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Marriage Agreement as an Instrument for Protecting the Rights of Wives and Children in Indonesian Family Law

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ABSTRACT

This article analyzes the regulatory framework of prenuptial agreements in the Indonesian legal system and its relation to the protection of the rights of wives and children. The study uses a normative juridical method by examining Law Number 1 of 1974 concerning Marriage, Constitutional Court Decision Number 69/PUU-XIII/2015, as well as Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 concerning Child Protection. The results of the study indicate that prenuptial agreements have obtained formal legal recognition and can be made before or during marriage. However, the existing regulations are still oriented towards property matters and do not explicitly require clauses for the protection of the rights of wives and children. Therefore, it is necessary to strengthen regulatory interpretation so that prenuptial agreements are not only formally valid but also function as instruments for substantive legal protection within Indonesian family law

INTRODUCTION

A marriage contract is a legal instrument recognized within the Indonesian family law system and has normative binding power (Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, 1974). So far, marriage contracts have been more commonly understood as a mechanism for managing assets within a marriage (Yunus et al., 2020). This orientation has made marriage contracts synonymous with the separation or management of joint property (Rohmadi, 2024; Sopiyan, 2023). In fact, in the development of modern family law, marriage contracts have a broader potential as an instrument of legal protection (Putri, 2021; Rafli et al., 2023). This instrument can be designed to provide protection guarantees for vulnerable parties, particularly wives and children (Sudirman & Hamzah, 2024).

Regulatively, the regulation of marriage agreements is governed by Law Number 1 of 1974 concerning Marriage and expanded through Constitutional Court Decision Number 69/PUU-XIII/2015 (Constitutional Court of the Republic of Indonesia Decision Number 69/PUU-XIII/2015 on the Review of Law Number 1 of 1974 concerning Marriage, 2015). This regulation provides legitimacy for creating agreements both before and during marriage (Asyatama & Ridwan, 2021). However, the existing norms emphasize formal validity and freedom of contract (M. Y. Harahap, 2007; Wan Hassan et al., 2023). The regulation has not explicitly directed the substance of agreements towards the protection of the rights of wives and children (Ulfazah et al., 2025). As a result, there is a gap between formal legal recognition and the function of substantive protection in family law practice (Rahardjo, 2009).

On the other hand, child rights protection has been comprehensively regulated in Law Number 23 of 2002, which has been amended by Law Number 35 (Indonesia, n.d.). This regulation emphasizes the principle of the best interests of the child as the foundation of legal policy (Nurbaiti & Husni, 2024; Nurcholis et al., 2025). However, child protection norms have not been systematically integrated into the design of marriage agreements (Wahyuningtyas, 2022). This condition indicates a regulatory fragmentation between marriage law and child protection law (Nasution, 2022). Such fragmentation has the potential to weaken the effectiveness of legal

protection within the family context (Muchsin, 2008; Syukrawati, 2024).

Several previous studies have mostly discussed marriage agreements from the perspective of contractual validity or the division of joint assets (R. I. Harahap & Siregar, 2023; Shomad & Hajati, 2025). Other studies focus on the protection of women and children in the context of divorce or custody disputes (Astuti & Prastio, 2022; Ramadhani, 2024). However, there is still limited research that specifically positions marriage agreements as a preventive legal instrument to guarantee the protection of the rights of wives and children from the pre-marriage stage (Rasidin, 2023). The lack of an integrative analysis between marriage agreement regulations and the principles of rights protection indicates an academic gap. This gap opens up space for the development of a regulatory approach more oriented toward substantive justice (Rahardjo, 2009).

Based on these conditions, the novelty of this research lies in the integrative analysis of the regulatory framework of marriage agreements from the perspective of protecting the rights of wives and children within a single normative construct. This article not only assesses the formal validity of marriage agreements but also examines the limits and potential of their regulation as a legal protection instrument (Pater, 2025). This approach expands the discourse from merely contractual freedom to the preventive function in family law (Auda, 2008; Jumriyani, 2022). Thus, this study offers a conceptual contribution in formulating directions for strengthening marriage agreement regulations that are more responsive to the protection of vulnerable parties. This contribution is expected to enrich the development of Indonesian family law based on rights protection and substantive justice (Hafidzi & Rahmah, 2024; Zezen, 2024).

METHODS

This research uses a normative juridical method with a statutory approach and a conceptual approach. This study does not use field instruments such as questionnaires or interviews, but rather employs a legal document analysis instrument. The research instrument consists of a normative analysis matrix designed to map the regulatory design, the structure of norms, and the orientation of rights protection in each regulation studied. This matrix is used to identify the conformity between contractual freedom

in marriage agreements and the principles of wife and child rights protection. With this instrument, the research can conduct a systematic evaluation of regulatory coherence.

The data collection process was carried out through library research by inventorying primary and secondary legal materials. Primary legal materials include Law Number 1 of 1974 concerning Marriage, Constitutional Court Decision Number 69/PUU-XIII/2015, Law Number 23 of 2002 concerning Child Protection, and Law Number 35 of 2014. Secondary legal materials consist of academic literature, scientific journals, and relevant family law doctrines. All documents were classified based on their normative relevance to marriage agreements and the protection of rights. This process aims to build a comprehensive normative database.

The data analysis process was carried out through grammatical, systematic, and teleological interpretation techniques. Grammatical analysis is used to understand the textual meaning of statutory provisions. Systematic analysis is conducted to assess the position of marriage agreements within the structure of national family law and their relationship with child protection regimes. Teleological analysis is used to evaluate whether the regulatory design aligns with the objectives of protecting the rights and best interests of children. This framework forms a rights-based legal evaluation and regulatory design analysis.

This study does not use statistical hypothesis testing because it is normative-qualitative in nature. Nevertheless, this research tests the conceptual proposition that marriage agreement regulations in Indonesia are more oriented towards formal validity than substantive protection. The testing is conducted through normative coherence analysis among the applicable regulations. The evaluation is directed at three dimensions, namely the scope of regulation, legal binding force, and capacity to protect rights. With this approach, the study assesses both the strengths and limitations of the regulations.

Data presentation was carried out in a descriptive-analytical manner in the form of a systematic narrative. The results of the analysis are displayed through normative mapping between regulations as well as tables comparing the substance of the provisions. This presentation aims to show the relationships, gaps, and inconsistencies in regulations transparently. The presentation structure

follows the flow of analysis, starting from normative design to the implications for rights protection. Thus, this research method has fulfilled the elements of instruments, data collection, analysis, and data presentation as required in the journal template.

RESULTS AND DISCUSSION

Regulatory Design of Marriage Agreements in Indonesian Marriage Law

Research results indicate that the regulatory design of marriage agreements in Law Number 1 of 1974 is oriented towards the regulation of property relations between husband and wife (Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, 1974). Article 29 provides freedom for the parties to draft agreements, as long as they do not conflict with law, religion, and morality (Arief, 2017; M. Y. Harahap, 2007). This regulation emphasizes formal aspects, namely the requirement to be made in writing and legalized by the marriage registrar (Latupono, 2019; Nurlaelawati, 2010). The norm does not regulate in detail the minimum substance that must be included in the agreement. As a result, the protection of the rights of wives and children is not an element explicitly required in its regulatory design (Putri, 2021; Ulfazah et al., 2025).

From the perspective of the freedom of contract theory, the regulation reflects the classical contractual paradigm that emphasizes individual autonomy (M. Y. Harahap, 2007; Subekti & Soesilowati, 2005). However, in the context of family law, the parties' relationship is not always on an equal footing (Kholifah, 2022; Lestari, 2024). Social and economic imbalances can influence the process of drafting agreements (Palimbunga, 2024; Rouf et al., 2023). Therefore, a formally neutral regulatory design has the potential to result in substantive injustice (Rahardjo, 2009). These findings indicate that regulation still emphasizes formal validity over preventive protection.

The Expansion of Temporality and Juridical Implications After Constitutional Court Rulings

The Constitutional Court Decision Number 69/PUU-XIII/2015 expands the possibility of making prenuptial agreements during the marriage (Constitutional Court of the Republic of Indonesia Decision Number 69/PUU-XIII/2015 on the Review of Law Number 1 of 1974 on Marriage, 2015). This decision strengthens the principle of freedom of contract and provides flexibility in managing joint

assets (Asyatama & Ridwan, 2021; Rohmadi, 2024). Legally, this expansion enhances the law's adaptability to family dynamics. However, analysis shows that this expansion still focuses on civil aspects and asset management (Siregar, 2023). There is no clarification regarding the obligation to include clauses on post-divorce economic protection or child welfare guarantees (Shomad & Hajati, 2025).

From a regulatory design perspective, the ruling reinforces the dimension of private autonomy without accompanied protective control mechanisms (Rahardjo, 2009). This condition shows that contractual freedom has not been balanced with minimum protection standards (Wan Hassan et al., 2023). In the context of modern family law, such an approach is inadequate to guarantee the security of the rights of vulnerable parties (Auda, 2008; Zezen, 2024). Thus, the expansion of contractual authority does not automatically increase the capacity for legal protection.

Fragmentation between Marriage Law and Child Protection Law

Law Number 23 of 2002 in conjunction with Law Number 35 of 2014 emphasizes the principle of the best interests of the child as the basis for legal policy (Indonesia, n.d.). This regulation requires parents to ensure the survival, growth, and welfare of their children (Nurbaiti & Husni, 2024; Nurcholis et al., 2025). However, research findings indicate that this principle has not been systematically integrated into the regulation of marriage agreements (Nasution, 2022; Wahyuningtyas, 2022). Marriage agreements are not required to include clauses that preventively guarantee children's rights. As a result, child protection tends to be reactive and depends on dispute resolution in court (Muchsini, 2008; Syukrawati, 2024).

This fragmentation indicates the weak normative coherence between regulations within the family law system (Hafidzi & Rahmah, 2024). Marriage law and child protection law operate in relatively separate regimes (Panjalu, 2024). In fact, the family is the primary space for fulfilling children's rights. Without regulatory integration, the potential for preventive protection through marriage agreements is not optimally utilized. These findings reinforce the need for normative harmonization within the framework of family law.

The Gap Between Formal Legitimacy and Substantive Protection

This study found a gap between the formal validity of marriage agreements and the effectiveness of substantive protection (Ulfazah et al., 2025). Formally, agreements made in accordance with regulations have binding legal force (Republic of Indonesia Law Number 1 of 1974 on Marriage, 1974). However, the regulations do not ensure that the agreements contain minimum protection standards for wives and children (Rouf et al., 2023). The absence of substantive guidelines opens the possibility for agreements that limit access to economic protection for certain parties (Rohmadi, 2024). This indicates that formal legality does not always align with the goal of rights protection (Rahardjo, 2009).

From the perspective of substantive justice, family law cannot be treated merely as a private contractual space. Family law has social and public dimensions related to the protection of vulnerable groups (Auda, 2008). Therefore, regulations that rely too heavily on freedom of contract require normative correction. This gap becomes a crucial point in assessing the limitations of the current regulatory design.

Conceptual Implications for Strengthening Regulation

The findings of this study indicate that prenuptial agreements have the potential to serve as instruments of legal protection, but they have not yet been optimized through a responsive regulatory design (Rasidin, 2023). The integration of principles protecting the rights of wives and the best interests of children needs to be emphasized within the normative framework of prenuptial agreements (Nurcholis et al., 2025). Strengthening can be carried out through the establishment of minimal substantive guidelines or more protective verification mechanisms by marriage registry officials (Pradana & Hartati, 2024; Prasajo, 2025). These measures will reinforce the coherence between marriage law and child protection law (Hafidzi & Rahmah, 2024). With this approach, prenuptial agreements can transform from merely a contractual instrument into a preventive mechanism within the family law system (Ishak & Nasir, 2022; Zezen, 2024).

CONCLUSION

This study concludes that the regulation of marriage agreements in Indonesian family law has provided formal legitimacy through Law Number 1 of 1974 and Constitutional Court Decision Number 69/PUU-XIII/2015. However, the prevailing normative design is still oriented towards freedom of contract and the management of property, and thus has not explicitly integrated standards for the protection of the rights of wives and children. This condition explains why legally valid marriage agreements have not yet functioned optimally as instruments of substantive protection. This gap is reinforced by the fragmentation between marriage law and child protection law, which has not been systematically harmonized. Therefore, the main issue does not lie in the absence of norms, but in the orientation of the regulatory design that is not yet based on rights protection.

Conceptually, prenuptial agreements have the potential to be developed as preventive protection instruments in family law. Strengthening regulations can be done by establishing guidelines for minimum substance that ensure economic protection for the wife and the best interests of the child. In addition, regulatory harmonization between marriage law and child protection law is needed to build normative coherence within the family law system. Practically, the role of marriage registration officials can be expanded to ensure that the content of the agreement does not harm vulnerable parties. For further research, empirical studies on the practice of prenuptial agreements and their impact on the protection of family rights need to be conducted to strengthen the normative evaluation that has been produced in this study.

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