

# Legal Consequences of Marriage Agreement to Interested Third Parties

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## Abstract

*Marriage is a bond that forms a family within society and the state. With the existence of marriage can realize the welfare and happiness between humans. In a marriage, the husband or wife certainly brings assets called innate assets. So, before the marriage takes place, the prospective husband and wife make a marriage agreement which is a form of agreement made between one party and another and there is no coercion from any party. This study aims to find out how the process of making a marriage agreement deed and to find out whether the marriage agreement has legal consequences for third parties. The type of research used is empirical juridical with primary data and secondary data. Data collection techniques with interviews and observation. The results of the study show that in Law No. 1 of 1974 concerning Marriage, what is unanimously mixed are assets acquired during marriage. As for inherited assets, they remain under the authority of each unless mutually agreed upon by the husband and wife to be united in joint property. In the marriage agreement besides binding the husband and wife, the marriage agreement is also binding on third parties. So, this is a third party is very interested.*

**Keywords:** Deed; Marriage Agreement; Notary.

## Abstrak

Perkawinan merupakan ikatan yang membentuk suatu keluarga di dalam lingkungan masyarakat dan negara. Dengan adanya perkawinan dapat mewujudkan kesejahteraan dan kebahagiaan antar manusia. Dalam suatu perkawinan suami atau istri tentunya membawa harta yang disebut harta bawaan. Maka sebelum perkawinan berlangsung para calon suami dan isteri membuat perjanjian perkawinan yang merupakan salah satu wujud dari perjanjian yang dibuat antara satu pihak dengan pihak yang lain dan tidak ada paksaan dari pihak manapun. Penelitian ini bertujuan untuk mengetahui bagaimana proses dalam pembuatan akta perjanjian perkawinan serta untuk mengetahui apakah perjanjian perkawinan memiliki akibat hukum bagi pihak ketiga. Jenis penelitian yang digunakan adalah yuridis empiris dengan data primer dan data skunder. Teknik pengumpulan data dengan wawancara dan observasi. Hasil penelitian menunjukkan bahwa dalam Undang – Undang Nomor 1 Tahun 1974 tentang Perkawinan, yang dicampurkan secara bulat adalah harta yang diperoleh selama perkawinan. Sedangkan untuk harta bawaan tetap di bawah kekuasaan masing-masing kecuali disepakati bersama oleh suami dan istri untuk disatukan dalam harta bersama. Dalam perjanjian pernikahan selain mengikat pasangan suami-istri tersebut, perjanjian perkawinan juga mengikat terhadap pihak ketiga. Maka hal ini pihak ketiga sangat berkepentingan.

**Keywords:** Akta; Perjanjian Perkawinan; Notaris.



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## A. INTRODUCTION

Marriage is a relationship between a man and a woman that is recognized as valid based on the applicable marriage regulations.<sup>1</sup> Marriage is a bond that forms a family within society and the state. With the existence of marriage can realize the welfare and happiness between humans.<sup>2,3</sup>

In a marriage, the husband or wife certainly brings assets called innate assets.<sup>4</sup> According to article 35 paragraph (2) of Law no. 1 yr. 1974 concerning Marriage, inherited property is property acquired by each husband and wife before marriage, as well as gifts or inheritance received from third parties during marriage. So, before the wedding takes place the bride and groom make a marriage agreement which is a form of agreement made between one party and another and there is no coercion from any party.<sup>5</sup>

Marriage agreements can be a means of minimizing separation.<sup>6</sup> This can be intended to provide protection to the assets brought by the wife. If at the beginning of the agreement it was planned that there would be a divorce, then one of the parties is burdened with obligations, which is what will make him think again about filing for divorce.<sup>7</sup> Because divorce is something that is not wanted by everyone or in a household,<sup>8</sup> while people who only dream or want wealth will think long and hard if it is suggested by the existence of the marriage agreement, with this, of course, they will reject the clause because the goal cannot be achieved and This can be classified as a violation of decency.<sup>9</sup>

The marriage agreement must be drafted in written form, and made before the marriage is carried out, and the entry into force of this agreement starts from the marriage is carried out. This agreement is attached to the marriage certificate and an inseparable part of the marriage

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<sup>1</sup> Hasan Bastomi, "Pernikahan Dini Dan Dampaknya (Tinjauan Batas Umur Perkawinan Menurut Hukum Islam Dan Hukum Perkawinan Indonesia)," *Yudisia* 7, no. 2 (2016): 354–84, <https://doi.org/10.21043/yudisia.v7i2.2160>.

<sup>2</sup> Tengku Erwinsyahbana, "Sistem Hukum Perkawinan Pada Negara Hukum Berdasarkan Pancasila," *Journal Ilmu Hukum* 1, no. 1 (2019): 1–15, <https://doi.org/10.30652/jih.v3i01.1027>.

<sup>3</sup> Alois Stutzer and Bruno S Frey, "Does Marriage Make People Happy, or Do Happy People Get Married?," *The Journal of Socio-Economics* 35, no. 2 (April 2006): 326–47, <https://doi.org/10.1016/j.socec.2005.11.043>.

<sup>4</sup> Nilna Fauza and Moh Afandi, "Perjanjian Perkawinan Dalam Menjamin Hak-Hak Perempuan," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 2, no. 1 (2020): 1, <https://doi.org/10.19105/al-manhaj.v2i1.3116>.

<sup>5</sup> Abdul Rokhim, "Kedudukan Hukum Perjanjian Perkawinan Sebagai Alasan Perceraian," *Masalah-Masalah Hukum* 41, no. 1 (2012): 59–64, <https://doi.org/10.14710/mmh.41.1.2012.59-64>.

<sup>6</sup> Suryati Suryati, Arif Awaludin, and Bing Waluyo, "Perlindungan Hukum Atas Harta Perkawinan Melalui Akta Perjanjian Kawin," *Cakrawala Hukum: Majalah Ilmiah Fakultas Hukum Universitas Wijayakusuma* 25, no. 1 (March 10, 2023): 22–32, <https://doi.org/10.51921/chk.v25i1.225>.

<sup>7</sup> Ali Imron, "Memahami Konsep Perceraian Dalam Hukum Keluarga," *BUANA GENDER : Jurnal Studi Gender Dan Anak* 1, no. 1 (2016): 15–27, <https://doi.org/10.22515/bg.v1i1.66>.

<sup>8</sup> Armansyah Matondang, "Faktor-Faktor Yang Mengakibatkan Perceraian Dalam Perkawinan," *JPPUMA: Jurnal Ilmu Pemerintahan Dan Sosial Politik UMA (Journal of Governance and Political Social UMA)* 2, no. 2 (2014): 141–50, <https://doi.org/10.31289/jppuma.v2i2.919>.

<sup>9</sup> Linda Azizah, "Analisis Perceraian Dalam Kompilasi Hukum Islam," *AL-ADALAH Vol. X*, no. 4 (2012): 415–22, <https://doi.org/10.24042/adalah.v10i2.295>.

certificate, and this agreement is made by mutual consent, made in writing, ratified by a civil registry employee, and is not allowed to conflict with law, religion and decency.

Article 29 of the Marriage Law states that a marriage agreement is an agreement made at or before the marriage takes place and further explains that the marriage agreement must be ratified by a marriage registrar. The marriage agreement is a means of protection in the event of unwanted things. Through this agreement, husband and wife can determine their respective assets that are under the control of each. It is contained in article 1320 of the Civil Code,<sup>10</sup> the validity of the agreement in the agreement requires 4 conditions, namely: 1) Agreed those who bind himself; 2) Ability to make agreements; 3) A certain thing; and 4) A lawful reason.

This agreement can be made in written form, both signed private deed, household affairs papers and other writings designed without the assistance of a public official, or in the form of an authentic deed drawn up in a form that has been regulated by law or before a public official authorized by law. authorized. In making this marriage agreement, it is made by an authorized official, namely a notary. In Law no. 2 yrs. 2014 concerning Amendments to Law no. 30 yrs. 2004 Concerning the Office of a Notary, a Notary is a public official authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws.<sup>11</sup>

Notary is a public official who has the authority to make authentic deeds regarding agreements, stipulations, and all actions desired by interested parties.<sup>12,13</sup> The notary must also be responsible for ensuring the date of making the deed and storing important files.<sup>14,15</sup>

A notary in making a marriage agreement is very necessary, because in making a marriage agreement it regulates many things, especially regarding assets. After making a marriage agreement, this must be reported at the VAT Office which covers the area where the marriage took place, which aims to fulfill the principle of publicity.

## B. METHOD

The type of research used by researchers is empirical juridical<sup>16</sup> which uses a qualitative research approach, where the data obtained from the field becomes the main data source, such

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<sup>10</sup> Esther Masri and Sri Wahyuni, "Implementasi Perjanjian Perkawinan Sebelum, Saat Dan Sesudah Perkawinan," *Jurnal Kajian Ilmiah* 21, no. 1 (2021): 111–20, <https://doi.org/10.31599/jki.v21i1.310>.

<sup>11</sup> Tiena Masriani Yulies, "Perjanjian Perkawinan Dalam Pandangan Hukum Islam," *Serat Acitya – Jurnal Ilmiah UNTAG Semarang* 5 (2017): 128–49, <https://doi.org/10.56444/sa.v2i3.115>.

<sup>12</sup> Aislie Anantama Septiawan, "Perjanjian Perkawinan Pada Perkawinan Campuran Dalam Kepemilikan Tanah Di Indonesia," *LamLaj* 2, no. 1 (2017): 1–10, <https://doi.org/10.32801/lamlaj.v2i1.32>.

<sup>13</sup> Cahyani Aisyiah and Diah Aju Wisnuwardhani, "Notary, Public Official or Public Official: Implications for the Position of Notary," *Jurnal Cakrawala Hukum* 13, no. 3 (December 28, 2022): 242–52, <https://doi.org/10.26905/idjch.v13i3.9012>.

<sup>14</sup> Puji Kurniawan, "Perjanjian Perkawinan; Asas Keseimbangan Dalam Perkawinan," *Jurnal El-Qanuniy: Jurnal Ilmu-Ilmu Kesayariahan Dan Pranata Sosial* 6, no. 1 (July 8, 2020): 125–37, <https://doi.org/10.24952/el-qanuniy.v6i1.2548>.

<sup>15</sup> Chrisya Nadine Immanuella and Siti Hajati Hoesin, "Akibat Hukum Terhadap Notaris/Ppat Terkait Pembuatan Melawan Hukum Oleh Pegawai Notaris/Ppat (Studi Kasus Putusan Pengadilan Negeri Blitar Nomor 10/Pdt.G/2020/PN Blt)," *PALAR | Pakuan Law Review* 8, no. 1 (January 1, 2022): 1–17, <https://doi.org/10.33751/palar.v8i1.4584>.

<sup>16</sup> Juanita A Haagsma et al., "The Global Burden of Injury: Incidence, Mortality, Disability-Adjusted Life Years and Time Trends from the Global Burden of Disease Study 2013.," *Injury Prevention: Journal of the International Society for Child and Adolescent Injury Prevention* 22, no. 1 (February 2016): 3–18,

as the results of interviews and observations. Data obtained directly from interviews with Notary Ricky Sanjaya, which focuses on the problem, which means directed to find the right solution. By using descriptive qualitative where the data obtained will be described and linked to the problem under study, then explain it in detail and clearly.

## C. RESULTS AND DISCUSSION

### 1. Making the Marriage Agreement Deed at the Notary

Client A1 has agreed with a woman named A2 at the Notary Office and PPAT Ricky Sanjaya, SH, M.Kn. in making the Deed of Marriage Agreement on date xx-xx-xxxx. By making the Deed of Marriage Agreement, the parties have agreed to hold a separation of the provisions regarding assets in marriage or joint assets of husband and wife. The parties are also free to determine the desired legal form for the assets that are the object.

Based on the provisions of Article 29 regarding the marriage agreement as stipulated in Law no. 1 of 1974 that marriage agreements may be made at or before the marriage takes place. In this case, the process of making the Deed of Marriage Agreement made at the Notary Office and PPAT Ricky Sanjaya, SH, M.Kn. in written form as follows:

- a. The prospective husband and wife who will carry out their marriage previously visited the Notary's office to arrange the preparation of the Deed of Marriage Agreement.
- b. Then the prospective husband and wife convey their intentions and objectives to the Notary.
- c. After conveying these aims and objectives, the prospective husband and wife are asked to complete documents as an administrative requirement to be able to make a Deed of Marriage Agreement.
- d. Bring complete KTP and KK. As for prospective husbands and wives of different nationalities, they must bring a KITAS or PASSPORT.
- e. The completeness of the requirements brought by the prospective husband and wife will be checked by the Notary to be equated with the original.
- f. The notary will invite the prospective husband and wife to be questioned regarding the contents of the marriage agreement that has been agreed upon so that it is included in the draft marriage agreement, if the complete identity of the prospective husband and wife is correct.
- g. When the draft of the marriage agreement has been completed by the Notary, the draft will immediately be given to the prospective husband and wife to read and understand in advance the intent of each sentence and the articles in it.
- h. When it has been read and understood, the Notary will ask the prospective husband and wife whether they agree with the contents contained in the draft made by the Notary.

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<https://doi.org/10.1136/injuryprev-2015-041616>; Theresia Anita Christiani, "Normative and Empirical Research Methods: Their Usefulness and Relevance in the Study of Law as an Object," *Procedia - Social and Behavioral Sciences* 219 (May 2016): 201–7, <https://doi.org/10.1016/J.SBSPRO.2016.05.006>.

- i. If the draft has been approved, the Notary will read out the deed according to the day and date at that time.
- j. If it has been read out and there are no more changes, the deed is ready to be signed by the prospective husband and wife, which the notary will then make a copy of.
- k. Then if the couple is Muslim, then a copy of the marriage agreement that has been made at the Notary must be brought to the Marriage Registrar (PPN) to be ratified, whereas if the couple is of a non-Muslim religion then it is legalized by the Notary and recorded at the Civil Registry Office (KCS). . Not later than 60 (sixty) days before the wedding took place or when the marriage took place, namely when the marriage was carried out according to Article 2 paragraph (1) of the Marriage Law. VAT will record the marriage agreement in the margin column of the marriage certificate provided.
- l. If the marriage agreement was made before or at the time the marriage took place when the marriage agreement certificate has been ratified by the PPN and has also been registered at the district court clerkship, then the marriage agreement is valid for husband and wife, and also applies to third parties. In the event that the marriage agreement has not been registered with the district court clerkship and has not been recorded in the marriage certificate of the husband and wife, the third parties may assume that the husband and wife are carrying out the marriage in a mixture of assets.
- m. In this way, the validity of the marriage agreement is when the marriage agreement has been registered at the district court clerk's office and the marriage agreement has been recorded, on the marriage certificate by the KCS officer.<sup>17</sup>

This marriage agreement can regulate matters regarding the distribution of assets, child custody, division of household expenses, and can even be a problem solving tool in the household that is consciously made by both parties. The marriage agreement can be used as a benchmark if something unexpected happens.<sup>18</sup> The positive and negative impacts of the marriage agreement are as follows:

- a. Positive impact:
  - 1) With the existence of a marriage agreement, household life will be more orderly. In this case, you can make an agreement on the separation of inherited assets with the prospective husband and wife. In addition to property issues, the marriage agreement can also regulate the rights and obligations of the husband or wife in marriage, work, and the prohibition of committing violence in the household. If it is felt that the contents of the agreement are out of sync, the couple can terminate the marriage agreement.<sup>19</sup>

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<sup>17</sup> Natalia Ningsih, I Made Arya Utama, and I Made Sarjana, "Kekuatan Mengikat Akta Notariil Perjanjian Perkawinan Terkait Harta Bersama Yang Dibuat Pasca Pencatatan Perkawinan," *Acta Comitatus* 1, no. 1 (April 3, 2017): 12, <https://doi.org/10.24843/AC.2017.v02.i01.p02>.

<sup>18</sup> Bella Arwinilita et al., "Separation Agreement Asset For Indonesian Citizens Married Abroad," *Jurnal Pembaharuan Hukum* 8, no. 1 (February 22, 2021): 1, <https://doi.org/10.26532/jph.v8i1.13734>.

<sup>19</sup> Moh. Thariq Godal, Syarif Hasyim, and Musyahidah Musyahidah, "Method of Sharing Marriage Properties in the Religious Court, Palu," *International Journal of Contemporary Islamic Law and Society* 2, no. 2 (2020): 58–70, <https://doi.org/10.24239/ijcils.vol2.iss2.22>.

- 2) Property and debt problems can become serious when a couple agrees to divorce, with the existence of the marriage agreement it is regulated that the husband's assets and debts are the property and responsibility of the husband, and vice versa
  - 3) With this marriage agreement, it is easier for couples to build a new business. This happens because the assets that are counted are not in the name of one person, but each person's name.
- b. Impact Negative:
- 1) In this case selfishness is one of the negative things that can boomerang for a couple, because it shows the individualist side of one of the couples. One of the married couples can be more powerful because they have excess wealth.
  - 2) The next negative thing, namely having an affair or having fun with wealth, this often happens due to the lack of care about the resulting wealth, after the married couple. Ideally the husband cares more about the possessions and vice versa.
  - 3) Excessive fear can also cause fear to live life together. It must be remembered again, if you have agreed to get married, it means you are ready to accept a partner under any circumstances.

In this research, the contents of the marriage agreement are not all of the husband and wife's assets combined into joint property,<sup>20</sup> but only part of the husband and wife's assets, which are the profits/losses obtained during the marriage. The assets brought into the marriage and the assets acquired throughout the marriage are still personal property and are not included in joint assets.<sup>21,22</sup>

As for the contents of the Marriage Agreement Deed made by a non-Muslim husband and wife made before a Notary and the author analyzes each article, namely:

*First*, Separation of Property, between husband and wife there will be no partnership of property, not only no partnership according to law, but partnership of profit and loss, partnership of results and income as well as partnerships in any form whatsoever are expressly abolished. The author analyzes in this article 1, it is in accordance with article 144 of the Civil Code. Because it is emphasized that there will be no material partnership, profit-loss partnership, income-generating partnership, and partnership in any form. As well as with this agreement, the husband is not entitled to the results and income of the wife.

*Second*, all assets of any nature brought by each party in the marriage or acquired during the marriage due to purchases, inheritance, grants/gifts and/or in any way remain the property of each party that brought and/or obtained them. Wealth and debts of each party, even though they occurred before and after the marriage was carried out, remain the rights or responsibilities

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<sup>20</sup> 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>.

<sup>21</sup> Muhammad Arsad Nasution, "Analisis Terhadap Al-Qur'an Dan Hadist Tentang Perlindungan Pekerja Menurut Hukum Islam," *Yurisprudencia: Jurnal Hukum Ekonomi* 5, no. 2 (2019): 129, <https://doi.org/10.24952/yurisprudencia.v5i2.1875>.

<sup>22</sup> Can Cui, Shan Yu, and Youqin Huang, "His House, Her House? Gender Inequality and Homeownership among Married Couples in Urban China," *Cities* 134 (March 2023): 104187, <https://doi.org/10.1016/j.cities.2022.104187>.

of each party. That the parties have brought the following items: The first party: 1) Car; b) house; c) Stocks. The second party: 1) House; 2) Jewellery. In Article 2 number 1, when viewed based on article 176 of the Civil Code, it is appropriate. Due to the words "...grant/gift --- and/or in any way remains the property of each party who brings and/or obtains it", the grant given is absolute and conditions are not permitted that require the gift item refunded if these conditions are not met in the future.<sup>23</sup> Furthermore, in Article 2 number 2 according to the author this is appropriate, where this has been confirmed in Article 1 of the Marriage Agreement, where all expenses and debts generated are for the benefit of the household and costs for educating and caring for children resulting from marriage, both carried out by both husband and wife, these expenses and debts are the responsibility of the husband.<sup>24</sup> Then in Article 2 number 3 explains what assets the husband and wife bring into the marriage, where the said assets are assets that will be protected by the marriage agreement.<sup>25</sup>

*Third*, proof of ownership, movable property which the parties obtained from and for whatever reason after the marriage took place, must be proven by proof of ownership or written evidence. In the absence of such evidence, the First Party cannot state that the items are his, while the Second Party can state the existence of these items or their prices with other evidence in the form of witnesses. If there is no written evidence, then for the parties or their heirs, other evidence or general knowledge is considered and accepted as valid evidence. In the event that a dispute arises regarding the ownership of an object in the form of a right to show or a movable object, where each party cannot prove its ownership, it is deemed and accepted that the said objects belong to the parties together, each for a share which is the same size. This assumption must not harm third parties. The author analyzes that it is appropriate according to Article 165 of the Civil Code because movable property obtained after the marriage takes place, must prove it with proof of ownership or written evidence. This must be stated explicitly in the deed of marriage agreement that has been signed by a Notary. As well as in the deed there are also profits and losses and income. In number 2 confirms that if there is no documentary evidence or other evidence it is considered and accepted as valid evidence. The author also analyzes that in number 3 where property disputes whose ownership cannot be proven will be divided into two equal parts. The author analyzes in number 4 that third parties should not be harmed. If the implementation occurs as number 3 but in the future there is a third party who feels aggrieved and turns out to be able to prove ownership, there is no agreement on who should be responsible for the loss. For this reason, it is better if movable property obtained from marriage must be proven by proof of ownership or written evidence, so the husband and wife are both obliged to return the item according to the ratio obtained.

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<sup>23</sup> Robiah Awaliyah and Wahyudin Darmalaksana, "Perceraian Akibat Dampak Covid-19 Dalam Perspektif Hukum Islam Dan Perundang-Undangan Di Indonesia," *Khazanah Hukum* 3, no. 2 (2021): 87–97, <https://doi.org/10.15575/kh.v3i2.12018>.

<sup>24</sup> Dahwadin Dahwadin et al., "Hakikat Perceraian Berdasarkan Ketentuan Hukum Islam Di Indonesia," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 11, no. 1 (June 5, 2020): 87, <https://doi.org/10.21043/yudisia.v11i1.3622>.

<sup>25</sup> Rahmadi Indra Tektona, "Kepastian Hukum Terhadap Perlindungan Hak Anak Korban Perceraian," *Muwazah* 4, no. 1 (May 17, 2013): 42–57, <https://doi.org/10.28918/muwazah.v4i1.148>.

*Fourth*, parties, wealth and debts of the Parties that occurred before or after the marriage took place, remain the rights or obligations of each. Each party has the right to manage and control his own personal property (property), whether movable or immovable, and the free enjoyment of his income and has the right to take legal action in any form whatsoever over his personal property without the need for any assistance or approval from other parties. The First Party is prohibited from relinquishing the property rights of the Second Party without the consent of the Second Party, likewise the Second Party is prohibited from relinquishing the property rights of the First Party without the approval of the First Party. The author reviews this is permissible because the rights regulated in this article only regarding personal property which have been explained in the previous articles, where the personal property is protected by a marriage agreement, this is in accordance with articles 141 and 144 of the Indonesian Civil Code. Civilian Law. Numbers 1 and number 2 are emphasized by number 3 where the husband cannot relinquish his wife's rights without the wife's consent and vice versa, this is in accordance with article 141 of the Civil Code.

*Fifth*, obligations of the Parties, the First Party is obliged to protect the Second Party and provide everything necessary for household life according to his ability. The Second Party is obliged to manage household affairs as well as possible. According to the author in number 1 this is in accordance with article 103 of the Civil Code, which states that the husband is obliged to protect and facilitate his wife in fulfilling household needs. In addition, the wife is also obliged to manage the household, and the wife must help each other and help each other.

*Sixth*, costs, expenses for household needs, for educating and caring for children born from their marriage are borne by the First Party. Expenditures for the purposes mentioned above carried out by the Second Party, are deemed to have been made with the approval of the First Party. Debts and bills from other parties arising from the costs mentioned above, must be borne and must be paid by the First Party, and the Second Party cannot be billed or sued regarding this matter. According to the author, article 6 number 1 of the marriage agreement is permissible, where this article is an interpretation of article 5 number 1, which is in accordance with article 103 of the Civil Code. Likewise with number 2, where the expenses incurred by the wife for the benefit of the household are considered valid by the husband, because it is the husband's obligation to facilitate the wife in running the household, which is in accordance with article 103 of the Civil Code. As for number 3, where the costs and debts for the costs mentioned in number 1 are the responsibility of the husband and wife which cannot be billed, this is permissible because the dependents belong to the husband. In addition, if you look at article 4 number 1, which is in accordance with article 141 of the Civil Code, the husband's debt is not the wife's debt.

*Seventh*, expired/Calculated According to Law, the clothes and jewelery which are in the possession of the Parties, at the time the marriage is terminated or at the time the calculation is held according to law, shall be considered as the property of the party wearing them or considered as the property of the person wearing them, so that these goods will not be calculations are carried out. All kinds of goods for household needs, including furniture for eating, drinking, sleeping, which were in the homes of both parties at the time the marriage was ended or at the time the calculation was held according to law, were considered the



property of the Second Party, so that the goods the goods, will not be held calculation. According to the author in number 1 the marriage agreement may be carried out, because the marriage agreement is related to property ownership. Whereas in number 2 it can be done with the condition that the status of the goods mentioned in that point is a grant.

*Eighth*, miscellaneous, that in the marriage to be carried out by the Parties, each of them brings innate assets that are known by the Parties, so there is no need to elaborate further in this deed. This article is quite clear because it is contained in Article 2 number 3, in that article it has been detailed what are the assets carried by the Client A1 and A2.

*Ninth*, domicile, For this deed and all its consequences and its implementation, choose a common and permanent place of residence at the Malang City District Court Registrar's office in Malang. This implementation is carried out at the domicile where the client lives to make it easier to arrange the required documents.

Thus the marriage agreement is made using a notarial deed in order to obtain certainty on the date of making the marriage agreement, because if the marriage agreement is made privately, there will be a possibility that it can change the contents of the marriage agreement and its conditions, this has something to do with the provisions of Article 149 of the Civil Code which explains that, the marriage agreement after the marriage runs in any way, will not be changed. This is intended to protect creditors from being brought together in uncertain conditions, which will harm creditors.

## **2. Legal Consequences of the Deed of Marriage Agreement for Third Parties**

In the marriage agreement besides binding the husband and wife, the marriage agreement is also binding on third parties. In making a marriage agreement, a third party is usually called a creditor. A third party is a person who has an interest in the marriage property of a family, namely the guarantee for its receivables depends more or less on the condition and form of the marriage assets of the first party and the second party,<sup>26</sup> so that in this case a third party is needed.

It is contained in Article 3 of the Deed of Contents of the Marriage Agreement made before a notary regarding Proof of Ownership which reads: Movable property which the parties obtained from and for whatever reason after the marriage took place, must be proven by proof of ownership or written evidence. In the absence of such evidence, the First Party cannot state that the goods are his, while the Second Party can state the existence of these goods or their prices with other evidence in the form of witnesses. If there is no documentary evidence, then for the parties or their heirs, other evidence or general knowledge is considered and accepted as valid evidence. In the event that a dispute arises regarding the ownership of an object in the form of a right to show or a movable object,

As explained in Article 29 paragraph (1) of Law No.1 Year. 1974 concerning Marriage which reads: at the time or before the marriage takes place, both parties to a joint agreement

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<sup>26</sup> Sriono Sriono, "Perjanjian Kawin Sebagai Bentuk Perlindungan Terhadap Harta Kekayaan Dalam Perkawinan," *Jurnal Ilmiah Advokasi* 4, no. 2 (2016): 69–80, <https://doi.org/10.36987/jiad.v4i2.336>.

can enter into a written agreement that is ratified by the Marriage Registration Officer (PPN), after which the contents also apply to third parties as long as the third party is involved.

So that there are consequences for third parties if the marriage agreement is not legalized or registered with the Marriage Registration Officer (PPN) so that the marriage agreement does not have strong power to the creditor, and also if the parties do not confirm when the marriage agreement starts, this will be interpreted as a marriage agreement. started running since the wedding was carried out. If you previously had legal action with a third party, it could create legal issues.<sup>27</sup>

So that in this situation the legal consequences for third parties are as long as the marriage agreement has not been registered, it can be considered that the marriage is running with unanimous union of marriage assets. So if there is a husband/wife debt dispute, the handling involves joint assets, because there is no marriage agreement by itself, there are only total assets.

In this provision, the contents of the marriage agreement are only registered in the District Court, namely since the promulgation of the Marriage Law which only applies internally between spouses. A marriage agreement that has been registered with VAT has an effect on the validity of the marriage agreement to a third party. This content, in addition to specifying the husband and wife who made it, is also binding on the creditor. In this case what is meant by creditors are those who are not based on a representation, both representation by law and representation by agreement. Those who belong to this creditor category are closely related to the parties to an agreement.

#### **D. CONCLUSION**

The marriage agreement must be drafted using a notarial deed to obtain certainty on the date of making the marriage agreement. The client must also meet the requirements needed in making the marriage agreement deed. If these conditions are not met, there will be a threat of annulment, which can lead to the fact that the couple is considered to have carried out a marriage with the union of assets together. This has something to do with Article 149 of the Civil Code that the marriage agreement, after the marriage takes place in any way may not be changed. The contents of the Deed of Marriage Agreement cannot be changed, because in order to protect third parties so that they are not brought up in an uncertain atmosphere, which can harm them. The legal consequence for third parties is that as long as the marriage agreement has not been registered, it can be considered that the marriage is running by combining marital assets. If there is a debt relationship with the husband or wife, it can be resolved by involving joint property, because there is no marriage agreement by itself, there is only total assets. It is different when it comes to third parties, if the marriage agreement is not registered, then the legal consequences of the marriage agreement do not have binding force to third parties. The researcher suggests that the prospective husband and wife in making a marriage agreement

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<sup>27</sup> Yudiana Dewi Prihandini, "Perlindungan Hukum Terhadap Pihak Ketiga Atas Perjanjian Perkawinan Yang Dibuat Setelah Perkawinan," *Jurnal Lex Renaissance* 4, no. 2 (2019): 354–66, <https://doi.org/10.20885/jlr.vol4.iss2.art9>.

seek information and clarity in advance regarding the existence, terms and procedures, as well as the positive and negative impacts of a marriage agreement. This must be done in order to avoid demands or lawsuits from other parties who feel aggrieved in the future. The researcher suggests that the Notary continues to provide legal advice as a solution to legal guidance without being asked, if the prospective couple understands the contents of the agreement which can be detrimental to one of the parties.

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