

PRENUPTIAL AGREEMENT: BETWEEN A RATIONAL NECESSITY OR A LACK OF CONFIDENCE IN MARITAL LIFE?

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Abstract

This study originates from the central research question as well as the primary objective, namely examining whether a prenuptial agreement is formulated as a rational necessity in navigating the dynamics of marriage or instead reflects a lack of confidence and trust within marital life. To address this focus, the research employs a literature review method with a qualitative approach, gathering journal articles and credible academic sources from Google Scholar, Scopus, ResearchGate, Garuda, and DOAJ. All data were analysed descriptively and analytically to map how the literature interprets the motivations behind the emergence of prenuptial agreements. The findings indicate that a prenuptial agreement cannot be categorised solely as either a necessity or an indication of distrust, but rather as a neutral legal instrument whose meaning is shaped by the couple's context. From the perspective of necessity, this instrument becomes relevant when there are significant differences in asset ownership, economic complexity, or the need for legal certainty regulated through provisions such as the Civil Code, the Marriage Law, and Constitutional Court decisions. However, the literature also shows that its formulation may be triggered by emotional anxiety, past trauma, or fear of relationship failure, thus reflecting a limited sense of security and confidence in marital life. The scientific contribution of this study lies in its more focused explanation of the ambivalence surrounding the meaning of a prenuptial agreement, specifically whether it functions as a rational planning measure or instead mirrors internal doubt, while enriching previous studies that predominantly emphasised juridical normative, legal formal, as well as social and cultural dynamics.

Keywords: *Prenuptial Agreement, Necessity, Marital Confidence*

Abstrak

Penelitian ini berangkat dari pertanyaan riset utama sekaligus tujuan pokok, yaitu menelaah apakah perjanjian pranikah dirumuskan sebagai suatu kebutuhan rasional dalam menghadapi dinamika perkawinan atau justru mencerminkan kurangnya keyakinan dan kepercayaan dalam kehidupan rumah tangga. Untuk menjawab fokus tersebut, penelitian ini



menggunakan metode tinjauan pustaka dengan pendekatan kualitatif, menghimpun artikel jurnal dan sumber akademik kredibel dari Google Scholar, Scopus, ResearchGate, Garuda, dan DOAJ. Seluruh data dianalisis secara deskriptif dan analitis untuk memetakan bagaimana literatur menafsirkan motivasi di balik munculnya perjanjian pranikah. Temuan penelitian menunjukkan bahwa perjanjian pranikah tidak dapat dikategorikan semata-mata sebagai kebutuhan ataupun indikasi ketidakpercayaan, melainkan sebagai instrumen hukum yang netral, yang maknanya dibentuk oleh konteks pasangan. Dari perspektif kebutuhan, instrumen ini menjadi relevan ketika terdapat perbedaan signifikan dalam kepemilikan aset, kompleksitas ekonomi, atau kebutuhan akan kepastian hukum yang diatur melalui ketentuan seperti Kitab Undang-Undang Hukum Perdata, Undang-Undang Perkawinan, serta putusan Mahkamah Konstitusi. Namun, literatur juga menunjukkan bahwa perumusannya dapat dipicu oleh kecemasan emosional, trauma masa lalu, atau ketakutan akan kegagalan hubungan, sehingga mencerminkan keterbatasan rasa aman dan keyakinan dalam kehidupan perkawinan. Kontribusi ilmiah dari penelitian ini terletak pada penjelasan yang lebih terfokus mengenai ambivalensi makna perjanjian pranikah, khususnya apakah ia berfungsi sebagai langkah perencanaan rasional atau justru mencerminkan keraguan internal, sekaligus memperkaya kajian-kajian sebelumnya yang lebih banyak menekankan dinamika yuridis normatif, hukum formal, serta sosial dan budaya.

Kata Kunci: *Perjanjian Pranikah, Kebutuhan, Keyakinan dalam Perkawinan*

INTRODUCTION

Prenuptial agreements are legal instruments that have increasingly gained attention within Indonesian legal discourse because they provide legal certainty regarding the separation of assets and the regulation of rights and obligations between spouses prior to marriage. In the study conducted by Esti Royani et al., it is explained that such agreements may include arrangements concerning shared profits and losses as well as asset separation, provided that they are made consciously and in accordance with the couple's values (Royani, Nortjahjo, Sobirov, & Triana, 2024). Meanwhile, Asmuliadi Lubis demonstrates that although prenuptial agreements are often considered taboo within Eastern cultures, they remain relevant in Islamic law so long as they do not contradict religious norms, even when expressed only orally (Lubis, 2023). Research by Muhammad Amri Pratama et al. further affirms that prenuptial agreements offer couples the flexibility to establish financial and property regulations beyond the provisions of general marriage law (M. A. Pratama, Zega,

Muhdiya, Butar, & Maylafaiza, 2024). In a similar study, Sugih Ayu Pratitis and Rehulina emphasise the importance of the formal validity of such agreements, which must be set out in an authentic deed before a notary in order to possess legal force (Pratitis & Rehulina, 2023).

Furthermore, the study conducted by Ferry Irawan Febriansyah et al. explains that prenuptial agreements function as legal protection for the personal rights of couples before marriage, which are often constrained by cultural stigma that perceives marriage as a sacred union without space for legal arrangements (Ferry Irawan Febriansyah, Alfalachu Indiantoro, & Wafda Vivid Izziyana, 2021). This perspective is reinforced by the research of Rosita et al., which underscores the urgency of prenuptial agreements in safeguarding pre-marital assets and preventing unhealthy marital motivations, particularly among couples with high financial risk such as politicians or entrepreneurs (Rosita, Novitasari, & Zainuddin, 2022). In the international context, Siddhi Suman and Udayasimha NG highlight the dynamics in India, where family courts have begun encouraging the legalisation of prenuptial agreements as mandatory contracts, in line with shifting views among younger generations who increasingly perceive marriage as contractual rather than sacred (Siddhi Suman & Udayasimha NG, 2024). The study of Ivanova Elena V et al. expands this understanding by classifying prenuptial agreements as valid civil law transactions rather than ordinary marital contracts because they possess characteristics of bilateral agreements recognised within civil law (Ivanova Elena V, Perepelkina Natalia V, & Semenova Nadezhda V, 2022).

Based on the preceding studies, it can generally be observed that they have addressed the issue of prenuptial agreements from normative juridical, legal formal, and socio-cultural perspectives. Most emphasise these agreements as instruments of legal protection for assets, rights, and obligations of couples within both civil law and Islamic law contexts. Other studies have also begun to explore societal resistance to such agreements, which are often viewed as contradictory to cultural values and the perceived sanctity of marriage. Meanwhile, international research broadens the scope

by comparing the acceptance of prenuptial agreements across foreign legal systems and examining their broader potential application. However, the psychological and emotional dimensions, particularly regarding the underlying motives, have not yet become a primary focus. This raises the fundamental question of whether these agreements emerge as a necessity for addressing the complexities of marital life or instead reflect doubt and diminished confidence in forming a marital union.

In response to this question, the present study aims to examine directly whether prenuptial agreements are drafted as a necessity for regulating essential aspects of domestic life or whether they arise as indicators of limited confidence in the continuity of the relationship. Through this objective, the study provides a scholarly contribution by offering a more focused explanation of how prenuptial agreements are understood and interpreted in relation to marital trust, thereby clarifying whether such instruments represent a rational planning measure or a reflection of fundamental doubt at the outset of marriage.

METHOD

This study is structured using a library research method as its principal approach. The selection of this method is not incidental but constitutes a methodological step that is relevant to the nature of the problem being addressed. A library-based approach provides a strong argumentative foundation for tracing how academics, legal practitioners, and previous researchers have interpreted prenuptial agreements from various perspectives, while also enabling this study to identify conceptual gaps that have not been adequately discussed in earlier scholarship.

Within this framework, the study employs a qualitative research design because its focus does not lie in the quantification of data but in the exploration of meaning, patterns of thought, and forms of argumentation that shape perspectives on prenuptial agreements. The qualitative approach allows the researcher to interpret more deeply the relationship between legal norms, psychological dynamics, and socio-cultural values as reflected in a range of literature sources. In addition, this

approach is relevant to the interpretative nature of the research focus, namely examining whether the formulation of prenuptial agreements is viewed more as a rational necessity or as an indication of doubt in entering married life.

In line with this requirement, the study formulates a single yet multidimensional research question: "Are prenuptial agreements a necessity or an expression of limited marital confidence?" This guiding question serves as the primary compass that directs the process of locating, selecting, and evaluating the relevant literature. Consequently, all methodological steps undertaken do not merely function to collect information but also to select sources that are pertinent to explaining how this legal instrument is understood, practised, and assessed by various social groups and previous scholars. To answer this research focus, the study gathers data from various written sources, particularly reputable scientific journal articles and other official websites. The use of diverse sources is also necessary because this research problem concerns not only formal legality but also the ways in which couples perceive security, trust, and emotional preparedness in marriage.

Furthermore, data were obtained from various academic online databases such as Google Scholar, ResearchGate, Scopus, Garuda Ristekbrin, DOAJ, and other relevant official platforms. The availability of these platforms enables the researcher to trace recent publications, including articles that specifically examine the dimensions of prenuptial agreements. By broadening the range of sources, the study is able to capture a more comprehensive picture of how prenuptial agreements are debated both locally and globally, as illustrated in the background section of the article which shows differing societal acceptance of this instrument.

Once all data had been compiled, the processing stage was carried out using a descriptive analytical technique. The descriptive stage was used to present the findings from the literature in a systematic manner. This stage is essential for helping readers understand the epistemological context underlying the discussion. The analytical stage, on the other hand, was used to interpret these findings so that they may clarify whether the tendency to formulate prenuptial agreements is driven more

by objective necessity or by subjective doubt on the part of couples. In this way, the method does not simply present information from various sources but connects them critically in order to generate new insights that are consistent with the findings of the study.

To ensure a more targeted literature search, this study employed keywords aligned with the main theme, such as "prenuptial agreement", "perjanjian pra-nikah", "marital trust", "marital needs", "relationship doubt", "couple psychology", and other relevant terms. The use of these keywords is designed to capture the variations in terminology used within academic discourse. Besides preventing interpretative errors, this strategy ensures that the collected literature genuinely supports the argument concerning the ambivalence of prenuptial agreements as instruments of necessity and potential reflections of distrust.

Through this methodological framework, the study establishes a sound scientific foundation for examining the issue of necessity and confidence in the drafting of prenuptial agreements. The combination of a library-based approach, qualitative analysis, and careful selection of literature enables the reconstruction of research findings in a logical and coherent manner.

RESULTS AND DISCUSSION

Legal Basis of Prenuptial Agreements

Prenuptial agreements in Indonesia possess a clear legal foundation that can be identified across several regulatory instruments. Their primary basis is set out in Article 29 of the Indonesian Civil Code, which provides room for prospective husbands and wives to establish agreements concerning property, so long as such agreements do not contravene the law, religion, or morality. This provision is further reinforced by Law Number 1 of 1974 on Marriage, particularly following its amendment through Law Number 16 of 2019, in which Article 29 paragraph (1) reiterates that prenuptial agreements may be made before or at the time the marriage is concluded (M. A. Pratama et al., 2024). The technical regulation of this matter is further clarified by

Constitutional Court Decision Number 69/PUU-XIII/2015, which expands the scope of prenuptial agreements so that they are no longer confined solely to matters of property but may also include other forms of agreement provided that they do not contradict fundamental legal principles (Abigail & Abdulilah, 2019).

With this robust legal basis, as regulated in the Civil Code, the Marriage Law, and reaffirmed through the decision of the Constitutional Court, prenuptial agreements can no longer be regarded as merely private arrangements lacking formal legitimacy. Instead, they have evolved into legal instruments fully recognised by the state and endowed with binding legal force. This degree of legality confirms that prenuptial agreements occupy a strategic position as mechanisms that can assist prospective couples in planning their married life in a more structured, transparent, and preventive manner, particularly in relation to the organisation of property, the distribution of responsibilities, and the anticipation of potential risks that may arise in the future.

Between Necessity or Insufficient Confidence in Building a Household?

A prenuptial agreement is essentially a contract formulated by two individuals who are about to enter into marriage with the intention of regulating certain aspects that are considered important and potentially problematic in the future (W. A. Pratama, 2025). The matters arranged may include the separation or consolidation of assets, the management of specific property, the division of responsibilities, and other jointly agreed provisions, provided that they do not conflict with positive legal norms (Utami et al., 2025). This instrument offers space for couples to establish legal certainty regarding areas that may generate differing interpretations once they begin their married life.

However, when a prenuptial agreement is presented as one of the options in preparing for marriage, an equally important question arises. It concerns whether the formulation of such an agreement genuinely stems from a rational need or instead reflects a lack of confidence in building a marital life founded on trust. These two perceptions move side by side and may become the basis for differing assessments of

the same instrument. Some parties may interpret it as a form of anticipation, while others view it as an indication of excessive caution.

To address these two perceptions, it is important to first examine the fundamental nature of the marital relationship itself. Marriage brings together two individuals who possess life experiences, economic conditions, ways of thinking, and value structures that are not always uniform (Tajuddin & Soleh, 2024). Even when an emotional bond has been firmly established, these differences still have the potential to become sources of friction once living together begins. A prenuptial agreement emerges as a response to these potential points of tension by offering a legal mechanism that can regulate sensitive matters before conflict arises (Hulukati, 2024). From this perspective, the instrument is understood as a means to prevent uncertainty.

The same approach can be observed among couples who have significant differences in the ownership or management of property. When one party owns a private business, family assets, intellectual property, digital assets, or other forms of property that require specific technical arrangements, a prenuptial agreement can help ensure that these assets are protected and clearly managed (Indira & Meylina, 2025). In such circumstances, the drafting of a prenuptial agreement does not merely reflect a lack of trust, but rather a desire to create order, transparency, and balance within the household that will be established.

Beyond economic and asset-related considerations, psychological factors also play a role. For some individuals, clarity regarding rights and obligations before marriage provides a sense of security that supports emotional stability. When both parties are able to discuss sensitive topics openly, the process strengthens communication and fosters awareness that a household cannot be built solely on feelings but also requires thoughtful planning (Lisa Zeiderman Esq, 2025). From this perspective, a prenuptial agreement is understood not as a form of suspicion but as an effort to organise shared life in a more realistic manner.

However, these psychological factors are not always positive. Some individuals are inclined to draft a prenuptial agreement not because of an objective need, but due to internal anxieties that are not rooted in the actual dynamics of the relationship. Worries about relationship failure, past trauma, or an exaggerated imagination of negative scenarios may lead someone to feel the need to install legal safeguards before beginning married life. In this context, a prenuptial agreement may become an instrument for managing fear rather than a tool for establishing certainty (Margulies, 2003). When the motivation is solely defensive, the agreement may create an unhealthy relational dynamic because it is not grounded in full trust.

Another aspect that influences perceptions of prenuptial agreements is the social and cultural environment surrounding the couple. In certain communities, discussions regarding property, assets, or the division of roles are still considered taboo or inappropriate to address before marriage. Such social norms may cause a prenuptial agreement to be viewed as unethical or inconsistent with moral values (Lubis, 2023; Niswah, 2025). Conversely, in other communities, transparency and planning are regarded as signs of maturity, which leads to the acceptance of prenuptial agreements as a reasonable measure (Hulukati, 2024). This pattern shows that the interpretation of legal instruments does not stand alone but is shaped by the value structures embedded within society.

In responding to the diverse motivations and perceptions described above, a prenuptial agreement must be understood as a neutral legal instrument. It cannot be absolutely labelled as either driven by necessity or as an indication of distrust, because both motivations may arise in different contexts. What requires attention is how couples construct the communication process when considering the use of this instrument. If discussions are conducted honestly, openly, and with an orientation towards balance, a prenuptial agreement can serve as a tool for strengthening transparency. However, if the communication process is marked by discomfort or pressure, the instrument may generate psychological unease that ultimately reduces the quality of the relationship.

Considering these variables, it becomes clear that the value of a prenuptial agreement does not lie solely in the document itself but in the process that underpins its formulation. Marriage is a relational space filled with emotional dimensions, which means that a legal contract cannot replace the roles of trust, loyalty, and communication (Arif Sugitanata & Sarah Aqila, 2023). A prenuptial agreement can function optimally only when it forms part of a healthy discussion, not when it is used as a substitute for the emotional structure of the relationship.

At this point, a prenuptial agreement may be understood as an instrument with two faces. It can help couples organise their domestic life more systematically, yet it can also become a reflection of unresolved internal uncertainties. What determines its direction is not the legal regulation itself but the emotional readiness and quality of communication between the parties. This legal instrument does not diminish the value of trust, although the way it is used may influence how couples perceive commitment.

Therefore, prenuptial agreements in Indonesia exist between the poles of necessity and doubt. On one hand, their legal basis is clear, their legal function is strong, and their practical benefits can be felt by couples who face particular complexities in managing shared life. On the other hand, this instrument may raise questions about emotional readiness when its use is driven more by anxiety than by objective need. Consequently, an understanding of prenuptial agreements cannot be simplified into merely necessary or unnecessary, but must instead be interpreted through a comprehensive context that encompasses legal, psychological, social, and relational factors.

The essence is that a prenuptial agreement is a legitimate legal option, and its existence does not determine whether a relationship possesses strong confidence or not. What matters is the quality of dialogue, the maturity of understanding, and the awareness of each party when preparing to enter married life. When this instrument is understood proportionally, it can become part of an effort to build a well-planned

and committed household, not as an obstacle to trust but as a foundation that helps ensure the relationship remains on a clear and accountable path.

CONCLUSION

This study finds that a prenuptial agreement cannot be categorised solely as a necessity or as an indication of insufficient confidence within a marital relationship. Instead, it is a neutral legal instrument that functions differently depending on the couple's context. On one hand, a prenuptial agreement emerges as a rational need when couples face significant disparities in asset ownership, complexities in economic management, or a requirement for legal certainty prior to entering marriage. In such circumstances, the instrument serves as a preventive mechanism to reduce potential friction, strengthen openness, and organise household life in a transparent manner. On the other hand, the study also finds that some couples consider a prenuptial agreement due to psychological impulses such as anxiety, trauma, or fear of potential relationship failure, which means the instrument reflects unresolved emotional needs. Consequently, a prenuptial agreement occupies an ambivalent position, as it may represent careful planning or a manifestation of doubt, with its meaning shaped by the quality of communication, emotional readiness, and the underlying process of dialogue.

This study also has a key limitation relating to the scope of its findings, which remain focused on describing motivations and perceptions concerning prenuptial agreements without verifying behaviour or concrete practices after the agreement has been drafted. All findings concerning necessity and insufficient confidence rely on conceptual arguments, logical reasoning, and normative interpretations of psychological, economic, and social dynamics. As a result, they do not yet illustrate how these motivations actually operate in real cases or in the empirical experiences of couples who have either made or declined to make a prenuptial agreement. The study also does not incorporate comparative data between different groups of couples, for instance couples with complex assets compared with those without significant

differences in assets. Therefore, conclusions regarding the ambivalence between necessity and doubt cannot yet be mapped with greater precision.

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