

Legal Protection of Female Workers Through Marriage Agreements In Ponorogo Regency

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ABSTRACT

Ponorogo Regency is one of the regions sending a significant number of female migrant workers (TKW), reaching 30,793 in the 2022–2024 period. The high number of Indonesian migrant workers (PMI) is correlated with the increase in divorce cases at the Ponorogo Religious Court, particularly divorce cases filed by wives. This situation raises legal issues, particularly regarding the division of joint assets, which often disadvantage migrant workers as the economically dominant party during the marriage. This study aims to analyze the urgency of a prenuptial agreement as an instrument of legal protection for migrant workers from a notarial law perspective. The research method used is empirical juridical with a statutory approach and field interviews. Normatively, the provisions of Law Number 1 of 1974 concerning Marriage, which were expanded through Constitutional Court Decision Number 69/PUU-XIII/2015, have provided legal space for couples to enter into a prenuptial agreement before and during the marriage. However, research results indicate that the implementation of prenuptial agreements in Ponorogo remains low due to limited legal literacy, inadequate outreach, and cultural barriers that view such agreements as a sign of mistrust. Therefore, prenuptial agreements are urgently needed as a preventative measure to ensure legal certainty, justice, and the protection of migrant workers' assets, as well as to minimize joint property disputes in divorce. (Law No. 1 of 1974).

Keywords: Marriage Agreement, Female Migrant Workers (TKW), Joint Property, Divorce, Legal Protection.

1. INTRODUCTION

Ponorogo Regency is one of the areas in East Java Province known as a sending area for female migrant workers (TKW) abroad in quite significant numbers. The community's economic conditions, limited job opportunities, and the demands of meeting family needs encourage many women who have become wives to choose to work as TKW. The departure of TKW on the one hand has a positive impact in terms of increased income and family welfare, but on the other hand, it also gives rise to various legal and social problems in household life. Data regarding Indonesian Migrant Workers (PMI) in Ponorogo Regency from 2022-2024 amounted to 30,793 people, with details of the number of Migrant Workers in Ponorogo Regency being 7,568 in 2022, 10,879 in 2023, and finally 11,329 in 2024.

Female migrant workers (TKW) are a group of Indonesian migrant workers who make a significant contribution to the family and national economy through their remittances. Ponorogo Regency is known as one of the regions with the highest number of migrant workers, making the various social and

legal issues experienced by these women a relevant phenomenon worthy of in-depth study, particularly from a notarial law perspective.

In the practice of domestic life, many migrant workers face marital problems that end in divorce. These divorces often have complex legal consequences, particularly regarding the division of joint assets, the provision of maintenance, and the protection of income and assets earned while working abroad. In many cases, migrant workers are the ones who suffer because the fruits of their labor during the marriage are considered joint property without any clear prior arrangements.

The high divorce rate in Ponorogo Regency, particularly among female workers, indicates that family resilience still faces serious challenges. This is based on the number of divorce filings filed by wives as female workers at the Ponorogo Regency Religious Court, which recorded 1,358 divorce filings in 2022, 1,294 in 2023, and 1,247 in 2024.

Based on data from the top five regencies/cities, Ponorogo Regency shows a correlation between migrant worker placements and divorce cases. In 2022, there were 7,568 migrant worker placements with 1,850 divorce cases. In 2023, the number of migrant worker placements from Ponorogo was recorded at 10,879, while the number of divorce cases filed, both through divorce and lawsuits, reached 1,708. From this data, the percentage of divorces involving migrant workers in Ponorogo reached 15.71%. Furthermore, in 2024, although the number of migrant worker placements increased to 11,329 people, the divorce rate actually decreased slightly to 1,623 cases. After calculation, the divorce ratio in 2024 fell to 14.32%. Details of this data will be presented further in the table provided below.

Normatively, marriage is a physical and spiritual bond between a man and a woman to live together as husband and wife legally according to religious and state law. This bond not only unites two individuals in a legal relationship, but also strengthens a sacred covenant before God Almighty with the aim of forming a harmonious, happy, and loving family. This principle is emphasized in Law Number 1 of 1974 concerning Marriage, specifically Article 1 which states that marriage aims to form a happy and eternal family based on the One Almighty God. In line with that, Article 2 of the Compilation of Islamic Law (KHI) emphasizes that marriage is a strong contract as a form of obedience to God's commands and its implementation has the value of worship. (Law No. 1 of 1974)

Every couple entering into marriage fundamentally hopes for a peaceful, harmonious, and sustainable household life. This is affirmed in Article 3 of the Compilation of Islamic Law (KHI), which states that the purpose of marriage is to create a household that is peaceful, loving, and compassionate. Domestic harmony can only be achieved if the husband and wife understand each other, exercise their rights and obligations in a balanced manner, and build communication based on mutual respect.



However, in reality, what happens in the families of female migrant workers does not always align with these normative goals. Various problems such as disagreements, economic pressures, property disputes, and domestic violence often arise and escalate into prolonged conflict. If these conflicts are not resolved appropriately, they often lead to divorce, ultimately severing the marriage bond and causing social, economic, and psychological impacts on both partners and children.

The provisions regarding the rights and obligations of husband and wife in Indonesia are derived from two sources of marriage law, namely Law Number 1 of 1974 concerning Marriage (Marriage Law) which explicitly regulates these provisions, which are outlined in Chapter VI, starting from Article 30 to Article 34. On the other hand, for those who are Muslim, similar provisions are clarified and expanded through the Compilation of Islamic Law (KHI), specifically in Chapter XII, which includes Articles 77 to 84. These two legal instruments are the primary references in defining the legal relations of marriage in Indonesia, a more detailed explanation of certain obligations is contained in Article 34: (Law No. 1 of 1974)

"(1) The husband is obliged to protect his wife and provide all the necessities of household life according to his ability, (2) The wife is obliged to manage household affairs as well as possible, (3) If the husband or wife neglects their respective obligations, they can file a lawsuit with the Court."

Apart from that, Article 80 of the KHI also explains that:

"(1) The husband is the guide for the wife and the household, however regarding important household matters it is important to be decided by the wife together, (2) The husband is obliged to protect his wife and provide all the necessities of household life according to his ability, (3) The husband is obliged to provide religious education to his wife and provide opportunities to learn knowledge that is useful and useful for the religion, homeland and nation, (4) According to his income the husband bears: a. living, *kiswah* and residence for the wife; b. expenses household, maintenance and medical costs for the wife and children; c. educational costs for the children, (5) The husband's obligations towards his wife as stated in paragraph (4) letters a and b above come into effect after the wife has completed her consent. (6) The wife can free her husband from the obligations towards himself as stated in paragraph (4) letters a and b, (7) The husband's obligations as referred to in paragraph (5) are terminated if the wife is *unsyuz*.

The principle of the obligation to provide for the family is part of the husband's financial responsibility to support the family within his means. Furthermore, the wife is expected to acknowledge and appreciate her husband's efforts in meeting these economic needs. However, this concept of role

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division is flexible and does not limit the wife to household chores or the husband to work. The wife has the right to work outside the home to contribute to improving the family's financial situation, and the husband can also take on a role in managing the household. However, amid this flexibility, the husband and wife must recognize and uphold their essential positions within the generally recognized family structure: the husband as the head of the family who provides the income, and the wife as the homemaker.

The high divorce rate, dominated by wives, is driven by various factors. Economic factors are a very dominant trigger, with the issue of husbands not fulfilling their wives' rights a major focus in divorce cases. Based on field data, most divorce suits filed by wives who work as migrant workers are often triggered by financial problems stemming from their husbands. This situation worsens when the husband is no longer able to shoulder the responsibility of meeting the family's needs, even to the point of neglecting his obligations. This situation often gives rise to conflict in the household, where the wife, the primary source of income, can begin to position herself as the primary decision-maker. As a result, the husband's role as head of the household begins to erode, which then triggers serious disputes between husband and wife. While the couple's initial decision to live apart was intended to meet their needs and strengthen family harmony, it ultimately leads to rifts and divorce.

This situation indicates that divorce among female workers in Ponorogo Regency is a serious issue and requires special attention. Many divorces are triggered by domestic conflicts related to economic issues and property disputes, which can be minimized by clearly defining the rights and obligations of husband and wife from the beginning of the marriage.

One of the legal instruments provided by legislation to prevent conflict and divorce is the marriage contract. A marriage contract is not intended as preparation for divorce, but rather as an anticipatory measure to provide legal certainty and protection for the rights and obligations of husband and wife during the marriage. The existence of a marriage contract has a strong legal basis, both in Article 29 of the Marriage Law and Article 45 of the Compilation of Islamic Law, and is reinforced by Constitutional Court Decision Number 69/PUU-XXI/2015 which extends the time period for making a marriage contract to the duration of the marriage bond.

For female migrant workers, drafting a prenuptial agreement is crucial because it regulates the separation of assets, income management, and protection of assets earned from overseas employment. Through a prenuptial agreement, the rights of migrant workers can be legally protected in the event of a future divorce. However, in practice in Ponorogo Regency, the rate of prenuptial agreements between prospective migrant workers and married couples remains relatively low. This is influenced by various factors, such as low public understanding of the law, the perception that prenuptial agreements conflict

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with cultural and religious values, and minimal awareness of the importance of legal protection from the beginning of marriage.

On the other hand, notaries, as public officials authorized to draw up authentic deeds, play a strategic role in providing legal protection through the creation of marriage contracts. The notary's function is not only administrative but also preventive, namely preventing future disputes, particularly disputes resulting from divorce that are detrimental to one of the parties. Therefore, it is important to examine the extent to which the notary's role in drawing up marriage contracts provides legal protection for the rights of migrant workers (TKW) resulting from divorce.

2. RESEARCH METHODS

The research method used is Socio-Legal legal research. The main focus is to examine the reality formed through social dimensions, especially the relationship between researchers and several key subjects. These subjects include Female Migrant Workers (TKW), Heads of Religious Affairs Offices (KUA) in five sub-districts of Ponorogo Regency (Siman, Sukorejo, Babadan, Jenangan, and Ponorogo), and the Population and Civil Registration Service (DUKCAPIL) as well as Religious Court Judges. The approach used in this study is sociological juridical, which is an approach to gain empirical understanding. The location of this research is in one of the areas in East Java Province, namely Ponorogo Regency. Types and Sources of Data are Primary Data and Secondary Data. Data collection techniques in this study use Observation, Interview, Documentation and Literature methods. After all the data is collected, it is then analyzed in this case using qualitative analysis methods. This qualitative analysis process then aims to produce a comprehensive and comprehensive picture of the creation of a marriage agreement as a legal instrument in protecting the rights of female migrant workers and the preventive measures that have been taken by the Religious Court and the Office of Religious Affairs (KUA) of Ponorogo Regency in reducing the divorce rate, especially cases of divorce lawsuits, among female migrant workers (TKW) in the region.

4. RESULTS AND DISCUSSION

The Function of Notary's Deed of Marriage Agreement in Providing Legal Protection for the Rights of Female Migrant Workers (TKW) Due to Divorce in Ponorogo Regency

In the Indonesian legal system, marriage is viewed not simply as an emotional relationship between a man and a woman, but as a physical and spiritual bond with legal consequences. It is described as a sacred agreement or bond that gives rise to rights and obligations for each party. In practice, the

relationship between husband and wife is not only about love and togetherness, but also involves economic, social, and even legal responsibilities. When one party fails to fulfill their obligations properly, conflicts often arise, leading to disputes and even divorce. Therefore, a prenuptial agreement is a crucial instrument for providing legal certainty and protection for both parties, both from the beginning and throughout the marriage.

Normatively, the regulation of prenuptial agreements was initially stipulated in Law Number 1 of 1974 concerning Marriage, which states that prenuptial agreements can only be made before or at the time of marriage. This provision is considered restrictive because in the dynamics of a household, legal needs can change over time. Couples who initially do not make an agreement may later discover the need to reorganize certain aspects of their assets or responsibilities. This time limit often leads to regret, especially for those facing complex financial issues after marriage. (Law No. 1 of 1974)

Legal reforms occurred through Constitutional Court Decision No. 69/PUU-XIII/2015, which expanded the timeframe for drafting a prenuptial agreement. This ruling affirmed that a prenuptial agreement can be made before, during, or during the marriage. This change provides legal flexibility for couples to adapt household arrangements to their actual needs. Thus, there are no longer rigid time limits, allowing legal protection to remain even after many years of marriage.

In the context of property, marriage agreements are closely related to the arrangement of joint property and personal property as regulated in Article 35 of the Marriage Law. Joint assets are assets acquired during the marriage, including the results of each party's work. Meanwhile, personal assets include assets inherited before marriage as well as assets obtained as gifts or inheritance. Without a marriage agreement, the principle of joint property applies automatically, so that all property acquired during the marriage becomes joint property, regardless of who actively produces it.

In addition to the Marriage Law, provisions regarding marital property are also found in the Civil Code (KUHPerdata). Article 119 of the KUHPerdata states that, in the absence of any other agreement, there is a complete commingling of assets between husband and wife. However, Article 139 allows prospective husbands and wives to deviate from this provision as long as it does not conflict with morality and public order. This provision reinforces the principle of freedom of contract within a marriage agreement, allowing couples to arrange the separation of assets, debts, and other forms of financial management as agreed.

In practice, marriage agreements generally include three main models: partial consolidation of assets, limited consolidation of income, and complete separation of assets. However, the content of the agreement is not limited to the property aspect alone. Based on the principle of freedom of contract

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reflected in Article 1338 of the Civil Code, the parties may determine other clauses as long as they do not violate law, religion, or morality. Therefore, a marriage agreement can include provisions on the division of roles, child responsibilities, and protection against domestic violence.

The concrete case that serves as the background for this research is that of Mrs. UF, a migrant worker in Hong Kong from 2010–2022. In her interview, UF stated: “Yes, sir, I migrated to Hong Kong when I was 20 years old... I worked hard there, but the money I sent never reached my child. If I had known about the marriage agreement, I would have made one from the start.” This statement shows deep regret due to the lack of written arrangements regarding financial management during the marriage. She admitted that she never received information about the possibility of making a marriage agreement when she married at the Office of Religious Affairs (KUA).

While UF was working abroad, her husband, QA, allegedly engaged in various acts without her consent, such as pawning a car's vehicle registration certificate (BPKB), borrowing from friends, and failing to pay bank installments using UF's parents' land certificate as collateral. There were even indications of an online gambling addiction due to easy access to remittances. This situation demonstrates the vulnerability of wives as primary breadwinners without legal protection through a written agreement.

This phenomenon is reinforced by the statement of Notary Sonny Bella Prakawan, SH, M.Kn in Ponorogo who stated: "Ponorogo is known as a contributor of foreign exchange from migrant workers, but the divorce rate is very high, even approaching 90 percent. Marriage agreements are still considered taboo, even though they are important to protect the assets of migrant workers." This statement shows a gap between the need for legal protection and the culture of society that still views marriage agreements as a form of distrust.

Similarly, Notary Riad Ladika Gutan, SH, M.Kn., emphasized that a marriage agreement not only regulates the separation of assets but also responsibilities for children's education, debt management, and protection for victims of domestic violence. He stated: "If domestic violence or infidelity occurs, the victim's property rights remain protected. A judicial review can even reduce divorce rates because there is no longer financial jealousy." This demonstrates the preventive function of a marriage agreement from both an economic and psychological perspective.

From a judicial perspective, the Class IA Religious Court Judge also highlighted the rise in divorces among migrant workers. He stated that many joint property disputes arise from the lack of a prenuptial agreement. In one case, a house built with the wife's earnings abroad became a disputed issue because it stood on shared land without a written agreement. The judge emphasized that the existence of a prenuptial agreement would facilitate the process of proving and resolving cases.



The effectiveness of a marriage contract can be legally reviewed as strong evidence if it is prepared in the form of an authentic deed. Deeds prepared by a notary have complete and binding evidentiary force. Under civil evidence law, an authentic deed does not require additional proof unless proven otherwise. Therefore, drafting a marriage contract before a notary is crucial to ensure legal certainty, especially for third parties.

Notary Dyah Antarukmi, SH, M.Hum., M.Kn., explained: "If it's made privately, the evidentiary value is not perfect. I recommend having it drawn up by a notary to provide legal certainty for third parties." This statement emphasizes the importance of an authentic deed in ensuring the validity and binding force of a marriage agreement, especially when it concerns debts or legal relationships with creditors.

In addition to legal and economic aspects, a prenuptial agreement also has a psychological dimension. The drafting process encourages open communication regarding finances, expectations, and responsibilities within the household. Discussions that may initially feel sensitive can actually strengthen mutual trust. By establishing clarity from the outset, the potential for future conflict can be minimized, allowing couples to focus on the primary goal of marriage: building a harmonious and prosperous family.

Thus, a prenuptial agreement is not a symbol of distrust, but rather an instrument of protection and risk management within the household. Furthermore, following the Constitutional Court's ruling permitting its creation during marriage, couples have greater opportunity to adapt their legal needs. In the context of increasing divorce rates, particularly among female migrant workers, prenuptial agreements become relevant as a legal umbrella that provides certainty, justice, and protection for both parties, both during and after the marriage.

Implementation and Obstacles in Making Marriage Agreement Deeds for Female Workers in Ponorogo Regency

Marriage, from a national and social legal perspective, is viewed as a physical and spiritual bond between a man and a woman aimed at forming a happy and lasting family. In the context of Indonesian positive law, marriage is not merely an emotional relationship but also a legal one that gives rise to rights and obligations for both parties. However, in practice, unequal implementation of these obligations is not uncommon, particularly in economic matters and asset management. This situation highlights the importance of a prenuptial agreement as a preventative instrument for legal protection against potential future disputes.

Prior to the Constitutional Court's ruling, regulations regarding prenuptial agreements were limited in time. Under Article 29 of Law Number 1 of 1974 concerning Marriage, prenuptial agreements

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could only be made before or at the time of the marriage. This limitation was deemed insufficiently responsive to the dynamics of married life, as new, unpredictable legal requirements often arise during the course of a marriage. (Law No. 1 of 1974)

Significant changes then occurred through Constitutional Court Decision No. 69/PUU-XIII/2015, which expanded the timeframe for drafting a prenuptial agreement so that it could be made during the marriage. This ruling provided legal flexibility and provided protection for couples who had not previously entered into an agreement. Thus, the law adapts to the needs of a dynamic modern society.

In substance, a marriage agreement generally regulates joint property and acquired property, as stipulated in Article 35 of the Marriage Law. Property acquired during the marriage becomes joint property, while acquired property, gifts, and inheritances remain under the control of each party unless otherwise specified. Without an agreement, the legal system automatically applies the principle of community of property, which under certain circumstances can be detrimental to one of the parties.

This provision is reinforced by Article 119 of the Civil Code, which states that from the moment of marriage, there is a complete unity of property, unless otherwise stipulated in the agreement. Meanwhile, Article 139 of the Civil Code allows prospective husbands and wives to deviate from this provision as long as it does not conflict with morality and public order. This means that, normatively, the law provides a strong foundation for couples to manage their property more fairly and proportionally.

In practice, a marriage agreement can take the form of a complete separation of assets, a limited merger of certain income, or a regulation of profits and losses during the marriage. This flexibility demonstrates that a marriage agreement is not merely an instrument for the separation of assets, but also a means of transparency and mutual agreement. However, in society, particularly in Ponorogo Regency, marriage agreements are still considered taboo and associated with distrust of one's partner. This situation is illustrated in an interview with UF, a former migrant worker who married at the Balong Office of Religious Affairs in 2010. She said:

"If I had known about the Marriage Agreement, sir, I would have made it, sir. I have been struggling for 12 years but this is the result."

UF suffered losses due to her husband's misuse of remittances, pawning the vehicle registration certificate (BPKB) without permission, and incurring debt without consent. Because there was no agreement, all assets were considered joint property, leading to a dispute.

GA, who worked as a migrant worker for eight years, experienced a similar phenomenon. She explained: "Because there was no agreement from the start, all the hard work I earned while working as a



migrant worker was considered joint property. It had to be divided equally, even though he had no part in it."

This statement shows the vulnerable position of female migrant workers in the community property system when there are no special arrangements beforehand.

The minimal implementation of prenuptial agreements in Ponorogo was also emphasized by Notary Sonny Bella Prakawan, SH, M.Kn., who stated that prenuptial agreements are still synonymous with businesspeople and professionals. He added that the divorce rate among migrant workers in Ponorogo is very high, and that prenuptial agreements can serve as an asset protection instrument for wives working abroad.

From a judicial perspective, the Ponorogo Religious Court Judge also highlighted the increase in joint property disputes. He stated that many cases of houses built with the work of migrant workers have become disputed due to the lack of separation of assets from the outset. He argued that with a prenuptial agreement, the process of proving and making decisions in court is much simpler because rights and obligations are predetermined.

However, there are significant cultural barriers. The Head of the Jenangan Religious Affairs Office (KUA) expressed his disapproval of marriage contracts, deeming them inconsistent with Islamic law. However, Religious Court Judge Maftuh Ba'sumi responded to this view, emphasizing that the law must be in line with current developments and that marriage contracts are a form of public welfare, not a violation of Islamic law.

In the perspective of Islamic law, the rules of *fiqhiyyah* state that law can change according to changing times and circumstances. Therefore, marriage agreements can be understood as a contemporary form of *ijtihad* to protect women's rights, especially in the context of migrant workers who face high social and economic risks.

Based on Soerjono Soekanto's theory of legal effectiveness, the effectiveness of a law is influenced by five factors: the law itself, law enforcement, facilities, society, and culture. In the Ponorogo context, the legal substance is actually adequate. However, societal and cultural factors pose a dominant obstacle due to low legal awareness and strong social stigma against prenuptial agreements.

From a law enforcement perspective, interviews with several heads of the Office of Religious Affairs (KUA) revealed that marriage agreements are not yet a central component of marriage guidance (*bimwin*). Some officials even admitted to never having discussed the urgency of marriage agreements with prospective couples. This demonstrates the weak preventive and educational functions of the marriage administration system.

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Thus, it can be concluded that the low level of implementation of marriage agreements for migrant workers in Ponorogo Regency is not due to a lack of legal norms, but rather to a lack of socialization, cultural barriers, and low legal literacy among the public. Therefore, synergy between notaries, the Office of Religious Affairs (KUA), the Manpower Office, and judicial institutions is needed to improve legal education. Marriage agreements should be understood not as a symbol of distrust, but as an instrument of legal protection and a risk mitigation strategy to achieve justice and well-being in the household.

4. CONCLUSION

Based on the discussion that has been outlined, it can be concluded that a prenuptial agreement is an important legal instrument in providing protection for the rights and assets of husband and wife, especially for female migrant workers (TKW) in Ponorogo Regency. Normatively, the provisions in Law Number 1 of 1974 concerning Marriage, which have been expanded through Constitutional Court Decision Number 69/PUU-XIII/2015, show that Indonesian law has provided clear space for couples to manage their assets, both before and during the marriage. Thus, in legal substance, there are no normative obstacles to the creation of a prenuptial agreement. (Law No. 1 of 1974)

However, in practice, the implementation of prenuptial agreements in Ponorogo remains low due to limited public understanding, inadequate outreach from relevant parties, and a cultural stigma that views such agreements as a sign of mistrust. As a result, many migrant workers experience losses in disputes over joint property during divorce. Therefore, increased education and legal awareness are needed to ensure that prenuptial agreements are understood as a preventative measure to ensure legal certainty, justice, and the protection of economic rights within the household.

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