

The Position of a Marriage Agreement in Providing Legal Protection Against the Impact of Infidelity

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Article history:

Received in revised form: 26 February 2026

Acceptance date: 12 March 2026

Available online: 19 March 2026

Keywords:

Infidelity; Civil Law; Marriage Contract.

How to Cite:

Jannati, S. Z., & Ginting, L. (2026). The Position of a Marriage Agreement in Providing Legal Protection Against the Impact of Infidelity. *Al-Risalah Jurnal Ilmu Syariah Dan Hukum*.
<https://doi.org/10.24252/al-risalah.vi.66099>

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Abstract

This study aims to analyze the position and function of prenuptial agreements in the Indonesian marital law system and their role in providing legal protection to parties harmed by infidelity. Infidelity is one of the main causes of marital breakdown that not only generates moral and psychological consequences but also produces legal and economic implications, particularly regarding the division of joint property and the fulfillment of post-divorce rights. This research employs a normative legal method using statutory and conceptual approaches supported by primary, secondary, and tertiary legal materials obtained through literature review. The findings show that prenuptial agreements function as a special legal instrument (*lex specialis*) that allows spouses to regulate deviations from the joint property regime as long as such arrangements do not contradict statutory law, religious values, and public morality. The legal development following Constitutional Court Decision Number 69/PUU-XIII/2015 expands the timeframe for making marriage agreements so that they may be concluded before or during the marriage. This development strengthens the function of prenuptial agreements as a preventive and repressive mechanism of legal protection against potential marital disputes, including those caused by infidelity. However, the scope of such agreements is legally limited because private parties cannot stipulate criminal sanctions for adultery, as criminal liability may only be determined by statutory law. Nevertheless, prenuptial agreements may regulate various civil consequences, including provisions concerning the division of property, maintenance obligations, compensation, and the protection of the rights of wives and children in the event of divorce due to infidelity. Therefore, a marriage agreement serves not only as an instrument for managing marital assets but also as a legal protection mechanism that anticipates the civil consequences of infidelity within the Indonesian marital law framework.

INTRODUCTION

Marriage is a universal cycle and is considered sacred by some countries. In Indonesia, the definition of marriage is legally regulated in Law Number 1 of 1974 concerning Marriage, hereinafter referred to as the Marriage Law. Article 1 of the Marriage Law states that marriage is a physical and spiritual bond between a man and a woman as husband and wife, with the aim of forming a harmonious and lasting family.¹ Marriages don't always run smoothly, as various problems, both material and non-material, often arise. One of the most common is infidelity. Infidelity is a serious global issue. Specifically, according to World Population Review data from 2022 to date, the infidelity rate in five countries has reached 51%.² Infidelity can also be categorized as adultery, according to the KBBI, which is sexual relations between a married man/woman and someone other than their spouse (Language Development Agency, 2018). It is regulated in Article 284 paragraph (1) of the Criminal Code, although Article 27 applies (Pustaka Yustisia Editorial Team, 2019). Unlike prostitution which involves payment and insults human dignity adultery is based on consent without profit (Amalia, 2018). Both are sexual relations outside of marriage and are considered reprehensible by Indonesian society, which upholds morals, manners, and ethics.³

This percentage indicates that infidelity is a serious problem in marriage. In recent years, the issue of infidelity has frequently surfaced in Indonesia and has been widely reported, particularly involving celebrities or influencers.⁴ However, infidelity also occurs in general society and family environments, so it can happen to anyone regardless of economic conditions.⁵

These negative impacts not only affect the moral and emotional realms but also impact the victim's legal standing before the state. In many cases, the victim of infidelity, often the wife, finds herself in a vulnerable position when facing divorce proceedings and the division of joint assets, especially if there is no clear arrangement from the outset

¹ Undang Undang Republik Indonesia, "Undang Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan" (1974).

² World Population Review, "Infidelity Rates by Country 2025," 2025, <https://worldpopulationreview.com/country-rankings/infidelity-rates-by-country>.

³ Guntur Hudry Hasibuan Ginting, Ahmad Zaky, Lilawati Ginting, "Open Marriage: Rules For Free Sex Between Couples In Heterosexual Marriages According To Islamic And Conventional Law In Indonesia," *Proceeding International Seminar of Islamic Studies* 1, no. 2 (2025): 1-13.

⁴ Faisal Riza Farhan Ichsan Fadillah, "Penyelesaian Sengketa Wanprestasi Sewa-Menyewa Satelit Kemenhan RI Dengan Avanti Communications Secara Arbitrase," *UNES Law Review* 6, no. 3 (2023): 323-43.

⁵ H. N Sibot, Y. S., Natasha, D., & Cahyanti, "Upaya Hukum Untuk Menjerat Tindakan Pelaku Perselingkuhan Dalam Perspektif Hukum Adat Dayak Ngaju," *Journal of Syntax Literate* 8, no. 9 (2023): 5323-34.

regarding marital assets and the responsibilities of each party.⁶ This situation demonstrates the need for preventive mechanisms to minimize the losses suffered by victims when infidelity leads to marital breakdown. One preventative measure is through a carefully and fairly drafted prenuptial agreement both before and during the marriage.⁷ Marriage is essentially a contract, hence the term "marriage agreement." Its provisions are contained in the Civil Code, hereinafter referred to as the Civil Code. Article 139 of the Civil Code states that prospective husbands and wives may enter into a marriage agreement that differs from the provisions on joint property, provided it does not violate morality or public order.⁸ The Marriage Law actually limits the scope of these marriage agreements, thus harming the victims. However, Constitutional Court Decision No. 69/PUU-XIII/2015 allows couples to enter into marriage agreements both before and during marriage. This ruling provides legal protection for injured parties, including victims of infidelity, making marriage agreements more flexible and robust.⁹

Several previous studies have discussed prenuptial agreements and infidelity from various perspectives. Karman examines the position of prenuptial agreements in the Civil Code and focuses on their validity and limitations in civil law.¹⁰ Salsiah et al. studied the legal consequences of marriage agreements on joint property.¹¹ Faizal and Sari discuss evidence and legal protection for victims of infidelity in joint property disputes.¹² These studies generally position prenuptial agreements as an instrument for managing assets or place infidelity within the context of evidence and divorce. However, no comprehensive study has yet explored prenuptial agreements as an instrument for preventative legal protection against the impact of infidelity within the framework of the Indonesian marital law system.

Based on these conditions, the scientific novelty of this research lies in its attempt to construct prenuptial agreements not merely as an instrument for managing assets, but

⁶ I. D. S Salsiah, L., Putri, E. A., & Saimima, "Perjanjian Perkawinan Dan Akibat Hukumnya Atas Harta Bersama," *Jurnal Hukum Sasana* 10, no. 2 (2024): 184-186.

⁷ F. R. W Putri, A. R., Luisa, M., & Adhi, "Perlindungan Harta Dalam Perkawinan Pentingnya Pencatatan Perjanjian Perkawinan Di Indonesia," *Jurnal Panorama Hukum* 10, no. 1 (2025): 15-36.

⁸ Tim Literasi Nusantara, *KUHPer (Kitab Undang-Undang Hukum Perdata) Dan KUHAper (Kitab Undang-Undang Hukum Acara Perdata) Beserta Penjelasannya* (Malang: Literasi Nusantara Abadi, 2021).

⁹ Mahkamah Konstitusi, "Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 Tentang Pengujian Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan" (2015).

¹⁰ K Karman, "Kedudukan Perjanjian Perkawinan Dalam Kitab Undang-Undang Hukum Perdata," *Cross-Border* 3, no. 1 (2020): 178-98.

¹¹ Salsiah, L., Putri, E. A., & Saimima, "Perjanjian Perkawinan Dan Akibat Hukumnya Atas Harta Bersama."

¹² D. A Faizal, N., & Sari, "Pembuktian Dan Perlindungan Hukum Terhadap Korban Perselingkuhan Dalam Sengketa Harta Bersama," *Al-Syakhshiyah Jurnal Hukum Keluarga Islam Dan Kemanusiaan* 6, no. 2 (2024): 19-32.

also as a mechanism for preventative legal protection against potential losses resulting from infidelity. Therefore, the questions examined in this research are (1) What are the legal regulations and status of prenuptial agreements within the Indonesian marital law system and (2) How do prenuptial agreements provide legal protection for parties harmed by marital infidelity.

METHODS

This research is a normative legal study that focuses on the examination of applicable legal norms, both those contained in legislation and in doctrine and court decisions. Normative legal research was chosen because the object of this study focuses on analyzing the position and function of prenuptial agreements within the Indonesian marital law system and their relevance in providing legal protection against the impacts of infidelity. Therefore, this study does not use empirical field data, but rather relies on secondary data obtained through literature review.¹³

The secondary data in this study consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include relevant laws and regulations, such as Law Number 1 of 1974 concerning Marriage and its amendments, the Civil Code (KUHPerdata), the Compilation of Islamic Law (KHI), and Constitutional Court Decision Number 69/PUU-XIII/2015. Secondary legal materials include legal literature, textbooks, scientific journals, previous research results, and expert opinions related to marriage agreements, infidelity, and legal protection. Tertiary legal materials include legal dictionaries, encyclopedias, and other sources that support an understanding of the terms and concepts used in this study.¹⁴

The approaches used in this research are a statutory approach and a conceptual approach. The statutory approach is conducted by examining and analyzing various legal provisions governing marriage contracts and legal protection in the Indonesian legal system. Meanwhile, the conceptual approach is conducted by examining theories, legal principles, and scholarly doctrines related to the concepts of infidelity, freedom of contract, legal protection, and the status of agreements in civil law.

This research is descriptive and analytical in nature, aiming to systematically and comprehensively describe the legal regulations governing marriage contracts and analyze their role in providing legal protection to parties harmed by infidelity. The analysis is conducted by interpreting applicable legal norms and relating them to the

¹³ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2016).

¹⁴ Bayu Indra Pratama et al., *Metode Analisis Isi (Metode Penelitian Populer Ilmu-Ilmu Sosial)* (Unisma Press, 2021).

issues studied, resulting in a logical and systematic legal argument in accordance with the research objectives.

RESULTS AND DISCUSSION

1. Legal Regulations and Position of Marriage Agreements in the Marriage Law System in Indonesia

A marriage agreement is a legal instrument recognized in the Indonesian marriage law system, namely an agreement made by prospective husband and wife or husband and wife to regulate rights and obligations, especially those relating to assets within their marriage bond.¹⁵ Moch. Isnaeni emphasized that a marriage agreement is basically a form of freedom of contract which has been adapted to the realm of family law, where the parties are given space to develop their own rules of the game as long as they do not conflict with applicable legal, religious and moral norms.¹⁶ Meanwhile, H.A. Damanhuri HR defines it formally as every agreement made in accordance with the provisions of the law between prospective husband and wife, with the contents of the agreement not being questioned as long as they do not conflict with the law, religion, and propriety.¹⁷

The legal regulation of marriage contracts in Indonesia is based on three concurrent legal instruments: Law Number 1 of 1974 concerning Marriage, the Civil Code (KUH Perdata), and the Compilation of Islamic Law (KHI). In the KUH Perdata, marriage contracts are regulated in detail in Articles 139 to 154, which require them to be drawn up before the marriage takes place through a notarial deed and emphasize that the agreement cannot be changed after the marriage takes place.¹⁸ For Muslims, Article 45 paragraph (1) KHI regulates that prospective brides and grooms can enter into marriage agreements in two forms, namely taklik talak and other agreements that do not conflict with Islamic law.¹⁹ This regulatory pluralism reflects the diverse nature of Indonesia's legal system, where state law coexists with the values of religious and customary law prevalent in society. As reviewed by Sukiati of the Muhammadiyah University of North Sumatra (UMSU), the aspect of legal certainty is a fundamental principle in the

¹⁵ Indoensia, Undang Undang Republik Indoensia Nomor 1 Tahun 1974 tentang Perkawinan.

¹⁶ Moch. Isnaeni, *Hukum Perkawinan Indonesia* (Bandung: Refika Aditama, 2023).

¹⁷ Damanhuri, *Segi-Segi Hukum Perjanjian Perkawinan Harta Bersama* (Bandung: Mandar Maju, 2022).

¹⁸ Nusantara, *KUHPer (Kitab Undang-Undang Hukum Perdata) Dan KUHAPer (Kitab Undang-Undang Hukum Acara Perdata) Beserta Penjelasannya*.

¹⁹ Ratih; Yulia; Marlia Sastro Purwasih, "Perlindungan Hukum Terhadap Anak Angkat Tanpa Penetapan Pengadilan (Studi Penelitian Di Jorong Katimahar, Kecamatan Panti, Kabupaten Pasaman)," *Jurnal Ilmiah Mahasiswa Fakultas Hukum (JIMFH)* 8, no. 54 (2025): 1–19.

application of marriage law in Indonesia, including in the context of agreements made based on applicable statutory provisions.²⁰

The most crucial legal development in the regulation of marriage contracts was the issuance of Constitutional Court (MK) Decision Number 69/PUU-XIII/2015. Prior to this decision, Article 29 of the Marriage Law limited the creation of a marriage contract to "at the time or before the marriage takes place," so that couples who had married without an agreement could no longer make such a contract. Through this Constitutional Court Decision, this phrase must now be interpreted to include the period during which the marriage bond lasts, so that a marriage contract can be made before, during, or after the marriage takes place.²¹ This expansion gave rise to two legally recognized forms of agreement: prenuptial agreements and postnuptial agreements. Esther Masri and Sri Wahyuni note that this development represents a significant paradigm shift, with Indonesian marriage law no longer rigidly restricting the timing of agreements but becoming more responsive to the legal needs of modern society.²²

From a legal perspective, a marriage contract is considered a special agreement (*lex specialis*) that is both subject to and deviates from the general provisions of contract law. It is said to be subject to the requirements for a valid marriage contract, namely the agreement of the parties, legal capacity, a specific object, and a lawful cause. It is said to deviate from the requirements because the marriage contract has stricter formal requirements, namely that it must be made in writing and validated by a Marriage Registrar (PPN) or notary to have binding legal force, and must be registered to be valid for third parties.²³ In their legal study, Alimuddin and Muhammadong emphasized that the position of a marriage agreement actually connects the private legal realm with the public dimension as well as religious values, so that it cannot be treated simply as an ordinary civil agreement.²⁴

In relation to assets, a marriage agreement is an instrument that can deviate from the joint property regime as regulated in Article 35 of the Marriage Law, which in principle

²⁰ Indah Amani Lubis Sukiati, Yadi Harahap, "Juridical Analysis of the Implementation of Itsbat Nikah in the Principle of Legal Certainty in the Religious Court Decision Number 93/Pdt.P/2018/PA.TTE," *ANAYASA: Journal of Legal Studies* 2, no. 1 (2024): 75–82.

²¹ Indoensia, Undang Undang Republik Indoensia Nomor 1 Tahun 1974 tentang Perkawinan.

²² Faradilla Asyatama and Fully Handayani Ridwan, "Analisis Perjanjian Perkawinan Menurut Undang-Undang Perkawinan Di Indonesia," *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (2021): 109–22, <https://doi.org/10.30656/ajudikasi.v5i2.3937>.

²³ Sri Wahyuni et al., "Sistem Hukum Perkawinan Di Indonesia Menurut Persepektif Hukum Perdata," *Jurnal Mahasiswa Karakter Bangsa* 1, no. 2 (2021): 143–49.

²⁴ Ervina Martha Herawati et al., "Kepastian Hukum Perkawinan Beda Negara Berdasarkan Hukum Perdata Internasional Indonesia," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. November (2023): 125–33.

stipulates that all assets acquired during the marriage become the joint property of the husband and wife.²⁵ Through a prenuptial agreement, the parties can choose to separate assets completely, separate only certain assets, or even arrange other forms of mutual agreement. Mahsulafari stated that this function makes prenuptial agreements very relevant, especially in the context of mixed marriages between Indonesian citizens (WNI) and foreign citizens (WNA), in order to protect the ownership rights of Indonesian citizens' assets over land that is legally only owned by Indonesian citizens.²⁶ Mahbubatul Hafifi et al. added that the provisions in a marriage agreement will determine the legal consequences for joint assets in the event of a divorce, so this agreement acts as a very strategic preventive legal protection instrument.²⁷

Another important aspect of the position of a marriage agreement is the principle of publicity, namely the obligation to register the agreement so that it applies to third parties. Joy Prananta Barus examines that unregistered marriage agreements only bind the parties who make them (*inter partes*), so that third parties who contract with one of the parties are not bound and cannot be harmed by the existence of the agreement.²⁸ Registration takes place at the Religious Affairs Office (KUA) for Muslims or at the Population and Civil Registration Office (Disdukcapil) for non-Muslims. Ayu Putri Lestari et al. emphasized that this registration mechanism is an essential requirement for achieving legal certainty, given the ongoing gap in technical regulations regarding the registration of agreements made during marriage following the Constitutional Court's ruling.²⁹

Despite providing considerable freedom, a marriage contract is not unlimited. There are things that legally cannot be made the object of a marriage contract, including: agreements that eliminate the husband's obligation to provide support to his wife and children; agreements that eliminate children's inheritance rights; and agreements that conflict with public order, morality, or the religious norms of the parties. Syarif Hidayatullah and Zil Aidi emphasized that a marriage contract made after the marriage has taken place cannot be applied retroactively to assets that existed before the contract

²⁵ Indoensia, Undang Undang Republik Indoensia Nomor 1 Tahun 1974 tentang Perkawinan.

²⁶ R F Mahsulafari, "Problematisasi Penanaman Pendidikan Agama Islam Pada Keluarga Nikah Dini Di Kecamatan Gedangan Kabupaten Malang," *Jurnal Hukum*, 2019.

²⁷ Muhammad Sultan Mubarak, *Sejarah Pemikiran Ekonomi Islam* (Purbalingga: EUREKA MEDIA AKSARA, 2021).

²⁸ Angga Syahputra, Asmuni Asmuni, and Tuti Anggraini, "Urgensi Maqashid Syariah Dalam Pengelolaan Harta," *Jurnal Iqtisaduna* 9, no. 1 (2023): 14–27, <https://doi.org/10.24252/iqtisaduna.v9i1.36636>.

²⁹ Ayu Putri Lestari; Irwan Sapta Putra; Ayang Fristia Maulana, "Tinjauan Yuridis Pendaftaran Perjanjian Kawin Di Kota Serang Dalam Perspektif UU No. 16 Tahun 2019 Dan Putusan MK No. 69/PUU-XIII/2015," *Rewang Rencang: Jurnal Hukum Lex Generalis* 6, no. 6 (2025): 1–16.

was made, unless expressly agreed by both parties and does not harm a third party.³⁰ This principle is in line with the study of the *De Lega Lata* journal published by the Faculty of Law, Muhammadiyah University of North Sumatra (UMSU), that changes in legal status in marriage cannot be done unilaterally and must pay attention to the protection of interested parties.³¹

Thus, it can be concluded that the legal regulation of marriage agreements in Indonesia is pluralistic and has undergone significant development, especially after the Constitutional Court Decision Number 69/PUU-XIII/2015 which expanded the timeframe for their creation to include the duration of the marriage. In terms of status, a marriage agreement occupies a special legal instrument that connects private law with the public, religious, and moral dimensions, and functions as a means of preventive legal protection for both parties in a marriage. Abd. Hannan and Herlina concluded that the effectiveness of a marriage agreement as an instrument protecting the rights of the parties depends heavily on the fulfillment of all formal and material requirements, including the obligation to be ratified by an authorized official and registered so that it is valid for third parties.³² Therefore, strengthening technical regulations and increasing public legal literacy regarding marriage agreements is an urgent legal agenda to ensure that this instrument can function optimally in the Indonesian marriage law system.

2. Marriage Agreement as Legal Protection for Parties Harmed by Infidelity in Marriage

The noble goal of marriage, as a physical and spiritual bond to form a happy and lasting family, is not always realized in every household. One of the greatest threats to the integrity of a marriage is infidelity by one of the partners.³³ The phenomenon of infidelity not only destroys trust between husband and wife but also has serious consequences for the victims. Adiyana Adam's research reveals that infidelity by husbands can lead to serious mental and physical health problems for wives, ranging from depression and excessive anxiety to a decreased overall quality of life.³⁴ In addition to the psychological impact, infidelity also has legal implications, particularly regarding

³⁰ Zil Aidi Syarif Hidayatullah, "Judicial Review of Post-Nuptial Agreement After Constitutional Court Decision Number 69/PUU-XIII/2015," *Legal Standing: Jurnal Ilmu Hukum* 7, no. 2 (2023): 350–60.

³¹ Ida Martinelli, "Status Hukum Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VII/2010," *De Lega Lata: Jurnal Ilmu Hukum Universitas Muhammadiyah Sumatera Utara* 1, no. 2 (2016): 321–34.

³² Herlina Abd. Hannan, "Perjanjian Perkawinan Menurut Perundang-Undangan Di Indonesia," *As-Sakinah Journal of Islamic Family Law* 2, no. 1 (2024): 1–16.

³³ Indoensia, Undang Undang Republik Indoensia Nomor 1 Tahun 1974 tentang Perkawinan.

³⁴ Adiyana Adam, "Dampak Perselingkuhan Suami Terhadap Kesehatan Mental Dan Fisik Istri," *Jurnal Kajian Perempuan, Gender Dan Agama* 14, no. 2 (2020): 177–86.

the legal rights and obligations of both parties in a marriage and the legal consequences that arise if the marriage ends in divorce. Within the framework of legal protection, a prenuptial agreement can serve as a preventive instrument for various legal consequences in the event of a breach of the promise of fidelity within the marriage bond.

A prenuptial agreement is a written agreement between a husband and wife or prospective husband and wife that regulates various aspects of their rights and obligations, particularly those related to the management of assets and other matters permitted by law.³⁵ In practice, the scope of a marriage contract is not limited solely to property matters. It can encompass other mutually agreed-upon aspects, as long as they do not violate legal norms, religious values, or prevailing societal morals.³⁶ Recently, a trend has emerged for couples to include specific clauses in their marriage agreements prohibiting infidelity and the legal consequences that will be borne if a violation occurs. Rahmat Fadillah and M. Beta Subehi note that prenuptial agreements containing promises not to cheat have become an increasingly common phenomenon in Indonesian society, although from both Islamic and positive law perspectives, this type of agreement has certain limitations, especially regarding criminal sanctions that cannot be regulated by private parties.³⁷

The parties' freedom to enter into a marriage contract must remain subject to applicable legal constraints. Infidelity is recognized under Indonesian law as a legitimate reason for divorce, but it is not automatically a criminal offense unless adultery (sexual relations) can be proven and a complaint is filed by the competent authorities. Therefore, a marriage contract cannot contain provisions that impose criminal sanctions on parties who commit adultery, as this would contradict the principle of legality in criminal law, which states that only the law can determine criminal acts and their sanctions.³⁸ However, married couples still have the freedom to regulate the civil legal consequences of infidelity in their agreement, such as stipulating unequal rights to joint property, the obligation to pay a certain amount of compensation, or other legally valid provisions, as long as they do not eliminate rights protected by statutory regulations.

Indonesian marriage law expressly recognizes infidelity as a justifiable reason for someone to file for divorce. The provisions of Article 39 paragraph (2) of the Marriage Law, further elaborated in Article 19 letter (a) of Government Regulation Number 9 of

³⁵ Indoensia, Undang Undang Republik Indoensia Nomor 1 Tahun 1974 tentang Perkawinan.

³⁶ Damanhuri, *Segi-Segi Hukum Perjanjian Perkawinan Harta Bersama*.

³⁷ Karman, "Kedudukan Perjanjian Perkawinan Dalam Kitab Undang-Undang Hukum Perdata."

³⁸ Master Legal Solution, "Perjanjian Perkawinan: Pengertian, Jenis, Dan Perlindungan Hukum Terhadap Pasangan," 2025.

1975, state that adultery is a valid reason for divorce.³⁹ In religious court practice, infidelity is one of the most frequently cited grounds for divorce. Rahmi's 2021 study of Aceh Religious Court rulings found that infidelity, which begins with interactions on social media and then escalates into a physical relationship, has become a dominant cause of divorce in today's digital age.⁴⁰ This fact demonstrates that infidelity not only causes moral and emotional harm, but is also legally recognized as a serious violation of the obligations inherent in the marriage bond.

In addition to divorce, victims of infidelity can theoretically also pursue another legal route, namely a lawsuit based on an unlawful act (PMH), as stipulated in Article 1365 of the Civil Code. This provision states that any unlawful act that causes harm to another person requires the perpetrator to provide compensation.⁴¹ In the context of infidelity, such actions can be categorized as a violation of moral norms that cause losses, both material and immaterial, for the betrayed partner. However, Madeline Metta Tanudjaja and Rosa Agustina, in their research analyzing various court decisions in Indonesia, concluded that although a lawsuit for sexual harassment (PMH) due to infidelity is theoretically possible, in practice it is very difficult for judges to grant. The main obstacles encountered include difficulties in providing evidence, the use of evidence that does not meet formal requirements, flaws in the formulation of the lawsuit, and the absence of regulations that explicitly categorize infidelity as an unlawful act. As a result, judges tend to be very cautious and conservative in interpreting moral norms as an unlawful act in cases of infidelity.⁴²

For Muslim couples, legal protection for victims of infidelity can be obtained through the taklik talak instrument which is an integral part of the marriage agreement in the Indonesian Islamic legal system. Taklik talak is a conditional divorce promise made by the husband shortly after the marriage contract, which contains a promise to impose a divorce if the husband commits certain actions such as having an affair, not providing support, or hurting the wife.⁴³ Wahyuni explained that taklik talak provides spiritual

³⁹ Indoensia, Undang Undang Republik Indoensia Nomor 1 Tahun 1974 tentang Perkawinan.

⁴⁰ Rahmi, "Strategi Kantor Urusan Agama (KUA) Kecamatan Ulee Kareng Dalam Mengoptimalkan Program Bimbingan Perkawinan (BIMWIN) Pranikah. Universitas Islam Negeri AR-Raniry Darussalam Banda Aceh" (Universitas Islam Negeri Ar-Raniry Darussalam-Banda Aceh, 2021).

⁴¹ Nusantara, *KUHPer (Kitab Undang-Undang Hukum Perdata) Dan KUHAper (Kitab Undang-Undang Hukum Acara Perdata) Beserta Penjelasannya*.

⁴² Margaritha Rami Ndoen and Febi Meliana Ingratubun, "Tinjauan Yuridis Terhadap Adopsi Anak Warga Negara Indonesia Oleh Warga Negara Asing," *PAULUS Law Journal* 3, no. 1 (2021): 39–49.

⁴³ Muhammad Yusuf, Akhmad Haries, and Moh Mahrus, "Interpretasi Hakim Terhadap Pasal 99 Huruf A Kompilasi Hukum Islam Dalam Perkara Penetapan Ahli Waris Untuk Memenuhi Hak-Hak Anak," *Jurnal Tuna Mana* 3, no. 2 (2023): 90–106, <https://ojs.staialfurqan.ac.id/jtm/>.

strength as well as real legal protection for women in facing the possibility of violations of obligations by their husbands, including in the case of infidelity and neglect.⁴⁴ Sukiati from the Muhammadiyah University of North Sumatra (UMSU) in her legal analysis emphasized that legal certainty is a very fundamental principle in the application of marriage law, including in terms of protecting the rights of wives through various mechanisms such as taklik talak and other legally recognized marriage agreements.⁴⁵

One concrete form of legal protection that a prenuptial agreement can provide is the regulation of assets acquired during the marriage. Normatively, assets acquired during the marriage become joint assets, owned jointly by the husband and wife.⁴⁶ However, through a prenuptial agreement, the parties can agree to different arrangements, for example, that if one party is proven to have committed adultery, the division of joint assets will not be carried out equally, or even all joint assets will be fully owned by the innocent party. Such arrangements have real financial consequences for the perpetrator of the affair, so they can function as a deterrent and protective instrument for the victim. Pranata and rahim, in their study, emphasize that prenuptial agreements have significant implications in efforts to protect the interests of husband and wife, especially regarding the division of joint assets in the event of divorce, including divorce caused by adultery.⁴⁷

Another essential aspect of legal protection is the guarantee of fulfilling the obligation to provide support to the wife, both during the marriage and after divorce. Indonesian marriage law requires the husband to protect his wife and meet all household needs according to his ability.⁴⁸ This obligation is further emphasized in the Compilation of Islamic Law, which specifically stipulates that a husband is obligated to provide maintenance that covers the living needs of his wife and all family members. In the context of divorce due to infidelity, the husband remains obligated to provide maintenance for the iddah period, mut'ah (a period of consolation), and child support. Through a marriage contract, the parties can clarify and stipulate the minimum amount of maintenance that must be provided, and can even stipulate a larger amount as a form of compensation for the moral and psychological harm suffered by the wife due to the husband's infidelity. Research conducted by Dian Apriyana revealed that in practice, the

⁴⁴ Wahyuni et al., "Sistem Hukum Perkawinan Di Indonesia Menurut Persepektif Hukum Perdata."

⁴⁵ Sukiati, Yadi Harahap, "Juridical Analysis of the Implementation of Itsbat Nikah in the Principle of Legal Certainty in the Religious Court Decision Number 93/Pdt.P/2018/PA.TTE."

⁴⁶ Indoensia, Undang Undang Republik Indoensia Nomor 1 Tahun 1974 tentang Perkawinan.

⁴⁷ Wiwin Pranata and Abdul Rahim, "Penundaan Kehadiran Anak Akibat Perkawinan Usia Muda Ditinjau Menurut Hukum Islam (Studi Pada Desa Jaling, Kec. Awangpone, Kab. Bone)," *Nukhbatul 'Ulum* 4, no. 2 (2018): 101-11, <https://doi.org/10.36701/nukhbah.v4i2.44>.

⁴⁸ Indoensia, Undang Undang Republik Indoensia Nomor 1 Tahun 1974 tentang Perkawinan.

obligation to provide maintenance is often not fulfilled properly because the husband is negligent or deliberately avoids his responsibilities. Therefore, a clear and firm marriage contract can be a solution to provide legal certainty and financial protection for the wife.⁴⁹

A marriage agreement can also provide legal protection in the form of affirming other rights attached to the wife and children, such as the right to hadhanah (child custody), the right to residence, and various other rights recognized by law. In the context of infidelity, the agreement can contain a clause stating that if the husband is proven to be having an affair, then custody of the child will automatically fall to the wife without the need to go through a lengthy trial process. Apart from that, the agreement can also regulate guarantees in the form of collateral or certain assets that must be handed over by the husband as a form of responsibility for fulfilling his legal obligations in the event of a divorce. As stated in the journal *De Lega Lata* published by the UMSU Faculty of Law, changes in the legal status of marriage and the protection of the rights inherent in the parties involved must be based on the principles of legal certainty and balanced justice.⁵⁰

It is important to understand that while a prenuptial agreement can regulate the civil consequences of infidelity, the criminal aspects of adultery cannot be regulated through a private agreement because criminal law is mandatory and can only be determined by law. Based on the New Criminal Code that has been passed and will be effective starting January 2, 2026, adultery (sexual intercourse with an unmarried person) is punishable by a maximum of one year in prison or a fine.⁵¹ However, adultery falls under the category of absolute complaint offenses, meaning that criminal prosecution can only be pursued upon a formal complaint from the legal spouse or the parents/children of the unmarried party. Adultery in the context of criminal law is very difficult because it requires concrete evidence of sexual intercourse, making criminal proceedings often ineffective in providing legal protection for victims of infidelity.⁵² Therefore, regulation through a prenuptial agreement that focuses on civil aspects is a more realistic and applicable alternative for providing real legal protection.

⁴⁹ Dian Apriyana, "Perkawinan Antara Warga Negara Indonesia Dan Warga Negara Asing Dalam Melindungi Hak Perempuan Dan Anak (Implementasi UU Nomor 12 TAHUN 2006 Tentang Kewarganegaraan RI)," *Syakhshiyah Jurnal Hukum Keluarga Islam* 3, no. 12 (2023): 1-12, <https://doi.org/10.32332/syakhshiyah.v3i1.7075>.

⁵⁰ Martinelli, "Status Hukum Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VII/2010."

⁵¹ Pasal 832 KUHP, "Kitab Undang-Undang Hukum Perdata" (2007).

⁵² Purwasih, "Perlindungan Hukum Terhadap Anak Angkat Tanpa Penetapan Pengadilan (Studi Penelitian Di Jorong Katimahar, Kecamatan Panti, Kabupaten Pasaman)."

From a prevention perspective, a prenuptial agreement containing a clause regarding infidelity and its legal consequences can have a strong psychological and moral impact on both parties, encouraging them to maintain their commitment and fidelity within the marital bond. Marrich et al. assert that a prenuptial agreement serves as a comprehensive instrument for protecting joint property and the rights of husband and wife, including anticipating various potential conflicts that may arise from breaches of obligations, one of which is infidelity.⁵³ A marriage agreement acts as an instrument for preventing disputes because it provides legal certainty regarding the rights and obligations of each party from the start, so that the potential for conflict in the future can be minimized.⁵⁴ With clear and firm consequences agreed upon from the outset, the parties will be more vigilant in upholding their marital commitments. This type of agreement not only protects the victim reactively after a violation occurs but also serves as a proactive deterrent mechanism by creating a deterrent effect for those who intend to violate their promise of fidelity.

Based on the above description, it can be concluded that a marriage contract provides multidimensional legal protection for parties harmed by infidelity. The first dimension is preventive protection, which clearly defines the legal consequences that the perpetrator of the infidelity will face, thereby preventing or reducing the likelihood of a breach of fidelity. The second dimension is repressive protection, which regulates rights to joint property, maintenance obligations, and other forms of compensation that must be met by the guilty party after being proven guilty of infidelity. The third dimension is procedural protection, which provides legal certainty and facilitates the process of enforcing the victim's rights through provisions previously agreed upon in the agreement. Although a marriage contract cannot regulate the criminal aspects of adultery and cannot replace the function of a court decision in cases of divorce, a marriage contract provides a very strong legal basis for the protection of the civil rights of the injured party, especially in terms of fulfilling the obligation of maintenance, the fair distribution of joint property, and guarantees of other rights recognized by law. To ensure that this legal protection can run effectively, a marriage contract must be made in written form, authorized by an authorized official (Marriage Registrar or notary), and registered in accordance with the

⁵³ Feva Marrich et al., "Implementasi Kebijakan Tentang Penanganan Tindak Kekerasan Seksual Terhadap Anak (Suatu Penelitian Di UPTD-PPA Provinsi Sulawesi Utara)," *Jurnal Governance* 2, no. 2 (2022): 2022.

⁵⁴ Yusuf, Haries, and Mahrus, "Interpretasi Hakim Terhadap Pasal 99 Huruf A Kompilasi Hukum Islam Dalam Perkara Penetapan Ahli Waris Untuk Memenuhi Hak-Hak Anak."

provisions of applicable laws and regulations so that it has legally binding force and can be enforced against interested third parties.⁵⁵

CONCLUSION

Based on the research and discussion, it can be concluded that a prenuptial agreement in the Indonesian marital law system constitutes a special legal instrument (*lex specialis*) that regulates the legal relationship between husband and wife, particularly regarding property arrangements. Such agreements may also contain other provisions as long as they do not contradict statutory regulations, religious norms, and morality. These provisions are derived from Law Number 1 of 1974 concerning Marriage, the Civil Code, and the Compilation of Islamic Law. Significant developments occurred following Constitutional Court Decision Number 69/PUU-XIII/2015, which expanded the timeframe for making agreements, allowing them to be concluded before or during marriage. This development strengthens the position of prenuptial agreements as a flexible legal instrument that can adapt to contemporary social and legal needs.

Furthermore, prenuptial agreements can function as a legal protection mechanism for parties harmed by infidelity, both preventively and repressively. Preventively, an agreement may include clauses regulating the civil consequences of breaches of marital fidelity, thereby creating a deterrent effect. Repressively, the agreement may regulate the division of joint assets, maintenance obligations, compensation, and the protection of the rights of wives and children in the event of divorce caused by infidelity. Although such agreements cannot stipulate criminal sanctions for adultery, they still provide a strong legal basis for guaranteeing the civil rights of the injured party.

From an academic perspective, this study contributes to the development of Indonesian marital law discourse by positioning prenuptial agreements not merely as instruments for property management, but also as a preventive legal protection mechanism against the civil consequences of marital infidelity. This perspective expands the understanding of the function of marriage agreements within the broader framework of legal protection in family law.

REFERENCES

Abd. Hannan, Herlina. "Perjanjian Perkawinan Menurut Perundang-Undangan Di Indonesia." *As-Sakinah Journal of Islamic Family Law* 2, no. 1 (2024): 1-16.

⁵⁵ Konstitusi, Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 tentang Pengujian Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan.

- Adam, Adiyana. "Dampak Perselingkuhan Suami Terhadap Kesehatan Mental Dan Fisik Istri." *Jurnal Kajian Perempuan, Gender Dan Agama* 14, no. 2 (2020): 177–86.
- Ali, Zainuddin. *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, 2016.
- Apriyana, Dian. "Perkawinan Antara Warga Negara Indonesia Dan Warga Negara Asing Dalam Melindungi Hak Perempuan Dan Anak (Implementasi UU Nomor 12 TAHUN 2006 Tentang Kewarganegaraan RI)." *Syakhshiyah Jurnal Hukum Keluarga Islam* 3, no. 12 (2023): 1–12. <https://doi.org/10.32332/syakhshiyah.v3i1.7075>.
- Damanhuri. *Segi-Segi Hukum Perjanjian Perkawinan Harta Bersama*. Bandung: Mandar Maju, 2022.
- Faizal, N., & Sari, D. A. "Pembuktian Dan Perlindungan Hukum Terhadap Korban Perselingkuhan Dalam Sengketa Harta Bersama." *Al-Syakhshiyah Jurnal Hukum Keluarga Islam Dan Kemanusiaan* 6, no. 2 (2024): 19–32.
- Faradilla Asyatama, and Fully Handayani Ridwan. "Analisis Perjanjian Perkawinan Menurut Undang-Undang Perkawinan Di Indonesia." *Ajudikasi: Jurnal Ilmu Hukum* 5, no. 2 (2021): 109–22. <https://doi.org/10.30656/ajudikasi.v5i2.3937>.
- Farhan Ichsan Fadillah, Faisal Riza. "Penyelesaian Sengketa Wanprestasi Sewa-Menyewa Satelit Kemenhan RI Dengan Avanti Communications Secara Arbitrase." *UNES Law Review* 6, no. 3 (2023): 323–43.
- Ginting, Ahmad Zaky, Lilawati Ginting, Guntur Hudry Hasibuan. "Open Marriage: Rules For Free Sex Between Couples In Heterosexual Marriages According To Islamic And Conventional Law In Indonesia." *Proceeding International Seminar of Islamic Studies* 1, no. 2 (2025): 1–13.
- Herawati, Ervina Martha, Vonny Fatikha Azzahra, Sheilla Syafadita, Budhi Pinasty, and Farrel Arrigo. "Kepastian Hukum Perkawinan Beda Negara Berdasarkan Hukum Perdata Internasional Indonesia." *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. November (2023): 125–33.
- Indoensia, Undang Undang Republik. Undang Undang Republik Indoensia Nomor 1 Tahun 1974 tentang Perkawinan (1974).
- Isnaeni, Moch. *Hukum Perkawinan Indonesia*. Bandung: Refika Aditama, 2023.
- Karman, K. "Kedudukan Perjanjian Perkawinan Dalam Kitab Undang-Undang Hukum Perdata." *Cross-Border* 3, no. 1 (2020): 178–98.
- Konstitusi, Mahkamah. Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 tentang Pengujian Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan (2015).
- Mahsulafari, R F. "Problematisasi Penanaman Pendidikan Agama Islam Pada Keluarga Nikah Dini Di Kecamatan Gedangan Kabupaten Malang." *Jurnal Hukum*, 2019.

- Marrich, Feva, Tatiana Muaja, Sofia E Pangemanan, and Alfon Kimbal. "Implementasi Kebijakan Tentang Penanganan Tindak Kekerasan Seksual Terhadap Anak (Suatu Penelitian Di UPTD-PPA Provinsi Sulawesi Utara)." *Jurnal Governance* 2, no. 2 (2022): 2022.
- Martinelli, Ida. "Status Hukum Anak Luar Kawin Pasca Putusan Mahkamah Konstitusi Nomor 46/PUU-VII/2010." *De Lega Lata: Jurnal Ilmu Hukum Universitas Muhammadiyah Sumatera Utara* 1, no. 2 (2016): 321-34.
- Maulana, Ayu Putri Lestari; Irwan Sapta Putra; Ayang Fristia. "Tinjauan Yuridis Pendaftaran Perjanjian Kawin Di Kota Serang Dalam Perspektif UU No. 16 Tahun 2019 Dan Putusan MK No. 69/PUU-XIII/2015." *Rewang Rencang: Jurnal Hukum Lex Generalis* 6, no. 6 (2025): 1-16.
- Mubarok, Muhammad Sultan. *Sejarah Pemikiran Ekonomi Islam*. Purbalingga: EUREKA MEDIA AKSARA, 2021.
- Ndoen, Margaritha Rami, and Febi Meliana Ingratubun. "Tinjauan Yuridis Terhadap Adopsi Anak Warga Negara Indonesia Oleh Warga Negara Asing." *PAULUS Law Journal* 3, no. 1 (2021): 39-49.
- Nusantara, Tim Literasi. *KUHPer (Kitab Undang-Undang Hukum Perdata) Dan KUHAper (Kitab Undang-Undang Hukum Acara Perdata) Beserta Penjelasannya*. Malang: Literasi Nusantara Abadi, 2021.
- Pasal 832 KUHP. *Kitab Undang-Undang Hukum Perdata* (2007).
- Pranata, Wiwin, and Abdul Rahim. "Penundaan Kehadiran Anak Akibat Perkawinan Usia Muda Ditinjau Menurut Hukum Islam (Studi Pada Desa Jaling, Kec. Awangpone, Kab. Bone)." *Nukhbatul 'Ulum* 4, no. 2 (2018): 101-11. <https://doi.org/10.36701/nukhbah.v4i2.44>.
- Pratama, Bayu Indra, Choiria Anggraini, Muhammad Rizki Pratama, Azizun Kurnia Illahi, and Dessanti Putri Sekti Ari. *Metode Analisis Isi (Metode Penelitian Populer Ilmu-Ilmu Sosial)*. Unisma Press, 2021.
- Purwasih, Ratih; Yulia; Marlia Sastro. "Perlindungan Hukum Terhadap Anak Angkat Tanpa Penetapan Pengadilan (Studi Penelitian Di Jorong Katimahar, Kecamatan Panti, Kabupaten Pasaman)." *Jurnal Ilmiah Mahasiswa Fakultas Hukum (JIMFH)* 8, no. 54 (2025): 1-19.
- Putri, A. R., Luisa, M., & Adhi, F. R. W. "Perlindungan Harta Dalam Perkawinan Pentingnya Pencatatan Perjanjian Perkawinan Di Indonesia." *Jurnal Panorama Hukum* 10, no. 1 (2025): 15-36.
- Rahmi. "Strategi Kantor Urusan Agama (KUA) Kecamatan Ulee Kareng Dalam Mengoptimalkan Program Bimbingan Perkawinan (BIMWIN) Pranikah. Universitas Islam Negeri AR-Raniry Darussalam Banda Aceh." *UNIVERSITAS ISLAM NEGERI AR-RANIRY DARUSSALAM-BANDA ACEH*, 2021.

- Review, World Population. "Infidelity Rates by Country 2025," 2025. <https://worldpopulationreview.com/country-rankings/infidelity-rates-by-country>.
- Salsiah, L., Putri, E. A., & Saimima, I. D. S. "Perjanjian Perkawinan Dan Akibat Hukumnya Atas Harta Bersama." *Jurnal Hukum Sasana* 10, no. 2 (2024): 184-186.
- Sibot, Y. S., Natasha, D., & Cahyanti, H. N. "Upaya Hukum Untuk Menjerat Tindakan Pelaku Perselingkuhan Dalam Perspektif Hukum Adat Dayak Ngaju." *Journal of Syntax Literate* 8, no. 9 (2023): 5323-34.
- Solution, Master Legal. "Perjanjian Perkawinan: Pengertian, Jenis, Dan Perlindungan Hukum Terhadap Pasangan," 2025.
- Sukiati, Yadi Harahap, Indah Amani Lubis. "Juridical Analysis of the Implementation of Itsbat Nikah in the Principle of Legal Certainty in the Religious Court Decision Number 93/Pdt.P/2018/PA.TTE." *ANAYASA: Journal of Legal Studies* 2, no. 1 (2024): 75-82.
- Syahputra, Angga, Asmuni Asmuni, and Tuti Anggraini. "Urgensi Maqashid Syariah Dalam Pengelolaan Harta." *Jurnal Iqtisaduna* 9, no. 1 (2023): 14-27. <https://doi.org/10.24252/iqtisaduna.v9i1.36636>.
- Syarif Hidayatullah, Zil Aidi. "Judicial Review of Post-Nuptial Agreement After Constitutional Court Decision Number 69/PUU-XIII/2015." *Legal Standing: Jurnal Ilmu Hukum* 7, no. 2 (2023): 350-60.
- Wahyuni, Sri, Rufiatul Amaliyah, Farhah Hafifah Septiani, and Cipta. "Sistem Hukum Perkawinan Di Indonesia Menurut Persepektif Hukum Perdata." *Jurnal Mahasiswa Karakter Bangsa* 1, no. 2 (2021): 143-49.
- Yusuf, Muhammad, Akhmad Haries, and Moh Mahrus. "Interpretasi Hakim Terhadap Pasal 99 Huruf A Kompilasi Hukum Islam Dalam Perkara Penetapan Ahli Waris Untuk Memenuhi Hak-Hak Anak." *Jurnal Tuna Mana* 3, no. 2 (2023): 90-106. <https://ojs.staialfurqan.ac.id/jtm/>.