

MARITAL BONDS AND JOINT PROPERTY CASES: IMPLICATIONS FOR THE PROTECTION OF SPOUSAL RIGHTS

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Abstract

The main issues raised are how a marital agreement that regulates the separation of property can protect husband and wife's ownership rights over inherited property and how justice is applied in different financial contributions to joint property in civil law. This research aims to explore marital agreements and joint property arrangements and their implications for the protection of husband and wife's rights. This research uses a qualitative method with a normative legal approach to examine the norms of marital engagement and joint property, and their implications for the rights of husband and wife. Data were obtained from regulations, books, documents, and journals, analyzed descriptively to provide a comprehensive picture. The findings show that a marital agreement that regulates the separation of property can provide significant protection to husband and wife's ownership rights over their inherited property, prevent potential conflicts, and ensure better financial management. In addition, fairness in different financial contributions is recognized as important for maintaining balance and harmony in marriage, by recognizing the value of non-financial contributions such as housework and childcare.

Keywords: *Marital Bonds, Joint Property Cases, Spousal Rights.*

Abstrak

Masalah utama yang diangkat adalah bagaimana perjanjian kawin yang mengatur pemisahan harta dapat melindungi hak kepemilikan suami istri atas harta bawaan dan bagaimana keadilan diterapkan dalam kontribusi finansial yang berbeda pada harta bersama dalam hukum perdata. Penelitian ini bertujuan untuk mengeksplorasi perikatan perkawinan dan pengaturan harta bersama serta implikasinya terhadap perlindungan hak suami istri. Penelitian ini menggunakan metode kualitatif dengan pendekatan hukum normatif untuk mengkaji norma perikatan perkawinan dan harta bersama, serta implikasinya terhadap hak suami istri. Data diperoleh dari peraturan, buku, dokumen, dan jurnal, dianalisis secara deskriptif untuk memberikan gambaran menyeluruh. Hasil temuan menunjukkan bahwa perjanjian kawin yang mengatur pemisahan harta dapat memberikan perlindungan signifikan terhadap hak kepemilikan suami istri atas harta bawaan mereka, mencegah potensi konflik, dan memastikan pengelolaan keuangan yang lebih baik. Selain itu, keadilan dalam kontribusi finansial yang berbeda diakui penting untuk menjaga keseimbangan dan harmoni dalam pernikahan, dengan mengakui nilai kontribusi non-finansial seperti pekerjaan rumah tangga dan perawatan anak.

Kata Kunci: Ikatan Perkawinan, Kasus Harta Bersama, Hak-Hak Pasangan.

INTRODUCTION

Marriage is a sacred bond that not only involves the emotional relationship between husband and wife, but also involves the legal aspects of the agreement of the rights and obligations of the parties. In the context of civil law, marriage creates an agreement that has broad legal implications, including in terms of joint property arrangements. The marriage bond and the case of joint property are crucial issues because they concern the protection of the rights of husband and wife in living together.¹

Regulations relating to joint property in marriage are governed by the Civil Code and other relevant laws. Wealth acquired during the marriage becomes the joint property of the parties, unless there is a marital agreement stipulating otherwise. This includes all assets acquired during the marriage, whether from employment income, investments, or inheritance.²

In one case in Suralaga Village, Suralaga Sub-district, East Lombok Regency, it was found that there was injustice in the division of joint property (gono-gini property) in divorce cases. This injustice is mainly caused by the strong patriarchal culture, where the existing legal system tends to discriminate against women. As a result, in many cases, wives often receive a smaller share of the property or even nothing from the joint property acquired during the marriage, even though they contribute significantly to the family economy.³

The legal implications of the regulation of joint wealth are significant for the protection of spousal rights. The division of joint property is not only important in a harmonious marriage, but is also very relevant in the event of a dispute or divorce. In these situations, the determination and division of joint property can be a source of conflict that requires resolution through legal channels.⁴

The arrangement of joint property is also related to the economic rights of each party. For example, if one party wants to take regulatory

¹ Natasha Karina Sianturi et al., “Akibat Hukum Perceraian Atas Perkawinan Yang Tidak Didaftarkan Terhadap Harta Pencapaian Istri (Studi Putusan Mahkamah Agung Nomor 145 K/Pdt/2021),” *Jurnal Media Akademik (JMA)* 2, no. 1 (2024).

² Ingrid Fransisca Matina Candra and Zil Aidi, “Implikasi Atas Berlakunya Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII-2015 Terhadap Perjanjian Perkawinan Di Indonesia,” *UNES Law Review* 6, no. 3 (2024): 8849–59.

³ Sri Hariati and Musakir Salat, “The Injustice of Distributing Marital Property (Harga Gini Gono) in Divorce Cases,” 2013, 448–63.

⁴ Salsabila Firdausia and Zeehan Fuad Attamimi, “Penerapan Prinsip Syirkah Abdan Dalam Pembagian Harta Perkawinan,” *Syntax Idea* 6, no. 2 (2024): 594–603.

action on joint ownership, such as selling or mortgaging property, the consent of the other party is usually required. This is intended to protect the interests of each party and prevent unilateral actions that could harm the couple.⁵

This endeavour to fill the gap of previous studies related to marital agreements and joint property. Although there have been several previous studies that examine marital agreements and joint property, none of them specifically examine marital agreements and joint property cases with implications for the protection of husband and wife's rights. For example, Achmad Farid and Anggrita Esthi Suhessyani, who conducted research in the *Judiciary Journal* (2022) with an article entitled "Legal Protection of Assets in Marriage by Making a Deed of Marriage Agreement", have not specifically studied marital agreements and joint property cases with implications for the protection of husband and wife's rights. Research by Muhammad Akbar Aulia Ramdhan, et al in the *Kenotarian Law Scientific Journal* (2017) entitled "Marriage Agreement Against Assets obtained during Marriage After Divorce". Research conducted by Sulikah Kualaria in *Journal Unita* (2015) entitled "Marriage Agreement as a Means of Legal Protection for Parties in Marriage" identifies the marriage agreement as included in the category of preventive legal protection. Damian Agata Yuvens. *Constitutional Journal* (2017), with the research title "Critical Analysis of the Marriage Agreement in the Constitutional Court Decision Number 69/PUU-XIII/2015". One of the objectives of the 1974 Marriage Law Number 1 and the Indonesian Law on Basic Agrarian Principles Number 5 is to ensure that Indonesian citizens who are married to foreigners still have rights to property with the right to use buildings.

Many previous studies have examined the arrangement of joint property, the legal implications of marital agreements, and various other related issues. However, there is one crucial aspect that has not been explored in depth by previous researchers, namely how the legal implications and rights protection of joint property arrangements in marriage. This aspect is very important because it concerns justice and legal certainty for married couples in maintaining and dividing their joint property.

⁵ Fitri Dwi Nurmaliza, "Pembagian Harta Bersama Terkait Hak Asuh Anak Setelah Perceraian," *JUDAKUM: Jurnal Dedukasi Hukum* 3, no. 1 (2024): 37–44.

RESEARCH METHODS

This research uses a qualitative method with a normative legal approach. This approach is used to examine the legal norms governing marital relations and joint property and their implications for the protection of husband and wife's rights. This research will analyse the applicable laws and regulations relevant to the topic discussed.

Primary data is obtained from laws and regulations related to joint property in marriage. Some of the laws and articles that are the focus of this research include the Civil Code Articles 119 and 120 to 130, the 1974 Indonesian Marriage Law Number 1 Articles 35 to 37 and the 1960 Indonesian Law on Basic Agrarian Principles Number 5 Articles 21 and 22. Secondary data is obtained from books, documents, and journals relevant to this research. Some of the literature used as references include books on marriage law and joint property. Research documents and legal reports related to the protection of husband and wife's rights in marriage. Scientific journals that discuss marital agreements, property separation, and legal implications for husband and wife's rights.

Data were collected through library research by reviewing various relevant legal literature, including laws and regulations, books, documents, and scientific journals. The data that has been collected is then grouped according to its type and source to facilitate analysis. After the data has been collected and grouped, the next step is to analyse the data using the descriptive method. Descriptive analysis is used to describe systematically, factually, and accurately about the facts and characteristics of the object of research. The purpose of this analysis is to obtain a clear and comprehensive picture of the legal implications of marriage agreements and joint property arrangements for the protection of husband and wife's rights.

RESULTS AND DISCUSSION

Marital Agreement that Regulates the Separation of Assets can Protect the Husband and Wife's Ownership Rights over Marital Assets

The human way of thinking has become critical due to the rapid and modern development of the times. As a result, the existence of a marriage agreement can damage a sacred and holy marriage. The purpose of marriage itself is to merge, but with marriage, there is an intention not to merge, especially in terms of wealth. Marriage itself is permissible and there is no law against it. Actually, in case of conflict, a marital agreement is useful as a reference. However, no couple

anticipates conflict. This agreement can also be used as a reference when the couple divorces to inform each other of their rights and obligations.⁶

A marital agreement that provides for the separation of property has a significant impact in protecting the ownership rights of husband and wife over their assets. The impact includes the protection of personal assets from potential third-party claims, both in business and personal situations. With property separation, each party retains full control over assets owned before the marriage as well as those acquired personally during the marriage, reducing the risk of losing assets to debt or legal issues that may arise.⁷

The urgency of implementing a marriage agreement is increasing amidst the complexity of modern economic relationships. With more and more couples owning personal or business assets before marriage, a marital agreement is an important tool to ensure that these assets remain safe and separate from the joint property. It also provides legal certainty and peace of mind for both spouses, thus preventing conflicts and disputes in the future.

The main benefit of a marital agreement that provides for property separation is that it provides legal clarity and security for both parties. It ensures that rights to inherited property are well protected, prevents asset disputes, and allows husband and wife to better manage their finances. In addition, this agreement also facilitates the process of property settlement in the event of divorce, because each party already has clear provisions regarding property ownership. Thus, a marriage agreement is not only a means of legal protection, but also a preventive measure to maintain harmony in marriage.⁸

To protect ownership in marriage, wealth preservation under the Civil Code provides leeway to determine the substance of the marriage agreement, but there are limitations. Marital agreements cannot be contrary to decency and public order. They cannot say that they will

⁶ Arfi Hilmianti, dan Kartika Yusrina. 2024. "DAMPAK PUTUSAN MAHKAMAH KONSTITUSI NO. 46 PUUVIII 2010 TERHADAP HUKUM PERKAWINAN DI INDONESIA". Mawaddah: Jurnal Hukum Keluarga Islam 1 (1):48-57. <https://doi.org/10.52496/mjhki.v1i1.3>.

⁷ Wiwin Sutini and Putu Eka Trisna Dewi, "Pembagian Harta Bersama Pasca Perceraian Terhadap Kontribusi Isteri Sebagai Pencari Nafkah (Studi Komparasi Di Australia, Malaysia Dan Jepang)," *Jurnal Aktual Justice* 6, no. 2 (2021): 121–39.

⁸ Pendahuluan Perkawinan, "Perlindungan Hukum Terhadap Istri Atas Penggunaan Dokumen Palsu" 9 (2022): 65–74.

waive the right to inherit property. They are also prohibited from saying that they will be governed by the laws of another country.

Wealth is said to have the power to change a couple's life. In marriage, the husband's wealth is determined by his condition and responsibility, so the husband must provide for the household. However, in the modern era, where women have equal opportunities in social interaction, women also always function in the financial existence of the household. This inevitably has an impact on the couple's property, both during the marriage and after divorce.⁹

Although the law has not regulated the purpose of marriage agreements or what can be agreed upon, the law usually makes agreements to protect the assets of both husband and wife.

When a marriage is entered into, the marital agreement provides property protection to the bride and groom with the right to determine the inherited property between the parties. Whether the property is divided from the beginning of the marriage, but how the property is divided is regulated at the time of divorce.¹⁰

As long as there is no other agreement, the joint assets of the husband and wife, and the property that both parties allow as inheritance, belong to each of them. As a public official, a notary can determine the law with regard to the principles, forms, and contents of marriage agreements, even though the law does not clearly stipulate the direction and contents of marriage agreements.

A marriage agreement is formed to share legal safeguards for both parties in good faith. If at any time a problem arises between the parties, this can be used as a basis for each spouse to exercise their rights and obligations, set within their boundaries.¹¹

According to Civil Code Articles 119 to 198, there are three types of marital agreements, namely:

1. A marital agreement that distinguishes the inherited assets of both parties. The agreement separates the inherited wealth that

⁹ Puspa Fitriyah, "Perlindungan Hukum Harta Bawaan Debitur Pasca Perceraian," *Al-Wasathiyah: Journal of Islamic Studies* 1, no. 1 (2022): 15–23.

¹⁰ Wildaniyah Mufidatul A'yun and Alif Hendra Hidayatullah, "Perspektif Masalah Dalam Perjanjian Perkawinan Mengenai Harta Dalam Undang-Undang Perkawinan," *Harmoni* 22, no. 1 (2023): 22–47, <https://doi.org/10.32488/harmoni.v22i1.667>.

¹¹ Cita Purnama Sari, Fakultas Hukum, and Universitas Muslim Indonesia, "Kaitan Dengan Harta Bawaan Menurut Undang-Undang No 1 Tahun 1974," no. 1 (2022).

the parties had before the marriage. Inherited wealth such as grants, inheritance, and others remain in the direct ownership of the recipient.

2. A marriage contract that is known to differentiate the risk of loss divides the benefits between the parties. If there is additional value after the marriage, the profit will be given equally to both parties, and if there is a loss, the shortfall will be guaranteed by each spouse.
3. Marital agreements relate to the full separation of property. Through wealth division, all assets associated with the marriage become the property of the parties, both those that existed before the marriage as well as those that arise during the marriage. By drafting a marital agreement, the parties can utilize their wealth independently without a marital agreement.¹²

In fact, a nuptial agreement should be entered into by parties who have property and expect to acquire property during the marriage. Among the considerations taken into account in a marriage agreement are:

- 1) In marriages with unanimous wealth, the purpose is to protect the wife from the husband's bad behavior, control of immovable property and important papers.
- 2) The purpose of marriages with divided property is that certain or all items brought by the parties into the marriage are not counted towards the pooling of marital property and therefore consistently become private property, this agreement protects the wife from the opportunity to rely on the property to debts designed by the husband or vice versa.¹³

If the agreement has a positive impact, it should be respected. These agreements are very important for maintaining security and are very important for preventing conflict, resolving cases, and creating harmony. Not many people in Indonesia make agreements before marriage. Every couple hesitates to reach an agreement because of the assumption that after marriage they will be fully harmonized. However, prenuptial agreements cover role sharing and childcare, as well as property issues.

¹² Surjanti, "Perlindungan Hukum Terhadap Harta Dalam Perkahwinan," *Jurnal YUSTITIABELEN* 2, no. 1 (2016): 70–102.

¹³ Perkawinan, "Perlindungan Hukum Terhadap Istri Atas Penggunaan Dokumen Palsu."

Marital agreements are great for safeguarding the rights of husband and wife. This agreement can be used as a basis for dispute resolution if they divorce. To be strong in the eyes of the law, the premarriage agreement must be legalized in front of the authority in charge, such as a notary. Its position will not be as strong if it is written on sealed paper.¹⁴

Not many people in Indonesia make an agreement before marriage. Couples are hesitant to reach an agreement because they think that after marriage, all affairs are unified. However, prenuptial agreements cover the division of roles and childcare, as well as property issues. In many cases, marital agreements, especially those relating to property, are made to protect women.

Divorcing couples will not worry about the amount of marital property they receive if there is a Marital Agreement in place. If the husband and wife are involved in a dispute about joint property, the awarding of joint property is expected to be done fairly.¹⁵

A marital agreement that provides for the separation of property is a legal tool that can provide safeguards for husband and wife's ownership rights over their assets. In this context, such an agreement has some significant advantages.

Firstly, the agreement allows the couple to clearly stipulate that assets owned prior to the marriage remain the property of the individuals concerned. This provides assurance that the inherited property will remain protected, regardless of subsequent developments in the marriage.

Secondly, such an agreement can ensure that assets acquired during the marriage remain separate and are managed according to the agreed terms. This prevents possible conflicts on the disposition of wealth in the event of the death or divorce of either party.¹⁶

In addition, a marital agreement can provide a clear framework for resolving financial issues during marriage, providing certainty and avoiding uncertainty. It can also provide incentives for spouses to

¹⁴ Yuni Angraini and Ana Silviana, "Pendaftaran Peralihan Hak Atas Tanah Sebagai Harta Bersama (Studi Kasus Jual Beli Tanpa Izin Suami, Isteri Dan Anak)," *Legal Standing: Jurnal Ilmu Hukum* 7, no. 2 (2023): 347–57.

¹⁵ Febrina Vivianita Cathy Roring, "Perlindungan Hukum Terhadap Harta Dalam Perjanjian Perkawinan," *Lex Privatum* 2, no. 3 (2015): 23.

¹⁶ Panal Herbet Limbong, Syawal Amry Siregar, and Muhammad Yasid, "Pengaturan Hukum Dalam Pembagian Harta Bersama Perkawinan Menurut Hukum Perdata Yang Berlaku Saat Ini Di Indonesia," *Jurnal Retentum* 5, no. 2 (2023): 177, <https://doi.org/10.46930/retentum.v5i2.1346>.

manage their finances more responsibly and carefully. Such an agreement can also provide protection for spouses from individual financial problems, such as bankruptcy or legal prosecution, by ensuring that separately owned assets are not affected.

In addition, a marital agreement can help in protecting the inheritance rights of children from a previous marriage by ensuring that previously owned assets remain separate. By having clear rules regarding the separation of assets, couples can ensure that their wishes regarding their inheritance are carried out.¹⁷

Finally, a marital agreement that provides for the separation of property also provides clear guidance in the couple's financial management, facilitating the division of responsibilities and financial decision-making. This reduces the likelihood of conflicts arising due to lack of clarity or differences of opinion on financial matters. Thus, a marital agreement that provides for the separation of property can provide protection, certainty and guidance for husband and wife in their financial management during marriage.¹⁸

Every individual involved in a legal act, such as marriage, opens a new chapter in their lives. This involves a change in legal status to husband and wife and issues related to the legal status of property, which can be a source of conflict in the future without prior agreement.

In the process of making a marriage agreement, it is not uncommon to face various challenges, such as:

- 1) Potential fraud regarding accounts payable and receivable for third parties.
- 2) Violation of the contents of the marriage agreement by one of the spouses.
- 3) Violation of the contents of the marriage agreement during the marriage.
- 4) Civil disputes related to the content of the marriage agreement.

In addition, there have also been complaints from the families of the bride and groom during the marriage ceremony, who feel that they were not informed of the marriage agreement made by the prospective

¹⁷ Moh. Faizur Rohman, "Implikasi Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 Tentang Perjanjian Perkawinan Terhadap Tujuan Perkawinan," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 7, no. 1 (2017): 1–27, <https://doi.org/10.15642/ad.2017.7.1.1-27>.

¹⁸ Damian Agata Yuvens, "Analisis Kritis Terhadap Perjanjian Perkawinan Dalam Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Konstitusi* 14, no. 4 (2018): 799, <https://doi.org/10.31078/jk1445>.

spouses. This issue can raise suspicions about the control of property in the marriage, which may result in a revision of the agreement or even the impossibility of its implementation.¹⁹

During the course of the marriage, one spouse may have debts that exceed the value of their estate, which can affect the management of the joint estate. Cultural issues and the belief that marriage is something sacred can also affect the dynamics of marriage. Hence, each spouse should maintain the sanctity and majesty of marriage with utmost care.

Unfortunately, not everyone is willing to sign a prenuptial agreement, as it is often seen as a sign of distrust or dishonesty. However, a prenuptial agreement actually reflects an awareness of rights and obligations in the management of property and the care of children which is in line with the purpose of marriage to make a happy and prosperous family.²⁰

When problems arise, such as divorce, the handling of property and guardianship of children must be carefully considered. Therefore, in making a marriage agreement, it is important to have openness, honesty, and mutual trust so that neither party thinks that they will lose in the future.

In Indonesian society, making a marriage agreement is still considered a taboo for most couples, mainly due to cultural and religious factors. However, with the right understanding, a marriage agreement can actually help realize the purpose of marriage better.²¹

To deal with the challenges that arise in the implementation of marital agreements, several solutions can be implemented. First, education and socialization on the importance of marital agreements should be increased so that prospective spouses understand its benefits in managing finances and joint property. In addition, premarital counseling can be a means to discuss in depth this agreement, so that both parties have a clear understanding and agreement before marriage.

¹⁹ Siti Nur Aisyah, Sudirman Sudirman, and Khoirul Hidayah, "Analisis Putusan Hakim Tentang Percampuran Harta Bawaan Dan Harta Bersama Perspektif John Bordley Rawls," *Jurnal Intelektualita: Keislaman, Sosial Dan Sains* 11, no. 1 (2022): 105–16.

²⁰ Karman Karman, "Kedudukan Perjanjian Perkawinan Dalam Kitab Undang-Undang Hukum Perdata," *Cross-Border* 3, no. 1 (2020): 192–202.

²¹ Puji Kurniawan, "Perjanjian Perkawinan; Asas Keseimbangan Dalam Perkawinan," *Jurnal El-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan Dan Pranata Sosial Fakultas Syariah Dan Ilmu Hukum IAIN Padangsidempuan* 6 (2020).

Second, transparency and good communication between the couple and the extended family are essential to prevent miscommunication and suspicion regarding the marriage agreement. Third, stricter and clearer arrangements regarding the reporting of debts and credits as well as violations of the marriage agreement need to be stipulated in the agreement, with strict sanctions to maintain compliance.²²

Furthermore, to maintain the integrity of the marriage, couples must commit to always maintaining the sanctity and majesty of marriage, and be willing to seek professional help in case of conflict. In the case of divorce, settlement through mediation or arbitration can be a faster and more efficient alternative to going to court.

Finally, awareness of the importance of openness, honesty and mutual trust in the making and implementation of the marriage agreement must be instilled from the start, so that there are no parties who think they will be harmed in the future. With this comprehensive approach, it is hoped that challenges in marriage agreements can be minimized, and the goal of forming a happy and prosperous family can be achieved.²³

A Justice Perspective on the Right of Husband and Wife to Make Different Financial Contributions to Joint Property under Civil Law

Joint property in marriage is one of the most important issues in civil law, especially in the context of protecting the rights of parties. Joint ownership is defined as wealth acquired during the marriage, regardless of who generated the income. Civil law regulates the division of joint property to ensure fairness between both spouses in a marriage. Therefore, the financial contribution of the husband as well as the wife is often the main focal point.

The perspective of fairness in the rights of husbands and wives to make different financial contributions to joint property has a high urgency in civil law. This urgency arises from the need to ensure that both parties to a marriage receive fair and equal treatment, even though their financial contributions may differ. This is important because it can

²² Jaka Bangkit Sanjaya and Rizqi Mulyani Slamet, “Analisis Yuridis Pentingnya Pembuatan Perjanjian Perkawinan Berdasarkan Perspektif Hukum Perdata,” *Jurnal Hukum Lex Generalis* 2, no. 6 (2021): 482–97.

²³ 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.

prevent injustice and imbalance in the distribution of joint property, which is often a source of conflict in marriage.²⁴

The impact of applying this equity perspective is significant. First, it can improve the emotional and psychological well-being of couples, as they feel recognized and valued for their respective contributions, both financial and non-financial. Secondly, it can also reduce gender inequality in marriage, by recognizing that household chores and childcare, which are often done by the wife, have equal value to the husband's financial contributions.

The benefit of this implication is the creation of a more harmonious and equitable marital relationship. By fairly recognizing each party's contribution, couples can build a solid foundation for cooperation and mutual support. It also provides greater legal security for the party who may make a smaller financial contribution, but contributes greatly to other aspects of life together.²⁵

As well as taking into account how the couple accumulated assets during the marriage, an equity model can be used to ensure a proportionate and fair distribution of joint assets. A pre-nuptial agreement before marriage can also serve as a reference for the division of joint property.

Agreement Legally formed marriage agreements can be used as evidence in cases of joint property disputes in court. A marriage agreement made by a deed-making official in the form of an official document has ideal evidential power so that it can be utilized as strong evidence in cases of marital disputes. By law, the court must respect the formal truth and facts in the original deed presented before the court as evidence, unless the opposing party can prove otherwise. This is an updated component of legal protection.²⁶

The principle of justice in the relationship between spouses in marriage law is based on the principle of equality, which is regulated in the 1945 Constitution, paragraph 1 of Article 27, which stipulates that

²⁴ M. Beni Kurniawan, "Pembagian Harta Bersama Berdasarkan Kontribusi Dalam Perkawinan," *Ahkam: Jurnal Hukum*, 2016, 1–23, <https://doi.org/http://dx.doi.org/10.15408/ajis.v12i1.980>.

²⁵ Besse Sugiswati, "Konsepsi Harta Bersama Dari Perspektif Hukum Islam, Kitab Undang-Undang Hukum Perdata Dan Hukum Adat," *Perspektif* 19, no. 3 (2014): 201, <https://doi.org/10.30742/perspektif.v19i3.22>.

²⁶ Abdul Kahfi, *Pembagian Harta Bersama Ditinjau Dari Perspektif Gender (Analisis Putusan Perkara Nomor 278/Pdt.G/2012/PA.Rks)*, Fakultas Syariah Dan Hukum, vol. S1, 2015.

citizens are required to submit to and respect the legal order and authorities without exception, and that all citizens are equal before the law. By distributing proper rights and interests to each person, justice aims to realize an ideal relationship between individuals.

Aristotle on distributive justice, states: "Justice is the giving of a share to each person on the basis of his merit or contribution." The framework for distributing joint assets in marriage is based on contribution. Justice means dividing things proportionally, not equally. The combined wealth-giving framework is combined with the guidelines of distributive justice, which means that everyone receives a component equal to their contribution. This principle allows judges to be decisive with respect to social values while maintaining balance during the judicial process.²⁷

If in awarding joint ownership according to their contributions during the marriage, where the husband's role is to earn financially while the wife focuses on household and family responsibilities, their contribution to the household and family is as important as that of the husband. Therefore, in the division of joint property, both are entitled to an equal share of ½ of the joint ownership.

If a party who does not fulfill his or her responsibilities has a double war, the judge may look at the reasons for determining the award that support the achievement of equality. The opinion of positive law is that, in general, the award of joint ownership should be made with balance and equality between the parties. Consequently, upon divorce, the award of joint ownership should be made in proportion, be transparent, and take into account how the two accumulated wealth during the marriage.²⁸

Most husbands believe that the responsibility of the household lies solely with their wives, a fact that holds true even when their wives work outside the home from early morning. Therefore, since there are many wives who contribute more than their husbands, limiting the division of joint assets to only half for women is not in line with the principle of fairness. The ideal joint asset division rule is proportionate and balanced, based on each party's involvement and role during the marriage. It is

²⁷ Muhamad Beni Kurniawan, "Pembagian Harta Bersama Ditinjau Dari Besaran Kontribusi Suami Istri Dalam Perkawinan," *Jurnal Yudisial* 11, no. 1 (2018): 41, <https://doi.org/10.29123/jy.v11i1.224>.

²⁸ Mochamad Mansur, "Pembagian Harta Bersama Dalam Konteks Penghasilan Istri Lebih Besar Dibanding Suami," *JUSTITIABLE-Jurnal Hukum* 5, no. 1 (2022): 58–74.

important to note that joint property division agreements should be made without pressure or coercion, violence, or threats.

A spouse's contribution to a marriage is not always measured financially. In scenarios where the wife does not fulfill household responsibilities or behaves in a *nusyuz* manner, the division of joint property upon divorce may be skewed in favor of the husband. On the other hand, if the wife not only tracks financially but also takes care of the household, while the husband is negligent in his obligations, then the division of joint property may be more favorable to the wife.

Upholding the principle of justice in the division of joint property can be achieved by applying a proportional system that considers the contribution and role of each party fairly. This is especially important for couples who bear the double burden of being both financial earners and housekeepers.²⁹

It is important to look at justice comprehensively. Where the process of assessing Justice in the division of joint property must consider the perspective of each party. Proportionality does not always mean equally for both parties. In this context, proportionality can be interpreted as the division of joint property that considers the contribution and role of each party fairly. The judge can decide that the wife gets a larger share than the husband if it is proven that the wife has more control and involvement in managing the joint ownership, while the husband is negligent in his responsibilities.

The protection of rights between spouses in the context of joint wealth requires that there is a balance in the division of assets, regardless of who contributes more financially. Civil law seeks to ensure that no party is treated unfairly. This principle aims to protect the rights of wives who may have significant non-financial contributions to the household. The protection of parties' rights in the context of joint assets requires that there is a balance in the division of assets, regardless of who contributes more financially. Civil law seeks to ensure that no party perceives that they have been treated unfairly. This principle aims to protect the rights of wives who may have significant non-financial contributions to the household.³⁰

²⁹ Putu Andhika Kusuma Yadnya, "Meninjau Keadilan Dalam Pembagian Harta Bersama Pasangan Wna Dan Wni Di Indonesia," *Jurnal Hukum Saraswati (JHS)* 5, no. 2 (2023): 535–44.

³⁰ Safira Maharani Putri Utami and Siti Nurul Intan Sari Dalimunthe, "Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian," *Jurnal USM Law Review* 6, no. 1 (2023): 433–47.

Non-financial contributions, taking care of the household and children, often do not receive the same attention as financial contributions. Civil law seeks to take into account the value of these contributions in the division of joint property. This is important to ensure that wives who may not work outside the home still get their fair share of the property.

In some cases, an imbalance in financial contributions between husband and wife can cause tension in the marriage. Civil law provides a framework that aims to reduce this tension by establishing clear rules on the division of joint property. This helps both parties understand their rights and obligations from the start.

Civil laws in different jurisdictions have different approaches to this issue. Some countries adhere to the principle that all property acquired during the marriage should be divided equally, while others take into account the financial contribution of each party. These different approaches reflect efforts to achieve fairness in various cultural and economic contexts.³¹

The application of the principle of fairness in the division of joint property also requires consideration of special circumstances, such as differences in the financial capabilities of the husband and wife. For example, if one party has a significantly higher income, a fair division may require adjustments to accommodate the difference. This reflects the flexibility of civil law in dealing with various situations.

Civil law also pays attention to the rights of children in the division of joint property. The protection of children's rights is especially important when the division of property may affect their welfare. Therefore, this consideration is often an integral part of the process of dividing joint assets.³²

The implications of granting joint ownership for the protection of parties' rights are significant in the context of family welfare. Fair and equitable protection can reduce the potential for conflict and ensure that both parties feel valued and have their contributions recognized. It also creates a stronger foundation for future family stability.

³¹ Panal Herbet Limbong, Syawal Amry Siregar, and Muhammad Yasid, "Pengaturan Hukum Dalam Pembagian Harta Bersama Perkawinan Menurut Hukum Perdata Yang Berlaku Saat Ini Di Indonesia," *Jurnal Retentum* 5, no. 2 (2023): 177–91.

³² Shafa Salsabila, "Pembagian Harta Bersama Dalam Perceraian Ditinjau Dari Perspektif Teori Keadilan," *Zaiken: Journal of Civil and Business Law* 4, no. 2 (2023): 225–41.

In addition to the legal aspects, there are also social implications of joint property division. Fair treatment of financial and non-financial contributions can encourage more peaceful communication and mutual respect between the parties. It can also influence society's perception of gender roles in the household.

In practice, differences in financial contributions can be a source of tension, but with a clear legal framework in place, this should be minimized. Transparency and a good relationship between the parties regarding finances and joint property are also important to prevent disputes.³³

Civil law plays an important role in creating justice for husbands and wives who make different financial contributions to the joint property. By considering various factors that affect the division of property, civil law seeks to provide solutions that are fair and in accordance with the principles of justice.

The role of lawyers and legal consultants is also very important in helping couples understand their rights and obligations regarding joint property. A good knowledge of civil law can help couples make informed decisions and avoid future conflicts. Thus, the protection of husband and wife's rights in the context of joint property depends not only on the rule of law, but also on understanding and implementing the theory of balance in daily life.³⁴

The application of a justice perspective regarding the financial contributions of husbands and wives to joint property in civil law faces several obstacles. Significant income differences between husbands and wives are often a source of injustice, with husbands usually having higher incomes. In addition, conservative social and cultural norms reinforce gender stereotypes, viewing husbands as the primary breadwinners and wives as responsible for household matters. Another challenge is the difficulty of objectively assessing non-financial contributions, such as housework and childcare, which makes it difficult for courts to decide on a fair division of property. All of this takes a psychological and emotional toll on couples, increasing the risk of stress,

³³ Fegha Fannissa Dyananto, "Implikasi Pengaturan Harta Bersama Berdasarkan Putusan Mahkamah Konstitusi NO. 69/PUU-XIII/2015," *Jurnal Privat Law* 9, no. 2 (2022): 227–37.

³⁴ Limbong, Siregar, and Yasid, "Pengaturan Hukum Dalam Pembagian Harta Bersama Perkawinan Menurut Hukum Perdata Yang Berlaku Saat Ini Di Indonesia," 2023.

conflict and divorce. Unfairness in property division also limits the wife's ability to be financially independent, especially after divorce.³⁵

To overcome these obstacles, it is necessary to adopt a more proportional approach in the division of joint property, which assesses contributions not only in terms of nominal value but also effort and sacrifice. Changing the paradigm of society through education on gender equality is essential, as well as introducing clearer legal guidelines regarding the valuation of non-financial contributions. Open communication between spouses and the use of marriage counseling can help resolve conflicts. Strengthening legal protection for wives in cases of divorce, including guarantees of equitable access to family economic resources, is necessary. Gender-inclusive and gender-based legal education will help reduce bias in the legal system. In addition, revision of discriminatory laws and drafting of new, more inclusive regulations are needed to protect wives' rights. Collaboration between the government, legal institutions and civil society on campaigns, training and the provision of support services can create a more balanced and equal playing field for all parties.³⁶

CONCLUSIONS

The main objective of this study is to understand marital agreements and the issue of joint property and its implications for the protection of husband and wife's rights in the context of civil law. The research found that a marital agreement that provides for the separation of property can provide significant protection to each spouse's ownership rights over their inherited property. This is important not only to protect personal assets from third-party claims, but also to ensure legal clarity and security in the management of household finances. A marital agreement helps prevent future conflicts and disputes, especially in a divorce situation, by providing clear provisions regarding property ownership.

³⁵ Safira Maharani Putri Utami and Siti Nurul Intan Sari Dalimunthe, "Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian," *Jurnal Usm Law Review* 6, no. 1 (2023): 433, <https://doi.org/10.26623/julr.v6i1.6899>.

³⁶ Utami and Dalimunthe.

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