

## THE VALIDITY OF MARRIAGE AGREEMENT DEEDS MADE BY NOTARIES FOR INTERFAITH COUPLES

Dinda Putri Sugiarto, Ajeng Aditya Listyani  
University of Jenderal Soedirman

### Abstract

Notaries have the authority to draw up authentic deeds which are very important in assisting the public, especially in the preparation of deeds such as marriage agreements. A marriage agreement, made by the prospective husband and wife, serves to regulate aspects related to marriage and has strong legal force. In Indonesia, the phenomenon of interfaith marriage often occurs, although Law Number 1 of 1974 has not explicitly regulated this matter. The Problem Formulation is regarding how the validity of a marriage agreement made by a notary for interfaith couples is and how the validity of a marriage agreement made abroad for interfaith couples is, with the aim of analyzing the validity of marriage agreements made by notaries for interfaith couples as well as marriage agreements made abroad. The research method used is normative legal research by collecting primary and secondary data. The research results indicate that the validity of a marriage agreement made by a notary for an interfaith couple depends on the fulfillment of legal requirements and not contradicting religious provisions. In addition, the validity of marriage agreements made abroad is also influenced by registration requirements and the authority of ratification. This study concludes the need for clearer regulations regarding interfaith marriages and better education for notaries to handle such cases

**Kata kunci:** Marriage agreement, notary, interfaith marriage, authentic deed, Indonesian marriage law.

### INTRODUCTION

Notaries, in exercising their duties, have the authority to draw up authentic deeds as regulated in Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning the Position of Notary. According to Article 1870 of the Indonesian Civil Code (KUHP), as a country adhering to Civil Law, the position of a notary is very important in assisting the public, especially in the preparation of deeds used as valid evidence or requirements in various legal actions. A marriage agreement is a form of deed that can be made before a notary, because this deed has strong legal force and can be used as perfect evidence in resolving legal cases.

A marriage agreement is a form of agreement made by the prospective husband and prospective wife before or during the marriage with the aim of regulating various aspects related to the marriage, such as avoiding problems after a divorce, regulating wealth or assets, regulating the rights and obligations of the husband and wife, and regulating the resolution of problems that may arise during the marriage. God created living beings consisting of men and women with the intention that later they can become partners until they reach the point of marriage. Marriage is considered an

important event and is often highly anticipated by human beings; a marriage must be founded on love and affection from both parties. Under Law Number 1 of 1974 concerning Marriage, a 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 everlasting family based on the Belief in the One and Only God. Therefore, with the existence of marriage, it is expected that husband and wife must complement each other so that physical and spiritual well-being can be realized. According to Imam al Ghozali as quoted by Abdul Rohman Ghozali, the objectives of marriage are:(Nita 2021)

- a. To obtain and continue offspring.
- b. To fulfill the human need to channel sexual desires and bestow affection.
- c. To answer the call of religion, protecting oneself from evil and destruction.
- d. To foster a genuine commitment to take responsibility for accepting rights and obligations and to acquire lawful wealth.
- e. To build a household to form a peaceful society based on love and affection.

One of the differences that frequently arise in a marriage is religion. Indonesia is a country that recognizes 6 religions, such as Islam, Christianity, Catholicism, Hinduism, Buddhism, and Confucianism; this provides opportunities for interfaith marriages to occur. Regarding marriages with different religious beliefs in Indonesia, according to a report by the Indonesian Conference on Religion and Peace (ICRP), "Between 2005-2022, there were 1,425 couples in Indonesia who engaged in interfaith marriages"(Siregar n.d.) The Indonesian Conference on Religion and Peace is a non-profit, non-governmental organization formed by religious leaders and believers in Indonesia with the aim of building a democratic, humanist, and pluralist religious life.

Law Number 1 of 1974 concerning Marriage has not yet validated marriages with different religious beliefs, but it is frequently found that such couples solemnize their marriages abroad and then register them with the marriage registration office where they reside; according to Article 56 of Law Number 1 of 1974, a marriage solemnized between two Indonesian citizens or an Indonesian citizen with a foreign national is valid provided it is carried out according to the applicable laws in the country where the marriage was solemnized, and within one year after the husband and wife return to Indonesian territory, the certificate of marriage proof must be registered at the Marriage Registration Office where they reside, besides that, the Central Jakarta District Court has granted a petition for permission for an interfaith marriage where JEA is an adherent of Christianity and SW is an adherent of Islam.(Saputra 2023) The norm of legal protection for joint property essentially aims to provide justice, certainty, and protection for the parties(Suhayati et al. 2025) In a formal sense, regarding a prenuptial agreement in any marriage agreement that is executed in accordance with statutory provisions and the prospective husband and wife concerning their marriage, its contents are not questioned.(Saverius Ndraha et al. 2024) Before the marriage is solemnized, the prospective husband and wife can still make amendments to the marriage agreement; such amendments must be made by a notarial deed(Iliyini, Bayuaji, and Yaqin 2023) The ratification of the marriage agreement can only be done at the time of the marriage registration, so those who forget or do not process it after the marriage has taken place

cannot ratify their marriage agreement and must first request permission from the local District Court. (Prananta Barus 2024)

The absence of specific provisions regarding the procedures or legal guidelines for interfaith couple marriage agreements potentially leads to varying interpretations by notaries and law enforcement agencies, and interfaith couples often choose to marry abroad to avoid legal restrictions in Indonesia, later registering their marriage in Indonesia. This raises issues regarding the legal recognition of marriage agreements made by notaries for such couples; therefore, the validity of marriage agreements made by notaries can be questioned in legal dispute cases if the interfaith marriage underlying the agreement does not meet specific material requirements established by law. Based on the background above, the author needs to analyze the legal issues arising concerning marriage agreements made by a notary for interfaith couples due to the ambiguity regarding interfaith marriages as well as the legal vacuum that gives rise to legal smuggling to conduct interfaith marriages in Indonesia; therefore, the author composed a master's thesis research entitled *The Validity of Marriage Agreement Deeds Made By Notaries For Interfaith Couples*.

## **PROBLEMS**

1. How is the validity of a marriage agreement made by a notary for an interfaith couple?
2. How is the validity of a marriage agreement made abroad for an interfaith couple?

## **METHODS**

This research utilizes normative juridical research, while the approaches in this research use a statutory approach and a conceptual approach; the primary legal materials used consist of the Civil Code, Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary, and Law Number 1 of 1974 concerning Marriage, whereas secondary legal materials consist of books, journals, research reports, newspapers, legal and non-legal dictionaries, and scientific magazines related to marriage agreements, as well as legal facts that support this research. The data presentation method in this research uses qualitative normative data analysis, which is an approach used to evaluate data based on existing norms, rules, or standards.

## **RESULTS AND DISCUSSION**

1. The validity of a marriage agreement made by a notary for an interfaith couple.

The philosophical foundation of marriage or matrimony in Indonesia has been regulated in Article 1 of Law No. 1 of 1974, namely "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 everlasting family or household based on the Belief in the One and Only God." (Haq, Jumni Nelli, and Erman Gani 2023) Over time, the phenomenon of interfaith marriages frequently occurs in Indonesia because this country consists of various ethnicities, religions, and races. With this, there are no clear legal rules regarding interfaith marriages. Often, this phenomenon causes

people to smuggle the law by conducting interfaith marriages abroad. In Indonesian law, a marriage agreement made by a notary is a valid authentic deed if it complies with the criteria mentioned in the provisions of Article 1868 of the Civil Code. In the context of interfaith marriages, a notary can facilitate the marriage by providing legal guarantees to couples marrying across different religions, even though this has not been regulated by Indonesian law.(Dkk 2024)

In the rules concerning the division of joint property, the authorized party (the judge) refers to 3 regulations applicable in Indonesia, namely the Marriage Law, the Civil Code, and the Compilation of Islamic Law. In these 3 regulations, they do not cause overlap between one legal rule and another but can complement each other.(Muhammad Iqbal 2020) Under the rules of the Compilation of Islamic Law, basically, if a divorce occurs between a husband and wife, it can result in a new legal matter, namely concerning joint property.(Hafifi, Sa`adah, and Hefni 2024) The validity of the marriage agreement applies from the moment the marriage is solemnized, bringing legal consequences to both parties, including third parties involved with the said marriage agreement.(Masri and Wahyuni 2021) Generally, a marriage agreement contains provisions regarding the wealth of the prospective husband and wife. The purpose of a marriage agreement is to regulate the consequences of marriage relating to wealth/property.(Sopiyan 2023) A new marriage agreement is considered valid if it fulfills the terms and conditions stipulated in the law. Therefore, attention to this aspect is very important so that the legal force of the marriage agreement can be accounted for (A`yun and Hidayatullah 2023) The aim of this legal protection tool is to prevent the emergence of disputes. This legal protection facility has immense significance for the government to make the government more careful in issuing a decision that is fundamentally coordinated by discretion. (Ani, Budiarta, and Widiati 2021) The function of a marriage agreement is primarily to regulate the status of property in a marriage, such as:.(Mahfud 2001)

- a. The mixing of personal property.
- b. The separation of respective acquired property.
- c. The authority to encumber personal property and joint property.
- d. Agreements regarding property are not allowed to eliminate the husband's obligation to fulfill household needs, with the aim of protecting the wife for the results of her labor.

The procedure for drafting a marriage agreement is as follows:(Legalitas.org 2024)

- a. Preparing documents such as the Identity Card (KTP) and Family Card (KK) of the husband and wife.
- b. Consulting a notary regarding the contents of the marriage agreement.
- c. Then, once finalized, both parties must sign the minuta of the marriage agreement deed before the notary.
- d. Then, the notary registers it with the local Office of Religious Affairs (KUA) or the Department of Population and Civil Registration

As a public official, a notary is regulated by Law Number 2 of 2014 concerning the Position of Notary; a notary must prioritize the precautionary principle in carrying out their official duties. This means the notary must ensure that the marriage agreement made does not violate the law and does not contradict religious provisions, decency, and public order; furthermore, Article 29 (2) of Law Number 1 of 1974 states that a marriage agreement can be ratified provided it does not violate the boundaries of law, religion, and decency. Although interfaith marriage agreements can be made by a notary, their legal recognition still depends on whether the marriage underlying the agreement fulfills specific material requirements. If not, then the agreement will be deemed null and void. The special authority of a notary in ratifying a marriage agreement also serves as a form of legal protection for the parties involved in the agreement. By involving a notary, the parties can ensure that their agreement has gone through a legitimate process and has strong legal force. (Addinur and Djajaputra 2024)

2. The validity of a marriage agreement made abroad for an interfaith couple.

Marriage agreement made abroad is a complex and interesting issue within the context of international and domestic law. Interfaith couples who marry abroad often face challenges in recognizing the validity of their marriage agreements in Indonesia. Law Number 1 of 1974 concerning Marriage does not explicitly regulate the validity of marriage agreements made abroad. Related articles provide several important clues; Article 29 of Law Number 1 of 1974 concerning Marriage states that a marriage agreement must be in writing and ratified by the Marriage Registrar Employee. In addition, a marriage agreement must not violate the boundaries of law, religion, and decency.

In an international context, the authority to ratify marriage agreements made abroad is questioned. According to research conducted by Brawijaya University, the authority to ratify marriage agreements is divided between the Marriage Registration Officer (Civil Registry Office) and the Office of Religious Affairs (KUA). Marriage agreements made abroad must be registered at an Indonesian representative body abroad and then re-registered at the Marriage Registration Office in Indonesia after the couple returns to Indonesia. (Khairunnisa 2018) Legal arrangements regarding marriage agreements made abroad are still wide open. However, several articles in Law Number 1 of 1974 provide important guidance. For instance, Article 56 paragraph (1) of the Law states that marriages solemnized outside Indonesia between two Indonesian citizens or an Indonesian citizen with a foreign national are valid if they are carried out according to the applicable laws in the country where the marriage took place and, for Indonesian citizens, do not violate the provisions of this Law. To acknowledge the validity of a marriage agreement made abroad, couples must fulfill several requirements. First, the couple must possess a marriage certificate from the country of origin that has been translated into Indonesian and super-legalized by the local Representative of the Republic of Indonesia, then they must report their marriage to the implementing

agency in their place of residence no later than 30 days after returning to Indonesia.(Dinas Kependudukan dan Pencatatan Sipil Kulon Progo 2022)

## CONCLUSION

The validity of a marriage agreement made by a notary for an interfaith couple is strongly influenced by the prevailing legal provisions. The agreement must meet specific material requirements and not violate the provisions of religion, decency, and public order. Notaries must prioritize the precautionary principle in carrying out their official duties. Although there are legal challenges that need to be addressed, interfaith marriage agreements can be made by paying attention to all relevant legal aspects. Thus, there is a need for clearer and more standardized regulations regarding interfaith marriage to facilitate the public in resolving their marriage problems. Furthermore, there is also a need for more intensive training and education for notaries to understand and handle cases of interfaith marriage better. Consequently, the validity of interfaith marriage agreements can be assured and legally recognized.

The validity of a marriage agreement made abroad for an interfaith couple is strongly influenced by the authority of ratification, registration requirements, and prevailing legal implications. The couple must meet the requirements set forth by Law Number 1 of 1974 and register their marriage agreement at the Marriage Registration Office after returning to Indonesia. In this way, the validity of the marriage agreement can be assured and legally recognized. In this conclusion, it is important to understand that the legal framework concerning marriage agreements made abroad remains wide open and requires further research. However, by understanding the requirements set forth by Law Number 1 of 1974, interfaith couples can take the appropriate steps to have the validity of their marriage agreement recognized in Indonesia.

## SUGGESTIONS

Indonesia requires specific and strict regulations regarding interfaith marriage so that its implementation can be legally recognized with certainty, similarly to marriages of same-faith couples. Currently, the Marriage Law does not explicitly prohibit or permit interfaith marriages, hence judges must conduct legal interpretation based on the interpretation of existing regulations. Consequently, whether an interfaith marriage can be carried out or not depends on the judge's decision. If there is clarity in the rules regarding interfaith marriages, it will be much easier for interfaith couples in Indonesia to make prenuptial agreements that are legally valid.

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