought into and acquired during the marriage. Thus, there are times when

⁶ Andyna Susiawati Achmad and Astrid Athina Indradewi, "Transfer Period Of Land Rights Ownership By Foreign Citizens Due To Inheritance Analyzed From The Indonesian Civil Code And Basic Agrarian Law," *Jurnal Widya Yuridika* 6, no. 1 (2023).

⁷ Riyanto Riyanto, Wachid Aryanto, and Arief Cholil, "Implementation Agreement By Mixed Marriage Based On Act No. 1 of 1974 Concerning Marriage After Constitutional Court Ruling No. 69/PUU-XIII/2015 (Study of Notary Role)," *Jurnal Akta* 5, no. 4 (2018): 829–36, <https://doi.org/10.30659/akta.v5i4.3712>.



prospective spouses, before stepping into marriage, create a prenuptial agreement or marriage agreement. A prenuptial agreement, often referred to as a marriage agreement, is an agreement made between a prospective husband and a prospective wife before the marriage is solemnized, the contents of which must not violate the law, religion, or applicable customary norms of morality. Such agreements are drafted and recorded by a notary or lawyer, then ratified at the Office of Religious Affairs or the Civil Registry.⁸

Prenuptial agreements are often considered taboo among Indonesian society because they are viewed as uncommon, harsh, materialistic, selfish, unethical, inconsistent with Eastern customs, and so forth.⁹ This generates pros and cons as it is identified with mistrust, suggesting such agreements need not be made.¹⁰ However, with the progression of the era and a critical society where equality between women and men is now established, and to protect the interests of each prospective husband and wife from undesirable events during the marriage or the occurrence of divorce in the future, a prenuptial agreement can serve as a foundation when entering into marriage. This is done solely to achieve the benefit of both parties.¹¹

When a man and a woman enter into marriage, it gives rise to legal consequences, specifically regarding the legal relationship between husband and wife, as well as their marital property and income.¹² Various legal relationships arising from the marriage between husband and wife include, among others, the rights and obligations of the husband and wife during the marriage, their responsibilities toward children, the consequences regarding assets, and the legal implications for third parties. It is crucial for every prospective couple intending to marry to understand these matters to prevent the emergence of problems within the marriage in the future.

⁸ M Muhsin, "Perkawinan Campuran Perspektif Undang-Undang Perkawinan Di Indonesia," in *AICOMS: Annual Interdisciplinary Conference on Muslim Societies*, vol. 2, 2022, 1–14.

⁹ Firman Floranta Adonara, "Kewenangan Notaris Mengesahkan Perjanjian Kawin Sebagai Amanat Konstitusi," *Jurnal Ilmu Kenotariatan* 1, no. 2 (2020): 55–73, <https://doi.org/10.19184/jik.v1i2.23599>.

¹⁰ Intan Fajriyanti, Joko Hermawan Sulisty, and Munsharif Abdul Chalim, "The Validity Of Marriages Agreement Made After Ongoing Based Marriage Law In Indonesia," *Jurnal Akta* 5, no. 4 (2018): 937–42, <https://doi.org/10.30659/akta.v5i4.3890>.

¹¹ Laurensius Arliman, "Peran Lembaga Catatan Sipil Terhadap Perkawinan Campuran Berdasarkan Undang-Undang Perkawinan," *Jurnal Cendekia Hukum* 4, no. 2 (2019): 288–301, <https://doi.org/10.33760/jch.v4i2.40>.

¹² Chantiqa Dwi Ayudhia Chaerunnisa and Endah Hartati, "The Position of Joint Assets Regarding the Existence of Marriage Agreements That Are Not Registered with the Dukcapil," *Jurnal Akta* 11, no. 2 (2024): 379–86, <https://doi.org/10.30659/akta.v11i2.37136>.

Various types of problems may arise in a household, whether concerning marital property, debts and receivables, child custody and education, or other issues that can become factors causing disputes or tension in a marriage. To avoid such situations, a husband and wife may create a marriage agreement containing all matters considered necessary to safeguard their rights and interests. In Indonesia, regulations concerning marriage agreements are governed by the Civil Code, the Marriage Law in conjunction with the Constitutional Court Decision Number 69/PUUXIII/2015, as well as the Compilation of Islamic Law (hereinafter referred to as "Compilation of Islamic Law ").

However, it cannot be denied that there is a vagueness of norms in several aspects of marriage agreement regulations. This is because the Marriage Law, which was intended to unify Indonesian marriage law, regulates marriage agreements very concisely, specifically in Article 29. The provisions in Article 29 of the Marriage Law are not sufficiently clear to describe marriage agreements fully and comprehensively, such as regarding matters that must be included or prohibited in a marriage agreement, and the legal consequences for the parties (husband and wife) as well as related third parties. Departing from the description above, there are issues regarding the legal force of marriage agreements concerning the parties within the marriage, as well as the form of legal protection provided by the existence of a marriage agreement for the parties within the marriage and for third parties.

II. METHODOLOGY

The author uses a normative legal research method, namely a legal research method that prioritizes the method of researching library materials or what is called secondary data in the form of positive law.¹³ This method uses primary legal materials and secondary legal materials. Primary legal materials include related laws and regulations. Secondary legal materials are in the form of legal writings, including: legal journal articles, legal textbooks and other legal scientific papers. The approaches used are the statutory approach and the conceptual approach. The type of research used is analytical descriptive research, which is a type of research that works by collecting data, facts, and analysis from research results that aim to obtain a picture to support legal arguments systematically and structured.

¹³ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2007). P.133.



III. THE LEGAL FORCE OF MARRIAGE AGREEMENTS

Fundamentally, a marriage agreement is entered into by a married couple to preempt various issues that may arise within the household, whether concerning marital assets, debts and receivables, child custody and education, domestic violence, stances on polygamy, and other matters that may serve as factors causing disputes or tension within a marriage.¹⁴ The Marriage Agreement becomes effective between the husband and wife from the moment the marriage is solemnized. The content regulated within the Marriage Agreement depends on the consensus of the prospective husband and wife, provided it does not contravene the Law, religion, and propriety or morality. Regarding the form and content of the marriage agreement, both parties are granted the broadest possible freedom. This pertains to the amendment of Article 29 of Law Number 1 of 1974 via the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015.¹⁵

The Compilation of Islamic Law regulates marriage agreements in Chapter VII concerning Marriage Agreements, from Article 45 to Article 52. Article 45 reads as follows: *"Both prospective bride and groom may enter into a marriage agreement in the form of: 1) Taklik talak (conditional divorce stipulation), and 2) Other agreements that do not contravene Islamic law."* This article states that a marriage agreement made by a husband and wife or prospective husband and wife is valid under Islamic law if it does not contravene the provisions of Islamic Sharia and does not violate applicable statutory regulations.¹⁶

Article 46 Paragraph 1 concerning marriage agreements explains that the content of *taklik talak* must not contravene Islamic law. Article 46 Paragraph 2 states that should the condition stipulated in the *taklik talak* actually occur subsequently, the *talak* (divorce) does not fall automatically. For the *talak* to genuinely fall, the wife must submit the matter to the Religious Court. Paragraph 3 states that a *taklik talak* agreement is not a mandatory agreement in every marriage; however, once *taklik talak* has been agreed upon, it cannot be revoked.

¹⁴ Soetojo Prawirohamidjojo, *Pluralisme Perundang-Undangan Perkawinan Di Indonesia* (Surabaya: Airlangga University Press, 1994).

¹⁵ Muhsin, "Perkawinan Campuran Perspektif Undang-Undang Perkawinan Di Indonesia."

¹⁶ Kevin Eka Pradana and Endah Hartati, "Peran Notaris Dalam Pembuatan Dan Pengesahan Perjanjian Kawin Beserta Batasan Tanggung Jawab Notaris Atas Akta Perjanjian Tersebut," *Unes Journal of Swara Justisia* 8, no. 1 (2024): 84–94, <https://doi.org/10.31933/UJSJ.V8I1.480>.

Article 47 Paragraph 1 explains that at the time of or before the marriage is solemnized, both prospective spouses may create a written agreement ratified by the Marriage Recording Officer regarding the status of assets within the marriage. Article 47 Paragraph 2 states that the agreement in Paragraph 1 may cover the commingling of private assets and the separation of respective livelihood assets, insofar as it does not contravene Islamic law. Paragraph 3 of Article 47 states that in addition to the provisions in Paragraphs 1 and 2, the agreement may also establish the respective authority to establish a mortgage lien over joint assets or *syarikat* assets.

Article 48 Paragraph 1 of the Compilation of Islamic Law states that if a marriage agreement is made regarding the separation of joint assets or *syarikat* assets, said agreement must not eliminate the husband's obligation to fulfill household needs. Paragraph 2 of Article 48 states that if the marriage agreement created does not fulfill the provision in Paragraph 1, it is deemed that the separation of joint assets or *syarikat* assets remains in effect, with the husband remaining liable for household expenses.

Article 49 Paragraph 1 of the Compilation of Islamic Law states that an agreement on the commingling of private assets may cover all assets, both those brought by each party into the marriage and those obtained by each during the marriage. Paragraph 2 of Article 49 states that without prejudice to the provision in Paragraph 1, it may also be agreed that the commingling of private assets is limited only to private assets brought at the time the marriage was solemnized, such that this commingling does not cover private assets obtained during the marriage, or vice versa.

Article 50 Paragraph 1 of the Compilation of Islamic Law states that a marriage agreement concerning assets is binding upon the parties and third parties calculated from the date the marriage is solemnized before the Marriage Recording Officer. Paragraph 2 of Article 50 states that a marriage agreement concerning assets may be revoked upon the mutual consent of the husband and wife and they are required to register it at the Office of the Marriage Recording Officer where the marriage was solemnized.

Article 50 Paragraph 4 states that if within a period of six months the registration of revocation is not announced by the concerned party, it automatically lapses and is not binding upon third parties. Paragraph 5 of Article 50 states that the



revocation of a marriage agreement concerning assets must not prejudice agreements previously made with third parties.

Article 51 of the Compilation of Islamic Law states that a violation of the marriage agreement grants the wife the right to request an annulment of the marriage or to submit it as grounds for a divorce suit to the Religious Court. Article 52 stipulates that a husband and wife or prospective husband and wife may create a marriage agreement to regulate specific matters concerning their rights and obligations within the marriage. This agreement may cover aspects such as joint assets, private assets, and other arrangements deemed important by both parties.

Based on the exposition above, a prenuptial agreement is an agreement or consensus agreed upon and created by prospective bridal couples who are to solemnize their marriage so that they become a legitimate couple.¹⁷ This prenuptial agreement possesses a binding nature and becomes effective when the marriage is executed. It has the objective of ensuring financial tranquility for the husband and wife should a dispute occur in the family leading to divorce; the marriage agreement plays a crucial role in protecting assets while the marriage is ongoing in the event of loss or other matters.¹⁸ If the prenuptial agreement created by the husband and wife is not implemented or a violation occurs, it automatically grants the wife the right to petition for marriage annulment or use it as grounds for a divorce suit.¹⁹

Article 139 of the Civil Code and Article 29 Paragraph (4) of the Marriage Law in conjunction with (*jo.*) Constitutional Court Decision Number 69/PUU-XIII/2015 essentially share the same meaning: that a marriage agreement constitutes a form of deviation from the standard regulations concerning marital assets.²⁰ Should a prospective husband and wife wish to deviate from the marital property laws stipulated in Article 35 of the Marriage Law, it is necessary to execute a marriage agreement.

¹⁷ Randy Raharja, Felicitas Sri Marniati, and Ahmad Yani, "Legal Certainty of Property in Marriage According to Civil Law Regarding the Deed of Marriage Agreement for Separation of Assets Neglected to Be Registered," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 5, no. 2 (2024): 439–69, <https://doi.org/10.24252/SHAUTUNA.V5I2.48853>.

¹⁸ Windy Shafira Ananditya and Rahandy Rizky Prananda, "Kedudukan Harta Perkawinan Terkait Perjanjian Kawin Yang Dibuat Setelah Perkawinan," *Notarius* 17, no. 3 (2024): 2347–64, <https://doi.org/10.14710/NTS.V17I3.50818>.

¹⁹ Thimoti Zeza Lamuri, Agustinus Hedewata, and Maria Yulianty Jacob, "Perlindungan Hukum Terhadap Harta Dalam Perkawinan Dengan Pembuatan Akta Perjanjian Kawin Berdasarkan KUH Perdata Dan Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris," *Jurnal Hukum Bisnis* 13, no. 5 (2024): 1–5, <https://doi.org/10.47709/JHB.V13I05.4601>.

²⁰ Muhammad Herizky Rahmandani, "Kedudukan Perjanjian Kawin Yang Dibuat Dihadapan Notaris Setelah Perkawinan," *UNES Law Review* 6, no. 3 (2024): 9026–32, <https://doi.org/10.31933/UNESREV.V6I3.1841>.

Provisions regarding marriage agreements in the Civil Code are set forth in Book I, Chapter VII, entitled "Marriage Covenants." In the Marriage Law, marriage agreements are regulated in Chapter V, entitled "Marriage Agreements," specifically in Article 29. The regulations within the Marriage Law have undergone several changes following Constitutional Court Decision Number 69/PUU-XIII/2015. Meanwhile, in the Compilation of Islamic Law, regulations on marriage agreements are found in Chapter VII, Articles 45 through 52 concerning marriage agreements. As referred to in Article 29 of the Marriage Law *jo.* Constitutional Court Decision Number 69/PUU-XIII/2015, it is determined that a marriage agreement may concern marital assets or other agreements, and its contents also apply to third parties third parties are involved, provided the contents do not violate the boundaries of law, religion, and morality.²¹

The legal force of a marriage agreement relates to its binding authority over the parties who created it. However, it should be noted that a marriage agreement applies not only to the married couple but may also bind third parties. Regarding its binding nature upon third parties, the marriage agreement must first be ratified (fulfilling the principle of publicity).²² A marriage agreement becomes binding and effective for the married couple from the moment the marriage is declared valid and has been solemnized according to the laws of their respective religions and beliefs, and recorded pursuant to statutory regulations (Article 2 of the Marriage Law). However, with the existence of Constitutional Court Decision Number 69/PUU-XIII/2015, the validity period of the marriage agreement commences when the marriage is solemnized, although the parties may stipulate otherwise within the agreement concerned, for example, becoming effective as of the date of the agreement's execution.²³

The validity and enforceability of a marriage agreement are also inseparable from the general requirements for the validity of agreements. Based on Article 1320 of the Civil Code, an agreement must be made by fulfilling four conditions:

- a. the consent of those who bind themselves;

²¹ Novea Elysa Wardhani, Elin Sudiarti, and Claudia Yuni Pramitha, "Perjanjian Kawin Dalam Perkara Sengketa Waris (Analisis Terhadap Putusan Nomor 21/Pdt.G/2022/PN Plk)," *UNES Law Review* 6, no. 4 (2024): 12377–89, <https://doi.org/10.31933/UNESREV.V6I4.2247>.

²² Fajriyanti, Sulisty, and Chalim, "The Validity Of Marriages Agreement Made After Ongoing Based Marriage Law In Indonesia."

²³ Muhsin, "Perkawinan Campuran Perspektif Undang-Undang Perkawinan Di Indonesia."



- b. the capacity to enter into an obligation;
- c. a specific subject matter; and
- d. a lawful cause.

Regarding the form of the marriage agreement, based on the provisions of Article 29 paragraph (1) of the Marriage Law *jo.* Constitutional Court Decision Number 69/PUU-XIII/2015, it is clear that a marriage agreement must be executed in written form and ratified by a Marriage Recording Officer or a notary. It can be stated that the written form of a marriage agreement may be executed either as a private deed (*underhand deed*) or an authentic deed.²⁴

A marriage agreement in the form of a private deed is an agreement deliberately created by the parties themselves without the intervention of a public official authorized to issue deeds. A deed in private form possesses valid probative legal force if the creator of the deed acknowledges the contents and the signature affixed thereto. Conversely, an authentic deed is a deed which, in the form determined by law, is made by or before public officials authorized for that purpose at the place where the deed is executed (Article 1868 of the Civil Code). Notaries and Marriage Recording Officers are public officials authorized to execute authentic deeds of marriage agreements.²⁵

However, in accordance with the Circular Letter of the Ministry of Religious Affairs of the Republic of Indonesia Number B.2674/DJ.III/KW.00/9/2017 regarding the recording of marriage agreements, point (1) determines that: *"The recording of a Marriage Agreement executed before the marriage, at the time of marriage, or during the marriage bond which has been ratified by a notary may be recorded by the Marriage Recording Officer."*

The primary objective of this recording is to fulfill the element of publicity of the marriage agreement; therefore, the agreement must be registered with the designated agency. This registration is crucial so that third parties are aware of and subject to said marriage agreement. If the marriage agreement is not registered for recording, it binds and applies only to the husband and wife who created it (the

²⁴ Muchammad Kawtsar, "Legalitas Akta Perjanjian Kawin Yang Dibuat Sebelum Perkawinan Berdasarkan Kehendak Orang Tua Pada Perkawinan Di Bawah Umur," *Notary Law Research* 6, no. 1 (2024): 102–12, <https://doi.org/10.56444/NLR.V6I1.1577>.

²⁵ Widika Shepia Hariani and Salim HS, "Pengaturan Perjanjian Kawin Di Negara-Negara Berbasis Civil Law," *Private Law* 4, no. 3 (2024): 669–79, <https://doi.org/10.29303/A6TG0123>.

principle of *Pacta Sunt Servanda*).²⁶ Although there may be an authentic deed of marriage agreement (made by a notary), if it is not registered and recorded at the Office of Religious Affairs or the Population and Civil Registration Agency, the agreement lacks legal force.²⁷ Observing the description above, it can be explained that if a marriage agreement is executed in writing in accordance with applicable statutory regulations, ratified by a Marriage Recording Officer or notary, and recorded by a Marriage Recording Officer, then said marriage agreement possesses legal force equivalent to the status of an authentic deed.

IV. MARRIAGE AGREEMENTS AS A FORM OF LEGAL PROTECTION FOR PARTIES TO A MARRIAGE

Legal protection is protection granted to legal subjects in the form of instruments, whether preventive or repressive in nature, and whether oral or written. In other words, it can be stated that legal protection is a distinct representation of the function of law itself, encompassing the concept that law provides justice, order, certainty, utility, and peace.²⁸ Similarly, legal protection within a marriage may be preventive, namely the prevention of the emergence of disputes, and repressive, namely the resolution thereof should a dispute arise.²⁹ This preventive legal protection prioritizes prevention to ensure that the rights of both husband and wife within the marriage are protected by law, in this instance through a marriage agreement.³⁰

A marriage agreement executed by a married couple aims to provide both preventive and repressive legal protection; aside from preventing the occurrence of household issues, should a conflict arise at a later date, the marriage agreement may serve as a reference and one of the foundations for each partner in exercising their rights and obligations, as well as delineating the boundaries thereof.

²⁶ Fitri Mindari Handayani, "Kedudukan Perjanjian Kawin Yang Dibuat Setelah Perkawinan Terhadap Pihak Ketiga," *Journal Evidence Of Law* 3, no. 1 (2024): 90–106, <https://doi.org/10.59066/JEL.V3I1.630>.

²⁷ Callista Raihana Anjani and Victoria Yuliana Nualedang, "Kedudukan Perkawinan Campuran Tanpa Perjanjian Kawin Atas Jual Beli Apartemen Dengan Hak Guna Bangunan," *Ranah Research* 7, no. 3 (2025): 1513–21, <https://doi.org/10.38035/RRJ.V7I3.1440>.

²⁸ Kawtsar, "Legalitas Akta Perjanjian Kawin Yang Dibuat Sebelum Perkawinan Berdasarkan Kehendak Orang Tua Pada Perkawinan Di Bawah Umur."

²⁹ Addinar Fatimatus Zahroh and Agus Nurudin, "Pembagian Harta Bersama Bagi Pasangan Bercerai Tanpa Adanya Perjanjian Kawin (Putusan Nomor 3067/Pdt.G/2021/PA.Bbs)," *Notary Law Research* 6, no. 2 (2025): 37–52, <https://doi.org/10.56444/1C5A3093>.

³⁰ Werdiningsih, "Asas Publisitas Perjanjian Perkawinan (Post Nuptial Agreement): Konsep Kepastian Dan Perlindungan Hukum Bagi Pihak Ketiga," *Jurnal Ilmu Kenotariatan* 4, no. 1 (2023): 45–64, <https://doi.org/10.19184/jik.v4i1.38537>.



All matters deemed necessary to safeguard the rights and interests of all parties may be included in the marriage agreement, whether concerning assets, debts and receivables, company ownership, child custody and education, division of household roles, avoidance of domestic violence, stance on polygamy, and so forth. Fundamentally, these points are flexible according to the mutual agreement of both parties without pressure or coercion from any party, and are made in a conscious and responsible state, provided they do not contravene the boundaries of legal norms, religion, and morality (Article 9 Paragraph (2) of the Marriage Law).

According to Pitlo, a deed is "a signed document, created to be used as evidence, and to be used by the person for whose benefit the document was made." According to Sudikno Mertokusumo, a deed is "a signed document containing events that form the basis of a right or obligation, created from the outset deliberately for evidentiary purposes." Thus, a deed is a signed document containing legal acts and used as evidence. For Subekti, a deed differs from a mere letter; he explains that the word "deed" does not simply mean a letter, but must be interpreted as a legal act, derived from the word *acta*, which in French means an act.³¹

What Subekti put forward above regarding the definition of a deed emphasizes the content of the deed, namely that it contains a legal act performed by the parties. Said legal act is embodied in a writing used as proof that a bond has occurred.³² Regarding documentary evidence, Article 1867 of the Civil Code determines that "proof by writing is conducted with authentic writings or with private writings." Thus, deeds as evidence consist of private deeds and authentic deeds.³³

A private deed is a deed deliberately created by the parties themselves, not by a public official authorized to issue deeds, which the parties use as evidence that a legal act has occurred.³⁴ A deed executed privately possesses valid probative force if the maker of the deed acknowledges the contents of the deed and the signature

³¹ Prihati Yuniarlin, Fathia Firli Rahma, and Qodriyah Isnayati, "Perjanjian Kawin Sebagai Alasan Pembatalan Perkawinan (Studi Putusan Nomor: 2011/Pdt.G/2022/PA.Mkd)," *Pagaruyuang Law Journal* 8, no. 1 (2024): 31–44, <https://doi.org/10.31869/PLJ.V8I1.5700>.

³² R. Subekti, *Hukum Perjanjian* (Jakarta: Intermasa, 2001).

³³ Yusthika Mahasaraswati, Gede Agung, and Wirawan Nusantara, "Implikasi Perjanjian Kawin Pisah Harta Dalam Penandatanganan Perjanjian Kredit," *Jurnal Yusthima* 4, no. 1 (2024): 189–206, <https://doi.org/10.36733/YUSTHIMA.V4I1.8967>.

³⁴ Milinia Mutiara Yushinta Dewi and Bayu Indra Permana, "Keabsahan Akta Yang Dibuat Oleh Calon Notaris Yang Sedang Magang Di Kantor Notaris," *Jurnal Ilmu Kenotariatan* 3, no. 2 (2022): 76–83, <https://doi.org/10.19184/jik.v3i2.36437>.

affixed thereto.³⁵ An authentic deed is a deed which, in the form determined by law, is made by or before public officials authorized for that purpose at the place where the deed is executed (Article 1868 of the Civil Code).³⁶ The existence of this authentic deed provides legal protection and certainty in society, particularly should a dispute arise in legal relationships within society regarding evidentiary matters.³⁷

Regarding written evidence in the form of an authentic deed, the Judge is in fact bound by law in its evidentiary assessment, because the law has explicitly stated that an authentic deed possesses perfect probative force.³⁸ Therefore, a marriage agreement executed via an authentic deed is also an effort at protection so that the created marriage agreement possesses perfect probative force to safeguard the rights of the parties.³⁹

According to the Marriage Law, at the time the marriage takes place, the marriage agreement becomes effective for the husband and wife (internally). Whereas regarding third parties (externally), the validity of the marriage agreement may be interpreted as commencing after it is registered with the Marriage Recording Officer on the marriage certificate excerpt—at the Office of Religious Affairs for Muslims and the Population and Civil Registration Agency for non-Muslims—as a form of ratification by the authorized Official, thereby possessing external binding force.⁴⁰ Thus, a third party cannot deny the marriage agreement if it is clearly recorded in the couple's marriage certificate excerpt.⁴¹

Regarding amendments to a marriage agreement, as stated in Article 29 Paragraph (4) of the Marriage Law *jo.* Constitutional Court Decision No. 69/PUU-XIII/2015, a marriage agreement may still be amended after the marriage has been

³⁵ Misbah Imam Subari and Justicia Firdaus Kurniawan, "Penggunaan Klausula Proteksi Diri Bagi Notaris Dalam Akta Partij Ditinjau Dari Undang-Undang Jabatan Notaris," *Jurnal Ilmu Kenotariatan* 4, no. 2 (2023): 144–60, <https://doi.org/10.19184/jik.v4i2.44196>.

³⁶ Soraya Ulfa Latifani, Moh. Ali, and Dominikus Rato, "The Existence of Marriage Agreement Registration In Legal Protection Perspective," *Acten Journal Law Review* 1, no. 3 (December 31, 2024): 188–202, <https://doi.org/10.71087/AJLR.V1I3.15>.

³⁷ Handayani, "Kedudukan Perjanjian Kawin Yang Dibuat Setelah Perkawinan Terhadap Pihak Ketiga."

³⁸ Muhammad Assegaf, Dominikus Rato, and Moh. Ali, "Keabsahan Perkawinan Beda Agama Pasca Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023: Studi Kasus Penetapan Nomor 423/Pdt.P/2023/PN.Jkt.Utr," *Acten Journal Law Review* 1, no. 2 (October 30, 2024): 157–70, <https://doi.org/10.71087/AJLR.V1I2.6>.

³⁹ Hariani and HS, "Pengaturan Perjanjian Kawin Di Negara-Negara Berbasis Civil Law."

⁴⁰ Anjani and Nualedang, "Kedudukan Perkawinan Campuran Tanpa Perjanjian Kawin Atas Jual Beli Apartemen Dengan Hak Guna Bangunan."

⁴¹ Kayla Delzanty et al., "Analisis Yuridis Perbuatan Melawan Hukum Terhadap Dugaan Unsur Penyesatan Dalam Perjanjian Kawin," *Media Hukum Indonesia (MHI)* 3, no. 3 (2025): 44–52, <https://doi.org/10.5281/ZENODO.15568560>.



solemnized, provided such amendment does not harm third parties.⁴² After the marriage is solemnized, the husband and wife may still amend the marriage agreement they created. However, such amendment must be executed via a notarial deed.⁴³ Furthermore, persons who previously participated as parties in realizing the marriage agreement must be included again. If those persons do not consent, the amendment cannot be carried out.⁴⁴

A matter that requires attention is the consequence of such amendment to the marriage agreement regarding third parties.⁴⁵ If the act of the husband and wife in amending the marriage agreement causes loss to a third party, the third party has the right to sue for compensation if the act of amending the marriage agreement fulfills the elements of Article 1365 of the Civil Code (Tort/Unlawful Act).⁴⁶ Observing the description above, if the marriage agreement is executed via a notarial deed, with the consensus of the husband, wife, and third parties in order to provide protection for said third parties.⁴⁷ If a marriage agreement is amended without the presence of the third party and is indeed created with the intent to harm the third party, the third party is not bound by said amendment to the marriage agreement, and should a loss occur, it can be stated the marriage agreement was conducted in bad faith.

V. CONCLUSION

The legal force of a marriage agreement is binding not only upon the spouses who execute it but also upon related third parties, provided that the element of publicity has been satisfied. Where a marriage agreement is executed in fulfillment of the validity requirements for agreements in accordance with applicable statutory regulations, ratified by a Marriage Recording Officer or a notary, and recorded by the

⁴² Endah Pertiwi, Ai Pitri Nurpadilah, and Dodik Wijaya, "Akibat Perkawinan Campuran Terhadap Anak Dan Harta Benda Yang Diperoleh Sebelum Dan Sesudah Perkawinan," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 1, no. 2 (2019): 1–12, <https://doi.org/10.52005/rechten.v1i2.36>.

⁴³ Werdiningsih, "Asas Publisitas Perjanjian Perkawinan (Post Nuptial Agreement): Konsep Kepastian Dan Perlindungan Hukum Bagi Pihak Ketiga."

⁴⁴ Riovaldi Paruntungan Silalahi et al., "Penyelesaian Sengketa Penyalahgunaan Keadaan Dalam Perjanjian Kawin: Antara Wanprestasi Dan Perbuatan Melawan Hukum Dalam Putusan No 3/Pdt./2015/PN.Sos," *Media Hukum Indonesia (MHI)* 3, no. 3 (2025): 677–82, <https://doi.org/10.5281/zenodo.15669437>.

⁴⁵ Assegaf, Rato, and Ali, "Keabsahan Perkawinan Beda Agama Pasca Surat Edaran Mahkamah Agung Nomor 2 Tahun 2023: Studi Kasus Penetapan Nomor 423/Pdt.P/2023/PN.Jkt.Utr."

⁴⁶ Adonara, "Kewenangan Notaris Mengesahkan Perjanjian Kawin Sebagai Amanat Konstitusi."

⁴⁷ Ardian Kurniawan, Rafikah, and Nuraida Fitrihabibi, "Kepastian Hukum, Kemanfaatan Dan Keadilan Pemidanaan Kejahatan Asal Usul Perkawinan (Analisis Putusan No. 387/Pid.B/2021/PN.Jmb)," *Al-Jinayah: Jurnal Hukum Pidana Islam* 8, no. 1 (2022): 1–13, <https://doi.org/10.15642/AJ.2022.8.1.1-13>.

Marriage Recording Officer, said marriage agreement possesses legal force equivalent to that of an authentic deed. Should the contents of a marriage agreement prove to contain contraventions of law, religion, or morality, this does not render the marriage agreement void in its entirety.

A marriage agreement executed by a married couple aims to provide preventive and repressive legal protection; specifically, should a conflict arise in the future, the marriage agreement may serve as a reference and a foundation for each spouse in exercising their rights and fulfilling their obligations, as well as delineating the boundaries thereof. A marriage agreement executed via a notarial deed also constitutes a protective measure ensuring that the agreement becomes an authentic deed possessing perfect probative force to safeguard the rights of the contracting parties as well as third parties. Furthermore, related third parties are entitled to claim compensation should the marriage agreement be executed or amended with the intent to prejudice said third parties.

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