

## **Pre-Marital Implementation Agreement by Act No. 1 of 1974 on Marriage Which Made by Notarial Deed**

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**Abstract.** The problem in this study were (1) How is the implementation of a pre-marital agreement according to Act No. 1 of 1974 on marriage made by notarial deed, (2) the constraints what emerged in the implementation of the agreement before marriage according to the Act No. 1 of 1974 on the marriage made by notarial deed, (3) How does the solution implementation constraints pre-marital agreement according to Act No. 1 of 1974 on marriage made by notarial deed. This study uses a method socio-legal approach that the research method approach a problem through a merger between the normative analysis with non-legal science approach in view of the law.

The results of this study indicate that (1) Implementation of the pre-marital agreement by notary deed that under Act No. 1 of 1974 on Marriage should be undertaken in good faith by both parties that a pre-marital agreement. In a pre-marital agreement matters mentioned therein should not be contrary to public order, morality, law and religion, and an agreement was reached after both parties agreed and voluntary and no coercion. (2) Criminal cases against pre-marital agreement by notary deed pursuant to Act No. 1 of 1974 on Marriage one of which is when the parties to make pre-marital agreement deed by Notary who forget listed in the civil registry.

**Keywords:** Pre-marital; Marriage Agreement; Notarial Deed.

### **1. Introduction**

In this globalization era, the people of Indonesia would require legal certainty about Pre-marital Agreement, especially the prospective husband and wife candidates to protect any rights of each party.

Under Article 1 of Act No. 1 of 1974 on Marriage, which referred to marriage is inner and outer bond between a man and a woman as husband and wife with the aim of forming a family (household) who are happy and everlasting based on God.<sup>3</sup> Marriage Act consists of 14 Chapters which includes 67 articles.<sup>4</sup>

The marriage contract is an agreement by Soetojo Prawirohamidjojo (agreement) made by prospective spouses before or during the marriage took place to regulate the consequences of marriage against their property.<sup>5</sup>

The issue of marriage is a many-faceted human problems, covering all aspects of human life that is easy to cause emotions and disputes. Therefore it is very important the legal certainty that there has been an agreement of marriage. In the case of marriage required legal certainty to be easily held tools proof. Family embodies a harmonious, prosperous, happy and eternal forever in an inner and outer linkage between two persons, then basically every marriage required material property is the basis for family life.

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<sup>3</sup> *Aturan, Hukum Dan Perundangan Perkawinan di Indonesia*, ed.1, p.12

<sup>4</sup> K.Wantjik Saleh, *Hukum Perkawinan di Indonesia*, ed.7, (Jakarta: Penerbit PT Ghalia Indonesia), p.4-5

<sup>5</sup> Soetojo Prawirohamidjojo, R., Soebijono Tjitrowinoto. 1986. *Pluralisme Dalam Perundang-undangan Perkawinan Di Indonesia*. Surabaya : Airlangga University Press, p. 57.

In a marriage of marital property issues often receive less attention by a husband and wife. Because it is in performing a marriage is forever. They think that marriage will be lasting and there will be no problem, as well as the life and the relationship between husband and wife always goes well as you wish. So they did not question the right of one of the rights of others.

Restrictions regarding what belongs to the husband, what belongs to the wife, and what belongs to them together not attract their attention. But if it turns out the marriage did not go according to the wishes and then divorced, they had questioned the right of an individual, especially regarding the division of marital property.

This problem would be different if the husband and wife at the time prior to mate a pre-marital agreement beforehand. So it will be more clear about the divisions, reduce the problems or conflicts that typically arise during a divorce.

Usually the Pre-marital agreement is made for the benefit of legal protection against the default of each property, the husband or the wife. It was originally a pre-marital agreement has been chosen by the upper class or rich people who have a heritage treasure of great value.

Agreement on Pre-marital / wedding Agreement set out in Article 29, paragraph 1-4 whose meaning is: Verse 1, which means on or before the marriage took place two parties by mutual consent can file a written agreement approved by the marriage registrar employee, after which its contents shall also apply to third parties lodged.<sup>6</sup>

Pre-marital agreement must be approved and signed by both parties in principle voluntarily and without coercion and pressure from any party, because if one party feels coerced, because getting one threat / pressure then legally pre-marital agreement declared void and has no binding legal force. Pre-marital essentially identical to the deed under hand. In order to have the strength and the value of legal evidence, it can be registered in the competent public authority in this case is the notarial deed.<sup>7</sup> In order for each party to get justice as agreed in the treaty. At the time the wedding took place a pre-marital agreement must also be ratified good marriage registrar employee on Religious Affairs Office (KUA) and the Civil Registry Office where practicing marriage.<sup>8</sup>

Underlying pre Agreement made this marriage is to deviate from the provisions of statutory law, which stipulates that the personal wealth of each husband and wife basically blended into one whole round. Another cause of the background of the Agreement Marriage is if among candidates married there are differences in social status are conspicuous, or own property balanced person, or giver does not want anything grant from the other party, or husband and wife each subject to different laws as occurs in mixed marriages.<sup>9</sup>

To learn more and in depth on the implementation of the pre-marital agreement, then this topic is interesting to study. In connection with that, the authors are interested to examine more deeply the scientific work in the form of a thesis on " Pre-marital Implementation Agreement By Act No. 1 of 1974 On Marriage Which Made By Notarial Deed?".

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<sup>6</sup> K.Wantjik Saleh, op.cit., p. 21

<sup>7</sup> <https://fc4pentingers.wordpress.com/2015/05/21/perjanjian-pra-nikah/> accessed on 01 October 2018, at 09.00 pm

<sup>8</sup> <https://wolipop.detik.com/read/2013/03/08/101338/2189258/854/step-by-step-membuat-perjanjian-pranikah-bersama-calon-suami> accessed on 01 October 2018 at 9:45 pm

<sup>9</sup> H.A Damanhuri H.R, *Segi-Segi Hukum Perjanjian Perkawinan Harta Bersama*, ed.II (Palembang, May 2012, Penerbit:cv.Mandar Maju), p. 13-14.

## Research methods

Based on the formulation of the problem and the purpose of the study, the research methods used in this study is a method socio legal. Socio-Legal Research Methods the method of research that approach a problem through a merger between the normative analysis with non-legal science approach in view of the law. Socio-legal research, a study evaluating the science of law to include social factors to remain within the limits of legal writing.

## 2. Results and Discussion

### 2.1. Implementation of Pre-marital Implementation Agreement By Act No. 1 of 1974 On Marriage Which Made By Notarial Deed

In the Pre-marital agreement in Article 29 of Act No. 1 of 1974, namely the approval of the separation of the assets in the marriage, or the agreement governing the extent to which the limits of personal responsibility of each as defined in paragraph 2 of Article 35 of the debts created by the husband against the wife against third parties. With the existence of this article a lot to help the wife and husband on the actions that harm, for example by making an agreement that the actions of her husband in debt, treasure wife does not take responsibility for repayment, inheritance congenital wife being auctioned for the debts of the husband even if the wife is not know anything about the debt. It is important to be noted, there are two important things about this agreement, pre-marital agreement is not a necessity, without any agreement, the marriage can be implemented. In other words, pre-marital agreement is only an institution that is prepared when there are those who feel the need to make an appointment, to avoid disputes between private property and common property.

Further to the ordinance a pre-marital agreement are as follows:

- Their willingness and openness from both sides
- Think of the contents of the agreement  
Prospective spouses may regulate anything according to the will and agreement on their property. However, there are some things that need to be considered when developing the content of the agreement, among others:
  - Agreements must not conflict with the norms of morality and public order.
  - Agreement should not be made to deviate from: The rights arising from the power of the husband; The rights arising from the power of the master;
  - The Agreement does not contain relics waiver of those who inherit it.
  - Agreements must not promise that either party would have to pay most of the debt is greater.
  - Agreements must not promise that the marriage will be governed by foreign law.
- Agreements made in writing  
Basically, the agreement can be done verbally or in writing. However, in making pre-marital agreement should be using the agreement in writing. Given the pre-marital agreement should be made by notarial deed before the wedding takes place, it will be void if not made that way. Thus, would be much better if an agreement is made with clear and bright.
- Agreements made before a Notary  
After steady with the agreement that will be made, prospective couples can go to the Notary authorities to create and validate pre-marital agreement. Notary is authorized to make a deed with a perfect probative value and specific.

Liabilities notaries as competent authorities responsible other than a deed is also obliged to store the certificate as part of the protocol notary. So if there is falsification can be immediately checked originality deed.

As for the deed pre-marital agreement, the conditions needed only ID card of the party, then the party came to the Notary office, then make a Notary deed mating agreement. The deed then registered in the District Court (make 2 multiple copies), after the State of the court is completed the next step in please register in civil certificate

## **2.2. Any Constraints That Often Arise For Notary According To The Marriage Act In Pre-Marital Agreement**

Most people think that in order to make the agreement Pre-marital is because one of the husband or wife own assets that many prior to the wedding and / or is the child of a wealthy family with assets in abundance, so that later in the marriage course, this child will receive a grant or inherited from their parents and he did not want this to be a common property assets are entitled owned also by the husband or wife. Then there is also cause for concern when you want to take legal actions for example, transfer or sell these assets became requires the consent of the husband or wife.

Pre-marital agreement made before a notary, sometimes in the implementation of the agreement of the mating face of obstacles. In general problem that often occurs among which:

- The conjugal act in bad faith in respect of debts to third parties.
- During the wedding the husband or wife has violated the agreement that created it.
- Civil disputes occur on the implementation of the agreement to marry.

Constraints other complaints from the family of the bride at the time of the marriage ceremony was held, because they are never told that there has been an agreement before marriage that has been made by the prospective husband and wife, or their suspicions of their control of property in marriage by the future husband or wife or by third party. So not impossible to do a change in the treaty or otherwise treaty itself can not be implemented. Notary deed for the manufacture of pre-marital agreement will experience problems when the deed forgotten please register in the civil registry.

## **2.3. Pre-Marital Agreements Implementation Solutions Which Made By Notary According to Act No. 1 of 1974 on Marriage**

In Indonesian society, with their make arrangements mating commonly called the pre-marital agreement is still considered for most of the prospective spouses. And with mating agreement showed good faith to understand the rights and obligations in matters of maintenance of property in marriage, including the maintenance of the child, for the purpose of marriage under the Marriage Act is to establish a happy and prosperous family based on the divinity of the Almighty. The main obstacle in the implementation of the agreement to marry, is that divorce is not reported. This is understandable, because the parties feel this is a family matter, but from the administration they need to re-register to record mating agreement notes they received.

Referring to article 29 over the marriage law, the marriage contract must be in writing and authenticated by a notary clerk or registrar of marriage. Marital agreement is valid as law for those who make it, also applies to third parties throughout this third party.

And when the deed pre-marital agreements are forgotten please register in the civil registry, it is necessary to do a court warrant.

### **3. Closing**

#### **3.1 Conclusion**

Based on the research results can be concluded as follows:

Implementation of Pre-Marital Agreements Made By Notary According to Act No. 1 of 1974 About Marriage. Agreement Pre-marital made in notary usually agreement about doing split treasure, a treasure inherited from donations or inheritance actually void already be under the control of their respective husband or wife, and he has the full right to take legal actions over the possessions innate without the consent of their husband or wife. As for the deed pre-marital agreement, the conditions needed only ID card of the party, then the party came to the Notary office, then make a Notary deed mating agreement. The deed then registered in the District Court (make 2 multiple copies), after the State of the court is completed the next step in please register in civil certificate

Any constraints that often arise for Notary according to the Marriage Act in deed pre-marital agreement. When the deed pre-marital agreement is the forgotten please register in please register in the civil registry.

Pre-Marital Agreements Implementation Solutions Made By Notary According to Act No. 1 of 1974 About Marriage. Referring to article 29 over the marriage law, the marriage contract must be in writing and authenticated by a notary clerk or registrar of marriage. Marital agreement is valid as law for those who make it, also applies to third parties throughout this third party. And when in a deed pre-marital agreements are forgotten please register in the civil registry then solutions need to do is make the determination of the court.

#### **3.2 Suggestion**

- In a pre-marital agreement, a Notary need to be careful and alert-related documents provided by the parties in order to avoid an error in the future.
- In pre-marital agreement, a Notary must not neglect or forget that the deed should be recorded in the civil registry.
- Need for dissemination to the public awareness to avoid a negative view of the Pre-marital Agreement but presumably the public can clearly understand the importance of Pre-Marital Agreement on marriage in order to protect the parties interested in the marriage.

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