



# Analysis of Legal Urgency of Premarriage Agreements Related to Gono Gini's Assets in Ternate Religious Court

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## ABSTRACT

The importance of a prenuptial agreement is closely related to the legal consequences that arise with the existence of marriage, namely, regarding assets, obligations of husband and wife and also the future of children born from marriage. Marriage has three legal consequences, namely, the existence of a legal relationship, the existence of assets and obligations to the children who are born and as a result of marriage including the existence of property and mixing of the property of both parties (husband and wife) which is known as innate property. , joint property, acquisition property and inheritance. The regulation regarding the protection of marital property of husband and wife in the form of a marriage agreement has been mandated by the legislation which has been explained comprehensively in the Civil Code. This study aims to determine the legal urgency of prenuptial agreements related to property gono gini at the Ternate Religious Court. This study uses a normative research method with an approach to legislation. The results show that the urgency of the prenuptial agreement law is to regulate the legal consequences of marriage, including the separation of assets obtained before marriage. In addition, the prenuptial agreement can also be about the separation of debts that occur before marriage, during the marriage, after divorce, and even death.

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## ABSTRAK

Pentingnya perjanjian pranikah sangat erat kaitannya dengan akibat hukum yang timbul dengan adanya perkawinan, yaitu, menyangkut harta, kewajiban suami istri dan juga masa depan anak yang dilahirkan dari perkawinan. Perkawinan menimbulkan tiga akibat Hukum yaitu, adanya hubungan hukum, adanya harta dan adanya kewajiban terhadap anak-anak yang dilahirkan dan akibat perkawinan diantaranya adalah adanya harta benda dan percampuran terhadap harta benda dari kedua belah pihak (suami dan istri) yang mana dikenal dengan harta bawaan, harta bersama, harta perolehan dan harta peninggalan. Pengaturan tentang perlindungan harta perkawinan suami istri dalam bentuk perjanjian kawin, telah diamanatkan oleh Peraturan Perundang-undang yang telah dijelaskan secara komprehensif dalam KUHPerdara. Penelitian ini bertujuan untuk mengetahui urgensi hukum perjanjian pranikah terkait harta gono gini di Pengadilan Agama Ternate. Penelitian ini menggunakan metode penelitian normatif dengan pendekatan Perundang-Undang. Hasil penelitian menunjukkan bahwa urgensi hukum perjanjian pranikah adalah untuk mengatur akibat hukum dari pernikahan meliputi, pemisahan harta kekayaan yang diperoleh sebelum perkawinan selain itu perjanjian pranikah juga bisa mengenai pemisahan hutang yang terjadi sebelum perkawinan, selama masa perkawinan, setelah perceraian, bahkan kematian.

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## I. INTRODUCTION

Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty based on Article 1 of Law Number 1 of 1974 concerning Marriage (UUP). Meanwhile, according to the Compilation of Islamic Law (KHI) marriage is a very strong contract or *mitsaaqon gholidan* to obey Allah's commands and carry it out is worship (Article 2 KHI) (Ahmad Azhar Basyir, 2014). The principles of marriage also explain that marriage is legal if it is carried out according to the law of each religion and belief, and in addition, each marriage must be recorded according to the applicable laws and regulations, so it should be underlined that marriage registration is an administrative obligation and does not constitute an administrative obligation. affect the validity of marriage (Rachmadi Usman, 2014).

Marriage registration is carried out to provide legal protection for both husband, wife, and children from that marriage, every marriage must be registered, and marriage registration is carried out in a marriage institution, namely for Muslims, at the Office of Religious Affairs (KUA) by a registrar in accordance with the provisions of the Law. Law Number 32 of 1954 concerning marriage, divorce, reconciliation and those who are non-Islamic are registered at the Civil Registry Office by marriage registrar employees as regulated in Government Regulation Number 9 of 1975 (Mamahit, 2013).

The regulation regarding the importance of registering marriages has been regulated in the Legislative Regulations, namely in Article 2 paragraph (2) of the UUP that, every marriage is recorded according to the applicable laws and registration does not determine the validity of a marriage is administrative in nature. law and legal protection (Matnuh, 2016). The importance of recording marriages is closely related to the legal consequences that arise with the existence of marriages, namely, regarding assets, obligations of husband and wife and also the future of children born from marriage (Matnuh, 2016).

The regulation regarding the protection of marital property of husband and wife in the form of a marriage agreement, has been mandated by legislation which has been explained comprehensively in the Civil Code. However, what will be the focus of the author is to examine the prenuptial agreement related to gono-gini assets in the Marriage Law Number 1 of 1974 concerning Marriage.

Based on the description of the background above, the researcher is interested in studying further about the issue of the importance of a prenuptial agreement or a marriage agreement made by a husband and wife and what are the consequences for marital property, especially for gono property if the husband and wife separate or die under the law. Marriage Number 1 of 1974 concerning Marriage. The researcher raised the research title "Legal Analysis of the Urgency of Prenuptial Agreements Related to Gono Gini's Assets at the Ternate Religious Court." To be appointed as the title of the thesis.

## II. RESEARCH METHODS

The method in this study is a description of how to write a thesis with the best possible effort, and the research methods used in collecting data for writing this thesis are as follows:

### 1. Types and Nature of Research

This type of research is the normative type, which is a research method in which the law is conceptualized as what is written in the legislation (law in books) or the law is conceptualized as a rule or norm which is a benchmark for human behavior that is considered appropriate. Normative research is a research method law is carried out by researching library materials or mere secondary materials. (Soerdjono, 1994)

This study uses a statutory approach, (Law Number 1 of 1974 concerning Marriage, and the Civil Code (KUHPerdata) and the Compilation of Islamic Law (KHI) with a conceptual approach. Marriage is mutual property according to the Marriage Law.

## 2. Types and Sources of Data

The data collected in this study can be classified into two, namely:

### 1. Primary Data

This study obtained from original sources regarding the subject matter being discussed in this paper. Sources of data can be obtained through:

1. The 1945 Constitution
2. Law Number 1 of 1974 concerning Marriage
3. Civil Code (KUHPerdata)
4. Compilation of Islamic Law (KHI)

### 2. Secondary Data

Secondary materials, are data obtained from library materials containing information about primary materials by conducting a literature study on expected data such as books, scientific works, journals, court decisions, articles and others.

### 3. Data collection technique

In a study, data collection is one of the stages in the research process that absolutely must be done. Thus, this study aims to obtain secondary data in the form of primary legal materials, secondary legal materials, and tertiary legal materials. The secondary data in this study were obtained through:

1. Literature study by using a study of legislation, and legal books related to the problems to be investigated in this research, also through the internet, magazines, and legal dictionaries related to the problems to be studied in this research.
2. Documentation Study is to find and collect materials in the form of literature and official government documents in the form of court decisions and other documents that can support this research.

### 4. Data Analysis Techniques

Data analysis in this study was carried out qualitatively, namely from the data obtained and then compiled systematically, then analyzed qualitatively to achieve clarity of the problems discussed.

Qualitative data analysis is a research method that produces descriptive data analysis, namely what is stated by the respondent in writing or verbally as well as real behavior, researched and studied as a whole. The results are then drawn a conclusion which is the answer to the problems raised. in this thesis research.

## III. RESULTS OF THE DISCUSSION

### Urgensi Hukum Perjanjian Pranikah

Marriage gives rise to three (3) legal consequences, namely, the existence of a legal relationship, the existence of assets and obligations to the children who are born and as a result of marriage including the existence of property and mixing of the property of both parties (husband and wife) which is known as with inherited property, joint property, acquired property and inheritance.

Congenital assets are assets that existed before the marriage that was brought by each party (husband and wife) (Pakaya, 2016).

In Indonesia, marriage agreements are allowed to be made since the enactment of the Civil Code and are regulated in Article 147, marriage agreements must be made with a notarial deed before the marriage takes place which is called a prenuptial agreement and after the marriage is known as a marriage agreement and will be void if it is not made in this way. . Furthermore, the prenuptial agreement was then reaffirmed in Law Number 1 of 1974 concerning Marriage, in Chapter V Article 29 Paragraph (1), Paragraph (2) and Paragraph (3). This was further strengthened by the Constitutional Court Decision Number 69/PUU-XIII/2015 namely (Hanafi Arief, 2017);

"At the time, prior to holding or during the marriage bond, both parties with mutual consent can enter into a written agreement which is legalized by the marriage registrar or notary, after which the contents also apply to third parties as long as the third party is involved."

The legal consequences concerning joint property under Article 37 of the Marriage Law are left to the divorced parties regarding which law and what law will apply, and if there is no agreement between the ex-husband and wife, the judge can consider according to a reasonable sense of justice. Thus, the consequences of a divorce on joint property for each person can vary, depending on what law and which will be used by the parties to regulate joint property (Liky Faizal, 2015). Researchers see based on the facts in the field that so far marital property can be said to be a factor that causes a lot of disputes between husband and wife, especially marriage assets which are not small in number, this often makes marriages threatened with divorce, lack of understanding of husband and wife about what is meant and what is meant by marriage. only those that are included in joint assets, inherited assets, acquired assets and existing inheritance, cause husband and wife to take action without thinking again and as a result end up separating.

Interference from outside parties such as family who sometimes interfere in family matters can also cause problems to get worse. This is what causes problems regarding marital property, both especially regarding gono gini or joint assets and inheritance or inheritance which causes the most conflicts after the husband and wife are separated or divorced or one of them dies, whether regarding the division or separation it becomes unclear and can sometimes lead to family conflict.

The contents of the prenuptial agreement can be adjusted to the needs of the prospective husband and wife as long as it does not violate the applicable laws and regulations and does not violate decency and public order. The contents of a prenuptial agreement or pre-nup agreement usually include the separation of assets obtained before marriage. In addition, a prenuptial agreement can also be about the separation of debts that occur before marriage, during the marriage, after divorce, and even death (M. Dziddan, 2017).

Meanwhile, what is meant by "gono gini" property is a joint property between a husband and his wife that has been obtained jointly within the period since the marriage between the two spouses. Gono Gini assets can be categorized as various forms of objects that are purchased by a couple using the money that is obtained together (Khairun, 2022). The division of gonogini property refers to the verse of the Qur'an surah an-Nisa' verse 32, where it is stated that for all men there is a share of what they work for and for all women there is a share of what they work for as well (Amad Sudiro, 1974) .

لِّلرِّجَالِ ۖ بَعْضٌ عَلَىٰ بَعْضٍ مِّمَّا كَسَبُوا ۖ وَلِلنِّسَاءِ ۖ لِمَا كَسَبْنَ ۚ وَللَّيْسَاءِ ۗ ۖ اٰكْتَسَبُوْا مِمَّا نَصِيْبٌ  
عَلَيْمًا شَيْءٍ يُّكُلُّ كَانَ اللّٰهَ اِنَّ ۗ فَضِيْلِهِ

## Translation

"And do not be envious of the bounty that Allah has given some of you to others over others. (Because) for men there is a share of what they earn, and for women (also) there is a share of what they earn. Ask Allah for some of His bounty. Verily, Allah is All-Knowing of all things."

According to Law no. 1 of 1974 concerning Marriage Article 35 which contains "Wealth acquired during marriage becomes joint property". Article 150 of the Civil Code distinguishes between inherited property and joint property. Differences regarding the meaning of inheritance and joint property affect the distribution of joint property after a husband and wife divorce. The difference in the distribution of joint property according to the Compilation of Islamic Law is based on Article 97 of joint property after divorce is divided equally, each of the share between husband and wife is the same (Harimurti, 2021).

Article 126 of the Civil Code stipulates that divorce results in the dissolution of joint property so that the joint property must be divided between husband and wife. Along with the definition of marital joint property as regulated in Law Number 1 of 1974 and the Civil Code, the Compilation of Islamic Law also regulates the notion of joint property which is the same as adopted in Law no. 1 of 1974 and the Civil Code above. Shared assets of marriage in the Compilation of Islamic Law are termed "syirkah" which means assets obtained either individually or together with husband and wife during the marriage bond, without questioning whether it is registered in the name of anyone (Muhammad Tigas Pradoto, 2015).

## Gono Gini's Treasure

Gono-guni (joint) assets are assets that are obtained and managed by husband and wife during the marriage and the marriage law does not explain about the joint assets obtained through whose efforts, there are assets obtained during the marriage and do not see or take into account who who get (Junica, 2022).

Meanwhile, the acquired property is defined as the property obtained by each husband and wife which is not an innate property or joint property. For example, inheritance obtained by one party at the time of the marriage takes place, then inheritance (inheritance) consists of property belonging to the husband or wife and property owned by another person which is legally controlled by the husband or wife (Mokodompit, 2015).

Marriage property is regulated in Article 119 Paragraph 1 BW which reads; "From the moment the marriage takes place, by law, there is a unanimous union between the assets of the husband and wife, only regarding this matter with the marriage agreement, no other provisions are made." It is explained that the property in marriage, whether it is the property of each husband and wife or joint property obtained as a result of cooperation and or inheritance in the form of inheritance later (Tim Pustaka Buana , 2016 ). Regarding marital property, where this marital property is obtained by a husband and wife during marriage or commonly known as joint property, but not only that, there are also assets that have been owned by a married couple before the marriage which is known as innate property or original property. There are also acquired assets where this property is the property of each individual husband and wife only obtained in a marriage which is not a joint property unless everything has been previously agreed, either before the marriage or when the marriage has taken place (Sanjaya, 2018).

Although marriage can be said to be an agreement, it has different principles from the agreement regulated in Book III of the Civil Code. Marriage is an institution, which after an agreement (such as an agreement), the parties must comply with the provisions of the law. A marriage agreement which is an agreement that binds a husband and wife pair as long as they are in a marriage bond and only ends if the marriage ends due to death or divorce, thus the marriage agreement is valid for a relatively long period of time, considering that marriage is eternal (Arief, n.d).

## The Role of the Ternate Religious Court in Handling the Gono Gini Property Dispute

The division of joint property in marriage is carried out after a divorce decision is made. According to KHI, based on Article 97, joint property after divorce is divided equally, each share between husband and wife is the same. Meanwhile, according to the Civil Code, the distribution can be made on the evidence submitted by the plaintiff and the defendant. There are two basic considerations of judges in deciding cases of distribution of joint assets according to KHI, namely the basis of deliberation and justice (Pradoto, 2017). The duties and roles of the religious courts in resolving cases of Gono Gini assets are: receiving, examining, deciding, adjudicating and resolving cases submitted by the plaintiffs. The judge in the process of dividing the joint property, namely dividing the joint property equally, (half) of the plaintiff and the defendant, while the judge in considering the distribution of the joint property or joint property does not have to be fixated on the law, but as a judge the process of considering the distribution of the joint property must be based on the law. a sense of justice because the judge himself has a contradictory principle (Siti Urwatul, 2020).

The process of resolving disputes over the distribution of assets between husband and wife after divorce is carried out by covering the stages of receiving, examining, deciding, adjudicating and resolving cases submitted by the plaintiffs against the defendant, with the process of dividing the assets of gono-gini being divided equally between (half) husband and wife. (half) wife. The division of the property of gono-gini is based on positive law and based on the agreement of the two parties in the marriage. In the event that the process of resolving joint property disputes in divorce cases is carried out in the District Court, according to civil procedural law that a divorce suit is filed first, after it is decided and has permanent legal force then a joint property lawsuit is filed (gono gini). As well as in filing a lawsuit for joint assets, debt must be included in the lawsuit for the judge's consideration in the lawsuit. The judge's consideration in giving a decision on the case of settlement of a joint property dispute in a divorce case in the District Court, namely proof in terms of whether it is true that there is joint property in a marriage, when the property was obtained by the husband or wife, whether before marriage or after marriage (Van Bone, 2017). ). As the court's decision on the distribution of joint assets without a prenuptial agreement at the Ternate Religious Court in the register Number :143/Pdt.G/2019/PA.Tte, the Ternate Religious Court's decision Number: 46/Pdt.G/2020/PA.Tte, and the decision Ternate Religious Court Number: 525/Pdt.G/2021/PA.Tte.a.

## IV. CONCLUSION

Marriage registration is carried out to provide legal protection for both husband, wife, and children from that marriage, every marriage must be registered, and marriage registration is carried out in a marriage institution, namely for Muslims, at the Office of Religious Affairs (KUA) by a registrar in accordance with the provisions of the Law. Law Number 32 of 1954 concerning Marriage, Divorce, Reconciliation and those who are non-Islamic are registered at the Civil Registry Office by the marriage registrar as regulated in Government Regulation Number 9 of 1975. The contents of the prenuptial agreement can be adjusted to the needs of the prospective husband and wife concerned. as long as it does not violate the applicable laws and regulations, it does not violate decency and public order. The contents of a prenuptial agreement or pre-nup agreement usually include the separation of assets obtained before marriage, besides that a prenuptial agreement can also be regarding the separation of debts that occur before marriage, during the marriage period, after divorce, and even death. Gono-guni (joint) assets are assets obtained and cultivated by husband and wife during the marriage and the marriage law does not explain about the joint assets obtained

through whose efforts, there are assets obtained during the marriage and do not see or take into account who who get.

The role of the religious courts in resolving cases of gono gini property are: receiving, examining, deciding, adjudicating and resolving cases submitted by the plaintiffs. The judge in the process of dividing the joint property, namely dividing the joint property equally, (half) of the plaintiff and the defendant, while the judge in considering the distribution of gono Gini property or joint property does not have to be fixated on the law, but as a judge the process of considering the distribution of Gono Gini assets must be based on the law. sense of justice because the judge himself has a contradictory principle.

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