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# **The legal convergence of prenuptial agreements: An analysis of the marriage law, Islamic law compilation, and constitutional jurisprudence**

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## **ABSTRACT**

A prenuptial agreement is an important instrument in marriage law that regulates agreements between prospective spouses to arrange their rights, obligations, and property prior to marriage. The study of prenuptial agreements is particularly urgent in the modern context, where social and economic dynamics continue to evolve and influence family life. This study aims to examine, from a legal perspective, how prenuptial agreements are regulated in Indonesian civil law, their implementation in society, and their legal implications for the division of property and safeguarding each party's rights following marriage. The research method used is a normative method, using the analysis of legal documents and related literature, as well as case studies to demonstrate how prenuptial agreements are used in practice. The study's results found that prenuptial agreements possess enforceable legal authority as long as they meet the requirements of a valid agreement according to the Civil Code and applicable laws and regulations, including the Marriage Law. These agreements serve to avoid property disputes at the end of a marriage through divorce or death. However, it is of paramount importance that legal convergence regarding prenuptial agreements is achieved. Similarly, the role of the notary as an authorized official is crucial in providing optimal legal protection. The legal implications of prenuptial agreements are vital for ensuring legal certainty for couples, particularly concerning the division of joint property, which can be adjusted to the parties' wishes in accordance with the initial agreement

**Keywords:** prenuptial agreement; division of property; legal protection; legal certainty

## 1. INTRODUCTION

Marriage is one of the most important legal events in human life, affecting not only the individuals concerned but also their families and communities. Article 28B, paragraph (1), of the 1945 Constitution declares that every person has the right to form a family and continue their lineage through a lawful union. Marriage is not only a religious activity but also a legal act (Salsabila et al., 2025).

In Indonesia, marriage law seeks to create pleasant, lasting families (households) founded on the idea that there is only one God, as stipulated in Law Number 16 of 2019 about Amendments to Law Number 1 of 1974 about Marriage, Article 1. To create a joyful and enduring family or household founded on the One Almighty God, a man and a woman must physically and spiritually unite as husband and wife through marriage.

The most significant legal consequence of marriage, apart from status and descent, is property regulation. In principle, Indonesian marriage law recognizes two types of property: joint and personal or separate property. Joint property, commonly referred to as shared property, is an asset obtained throughout the marriage. Based on Article 35, paragraph (1) of the Marriage Law, this property becomes joint property between husband and wife. According to Article 36, paragraph (1) of the Marriage Law, the husband and wife may act on joint property with each other's approval. If a divorce occurs, this shared property is divided equally (Article 37 of the Marriage Law and Article 97 of the KHI). Meanwhile, personal property or dowry is the property each husband or wife brings into the marriage or property that each receives as a gift or inheritance. Each party has control over personal property and full rights to perform legal acts with regard to their personal property (Article 35 (2) and Article 36 (2) of the Marriage Law).

The basic principle governing the management of assets in a married couple is joint ownership, which means that everything obtained throughout the marriage belongs to both spouses unless otherwise specified in an agreement. This principle differs from the system of separation of property, which automatically applies in some other legal systems or can be chosen through a prenuptial agreement.

Marriage is a multifaceted human issue encompassing all aspects of human life that can easily cause emotions and disputes. Married life does not always run smoothly; many obstacles and problems arise in households. Therefore, Indonesian society currently needs legal certainty regarding prenuptial agreements to protect the rights of all parties. A prenuptial agreement is an agreement reached prior to marriage and is binding on both the prospective bride and groom (Yunus, 2020).

An agreement formed prior to or during marriage is known as a prenuptial agreement, and the creation of a prenuptial agreement is still relatively unfamiliar to the public. For some people, the creation of this agreement is still considered taboo and even selfish. However, a prenuptial agreement can protect both partners in the event of undesirable circumstances such as divorce. A prenuptial agreement is an agreement made and executed by a man and a woman who are about to get married to bind the relationship between the two parties (Gresnia, 2024).

A prenuptial agreement is a legal instrument that is increasingly important in regulating the property relations between prospective husbands and wives before marriage. The Civil Code and Law Number 1 of 1974, regulating marriage, offer a legal foundation for this agreement to regulate the separation or consolidation of property to prevent future conflicts. Current social phenomena show an increase in awareness of the importance of this agreement as a form of legal defense and the clarity of the rights of each party. However, in practice, prenuptial agreements are still frowned upon by some people because they are seen as contrary to cultural and traditional values, as well as a lack of adequate legal understanding. The disharmony between customary, religious, and positive laws also poses a challenge to the implementation of prenuptial agreements.

Although the prenuptial agreement is acknowledged as a vital instrument for achieving legal certainty and preventing property disputes, its implementation in Indonesia faces complex juridical challenges. The fundamental divergence in principle between the system of joint property adopted by the Marriage Law and the KHI (Compilation of Islamic Law), and the separation of property system,

which is often the objective of prenuptial agreements, creates normative tension. The principal gap emerged following the Constitutional Court Decision Number 69/PUU-XIII/2015, which extended the timeframe for drawing up the agreement—not only before, but also during marriage.

This expansion of the temporal scope automatically introduces new conflicts of norms, particularly concerning the rights of third parties, the implications for marriages bound by two different legal systems (Civil and Islamic law), and how this convergence is practically applied by notaries and recognized by the courts. Current doctrinal studies have not yet systematically mapped the implications of this tripartite convergence, namely, between the Marriage Law, the Compilation of Islamic Law, and the Constitutional Jurisprudence.

## 2. METHOD

This study uses normative legal research. Marzuki explains that normative legal research is finding legal doctrines, norms, and principles to address legal questions (Marzuki, 2011).

In relation to the research method proposed by Peter Mahmud Marzuki, this article examines the existence of prenuptial agreements concerning Article 29 before and after the issuance of Constitutional Jurisprudence 69/PUU-XIII/2015.

This study uses a conceptual, statute, and case approach. Examining all laws and rules pertaining to the legal matters under consideration is a part of the statutory method. The conceptual approach is a conceptual strategy grounded in theories and viewpoints developed within legal science (Gozali, 2021).

This study focuses on the existence, principles, and how prenuptial agreements provide legal certainty to parties bound by marriage law.

The legal materials used in this article include: (1) primary legal materials, such analysed: (Articles of the Civil Code, the Marriage Law, the Compilation of Islamic Law, Constitutional Jurisprudence 69/PUU-XIII/2015; and (2) secondary legal materials, such as theses, journal articles, and commentaries.

## 3. RESULT AND DISCUSSION

Marriage is sacred and noble; it must be based on mutual trust and love between the bride and groom. According to Article 1 of Law Number 1 of 1974 about Marriage, marriage is a bodily and spiritual union of a man and a woman as husband and wife with the intention of creating a happy and enduring family (home) founded on One Almighty God (Surah, 2018).

In traditional marriages, people recognised the concept of joint marital property, and they never argued over each other's assets because mutual trust and understanding formed the basis of their shared marital property. Gradually, foreign cultures entered Indonesia, and globalisation emphasised individualism. Many couples now enter into prenuptial agreements. This clearly contradicts the values of Eastern societies, with various reasons given by husbands and wives for entering into prenuptial agreements with their respective partners (Surah, 2018).

A prenuptial agreement, often referred to as a marriage contract, is a legal instrument whose existence has long been recognised in Indonesian law, although it has been the subject of discussion and development over time. Fundamentally, this is a formal contract between the future husband and wife, made before or during the marriage, to regulate their property and other financial consequences of their marriage.

The existence of prenuptial agreements in Indonesia is supported by various legal foundations, ranging from the Civil Code, the Compilation of Islamic Law, the Marriage Law, to Constitutional Court Decision Number: 69/PUU-XIII/2015.

### **3.1. Civil Code**

Under Article 119 of the Civil Code, marriage gives rise to the union of property, in which case the bond between husband and wife is only one type of property, namely the union of property. Article 139 of the Civil Code grants the husband and wife the right to enter into a prenuptial agreement containing rules regarding property, provided that the agreement does not violate public morality.

The Civil Code's Articles 139–154 govern marriage contracts. Article 139 states that 'By entering into a prenuptial agreement, both prospective spouses have the right to make certain deviations from the laws and regulations concerning the union of property, provided that the agreement does not violate good morals or public order and provided that all the provisions below are complied with in accordance with the following articles'.

A prenuptial agreement according to the Civil Code is an agreement that is not far from various interpretations made by experts, whereby according to civil law, a prenuptial agreement is a contract between a husband and wife that governs how marriage will affect the couple's fortune. In civil law, the creation of a prenuptial agreement must meet the requirements set out in Article 139 of the Civil Code, which declare that the creation of a prenuptial agreement involves freedom of contract. Therefore, based on this, the prenuptial agreement's contents are up to each prospective husband and wife, but must comply with all prohibitions so as to avoid future issues. And in the view of civil law, a provision in a prenuptial agreement is declared valid and has legal force if it meets the following elements (Gemala Dewi, 2018): (1) This prenuptial agreement is based on the decision and consent of both parties and there was no coercion during the drafting process the prenuptial agreement; (2) In drafting the agreement, both spouses must be adults, meet the requirements for marriage, and if a court grants permission for the marriage to occur, the prenuptial agreement must also be approved by the court; (3) The prenuptial agreement must have a clear object, for example, the pooling of personal property or the separation of personal and shared property; (4) The contents of this prenuptial agreement do not conflict with Islamic law, morality, or other laws; (5) The contents of the agreement are written and certified by the marriage registrar.

The legal provisions of prenuptial agreements in civil law can be implemented if they meet the requirements, and according to Article 147 of the Civil Code, prenuptial agreements must be made through a notarial deed to avoid nullity. The existence of a notarial deed under civil law strengthens the agreement and has consequences, such that once the parties are married, the agreement can no longer be changed under civil law. The Civil Code also contains conditions that cannot be included as requirements in a marriage consensus, as specified in Articles 139 to 142 of the Civil Code, which include the following (Gresnia, 2024): (1) The drafting of a prenuptial agreement must not be at odds with morals, religion, or public order; (2) The drafting of a prenuptial agreement must not include terms that could result in the husband losing his status as head of the family, nor may it include an agreement allowing the wife to live separately from the family home; (3) The drafting of a prenuptial agreement must not contain any agreement that exempts the parties from the provisions of the Law on inheritance and must not regulate the inheritance itself; (4) The drafting of a prenuptial agreement must not be in the form of general statements; (5) Prenuptial agreements also cannot be changed, as stipulated in Article 147 of the Civil Code, which reads: 'The prenuptial agreement cannot be altered in any way once the marriage has taken place'.

Based on the above explanation, it can be understood that prenuptial agreements are actually permissible and legally valid within certain conditions, and do not violate any prohibitions.

### **3.2. Compilation of Islamic Law**

Articles 45–52 of the Compilation of Islamic Law address prenuptial agreements. A taklik talak (divorce agreement) and other agreements that do not violate Islamic law may be entered into by both prospective spouses, according to Article 45 of the KHI.

The general contract/agreement law principle of binding force is likewise used in this KHI regulation. A property agreement made during a marriage ceremony in front of a Marriage Registrar is legally enforceable on both the parties and third parties, according to Article 50 paragraph (1).

According to this article, a prenuptial agreement is legally binding on both couples and cannot be made informally.

Article 51 states that "Violation of the prenuptial agreement entitles the wife to request annulment of the marriage or to file for divorce in the Religious Court" in reference to default or prenuptial agreement violations. The Compilation of Islamic Law (KHI) states that there are three components to the imposition of penalties, specifically ([Nurillah, 2022](#)): (1) Ensuring that the agreement will be fulfilled. If a prenuptial agreement is broken, the woman has the right to ask for the marriage to be annulled under Article 51 of the Compilation of Islamic Law. It is possible to exercise this right or not. In essence, the wife's entitlement to ask for the marriage to be annulled stems from a prenuptial agreement violation, not from the husband's punishment or sentence; (2) For the penalty to be applicable, there must be a breach of contract. Only in the event of a breach of contract (failure to fulfill a promise) may the husband be penalized by the wife's right to request annulment of the marriage. Before the marriage can be annulled, there must be a breach of contract or other violation of the agreement; (3) The penalty that is being threatened needs to be specific. The punishment is explicitly specified in Article 51 of the KHI, which gives the wife the option to ask for the marriage to be annulled or to file for divorce. If the wife is entitled to bring a material claim, etc., there are no alternative or substitute provisions.

### **3.3. Marriage Law**

Following the passing of legislation No. 1 of 1974 on Marriage, prenuptial agreements are regulated in Article 29 paragraphs (1) to (4). Article 29 of Law No. 1 of 1974 on Marriage stipulates that agreements must be established either before or at the moment of the marriage. With the provision that with the mutual agreement between the husband and woman, a written agreement can be made, this means that the prenuptial agreement in Law No. 1 of 1974 on Marriage does not specify that the prenuptial agreement must be made with an authentic deed or a private deed, indicating that if a husband and woman want to sign a marriage contract, they can do so either by notarial deed or by private deed, depending on their agreement ([Surah, 2018](#))

Legally, the parties are bound by the marriage contract and each must fulfil their obligations and rights. The parties must also be prepared for the potential legal repercussions, if they violate the marriage contract.

The provisions of Article 29 of Law No. 1 of 1974 concerning Marriage, which specifically regulates Prenuptial agreements, and Article 35 of 1974 concerning Marriage, which specifically regulates Joint Property, are intended by the legislator to give the parties fairness and legal certainty as they navigate their household. Many married couples who have tied the knot end up divorcing, which is why the law regulates how to protect both parties, particularly with regard to property obtained throughout the marriage as well as property obtained by working together during the marriage. In actuality, the Prenuptial agreement also aims to give third parties with an interest in the marriage's property legal protection ([Darusman & SH, 2016](#)).

A prenuptial agreement must be made in writing by both parties and registered at the time of or before to the marriage, according to Law No. 1 of 1974 respecting Marriage, Article 29 paragraph (1). This is intended to provide certainty to both parties regarding which assets belong to each party as separate property and which are joint property. Because Article 35 regulates joint property as property acquired after or during marriage, it states: 1) Property acquired during marriage becomes joint property, (2) The separate property of each husband and wife and property acquired by each as a gift or inheritance is under the control of each party unless the parties determine otherwise" ([Darusman & SH, 2016](#)).

According to Article 29 of Law No. 1 of 1974 on Marriage, prenuptial agreements were formed either before or at the moment of marriage prior to Constitutional Court Decision No. 69/PUU XIII/2015. This implies that any property obtained during or throughout the marriage becomes joint property of the husband and wife until the marriage is dissolved if there was no prior prenuptial agreement. According to Article 35 of Law Number 1 of 1974 Governing Marriage, property obtained

during a marriage becomes joint property, but each husband's and wife's personal property is still under their own authority until both parties decide otherwise.

### **3.4. Constitutional Court Decision No. 69/PUU XIII/2015**

The principle of separate property as adopted by Law No. 1 of 1974 on Marriage in Indonesia is a very accurate measure to avoid conflicts over property during a divorce. The separation of personal property or assets that the husband and wife brought into the union applies automatically without the need for a prenuptial agreement. The principle of separate property is very likely to provide assurance to each spouse that they will be able to maintain their standard of living after a divorce, should one occur (Anshary, 2016).

Only at the time of or before to the marriage can a marriage contract be made. This provision is mandatory, meaning that if it is not fulfilled, the marriage contract is not invalid but has no legal force, with the legal consequence that it is deemed never to have existed (Anshary, 2016).

On 27 October 2016, the Constitutional Court issued Decision No. 69/PUU-XIII/2015 amending the provisions of Article 29 of Law No. 1 of 1974 concerning prenuptial agreements. starting with the case of petitioner Ike Farida, an Indonesian national who wed a Japanese man in accordance with a lawful marriage that was recorded at the DKI Jakarta Civil Registry Office in 1999 as well as the East Jakarta Religious Affairs Office in 1995. Ike Farida never gave up her Indonesian citizenship, did not have a separate property prenuptial agreement, and decided to stay in Indonesia.

On 26 May 2012, Ike Farida purchased one unit of Rusun (apartment building) in Jakarta, but after paying in full for the Rusun, the flat was not handed over and the purchase agreement was abruptly canceled by the developer, citing the lack of a marriage contract and the fact that Ike Farida's husband was a foreign national. According to Article 36 (1) of Law No. 5 of 1960 Governing Basic Agrarian Principles, the developer wrote in its letter that women who marry foreign nationals are not allowed to buy land and/or buildings with building use rights. Because it would have violated Article 36 paragraph (1) of Law Number 5 of 1960 Governing Basic Agrarian Principles, the developer chose not to enter into a Sale and Purchase Agreement or Deed of Sale and Purchase with Ike Farida (Surah, 2018).

Furthermore, according to the developer's letter, property purchased after a marriage becomes joint property under Article 35 paragraph (1) of Law Number 1 of 1974 Governing Marriage. Therefore, if a husband and wife buy real estate (in this case, a flat or apartment) during their marriage, the apartment will become joint property, or gono gini, of the husband and wife in question. This also applies to mixed marriages (between Indonesian citizens and foreign nationals) that are performed without a prenuptial agreement, in which case the apartment bought by an Indonesian husband and wife automatically becomes the property of the foreign spouse as well (Surah, 2018).

The developer's refusal to purchase was then upheld by the Jakarta District Court on 12 November 2014, due to a violation of Article 36(1) of Law Law Number 5 of 1960 concerning Basic Agrarian Principles and Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which are the objective requirements for a valid agreement as specified in Article 1320 of the Civil Code.

Because of this, Ike Farida, the petitioner, filed for a judicial review of a number of articles, including Article 21(1) and (3), Article 36(1) of Law No. 5 of 1960 concerning Basic Agrarian Principles, and Article 29(1), (3) and (4), Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage. These articles have the potential to violate the applicant's constitutional rights, including the right to own property and the right to use buildings.

However, only a portion of Ike Farida's (the petitioner) request—that is, Article 29 paragraphs (1), (3), and (4) of Law Number 1 of 1974 concerning Marriage—was approved by the Constitutional Court.

The Constitutional Court stated that marriage, as defined in Article 1 of Law Number 1 of 1974 concerning Marriage, is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the One Almighty God in its legal considerations regarding the review of Article 29 of Law Number 1 of 1974 concerning

Marriage. In the home and in social situations, the wife has the same rights and status as the husband, allowing the husband and wife to discuss any issues pertaining to the family.

The Constitutional Court claims that ignorance or carelessness regarding the provisions of Law Number 1 of 1974 concerning Marriage, which governs matters of prenuptial agreements, is the basis for the creation of a prenuptial agreement during the marriage or in its legal consideration. A marriage contract must be made "at the time of or before the marriage is solemnized," according to Article 29 of Law Number 1 of 1974 regulating Marriage. Another reason is the potential risk associated with joint property in a marriage as each spouse's job requires them to be accountable for their personal belongings, meaning that any property they acquire stays their personal property.

Article 29 of Law Number 1 of 1974 regulating Marriage was revised by Constitutional Court Decision Number 69/PUU-XIII/2015, which was issued on March 21, 2016. It states: (1) Insofar as it is not construed to mean "At the time, before the marriage is solemnized or during the marriage, both parties may, by mutual consent, submit a written agreement certified by a marriage registrar or notary, after which its contents shall also apply to third parties insofar as the third parties are concerned," Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1 and Supplement to the State Gazette of the Republic of Indonesia Number 3019); (2) Unless interpreted as "At the time, before the marriage is solemnized or during the marriage, both parties may, by mutual consent, submit a written agreement that is certified by a marriage registrar or notary, after which its contents shall also apply to third parties insofar as the third parties are concerned," Article 29(1) of Law No. 1 of 1974 on Marriage (State Gazette of the Republic of Indonesia Year 1974 No. 1 and Supplement to the State Gazette of the Republic of Indonesia No. 3019); (3) Insofar as it is not understood to mean "The agreement shall take effect from the date of the marriage, unless otherwise specified in the Prenuptial agreement," Article 29 paragraph (3) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1 and Supplement to the State Gazette of the Republic of Indonesia Number 3019) is in conflict with the Republic of Indonesia's 1945 Constitution; (4) Insofar as it is not understood to mean "The agreement shall come into effect upon the celebration of the marriage, unless otherwise specified in the Prenuptial agreement," Article 29 paragraph (3) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1 and Supplement to the State Gazette of the Republic of Indonesia Number 3019) is not legally binding; (5) If Article 29 paragraph (4) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1 and Supplement to the State Gazette of the Republic of Indonesia Number 3019) is not understood to mean "During the marriage, the prenuptial agreement may concern marital property or other agreements, and may not be amended or revoked, unless both parties agree to amend or revoke it, and such amendment or revocation does not prejudice a third party."

Two clauses in Article 29 of Law Number 1 of 1974 concerning Marriage the time of making a prenuptial agreement and the ratification of a marriage agreement have been modified by Constitutional Court Decision Number 69/PUU-XIII/2015.

According to the above explanation, this study reveals that prenuptial agreements have a strong normative legal position in positive law in Indonesia. Prenuptial agreements serve as legal instruments that regulate the division of property and the management of rights and obligations between prospective spouses before marriage, thereby providing legal certainty and a mechanism for regulating property disputes in the future.

However, the implementation of prenuptial agreements in practice remains limited due to cultural stigma and uneven legal awareness. This often leads to prenuptial agreements being viewed as contrary to traditional family values and receiving little social support. Furthermore, research indicates the need for harmonisation between civil law, religious law and customary law in order for prenuptial agreements to be effectively applied and widely accepted (Harahap, 2015).

In legal terms, prenuptial agreements must meet legal requirements in the form of a deed drawn up before a notary and needs to be completed prior to the marriage in order to be valid and legally

binding. These agreements cannot be unilaterally changed after the marriage has taken place, in order to shield third parties and maintain legal certainty (Subekti, 2014).

The study also found that although prenuptial agreements legally prevent disputes over property division and financial responsibilities, aspects of protection of the wife's economic rights, rights of children and the obligations of a married couple still need more comprehensive attention and regulation (Anwar, 2019). Therefore, improving legal literacy and raising awareness about the benefits and procedures of prenuptial agreements is essential to optimise the expected legal protection function. See Table 1

**Table 1. Prenuptial Agreement**

Prenuptial Agreement		
<b>Aspect</b>	Before Constitutional Court Decision No. 69/PUU-XIII/2015	After Constitutional Court Decision No. 69/PUU-XIII/2015 (New Interpretation of Article 29)
<b>Main Legal Basis</b>	Article 29 of Law No. 1 of 1974 (before judicial review)	Article 29 of Law No. 1 of 1974 (as interpreted by the Constitutional Court)
<b>Time of Execution</b>	<b>Mandatory</b> to be made <b>before or at the time</b> the marriage is solemnised.	Can be made <b>at any time</b> during the course of the marriage (not strictly before or at the time).
<b>Nature of Agreement</b>	Characterised as <i>rigid</i> ; considered a pure prenuptial agreement.	More flexible; covers prenuptial, at-the-time-of-marriage, and postnuptial agreements.
<b>Legal Force/Validity</b>	Takes effect from the moment the marriage is solemnised.	Takes effect from the time it is certified by the Marriage Registrar/Notary and validated by the court.

#### 4. CONCLUSION

In Indonesian law, a prenuptial agreement is a crucial legal document that governs potential spouses' rights and responsibilities with relation to the management and distribution of property before to marriage. This agreement must be made in writing and certified by an authorised official, such as a notary or marriage registrar, in order to be legally binding. In addition to providing legal certainty, prenuptial agreements also prevent property disputes in the future, both throughout the marriage and in the case of a divorce. However, entering into a prenuptial agreement is not mandatory, so couples can still marry without one. Nevertheless, public awareness and understanding of the importance of prenuptial agreements needs to be improved in order to ensure optimal legal protection for both parties. Clear regulations and harmonisation between civil law, religious law and customary law are also key factors in the successful implementation of prenuptial agreements in Indonesia.

#### Ethical Approval

Not Applicable

#### Informed Consent Statement

Not Applicable

#### Authors' Contributions

AM contributed to the conceptualization of the study, formulation of research objectives, legal analysis, and overall supervision of the manuscript. NL contributed to the literature review and analysis of Indonesian civil and marriage law related to prenuptial agreements. NA contributed to data collection from legal documents and case studies, as well as initial drafting of the manuscript. MRA contributed to the analysis of legal implications and the role of notaries in prenuptial agreements. IUA contributed to manuscript editing, refinement of arguments, and final review to ensure coherence and academic rigor.

## **Disclosure statement**

The Authors declare that they have no conflict of interest

## **Data Availability Statement**

The data presented in this study are available on request from the corresponding author due to privacy reasons.

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## **REFERENCES**

Anshary, H. M. (2016). Harta bersama perkawinan dan permasalahannya. *Bandung: Mandar Maju*.

Anwar, Dewi Fortuna. (2019). Hukum Perdata Indonesia, Kajian dan Perbandingan *Yogyakarta: Kanisius*

Darusman, Y. M., & SH, M. M. (2016). Kajian Yuridis Pengujian Undang-Undang Pasal 29 Ayat (1), Ayat (3), Ayat (4), Pasal 35 Ayat (1) UU No. 1/1974 Tentang Perkawinan (Studi Pada Putusan MK No. 69/PUU-XIII/2015). *PROCEEDINGS UNIVERSITAS PAMULANG*, 1(1).

Gemala Dewi, S. H. (2018). *Hukum Perikatan Islam di Indonesia*. Prenada Media.

Gozali, D. S. (2021). *Ilmu Hukum Dan Penelitian Ilmu Hukum*.

Gresnia, E. (2024). Hukum Perjanjian Pranikah dalam Pandangan Hukum Perdata. *AL-BAHTS: Jurnal Ilmu Sosial, Politik, Dan Hukum*, 2(1), 62–70.

Harahap, M. Yahya. (2015). Hukum Perdata: Perjanjian dan Perikatan. *Jakarta: Sinar Grafika*

Marzuki, P. M. (2011). Penelitian Hukum, cetakan ke-11. *Jakarta: Kencana*.

Nurillah, N. (2022). Tinjauan Yuridis Perjanjian Pra Nikah Dalam Perspektif Hukum Islam Dan Hukum Positif Indonesia. *Jurnal Ilmiah Wahana Pendidikan*, 9(2), 430. <https://doi.org/10.29103/jimfh.v8i1.20024>

Salsabila, V., Jamaluddin, J., & Sulaiman, S. (2025). Perjanjian pranikah dan akibat hukumnya berdasarkan Pasal 29 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan (studi penelitian di wilayah hukum Pengadilan Agama Medan). *Jurnal Ilmiah Mahasiswa Fakultas Hukum Universitas Malikussaleh*, 8(1). <https://doi.org/10.29103/jimfh.v8i1.20024>

Subekti. 2014. Hukum Perjanjian. *Jakarta: Intermasa*

Surah, F. (2018). *Perlindungan hukum bagi pihak ketiga pada perjanjian perkawinan yang dibuat selama perkawinan berlangsung* [Skripsi/tesis, Universitas Lambung Mangkurat]

Yunus, A. (2020). *Hukum Perkawinan dan Itsbat Nikah: Antara Perlindungan dan Kepastian Hukum*. Humanities Genius.