

The Urgency of the Prenuptial Agreement as an Early Marriage Agreement

Ferry Irawan Febriansyah^{1*}, Alfalachu Indiantoro², Wafda Vivid Izziyana³

¹*Universitas Muhammadiyah Ponorogo*

²*Universitas Muhammadiyah Ponorogo*

³*Universitas Muhammadiyah Ponorogo*

*Email: ferryirawanfebriansyah@gmail.com

ABSTRACT

This research aims to give rights to the prospective husband and wife who are going to get married to protect their property before getting married. The pre-marriage agreement actually aims to protect each individual as a legal subject whose rights are protected. The Prenuptial Agreement is an interesting matter because in the agreement it concerns the rights of each candidate who will marry. In Indonesia, a prenuptial agreement is still not common in the eyes of society, because there are many negative stigmas which say that marriage is a sacred thing. A prenuptial agreement is very necessary as it will be helpful when getting married since the agreement discusses about rights and obligations of each party. Therefore, an agreement is needed. The purpose of establishing the Agreement is to regulate legal relationship between individuals and the others in order to understand their rights and obligations. The method used in this study is a normative legal research method that emphasizes on legal issues by using legal studies, explicitly named statutory regulations. The conclusion that can be drawn from this research is that the agreement has been regulated in statutory regulations. So that in order to fulfill his / her rights, a person is allowed to enter into an agreement including a prenuptial agreement to protect the rights of the both parties who are going to get wedded.

Keywords: *Agreement, Marriage, Prenuptial.*

1. INTRODUCTION

Indonesia is a country of law that always refers to the regulations governing the government and elements of society without exception. Because according to the law everyone is considered to understand the law. This refers to the principle of law because in the eyes of the law everyone is equal. As for the principle of legal fiction which requires everyone to be considered to know the law because we live in a state of law. Someone who is considered ignorant of the law is usually someone who is incapable of the law or someone who is still under arrest because they cannot be held responsible for his treatment. In Indonesia, the system used is civil law; this can be seen from the history that has occurred in Indonesia [1].

The civil law legal system is a legal system that is widely used in European countries such as the Netherlands, France, Germany and Italy. Indonesia also applies mixed law because it includes private law or what is called civil law, Islamic law and customary law. If we talk about laws in Indonesia, it will focus on criminal and

civil law. Criminal law is public law and civil law is a law that regulates one individual and another. In civil law, we are familiar with what is called marriage. Marriage is a form of agreement between both male and female parties in carrying out the marriage bond.

Marriage is something that is done by the prospective husband and wife to establish a bond in which there is a commitment and aims to form a family. A marriage must go through a process that must be passed by both candidates who will have a bond and the bond is recognized as valid by the surrounding community. Marriage is an individual activity performed by a couple of husbands and wives to achieve common goals. [2] Marriage is considered valid if it is done according to the laws of each religion and belief. Every person who is considered legal to perform marriage must be registered according to certain laws and regulations. canceled due to the lack of age of the candidate who has not met the rules of the Marriage Act and does not get approval by the parents of the candidate, and must get a dispensation

from the Court if it must be married and must have strong evidence.

Marriage is a sacred thing because in the marriage unites the bond between the prospective husband and wife. Therefore if a person wants to enter a marriage, they should meet the conditions that have been determined to prevent early marriage and the candidate can plan a mature marriage. The age of male and female candidates according to Law 1 of 1974 on marriage article 7 which is the minimum age of marriage is 19 years old. The age limit for marriage has been set so that the candidates who will hold the wedding make a mature marriage plan and good marriage so as not to cause divorce [3].

Every valid marriage is recorded by the marriage registrar. However, if the husband and wife cannot show their marriage certificate or have lost it then the couple must file an isbat trial to the religious court. Husbands, wives, children and guardians are entitled to appeal to the religious court because they are the ones who are interested in the marriage. Sidang isbat is a trial to resolve cases of loss of marriage certificate between husband and wife, the existence of doubts whether the marriage is legal or not, and the existence of marriage that occurred before the existence of Law Number 1 of 1974.

Marriage has the principle of monogamy that is the principle where the husband should have only one wife. However, the husband is allowed to have more than one wife with the provision of the wife has obstacles such as not being able to have children which is sterile, then the wife gives permission to the husband to married again, and the court also gives permission to have another wife [4]. Subsequently the conditions that must be met in order to get permission by the court are the wife has given permission to the husband, there is a certainty that the husband can meet the needs of the wife and their children, there is a guarantee the husband will be fair to his wife and children in which regulated in Article 5 of the Marriage Law 'all wives have joint property rights after the marriage takes place'. Therefore, marriage is a part of the agreement.

An agreement is an act that has legal consequences that are binding on the person who has entered into an agreement. The agreement can also be called a set to obtain a right and obligation. Agreements are usually made between individuals to reach a deal. An agreement between the two parties becomes a law for those who agree with it and has legal consequences when it violates or it is called *wanprestasi*. If in the course of the agreement there are parties who violate the agreement or *wanprestasi* then the party who feels disadvantaged has the right to sue the party who violated the agreement in order to fulfill their rights. The above statement relates to Article 1338 paragraph (1) of B.W., which contains: "All agreements which are made legally applies as law for those who make them".

Every people are allowed to enter into an agreement as long as it meets the legal requirements of the agreement. The moment a person enters into an agreement then that person will obtain a set of rights and obligations that is *prestasi*. *Prestasi* means the acts of submitting something: For example in a sale and purchase agreement we hand over the objects we sell to the buyer because there is a *prestasi* that has been done in the sale and purchase agreement. The example of doing something: Doing something in this context means that to finish the construction of the house to the person who asked to make a house. Not doing something for example is like this: an employee who has already worked in the company will not move to the other company because he/she has made a work agreement. In the implementation of the agreement there is also a violation of an agreement called *wanprestasi* that is a person who is bound by the agreement and cannot fulfill his obligations and if in the agreement there are parties who feel disadvantaged then the affected party can demand to pay the loss.

The purpose of the Agreement is to regulate the legal relationship between individuals and other individuals in order to understand their rights and obligations. Agreements that have been approved become a laws for those who create it. The difference with the law in general is that the law regulates a community that exists in a certain area, whereas in an agreement it is only binding on individuals who agree to the agreement that has been agree with. If in the agreement there is a dispute, it can be used as evidence in court to resolve the dispute. Beside that, it can also function as compensation for what has been violated and caused a loss. So that the person who has been violated is allowed to claim the compensation.

The validity of the agreement is a prerequisite that must be fulfilled when someone is about to make an agreement with another person. If the legal terms of this agreement cannot be fulfilled then the agreement will not be valid. The valid terms of the agreement are regulated in Article 1320 of the Civil Code, that is their agreement that binds oneself, skill, certain things and a lawful cause.

An agreement is something that must be exist in the terms of the validity of the agreement. Because if in an agreement there is one party who disagrees, the agreement cannot be considered as a valid agreement. Agreement is a term that comes out of an individual who binds himself to another individual and if both of the party agree on what has been written or spoken in the agreement, then both individuals are bind each other and have their respective rights and obligations. However, there is an agreement that is considered flawed. An agreement is considered flawed or invalid if there is someone who makes an agreement with coercion or threats, contains fraud, in which a malicious act committed by one of the parties. For example someone

sells an iPhone smartphone and it turns out that the smartphone is an imitation smartphone and contains errors. It means that in this agreement there is a difference in perception between one individual and another which results in a fallacy toward the object and subject in the agreement. If the errors toward the subject or person, it is called an error in persona, whereas if the error toward an object, it is called an error in substantial.

The ability of the parties to make an agreement in article 1329 of the Civil Code, is as follow: everyone is capable of establishing an agreement except what is regulated in article 1320 which states that there are people who are not competent to create an agreement. Based on article 330 of the Civil Code, a person can be considered to be an adult when they are 21 years old or more and 21 years and under but already married. The Marriage Law number 1 / 1974 which states that the age of 18 years old is considered to be an adult and is stated again in Law No. 23 of 2002 Article 1 verse 1 that a child is someone who is not yet 18 years old.

Certain things are what is contained in an agreement that at least the agreement contains an object in which the type of object can be determined. In article 1332 of the Criminal Code that the object of the agreement is the most non-tradable item. This is something that must be exist in the agreement because an object in this context means an object that is carried out when establishing an agreement. Another condition for the validity of the agreement is the existence of lawful legal causes. The agreement does not violate the norms and laws and the agreement is created for the purpose and does not contradict the applicable law. Meanwhile, the causes which are not lawful are causes which are prohibited in the law and are contrary to the applicable law. The agreement should be based on the norms and values which are adopted by the society.

If it does not meet the legal conditions of the agreement then the agreement becomes invalid. If in the agreement there are conditions that are not met, then one of the parties can request the annulment of the agreement to the court. Beside that, the agreement will also be binding when there are some principles that must be met in implementing or establishing a marriage agreement. So that this marriage agreement becomes afdhol. The following are the principles in the agreement, **the principle of freedom of contract** which means that anyone has the right to enter into an agreement with anyone who is eligible. Despite the freedom of contract is exist, someone who create the agreement should not violate the terms and conditions of the Law. **The principle of legal certainty** is that if a party in the agreement violates or wanprestasi then the judge can force the violating party to fulfill his rights and obligations as contained in the agreement. Moreover, the judge can ask for the compensation if the party who violated the agreement feels harmed.

The principle of consensualism, this principle means agreement; basically an agreement will be created if both parties who make the agreement reach a deal. The principle of **good faith** is the inner state of both parties in the agreement that should believe each other and be available. Such an inner state should not be tainted with the intent to cover up the actual state which is not mentioned in an agreement. **The principle of personality** means that the content of the agreement only binds the parties personally, not binds the parties that are not exist in an agreement. A person is not allowed to represent another person to make an agreement. Agreements which is made by the parties only apply to those who create them.

Marriage is an agreement because there is a bond. Marriage is an agreement which is created by male and female candidates to have a bond [5]. So that marriage is also called an agreement. In a marriage there is pillar that make a marriage valid, namely, the marriage contract. The marriage contract is an agreement because it is signed a qobul consent. In the qobul agreement, the bride and groom will pronounce the agreement in which the agreement is binding, therefore marriage is an agreement [6]. A marriage agreement or prenuptial agreement can only be created before the marriage takes place or during the marriage process. Beside that, it must be registered or notified to the party who issuing the marriage certificate that there is an agreement in marriage. Furthermore, the registration of the marriage agreement can be carried out. After the both of prospective partners get married and witnessed by several witnesses, the marriage will become a binding agreement between the two married people. Nowadays, the agreement is not only created in the marriage, but also when the candidate has not yet married. This agreement is called the prenuptial agreement.

2. METHODOLOGY

The method used in this study is a normative legal research method that focuses on problems by using legal studies or statutory regulations. Meanwhile the scope of this research is Civil Law. The scope of this research includes, the legal basis governing the prenuptial agreement.

The types of data that the researcher use in this study include primary data and secondary data. However, this research focuses more on secondary data. Meanwhile primary data is supporting and complementary. So that the results of the study are relatively more comprehensive. Primary data is data that is obtained directly by researcher through laws and regulations, books, journals, and previous research related to prenuptial agreements. Secondary data were obtained from the symptoms in the society related to the law of marriage.

3. RESULT AND DISCUSSION

3.1. Legal Basic of Agreement

We already discussed previously about the meaning and several things about the agreement. The agreement is included in the Burgerlijk Wetboek group or in Indonesian it is called the Civil Code. The meaning of the agreement has also been explained in article 1313 of the Civil Code: the agreement consists of two or more people in order to achieve a goal which makes it legal for all parties concerned as well as to be able to reach their respective rights and obligations according to the parties' responsibility. In an agreement also requires other components to complete the legal conditions of an agreement which becomes law for those who create it. Article 1320 of the Civil Code is an explanation of the terms of an agreement, in that article there are 4 articles which are cumulative in nature. The terms are include the existence of an agreement, legal skills, objects and a cause that is lawful. The agreed object must be determinable and valuable.

Prestasi means object that can be claimed or valuables as collateral for the law or agreement which mutually agreed by both parties. There are several elements in the agreement based on article 1313 of the Civil Code, namely subjects that involve two people or more or it could be a legal entity, which in turn is binding itself to perform or not performing its prestasi. In addition, there are also principles in an agreement law, including the principle of freedom of contract, in which in this case the parties are given the freedom to choose to carry out a legal act according to the parties' wishes [7].

The second is the principle of consensuality, in this case when establishing an agreement it must be in accordance with the agreement of the parties, which should not emphasize one party. However, if the party concerned agrees it will become the law for those who create the agreement. The third is legal certainty, in this case when establishing an agreement it must be in accordance with the elements of the agreement which have a legal certainty for all the parties concerned to comply with in accordance with their agreement. The next is the principle of good faith, it means that in establishing an agreement it is not allowed to have malicious intentions or profitable only one party. This good faith has a relative element, namely paying attention to the real attitude and behavior of the subject, and one element which is absolute which lies in common sense and justice.

The last principle is the principle of personality, in which the contents of the agreement are only bond by people who are involved. In the other words, other people who are not involved in the contents of the agreement cannot merely interfere in the settlement of prestasi in the agreement. It has been explained in article

1340 of the Civil Code which says that "The agreement is only valid between the parties who create it" but there is an exception stated in article 1317 of the Civil Code which says "An agreement can also be created for the benefit of a third party, if an agreement is created for himself or as a gift to others, and contains such conditions".

An agreement can be null and void because all elements and conditions are not in accordance with the applicable law and the basic foundation of the state, namely Pancasila. There are several articles in the Civil Code which explain that an agreement is considered invalid. As explained by article 1322 of the Civil Code regarding an error, "An error does not result in the cancellation of an agreement, unless the mistake occurs regarding the nature of the goods which are the subject of the agreement. An error does not result in cancellation, if the mistake only occurs about the person with whom someone intends to create an agreement, unless the consent is given primarily because of the person concerned, it means that if you make a mistake in the misuse of the situation it is a factor for aborting a valid agreement."

Article 1323 of the Civil Code explains a coercion which contain "Coercion imposed on a person entering into an agreement results in the cancellation of the agreement concerned. Moreover, if the coercion is carried out by a third party who has no interest in the agreement which is created". The moment an agreement is created due to coercion or under pressure from other parties, the agreement will be null and void. In line with articles 1324 and 1325 also explain coercion in an agreement. Article 1328 which explains fraud stated "Fraud is an excuse to cancel an agreement, if the fraud used by one of the parties is such that it is clear that the other party will not enter into the agreement without deception". Some of these articles are an agreement or engagement in which as a whole has been described in the material law in this country, namely the Civil Code or can be called BW (Burgerlijk Wetboek).

3.2. Legal Basic of Prenuptial Agreement

Marriage is a very important thing for all mankind, marriage involved in participating in the development of a country as a good people for the future of the nation. Therefore, the state establish its own rules in a thing called marriage. On page one of Indonesian Republic Law Number 1 of 1974 concerning marriage; it explains that in accordance with the Pancasila philosophy and the ideals for the development of national law, there is a need for a marriage law that applies to all citizens [8]. All the explanations about marriage starting from the basis of marriage, conditions, cancellation of marriage, rights and obligations of husband and wife and there are several more, all of them which aim to regulate all marriages in this country can be maintained neatly. Marriage does not

only cover the problem of the person but also the assets owned by both of male and female party before or after they enter into a marriage.

It is undeniable that a pre-marriage agreement with the discussion of assets is not used to being heard or done by Indonesians themselves. Because in the view of Indonesians, most of the assets they have are also the assets of the spouse they will marry later as a form of their belief in their spouse. Because sometimes, they don't think about the risk that possible to happen later on, and it is called divorce. Eventhough in a marriage bond describes that marriage for safety, comfort, harmony, and the welfare of their household which is eternal for the rest of the life and that will be passed on to their children. However, the existence of prenuptial agreement is very important and needs to be carried out by every party who is going to marry to protect their respective rights and assets.

A marriage agreement is one of the agreements that is written in the marriage law. A prenuptial agreement is an agreement between the two parties between a man and a woman who will carry out the marriage. The function of prenuptial agreement is to arrange an affairs during the marriage when the marriage has taken place. However, the prenuptial agreement should not only spoken in front of each partner but also should be created with a notary deed. A notary acts as a bridge for the couples who will establish a prenuptial agreement to validate the agreement in order to have legal force that is recognized by the state. Then notary will direct to attach the prenuptial agreement to the religious office (KUA) for Muslims and civil registration for people with other religion. This prenuptial agreement has been regulated in Law number 1 of 1974 concerning marriage, this prenuptial agreement functions to regulate the assets and debts that will arise during the marriage.

The explanation regarding the prenuptial agreement as stated in Chapter V article 29 of the Marriage Law states that: (1) At the time or before the marriage takes place, both parties with mutual consent may submit a written agreement that is legalized by a marriage registrar, after which the contents also apply to the third party involved, (2) The marriage cannot be legalized if it violates the boundaries of law, religion and morality, (3) The agreement is effective from the time the marriage is carried out, (4) During the marriage, the agreement cannot be changed, unless there is an agreement to change from both parties and the modification do not harm the third party.

In accordance with article 147 BW the marriage agreement must be created with the following conditions: (1) The agreement can be created through notarial deed. A notary deed is used in order to guarantee the legality of the agreement and to prevent hasty actions because this agreement will be carried for life, as well as valid evidence. After establishing a written agreement which is

created by a notary public, the notary deed is then taken to the the religious office (KUA) or Civil Registration office which will be included in the marriage certificate. Civil registration is only responsible for recording the agreement and the rest will be carried out by the concerned parties, namely the husband and wife, who should create specific guidelines or laws for their families for the future until it is completed, (2) The agreement can be created when the marriage has not yet been carried out or legalized. This provision is created so that when the marriage is already done, it has a law that must be implemented for each responsibility for the sake of a complete family unity.

In addition, the prenuptial agreement is also explained in the civil law book in Chapter VII concerning the marriage agreement. There are many articles that explain all the rules for each male as a husband and the female as a wife, such as segregation of their respective assets, regulation for the rights and responsibilities of a husband and wife, regulation of the debts that they have before marriage, and regulation related to the third parties and children as registered in the consent provider in the prenuptial agreement. The purpose of this prenuptial agreement is to affirm the arrangement and ownership of an inheritance of each of them as the husband and wife before the marriage is validated. So that when they are on the process toward their marriage they experience an irregularity between husband and wife there is no prolonged conflict because a prenuptial agreement has been created. Eventhough both of the party do not want to be separated in their household because in eastern culture itself, including the Indonesian state, in particular, marriage is only enough to be done once in a lifetime. Moreover, the assets of each prospective bride and groom are rounded up to become a joint asset to be included in the management of their respective assets.

One of the important reasons for the existence of a prenuptial agreement is actually to protect the rights of women who marry men of foreign nationalities. According to the Basic Agrarian Law number 5 of 1960, [9] the ownership of land rights in the country itself is not eliminated because in this Basic Agrarian Law if an Indonesian woman marries a foreign man, she must give up to her land ownership rights after one year of marriage. However, when there is a prenuptial agreement, land ownership as an Indonesian citizen can still be carried out in accordance with the existing laws in Indonesia because this prenuptial agreement is not only to anticipate a separation in the future but also to protect the rights of each party. Moreover, The prenuptial agreement is not a bridge or a tool to stigmatize sacred household but rather to form a harmonious and happy family without worrying of a conflict when unwanted things happen.

There are several legal consequences for the property owned by each party when the prenuptial agreement is

established. The purpose of establishing a prenuptial agreement before a notary is to limit or eliminate the sharing of assets, giving gifts from husband to wife and vice versa in accordance with article 168 BW, limiting the power of collective assets determined in article 124 paragraph 2 BW, as a reciprocal testament described in article 169 BW, gift giving by a third party in accordance with article 176 BW, and as a testament from a third party to a husband and wife (article 178 BW).

3.3. The Process in the Prenuptial Agreement

The existence of pre-marriage/prenuptial agreement is legally protected. In accordance with article 29 paragraph 1 of law number 1 of 1974 concerning marriage which states "At the time or before the marriage takes place, both parties with mutual consent can submit a written agreement which is legalized by the marriage registration officer after that contents also applies to the third party involved". This means that the law has recognized the truth of a prenuptial agreement, this is legally valid. There are several stages or processes in establishing a prenuptial agreement, including writing down each other's wishes. Each party can discuss what will be arranged in their future marriage, this agreement is free but only related to a contract that has been approved by a notary.

The next step is to bring a legal consultant. The party who is about to enter into a prenuptial agreement is allowed to consult with the authorized institution in order to make it easier for each party to write what is desired in the prenuptial agreement. After the parties write the agreement for their marriage, it is enough to bring it to the notary to ratify the agreement and there is no need to bring it to the court because the notary has sufficient legal force.

Furthermore, they can still change it though it has been brought to a notary public. After they bring their agreement to the notary, they can still change it back if there is still something to be changed in the contents of the agreement. It is because the notary provides an opportunity to change it before the agreement is legalized into a marriage certificate. Then, both of the party should bring the certificate to the Institute marriage records. Not everyone can bring their prenuptial agreement to the Marriage Record Institute. There are provisions that have been regulated by the law that if they are Muslim, it must be brought to the Office for Religious Affairs (KUA), which this institution that only deals with people who are Muslim. Meanwhile, for Non-Muslims can be submitted to the civil registration institution to be included in their marriage book. In addition, the submission of this prenuptial agreement must be submitted to the competent authority before the consent of the qabul.

3.4. The Importance of the Prenuptial Agreement

The Prenuptial Agreement is an interesting thing because in this agreement concerns the rights of each candidate. Indeed, in Indonesia the prenuptial agreement is still not common in the eyes of the society. It is because there are many negative stigmas that say that marriage is sacred, and no need to make an agreement prior to getting married. A prenuptial agreement is very necessary because it will be useful when getting married because the agreement discusses rights and obligations. A prenuptial agreement can also be called an agreement between the bride and groom to state something in terms of their respective interests to be carried in their legal marriage. This agreement usually includes property between the prospective husband and wife, it contains the separation of property or wealth after marriage. It is because marriage does not guarantee that they will always be happy. Therefore this prenuptial agreement is to protect the private property of the husband or wife in term of there are possibility of a divorce or one of them is passed away.

Establishing a prenuptial agreement is important. Because the prenuptial agreement contains assets and money [10]. This agreement is to protect the rights and obligations of each other because after marriage the property of both husband and wife will become joint property. Unless there is an agreement before marriage. Beside that, the prenuptial agreement also contains other things that have become a collective agreement. The Prenuptial Agreement can also be a reminder of the commitment of both the husband and wife. Therefore, the prenuptial agreement is important so that the prospective husband and wife understand their respective rights and obligations.

The separation of property in this context occurs because at the moment the wife is cornered for certain reasons because the husband wastes joint property for personal gain. Beside that, it can occurs when the husband does not give something that is proper to the wife because he just takes care of his own property. It also occurs when there is a negligence in taking care of marital property coming from the husband and make it possible to loss of joint property. Prenuptial agreements is protected by law in Article 29 paragraph 1 of law number 1 of 1974 which stated, "at the time before the marriage takes place, both parties with mutual consent can submit a written agreement which is legalized by the marriage registrar after that contents applies to the third party involved". Therefore, the prenuptial agreement is allowed to establish if both parties are agree and want to create it.

A prenuptial agreement is very important for the future of one's household because it guarantees mutual interests if at any time something undesirable happens for

instance a divorce. Divorce is something that is not expected in a marriage but it possible to happen. Indonesia itself is a country where the divorce data is quite high. Therefore, an agreement before marriage is actually needed to maintain the rights that each party has before they unite in a bond called marriage. However, prenuptial agreements are still very taboo among Indonesians. It is because of the idea that premarital agreement is not suitable or ethical in eastern states, especially Indonesia. On the contrary, western culture prioritize a prenuptial agreement to protect their respective rights.

Furthermore, the things that needs to be the background of this prenuptial agreement are to deviate from the statutory provisions which regulate a marriage of a different party, to equalize round up the rights of each party in the ownership of assets, then receivables and things that make the rights of each party. Another reason behind the establishing of a prenuptial agreement is the existence of significant differences between the prospective husband and wife. For example having a difference wealth of assets, which further create the difference in desires which is one of the parties who is going to marry does not want to share some of his wealth with other parties.

Basically, this prenuptial agreement is for the sake of legal protection of one's own assets. In the law number 1 of 1974, it is stated that there are two types of property in marriage, namely joint property/assets and inheritance. Joint property/assets are assets obtained by both of husband and wife or parties who are married when they have entered into a legal marriage. Regardless what the respective work of each party or where did the assets come from. All of these are their common property or can be called joint assets. Inheritance assets, namely where before entering into a marriage, the husband and wife have their own assets that are obtained from each party. Regardless the property, that is, from inheritance, gift or assets obtained from their respective work before both of the party unite in a marriage bond.

4. CONCLUSION

Marriage is a sacred thing because it unites the bond between the prospective husband and wife. Then, Prenuptial agreement is an important thing in the marriage. Eventhough in the view of the eastern people this has not become a habit, it can even be a taboo thing to create. However, this prenuptial agreement is very important before entering into a marriage to protect the rights and the obligations they have to carry out before and after marriage. The government has been very supportive of this prenuptial agreement for a long time, which is in 1974 the government legalize the marriage law. The law has explained a lot about marriage, which the government has regulated in such a way that society can be organized and protected all the rights and

obligations that they will bear after carrying out the marriage. Such as the age of marriage, the things that must be considered in marriage, and the rights and obligations of each party. All of them have been regulated in the marriage law which has become a special law in Indonesia.

However, it is not only the marriage law that regulates the marriage. The Civil Code law also regulates long before this special marriage law created. Therefore, as a good and wise society who always prioritizing the rules that have been created by the government, those regulations should be understood and implemented. Moreover in this country children with special interests are allowed to marry to participate in developing and advancing the Indonesian state.

REFERENCES

- [1] F. Nurhadianto, "SISTEM HUKUM DAN POSISI HUKUM INDONESIA." 2015.
- [2] Santoso, Hakekat perkawinan menurut undang-undang perkawinan, hukum islam dan hukum adat. Yudisia, 2016.
- [3] H. Bastomi, "Pernikahan Dini Dan Dampaknya (Tinjauan Batas Umur Perkawinan Menurut Hukum Islam Dan Hukum Perkawinan Indonesia)," J. Pemikir. Dan Penelit. Sos. Keagamaan, vol. 7, pp. 354–384, 2016.
- [4] I. Samah et al., "IZIN ISTERI DALAM POLIGAMI PERSPEKTIF UNDANG UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN," Hukum Islam, 2014.
- [5] H. Faradz, "TUJUAN DAN MANFAAT PERJANJIAN PERKAWINAN. Jurnal Dinamika Hukum." 2008, doi: 10.20884/1.jdh.2008.8.3.82.
- [6] A. H. M. A. D. D. A. V. I. Q. N. U. R. DZIDDAN, "PERJANJIAN PRANIKAH DAN AKIBAT HUKUMNYA DITINJAU DARI PERSPEKTIF HUKUM NASIONAL," J. Chem. Inf. Model., 2017, doi: 10.1017/CBO9781107415324.004.
- [7] L. Jamilah, Asas Kebebasan Berkontrak Dalam Perjanjian Standar Baku. Syiar Hukum, FH UNISBA, 2012.
- [8] A. L. Belakang, "Undang-Undang Republik Indonesia Nomor I Tahun 1974 Tentang Perkawinan. Menteri/Sekretaris Negara Republik Indonesia." 1974, doi: 10.1098/rstb.1996.0056.
- [9] U.-U. D. R. I. No, "5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria." 1960.
- [10] A. A. Burhanudin, Konsep Perjanjian Perkawinan Dalam Perspektif Perbandingan Hukum. El-Faqih: Jurnal Pemikiran Dan Hukum Islam, 2019.