

Marriage Agreement In Solving The Problem Of Dividing Joint Property

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Abstract:

This writing aims to find out how the position of a marriage agreement in Indonesian positive law and the role of a marriage agreement in resolving the problem of dividing joint property. This writing uses a normative juridical approach, where data is collected through the study of library materials and interviews and then analyzed with qualitative explorative, descriptive and explanatory methods.

From the results of this writing it is concluded that (1) The provisions of the marriage agreement in the Civil Code are no longer valid, so that the provisions of the marriage agreement refer to Law Number 1 of 1974 in general and Presidential Instruction Number 1 of 1991 specifically for Muslims, (2) The marriage agreement plays an important role in resolving disputes over the division of joint property.

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I. Introduction

The divorce case between actress Dewi Hughes and her ex-husband Afin, which has become a big news in the mass media, is one example of an interesting case. Hughes' divorce suit was granted by the South Jakarta Religious Court. The Religious Court determined that the division of joint property obtained by a married couple while bound in marriage, is 50: Hughes appealed this ruling because she believed that the property that Afin considered to be his was actually only Hughes'. In addition, Hughes felt that he had worked harder during the marriage, while Afin had only acted as Hughes' manager for a short time after the marriage. According to the prevailing regulations, the manager is entitled to ten percent (10%) of the honorarium earned by the client (Bambang Sukartiono, Kawin Cerai among artists, *Gaya Hidupkah?*, Kompas, June 27, 2005).

Positive law in Indonesia has basically anticipated the problem of joint property so as not to be protracted in its division, namely by entering into a marriage agreement. In simple terms, this marriage agreement is intended to facilitate the process of dividing joint property in the event of a divorce. A marriage agreement is an agreement made by a couple, both men and women, before their marriage takes place, and the contents of the agreement are binding on their marital relationship. Marriage agreements in positive law are regulated in the Civil Code Articles 139-154, Law No. 1 of 1974 concerning Marriage Article 29, and Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law Articles 45-52. However, reality shows that marriage agreements as mentioned above are still something that is not well known by the general public. It cannot be denied that the public still considers this marriage agreement as something unusual, materialistic, unethical, not in accordance with Islamic and eastern customs and only emphasizes the egoism of the parties who make it. The following case example can be an interesting illustration.

A girl named Dina (25 years old), a private employee in Jakarta, was planning to get married. At one point, her future husband proposed that they both make a marriage agreement. Some of the points listed in the marriage agreement stipulate that, among others, in the event of divorce, Dina has no right to demand a certain amount of money from him. When they were still married, it also regulated the procedures for managing Dina and her husband's money. Dina felt hurt because they had not even been married yet and were already talking

about divorce, let alone with material calculations. Dina finally reconsidered her marriage plan with her future husband (Abdul Manan, Dilemma of Pre-Marital Agreement, SinarHarapan, November 12, 2004).

The example above shows that marriage agreements are still considered taboo and not something that is commonly done in society. In addition, marital agreements are often misunderstood by both the couple getting married and their parents. The negative image of marital agreements still lingers, and even worse, this image has become the general view of some Indonesians.

In another example, there was a successful career woman named Mita (26 years old), who was planning her marriage to Gunawan (28 years old). However, Mita had second thoughts, because her future husband presented her with a marriage agreement that had to be signed 2 (two) months before they got married. Initially, Mita agreed with the points of the agreement. But her mother, Mrs. Farida, objected. Her mother's reasoning was, "You have to use an agreement to get married". Mrs. Farida thought that the marriage agreement gave the impression that their marriage was nothing more than a marriage contract.

Mrs. Farida actually objected. Her mother's reasoning was that "you have to use an agreement to get married". Mrs. Farida thought that the marriage agreement gave the impression that their marriage was nothing more than a contract marriage (Fia S. Aji, Gender Flows in Marriage, A Sociological Study, Republika, February 4, 2007). Some of the illustrations above show how antipathetic ordinary people are to marriage agreements. Public beliefs are also the reason why this happens. People still believe that marriage is something holy, sacred and majestic, in contrast to the marriage agreement which is worldly in nature. This means that every couple who will enter into a marriage must maintain its sanctity, not to be mixed with worldly matters, from the process leading up to marriage to organizing their household life (Rahman, Premarital Agreement, www.rahima.or.id).

The concept of marriage as something "sacred" and the marriage agreement as something "worldly" has certainly led society to the wrong understanding. The community considers that worldly matters in marriage are not appropriate to be discussed, let alone practiced between husband and wife. People also still think that making a marriage agreement is the same as making agreements that are more businesslike. This misunderstanding needs to be straightened out, so that people do not feel taboo about marriage agreements, which actually have many benefits.

Based on the background mentioned above, the main problem that is the focus of the author's writing is as follows How the marriage agreement plays a role in resolving the problem of dividing joint property.

II. The Role of the Marriage Agreement in Resolving the Problem of Joint Property Division

Regarding the role of the marriage agreement in this section, it will be divided into 2 major sub-sections, namely the role of the marriage agreement for the personal life of husband and wife, and the role of the marriage agreement in terms of resolving marital cases at the judicial institution.

The Role of the Marriage Agreement for the Personal Life of Each Husband and Wife

Factors that cause divorce, including issues of responsibility and in terms of utilization of joint property, marriage agreements play a role in the form of :

a. Provide legal protection for the property owned by each husband and wife.

The existence of a marriage agreement made by prospective husband and wife will provide legal protection for the assets of each party, both husband and wife. The marriage agreement acts as a legal medium to resolve the issue of division of joint property if the marriage must end due to divorce. With the existence of a marriage agreement, it will be clearly distinguished which is joint property that needs to be divided between each divorced husband and wife, and which is gono-gini property that does not need to be divided.

b. Creating and upholding a sense of justice in domestic life.

As partners in married life, husbands and wives basically have the same or equal position, as stipulated in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law Article 79 paragraph (2) which states that "The rights and position of the wife are equal to the rights and position of the husband in household life and social life together in society". When the husband has a greater income than the wife, then the wife also enjoys and utilizes the husband's income together, of course this is a common thing and has become a habit, it can even be said to be a necessity considering that the husband is the head of the family who is the backbone of the family and in fact has the obligation to make a living to meet the needs of the family, as stated in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law Article 79 paragraph (1) which states that "The husband is the head of the family and the wife is the housewife." However, in some marital relationships, the husband is the head of the family and the wife is the housewife. " However, in some marital relationships, especially in developed societies, the reality is that the wife's position is at a higher social status than the husband, which of course causes the wife's income to be greater than the income earned by the husband. Sometimes it is also found in households where the husband does not have a regular job at all so

that all his needs are met by the wife. Then when a divorce occurs, the husband demands that the property obtained or produced by the wife be divided equally as the applicable legal provisions. It is also not uncommon for one of the husband or wife in their marital life to be involved in debt affairs with third parties, where the money obtained from this debt and credit relationship is not used for the joint interests of husband and wife, but for the personal interests of the husband or wife who owes. If their marriage is not accompanied by a marriage agreement, then the debt will be charged to the joint property because it is a joint responsibility. The husband must also bear the debt caused by his wife and vice versa. This of course creates a lame condition, where the husband or wife must bear the loss and burden of the actions committed by their spouse. For example, the husband It is not uncommon for debts to arise because of bad behavior, for example playing gambling, while the wife who does not know anything about it according to the law must take responsibility for the debts caused by her husband. Especially in cases where the husband is unemployed while the wife works for a living, of course the aspect of justice will never be achieved. In this case, the injustice will not only have negative consequences for one of the husband or wife, but also for the household as a whole.

c. Giving each husband and wife freedom over their own property.

In domestic life, the influence of the family system remains inescapable. Although a man and a woman are married and thus bound as husband and wife legally and recognized under the law, it does not cause the family ties of the respective lines of husband and wife to be cut off or stretched. This means that even though they are bound by marriage, the husband still has a responsibility, at least a moral responsibility, to provide assistance or help his family from difficulties, which is also the responsibility of the wife towards her family. The responsibilities that each husband and wife have towards their respective families sometimes cause friction which could cause big problems if not handled wisely. For example, the husband provides material assistance to someone from his family line without his wife's knowledge. Or, for example, conversely, the wife provides material assistance to someone from his lineage without the husband's knowledge. The husband may feel that his rights have been reduced, even though he does not directly reprimand or prohibit the actions taken by his wife, because after all, the joint property is the joint property of the husband and wife, not their individual/individual property. In circumstances like this, disputes between husband and wife can arise at any time. This is where the marriage agreement plays a significant role. For example, in the event that before or during marriage they are accompanied by a marriage agreement, especially one that regulates the "Separation of Property" in marriage, there is no need for friction to occur which could lead to quarrels between husband and wife. With the concept of separation of assets in marriage as regulated in the marriage agreement, each party (husband and wife) has freedom over their respective assets obtained during the marriage. Each husband and wife are not only free to take legal action over their assets with third parties, for example in the form of buying and selling, renting and so on without the consent of their spouse, but also have freedom in terms of using their assets, as long as this does not harm the interests of the family as a whole. general.

d. Increasing Work Spirit and Economic Standards.

As has been discussed, with the existence of a marriage agreement, the assets owned by each married couple can be legally protected and provide freedom of action for each to do everything related to their assets. In this case, of course, each individual must have their own assets to protect. The problem is if one of the husband or wife does not have personal assets, or only a small amount of personal assets, then the other party asks for a marriage agreement to be entered into. In this case, the husband or wife will be encouraged to work to earn their own income (property). This means that with a marriage agreement, the husband or wife will no longer depend on their partner in terms of assets. The wife must work and be creative, because if she does not work, then legally she has no rights to the property obtained by her husband. The logical consequence that this bears is that if a divorce occurs, the wife will not only lose her husband, but will also lose her future because she will not get anything from the assets obtained during the marriage. The reality is that the husband, who already had his own job and income when the divorce occurred, no longer thought about his ex-wife, who had no income at all. Meanwhile, for the husband, the urge to continue working to earn income (wealth) is not only caused by an obligation, but also for the sake of obtaining wealth for himself. Furthermore, if both husband and wife have their own income, this will of course increase the general economic level of the family. Having income from both husband and wife will certainly increase the family's financial coffers, which will ultimately improve the welfare of family members, such as husband, wife and especially children. In essence, having a marriage agreement made by a husband and wife will encourage husband and wife to earn their own income. With a marriage agreement, the enthusiasm to work to earn as much income as possible does not only belong to the husband, but also to the wife, so that the family's financial coffers will increase. The increase in state financial treasury will increase the family's economic level, thereby increasing the welfare of family members.

e. The Role of Marriage Agreements for Children

In a marriage agreement, it can also be agreed to create a unity of assets in marriage between husband and wife, but with an agreement that in the future, if a divorce occurs, all the assets will be devoted to the child. In family life, the essence of parents' search for income is for the benefit of the child

f. **The Role of Marriage Agreements for Women**

Marriage agreements are also very beneficial for the interests of women. Thus, the existence of a marriage agreement will protect women's rights in marriage. The marriage agreement can be used as a guide for the wife so that the husband does not monopolize the joint property and his wife's personal assets. Apart from that, from the perspective of women's empowerment, this agreement can be a means of protection for women from all possible occurrences of domestic violence (KDRT).

1. **The role of marriage agreements in resolving cases regarding the division of joint assets in judicial institutions**

A marriage agreement made by a husband and wife before entering into marriage can be a support or encouragement so that the principle of "Simple, Fast and Low Cost" in litigating in court is achieved as it should be. The implementation of this principle is certainly a good thing and is expected by married couples who want to divorce. Neither party wants their case in court to be complicated, convoluted, slow and expensive. All parties want a judicial process that is effective and efficient and not confusing, whatever demands they want and at whatever level. In divorce cases there are two ways, namely:

- a. settlement of cases where the divorce dispute is combined with the dispute over the division of joint assets, and
- b. settlement of cases where the divorce dispute is separated from the dispute over the division of joint assets.

The two methods mentioned above have their respective advantages and disadvantages, depending on the point of view. Settlement of cases where a divorce dispute is combined with a dispute over the division of joint property, seen from the costs incurred, is of course cheaper, because the court costs incurred by the parties are only for one judicial process, starting from the initial examination to the judge's decision and the implementation of the decision. The time taken is also shorter than if the dispute resolution was combined. However, the downside is that if one of the parties is not satisfied with the decision of the first instance judge and then files an appeal, it will cause even more complicated problems. If the husband or wife is dissatisfied with the first level judge's decision regarding the division of joint assets, then files an appeal to the second level court, then what will be examined is not only the dispute over the division of joint assets but also the divorce dispute, which in this case is the subject of the dispute. This is because a divorce dispute and a dispute over the division of joint assets constitute 1 (one) case file.

Of course, if the second level judge decides that the first level judge's decision regarding the husband and wife's divorce is invalid, then there is no need for a division of joint assets. In essence, there is no division of joint assets if there is no divorce.

This is different from case resolution where the divorce dispute is separated from the dispute over the division of joint assets. Even though it takes more money and time, if one husband or wife is not satisfied with the judge's decision at the first instance regarding the division of joint assets, of course if it is compared again, then only the dispute over the division of joint assets will be examined, there is no need to further examine the dispute. divorce because it is a separate case file.

III. Conclusion

The role of the marriage agreement in resolving the problem of dividing joint property is divided into 2 sub-sections, namely First, the role of the marriage agreement for the private life of husband and wife, which includes a) Providing legal protection for the assets owned by each husband and wife. b) Creating and enforcing sense of justice in domestic life. c) Give each husband and wife freedom over their respective assets. d) Increasing Work Spirit and Economic Standards. e) The Role of Marriage Agreements for Children and f) The Role of Marriage Agreements for Women; secondly, the role of marriage agreements in resolving marriage cases in judicial institutions, which includes: a) simplifying the litigation process, b) saving time and d) saving costs.

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