The Principle of Balances in Prenuptial Agreements to Protect the Rights of Future Spouses

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Abstract

The prenuptial agreement is regulated under Article 29 of Law Number 1 of 1974. This agreement is made either during or before the marriage takes place. The prenuptial agreement must be made and legalized in the presence of a lawyer or notary, and then ratified by the Religious Affairs Office (KUA) or Civil Registration Office. The research method used in this study is a normative juridical approach, focusing on issues within the scope of prenuptial agreement. The principle of balance is crucial to emphasize in order to ensure equality between the rights and obligations of the parties involved. A prenuptial agreement typically includes main clauses concerning property division, rights and obligations, child protection, and dispute resolution. The Indonesia government need to provide education to the public about the principle of balance in prenuptial agreements. The government should also establish standard clauses that accurately reflect this principle of balance, and should cover all important matters typically included in such agreements.

Keywords: *Agreement, Pre-Marriage, Principle of Balance, Clause.*

A. INTRODUCTION

Indonesia is a rule of law country which ultimately will always refer to applicable regulations, and is also binding on the government and society in Indonesia. Because in the eyes of the law, everyone is considered to understand the applicable law. This is also in accordance with the legal principle, namely that everyone is equal before the law, and the principle of legal fiction which also assumes that when a statutory regulation has been promulgated, then at that time everyone is considered to know (*presumption of rights by law*) and these provisions are binding so that a person's ignorance of the law cannot free/excuse him from legal demands. Then on the legal context in Indonesia for that era Currently, the discussion of pre-nuptial agreements is a topic that is increasingly being discussed, especially in the context of modern family and marriage law.

In civil law in Indonesia, we are certainly familiar with the term marriage. Marriage is a form of marriage that occurs involving a man and a woman. Then, according to article 1 of Law Number 1 of 1974 concerning marriage, it is explained that marriage is a spiritual and physical bond between a man and a woman in which they will form a family or household based on belief in the Almighty God. A marriage will be considered valid, if the process is in accordance with religious law and the respective beliefs of the bride and groom. If they really want to be recognized legally, the bride and groom must register in accordance with the legal regulations that have been in effect in this country.

In our country, regulations regarding pre-nuptial agreements are regulated in Article 29 of Law Number 1 of 1974. Here it is explained that if couples really want to make an agreement regarding assets during marriage, this is legal to enforce as long as it is in line with the law and also religion. Apart from discussing assets, a marriage agreement can also protect the individual rights and obligations of a couple, such as custody rights and the right to work. By making a pre-nuptial agreement, a couple can avoid disputes in the future. However, with a pre-nuptial agreement, it is possible that there will be opportunities for husband and wife to separate and fight over each other's assets. Because when a couple makes a pre-nuptial agreement, it can be said that they are also planning their financial future so that the individual rights of each are also protected. However, what we must underline here is that the existence of a pre-nuptial agreement does not mean eliminating the feeling of affection and commitment between partners in a marriage.

When a husband and wife want to make a pre-nuptial agreement, everything can be written down, such as how the couple will manage assets, debts and many other things. Even child custody in the event of a divorce can also be regulated in a pre-nuptial agreement. Because this pre-nuptial agreement is a free agreement but is legally valid. Then this agreement must be made and ratified before a lawyer or notary, which will later also be ratified at the Religious Affairs Office (KUA) or Civil Registration Office.[7] Even the provisions for ratifying pre-nuptial agreements in Indonesia and western countries are actually not much different. Just as couples in Indonesia can have their agreement ratified at the Civil Registry Office, the same is true for couples in the UK and the United States who register it at the local civil registry office. However, there is a difference, namely, Indonesia can carry out religious pre-nuptial agreements too. Unlike in western countries where agreements are only recognized civilly and not religiously.

Even so, this pre-nuptial agreement is sometimes still questioned. Because some people judge it from the positive side or even the negative side, this comes from several circles of local society and also from the perspective of legal experts. If you look at it from the perspective of people who are pro the existence of pre-nuptial agreements, they are usually people who clearly understand the fulfillment of their partner's individual rights. Because as I mentioned before, this agreement can not only clarify the distribution of financial rights and also protect business and assets, it can also be a step to reduce or even avoid conflicts regarding property if something happens it's called divorce. Moreover, the meaning of a pre-nuptial agreement is expanded so that this agreement can not only be made before the marriage, but can also be made after the marriage, this is contained in the Constitutional Court decision no. 69/PUU-XIII/2015.

However, apart from the positive side, there are also people who have a negative or opposing view of pre-nuptial agreements. Because for some people, they feel that the existence of this pre-nuptial agreement actually creates or creates distrust between husband and wife, resulting in a relationship that will become even more complicated. Then this can also happen because pre-nuptial agreements are seen as

inconsistent with cultural values, and are considered to damage the sanctity of marriage itself. [9]Moreover, a judge can still consider an agreement invalid if there are facts that do not match, so that the validity of the agreement again depends on the agreement of both parties and there can be no such thing as coercion. For the general public around us, there are still those who don't understand what a pre-nuptial agreement is and its function, so if you look at the cases that are currently occurring, there are many couples who realize and regret not making a pre-nuptial agreement when problems arise. law in their household.

If we look at and reflect on the success rate obtained by making a pre-nuptial agreement, then it can be said that this pre-nuptial agreement is effective. In general, this pre-nuptial agreement provides clarity regarding the financial rights and obligations of the couple, thereby reducing the potential for conflict regarding property ownership issues, perhaps a success rate of 60-70%.

In fact, if you pay attention and understand it better, this agreement can actually make individual rights that might otherwise be ignored become more aware. Therefore, it is important to better understand the purpose of making a pre-nuptial agreement. So that both husband and wife can understand each other, so that no one is ignored. Moreover, by having a written agreement regarding these rights and obligations, couples can avoid conflicts such as misunderstandings and dissatisfaction that might arise if there is no pre-nuptial agreement. A pre-nuptial agreement can also increase the understanding between partners towards each other, and also strengthen the bond between the couple. Because the process of preparing a pre-nuptial agreement of course requires good and open communication, so that in the future a happy family will be formed. Therefore, I hope that this analysis can provide a clearer understanding to the public regarding the balance of rights and obligations for both parties in a marriage.

B. METHOD

The research method that will be used in this research is normative juridical or based on applicable legal principles. Focusing on issues using legal studies, the scope of this research is civil law. The scope of this research includes the legal basis governing prenuptial agreements. Then the collection technique will use secondary data through literature study. And data obtained directly by researchers through statutory regulations, books, journals, and research related to prenuptial agreements. Data processing starts from the basics of general knowledge then examine specific matters so that a conclusion can be drawn from this analysis process.

C. RESULTS AND DISCUSSION

1. Principle of Balance in Pre-Nuptial Agreements

In the context of civil law, the principle of balance is a principle that must be emphasized so that there is equality between the rights and obligations of the parties. The principle of balance is harmonized with legal norms and also the basic principles regarding contract law which we call the Civil Code, based on the thoughts and

background of one party, and also discusses how the Indonesian nation thinks towards other parties.[14] The principle of balance was first proposed by Herlien Budiono in his scientific paper entitled "The Principle of Balance for Indonesian Contract Law, Contract Law based on Indonesian Wigati Principles". By emphasizing the principle of balance in the pre-nuptial agreement, this can protect the interests of both parties so that it reflects a fair and balanced relationship between husband and wife. Balance in making a pre-nuptial agreement is very important, because if the agreement made later seems one-sided and only benefits one party, conflict could occur and cause injustice in the marriage relationship.

We can see the principle of balance when making a pre-nuptial agreement when writing articles regarding the fair distribution of assets between husband and wife. If we take an example, when one of the parties (be it husband or wife) has a business that has been running even before the marriage, then the assets produced before the marriage are regulated and referred to as inherited assets.[15] Meanwhile, for profits from existing businesses after marriage, these assets are referred to as joint assets, because these assets are indirectly managed jointly. Regarding this property, it has been regulated according to UU No. 1 of 1974 on Marriage in Article 35 which reads "Property acquired during marriage becomes joint property and inherited property from each husband and wife and property acquired by each as a gift or inheritance, are under the control of each each as long as the parties do not decide otherwise". So, if this method is used, there is a possibility that the parties will suffer financial losses, whether before or after the marriage. Apart from that, if you apply the principle of balance when making a pre-nuptial agreement, it can also affect how the financial responsibilities of each party are divided. For example, the articles in the pre-nuptial agreement can regulate the husband's responsibility for household needs, while the wife can be responsible for the children's education. This can all be done as long as it is in accordance with the agreement and also the financial capabilities of each party.

Imbalances in pre-nuptial agreements can occur if the contents of the agreement only benefit one party. For example, the contents of the agreement made give all assets to the husband without considering the wife's contribution during the marriage between the parties. Of course, this can be said to be detrimental to the wife, both in material and non-material terms, and can be considered the principle of balance. Because situations like this have the potential for legal conflicts to arise, because one of the parties feels aggrieved and then takes the case to court. Then the Constitutional Court Decision Number 69/PUU-XIII/2015 also participated in strengthening the rights of wives in pre-nuptial agreements. Because in this Court's decision it was emphasized that agreements regarding marriage can be made before (referred to as a Pre-Nuptial Agreement) or after (referred to as a Marriage Agreement) the marriage, as long as it does not harm either party. From this it is clear that the principle of balance does not only apply when the agreement is made, but also applies during the marriage

Apart from that, the existence of the principle of balance is also important to protect the rights of women, especially in our country, Indonesia, which is still tied to a patriarchal culture so that women's position is often weaker socially and economically.

By having a pre-nuptial agreement that balances rights and obligations, women will not lose access to joint property during marriage if divorce occurs. Especially for women who do not work formally but contribute a lot in managing the household, this can help them to still get justice even if they have to separate from their partners.

For this reason, the principle of balance plays an important role in creating a fair relationship between husband and wife. CWhen drafting a prenuptial agreement, a notary or lawyer must be involved, so that the contents of the agreement made do not violate the principle of balance and also ultimately provide ideal and optimal legal protection to the parties.

2. Pre-nuptial agreement clauses that can protect the rights of husband and wife

A pre-nuptial agreement is an agreement formed between a husband and wife in order to reach an agreement regarding the rights and obligations of each party during the marriage. The pre-nuptial agreement is preventive in nature and also has the aim of providing legal protection for the rights of the parties. A pre-nuptial agreement can provide legal certainty regarding the division of assets or even other things that might occur in the household. It is important to have a pre-nuptial agreement, especially in countries where there is a lot of social inequality in the distribution of financial responsibilities or rights to property after marriage.

The pre-nuptial agreement itself has special provisions or main clauses that are usually included in the agreement. The clauses that are generally discussed relate to the division of assets, rights and obligations in the household, child protection, and clauses regarding dispute resolution. Regarding the division of assets clause, the aim is to provide clarity regarding the status of the inherited assets and joint assets of the parties. For example, regarding the existence of property that was owned before the marriage was the personal property of each party, this is different from property acquired during the marriage which can be agreed to be joint property. According to Article 35 of the Marriage Law, it is explained that joint property is property acquired during marriage[20]. However, prospective couples can make their own arrangements regarding how to manage and divide assets through a pre-nuptial agreement. Example of a wealth distribution clause in a pre-nuptial agreement:

> "All property of whatever nature is acquired, acquired and cultivated by the parties during/in the marriage or which is acquired by the parties during the marriage and after the registration of this pre-nuptial marriage agreement becomes the property of each of them, including property obtained through inheritance, gifts and or in any way remains the property of the parties who brought it and/or acquired it."

In the rights and obligations clause in the household, it is usually stated regarding the division of responsibilities between husband and wife in meeting household needs. The existence of this clause is of course very important in order to prevent disputes that may occur in the future regarding financial contributions or responsibilities in non-financial matters. For example, a couple agrees on who is responsible for basic household needs, and also who is responsible for financing their children's education.[21] According to

the theory of justice by Rawls (1971), having arrangements regarding the distribution of rights and obligations like this can ensure that parties receive justice and also a balance in the rights and obligations of individuals. The following is an example of a rights and obligations clause in a household:

> "Husbands are responsible for the needs of the household, to educate and take care of the children born from their marriage that are borne by the husband. Wife responsible for expenses for these purposes. Expenditures can be made after obtaining approval from both parties."

This child rights protection clause aims to protect children's rights if the marriage ends. The parties can regulate child custody based on an agreement, and this clause must still pay attention to the principle of the child's best interests.[22] The following is an example of a child rights protection clause in a pre-nuptial agreement:

> "If the marriage ends, custody of minor children will be a joint responsibility and must be based on an agreement or based on a court decision."

Then, this dispute resolution clause can be used as a mechanism for resolving problems if a dispute arises regarding the implementation of the contents of the agreement. This clause usually makes mediation an effort to resolve disputes before resorting to court.[23] The following is an example of a dispute resolution clause:

> "All kinds of disputes that arise related to this agreement will be resolved first through mediation. If the mediation is unsuccessful, then both parties agree to resolve the problem through arbitration at the agreed institution."

D. CONCLUSION

Pre-nuptial agreements are regulated in Article 29 of Law Number 1 of 1974, where this agreement is made in time or before the marriage/marriage takes place. It was explained to couples that if they really want to make an agreement regarding assets during marriage, this is legal to enforce as long as it is in line with the law and religion. A marriage agreement can also protect the individual rights and obligations of a couple, such as custody rights and the right to work. This agreement must be made and ratified before a lawyer or notary, which will later also be ratified at the Religious Affairs Office (KUA) or Civil Registration Office. The existence of a pre-nuptial agreement is very important, because it is a written agreement regarding these rights and obligations makes the couple able to avoid conflicts such as misunderstandings and also dissatisfaction that may appear if there is no pre-nuptial agreement.

In the context of civil law, the principle of balance is a principle that must be emphasized so that there is equality between the rights and obligations of the parties. By emphasizing the principle of balance in the pre-nuptial agreement, this can protect the interests of both parties so that it reflects a fair and balanced relationship between husband and wife. Applying the principle of balance when making a pre-nuptial agreement can also influence how financial responsibilities are divided between each party. Applying the principle of balance when making a pre-nuptial agreement can also affect how the financial responsibilities of each party are divided. The pre-nuptial agreement itself has special provisions or main clauses that are usually included in the

agreement. The clauses that are generally discussed revolve around the division of assets, rights and obligations in the household, child protection, and clauses regarding dispute resolution. This division of assets clause aims to provide clarity regarding the status of the parties' inherited and joint assets, where according to Article 35 of the Marriage Law, it is explained that joint assets are assets acquired during the marriage. The rights and obligations clause in the household usually concerns the division of responsibilities between husband and wife in meeting household needs. By having arrangements regarding the distribution of rights and obligations like this, it can ensure that the parties receive justice and balance in the rights and obligations of individuals. The child rights protection clause aims to protect children's rights if the marriage ends. These parties can regulate child custody based on an agreement, and this clause must also pay attention to the principle of the child's best interests. Finally, the dispute resolution clause, this clause can be used as a mechanism for resolving problems if a dispute arises regarding the implementation of the contents of the agreement.

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