

## **URGENCY OF MARRIAGE AGREEMENTS FOR ISLAMIC RELIGIONS IN CREDIT TRANSACTIONS WITH FINANCING INSTITUTIONS**

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### Abstract

Regulations related to joint assets of husband and wife of Muslims are subject to the provisions of the Marriage Law and the Compilation of Islamic Law. The position of the compilation of Islamic law that is under the Marriage Law and the emergence of legal consequences on joint assets of husband and wife in terms of credit transactions with financial institutions, are the basis for the urgency of making a marriage agreement. Where in the marriage agreement must explicitly regulate the mixing or separation of joint assets between husband and wife. The goal is to achieve legal certainty regarding the rights and obligations of husband and wife regarding joint assets in the event of a credit transaction with a financing institution.

**Keywords: Marriage Agreement, Joint Assets, Compilation of Islamic Law, Marriage Law**

### INTRODUCTION

Not all couples who are getting married have the legal understanding or desire to enter into a marriage contract. Various reasons are the reasons for their reluctance to enter into a marriage agreement.(Erliyani, 2016) First, the complexity of recording and ratifying the marriage agreement. Second, because making a marriage agreement is not a habit or culture for prospective couples or couples in Indonesia and the procedure must involve a notary and a marriage registrar.(Risanto & Rizka, 2020)

Whereas in the marriage agreement there are many legal aspects that can be agreed upon to regulate household management. For example, regarding the separation of assets, child care, and fulfillment of livelihoods and the consequences of death or divorce that may occur. Mutually agreed arrangements in a marriage agreement will certainly make it easier for husband and wife to manage the household going forward. Including the existence of legal certainty for a financial transaction with a third party.(Subarman, 2013)

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In everyday life, a married couple will be faced with financial transactions such as buying and selling and applying for credit. For the sake of certainty of legal responsibility for all these financial transactions, it is very important for married couples to agree on the concept of joint assets and personal assets in marriage.(Inayatillah et al., 2018) By classifying joint property and personal assets in marriage, the legal impact that may arise later will also be easier to manage.(Faizal, 2015) For example, accountability for debt payments submitted through credit with a financing institution. Or determine the distribution of assets in the event of a divorce or death.(Safithri, 2020)

For Chinese and non-Muslims, the arrangement of assets in this marriage is subject to Article 119 and Article 120 of the Civil Code as follows:

### Article 119.

Since the time the marriage is carried out, according to the law there is a comprehensive joint property between husband and wife, as long as there are no other provisions in the marriage agreement.

Joint assets, during the course of the marriage, may not be abolished or changed with an agreement between husband and wife.

### Article 120.

With regard to the matter of profit, joint property includes movable and immovable property of the husband and wife, both existing and future, as well as things they get free of charge, except in the latter case. it is what inherits or determines the opposite firmly.

With the provision of mixing assets, Chinese and non-Muslim marriages are required for a marriage agreement that agrees to separate property. Its uses include protecting marital assets from the risk of loss and ensuring legal liability to third parties, especially those related to financial transactions.

Meanwhile, there are things that are different from the provisions of Article 119 and Article 120 of the Civil Code as described above, namely for Muslims. There is a provision

which implies that the husband's assets and the wife's assets in marriage are separate. This is as stipulated in Article 86 of the Compilation of Islamic Law as follows:

Article 86

1. Basically there is no mixing between the husband's assets and the wife's assets because of marriage.
2. The wife's property remains the wife's right and is fully controlled by her, likewise the husband's property remains the right of the husband and is fully controlled by her.

With the concept of separation of assets based on Article 86 of the Compilation of Islamic Law above, in fact for a Muslim husband and wife, a marriage agreement is not required. Because it is clear that the classification of property between husband's and wife's.(Khosyi'ah, 2017) Which is the consequence, namely followed by the respective legal responsibility for the assets. For example, in the case of applying for credit with a financing institution, only the husband or wife is responsible for submitting it.(Sari, 2017)

However, if the provisions of Article 86 of the Compilation of Islamic Law, which are related to marriage agreements, are analyzed with other laws and regulations and looking at legal practice, then there are several problems. First, Article 86 Compilation of Islamic Law contradicts its substance with Article 35 of Law Number 1 of 1974 concerning Marriage in conjunction with Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (Marriage Law), which regulates the existence of mix of assets in marriage known as joint assets, as follows:

Art 35

- (1) Assets acquired during the marriage become joint assets.
- (2) The inheritance of each husband and wife and the property which is acquired as a gift or inheritance, is under their respective control as long as the parties do not determine otherwise.

Second, in practice, if a couple who is Muslim and is married wants to make credit transactions with a financial institution, it will still require the consent of the husband and wife

together in the credit agreement. It is as if the property of the husband and wife is a unity in common assets. And if there is responsibility for the payment of credit debt, it will be considered as a joint debt in the marriage that is borne by the husband and wife together.

Therefore, it is necessary to analyze the real urgency of making a marriage agreement for Muslims who base the separation of their assets on the provisions of Article 86 of the Compilation of Islamic Law. Especially in the case of credit transactions with financing institutions that cause mutual debt in marriage. The main issue that will be analyzed in this paper is what is the urgency of making marriage agreements for Muslims, regarding credit transactions with financial institutions.

## **METHODOLOGY**

The analysis in this paper uses a qualitative descriptive methodology with secondary data in the form of primary legal materials and secondary legal materials, namely from various literatures and laws and regulations. This paper is intended to get an overview of the urgency of making marriage agreements for Muslims regarding credit transactions with financial institutions.

## **RESULT AND DISCUSSION**

### **1. Principles of Article 86 Compilation of Islamic Law Regarding Separation of Assets in Marriage**

When referring to Islamic law, there are no provisions that explicitly regulate the mixing of assets in marriage. According to Kholil Nawawi, the implicit mention of the term collective property is not found in the Koran or al-Hadith because this term comes from customary law ('uruf) in people who recognize the mixing of family assets such as Indonesian (Nawawi: 2013), p. 6).

Then, the burden of fulfilling the family's livelihood lies with the husband as mentioned in the Al-Qur'an Surat Al-Baqarah Verse 233 as follows:

"And it is the father's duty to feed and clothe the mothers in the ma'ruf way".

If a wife also has her own income, either because of a job, gift or inheritance, then the property becomes her own and is not burdened with the obligation to fulfill her family's livelihoods.

As the opinion of Shaykh 'Abdullah bin' Abdur Rahman al Jibrin who was once asked about the law of a husband taking money (property) belonging to his wife, to be combined with his (husband's) money. Answering questions like this, Shaykh al Jibrin said, there is no doubt that the wife has more rights with the dowry and property that she has, whether through her efforts, grants, inheritance, and so on. It is his treasure, and belongs to him. He has the most right to do anything with his wealth, without interference from other parties (Al Manhaj: 2020).

However, if the family experiences a shortage and the wife is happy, then her property can be used to meet her family's needs. As mentioned in the Al-Qur'an Chapter An-Nisa Verse 4 as follows:

Give dowry (dowry) to the woman (whom you marry) as a voluntary gift. Then if they give you a portion of the dowry with pleasure, then eat (take) that gift (as food) which is delicious again with good consequences.

Islam strictly regulates the ownership of the assets of each husband and wife obligations and responsibilities in the family, the principle of separation of assets in Article 86 Compilation of Islamic Law cannot be ruled out in the practice of credit transactions with financing institutions.

## 2. **Position of Compilation of Islamic Law under the Marriage Law**

Although Article 86 of the Compilation of Islamic Law implies the principle of separation of assets, the position of the Compilation of Islamic Law, which is

strengthened by Presidential Instruction No.1 of 1991 concerning the Dissemination of Islamic Law Compilation, is still under the Marriage Law.

Meanwhile, Article 35 of the Marriage Law clearly regulates the mixing of assets in marriage between husband and wife. Furthermore, the position of the Islamic Law Compilation is only as material law in the Religious Court which becomes a guide for judges in examining a case and making a decision.

### 3. **Legal Effects on Spouses for Credit Transactions at Financing Institutions**

In the event that a husband and wife conduct credit transactions at a financing institution, there are legal consequences related to joint ownership of assets and responsibility for paying joint debts that arise in marriage. Because in practice, the financing institution will always ask for the husband and wife's consent together in writing in the credit agreement or contract. And this collective agreement will have several legal consequences.

First, the proposed credit will be a joint debt in the marriage which must be borne by the husband and wife jointly. Because with the enactment of the provisions of Article 35 of the Marriage Law, if there is no marriage agreement, the assets of the husband and wife, including debts, will be considered as one unit or mixed.

Second, if any payment is made against credit, it will be considered as a payment of joint property. Even though the money used to pay the credit actually comes from only one husband or wife.

Third, if there is an asset that is purchased from the credit proposed by the husband and wife, it will become joint property of the husband and wife. This happens because they no longer consider whose money is used to pay credit. As long as the money is in the marriage, it is considered part of the joint property.

Thus, assets purchased from credit applications at financing institutions are assets that are part of joint assets. Ownership is not tied to the name of the husband or wife stated on the ownership document. So that in the event of a divorce or death, in the absence of a marriage agreement that contains an explicit separation of assets, it can cause problems in the distribution.

4. **Urgency of Marriage Agreement for Muslims in Credit Transactions with Financing Institutions**

Taking into account the position of the Islamic Law Compilation under the Marriage Law as well as the legal consequences for joint assets of husband and wife in terms of credit transactions with financial institutions, it is very necessary for husband and wife who embrace Islam to make a marriage agreement with one of its clauses regarding separation of assets.

Although the principle of separation of assets has been regulated in Article 86 of the Compilation of Islamic Law. However, this principle still needs to be strengthened and reaffirmed with a marriage agreement. The urgency of making a marriage agreement for Muslims is also based on the following:

a. **Islamic law implies to make a written agreement**

Islamic Sharia requires that agreements between humans be made in writing. As stated in the Al-Qur'an Surat Al-Baqarah Verse 282 and Verse 283 as follows:

O you who believe, if you pray not in cash for a specified time, let you write skannya. And let a writer among you write it down correctly. And let not the writer refuse to write it as Allah has taught it, let it be written, and let the debtor dictate (what is to be written), and let him fear Allah his Lord, and let him not diminish in the least from his debt. If the debtor is a person who is weak-minded or weak (his condition) or he himself is not able to dictate, then the guardian should dictate honestly. And bear witness with two witnesses of men (among you). If there are no

two men, then (may) one man and two women from the witnesses whom you are pleased with, so that if one forgets then one reminds him. Let not the witnesses refuse when they are called; and do not get tired of writing the debt, both small and large until the deadline to pay it. That is, it is fairer in the sight of Allah and stronger in testimony and closer to not (raising) your doubts. (Except your dealings), unless the dealings are cash transactions between you, then there is no sin for you, (if) you do not write it. And bear witness when ye trade; and do not make writers and witnesses difficult for each other. If you do (that), then it is indeed a wickedness in you. And fear Allah; God teaches you; and Allah is All-Knowing (QS Al-Baqarah: 282).

If you are on a journey (and bermu'amalah not in cash) while you do not get a writer, then there should be a dependent item held (by the debtor). But if some of you believe in others, then let him who is trusted fulfill his mandate (his debt) and let him fear Allah his Lord; and do not conceal your testimony. And whoever hides it, he is indeed a sinner in his heart; and Allah is Aware of what you do (QS Al-Baqarah: 283).

Based on the above verse, it can be understood that Allah SWT recommends to human beings that an agreement be made in writing, attended by witnesses and given the responsibility of the individual who made the agreement and who became the witness. In addition, it is also recommended that if an agreement is implemented not in cash, then something can be held as a guarantee (Ubaidullah: 2015, p. 14).

b. General Principles of Agreement in the Civil Code

The urgency of making this marriage agreement is also based on the provisions of Article 1320 and Article 1338 of the Civil Code as follows:

Article 1320

For a valid agreement to take place, four conditions must be met:

- 1) the agreement of those who bind themselves;
- 2) the ability to form an alliance;

- 3) a particular subject matter;
- 4) an unrestricted cause.

#### Article 1338

All agreements made in accordance with the law apply as law to those who make them. The agreement cannot be revoked except by agreement of both parties, or. For reasons specified by law.

Agreement must be executed in good faith.

The provisions set out in Article 1320 and Article 1338 of the Civil Code above, form the general basis that applies in the making of marriage agreements. Which has been reinforced by more specific rules in the Marriage Law and the Compilation of Islamic Law on the making of such marriage agreements.

#### c. Specific Fundamentals of Marriage Agreement in the Marriage Law

Further in the Marriage Law has been specifically set forth provisions regarding the making of marriage agreements. As referred to in Article 29 of the Marriage Law as follows:

#### Article 29

- 1) At the time or before the marriage takes place, both parties by mutual agreement may enter into a written agreement ratified by the Registrar of Marriages, after which the contents also apply to the third party as long as the third party is involved.
- 2) The Agreement may not be ratified when it violates the boundaries of law, religion and morality.
- 3) The agreement shall take effect from the time the marriage takes place.
- 4) During the marriage the agreement cannot be changed, except when both parties have an agreement to change and the change does not harm the third party.

Substances in Article 29 of the Marriage Law, have been in accordance with the general principles of the agreement set out in Article 1320 and Article 1338 of the Civil Code. That is, in the event that there must be an agreement between husband and wife in making or changing a marriage agreement. And must regulate the main points of the agreement that are not against the norms of law, religion and morality.

In subsequent developments, there are changes to Article 29 Paragraph (1) of the Marriage Law, so that a marriage agreement can also be made by a husband and wife during their marriage period. This is based on the Decision of the Constitutional Court No.69 / PUU-XIII / 2015 of 2015.

The amendment to Article 29 Paragraph (1) of the Marriage Law has guaranteed legal certainty for married husbands and wives, but requires a marriage agreement. For example, in the case of credit transactions with financial institutions, it would be better if a husband and wife who apply for credit make a marriage agreement first. So that the rights and obligations related to asset ownership and credit debt payments become clear to husband and wife.

d. Special Principles of Marriage Agreement in Compilation of Islamic Law

The provisions regarding marriage agreements specifically for Muslims and their relation to third parties, in this case financial institutions, can be seen in Article 47 to Article 50 of the Compilation of Islamic Law, as follows:

Article 47

- 1) At the time or before the marriage takes place, the two prospective brides can make a written agreement legalized by the Marriage Registry Officer regarding the position of assets in the marriage.

- 2) The agreement referred to in subsection (1) may include a mixture of personal assets and separation of assets for their respective livelihoods as long as this does not conflict with Islam.
- 3) Apart from the provisions in paragraphs (1) and (2) above, it is also permissible for the contents of the agreement to stipulate their respective authority to enter into mortgage ties on personal assets and joint assets or company assets.

Article 48

- 1) If a marriage agreement is made regarding the separation of joint assets or company assets, then the agreement may not eliminate the husband's obligation to fulfill household needs.
- 2) If a marriage agreement is made that does not comply with the provisions referred to in paragraph (1), it is considered that there will be separation of joint assets or company assets with the husband's obligation to bear household expenses.

Article 49

- 1) An agreement for mixing personal assets can include all assets, both those brought into the marriage as well as those acquired by them during the marriage.
- 2) Without prejudice to the provisions referred to in paragraph (1), it can also be agreed that a mixture of personal assets brought at the time of the marriage takes place, so that this mixture does not include personal assets acquired during the marriage or vice versa.

Article 50

- 1) A marriage agreement regarding assets is binding on the parties and third parties as of the date the marriage takes place in the presence of a marriage registrar.

- 2) Marriage agreements regarding assets may be revoked with the joint consent of husband and wife and must register them at the Office of the Registrar of Marriages where the marriage takes place.
- 3) Since the said registration, revocation has been binding on husband and wife but against third parties the revocation will only be binding since the date of registration it is announced by husband and wife in a local newspaper.
- 4) If the concerned person does not make the announcement within 6 (six) months, the registration for revocation by itself is null and not binding to a third party.
- 5) Revocation of a marriage agreement regarding assets may not be detrimental to a previously made agreement with a third party.

Regarding the provisions of Article 47 Paragraph (1) Compilation of Islamic Law, following the development of changes to Article 29 Paragraph (1) of the Marriage Law based on the Constitutional Court Decision No.69 / PUU-XIII / 2015 of 2015. So that Muslims who are married and want to make a marriage agreement, can still carry out the draft before a notary public, then register it with the Office of Religious Affairs so that it is recorded in the marriage book.

If based on the provisions of Article 47 Paragraph (2), the husband and wife of the Muslim religion can determine in the marriage agreement to mix their assets or separate their respective assets. This is at the same time an affirmation of husband and wife to the provisions of Article 35 of the Marriage Law which stipulates that the mixing of husband and wife's assets into collective assets. Or an affirmation of Article 86 of the Compilation of Islamic Law which states in principle that husband and wife assets are separated in marriage.

This includes affirming the authority of husband and wife in entering into a guarantee agreement with a third party as referred to in Article 47 Paragraph (3). That is, can it be done

separately because of choosing to separate asset or permission is required jointly by husband and wife because of a joint of assets.

The affirmation regarding the provisions of Article 47 Paragraph (3) in the marriage agreement will underlie the rights and obligations of the husband and wife conducting credit transactions with financial institutions. If the assets have been separated, there are no need for a husband and wife's signature jointly in the credit agreement with the financing institution as a third party. The name of the husband or wife listed as the party applying for credit to the financing institution is also the benchmark for the party who will be fully responsible for paying the said credit debt.

Furthermore, in Article 48 it is also clearly guaranteed that with or without separation of assets, the husband still has separate obligations to support the family and meet household needs. And based on the provisions of Article 49, there is freedom for husband and wife to determine the mix of their personal assets. Including assets brought in marriage or assets acquired during marriage.

Finally, the relationship with third parties related to the making of marriage agreements or their cancellation. As regulated in Article 50, in principle, the rights of third parties are guaranteed and cannot be harmed by husband and wife. This needs to be a legal basis for financial institutions that conduct credit transactions with husband and wife. Namely, asking first whether the husband and wife have a marriage agreement. Then adjusted to the credit agreement to be made. This will ensure legal certainty over the rights and obligations of husband and wife, including financial institutions in implementing credit transactions.

## **CONCLUSION**

Regarding joint assets, husband and wife who are Muslim are subject to the Marriage Law and the Compilation of Islamic Laws. The position of the compilation of Islamic law that is under the Marriage Law and the emergence of legal consequences on joint assets of husband

and wife in terms of credit transactions with financial institutions, are the basis for the urgency of making a marriage agreement.

Where in the marriage agreement must explicitly regulate the mixing or separation of joint assets between husband and wife. The goal is to achieve legal certainty regarding the rights and obligations of husband and wife regarding joint assets in the event of a credit transaction with a financing institution.

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