PRE-NUPTIAL AGREEMENTS IN ENSURING LEGAL CERTAINTY

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ABSTRACT
Along with the development of increasingly modern times today, humans are more critical in matters of wealth. Humans now have many considerations in terms of calculating the material advantages and disadvantages that will be obtained as a result of marriage. The development of the women's emancipation movement has also played a role in influencing the human mindset towards property. At present, many prospective husbands and wife want their marriage to have a marriage agreement. Some parties consider that a marriage agreement is not suitable for use in Indonesia, which has an Eastern culture. However, the marriage agreement cannot be underestimated from the negative side. normative legal research method because the focus of the study departs from the vagueness of the norm, using the approach: conceptual approach. The technique of searching for legal materials uses literature study techniques, and the analysis of the study uses qualitative analysis. The provisions regarding marital agreements are regulated in Law Number 1 of 1974 concerning marriage. Article 29 ayt 1: marriage agreements at the time or before the marriage is held, the two parties by mutual consent can jointly make a written agreement that is legalized by the marriage registrar, after which the contents also apply to third parties involved. In the decision of the Mahakam Constitution Number 69/PUU-XIII/2015, the judges of the Mahakam Constitution interpreted Article 29 paragraph 1 of the Marriage Law as follows at the time before the implementation or during the marriage both parties at the mutual consent can submit a written agreement legalized by a marriage registrar or notary, after which the contents also apply to third parties as long as the third party is involved.

INTRODUCTION
The purpose of this study is, to find out how legal certainty of the implementation of a pre-marital agreement, from the perspective of applicable law in Indonesia. The research benefits of the results of this study are expected to be used as information for other researchers who will conduct research in the field of law, especially family law, and also the
author can apply the theoretical knowledge gained during lectures and connect with what happens in society in reality.

Marriage is a happy thing. Because two people who love each other can come together to build a family that is Sakinah, through Mawaddah and Warahmah. Not even a few who struggle hard in order to get married to the person they love. In addition, marriage can also connect the relationship between the two couples. A marriage is certainly built with the aim of creating a happy, eternal, and harmonious family. As stated in the Compilation of Islamic Law article 3 which reads that "the purpose of marriage is to create a family that is sakinah, mawaddah, and warahmah".

A prenuptial agreement is an agreement made by a prospective husband and wife before marriage to regulate the consequences of marriage in the field of property after the marriage is held. The definition of a prenuptial agreement is not found in the Civil Code, so the doctrine tries to formulate it in a different view. Thus, the definition of a prenuptial agreement submitted by legal experts can be stated.

R. Soetojo Prawirohamidjojo, said that a prenuptial agreement is an agreement made by a prospective husband and wife before or at the time of marriage to regulate the consequences of marriage on the assets of both (Prawirohamidjojo, 1986).

Along with the development of increasingly modern times today, humans are more critical in matters of wealth. Humans now have many considerations in terms of calculating the material advantages and disadvantages that will be obtained as a result of marriage. The development of the women's emancipation movement has also played a role in influencing the human mindset towards property. At present, many prospective husbands and wife want their marriage to have a marriage agreement. Some parties consider that a marriage agreement is not suitable for use in Indonesia, which has an Eastern culture. However, the marriage agreement cannot be underestimated from the negative side. Although it cannot be denied that the vagueness of norms in some aspects of marriage law, for example, the vagueness of norms regarding the validity of marriage and the time of making a marriage agreement in the Marriage Law, makes some parties who are not in good faith to violate the rules in marriage law. On the basis of these reasons, the author is interested in discussing the Marriage Agreement as a Means of Legal Protection for the Parties in Marriage.

METHOD RESEARCH

This research uses normative legal research methods because the focus of the study departs from the vagueness of the norm, using the approach: conceptual approach. The technique of searching for legal materials uses literature study techniques, and the analysis of the study uses qualitative analysis. In the example of the case to be discussed, in the jurisdiction of Samarinda City, as a sample using unstructured interviews with parties who made a pre-marital agreement.

RESULTS AND DISCUSSION

In principle, agreements are only binding on the parties that make them, as shown in the provisions of Article 1338 Paragraph (1) of the Civil Code, this is also emphasized in Article 1315 of the Civil Code (Soimin, 1992).
In marriage, there will be problems regarding property. The property in question is in the form of joint property of husband and wife and personal property of each party, including inherited property. This marital property is the legal effect of marriage.

Marital property is regulated in Book I of the Civil Code because marital property as a result of marriage is included in the scope of family law. The law of marital property is not included in the scope of property law, although it is also related to property or objects and property rights, therefore it is not regulated in Book III of the Civil Code on Bonds. (Elisabeth Nurhaini said that "the regulation of marital property is not included in the scope of property law due to the assumption that marriage is not a way to obtain or acquire property or wealth, although it is recognized that marriage will result in a person's position towards property.

The concept of marital property in the Marriage Law is different from the concept in the Civil Code. The concept of marital property according to the Civil Code is the unity of property, as contained in article 119 which reads from the time the marriage is entered into, by law there shall be a unanimous union between the assets of the husband and wife, except that no other provision is made for this by a marriage agreement. From this article, it can be understood that from the time of marriage, a unanimous union of property applies, unless a separation of property is made by making a marriage agreement.

A prenuptial agreement is not a requirement for prospective husband and wife to make it, marriage can still take place without a prenuptial agreement because a prenuptial agreement is an institution prepared by prospective husband and wife if deemed necessary to avoid disputes between personal property and joint property. According to (Saleh, 1980) regarding the scope of the prenuptial agreement, it is not determined what the contents of the prenuptial agreement are, such as regarding property, there are no restrictions on the property, so it can be concluded that the scope of the prenuptial agreement is very broad as long as it does not conflict with legal provisions and decency.

Basically, a prenuptial agreement is made with the aim of maintaining the welfare of both parties who make the prenuptial agreement, especially in the financial field because the prenuptial agreement is a means of protecting the assets of both parties so that with the prenuptial agreement the parties can determine the limits of their respective assets and joint property during marriage, and if there are problems in the household that lead to divorce or the breakdown of marriage due to death, property problems can be resolved based on the agreement that has been made. Prenuptial agreements also have a very important role in domestic life, among others, to safeguard the assets and property owned by both parties during the marriage, we can see that in the current era marriages often occur for certain interests such as marrying to maintain certain positions, status, or wealth, so that by making a prenuptial agreement it can protect property ownership in the event of bankruptcy or certain things, so it can be concluded that the scope of a prenuptial agreement is very broad as long as it does not conflict with legal provisions and decency (Nelly & UNHAM, 2006).

A marriage Agreement (huwelijksvoorwaarden) is an agreement made by a prospective husband and wife that contains the status of property ownership in their marriage (Soimin, 1992). In connection with this agreement, there are several things that need to be considered, namely: 5 1) The marriage agreement does not give rise to the right to sue before the judge for the continuation of the marriage and to demand reimbursement of costs, losses, and interest, due to the injury committed against him. All agreements for compensation in this case are void
(Article 58 paragraph 1 of the Civil Code). 2) A child who is still a minor (has not reached the age of 21 years), is not allowed to act alone and must be represented by his parents or guardian. However, according to Article 151 of the Civil Code, a person who is not yet eligible for marriage is allowed to act alone in approving a marriage agreement, provided that he is assisted by his parents or by a person who is required to give him permission to marry. 3) Every marriage agreement must be made a notarial deed before the marriage takes place, and the agreement comes into force from the time the marriage is held (Article 147 of the Civil Code). 4) This marriage agreement comes into force for third parties from the day of its registration at the registrar of the local district court, where the marriage has been held (Article 152 of the Civil Code). 5) After the marriage takes place, the marriage agreement in any way may not be changed (Article 149 of the Civil Code).

A marriage agreement can be made before or at the time of marriage, which aims to regulate the rights and obligations of husband and wife. This arrangement includes the respective assets that will be brought into the marriage. In the Indonesian context, a marriage agreement is a common thing to be done by prospective couples who are getting married. In fact, this agreement is considered common sense by some people. A marriage agreement is made to ensure legal certainty for both parties, especially to deal with marriage disputes. For example, the rights and obligations of husband and wife, separation of property and merging of property, or debt and credit problems before marriage. In addition to detailing the assets of each késekunik married.

The provisions regarding marriage agreements are regulated in Law Number 1 of 1974 concerning marriage. Article 29 ayt 1: marriage agreement at the time or before the marriage is held, the two parties by mutual consent can jointly make a written agreement which is legalized by the marriage registrar, after which the contents also apply to third parties involved. In the decision of the Mahakam Constitution Number 69 / PUU-XIII / 2015, the judges of the Mahakam Constitution interpreted Article 29 Paragraph 1 of the Marriage Law as follows at the time before the marriage is held or during the marriage bond, both parties by mutual consent can submit a written agreement legalized by a marriage registrar or notary, after which the contents also apply to third parties as long as the third party is involved.

Prenuptial agreements are generally about the separation of property or assets owned by each prospective married couple. Not only assets but all types of debts or the like that result in confiscation of property or assets owned. A prenuptial agreement must be made based on mutual agreement without coercion from anyone, this is done so that later this agreement can be accounted for. After the agreement is made, it will be legalized by the authorized party, and registered at the civil registry, if it is authorized by a notary, the notary will issue a Prenuptial Agreement Deed (Soimin, 1992).

The constitutional court judges, in this case, added the phrase during the marriage bond, but also changed the word held to file and added the phrase "or notary". (Negara & Konstitusi, 2019).

A marriage contract is one form of agreement. It is the same as a sale, exchange, or collective agreement, and all of them have their own characteristics and interests. There are five characteristics of the components of a marriage contract, namely as follows:
1. The parties, i.e. the woman who will enter into marriage or has already entered into marriage.
2. The time span for making, which is done at a certain time only, namely at the time or before the marriage takes place.
3. The content of the agreement, which is very varied, depending on each party who will determine the contents of the agreement, is made before the marriage, and the period of validity remains since the marriage is held.
4. The validity of the marriage agreement, starts from the time of the marriage. Even though the agreement was made before the marriage, the period of entry into force remains since the marriage took place.
5. The reason for the expiration of the marriage agreement. A marriage agreement cannot be made without a marriage. However, there is no provision stating that the marriage agreement becomes erased/terminated when the marriage also ends. There is not even a provision regulating the termination of this marriage agreement in the Marriage Law. Things that are promised in a marriage agreement include child custody after divorce, post-divorce child expenses, and so on.

CONCLUSION
Basically, a prenuptial agreement is made with the aim of maintaining the welfare of both parties who make the prenuptial agreement, especially in the financial field because the prenuptial agreement is a means of protecting the assets of both parties so that with the prenuptial agreement the parties can determine the limits of their respective assets and joint property during marriage, and if there are problems in the household that lead to divorce or the breakdown of marriage due to death, property problems can be resolved based on the agreement that has been made. Prenuptial agreements also have a very important role in domestic life, among others, to protect the assets and property owned by both parties during marriage, we can see that in the current era marriages often occur because of certain interests such as marrying to maintain certain positions, status, or wealth, so that by making a prenuptial agreement it can protect property ownership in the event of bankruptcy or certain things. The provisions regarding marriage agreements are regulated in Law Number 1 of 1974 concerning marriage. Article 29 paragraph 1: marriage agreement at the time or before the marriage is held, the two parties upon mutual consent can jointly make a written agreement which is legalized by the marriage registrar, after which the contents also apply to third parties involved. In the decision of the Mahakam Constitution Number 69 / PUU-XIII / 2015, the judges of the Mahakam Constitution interpreted Article 29 Paragraph 1 of the Marriage Law as follows at the time before the marriage is held or during the marriage bond, both parties by mutual consent can submit a written agreement legalized by a marriage registrar or notary, after which the contents also apply to third parties as long as the third party is involved.

REFERENCES


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