

# Marriage Agreements in Indonesia: A Comparative Analysis of Civil Law and Islamic Law after the Constitutional Court Decision

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## ABSTRACT

Marriage agreements play a strategic role in regulating the rights and obligations of spouses, particularly in relation to the ownership and management of property. This study aims to examine the differences in the regulation of prenuptial agreements under the Indonesian Civil Code (KUH Perdata) and the Compilation of Islamic Law (KHI), and to analyze the impact of the Constitutional Court Decision No. 69/PUU-XIII/2015 on the practice of marriage agreements in Indonesia. The research employs a normative juridical method using statutory and case study approaches, supported by literature reviews of relevant regulations, court rulings, and academic sources. The findings reveal that the Civil Code requires formal notarized agreements, while the KHI offers greater flexibility as long as the agreements align with sharia principles. The Constitutional Court's decision broadens access to prenuptial arrangements but also brings administrative challenges and a lack of public awareness. This study highlights the importance of harmonizing national legal systems and religious norms to ensure fairer protection, particularly for women in marriage. The novelty of this research compared to previous studies is its focus on analyzing marriage agreements through a comparative lens of civil law and contemporary Islamic law in Indonesia.

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## INTRODUCTION

The marriage agreement, as a crucial element in family life, plays a strategic role in regulating the legal relationship between husband and wife. In Indonesia, known for its ethnic, religious, and cultural diversity, marriage agreements are governed by two main legal systems: State Law and Sharia. Each of these legal systems not only has a distinct philosophical basis but also diverse legal mechanisms and procedures for viewing and regulating marriage agreements (A'yun & Hidayatullah, 2023).

The primary source of Indonesian Civil Law, the Civil Code (KUHPer), provides guidance for couples who wish to regulate their marriage within specific terms, including those concerning joint property, inheritance distribution, and the authority and responsibilities within a marriage. In this context, a marriage agreement is often formulated in a notarized deed and provides legal protection to the couple in the event of any disputes related to the division of property or other legal claims that may arise after the marriage (Zulkarnain & Hakim, 2024).

In addition, this study also highlights the Constitutional Court Decision No. 69/PUU-XIII/2015, which marked a significant development in the legal framework of marriage agreements in Indonesia. Through this decision, the Court declared that prenuptial and postnuptial agreements are not limited to property arrangements made before marriage but may also be created during the course of marriage, as long as they do not violate the principles of law, religion, and morality. This ruling broadened the scope of marriage agreements, provided greater legal certainty for married couples, and aligned with the principles of justice and equality, while also offering new perspectives on the relationship between civil law and contemporary Islamic legal thought.

Meanwhile, in the Islamic legal system, which serves as a guide for Muslims in Indonesia, marriage agreements have a solid foundation derived from the Qur'an, Hadith, and Islamic jurisprudence. Islamic principles regarding marriage place a strong emphasis on justice, the rights of spouses, and the dowry (mahr). Islamic law also regulates various obligations of husbands to their wives, such as the responsibility for providing financial support, child custody, and the right to divorce (khulu' or talaq) if the relationship no longer aligns with sharia principles. Marriage agreements in Islam are often oral or written in simpler forms, but still adhere to the provisions of sharia (Iliyin et al., 2023).

As time goes by, in social, economic, and cultural aspects, new dynamics have emerged that influence how Indonesian society drafts and regulates marriage agreements. Changes in the mindset of society, which is increasingly open to pluralism, and increased legal awareness among couples seeking to plan their married lives in a more structured manner, influence how they regulate marriage agreements, both within the context of Civil Law and Islamic Law. The use of marriage agreements in the form of legal documents before the state and religiously is increasingly relevant in modern Indonesian society.

However, this dynamic is not without challenges, particularly regarding the alignment of state law (Civil Law) with religious law (Islamic Law) in the context of marriage. Despite efforts to integrate these two legal systems, significant differences remain in the interpretation, implementation, and compliance with each. Issues that frequently arise include the recognition and division of joint property, inheritance rights, and divorce, which are not always recognized equally by state and religious law. Furthermore, an increasing number of couples are choosing to create marriage agreements that accommodate their individual needs, adding to the complexity of the applicable law.

Previous research on prenuptial agreements has been discussed in several scientific works, one of which was by Silmi, (2024) in his research entitled *Marriage Agreement from the Perspective of Maqasid Syari'ah of Imam Al-Sya'ibī*. In the research, the author explains that the marriage agreement in the Indonesian legal system and in the view of Maqāṣid Syarī'ah of Imam al-Sya'ibī is studied through qualitative descriptive methods and juridical and normative approaches. The research findings indicate that the provisions regarding this agreement are stated in the Civil Code, Law Number 1 of 1974, and the

Compilation of Islamic Law. According to Imam al-Syaṭibi, the agreement is considered valid if it provides benefits and avoids harm, and is in line with the three levels of sharia objectives, namely ḥarūriyāt, ḥājiyāt, and tāḥsīniyāt, which include five main principles: protection of religion, soul, descendants, mind, and property.

Then there is also scientific work in the form of research results by Zulkarnain & Hakim, (2024) with the title *Limitations of Marriage Agreements Based on the Civil Code*. The focus of this research is on the limitations of marriage agreements, the findings of the research explain that marriage agreements can only be made on the basis of marriage involving the husband and wife, the limitations in marriage agreements according to civil law are not specifically explained by the principles accepted in the Civil Code, but the limitations are aligned with the principles of consensus, personality, good faith, freedom of contract and adherence to agreements.

In addition to the aspect of limitations and approaches, marriage agreements can be used to reduce the occurrence of disputes in households because there is a tendency for polygamy, this can be seen in the results of previous research published in 2022, written by Sari & Arif, (2022). The results of this study indicate that there are no objects explicitly regulated in Law number 1 of 1974 concerning objects in a marriage agreement, so that the objects in a marriage agreement tend to be free and may be anything with conditions in accordance with law, religion, ethical norms, regarding the marriage agreement stipulated in article 45 of the KHI, so that in this case the study concludes that in a broader aspect the marriage agreement can regulate many broader objects including polygamy, the objects regulated in the marriage agreement can be used as a joint commitment effort in maintaining the marriage relationship and can have an impact on minimizing disputes in the future. Previous studies that we have described above show that a marriage agreement is actually permitted, and has several benefits and good impacts in establishing a marriage relationship, but it is only that in civil law regulations in Indonesia, even the KHI, it is not regulated in detail and explicitly.

This article aims to explore and analyze the dynamics of marriage agreements under Civil Law and Islamic Law in Indonesia, particularly in the contemporary context. The discussion will focus on the comparison and intersection of the two legal systems, as well as how marriage agreements are adapted to an increasingly pluralistic and modern society. Thus, the article aims to provide an understanding of the changes that will occur in the practice of marriage agreements in Indonesia, as well as the challenges and opportunities that arise in the process of integrating state law and religious law into Indonesian marital life (Raharja et al., 2024).

## RESEARCH METHOD

This research was conducted qualitatively with a normative legal approach in order to analyze the dynamics of marriage agreements in civil law and Islamic law in Indonesia (Sunggono, 2007). The normative legal approach itself is an approach that focuses on and refers to the legal rules that are currently in force (Fardiansyah et al., 2023). Therefore, in this context, data was obtained through library research covering various laws and regulations, such as the Civil Code (KUHPer), Law No. 1 of 1974 on Marriage, the Compilation of Islamic Law, and Constitutional Court Decision No. 69/PUU-XIII/2015. Regarding marriage, specifically in Chapter V which regulates marriage agreements, the Indonesian Compilation of Islamic Law (KHI) refers to Part VII regarding marriage agreements. Court decisions, both from the Supreme Court and

religious courts, are relevant to marriage agreements. Data were analyzed using descriptive-analytical methods to examine regulations, practices, and developments in jurisprudence related to marriage agreements (Asikin, 2004). The analytical descriptive method itself is an approach used that aims to describe actual conditions in detail to obtain the most accurate data possible regarding the research object. Thus, normative issues can be identified and analyzed through legal theory and relevant statutory provisions. It is hoped that the results of this research will contribute to the

## ANALYSIS AND DISCUSSION

### Marriage Agreement in Civil Law and Islamic Law

Marriage in Islamic teachings is known as nikah, which is one of the principles of living in a civilized and integrated community. Islam views marriage not only as a noble way to build a family and produce the next generation, but also as a means to strengthen ties between tribes and nations. Marriage is a law of God that applies universally to all of His creation. Allah SWT established marriage as a means provided by God for His creatures to continue their lineage and maintain survival. Although the term "marriage" is common in society, many individuals do not fully understand its meaning. This lack of understanding often leads some to engage in deviations or abuses in the practice of marriage (Samuel, 2018).

In marriage, a prenuptial agreement is established by the prospective bride and groom before the wedding, in which each party promises to abide by the terms of the agreement. This agreement is then formalized by a marriage registrar. A prenuptial agreement must meet certain requirements, ensuring it does not conflict with Islamic law or the essence of marriage. If the terms of the agreement violate Islamic law or the values of marriage, the agreement is legally void and must not be complied with. However, the contract remains valid.

A prenuptial agreement can be defined as a deed of agreement between the prospective bride and groom that contains various rules that will be binding and adhered to after they marry. This agreement covers various aspects, such as the management of joint assets, provisions regarding permitted and prohibited acts (including domestic violence), prohibitions on extramarital affairs, rules regarding marriage with more than one wife or husband, income distribution, family needs, separation and consolidation of assets acquired during the marriage and assets owned before the marriage, obligations for each party's debts, childcare, and financing of personal needs, care, and education of the children until they reach maturity and independence (Bagenda, 2021).

In the Western Civil Law system, particularly as contained in the Civil Code (Code of Law), several articles specifically regulate marriage agreements. However, in some situations, a broader interpretation is required regarding newly emerging legal events and relationships while specific provisions are not yet available. Therefore, general legal principles are used. In the case of marriage agreements, the provisions refer to Book III concerning Contracts, specifically Article 1320 of the Civil Code, which establishes the requirements for a valid agreement. These provisions include subjective elements, namely the consent of both parties and the ability to draft the agreement, as well as objective elements, namely the existence of a specific matter and a permissible reason (Risky, 2020).

In a marriage agreement, the principle of freedom of contract applies, allowing the parties to agree on various matters related to the legal actions required in marriage. The implementation of a marriage agreement after marriage depends on the good faith of both parties in complying with the agreement made. A marriage agreement has a more limited scope than a general agreement, as it is based solely on agreements and actions that do not conflict with the law, without reference to contracts or agreements based on law. Although there is no clear definition of a marriage agreement, it can be broadly understood as a legal relationship that regulates the joint property of a husband and wife, in which one party makes a promise or is deemed to have made a promise to carry out an action, while the other party has the right to demand its implementation. With this agreement, the couple bound by it will receive legal protection both during and after the marriage. Therefore, annulment of a marriage that also violates the marriage agreement is rare, considering the legal implications that must be borne by one party if it does not comply with the agreement. Typically, there are penalties imposed on the party violating the provisions of the marriage agreement (Saputro, 2024).

According to Islamic law, as quoted by Gatot Supramono, a marriage agreement is an agreement made between the prospective bride and groom before or during the marriage. This agreement must be set out in writing and officially ratified by a Marriage Registrar, and can have legal effect for third parties if it has been agreed to in the agreement. In this case, the Islamic legal system and the Civil Code (BW) have similarities in terms of the requirement for the agreement to be made in the form of a record. However, according to the BW, the difference lies in the validity of the agreement, the agreement must be made before a notary, while in Islamic law it is sufficient to be ratified by a Marriage Registrar. In addition, in the BW, the marriage agreement only binds third parties after being registered with the clerk of the local District Court where the marriage took place, whereas in Islamic law, the agreement is binding on third parties as long as it is included in the clauses of the agreement.

### **Dynamics of Joint Property in Marriage Agreements**

The dynamics of joint ownership within a prenuptial agreement are a crucial element of Indonesian marriage law. Under the prevailing legal system, assets acquired during a marriage are automatically considered joint property, unless otherwise provided by the prenuptial agreement. The prenuptial agreement allows couples the freedom to determine the status of their assets, whether through complete separation, proportional distribution, or other mutually agreed-upon arrangements. This agreement can provide legal certainty and prevent future conflicts, particularly in situations of divorce or inheritance distribution (Asqia Az-zahra & Milhan, 2024).

Prenuptial agreements also play a strategic role in protecting women's rights within marriage. In some cases, women who owned assets or earned their own income before marriage often feel the need to ensure that these assets remain their personal property. Furthermore, for women running businesses, prenuptial agreements can prevent the mixing of business assets with joint assets, thereby minimizing the financial risks that may arise from marital problems. (Fauza & Afandi, 2020).

On the other hand, a marital agreement isn't solely about dividing assets but can also regulate financial responsibilities within the household. Agreements regarding each party's contribution to living expenses, investments, and other obligations can help couples better manage their finances and avoid financial disputes. In today's world, where

many couples have separate incomes, these agreements are increasingly relevant for ensuring financial independence and fairness within the household. (Sunarsi et al., 2018).

Despite its many benefits, prenuptial agreements are often considered taboo or uncommon in society. Many believe that drafting these agreements before marriage reflects a lack of trust between the couple or can even undermine the essence of marriage itself. However, in many countries, prenuptial agreements are considered a realistic and mature step in building a household, where each party clearly understands their rights and responsibilities from the outset.

To help more couples understand the importance of prenuptial agreements, broader legal education is needed. Marriage registration agencies, notaries, and lawyers should be more proactive in providing information to prospective brides and grooms about the benefits and procedures for drafting prenuptial agreements. With a better understanding, couples can make more informed decisions about managing joint assets and ensure stronger legal protection for each party (Achmad Asfi Burhanudin, 2019).

The existence of a prenuptial agreement not only provides legal guarantees for couples but also ensures that women's rights are protected within the household. By understanding the dynamics of joint property within a prenuptial agreement, couples can build a more just, transparent, and harmonious marriage in accordance with their mutual agreements (Djuniarti, 2019).

## **Protection of Women Through Marriage Agreements**

A prenuptial agreement is a legal instrument that serves to provide protection to women in the bonds of marriage. In the context of Indonesian law, a prenuptial agreement, according to Article 29 of Law No. 1 of 1974 concerning Marriage, requires prospective husbands and wives to enter into a written agreement, which is then ratified by a marriage registrar before or during the marriage. This agreement regulates various aspects of domestic life, particularly regarding the separation of assets and obligations of each party (Yulies, 2017).

One of the primary benefits of a prenuptial agreement is that it provides legal security for women in managing their assets before and during marriage. In a legal system still often influenced by patriarchal culture, women are often in a vulnerable position, particularly regarding asset ownership and management. With a prenuptial agreement, women can maintain their rights to their personal assets and avoid potential conflicts regarding asset division in the event of divorce or the death of a spouse.

Beyond property, a prenuptial agreement can also cover various other matters concerning the rights and obligations of each partner. For example, agreements regarding the right to work, education, and domestic roles can prevent women from exploitation or injustice within the household. This agreement can serve as a legal basis to protect women from discrimination in married life and provide them with the space to maintain economic and social independence. (Ni'mah & Yunanto, 2023).

Although prenuptial agreements offer many benefits, society still holds the prejudiced view that drafting prenuptial agreements reflects a lack of trust between partners. In reality, prenuptial agreements are a manifestation of maturity in marriage, where both parties are aware of their respective authorities and obligations and prevent potential problems in the future. Therefore, it is crucial for society to understand that prenuptial agreements are not a sign of distrust, but rather a form of legal protection for both parties, especially women (Aprilia et al., 2024)(Aprilia et al., 2024).

On the other hand, the existence of a prenuptial agreement also plays a role in reducing legal uncertainty for women in divorce situations. Without a clear agreement, women are often in a vulnerable position when facing division of joint property or when demanding their due rights. With a valid legal document, women have a strong basis to assert their rights in accordance with the agreement (Budiawan, 2023). To ensure more women receive the protection of prenuptial agreements, broader education regarding their benefits is needed. Prospective brides and grooms should gain a sufficient understanding of their rights within marriage, both from a religious and legal perspective. Furthermore, marriage registration institutions and notaries should play an active role in providing information on the procedures and benefits of prenuptial agreements so that more couples consider entering into them (Zamroni & Putra, 2019).

With a better understanding of prenuptial agreements, women can obtain stronger protections within their marriage. The existence of these agreements not only provides legal certainty but also ensures that women's rights are always protected and respected in their married life (Susanti, 2018).

### **Comparison of Marriage Agreement Law in Civil Law and Islamic Law in Indonesia**

The legal regulations regarding marriage agreements in Indonesia have two main legal bases: civil law, which refers to the Civil Code (KUH Perdata), and Islamic law, which is guided by the Compilation of Islamic Law (KHI). Both legal systems regulate marriage agreements with the same goal: to provide clarity and legal protection for married couples, particularly regarding property. However, there are fundamental differences in the concepts, requirements, and legal consequences of marriage agreements in the two systems (Haq et al., 2023).

In civil law, a marriage agreement is known as a marriage agreement and is regulated by Article 139 of the Civil Code. This agreement is drafted before the marriage takes place and must be recorded in a notarial deed and officially registered with the Civil Registry Office. Civil law allows couples the freedom to determine the terms of the agreement in accordance with legal provisions, public interest, and moral norms. One aspect regulated by this agreement is the separation of assets, which allows husband and wife to continue to own and manage their respective assets independently during the marriage.

On the other hand, the Islamic legal system applied in Indonesia recognizes the marriage agreement as stipulated in Article 29 of Law Number 1 of 1974 concerning Marriage and as clarified in the Compilation of Islamic Law (KHI). From an Islamic perspective, a marriage agreement is referred to as *ta'liq talaq* or other agreement agreed upon by the husband and wife, as long as it does not violate the basic provisions of sharia. Unlike civil law, which requires agreements to be made before marriage, Islamic law is more flexible, allowing agreements to be made before or after the marriage agreement, as long as there is the consent of both partners.

Another inequality lies in the consequences of a marriage agreement. Under civil law, in the absence of a marriage agreement, a joint asset system applies, meaning all wealth accumulated during the marriage is considered joint property of the husband and wife. Meanwhile, under Islamic law, the prevailing principle is the separation of assets based on individual ownership, unless otherwise agreed upon. This aligns with Islamic

principles, which emphasize that the assets of a husband and wife are essentially separate, unless otherwise agreed upon.

Furthermore, in terms of recording and enforceability, civil law places greater emphasis on administrative aspects, requiring notarial deeds and registration with official authorities to ensure legal validity. Meanwhile, in Islamic law, although recording is encouraged for legal certainty, agreements made verbally or in writing are still recognized as long as they comply with sharia principles and receive the consent of both parties. This demonstrates that Islamic law places greater emphasis on the substance and intent of an agreement than on formalities (Suwardiyati, 2020).

Thus, despite differences in administrative and conceptual aspects, marriage agreements in both civil and Islamic law in Indonesia aim to protect the rights of married couples in marriage. Civil law is more formal and administrative, while Islamic law is more flexible and adheres to sharia principles. Therefore, the choice of legal system used in a marriage agreement depends on the legal background of the couple and their legal needs in regulating property and marital relationships.

### **Implications of the Constitutional Court's Decision on Marriage Agreements in Indonesia**

The implications of the Constitutional Court's (MK) ruling on marriage agreements in Indonesia have brought significant changes to family law, particularly regarding the separation of assets and financial obligations between husband and wife. Previously, Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage stipulated that marriage agreements must be drafted no later than or during the marriage. However, through Constitutional Court Decision Number 69/PUU-XIII/2015, this provision underwent a fundamental change, granting couples greater freedom in managing their assets. The Constitutional Court stated that marriage agreements should not be drafted solely before marriage, but during the marriage, as long as they do not violate law, religion, or propriety (Charissa, 2022).

This ruling has had a broad impact on the dynamics of marriage in Indonesia, particularly in terms of economic aspects and legal protection for married couples. With flexibility in the timing of marriage agreements, married couples can adjust the provisions regarding joint property to suit their needs, particularly when facing changing economic conditions or specific circumstances such as business risks and debt. This provides greater legal security for all parties, particularly in avoiding future property disputes.

Furthermore, this ruling also has a positive impact on women, particularly those who owned assets or businesses before marriage. In many cases, women pursuing careers or entrepreneurship often face challenges in managing their assets due to the marital property system, which automatically merges ownership of assets upon marriage. With the freedom to enter into a prenuptial agreement at any time, women can gain greater financial independence and protect their assets without being bound by the default provisions of joint property in marriage (Rohman, 2017).

The Constitutional Court Decision No. 69/PUU-XIII/2015 carries significant implications for the practice of prenuptial agreements in Indonesia. By allowing agreements to be made not only before but also during the course of marriage, the ruling expands the flexibility of marital arrangements and provides greater protection for individual rights within marriage. This development marks a shift from the rigid

interpretation of the Civil Code, which previously restricted such agreements to the period prior to marriage, thereby broadening legal certainty and accessibility for couples.

However, the decision also raises the potential for disharmony within the legal system, particularly between civil law and Islamic law as applied through the Compilation of Islamic Law (KHI). While civil law now permits postnuptial agreements, Islamic legal principles emphasize clarity and certainty at the time of contract (*akad*). This divergence could create interpretive challenges for judges, practitioners, and couples themselves, particularly in cases involving property division and inheritance, where both legal systems may produce different outcomes.

To strengthen the normative and systematic analysis, it is essential to explicitly reference the provisions governing prenuptial agreements in the Indonesian Civil Code (KUH Perdata), the Compilation of Islamic Law (KHI), and the Constitutional Court decision itself. This triangulation not only situates the discussion within its proper legal framework but also highlights the dynamic interaction between statutory law, Islamic jurisprudence, and constitutional interpretation. In doing so, the analysis provides a more holistic understanding of how marriage agreements are regulated and applied in Indonesia's pluralistic legal system.

Furthermore, this Constitutional Court ruling also has implications for inheritance law and liability towards third parties, such as creditors. Under the previous legal system, married couples without a prenuptial agreement automatically assumed joint liability for debts incurred during the marriage. With the freedom to draft a prenuptial agreement, individuals can protect their assets from legal obligations that do not directly affect them. This is crucial for individuals with high-risk businesses, so their partners do not have to bear the financial impact of their business decisions. However, this Constitutional Court ruling also presents challenges in its implementation, particularly regarding public awareness of the importance of prenuptial agreements. In Indonesia, prenuptial agreements are often considered taboo or an indication of a lack of trust between partners. However, in practice, these agreements actually provide legal guarantees to couples in marriage. Therefore, education and outreach regarding the benefits and mechanisms of prenuptial agreements are crucial for ensuring the public's optimal use of them (Sinaga, 2020).

Overall, the Constitutional Court's ruling permitting prenuptial agreements during marriage represents a progressive step in Indonesia's family law system. This change provides couples with the flexibility to manage their assets according to evolving needs and circumstances. However, effective implementation requires broader public understanding and support from the government and legal authorities in providing information and services that facilitate couples in entering into prenuptial agreements based on the provisions (Ni Kadek Ani et al., 2021).

## CONCLUSION

Marriage agreements in both civil and Islamic law in Indonesia play a central role in managing the rights and responsibilities of spouses, particularly regarding property management. Under civil law, these agreements could initially only be made before marriage, but following Constitutional Court ruling No. 69/PUU-XIII/2015, couples are permitted to enter into them during the marriage. Meanwhile, under Islamic law, marriage agreements are more flexible as long as they do not conflict with sharia principles. This development demonstrates the legal adaptation to meet the needs of modern society in

building fairer and more transparent households. The existence of marriage agreements also provides legal protection, particularly for women, in maintaining their rights to personal assets and avoiding marital injustice. With more flexible rules, couples can adjust their property management according to mutual agreements without being bound by the system of property mixing that automatically applies in marriage. Furthermore, these agreements also help reduce the potential for future conflict, particularly in the event of divorce or financial difficulties in the marriage. Despite their many benefits, there is still a stigma in society that considers marriage agreements a sign of distrust in the relationship. In fact, their primary purpose is to ensure legal certainty and protect the interests of the couple. Therefore, education and outreach regarding the importance of marriage agreements need to be increased so that the public can understand that this legal instrument is part of responsible marriage planning, not just a form of distrust towards one's partner.

## AUTHOR CONTRIBUTION

AS contributed as the principal author and was mainly responsible for the conceptual development of the study, data collection, and drafting of the main manuscript.

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