
Legal Certainty of Marriage Agreements Made Before Marriage and Their Implications After Divorce

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Abstract

The dissolution of a marriage results in legal consequences, one of which is the division of joint assets in the marriage. Property law in marriage is regulated in Articles 35 to 37 of the Marriage Law Number 1 of 1974. The Marriage Law allows both prospective husband and wife to make a marriage agreement to separate property. The marriage agreement that is made causes the agreement to become valid as law for both parties who make it. Regarding this problem, the author is interested in researching how legal certainty is regarding marriage agreements made before marriage in relation to joint property and what the legal consequences are for marriage agreements that are not in accordance with the marriage agreement when a divorce occurs. The theories used are the theory of legal certainty from Gustav Radbruch and the theory of agreement from Subekti. The method used in this research is a type of normative juridical research, namely legal library research or secondary data with primary, secondary and tertiary sources of legal materials. The research approaches used are the statutory approach, conceptual approach, analytical approach, case approach, historical approach and legal material collection techniques carried out by identifying and inventorying positive legal rules, book literature, journals and other sources of legal material. The analysis technique for legal materials is carried out using legal interpretation (interpretation), namely, historical interpretation, systematic interpretation, teleological interpretation and legal construction methods. From the research results, it can be concluded that the marriage agreement made still has legal certainty because it does not violate the law and the marriage agreement is included in the law for both parties in accordance with Article 1338 of the Civil Code. The legal consequences of marriage regarding joint property in the event of a marriage agreement are regulated in Article 37 of the Marriage Law, the distribution of which is according to the agreement made.

Keywords: Divorce, Marriage Agreement

1. INTRODUCTION

Marriage (Marriage, matrimonial) is a legal relationship between a man and a woman as husband and wife and gives rise to rights and obligations to each other regarding property and other matters related to this legal relationship (Asnawi, 2020). The legal consequences of marriage in the field of assets are regulated by the law on marital property. The law of objects in marriage is regulated in Article 35, Article 36 and Article 37 of the Marriage Law (Triwulan and Trianto, 2007).

The Marriage Law or what is known as UUP allows both prospective husband and wife to make a "marriage agreement" or "marriage agreement", which generally only concerns the arrangement of marital assets, which is intended to anticipate problems that might arise if the marriage occurs. it ends. A marriage agreement as an agreement regarding husband and wife's property is possible to be made and entered into as long as it does not deviate from the principles or patterns established by law (Soebekti, 2004).

Marriage agreements must still be made based on the general conditions that apply to the validity of an agreement as regulated in article 1320 of the Civil Code. In article 1338 of the Civil Code, it is emphasized that all agreements made legally are valid as law for those who make them. These

agreements cannot be withdrawn other than with the agreement of both parties, or for reasons that the law states are sufficient for that purpose. Agreements must be implemented in good faith (Abdulkadir, 2000).

At the Bandung District Court there was a dispute over the division of joint assets between Freddy Setiawan as the Defendant and Tjindrawati Gunawan as the Plaintiff. Before marriage, the plaintiff and the defendant had made a marriage agreement for the separation of assets. After the divorce occurred between the plaintiff and the defendant, the joint property was won by the defendant (husband) at the Bandung District Court because before the marriage the husband had inherited property and there was a marriage agreement. The plaintiff (wife) disagreed with the decision of the Bandung District Court and filed an appeal with the Bandung High Court with the same dispute object, and the Bandung High Court upheld the Bandung District Court's decision. It did not stop there, the plaintiff filed a cassation with the Supreme Court regarding the disputed assets and the plaintiff (wife) won the cassation.

The defendant did not agree with the decision and submitted a judicial review (PK) to the Supreme Court regarding the joint assets, and the Supreme Court ruled in favor of the defendant (husband) over the joint assets because there was a marriage agreement made and acknowledged by both parties. The Judicial Review Decision was won with Decision Number 23/PK/Pdt/2016.

There is also an example of a case that occurred at the Denpasar District Court, where there was a case of joint property between the plaintiff (wife) and the defendant (husband), before they got married they made an agreement to separate their assets before a notary. After several years, there was a divorce between them, and the wife sued for the joint property in her name. At the first instance court (PN), the husband was won by the Panel of Judges and the disputed property was won by the defendant (husband) with Decision Number 1049/Pdt.G/2017/PN DPS. The wife filed an appeal to the Denpasar High Court (PT) regarding the joint assets because the assets in the wife's name were won by the husband, but in fact there was no evidence to prove that the joint assets belonged to the husband. The Panel of Judges at the Denpasar High Court granted the wife's lawsuit and the joint property was won by the wife with Decision Number 67/Pdt/2019/ PT DPS.

It didn't stop there, the husband submitted a cassation request to the Supreme Court regarding the disputed joint assets, because the husband remained adamant in saying that the assets were purchased using money from the husband's mother. The Supreme Court judge also stated that the assets in dispute did not belong to the husband (who was previously the defendant) because there was no evidence to show that the assets belonged to the cassation applicant (husband). The judge decided that the joint property was won by the cassation respondent (wife) with Decision Number 2457/K/Pdt/2020.

The purpose of this research is to analyze and find out about the legal certainty of marriage agreements made before marriage in relation to joint property and the legal consequences of marriage agreements that are not in accordance with the marriage agreement when a divorce occurs, and this research is expected to contribute thoughts and considerations to enforcers. law and society so that they can always carry out policies and functions as well as possible, and be able to provide the benefits of developing knowledge regarding the legal certainty of marriage agreements made before marriage and their implications after divorce.

2. METHOD

The method used in this research is a type of normative juridical research, namely legal library research or secondary data with primary, secondary and tertiary sources of legal materials. The research approaches used are the statutory approach, conceptual approach, analytical approach, case approach, historical approach and legal material collection techniques carried out by identifying and inventorying positive legal rules, book literature, journals and other sources of legal material. The analysis technique for legal materials is carried out using legal interpretation (interpretation), namely, historical interpretation, systematic interpretation, teleological interpretation and legal construction methods.

Based on the background described above, the author is interested in studying in more depth so that this research is more focused by formulating the problem as follows: What is the legal certainty of marriage agreements made before marriage in relation to joint property. What are the legal consequences of a marriage agreement that is not in accordance with the marriage agreement when a divorce occurs? This research has similarities with other researchers, namely that they both discuss the legal certainty of marriage agreements made before marriage and their implications after divorce. However, this research also has differences from previous researchers.

3. RESULT AND DISCUSSION

3.1 Analysis of Legal Certainty of Marriage Agreements Made Before Marriage in Relation to Joint Assets

Article 1 of Law Number 1 of 1974 concerning Marriage, provides an understanding of marriage, namely the spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy family (household) based on belief in the Almighty God. On this basis, marriage it is hoped that they can form a happy and eternal family, and are expected to run smoothly, without obstacles, and be happy forever in accordance with the principles or principles of a marriage (Soemiyati, 1974). Marriage as a legal institution, has very important legal consequences in the lives of the parties entering into a marriage. A marriage agreement is an agreement that regulates the consequences of the marriage bond, one of which is in the area of assets. Marriage agreements rarely occur in native Indonesia, due to the strong kinship relationship between prospective husband and wife, as well as the strong influence of customary law. Basically, marriage is a binding agreement physically and mentally on the basis of faith. This is because some people think that marriage is a mere agreement in society between a man and a woman, such as an agreement regarding buying and selling, renting and so on.

A marriage agreement is an agreement made by a prospective husband and wife before a Notary which basically contains an agreement between the prospective husband and the prospective wife to make a separation of their respective property in their future marriage. The implication of this marriage agreement is that all assets acquired before and during the marriage remain the property of each husband and wife. This also applies to debts and receivables that arise during marriage and remain a burden for each husband and wife (Asnawi, 2020). In Indonesia, there are 3 (three) legislative regulations that regulate the issue of marriage agreements, namely the Civil Code (KUHPperdata) or Burgerlijk Wetboek (BW), Law Number 1 of 1974 concerning Marriage, and Presidential Instruction Number 1 1974 concerning the Compilation of Islamic Law. Since the enactment of Law Number 1 of 1974, in Indonesia there has been unification in the field of Marriage Law, except as long as it has not been or is not regulated in this law, the old regulations can be used.

Marriage agreement is a term taken from the title of Chapter V of Law Number 1 of 1974, containing one article, namely article 29. Meanwhile, the definition of marriage agreement does not provide an explanation, there are only regulations regarding when the marriage agreement is made, regulating its validity, when it comes into force, and the agreement can be changed. It does not regulate the material of the agreement as regulated in the Civil Code. A Marriage Agreement is an agreement or agreement made by the prospective husband and wife, before or at the time the marriage takes place to regulate the consequences of the marriage on their assets.

A marriage agreement is not only limited to agreeing on financial or property matters, there are other things that are also important to agree on, for example domestic crimes, promising that one party will continue to have a career even though they are married and so on. The marriage agreement according to the Civil Code Article 139 is actually an agreement between the prospective husband and wife, to regulate the consequences of marriage on their assets. Therefore, a marriage agreement can be entered into either in the event that husband and wife will marry to mix assets together, or in the event that they agree to have separate assets, or assets outside the union.

Marriage agreements in Indonesia have been permitted to be made since the enactment of the Civil Code on May 1, 1848. In this case, marriage agreements were then included and reaffirmed with the promulgation of Marriage Law Number 1 of 1974. Meanwhile, as a result of the increasingly rapid development of the times and the demands Equality between men and women means that marriage agreements are more often made before prospective husband and wife get married. The existence of Article 29 paragraph (1) in the Marriage Law Number 1 of 1974 requires an agreement to accompany the demands of the times for equality of status and degree as well as freedom to determine the needs of the people themselves.

The benefits of marriage agreements for the state are enormous. The existence of a marriage agreement provides boundaries for married couples to prevent and reduce conflicts, especially those that occur within the institution of marriage. The marriage agreement can be a reference if a conflict arises, even if the conflict is undesirable. However, if a conflict occurs that ends in divorce, the agreement can be used as a reference so that each person knows their rights and obligations.

Harlien Budiono believes the elements of the agreement are as follows:

1. Agreement from both parties;
2. The agreement reached must depend on the parties;
3. The desire or aim of the parties for legal consequences to arise;
4. Legal consequences for the benefit of one party and at the expense of another or reciprocity. Made by taking into account the provisions of laws and regulations (Budiono, 2009).

One of the reasons why a marriage agreement must be made before the marriage is so that the parties have a reference in managing the assets in the marriage. Making a marriage agreement before the marriage is also intended to avoid bad intentions from one of the husband and wife that might exist if the marriage agreement was made after the marriage (Budiono, 2009). The legal basis for a marriage agreement is the Civil Code, Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, and Constitutional Court Decision Number 69/PUUXIII/2015. With the enactment of the Marriage Law, what is regulated in the Civil Code no longer applies, except for what has not been regulated in the Marriage Law.

Based on Constitutional Court Decision Number 69/PUU-XIII/2015, marriage agreements can be made during marriage. This is different from the period before the Constitutional Court Decision Number 69/PUU-XIII/2015, where marriage agreements could only be made before or during the marriage, so that in such circumstances, the wife could only file a claim for separation of marital assets. The separation of marital assets is regulated in articles 186 to 195 of the Civil Code (Benny, 2020). Based on several decisions, the author analyzes the marriage agreement made before the marriage between the plaintiff and the defendant. The agreement was made in accordance with the provisions of Article 1320 of the Civil Code and Article 1338 of the Civil Code, Paragraphs 1 and 3.

“is legally valid as a law for the plaintiff and the defendant and must be implemented on the basis of good faith on both parties.”

Contract law regulated in the Civil Code applies the principle of freedom of contract. This principle is contained in article 1338 of the Civil Code paragraph (1), the principle of freedom of contract provides freedom for the parties to make or not make an agreement, make an agreement with anyone and are free to determine the content and form of the agreement. Article 1338 paragraph (2) regulates legal certainty. The sentence that emphasizes legal certainty in this article is found in the sentence “an agreement cannot be withdrawn”. Unless there is an agreement by both parties, or for reasons that are sufficient by law. Without an agreement, the agreement cannot be withdrawn (Subekti, 2005).

The requirement for making a marriage agreement with a notarial deed is to obtain certainty on the date of making the marriage agreement, because if the marriage agreement is made with a private deed, there is a possibility that the contents of the marriage agreement will be changed so that it could be detrimental to third parties. These conditions are also intended to ensure that the marriage agreement has the power of proof and legal certainty regarding the rights and obligations of the prospective husband and wife regarding their property.

With this marriage agreement, the division of assets between husband and wife is clear in the eyes of the law, so that there is no need for a judge’s decision from the court to resolve the issue of assets obtained during the marriage, so the authentic deed is a valid document and can be used as perfect evidence at the time of trial.

In the case that the author raises, it is related to the theory of legal certainty. According to Gustav Radbruch’s theory, legal certainty as one of the goals of law can be said to be part of efforts to realize justice. The real form of legal certainty is the implementation or legal enforcement of an action regardless of who carries it out. With legal certainty, everyone can predict what they will experience if they take certain legal actions.

Gustav Radbruch put forward 4 (four) basic things related to the meaning of legal certainty, namely:

1. That law is positive, meaning that positive law is legislation.
2. That the law is based on facts, meaning it is based on reality.
3. That facts must be formulated in a clear way so as to avoid errors in meaning, as well as being easy to implement.
4. Positive law must not be easily changed.

Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a juridical aspect that can guarantee certainty that the law functions as a regulation that must be obeyed.

The marriage agreement deed made with a Notarial deed is intended to provide legal certainty, especially regarding the rights and obligations of husband and wife regarding their assets, besides that it also aims to protect other parties who have an interest in the existence of the marriage agreement. A marriage agreement as stated in the Law must be made before the marriage takes place and/or it can be made in the form of an authentic deed. This authentic deed is very important because it can be used as evidence in a court trial if there is a joint property dispute between husband and wife.

With the order of priority as stated above, the legal system can avoid internal conflicts. Therefore, by using Gustav Radbruch's theory, it is hoped that this research will provide clarity regarding the legal certainty of marriage agreements made before marriage. From the examples of these cases, it has been explained how the respective assets were arranged between the plaintiff and the defendant before and during the marriage. *Pacta sunt servanda* or also known as the principle of legal certainty, is a principle related to the consequences of agreements. The principle of *pacta sunt servanda* is the principle that the Court or a third party must respect the substance of the contract made by the parties. The principle of *pacta sunt servanda* is a logical consequence of the effect of the binding force of an agreement.

3.2 Legal Analysis of Marriage Agreements That Are Not In Accordance With Marriage Agreements When Divorce Occurs

Divorce is an event that can occur in the life of every married person due to various reasons. A husband or wife who feels they can no longer survive in the household will file a divorce suit in court. After the divorce decision is issued by the court and has permanent legal force, of course there are several things that need to be taken care of, one of which is managing the division of joint assets. Please note that in marriage there are two types of property ownership.

The first is without a marriage agreement, if a marriage agreement has never been made between the husband and wife, then between the husband and wife there is a mixture of assets which is called joint property.) In civil law, there are two different concepts regarding the concept of joint property. For couples who married before 1974, the definition of joint property is in accordance with Article 119 of the Civil Code (KUHP *perdata*), namely:

'From the moment the marriage takes place, according to the law there is complete joint property between husband and wife'. This means that when a marriage takes place, there is a mixing of assets between husband and wife, both assets obtained before the marriage and assets obtained during the marriage. Different from the Civil Code, Law no. 1 of 1974 concerning Marriage in Article 35 differentiates joint assets from inherited assets. Joint assets are assets acquired at the time of marriage, while inherited assets are assets acquired before the marriage. This regulation is intended for couples who married after 1974. The legal consequence of not having a marriage agreement is that the ex-husband and ex-wife must divide their joint assets after divorce.

The second is with a marriage agreement. Between husband and wife there is a clause on separation of assets from before or at the time of marriage which is stated in the marriage agreement. The legal consequence is that if you divorce there is no division of joint assets. Each party will get the property registered in their name. Parties who do not make a marriage agreement at the time of marriage and divorce must divide joint assets after the divorce decision has permanent legal force. This is because divorce does not automatically divide joint assets. If the division is not carried out, there are consequences that must be borne, namely every legal action regarding assets registered in the name of one of the parties, whether in the name of the husband or wife, must obtain approval from the ex-wife or ex-husband. This will certainly make it difficult for the parties if they want to take legal action against joint assets. There are two ways you can divide joint assets after divorce, namely:

1. Appear with a Notary to make a Deed of Sharing Joint Assets; or
2. File a lawsuit for the division of joint assets with the District Court where the defendant lives.

It should be remembered that a lawsuit for the division of joint assets cannot be filed simultaneously or at the same time when filing for divorce because each lawsuit stands alone and has different substance. This is in accordance with the Supreme Court Jurisprudence No. 913 K/Sip/1982, dated 21 May 1983, which states "Claims regarding divorce cannot be combined with claims for marital property" and Supreme Court Jurisprudence No. 1020 K/Pdt/1986, dated 29 September 1987, which states "... likewise, a claim for the division of joint assets cannot be filed together with a claim for

divorce.” Therefore, a lawsuit for the division of joint assets can only be filed if the divorce has received a decision that has permanent legal force.

In general, when a marriage ends due to divorce or the death of one of the spouses, each husband and wife have the same rights to the joint property acquired during the marriage, namely half of the joint property. This kind of division applies without having to question who seeks the assets during the marriage. The consideration that a husband or wife is entitled to half of the joint property is based on the role played by both the husband and wife, as partners who complement each other in efforts to foster family integrity and sustainability.

Marriage gives rise to various legal consequences, including those related to the rights and obligations of husband and wife, legal relationships with children and descendants, and property in marriage. One of the legal consequences of marriage is related to property in marriage. Marital property is regulated in articles 119 to 138 of the Civil Code in conjunction with articles 35 to 37 of the Marriage Law (UUP) (Benny, 2020). Joint assets are placed in a group as a result of marriage law, this is because joint assets are not an entity that existed from the start. Joint property is born after a legal and registered marriage institution. The validity of the marriage is the basis for whether or not there are joint assets in the marriage. Thus, the understanding above is that joint property is born from cooperation between husband and wife, the implementation of the duties and responsibilities of each husband and wife, as well as mutual support from husband and wife (Asnawi, 2020). Whoever buys it and in whose name it remains joint property during the marriage period in accordance with Marriage Law number 1 of 1974 concerning marriage, Article 35, property acquired during marriage becomes joint property. Unless there is a pre-nuptial agreement, the assets are divided according to the agreement.

According to Sudikno Mertokusumo, an agreement is a legal relationship between two or more parties based on an agreement to give rise to legal consequences. Both parties agree to determine legal regulations or rules or rights and obligations that bind them to obey and implement. The purpose of this agreement is to give rise to legal consequences, namely giving rise to rights and obligations so that if the agreement is violated there will be legal consequences or sanctions for the violator (Sudikno Mertokusumo, 1986). A marriage agreement is important to avoid property ownership between husband and wife, avoid property disputes in the future, and prevent injustice in the distribution of mutually exclusive assets. This marriage agreement is made before or during the marriage period, this agreement is ratified by an employee of the Religious Affairs Office (KUA) for Muslims and by the civil registration office (KCS) for followers of religions other than Islam and it is better if this marriage agreement is also ratified by Notary (Sri Hariati, 2020).

If a husband and wife are separated due to a divorce between them, the division of marital property is regulated based on their respective laws, these provisions are regulated in Article 37 of the Marriage Law and regulated in Article 128 of the Civil Code. In accordance with Marriage Law no. 1 of 1974 Article 37 “If the marriage is dissolved due to divorce, property is regulated according to respective laws.” What is meant by respective laws are customary law, religious law and other laws. If in a marriage there is a marriage agreement between husband and wife, then the distribution refers to the agreement they have made (Happy Susanto, 2008). In connection with the issue of marriage agreements, if it is related to the Agreement Theory, according to Subekti, an agreement is an event where one person makes a promise to someone else or where two people promise each other to carry out something (Subekti, 2002). If an agreement has been made based on Article 1320 of the Civil Code, the consequence is that the agreement applies as law for the parties as stated in Article 1338 paragraph (1) of the Civil Code. If one party does not carry out performance in accordance with what was agreed, it is called a default (Munir Fuady, 1999).

In general, default is a situation where a person does not fulfill or carry out the achievements as stipulated in an agreement. Default occurs when one of the parties does not fulfill his obligations as stipulated in the agreement, whether the agreement arises due to law or an agreement (Ahmadi Miru, 2007). The elements of breach of contract include: the existence of a valid agreement (Article 1320 of the Civil Code), the existence of a mistake (due to negligence and deliberate action), the existence of a loss, the existence of sanctions, which can be in the form of compensation, paying court costs (if the problem is brought to court) (Kartini Muljadi and Gunawan Widjaja, 2003).

In contract law, several legal principles can be found, both relating to the birth of the agreement, the contents of the agreement, the binding force of the agreement, and those relating to the implementation of the agreement. Some of the legal principles of the agreement are as follows:

a) Principle of Consensualism (conformity to will)

Consensualism comes from the word consensus, which means to agree. The principle of consensualism means that an agreement has already been born or already exists at the time an agreement is reached between the parties entering into the agreement. In other words, the agreement is binding from the time an agreement is reached regarding the subject matter of the agreement between the parties and no particular formalities are required (Subekti, 2005).

b) Principle of Freedom of Contract (contract vrijheid)

The principle of freedom of contract concerns the contents of the agreement. This principle can be concluded from the words “all agreements” in the formulation of article 1338 paragraph (1) of the Civil Code which means that everyone has the freedom to make agreements (Subekti, 2005).

The principle of freedom of contract provides freedom to the parties in several matters, such as:

1. Freedom to enter into or not to enter into an agreement
2. Freedom to choose with whom he will enter into an agreement
3. Freedom to determine the form of agreement
4. Freedom to determine the contents and terms of the agreement
5. Freedom to determine to which law the agreement will be subject.

The principle of the binding force of agreements (pacta sunt servanda)

a) The principle of the binding force of an agreement is also called the principle of *sunt servanda*.

This principle is concluded from the formulation of article 1338 paragraph (1) of the Civil Code from the words “valid as law for those who make it”. The word binding as a law means that:

1. The parties are obliged to comply with the contents of the agreement they make as they comply with the law.
2. Third parties, including judges, are obliged to respect the agreement made by the parties, in the sense of not interfering with, adding to or reducing the contents of the agreement.

Based on the principles stated in article 1338 paragraph (1) of the Civil Code, an agreement that is made legally is binding as law for the parties who make it. And Article 1338 paragraph (3) of the Civil Code states that every agreement must be implemented in good faith.

According to the author’s analysis, the decisions that the author has examined are in accordance with article 37 of the Civil Code “if the marriage is broken up due to divorce, then joint assets will be regulated according to their respective laws”, because there is a marriage agreement made before the marriage, also applies to article 1338 of the Civil Code paragraph (1) “all agreements made legally apply as law for those who make them”. The provisions of this article explain that agreements or agreements that have been made cannot be withdrawn or canceled by any of the parties except by mutual agreement of the parties who made them or by law. and is in accordance with the principles of the agreement, namely, the principle of consensualism, the principle of legal certainty (*pacta sunt servanda*), the principle of freedom of contract and the principle of good faith.

In accordance with the principle of the birth of an agreement, namely the principle of consensualism which states that an agreement is born from the moment a word of agreement is reached between the parties, then the marriage agreement automatically binds the party making it when both agree on the marriage agreement being made, whether registered or not. So whether registered or not, a marriage agreement still has legal consequences that remain binding for the husband and wife who agree to make it. The parties who agree on the agreed matters are obliged to obey and implement them, so that the agreement gives rise to a legal relationship called an engagement (*verbinten*).

4. CONCLUSION

Based on the analysis and description that the author has put forward in the previous chapters, conclusions can be drawn as answers or main issues related to this thesis, namely as follows:

1. The deed made by a Notary is an authentic deed which can be used as perfect proof if there is a dispute over the division of joint assets between husband and wife when a divorce occurs. The marriage agreement made by a Notary serves as a valid law for both parties. In the Constitutional Court Decision Number 69/PUU-XIII/2015, there is a provision that requires a marriage agreement to be made in written form and ratified by a Marriage Registrar or Notary, so the marriage agreement deed that is made has legal force and obtains legal certainty regarding the status of the husband’s assets or wife so that if there is a divorce, be it death or divorce, the

assets will be divided according to the marriage agreement they have made. Thus, the party who disputes the deed must provide evidence to refute the Notary's deed. If they are unable to prove the untruth then the deed must be accepted by anyone.

2. One of the legal consequences of marriage is related to property in marriage. Marital assets are regulated in articles 35 to 37 of the Marriage Law (UUP). Article 37 states that in the event of a divorce, joint property matters are regulated according to respective laws. If in a marriage there is a marriage agreement between husband and wife, then the distribution refers to the agreement they have made in accordance with article 1338 of the Civil Code. The contents of the agreement must be carried out in good faith by paying attention to the provisions of the law, norms of decency and public order. If one party does not carry out the marriage agreement and harms the other party, then the party who feels aggrieved can ask for compensation from the party who caused the harm.

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