

THE URGENCY OF A SEPARATION OF PROPERTY AGREEMENT IN MARRIAGE AS AN EFFORT TO CREATE A HARMONIOUS FAMILY

Lestari Lamindo Limbong¹, Henry Aspan², Dahlan³

^{1,2,3} Universitas Pembangunan Panca Budi, Indonesia.

Corresponding Author: lestarilimbong3@gmail.com , henryaspan@yahoo.com

Received : 20 November 2024

Revised : 30 November 2024

Accepted : 17 December 2024

Published : 30 January 2025

DOI : <https://doi.org/10.54443/ijerlas.v5i1.2340>

Publish Link : <https://radjapublika.com/index.php/IJERLAS>

Abstract

As science develops, public awareness of the importance of legal protection for themselves also grows rapidly. Likewise, legal protection for married couples. The existence of a separation of property agreement in a marriage is one effort to avoid conflicts related to property in a marriage bond, the less conflict there is, the greater the potential for a harmonious marriage. A separation of property agreement must be made based on an agreement between the two parties so that no one feels disadvantaged. The marriage agreement must also be approved by an authorized official. This study uses the Normative Juridical approach method, namely legal research conducted by examining library materials or secondary data as a basis for research by conducting a search for regulations and literature related to the problems being studied.

Keywords: *Marriage agreement, Separation of Assets, Sakinah Family*

Introduction

Marriage is an endless topic to study, many things become interesting if associated with this sacred bond. Marriage usually does not only involve men and women, but also many parties involved in it, so many conflicts usually occur in a marriage. The existence of Law No. 1 of 1974 is an effort to unify civil law, especially family law, but in reality it is not as perfect as expected. To say that Law No. 1 of 1974 does not regulate all aspects related to family law, it is necessary to look at the substance of Law No. 1 of 1974, which generally regulates: (1) the basis of marriage; (2) the conditions for marriage; (3) prevention of marriage; (4) cancellation of marriage; (5) marriage agreement, (6) rights and obligations of husband and wife, (7) property in marriage, (8) dissolution of marriage and its consequences; (9) status of children; (10) rights and obligations between parents and children, (11) guardianship, (12) proof of the origin of children; (13) marriage outside Indonesia; and (14) mixed marriages.

In Law No. 1 of 1974, what is meant by marriage is a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on belief in the Almighty God.³ Based on the above understanding, marriage aims to form a happy and eternal family, but not infrequently many problems occur in a marriage relationship, therefore many couples choose to find solutions so that they can run a happy marriage. One solution that is currently widely looked at is a marriage agreement.

A marriage agreement is a type of agreement, it is a species of the genus of agreements, thus it must fulfill the requirements of the genus and besides that it also contains an element that makes it a species. Marriage agreement in English is also called Prenuptial Agreement. The definition of a marriage agreement itself is not explained in the Marriage Law, but only the terms are mentioned and its validity, when it comes into effect, and whether the agreement can be changed. Soetojo Prawirohamidjojo stated that a marriage agreement is an agreement or agreement made by prospective husband and wife, before or at the time the marriage takes place to regulate the consequences of marriage on assets..⁴

¹ Mahasiswa Universitas Pembangunan Panca Budi, Medan.

² Dosen Universitas Pembangunan Panca Budi, Medan.

³ Santoso. "The Nature of Marriage According to Marriage Law, Islamic Law and Customary Law." YUDISIA Journal 7, no. 2 (2016): 412.

⁴ Faradilla Asyatama, and Fully Handayani Ridwan. "Analysis of Marriage Agreement According to Marriage Law in Indonesia." Adjudication: Journal of Legal Studies 5, no. 2 (2021): 109–22.

Marriage is a sacred bond that is built full of thorough preparation. Marriage is not only limited to fulfilling the demands of society but also aims to prosper and enliven the earth through good offspring in a healthy marriage. Marriage is one of the happiness for personal and social life. In addition, married couples who are married must also have the hope of having a happy and peaceful family. As science develops, public awareness of the importance of legal protection for themselves is also growing rapidly. Separation of property agreements in marriage as one of the efforts to protect oneself from future losses, and can create a harmonious family. To realize a harmonious family, it is the responsibility of both parties, both husband and wife, to fulfill psychological needs. The psychological life in question is loving each other, understanding each other, accepting each other, respecting each other, advising each other and helping each other. Based on the discussion above, a study was conducted entitled *The urgency of a separation of property agreement in marriage as one of the efforts to create a harmonious family*.

A. Formulation of the problem

The formulation of the problem in this research is:

1. How is the Marriage Agreement regulated in Law No. 1 of 1974?
2. How urgent is the separation of property agreement in marriage as an effort to create a harmonious family?

B. Theoretical basis

1. Definition of Marriage

Article 1 of the Marriage Law states that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a family (household) that is peaceful, loving and compassionate.⁵ A happy and eternal family based on the Almighty God. While in the General Dictionary of the Indonesian Language, marriage is defined the same as marriage, namely the act of marriage, where marriage itself comes from the basic word marriage which means an agreement between a man and a woman to become husband and wife (officially).⁶ Meanwhile, Article 2 of the Compilation of Islamic Law states that a mitsaaqan marriage according to Islamic Law is a marriage, namely a very strong contract or gholiidhan to obey Allah's command and carrying it out is an act of worship.⁷

Marriage, which in religious terms is called 'Nikah', is: carrying out a contract or agreement to bind themselves between a man and a woman to make sexual relations between the two parties permissible, on a voluntary basis and with the consent of both parties to realize a happy family life filled with feelings of love and peace in ways that are approved by Allah. Marriage, according to Anwar Haryono, is a sacred agreement between a man and a woman to form a happy, eternal family. As quoted by Ramulyo. Marriage is a physical and spiritual bond between a man and a woman who are called husband and wife. The purpose of this marriage is to form a happy and eternal family (household) based on God Almighty. God can build a happy and peaceful family unit and foster love and affection between each other.⁸

Based on the understanding and purpose of marriage above, the following elements of marriage are formulated.⁹

- a. Marriage is considered a physical and spiritual bond because it is formed by law and binds both parties to live together as husband and wife. In terms of spiritual bonds, it is an unofficial bond, invisible, and can only be felt by the parties involved. This bond can serve as a basis for forming and fostering a happy family.
- b. If a man and a woman are bound as husband and wife, they may not remarry. In this case, there is the principle of monogamy. However, religion and law allow people to remarry for certain reasons and conditions, depending on the situation.
- c. Marriage is done with the intention of forming a happy and eternal family (household). This means that they should not be broken off lightly and must last a lifetime. Dissolution of marriage or divorce for reasons other

⁵K.Khairiah, *Opportunities to Get Education in a Study of Education Level and Family Income*. (Yogyakarta: Student Library, 2018) p. 56

⁶K Wantjik Saleh. *Indonesian Marriage Law*. (Ghalia Indonesia: Jakarta, 1892) p. 78

⁷Compilation of Islamic Law

⁸Abdul Rahman Ghozali. *Fiqh Munakahat*, (Kencana: Jakarta, 2010) page 97

⁹Idris Mohd. Ramulyo, *Marriage Law, Inheritance Law, Religious Court Procedure Law and Zakat According to Islamic Law*, (Sinar Grafika: Jakarta, 2016) Page 109

than death has strict limitations. As a result, divorce of life, or dissolution of marriage due to divorce, is the last resort after other options have been exhausted.

- d. Marriage is based on the Almighty God, which means that it is given to humans as civilized beings who are gifted by God, not just according to the wishes of the parties.

2. Definition of Agreement

In the Civil Code, agreements are regulated in Book III (Articles 1233-1864) concerning Obligations. The Civil Code uses the terms contract and agreement for the same meaning. This can be clearly seen from the title of Chapter II of Book III of the Civil Code, namely: Concerning obligations arising from contracts or agreements.

The definition of an agreement or contract varies, including: Subekti said, an agreement is: "An event in which a person promises to another person or in which two people promise each other to carry out something". While an obligation is: "A legal relationship between two people or two parties, based on which one party has the right to demand something from the other party, and the other party is obliged to fulfill the demand"¹⁰. Article 1313 of the Civil Code states: "An agreement is an act by which one or more persons bind themselves to one or more other persons."¹¹ Thus, an agreement in the form of a contract or agreement is essentially binding, even in accordance with Article 1338 paragraph 1 of the Civil Code, this agreement has binding force as a law for the parties who make it.¹² Based on the formulation of the definition of an agreement that has been put forward above, it can be concluded that an agreement consists of:¹³

1. There are parties.
2. There is an agreement between the parties.
3. There are achievements that will be carried out.
4. There are certain forms, spoken or written.
5. There are certain conditions as part of the agreement.
6. There is a goal to be achieved.

3. Definition of Property

According to the language, the meaning of property is goods (money and so on) that become wealth. (Depdikbud, KBBI, 1989). In property, including in it what is meant by marital property is all property controlled by husband and wife during their marriage, both property controlled by relatives, and personal property originating from inheritance, self-earned property, gift property, property searched together by husband and wife and gift items.¹⁴ Meanwhile, according to the term, wealth is anything that is used for something that is legal according to Islamic law, such as buying and selling, borrowing and lending, consumption and gifts or grants that are beneficial to all humans.¹⁵

Regarding property ownership and inheritance, Islam recognizes an individual ownership system. Inheritance in Islam means the transfer of rights in the form of property division (and also full ownership rights) to a number of heirs according to their respective portions. Thus, property that was originally owned by a person is divided into the ownership of several people after he dies. Islam does not regulate communal property ownership, except in the form of a business association (*syirkah*) with considerations of profit and loss. Business associations can be found in one family such as a firm (family business) or a business association with other people. If there is an inheritance of property, then individual rights must be issued first before the property is divided.¹⁶

C. Research methods

This study uses a normative legal approach method. In research or study of normative legal science.¹⁷ Normative research is research that uses analysis of laws and regulations as primary legal material. The

¹⁰ R. Subekti, *Contract Law*, (Intermasa; Jakarta, 2005) page 59

¹¹ R. Soebekti *Civil Code 1976*

¹² Huala Adolf, *Basics of International Contract Law*, (Refika Aditama: Bandung, 2006) p. 88.

¹³ Sudikno Mertokusumo, *Understanding the Law: An Introduction*, (Liberty: Yogyakarta, 1999) p. 23

¹⁴ Hilma Hadi Kusuma, *Customary Marriage Law*, Aditya Bakti: Bandung, 1999) p.69

¹⁵ Yusuf Qardhawi, *Islamic norms and ethics*, (Gema Insani Press: Jakarta, 1997). p.77

¹⁶ Yaswirman, *Family Law*, (PT. RajaGrafindo Persada: Jakarta, 2011) page 11

¹⁷ Yulia Nadrah, Farhana, and Ahmad Saleh Kusnowibowo. "Legal Protection for Software Creators from Illegal Key Generator Sales Activities." *Tambusai Education Journal* 6, no. 2 (2022): 15606–11

primary legal material is also supported by books, expert opinions, mass media, newspapers, and magazines as secondary legal materials.

The data sources that the author uses in this study are: Law No. 1 of 1974 concerning Marriage; Bibliography books on the Law of Separation of Property Agreements; Articles containing marriage and separation of property agreements; Journals containing Marriage and Separation of Property Agreements.

D. Discussion

1. Marriage Agreement

a. Overview of Marriage Agreement

Agreements can be seen in both formal and material terms. The definition of a marriage agreement, as contained in the provisions of Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage, is a type of agreement, which is made at the time or before the marriage takes place by husband and wife on the basis of mutual agreement, and which is ratified by a marriage registrar, these provisions are formal regulations.¹⁸ Another modern scholar, Van der Pleeg, gave a material formula, namely, "Every provision that regulates the law of property between prospective husband and wife, which arises from their marriage, is a marriage agreement *overenkomst van huwelijksvoorwaarden*". The material nature of a marriage agreement is not directly contained in the Civil Code. Indirectly, this nature can be concluded from the text of Article 119 of the Civil Code, which reads. "Since the marriage took place, there is automatically a unification of property between husband and wife, as long as they do not make a marriage agreement regarding the property."

In the formulation of Article 119 of the Civil Code regulates the position of property. The sub-clause of the formulation allows the parties to make a marriage agreement. Marriage agreements according to statutory regulations (Civil Code and Law Number 1 of 1974 concerning Marriage). In the Civil Code (BW) regarding marriage agreements are generally determined in Articles 139 to 154. In Article 139 it is stated that, "by making a marriage agreement, both prospective husband and wife are entitled to prepare several deviations from the statutory regulations regarding the unity of property as long as the agreement does not violate good morals or general order and as long as all provisions below are observed according to the following article".¹⁹ In the Civil Code, it is required that a marriage agreement must be made by notarial deed, including its amendments, otherwise the marriage agreement will be threatened with null and void by law. Article 147 of the Civil Code states, among other things, that due to the threat of cancellation, every marriage agreement must be made with a notarial deed before the marriage takes place. Furthermore, in the provisions of Article 148 of the Civil Code, among other things, it states that any changes to the marriage agreement cannot be implemented in any other way, except by deed and in the same form as the marriage agreement that was previously made. The Civil Code also limits by prohibiting certain things to be included in the marriage agreement. Things that are prohibited from being included in the agreement include:²⁰

- 1) As stipulated in Article 139 of the Civil Code, the marriage agreement entered into must not be contrary to or violate the law, public order, or morality; prospective husband and wife may make several deviations from the laws and regulations regarding the unity of assets as long as the agreement does not violate morality or public order and also respects all provisions regulated in the Civil Code;
- 2) In the marriage agreement:
 - a) It must not reduce all rights based on the husband's authority as a husband;
 - b) It is not permissible to reduce the husband's power over the children when separating from bed and board;
 - c) May not reduce the rights granted by law to the husband and wife who live the longest;
 - d) It cannot reduce the rights delegated to the husband as head of the family.²¹

¹⁸Hilman Hadikusuma, Indonesian Marriage Law According to Statutes, Customary Law, Religious Law, (Mandar Maju, Bandung, 2007) p. 92

¹⁹J. Satrio, Law of Contracts (contracts in general), (PT Citra Aditiya Bakti: Bandung, 1992) p. 51

²⁰Rosnidar Sembiring, Family Law, (Property in marriage), (Rajawali Press: Depok, 2019) p. 28

²¹See Article 40 of the Civil Code

The rules regarding marriage agreements are regulated in Article 29 of Law Number 1 of 1974 concerning Marriage, which stipulates that both parties with mutual consent can enter into a marriage agreement, which in Dutch is called *huwelijks voorwaarden*.

The conditions of the marriage agreement are:

- a) Must be submitted by both parties at the time or before the marriage takes place;
- b) Submitted in writing which is then validated by the marriage registrar and included in the marriage certificate;
- c) The marriage agreement cannot be ratified if it violates the boundaries of religious law and morality;
- d) During the marriage, the marriage agreement cannot be changed, unless there is agreement from both parties and the change does not harm a third party;
- e) The marriage agreement that has been ratified also applies to the third parties involved;
- f) Effective from the date of marriage.

In accordance with Law Number 1 of 1974 concerning Marriage, a marriage agreement comes into effect from the time the marriage takes place, bringing with it legal consequences that bind the husband and wife and also bind third parties involved in the marriage agreement. According to the provisions of Article 29 of Law No. 1 of 1974 concerning Marriage, it is stated that "at the time or before the marriage takes place, both parties with mutual consent may enter into a written agreement which is ratified by a Marriage Registration officer, and the contents of which also apply to third parties as long as the third party is involved." What things can be agreed upon in a marriage agreement is not regulated in the Marriage Law. Both parties are free to determine the contents of their marriage agreement as long as the agreement does not violate the boundaries of religious law and morality.

The agreement cannot be ratified if it violates the limits of law, religion and morality as stipulated in Article 29 paragraph (2), the agreement comes into force from the time the marriage takes place. As long as the marriage takes place, the marriage agreement cannot be changed by the husband and wife, unless the husband and wife agree to make changes and the changes will not be detrimental to both parties and third parties.

b. Types of Marriage Agreements

Based on the rules of Article 119 to Article 198 of the Civil Code, it can be concluded that there are 3 (three) types of contractual marriages, including:

- 1) Marriage agreement for the separation of property brought by each husband or wife
This separation of assets is separated from the assets brought by each husband and wife that were obtained before the marriage relationship. So directly, assets brought by each husband or wife remain in the control of each husband or wife. Regarding assets obtained after the marriage relationship, it remains joint property of both of them that is owned together;
- 2) Marriage agreement separation of profits and losses.
This separation includes Separation if there is a profit after a marital relationship between husband or wife, then the profit will be divided equally between both. Meanwhile, if there is a loss after a marital relationship, then the loss becomes the responsibility of each of the husband or wife;
Marriage agreement for complete or complete separation of property.
- 3) This separation of assets means that all assets in the marriage, both assets that existed before the marriage relationship and assets that arise during the marriage relationship become the rights of each husband and wife. By making this complete separation of assets marriage agreement, both of them can carry out a legal act themselves from their assets without requiring the consent of the husband/wife.²²

c. Valid conditions for a marriage contract

In general, there are three types of valid requirements for a marriage contract, namely:²³

- 1) Regarding the subject, it includes:
 - a. The person making the agreement must be competent or capable of carrying out legal actions.
 - b. The agreement that forms the basis of the agreement must be reached on the basis of freedom to determine one's will.

²² Muhammad Sopiyan, "Analysis of Marriage Agreements and Their Consequences According to the Marriage Law in Indonesia," *Misykat Al-Anwar Journal of Islamic and Community Studies* 6, no. 2 (2023): 175,

²³ Usman, Rachmadi, *Aspects of Individual and Family Law in Indonesia*, (Sinar Grafika: Jakarta, 2016) p. 59

c. Regarding the object, namely what is promised by each party. To make a marriage agreement must meet several terms or conditions so that it is not legally flawed, including:

2) Upon Mutual Consent, Enter into an Agreement.

The prospective husband and wife who will make a marriage agreement must be based on mutual consent, meaning that what the husband wants is the same as what the wife wants. An agreement that is stated due to coercion or because of deception is invalid. Because, the agreement is given with a flawed will, an agreement that contains a flawed will can be requested to be canceled by the court, the will of the parties expressed in the agreement is the basis for binding an agreement.

(3) Husband and Wife Are Capable of Making Agreements.

A marriage contract must be made by a person who is legally competent, because legally he will bear the burden of work. This competence is measured from the candidate being an adult and not under guardianship. Regarding when a person is an adult, this can be seen in Article 6 paragraph (3) of the Marriage Law which states that to enter into a marriage, a person who has not reached the age of 21 must obtain permission from both parents. Furthermore, in article 50 of the Marriage Law, children who have not reached the age of 18 or have never been married who are not under the authority of their parents are under the authority of their guardians. To carry out a marriage, a couple who have not reached the age of 21 need parental permission, this means that children who are under that limit are considered not yet capable of acting legally, so to make a marriage agreement they must get permission from their parents or guardians.

(4) The object of the agreement must be clear.

The intention is regarding the contents of the marriage agreement. For example, if it is desired to mix personal assets, separate assets and so on. The object of the marriage agreement can be something that already exists or something that will exist in the future.

d. Time of Implementation of Marriage Agreement

Legal breakthroughs in marriage agreements are regulated in Decision Constitutional Court No. 69/PUU XIII/2015 has changed the meaning of marriage agreements. In the decision, the Constitutional Court stated that to grant application Applicant For part;²⁴

1. Article 29 paragraph (1) of the Law Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019) is contrary to by Law The 1945 Constitution of the Republic of Indonesia as long as it is not interpreted as " At the time, before it takes place or during in a marriage bond both parties may, with mutual consent, submit a written agreement that is legalized by a marriage registrar or notary, after which the contents also apply to the parties third along g third party involved";
2. Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019) does not have binding legal force as long as it is not interpreted as "At the time, before the marriage takes place or during the marriage bond, both parties with mutual agreement may submit a written agreement which is legalized by a marriage registrar or notary, after which the contents also apply to third parties as long as the third party is involved";
3. Article 29 paragraph (3) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019) is contrary to the 1945 Constitution of the Republic of Indonesia insofar as it is not interpreted as "The agreement shall come into effect from the time the marriage takes place, unless otherwise specified in the Marriage Agreement."
4. Article 29 paragraph (3) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019) does not have binding legal force as long as it is not interpreted as "The agreement comes into effect from the time the marriage takes place, unless otherwise specified in the Marriage Agreement";
5. Article 29 paragraph (4) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019) is contrary to the 1945 Constitution of the Republic of Indonesia insofar as it is not interpreted as "During the marriage, the marriage agreement regarding marital property or other agreements cannot be changed or

²⁴Kadek Dewi Ary Purnama. "Property Arrangement in Marriage in Marriage Agreement." *Yustitia Journal* 13, no. 1 (2019).

revoked, except if there is an agreement from both parties to change or revoke it, and the change or revocation does not harm a third party;

6. Article 29 paragraph (4) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019) does not have binding legal force as long as it is not interpreted as "During the marriage, the marriage agreement regarding marital property or other agreements cannot be changed or revoked, except if there is an agreement from both parties to change or revoke it, and the change or revocation does not harm a third party"; The making of a marriage agreement either before or after the marriage takes place follows the requirements for the validity of the agreement as regulated in Article 1320 of the Civil Code. The marriage agreement binds the husband and wife and the substance regulated in the marriage agreement must be carried out in good faith.

2. The urgency of a separation of property agreement in marriage as an effort to create a harmonious family.

a. Definition of a harmonious family

Sakinah family consists of two syllables, namely family and sakinah. What is meant by family is the smallest society consisting of at least a husband and wife as its core source and the children born from them. So at least a family is a husband and wife. Whether having children or not According to the big dictionary of the Indonesian language, the meaning of family consists of father, mother, and children which are the basic kinship units in society. The family is also a natural place that is in accordance with Allah's desire for human life since the existence of the caliph. Sakinah family is the ideal of every husband and wife who depend on close relationships and good relationships in carrying out their rights and obligations. Sakinah is peaceful and calm that throughout his life is always filled with happiness and prosperity. In the family development program, the Ministry of Religion has compiled general criteria for a family consisting of pre-marital family, family sakinah I, family sakinah II, family sakinah III and family sakinah plus and can be further developed according to each regional condition. The description of each criterion is as follows:

- 1) Pre-sakinah families are families that are not formed through legal marriage provisions. Unable to fulfill basic spiritual and material needs at a minimum, such as: faith, prayer, zakat fitrah, fasting, clothing, food, shelter and health.
- 2) Sakinah I families are families that are built on a legal marriage and have been able to fulfill minimal spiritual and material needs but are still unable to fulfill psychological needs such as the need for education, religious guidance in the family, and participating in social and religious interactions in their environment.
- 3) Sakinah family II, namely a family that is built on a legal marriage and besides being able to fulfill its life needs, is also able to understand the importance of implementing religious teachings and religious guidance in the family and is able to carry out social interactions in its environment, but has not been able to internalize and develop the values of faith, piety and good morals, infak, sedekah, zakat, amal jariyah, saving and so on.
- 4) Sakinah III family, namely families who can fulfill all the needs of faith, piety, noble morals, social psychology and family development, but are not yet able to become role models in their environment.
- 5) Sakinah III plus families are families that have been able to fulfill all the needs of faith, piety, morals perfectly, social psychological needs and their development and can be role models for their environment.

b. The urgency of a separation of property agreement as an effort to create a harmonious family

In married life, every family in the world is not the same in interpreting sakinah and how to live it in a household. The difference can be seen from various aspects of their activities and their own way of thinking and from that way of thinking each family has a goal to achieve, one of the steps to achieve that goal and the results achieved are all clearly very influential on how the way of life is lived by each husband and wife. A harmonious family will be realized if family members can fulfill their obligations to Allah, to themselves, to their family, to society and to their environment. In order to protect the wife from the husband's very broad power over the joint property and the wife's personal property, the law gives the wife the right to ask the judge to separate the property while the marriage continues. The separation of the property can be requested by the wife:

- a) If the husband, with behavior that is clearly not good, sacrifices joint wealth and endangers the safety of the family;
- b) If the husband manages his wife's wealth poorly, there is a fear that this wealth will run out;

- c) If the husband sells off his own wealth, the wife will lose the responsibility that the law has given her for that wealth because of the husband's management of his wife's wealth.

The lawsuit to obtain separation of assets must be announced first before being examined and decided by the judge, while the judge's decision must also be announced. This is to protect the interests of third parties, especially people who have debts to the husband. They can file an objection to the separation of assets. In addition to bringing about the separation of assets, the judge's decision also results in the wife regaining her right to manage her own assets and has the right to use all her own income as she pleases. However, because the marriage has not been dissolved, she is still not competent according to the Law to act alone in law. Separation of assets can be ended with the agreement of both parties by putting the agreement in a notarial deed, which must be announced in the same way as is determined for the announcement of the judge's decision in carrying out the separation. Article 105 of the Civil Code stipulates that the husband is the head of the husband-wife union, so that he can manage all of his wife's assets. If you do not want this to apply, then a marriage agreement can be made as a form of deviation, in accordance with Article 140 paragraph (2) and (3) of the Civil Code, while Article 140 paragraph (2) and (3) of the Civil Code stipulates that it can be agreed that the wife can manage her personal assets, both movable and immovable, and enjoy the income herself. In addition, it can also be regulated that the husband may not transfer or encumber the wife's immovable property, valuables, receivables obtained before or after the marriage, without the wife's consent. This kind of marriage agreement is called a marriage agreement outside the community of property, and is regulated in Article 139 of the Civil Code. With this type of marriage agreement, there is no community of property at all. Both associations according to law. Laws, profits and losses, results and income, as well as any mixture are all expressly excluded. For example, if the husband owes money, it cannot be charged to the wife at all. In this marriage agreement, what is regulated is, among other things:

- (a) There is no fellowship of any kind.
- (b) Each person's property remains their own.
- (c) A wife has the right to manage her own property and is free to enjoy the results without her husband's help.
- (d) Each person's debt remains their own responsibility.
- (e) Household expenses are the responsibility of the husband as head of the household (such as shopping, school, telephone, electricity, water).
- (f) household furniture is considered the wife's property.
- (g) Clothing, jewelry, books related to education or work, are considered the property of the user.
- (h) Other movable property due to gifts, inheritance, or anything else in marriage, falls to one party, as long as its origin can be proven. If it cannot be proven, then it must be divided in two.

This agreement to regulate family finances is also one of the steps to forming a happy family. With this agreement, the possibility of disputes will be minimized well. The agreement made is about the roles, rights, and responsibilities of each partner regarding finances. There are several concepts and indicators towards a happy family in a marriage agreement, namely: Marriage Agreement in Maintaining Communication Relationships. One effort to make a happy family is through good or effective communication. Good communication means establishing a good relationship too. Therefore, between husband and wife before getting married, they should make a marriage agreement, especially an agreement so that both of them always maintain good communication. So that with this communication, it is hoped that openness and honesty will emerge, so that suspicion between partners can be avoided. Communication here is interpreted as the process of exchanging information and feelings between two or more people. Communication in the family means exchanging information and feelings between husband and wife. Communication between husband and wife is very important in order to create harmony and make the family *sakinah*. One of the results of this communication is the closeness between one party and another, so that with communication between husband and wife, closeness between family members can be established well.

E. Conclusion

In Law No. 1 of 1974, what is meant by marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God. A Marriage Agreement is a type of agreement, made at the time or before the marriage is carried out by a husband and wife on the basis of mutual consent, and which is authorized by a marriage registrar. The making of a marriage agreement either before or after the marriage takes place follows the requirements for the validity of the agreement as regulated in Article 1320 of the Civil Code. The marriage agreement binds the husband and wife and the substance regulated in the marriage agreement must be carried out in good faith. This

agreement to manage family finances is also one of the steps to form a happy family. With this agreement, the possibility of disputes will be minimized well.

F. Suggestion

The rules regarding marriage agreements contained in the Law are very clear, as well as based on the Supreme Court's decision regarding the time of implementation of the marriage agreement. However, in reality, there are still many couples who are ignorant and also taboo in discussing marriage agreements, especially regarding the separation of assets made before or after marriage. In fact, marriage agreements have great potential to reduce conflict between husband and wife.

According to the author, it is all due to the lack of socialization regarding the importance of this marriage agreement to prospective brides and grooms or married couples. According to the author, it is necessary to hold socialization by religious institutions such as the KUA so that prospective brides and grooms have knowledge regarding the importance of marriage agreements, and it is hoped that marriage agreements, especially those related to the separation of property, can be a solution to reduce conflict in the household, so that a harmonious family can be formed.

REFERENCES

- Adolf, Haula 2006 Dasar-dasar Hukum Kontrak Internasional, Refika Aditama: Bandung
- Ghozali, Abdul Rahman 2010. Fiqh Munakahat. Kencana: Jakarta.
- Saleh, K Wantjik, 1892. Hukum Perkawinan Indonesia. Ghalia Indonesia: Jakarta.
- Khairiah, K 2018. Kesempatan Mendapatkan Pendidikan Dalam Kajian Tingkat Pendidikan dan Pendapatan Keluarga. Yogyakarta: Pustaka Pelajar.
- Ramulyo, Mohd Idris 2006. Hukum Perkawinan, Hukum Kewarisan, Hukum Acara Peradilan Agama dan Zakat Menurut Hukum Islam. Sinar Grafika: Jakarta.
- Subekti, R 2005 Hukum Perjanjian, Intermedia: Jakarta
- Mertokusumo, Sudikno, 1999. Mengenal Hukum: Suatu Pengantar, Liberty: Yogyakarta.
- Sutarno, 2003, Aspek-Aspek Hukum Perkreditan pada Bank, Alfabeta : Bandung.
- Depdikbud, 1989 Kamus Besar Bahasa Indonesia, Balai Pustaka : Jakarta
- Kusuma, Hilma Hadi 1999, Hukum Perkawinan Adat, Aditya Bakti : Bandung
- Qardhawi, Yusuf, 1997, Norma dan etika Islam, Gema Insani Press: Jakarta
- Yaswirman, 2011, Hukum Keluarga, PT. RajaGrafindo Persada: Jakarta
- Usman, Rachmadi, 2016, aspek-aspek Hukum Perorangan dan Kekeluargaan Di Indonesia, Sinar Grafika: Jakarta
- Satrio, J 1992 Hukum Perjanjian (perjanjian pada umumnya), PT Citra Aditiya Bakti: Bandung.
- Sembiring, Rosnidar, 2019, Hukum Keluarga, (Harta-harta benda dalam perkawinan), Rajawali Press: Depok.
- Dewi, Kadek Ary Purnama. "Pengaturan Harta Dalam Perkawinan Dalam Perjanjian Perkawinan." *Jurnal Yustitia* 13, no. 1 (2019).
- Faradilla Asyatama, and Fully Handayani Ridwan. "Analisis Perjanjian Perkawinan Menurut Undang-Undang Perkawinan Di Indonesia." *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (2021): 109–22. <https://doi.org/10.30656/ajudikasi.v5i2.3937>.
- Nadrah, Yulia, Farhana, and Ahmad Saleh Kusnowibowo. "Perlindungan Hukum Terhadap Pencipta Software Dari Aktivitas Penjualan Key Generator Secara Illegal." *Jurnal Pendidikan Tambusai* 6, no. 2 (2022): 15606–11.
- Santoso. "Hakekat Perkawinan Menurut Undang-Undang Perkawinan, Hukum Islam Dan Hukum Adat." *Jurnal YUDISIA* 7, no. 2 (2016): 412.
- Sopiyan, Muhammad. "Analisis Perjanjian Perkawinan Dan Akibatnya Menurut Undang-Undang Perkawinan Di Indonesia." *Misykat Al-Anwar Jurnal Kajian Islam Dan Masyarakat* 6, no. 2 (2023): 175. <https://doi.org/10.24853/ma.6.2.175-190>.