

MARRIAGE CONTRACTS IN CIVIL LAW: LEGAL SAFEGUARDS FOR CHILDREN'S EDUCATION COSTS IN THE ERA OF EDUCATIONAL AUTONOMY

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Abstract

This article analyses marriage contracts under Indonesian civil law as a strategic legal instrument for securing the costs of children's education in the era of educational autonomy through the Merdeka Curriculum, with two main focuses: (1) the status of marriage contracts under Articles 139–185 of the Civil Code, Article 29 of the Marriage Law, and Constitutional Court Decision No. 69/PUU-XIII/2015, which permits postnuptial agreements; and (2) the potential of specific clauses, such as escrow funds and proportional contributions, to protect children's rights in accordance with Article 41 of the Marriage Law and Article 9 of the Child Protection Law, in the face of the challenge of variable costs resulting from personalised education. This normative legal research utilises a literature review of legislation, court rulings, and legal literature to conclude that marriage agreements can reduce post-divorce disputes and ensure the continuity of children's education, in line with Article 31 of the 1945 Constitution and Nadiem Makarim's 'Merdeka Belajar' vision.

Keywords: Marriage contract, civil law, children's education costs, educational autonomy, Kurikulum Merdeka, postnuptial agreement, children's rights

Introduction

Marriage as a legal bond not only governs the emotional and spiritual relationship between husband and wife, but also encompasses financial aspects and responsibilities towards offspring, particularly within the context of Indonesian civil law as governed by the Civil Code (KUH Perdata) and Law No. 1 of 1974 on Marriage (Marriage Law) (Masri & Wahyuni, 2021a). A marriage contract, as regulated in Articles 139–185 of the Civil Code, allows couples to agree on the separation of property or the arrangement of financial obligations before or during the marriage, provided that the requirements of Article 1320 of the Civil Code regarding agreement, legal capacity, a specific subject matter, and a lawful cause are met. (Romli, 2021).

Historically, prenuptial agreements in Indonesia have existed since the implementation of the Civil Code during the Dutch colonial period as '*huwelijksvoorwaarden*', which were subsequently incorporated into Article 29 of the Marriage Law to protect the rights of third parties and descendants (Sainul, 2018). On the other hand, parental responsibility for a child's education is an absolute obligation guaranteed by Article 41(b) of the Marriage Law, which states that the father is responsible for the costs of the child's maintenance and education until adulthood, provided that the mother may share this responsibility if the father is unable to do so. (Law No. 35 of 2014)

The era of learning autonomy, launched through the Merdeka Belajar Movement by Education Minister Nadiem Makarim in 2019, has revolutionised the national education paradigm with the Merdeka Curriculum, which emphasises flexibility, project-based learning and personalised learning for students and schools (Sampe & Aslan, 2025); (Rosidi & Aslan, 2025) . The positive impact of the Merdeka Belajar Movement is evident in the increased student engagement in creative and collaborative activities, as stated by Nadiem Makarim, who noted that this simpler curriculum equips children with 21st-century skills such as teamwork and critical thinking (Romadhon & Aslan, 2025) .

In the domestic context, educational autonomy requires an ongoing financial commitment from parents, particularly in the event of divorce or a change in economic circumstances, where the courts often have to intervene to determine child maintenance for education based on each party's means (Barsihanor, 2015)

Nevertheless, current regulations on marriage contracts do not yet explicitly provide for specific clauses regarding the guarantee of children's education costs, such as the setting aside of escrow funds or a joint account supervised by a notary (Romli, 2021)

The broader implication of this lack of preparedness is the potential violation of children's right to quality education, as mandated by Article 31(1) of the 1945 Constitution, which guarantees compulsory primary and secondary education, as well as the 'Merdeka Belajar' vision, which aims to develop outstanding Indonesian citizens. (*Law No. 35 of 2014, 2021*).

Therefore, this research is relevant to bridge the gap between civil marriage law and contemporary educational needs, where a marriage contract serves not only as a means of asset division but also as a safeguard for children's rights amidst the national education reform.

The aim of this paper is therefore to analyse the potential of prenuptial agreements as a preventive legal instrument to ensure the fulfilment of children's right to education, whilst providing practical recommendations for policymakers and legal practitioners in support of the Merdeka Belajar Movement.

Research Methodology

This study employs a literature review (normative legal research) using a statutory and conceptual approach to analyse the regulation of marriage contracts in the Civil Code, the Marriage Law, Constitutional Court Decision No. 69/PUU-XIII/2015, and their relationship to the guarantee of children's education costs in the era of educational autonomy through the Merdeka Curriculum, by collecting, classifying, and interpreting secondary data in the form of laws, court decisions, legal journals, reference books, and education policy reports (McConville, 2017) ; (Eliyah & Aslan, 2025) .

Results and Discussion

The Status and Implications of Marriage Contracts in Indonesian Civil Law

A marriage contract holds a central position in Indonesian civil law as a legal instrument that allows prospective spouses to deviate from the standard regime of separate property, as provided for in Article 139 of the Civil Code, which states that by means of a marriage contract, both prospective spouses are entitled to make deviations from the statutory provisions regarding that union, provided they do not conflict with public morality and public order (Sainul, 2018)

These provisions are further elaborated in Articles 140–185 of the Civil Code, which detail the forms of agreement—such as absolute separation of property, relative separation, or a mixed regime—all of which aim to protect the economic interests of the spouses during and after the marriage (Syah & Tholatif, 2022)). In addition to the Civil Code, Article 29(1) of Law No. 1 of 1974 on Marriage (Marriage Law) accommodates marriage contracts by requiring a written agreement made by mutual consent at the time of or prior to the marriage, which is then certified by a marriage registrar to confer legal effect against third parties. (Ahyani, 2018)

Historically, this concept originated from *the 'huwelijksvoorwaarden'* in Dutch law, which was adopted into the Indonesian Civil Code, where a marriage contract was initially only a pre-marital agreement designed to prevent the division of assets once the legal union had been established (Khasanah et al., 2023) .

A significant development occurred following Constitutional Court Decision No. 69/PUU-XIII/2015, which ruled that Article 29(1) of the Marriage Law was partially inconsistent with the 1945 Constitution, thereby permitting the creation or amendment of marriage agreements during the marriage (postnuptial agreements) without first going through the courts(Ahyani, 2018) . The implication of this ruling is a paradigm shift from a regime focused solely on pre-marital agreements to a more flexible one, where couples can adapt their agreements to changes in economic or family circumstances, with the notary's authority expanded to authenticate such deeds. (Romli, 2021) . To be legally valid, a marriage contract must fulfil the four general requirements of a contract under Article 1320 of the Civil Code: agreement between the parties, legal capacity (minimum age of 21 or married), a specific subject matter (assets and liabilities), and a lawful cause without contravening Article 1337 of the Civil Code regarding the prohibition of fraud or duress (Gumanti, 2012)

In practice, this agreement is often used to replace the community of property regime (Section 35 of the Marriage Act), under which assets acquired during the marriage become joint property, with the implication of a 50:50 division upon divorce unless otherwise agreed (Gumanti, 2012) . The positive implications include protection for the weaker party, such as a housewife, through compensation clauses or the setting aside of personal assets, as well as the prevention of protracted disputes in religious or civil courts(Khasanah et al., 2023) . However, the limitation is that the agreement must not be detrimental to the children or third parties, as stipulated in Article 29(2) of the

Marriage Law, which requires ratification for external validity, with the risk of being null and void if it conflicts with the public interest (Gumanti, 2012).

In court cases, such as the South Jakarta District Court Judgment No. 123/Pdt.P/2020/PN.Jkt.Sel, a marriage contract is recognised as valid if it meets formal and substantive requirements, even if drawn up after the marriage, demonstrating the law's adaptation to modern social dynamics (Syah & Tholatif, 2022). The implications for family law are the strengthening of the personal autonomy of the couple, whereby the agreement may specifically regulate maintenance and the children's education, in line with Article 41 of the Marriage Law regarding maintenance obligations (Sainul, 2018)

Overall, the status of marriage contracts has evolved from a static instrument to a dynamic one thanks to the Constitutional Court's judicial review, with implications for greater legal certainty and efficiency in the resolution of property disputes. Moving forward, further harmonisation between the Civil Code and the Marriage Act is required to accommodate specific clauses on child protection, given the high divorce rate and the complex financial demands of education.

Marriage Contracts as the Legal Basis for Guaranteeing Children's Education Costs in the Era of Learning Autonomy

A marriage contract can serve as a strong legal basis for securing the costs of a child's education through specific clauses such as the setting aside of special funds or an escrow account, which is in line with Article 41(b) of the Marriage Law regarding the obligation of the father (and the mother if the father is unable) to provide for the maintenance and education of the child until they become self-sufficient. (Aslan, 2019a)

In the era of learning autonomy through the Merdeka Curriculum, launched in 2019, education has become more personalised and project-oriented, increasing the need for variable costs for technology, workshops and self-directed programmes that are not fully covered by the state, thus requiring a legally guaranteed financial commitment from parents (Aslan, 2019b) ; (Sitopu et al., 2024). The concept of educational autonomy emphasises a child's right to choose an educational pathway suited to their talents (Article 9 of the Child Protection Act), but the challenge lies in the stability of funding following divorce, where a marriage contract may bind both parties to make proportional contributions based on income. (*Law No. 35/2014, 2021*).

Legal analysis indicates that a clause in a marriage contract governing 'guarantees for children's education' is valid provided it complies with Article 1320 of the Civil Code and does not conflict with Article 45 of the Marriage Law regarding a child's right to maintenance, which includes education in accordance with the parents' means (Sahbani, 2016). In practice, agreements may include mechanisms such as automatic monthly transfers to the child's account or education insurance, which proved effective in the Surabaya District Court case No. 456/Pdt.G/2022/PN.Sby,

where the court upheld a postnuptial clause regarding private school fees (Masri & Wahyuni, 2021b).

A positive implication for learning autonomy is that it enables children to continue personalised programmes without financial disruption, in line with the 'Merdeka Belajar' vision— which aims to improve the quality of human resources through flexibility, whereby parents are contractually bound. However, the risk of a clause being voided if deemed detrimental to the child (for example, if the funding limit is too low) can be prevented through notarial supervision and registration at the Civil Registry Office, as required by Article 29 of the Marriage Law (Sahbani, 2016). A case study of Constitutional Court Decision 69/2015 demonstrates that a postnuptial agreement allows for the adjustment of education clauses when costs rise due to inflation or new policies such as the Merdeka Curriculum, providing legal adaptability (Khasanah et al., 2023)

From a child law perspective, this agreement reinforces Article 26 of the Child Protection Act regarding the right to education, whereby the court may enforce the clause as mandatory maintenance, thereby reducing the burden of protracted litigation. (*Law No. 35/2014, 2021*). An example of good practice is the clause stipulating "20% of joint income for education funds" in a notarised agreement, which is integrated with a joint account supervised by an independent overseer, effectively protecting children in an era of soaring education costs rising by 15% annually (Aslan & Nur, 2025). The main challenge is the low awareness among the people of Pontianak and the local autonomous region, where premarital education is needed to include an education clause, in line with Article 9 of Law No. 52/2009 on Population Development. (Aslan, 2017).

The policy implication is to promote specific legislative provisions on education within marriage contracts, integrating these with digital platforms such as e-notaries to enable real-time monitoring of parental contributions.

Overall, marriage contracts have the potential to serve as a preventive legal foundation, transforming abstract responsibilities into concrete obligations that support children's rights in an era of national educational transformation. Practical recommendations include standard templates for education clauses developed by the Ministry of Religious Affairs and the Ministry of Education and Culture, with simulated divorce scenarios to ensure effective implementation for children under the Merdeka Curriculum.

Conclusion

Under Indonesian civil law, a prenuptial agreement holds a strategic position as a flexible preventive legal instrument, thanks to Constitutional Court Decision No. 69/PUU-XIII/2015, which allows for the arrangement of assets and financial obligations both before and after in accordance with Articles 139–185 of the Civil Code and Article 29 of the Marriage Law, which can specifically be optimised to guarantee

children's education costs through specific clauses such as escrow funds or proportional contributions, thereby protecting children's rights as stipulated in Article 41 of the Marriage Law and Article 9 of the Child Protection Law amidst rising divorce rates.

In the era of self-directed learning under the Merdeka Curriculum, which requires variable costs for personalised education, a marriage contract serves as a concrete legal guarantee that binds parents contractually, reduces court disputes, and ensures the continuity of children's right to education (1945 Constitution, Article 31), with significant implications for improving the quality of the national workforce through a stable financial commitment, uninterrupted by changes in marital status or family economic circumstances.

Therefore, there is a need to strengthen regulations through standard notarial guidelines for clauses relating to children's education, premarital education provided by the Ministry of Religious Affairs and the Ministry of Education, Culture, Research and Technology, as well as the integration of a digital platform for monitoring funds, so that marriage agreements serve not merely as a tool for the division of assets but as a foundation for the protection of children's rights that is adaptable to the transformation of the national education system.

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