

Lowokwaru People's Perception on The Marriage Agreement (The Implementation of Article 29 of The Marriage Law Based on Legal System Theory)

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Abstract:

This study aims to analyze the perception of the people of Lowokwaru to the marriage agreement stipulated in Article 29 of the law on marriage. Although the marriage agreement has been regulated both in substance and procedure, but very few people who make a marriage agreement especially regarding the separation of property. This study is a juridical-empirical research with sociological juridical approach. The data used are qualitative data collected through semi-structural interview techniques. To obtain field data, 15 people were involved as a sample, which included married and pre-married couples, as well as the head of the Religious Affairs Office. The theory used in the analysis is the theory of Lawrence M's legal system. Friedman. The results of the study are: 1). The majority of respondents considered the marriage agreement unnecessary because the marriage is done for life; 2). In its implementation, only a few people enter into marriage agreements (only 2 agreements in 2022) with the procedure established by law; 3). according to Lawrence M. Friedman, in the substance of the law there is no problem, in terms of legal structure, the relevant officials have carried out the procedures as stipulated in the legislation. In legal culture, some people still consider it taboo, unethical, materialistic so that there is no need for a marriage agreement.

Keywords: prenuptial agreement; marriage agreement.

Introduction

Ari Wibowo's divorce lawsuit case to Inge Anugrah absorbed the public's attention. The 16-year marriage is at the end of its journey. Without seeing the reason for the divorce lawsuit filed by Ari Wibowo, the public's attention was immediately drawn to the prenuptial agreement that was once made and agreed upon by Ari and Inge. One of the contents of the agreement is regarding the separation of property.¹ With the agreement on the separation of the property, Inge will bear the consequences of not getting the *gono-gini* (joint) property if the marriage is really broken. This case creates a discourse whether it is important or not making a marriage agreement or prenuptial agreement.

¹Perceraian Ari Wibowo, Perjanjian Pranikah Bikin Rugi Istri?, MY MONEY - Aulia Akbar, CNBC Indonesia 18 April 2023 05:45, diakses 25 Mei 2023 pukul 09.00 WIB, <https://www.cnbcindonesia.com/mymoney/20230418033432-72-430782/perceraian-ari-wibowo-perjanjian-pranikah-bikin-rugi-istri>

Marriage agreements are not something that is often heard by the public, even most people consider unethical or taboo.² In Indonesia, which still upholds Eastern customs, the community considers this agreement to be a sensitive issue, considered unusual, rude, materialistic as well as selfish, unethical, incompatible with Islam and Eastern customs, and so on.³ In general, the marriage agreement contains the arrangement of the property of the future spouse. The purpose of marriage is to provide for the inheritance of wealth.⁴ However, in practice, the marriage agreement can contain a variety of matters relating to married life ranging from the separation of business ownership, debt separation, regulating biological relationships, to rights and obligations in the household,⁵ so long as it does not violate the provisions of law, religion and morality as described in Article 29 paragraph (2) of the Marriage Law. Thus, if the prospective spouse agrees to make a marriage agreement, they can make the contents of the agreement in accordance with their respective wishes and be mutually agreed. Making a marriage agreement is done in the presence of a notary who will produce a marriage agreement deed.⁶ Marriage agreement can also be made when the marriage has taken place (during the marriage) as in the decision of the Constitutional Court Number 69/PUU-XIII/2015.⁷

Making a marriage agreement is not without purpose. According to Manan, there are three purposes of making a marriage agreement, namely protecting the property of one party, protecting the business owned by both parties, which is intended to avoid bankruptcy experienced by one party so that the other party does not go bankrupt, and the last to protect the party who is not in the other party that has debt.⁸

With the regulations governing the agreement, the so-called marriage agreement has legal force. Apart from being a legally binding agreement, the marriage agreement is also an anticipation of financial problems in the middle of marriage, such as a guarantee of the cost of living of congenital children, as a debt

²Ru'fah Abdullah, "PERJANJIAN DALAM PERKAWINAN PERSPEKTIF HUKUM ISLAM DAN PERUNDANG-UNDANGAN", *Jurnal Studi Gender dan Anak*, Vol. 3 No. 1, Januari-Juni 2016, hal. 32

³Indira Hastuti, "PERLINDUNGAN HUKUM BAGI SUAMI ISTERI DALAM PELAKSANAAN PERJANJIAN PERKAWINAN MENURUT HUKUM ISLAM", *JURNAL HUKUM DAN DINAMIKA MASYARAKAT*, Volume 18, No. 1, Oktober 2020, ISSN 2460-9005 (online) & ISSN 0854-203, <http://jurnal.untagsmg.ac.id/index.php/hdm>, hal. 63

⁴ Ru'fah Abdullah, "PERJANJIAN DALAM PERKAWINAN PERSPEKTIF HUKUM ISLAM DAN PERUNDANG-UNDANGAN", *Jurnal Studi Gender dan Anak*, Vol. 3 No. 1, Januari-Juni 2016, hal. 33

⁵ Yasin Yusuf Abdillah, "PERJANJIAN PERKAWINAN SEBAGAI UPAYA MEMBENTUK KELUARGA BAHAGIA (Tinjauan Maqāsid Asy-Syarī'Ah)", *Al-Ahwal: Jurnal Hukum Keluarga Islam* 10, no. 2 (2018): 165, <https://doi.org/10.14421/ahwal.2017.10205>.

⁶ Freddy Pieloor, *Monogami Lebih Baik Dari Poligami?* (Elex Media Komputindo, 2013), https://www.google.co.id/books/edition/Monogami_Lebih_Baik_Dari_Poligami/cH5cDwAAQB_AJ?hl=id&gbpv=1

⁷ Esther Masri dan Sri Wahyuni, "Implementasi Perjanjian Perkawinan Sebelum, Saat Dan Sesudah Perkawinan", *Jurnal Karya Ilmiah* Volume 21 nomor 1, hal. 111-120 (Januari 2021), <http://ejurnal.ubharajaya.ac.id/index.php/JKI>

⁸ Muhammad Ngizzul Muttaqin and Miftah Rosadi, "Perlindungan Perempuan Melalui Perjanjian Pra Nikah (Respon Terhadap Isu Hukum Dan Gender)", *AL-MAIYYAH* 13, no. 1 (2020).

separator between spouses, and so on.⁹ Marriage agreement that has been made and approved cannot be canceled or changed by itself unless a re-agreement or agreement is made between the parties, namely the prospective husband and wife or the husband and wife themselves.

In Article 2 of the compilation of Islamic law (KHI), it is said that, “marriage according to Islamic law is a marriage, that is, a very strong contract *mitsaqan ghaliizhan* to obey the commands of Allah and to constitute worship”. Although marriage is said to be worship, but there is an average of the Hadith books of law and jurisprudence inserting the discussion of marriage into the *muamalah* section,¹⁰ so that the civil relationship between one person and another (*hablum minan naas*) precedence over the relationship with Allah (*hablum minallah*). One of them is the covenant.

Furthermore, Article 3 KHI says, “marriage aims to realize a *sakinah, mawaddah* and *rahmah* household life”. What is meant by *mitsaqan* is a bond, both physical and mental. The bond of birth in this case means uniting both spouses as a family, reproducing and working together to accumulate property for the purposes of life in the family. The inner bond means the bond of both in affection, peace and tranquility. It can be said a very strong bond (*mitsaqan ghaliizhan*); this means before or even after the wedding, one should not imagine, let alone intending for one day the marriage will be interrupted. The purpose of marriage is also stipulated in the Quran Surah ar-Rum verse 21 which means, “And among his signs is that He created for you wives of your own kind, that you may be inclined and feel at ease with her, and He made between you a sense of love and affection. Verily in this are signs for a people who reflect.”

Until now, there has been a lot of news circulating about divorce caused by property problems in marriage. Some of the cases include a husband and wife divorce after a week of marriage because the husband is bankrupt. The couple got married after dating for three months. Then shortly after marriage, the wife spends a lot of money to satisfy her desires by buying expensive things. On the other hand, the husband owns a company that is experiencing financial difficulties.¹¹

Gono-gini (joint) property issues also occur among celebrities, including Ari Wibowo and Jenita Janet. Jenita Janet's ex-husband sued *gono-gini*'s estate and demanded the division of assets during the marriage. According to Jenita Janet, during the marriage with her ex-husband, she did not require any maintenance from her husband and she had to reprimand her husband first to fulfill his obligations as a husband, namely to provide maintenance.¹²

⁹ Tavinayati and Zakiyah, “Urgensi Perjanjian Pra Nikah Bagi Calon Suami Isteri,” 2016, [http://eprints.ulm.ac.id/9160/1/PENELITIAN Urgensi Perjanjian Pra Nikah Bagi Calon Suami Isteri.pdf](http://eprints.ulm.ac.id/9160/1/PENELITIAN%20Urgensi%20Perjanjian%20Pra%20Nikah%20Bagi%20Calon%20Suami%20Isteri.pdf).

¹⁰ Amirullah, “Baru Seminggu Nikah, Pria Kaya Ditinggal Istri karena Jatuh Miskin, Modal Pacaran Habis Rp 13 M”, SerambiNews.com, 4 Maret 2021, diakses pada 13 November 2022, <https://aceh.tribunnews.com/2021/03/04/baru-seminggu-nikah-pria-kaya-ditinggal-istri-karena-jatuh-miskin-modal-pacaran-habis-rp-13-m>

¹² Adiyoga Priambodo, “Digugat Harta Gono-Gini, Jenita Janet Pertanyakan Nurani Mantan Suami”, Okezone.com, 4 Agustus 2020, diakses pada 22 Desember 2022, <https://www.okezone.com/tren/read/2020/08/04/620/2256878/digugat-harta-gono-gini-jenita-janet-pertanyakan-nurani-mantan-suami>

With the above considerations, this marriage agreement becomes important to consider by looking at cases regarding marital property. In Malang, the case of *gono-gini* treasure is relatively numerous. Reporting from the Supreme Court decision directory, in the Malang Religious Court in 2019, there were 213 cases of *gono-gini* property. Then in 2020, there were 191 items, and increased significantly in 2021 by a total of 309 items.¹³ With this consideration and from the description of the background above, the purpose of the study is directed to the perception of the people of Malang (especially in Lowokwaru district) on the marriage agreement, as well as the implementation of Article 29 of the marriage law according to The Theory of Lawrence Meir Friedman's legal system.

Results and Discussion

Lowokwaru People's Perception on The Marriage Agreement

Perception is the direct response (acceptance) of something or the process of someone knowing some things through the five senses¹⁴ In other languages, perception means the response of a person to something or the process of a person's recognition of something that has been obtained through his five senses. It involves the retrieval of information through sensing (such as seeing, hearing, smelling, tasting, and feeling) and the processing of that information by the brain to provide an understanding and assessment of the surrounding environment or a particular object. From the definition of this perception, if it is connected with the marriage agreement, then the community will bring up opinions about what they have experienced, both through sensing and subconscious experience of the marriage agreement. By looking at the practice, marriage agreements are rarely implemented for several reasons. In addition, marriage, which is sacred and is a lifelong agreement between two human beings, raises the perception that the marriage agreement is considered unimportant or unnecessary, even considered taboo.

This study took 15 people as a sample, 10 married couples and 5 unmarried couples. 10 samples will be presented in the following table:

No.	Respondent Name	Age	Job	Age Of Marriage
1	Rakhmad Mahendra	36 years old	Self-employed	11 years old
2	Herunanto Endroyono	46 years old	Self-employed	18 years old
3	Suryo Wandowo	49 years old	Self-employed	22 years old
4	Muhammad Faji	35 years old	Self-employed	9 years old
5	RF	29 years old	Lecturer	7 years old
6	Awan Indarmoko	48 years old	Self-employed	22 years old
7	DK	41 years old	Lecturer	14 years old
8	DR	36 years old	Teacher	10 years old
9	Tejo Martoyo	51 years old	Accountant	22 years old
10	Puguh Ari	50 years old	Entrepreneur	14 years old

¹³<https://putusan3.mahkamahagung.go.id/search.html?q=perjanjian%20perkawinan&court=401426PA788&cat=5075830a91a075755bda422224447e0> diakses pada 22 Desember 2022

¹⁴ Pusat Bahasa Departemen Pendidikan Nasional, Kamus Besar Bahasa Indonesia, (Jakarta: Balai Pustaka, 2002), Ed, 3. Cet 2, 863

11	Azia Farhan	21 years old	Students	Not Married
12	Azka Zidan Halim	22 years old	Students	Not Married
13	Sakinah Apliana R.	22 years old	Students	Not Married
14	Muslimatul Hamidah	23 years old	Students	Not Married
15	NW	21 years old	Students	Not Married

Mr. Rakhmad Mahendra said that actually the marriage agreement is not necessary when each has known the limits or rules in marriage, as the results of the interview: *“If it is about such a thing, I do not make it. This means that the limits that I have prepared are the same as in the Sharia although not written”*.¹⁵ Limits or rules as conveyed by Mr. Rakhmad have been stipulated in the Sharia such as the obligation to provide for the husband to his wife and children, while the wife's obligation is to take care of the household. Article 48 paragraph (1) KHI says that: *“When a marriage agreement is made regarding the separation of joint property or company property, the agreement must not eliminate the husband's obligation to meet household needs”*.

In Islamic law, if one of the spouses does not fulfill obligations, it can be said *nusyuz*. This should be known by the couple so as not to confuse between duty and kindness.¹⁶ Example of kindness is if the wife helps the husband in earning a living for the family. In line with Mr. Rakhmad, Mr. Suryo also said that the marriage agreement is not necessary to do, *“I think it is not necessary to make the agreement on treasure with wife. In my opinion, it is my wife's property and my children's property. My wife's property is not my property. I personally consider my property to be my family's property. So I think that contextual separation of property as in the marriage agreement is unnecessary”*.

According to Abdurrahman Saleh, perception is a process that combines and organizes our sensory data (sensing) to be developed in such a way that we can be aware of the surroundings.¹⁷ In this case perception or response is something that we have observed / experienced always left its trace or impression in our soul. It is made possible by the chemical capabilities of our souls. Traces of traces/impressions left on us that we can re-cause (reproduction) in response.¹⁸ Perception is a process that involves combining and organizing the sensory data we receive to develop our understanding of the surrounding environment or a particular thing. In perception, we combine information from different senses such as sight, hearing, smell, feeling, and taste to form an overall picture of what is around us. This process allows us to be better aware of and interpret the environment, so that we can respond appropriately to it. Thus, in the context of the marriage agreement, the perception of a person obtained can be the same or not the same because it depends on the factors and life experiences of each. For example, the perception of Mr. Rakhmad above is not the same as Mr. Herunanto Endroyono who said that: *I agree (with the marriage agreement) because I am side by side with non-Muslims, maybe non-Muslims see the agreement is important. Muslims make a marriage agreement depending on each party. So, I consider it*

¹⁵ Rakhmad Mahendra, wawancara, (Malang, 10 Maret 2023)

¹⁶ Syaiful Anwar, “Hak dan Kewajiban Suami-Istri Menurut Undang-Undang Nomor 1 Years old 1974”, *Jurnal Kajian Islam Al KAMAL*, Volume 1, Nomor 1 Mei 2021, hal. 83

¹⁷ Abdul Rahman Shaleh, *Psikologi Suatu Pengantar dalam Perspektif Islam*, (Jakarta: Kencana, 2004), 110.

¹⁸ M. Alisuf Sabri, *Pengantar Psikologi Umum dan Perkembangan*, (Jakarta: Pedomon Ilmu Jaya, 2010) cet.5, 60. 14

necessary. Personally, I do not need a marriage agreement. I think the marriage agreement is positive.”¹⁹ According to him, the marriage covenant was necessary. This perception is influenced by personal experience because it coexists with a non-muslim who certainly has laws that are different from Islam. There are five factors that influence perception according to Sarlito Wirawan:²⁰

1. Attention. A person usually does not capture all the stimuli in the surrounding environment at once, but focuses on one thing or object only. The difference in focus between one person and another, causes a difference in perception. Similarly, the perception of the marriage agreement, between respondents will be different depending on which assessment is desired. For example, regarding whether or not a marriage agreement is necessary, depending on which side the respondent focuses on.
2. Set. A Set is a person's expectation of the stimulus that will arise. In the context of whether or not a marriage agreement is necessary, the respondent or the community will consider it necessary if it is at a point or condition where he must do so. For example, if a prospective wife feels that her property and income are higher than her future husband, then before marriage a prenuptial agreement will be made because it is considered important/necessary. As explained by Mr. Ghufro, head of KUA Lowokwaru.
3. Needs. The needs of a moment or settled in a person, the person will affect the perception. Thus, different needs will also cause differences in perception.
4. Value system. The value system that prevails in a society also affects perception. In the case of marriage agreements, this value system can have an effect on whether or not a marriage agreement is necessary. The influence of Eastern values, for example, which considers the marriage agreement is something that should not be done compared to Western cultures that are more liberal and open.
5. Personality traits. In terms of the perception of the marriage agreement, a person who has a firm and responsible personality in his marriage, he does not make a marriage agreement as the opinion of Mr. Suryo who said that, “My property is the property of my wife and children but my wife's property is her own property”.

Although there are differences in personal perception, the similarity of the environment or social factors such as religion and Eastern customs caused the perception of the Lowokwaru community represented by fifteen respondents get the same majority of points that the marriage agreement does not need to be done.

The Implementation of Article 29 of the Marriage Law in KUA Lowokwaru

Implementation is the application. While the general understanding is an action or implementing a plan that has been carefully prepared and detailed (mature). In this study, the implementation in question is the application of one rule of law, namely the marriage law, especially Article 29. Article 29 reads:

1. at the time or before the marriage, the two parties by mutual agreement may enter into a written agreement certified by an employee of the Registrar of

¹⁹ Herunanto Endroyono, wawancara, (Malang, 10 Maret 2023)

²⁰ Sarlito W. Sarwono, *Pengantar Umum Psikologi*, (Jakarta: Bulan Bintang, 2003), cet 9, hal. 45-46

- marriages, after which the contents shall also apply to the third party insofar as the third party is involved;
2. agreement cannot be ratified if it violates the boundaries of law, religion and morality;
 3. agreement comes into force from the moment the marriage happens;
 4. during the marriage, the agreement cannot be changed, unless both parties agree to change and the change does not harm the third party.

This article 29 provides for the permissibility of making a marriage agreement, which contain all matters relating to the household, as long as it does not violate the boundaries of law, religion and morality.²¹ Addition to applying to a husband and wife, a marriage covenant may also apply to a third party.²² Marriage agreement is valid from the moment the spouse become legally married and cannot be changed except with the consent of both parties and does not violate the rights of third parties.

Although people know about the rules of this marriage agreement, but it is rarely done. This is because the assumption that marriage is a very strong (*miitsaaqan gholiidzan*)²³ and should not be intended for one moment will be separated. As said by Mr. Faji who does not agree with the marriage agreement. According to him, "If you are married, it is already a commitment not to separate. So long as they are on the same ladder together. Because if we embrace the understanding, that whatever material we get is no longer for us but for children. So, the premarital agreement is as if there will be a shadow of one day will be separated. So I think this way, if there is a prenuptial agreement, the level of survival of a household will decrease. Agreement has a limitation. Later, if I get divorced, all are separated. So, for me, I don't agree with that."²⁴

This assumption causes the Lowokwaru community not to make a marriage agreement. In other words, Article 29 of the Marriage Law has not been implemented much. In a period of one year there is not necessarily a couple who made a marriage agreement. As informed by Mr. Ghufon as the head of KUA Kecamatan Lowokwaru that he has never handled the registration of marriage agreements. Based on the marriage archive data recorded at KUA Lowokwaru, there were only two couples who registered a marriage agreement between April and May in 2022, and these couples have divorced. The recording of the marriage agreement is located on the back of the marriage book. This marriage agreement is a deed of agreement made by a notary.

The agreement itself is a Civil Law Act that is regulatory and there is no obligation to use it. In Article 1313 of the Civil Code (KUHPer) it says, "In which one or more persons bind themselves to one or more other persons". For a marriage agreement, it is initially provided in Article 139 of the Criminal Code. The article reads "Prospective spouses with a marriage agreement may deviate from the rules of the law on joint property provided that it does not conflict with good morals or with General Order and the following provisions are also observed". By looking at the contents of this article 139, at first the marriage agreement was only about the separation of property. This article is then refined by Article 29 of the Marriage Law

²¹ Pasal 29 ayat (2) UU Perkawinan

²² Pasal 29 ayat (1) UU Perkawinan

²³ Pasal 2 KHI

²⁴ Muhammad Faji, wawancara, (Malang, 11 Maret 2023)

which expands the content of the agreement which is not only the separation of property.

The voluntary nature of a marriage agreement means that it will be used if the legal interests of one or both parties wish for it. So the real purpose of making regulations on the marriage agreement is good, for the legal protection of spouses as long as there are no injured parties, including third parties. Mr. Ghufron said that the marriage agreement is good for couples who before marriage each bring wealth so that there is no mixing of property that has been owned before marriage and joint property produced after marriage. But if the spouses who previously did not have property, that is, they both started from the bottom, then there is nothing to be stated in the marriage agreement. According to him, the one who makes a marriage agreement is on average a person who already has property and then divorces and marries again with someone who both brings property and they mutually agree to make a marriage agreement in the framework of the separation of property.

Regarding the marriage agreement in the review of Islamic law, Mr. Ghufron stated that the marriage agreement is something that needs to be made but not to the extent that it is mandatory to make it. It is the same with debts which are best recorded. The marriage agreement is not mandatory because there is no evidence that regulates it and the marriage agreement is made as a measure to prevent bad intentions from one of the parties to control the property of their spouse. It is another matter if the property is given voluntarily then it does not matter. For him the separation of property is a good thing and the marriage agreement is important for couples who before marriage have brought wealth. If before the wedding did not bring wealth, then there is nothing to be listed because to the notary alone requires a lot of money and other requirements that need to be met to make a marriage agreement.

Furthermore, according to Mr. Ghufron as head of Kua Lowokwaru: the procedure for making a marriage agreement conducted at Kua Lowokwaru is in accordance with the national law governing marriage agreements. Although as long as the speaker served as the head of Kua Lowokwaru, he had never met a couple who registered their marriage agreement.

The procedure for drawing up a marriage agreement begins with the drawing up of a marriage agreement in the presence of a notary. Although the provision for making a marriage agreement before a notary is not mentioned in Article 29 of the Marriage Law, it is stipulated in the Criminal Code Article 147 in conjunction with Article 149, which essentially states that a marriage agreement must be made by a notarial deed before marriage is carried out. The marriage agreement in the form of a notarial deed is aimed at obtaining the accuracy of the date of drawing up the agreement. If the marriage agreement is made illegally, there will be a possibility of changing the contents of the marriage agreement that can harm third parties. By using a notarial deed, the agreement is also interpreted as strong evidence and has legal certainty about the rights and obligations of husband and wife regarding their property.²⁵

In the opinion of the interviewees, the marriage agreement according to the compilation of Islamic law (KHI) is permissible, as stated in Article 45 KHI: “the

²⁵ Hanafi Arief, “Implementasi Yuridis Perjanjian Kawin Dalam Sistem Hukum Positif Di Indonesia,” *Syariah Jurnal Hukum Dan Pemikiran* 15, no. 2 (2016): 141–53, <https://doi.org/10.18592/syariah.v15i2.551>.

marriage agreement is an agreement from both parties, namely the prospective husband and prospective wife, which must be fulfilled after the implementation of the marriage and if a violation of the marriage agreement is made by one party, the marriage and vice versa. This is a sanction for violation of the marriage agreement”.²⁶

From interviews with sources and documentation obtained, it can be concluded that the implementation of Article 29 of the Marriage Law is in accordance with the regulations governing the marriage agreement contained in Article 29 of the Marriage Law, Article 147 in conjunction with Article 149 of the Criminal Code, compilation of Islamic law, and the Constitutional Court decision 69/PUU-XIII/2015.

Implementation of Article 29 on The Marriage Act According to Lawrence Friedman

The legal system according to Friedman is something abstract that cannot be described concretely such as a table, TV, house, ball and so on.²⁷ As the system is generally understood, the legal system is also a collection of components that work together to achieve a specific goal.²⁸ Basically, the theory of the legal system wants to see whether the law works or not so that it can be known that the law is still alive and valid in society.

The legal system is like a machine that cannot work without a lighter. In this case the lighter is referred to as the input. About how the law works, Friedman said that there must be input from the community such as conflicts or demands.²⁹ Thus it can be said that it is these social phenomena that ultimately form the law. With the input, the law can be processed and the legal system works to produce output in the form of regulations or court decisions.³⁰ In the context of marriage agreements, the need or demand for constitutionalization of marriage agreements can be used as input in the legal system. But because the input does not work alone, it must be considered other components of the legal system, namely the process, output and feedback.

In discussing the legal system, Lawrence M. Friedman in his book “The Legal System: A Social Science Perspective”³¹ explains how the law is effective. The law is effective when the 3 elements of the legal system work together. These 3 elements are law (which consists of substance and structure) and legal culture. These three elements of the legal system can affect the success or failure of law enforcement. The structure of law is related to law enforcement officers, then the substance of law is related to legislation, and legal culture is related to living law or living law adopted

²⁶ Sukardi, “Kajian Yuridis Perjanjian Perkawinan Menurut Kitab Undang-Undang Hukum Perdata, Undang-Undang Nomor 1 Years old 1974 Dan Kompilasi Hukum Islam,” *Jurnal Khatulistiwa* 6, no. 1 (2016): 19–45, <http://jurnaliainpontianak.or.id/index.php/khatulistiwa/article/view/635>.

²⁷ Lawrence Meir Friedman. 2015. *The Legal System: A social science perspective*. Penerjemah M. Khozim. Cetakan ke-7. Bandung: Nusa Media.

²⁸ Lawrence Meir Friedman. 2015. *The Legal System: A social science perspective*. Penerjemah M. Khozim. Cetakan ke-7. Bandung: Nusa Media.

²⁹ I Dewa Gede Atmadja dan I Nyoman Putu Budiarta, *Teori-Teori Hukum*, (Malang: Setara Press, 2018), hal. 140

³⁰ I Dewa Gede Atmadja dan I Nyoman Putu Budiarta, *Teori-Teori Hukum*, (Malang: Setara Press, 2018), hal. 140

³¹ Lawrence Meir Friedman. 2015. *The Legal System: A social science perspective*. Penerjemah M. Khozim. Cetakan ke-7. Bandung: Nusa Media.

by the community.³²

Related to the implementation of legislation, the implementation of regulations is in the output stage. In this output stage, the legal system needs feedback, namely the reaction of the community and the implementers of the output. If the reaction from the feedback is good, the rules can be implemented, then the legal system will wait for the next input. That is, the goal of the legal system has been achieved. For example, the rules regarding the marriage agreement were originally set out in Article 139 of the Criminal Code. However, this article only regulates the separation of property and is carried out before the marriage takes place. The community wants changes because the agreement stipulated in Article 139 of the Criminal Code is considered too limiting the substance of the agreement. This is a reaction (feedback) which then becomes input in the next process. After that, the law regulates the marriage agreement more broadly and flexibly regarding its substance with the condition that it does not violate the boundaries of law, religion and morality. However, the time of making the agreement is still before the marriage, this is an input for the next process and the output is the issuance of the Constitutional Court decision number 69/PUU-XIII/2015. For Muslims, the marriage agreement is also regulated in the compilation of Islamic law, especially Article 45 to Article 51. According to Friedman, this is how the law works without stopping.

In implementing Article 29 of the Marriage Law, researchers interviewed 15 respondents. 15 respondents were sampled from the study population located in Lowokwaru. Of the 15 people, 10 were married and 5 were unmarried. RF mother of one of the respondents who is married does not enter into a marriage agreement but wants (will) do so. The reason is in anticipation if one of the parties cheats and a divorce occurs. So the marriage agreement can facilitate settlement, especially regarding the marital property. Unlike what Mr. Awan conveyed: "I don't know yet. If I think it is not good (separation of property in the marriage agreement), because the property is destined for the next generation or children. Or windfall from parent to child. There is no need for separation of property. Unless there are two people who are both married and both carry property. Just filed with a notary. But if starting from dating you don't have anything and it's a joint property if I can disagree. It doesn't matter, because it means that our marriage is heading to Sakinah, mawadah, warahmah until death. That's all."³³ Although Mr. Awan did not know about the rules of the marriage covenant, he saw that it was not good for him to do so, because in essence, the property accumulated in a marriage ultimately belongs to the child, not to one of the parties. Meanwhile, according to Ibu DK, the marriage agreement is important to do because in anticipation if later in the course of marriage there are problems or situations that change compared to the beginning of marriage. But Mrs. DK herself did not do it. From several interviews, although almost all of them consider it good that there are regulations regarding marriage agreements, they still consider that it is not necessary to do so. In Friedman's theory of the legal system this has to do with culture or legal culture.

Based on interviews conducted with fifteen Lowokwaru residents, there were three respondents who did not know about the marriage agreement. Furthermore,

³² Babtista Yohanes Kou, "Pendaftaran Tanah Secara Sistematis Terhadap Tanah Bekas Hak Adat Di Kecamatan Cibal Kabupaten Manggarai Setelah Berlakunya PP 24 Years old 1997 Tentang Pendaftaran Tanah," *Thesis* 13, no. April (2017): 15–38.

³³ Awan Indarmoko, wawancara, (Malang, 11 Maret 2023)

from the interviews, the researchers concluded that four out of ten people with married status and an average age of marriage of more than ten years are of the view that the marriage agreement is not an important thing to do in their marriage. Because they believe that their marriage does not require the separation of property and they adhere to the understanding that marriage is a lifelong commitment or it can be said that marriage is *mitsaqan ghalidzan*.

Then six other people who are married and the average age of marriage is more than ten years, they have the opinion that the marriage agreement is a necessary thing to do and is a positive thing. However, of the ten respondents with married status, only one plans to conclude a marriage agreement.

As for the five respondents who are not married, the researchers concluded that the respondents already know and understand about the marriage agreement. Four out of five respondents also have plans to enter into a marriage agreement. This means that the respondents who are not married have a different point of view from the respondents who are married.

Associated with legal culture as one of the elements of the legal system Lawrence M. Friedman, the community in Lowokwaru based on interviews conducted by researchers showed that most of the respondents agreed on the marriage agreement as a binding agreement in their marriage. For respondents who agreed on the marriage agreement, they view the marriage agreement as a preventive measure from conflicts that may come in the future and also as a sign that their marriage is open between spouses.

Conclusion

Based on the results of the study, it can be concluded that the perception of the people of Lowokwaru district about the marriage agreement is diverse, but most do not think it needs to be done and this can be seen from none of the respondents who are married to make a marriage agreement. Regarding the implementation of Article 29 of the marriage law, it is basically in accordance with the procedure for making marriage agreements regulated by national laws and regulations. Based on the results of interviews with fifteen respondents, it was concluded that the majority of respondents believe that marriage is a sacred bond that aims to form a *sakinah, mawadah, and rahmah* family so that there is no need to make a marriage agreement.

According to the theory of the legal system, the legal substance of the marriage agreement is sufficient to provide legal certainty and protection, while in the legal structure, the executor or law enforcement has carried out in accordance with established procedures. However, in legal culture, the implementation of Article 29 of the Marriage Law is still constrained by the perception and legal knowledge of the community about the existence of a marriage agreement.

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