

ANALISA YURIDIS PERJANJIAN PRA NIKAH DAN AKIBAT HUKUMNYA TERHADAP HARTA PERKAWINAN

Dewi Sariswati Permata Vitri

Abstrak

Prenuptial Agreement atau perjanjian pra nikah dibuat untuk kepentingan perlindungan hukum terhadap harta bawaan masing-masing. Membuat perjanjian pra nikah diperbolehkan asalkan tidak bertentangan dengan hukum, agama dan kesucilaan, nilai-nilai moral dan adat istiadat. Hal ini telah diatur sesuai dengan pasal 29 ayat 1 dan ayat 2 UU No.1 tahun 1974 tentang Perkawinan dan Kompilasi Hukum Islam pasal 47 ayat 1. Metode penelitian yang digunakan dalam penelitian ini adalah penelitian yuridis normatif empiris. Hasil penelitian menunjukkan bahwa perjanjian pra nikah yang dibuat mengacu pada ketentuan yang terdapat dalam KUH Perdata Pasal 1320, tentang syarat-syarat sahnya perjanjian-perjanjian. Serta pasal 1338 KUH Perdata dimasukkan prinsip atau asas kebebasan berkontrak. Akibat hukum yang timbul dari perjanjian pra nikah yang dibuat adalah tidak ada harta bersama selama perkawinan dan suami wajib memberikan nafkah terhadap keluarga. Kendala-kendala yang dihadapi antara lain Tuan MR telah melanggar perjanjian pra nikah yang dibuat sebelum pernikahan berlangsung dan tidak disebutkan dalam UU adanya sanksi yang memberatkan bagi suami yang tidak melaksanakan kewajibannya dalam perjanjian pra nikah yang dibuat.

Kata Kunci: Perjanjian Pra Nikah, perlindungan hukum, harta perkawinan.

JURIDICAL ANALYSIS ON PRENUPTIAL AGREEMENT AND LEGAL CONSEQUENCE ON MATRIMONIAL PROPERTY

Dewi Sariswati Permata Vitri

Abstract

Prenuptial agreement or abbreviated to *prenup* is made in order to legally protect each party's property in the event of divorce. Establishing a prenuptial agreement is permitted as long as it complies with the law, religion, moral and cultural values. It has been regulated in accordance to The Constitution of the Republic of Indonesia Art. 29 (1) and (2) No. 1/74 about Marriage and Compilation of Islamic Laws Art. 47 (1). The research methods used were juridical, normative, and empirical. The research outcome yielded data based on prenuptial agreement made in compliance with the provisions from Indonesian Civil Code Art. 1320 on terms which make the contract and/or agreements valid. Along with Indonesian Civil Code Art. 1338, the principle of freedom of contract was included. Legal consequences from existing prenuptial agreement were that there would be no shared property while the marriage was taking place and a husband had an obligation to provide for the family. Obstacles faced were Mr. MR failed to abide by the prenuptial agreement which was made before the marriage took place, also, no burdensome sanctions mentioned in the constitution against a husband who does not carry out his matrimonial obligations based on the concluded prenuptial agreement.

Keywords: Prenuptial Agreement, Legal Protection, Matrimonial Property.