

Prenuptial Agreement Between Indonesia and South Korea Regulations

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ABSTRACT: This study examines the legal frameworks governing prenuptial agreements in Indonesia and South Korea, offering a comparative analysis between a developing and a developed nation in Asia. It explores cultural and societal attitudes that shape perceptions of such agreements in both jurisdictions, providing insights into how these frameworks function within their respective contexts. In South Korea, prenuptial agreements are widely used; however, the country faces one of the world's lowest fertility rates, partially attributed to declining interest in marriage. Conversely, Indonesia's societal structure remains deeply rooted in traditional and religious values, influencing its regulatory approach to marital contracts. The research evaluates statutory laws, court decisions, expert opinions, and relevant literature to uncover the similarities and differences in legal applications. Both countries share civil law traditions, yet their handling of prenuptial agreements diverges significantly. Indonesian regulations emphasize strict formality and a limited scope, predominantly addressing property arrangements. In contrast, South Korea's laws allow broader flexibility and greater judicial discretion, extending to spousal support and child custody. The findings highlight the importance of harmonizing legal frameworks to address societal changes and cross-national marriage trends. Indonesia could benefit from adopting South Korea's flexible enforcement practices to promote adaptability, while South Korea might consider stricter formal requirements to ensure consistency and predictability. Such reforms could enhance the legal clarity and societal acceptance of prenuptial agreements, ultimately contributing to marital stability and fairness in both jurisdictions.

KEYWORDS: Prenuptial Agreement; Legal Framework; Property Arrangements.



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I. INTRODUCTION

Humans aspire to live happy lives and have children, and to make this dream a reality, marriage is often pursued. Marriage is a process in which individuals bind themselves to one another and make promises according to their respective religions and legal systems.¹ The definition of marriage is outlined in Marriage Law Number 1 of 1974, which states in Chapter 1, Article 1, that "*Marriage is an inner bond between a man and a woman as husband and wife that aims to create a happy and everlasting family (household) based on the one and only God*".² The Civil Code does not provide a definition of marriage; however, it does state in Book 1, Article 26, that the law views marriage primarily in terms of civil relations. This definition implies that marriage is a contract (*verbentennis*) based on the voluntary will of both parties, free from coercion.³

The requirements for a valid marriage are outlined in Article 2 of Law Number 1 of 1974, which stipulates that a marriage is valid if conducted according to the laws of each individual's religion and belief and is registered in accordance with applicable laws.⁴ This article emphasizes the strong religious aspect of marriage compared to the Civil Code, which regards marriage solely as a civil matter. Article 81 of the Civil Code further clarifies that no religious ceremony may take place until both parties

¹ Government of Uganda & UNICEF, "Ending Child Marriage and Teenage Pregnancy in Uganda", (19 December 2021), online: <<https://www.unicef.org/uganda/reports/ending-child-marriage-and-teenage-pregnancy-uganda>>.

² Imelda Martinelli, Joko Priyono & Yunanto, "The Concept of Legal Subject Competence in The Authority to Act on Marriage Law In Indonesia" (2023) 13:3 Indonesia Law Review, online: <<https://scholarhub.ui.ac.id/ilrev/vol13/iss3/3>> 126.

³ *Ibid.*

⁴ Muhammad Afie Abdullah, *Analisis Perbandingan Isi Perjanjian Perkawinan di Indonesia dengan Australia (Comparative Analysis the Contents of Prenuptial Agreement Indonesia and Australia)* (Universitas Indonesia, 2016) publisher: Universitas Indonesia.

prove to their religious officials that the marriage has been formalized with the civil registrar.

Conflicts can arise during marriage, potentially leading to divorce, which affects the division of assets and child custody arrangements.⁵ As a result, couples often choose to establish prenuptial agreements. A prenuptial agreement is a contract signed before marriage by a prospective husband and wife, obligating both parties to adhere to its terms. In principle, this agreement cannot be altered once the marriage has taken place.⁶ The purpose of a prenuptial agreement is to protect each individual as a legal subject with certain rights and to clarify the legal relationship between them, ensuring that both parties understand their rights and obligations.⁷

Understanding prenuptial agreements sheds light on how individuals rationalize societal taboos and flaws, while also highlighting their potential benefits for interpersonal and financial well-being.⁸ Furthermore, it illustrates how perceptions can be influenced by individual narratives and the power of metaphor in shaping thoughts, actions, and identities.⁹ In Indonesia, prenuptial agreements are not yet commonplace, largely due to negative perceptions that regard marriage as sacred, while viewing prenuptial agreements as overly secular. However, as society evolves, many now recognize the value of prenuptial agreements.¹⁰

In South Korea, prenuptial agreements are more widely accepted before marriage.¹¹ Although there remains some debate within society, with some

⁵ Tinny, Meyer & Piccarreto, “What Are the Most Commonly Contested Issues in a Divorce?”, online: <<https://www.tmplegal.com/blog/2024/october/what-are-the-most-commonly-contested-issues-in-a/>>.

⁶ Esti Royani et al, “Juridical Review of Prenuptial Agreements” (2024) 6:2 *Awang Long Law Review* 375.

⁷ *Ibid.*

⁸ Jeppe Trolle Linnet, *Interweavings: A cultural phenomenology of everyday consumption and social atmosphere within Danish middle-class families* University of Southern Denmark, (2010) publisher: Syddansk Universitet. Det Samfundsvidenskabelige Fakultet.

⁹ Jeffrey Sherman, “Prenuptial Agreements: A New Reason to Revive an Old Rule” (2005) 53:3 *Cleveland State Law Review* 359.

¹⁰ *Ibid.*

¹¹ Jacqueline Putnam Epstein, “The Role of Women in Korean Divorce Law” (2019) 6:2 *Journal of Korean Law* 257–258.

viewing prenuptial agreements as relevant only for the upper class or business owners, their popularity has grown, with the primary purpose often being asset separation.¹² Generally, there are not many differences in the regulations surrounding prenuptial agreements in South Korea and Indonesia, but notable differences exist in the ratification processes.

Given this context, the research problem explored in this article focuses on the arrangements concerning prenuptial agreements and the legal consequences of such agreements under Indonesian and South Korean regulations. Numerous studies have previously examined the topic of prenuptial agreements. One such study is by Ahmad Assidik and A. Qadir Gassing, titled "*Tinjauan Hukum Islam dan Hukum Positif Terhadap Prenuptial Agreement atau Perjanjian Pra Nikah*," published in 2020.¹³ This research discusses the legal consequences of prenuptial agreements executed in writing by both parties, emphasizing that once an agreement is made, it must not be violated. Another relevant study is by Yusuf Iskandar, titled "*Tinjauan Yuridis Perjanjian Pra Nikah Dalam Hukum Perdata*" (*Juridical Review of Prenuptial Agreement in Civil Law in Indonesia*), published in 2019.¹⁴ This research emphasizes various regulations regarding prenuptial agreements in Indonesian civil law. A third study by Muhammad Afie Abdullah, titled "*Analisis Perbandingan Isi Perjanjian Perkawinan di Indonesia dengan Australia*" (*Analysis of the Comparison of the Content of Prenuptial Agreement in Indonesia and Australia*), published in 2016, compares the arrangements and identifies the similarities and differences in prenuptial agreements in Indonesia and Australia.¹⁵

In summary, while previous studies have explored prenuptial agreements, this research specifically focuses on comparing the legal regulations surrounding prenuptial agreements in Indonesia and South Korea.

¹² Linnet, *supra* note 8.

¹³ Ahmad Assidik & A Qadir Gassing, "Tinjauan Hukum Islam dan Hukum Positif Terhadap Prenuptial Agreement atau Perjanjian Pra Nikah" (2020) 1:1 Qadauna 1–16.

¹⁴ Yusuf Iskandar, *Tinjauan Yuridis Perjanjian Pra Nikah dalam Hukum Perdata di Indonesia* (skripsi, Universitas Pancasakti Tegal, 2019).

¹⁵ Muhammad Afie Abdullah, *supra* note 4.

II. METHODS

This research employs a normative legal research method, which involves conducting studies through the examination of documents and regulations. The research utilizes legal sources and materials based on statutory regulations, court rulings and decrees, contracts and agreements, legal theories, and expert opinions. A comparative approach is adopted in this study, focusing on the rules regarding prenuptial agreements in Indonesia and South Korea. This comparison is relevant due to the shared civil law legal system between the two countries, as well as the more prevalent phenomenon of prenuptial agreements in South Korea compared to Indonesia. The comparative approach emphasizes identifying both similarities and differences across various legal systems. In discussing the findings and drawing conclusions, a deductive analysis will be employed. This involves applying general theories and concepts to specific cases.

The legal materials utilized in this study include primary, secondary, and tertiary legal materials. Primary legal materials are sourced from several key texts, including the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata), Marriage Law (Undang-Undang Perkawinan), and the Korean Civil Code (Kitab Undang-Undang Hukum Perdata Korea Selatan). Secondary legal materials are derived from literature studies, including the Compilation of Islamic Law and Constitutional Court Decision Number 69/PUU-XIII/2015, which addresses regulatory changes related to Article 29 of the 1974 Marriage Law. Finally, non-legal or tertiary legal materials encompass language dictionaries in both Indonesian and other foreign languages, which serve to support the primary and secondary legal materials.

III. COMPARISON INDONESIA AND SOUTH KOREA PRENATAL AGREEMENT REGULATION

Marriage plays a significant role in shaping a nation by contributing to the development of human resources for its future.¹⁶ Recognizing this, the state enacts marriage laws to regulate this institution. Indonesia, a nation with diverse ethnicities, cultures, religions, and social classes, is known for its

¹⁶ Patricia A Thomas, Hui Liu & Debra Umberson, "Family Relationships and Well-Being" (2017) 1:3 *Innovation in Aging* 25.

strong adherence to Eastern traditions, which emphasize politeness and kinship.¹⁷ Traditionally, prenuptial agreements in Indonesia have been viewed negatively, as marriage is considered sacred.¹⁸ However, societal views are shifting, and more people are now recognizing prenuptial agreements as valuable tools.

Understanding prenuptial agreements can reveal how societal perceptions are shaped by narratives and the power of language in influencing people's thoughts, actions, and identities. This insight suggests the importance of removing negative biases against prenuptial agreements, promoting open conversations about financial planning, and recognizing these agreements as a form of insurance or protection within marriage.

In South Korea, prenuptial agreements are also widely used. However, South Korea has one of the world's lowest fertility rates, partly due to a declining interest in marriage. A study by Bun Song Lee, Jennifer Klein, and others, titled "Factors Delaying Marriage in Korea: An Analysis of the Korean Population Census Data for 1990-2010," analyzed factors contributing to delayed marriage, identifying it as a key cause of low birth and fertility rates.¹⁹ This study found that the likelihood of marriage for men and women aged 30-34 and 35-39 has declined over time, based on samples from the Korean population census between 1990 and 2010.²⁰

Indonesia and South Korea both follow the Civil Law system, where the legal framework is based on codified laws set by the government and applied uniformly across society. This shared legal foundation can be traced back through the historical development of both countries' legal systems, emphasizing the role of government-established regulations in shaping societal conduct.²¹

¹⁷ Korik Agustian, Oyo Sunaryo Mukhlas & Januariansyah Arfaizar, "Marriage Law In Indonesia From a Legal Sociology Perspective" (2023) 11:6 Russian Law Journal, online: <<https://www.russianlawjournal.org/index.php/journal/article/view/3474>> 669-671.

¹⁸ *Ibid.*

¹⁹ Bun Song Lee et al, "Factors Delaying Marriage in Korea: An Analysis of The Korean Population Census Data for 1990-2010" (2021) 17:1 Asian Population Studies 90-93.

²⁰ *Ibid.*

²¹ Nur Rohim Yunus, Fitriyani Zein & Amrizal Siagian, "Civil Law System in Indonesia and Its Comparison with Other Legal Systems" (2022) 9:5 SALAM: Jurnal Sosial dan Budaya Syar-i 1649-1650.

In the context of marriage, the concept of an agreement originates from the Dutch term "*huwelijkse voorwaarden*" referenced in the Civil Code, meaning the conditions agreed upon in a marriage.²² The term originates from the Dutch words "*huwelijk*" meaning marriage between a man and a woman, and "*voorwaard*" meaning conditions.²³ Therefore, a marriage agreement is one established by both parties either at or before the marriage, which is then ratified by a marriage registrar.²⁴ Specifically, a prenuptial agreement refers to an agreement made before the marriage is legally valid.²⁵ This type of agreement reflects the principle of consensualism, meaning it must be entered into voluntarily and without coercion by both parties.²⁶

According to Wirjono Projodikoro, a legal scholar, an agreement represents a legal relationship regarding property between two parties, where one party promises—or is considered to have promised—to perform a certain action, while the other party holds the right to demand the fulfillment of that promise.²⁷ Article 1313 of the Indonesian Civil Code defines an agreement as "an act in which one or more people bind themselves to one or more other people."

In Indonesia, prenuptial agreements are regulated in multiple sections of the Civil Code. The initial regulations appear in Chapter VII, Articles 139–154, with additional provisions related to property and asset management found in Articles 119, 180, 182, and 185. Further rules on prenuptial agreements appear in Chapter V, Article 29, paragraphs (1)–(4) of the Marriage Law, as well as Articles 45–52 of the Compilation of Islamic Law. A notable update on prenuptial agreements is found in Article 29 of the Marriage Law, following the Constitutional Court Decision No.

²² R Subekti, "Pokok-Pokok Hukum Perdata", (1992), online: *Universitas Indonesia Library* <<https://lib.ui.ac.id>>.

²³ Honggo Hartono, "Roles of Notary in Drawing Up Marriage Agreement After Constitutional Court Decision Number 69/PUU-XIII/2015" (2020) *Prophetic Law Review* 190.

²⁴ *Ibid.*

²⁵ Asrat Nita Wati & Dhiauddin Tanjung, "Aspect of The Agreement In Marriage" (2023) 9:1 *Jurnal Hukum DE'RECHTSSTAAT*, online: <<https://ojs.unida.ac.id/LAW/article/view/7240>>.

²⁶ *Ibid.*

²⁷ Damanhuri, *Segi-Segi Hukum Perjanjian Perkawinan Harta Bersama*, version 1 ed (Bandung: Mandar Maju, 2007).

69/PUU-XIII/2015, which expanded the scope and flexibility of prenuptial agreements.²⁸

Article 119, paragraph (1) of the Civil Code stipulates: “*From the moment the marriage occurs, then according to the law, there are joint assets between husband and wife, as long as there are no other provisions in the prenuptial agreement.*” This implies that marriage results in a legal union of assets, creating a single category of marital property: joint assets. In the event of divorce, these joint assets become shared property, granting each spouse a 50% share, regardless of individual contributions.²⁹

Furthermore, Article 119, paragraph (2) states, “*From the moment of execution of the marriage, there shall exist a legal community of property between the spouses, unless other stipulations have been made in the prenuptial agreement.*” This provision reinforces that marital property is communal by default unless otherwise specified in a prenuptial agreement.³⁰

Provisions concerning property are detailed in several articles. Article 120 specifies that joint property includes both the movable and immovable assets of both spouses—existing and future—as well as any gifts received, unless the donor specifies otherwise. Article 121 addresses debts, stating that all debts incurred by either spouse before and during the marriage are considered joint property. Article 122 explains that all income, revenue, profits, and losses generated during the marriage are also classified as joint property.³¹

Once a marriage contract is agreed upon, it cannot be changed for any reason after the marriage has taken place. This is stated in Article 149 of the Civil Code, which declares, “*Following the execution of the marriage, no changes whatsoever may be made to the prenuptial agreement.*” The explanation regarding the prenuptial agreement, as outlined in Chapter V, Article 29 of the Marriage Law, states that:

²⁸ Joice Soraya & Muhammad Ansy Althafzufar, “Legal Consequences Of Annulment Of A Prenuptial Agreement In Marriage Between Individuals Of Different Nationalities” (2024) 1:2 JHK : Jurnal Hukum dan Keadilan 24–25.

²⁹ Andrew Giovanni Tanjaya & Gunawan Djajaputra, “Position of Joint Assets in Marriages that Lead to Divorce (Decision Study No.419/Pdt.G/2021/Pn.Tng)” (2022) 5:2 Jurnal Hukum Adigama 164–165.

³⁰ Royani et al, *supra* note 6.

³¹ Tanjaya & Djajaputra, *supra* note 29.

- (1) *At or before the marriage is consummated, both of the parties upon mutual consent can make a written agreement ratified by the marriage registration employee which the content is applied to the third party to the extent involved;*
- (2) *The agreement cannot be ratified if it violates the law, religion, and morality boundaries;*
- (3) *The agreement has been in force since the marriage occurred;*
- (4) *During the marriage the agreement cannot be altered, unless both parties agree to change and the alter does not harm the third party.”*

Only Article 29, paragraph (2) addresses the limitations that must not be violated when creating a prenuptial agreement. Therefore, the prenuptial agreement must be established at or before the marriage occurs. According to Article 12(h) of the Marriage Law, “*If the parties make the marriage agreement, then that matter must be recorded in the marriage book.*” This requirement differs from the provisions regarding the timing of prenuptial agreements in the Indonesian Civil Code.

Article 147 of the Indonesian Civil Code (Burgerlijk Wetboek or BW) outlines the following requirements for a prenuptial agreement:

- (1) *The agreement can be drawn up by a notarial deed. A notarial deed is utilized to ensure the agreement’s validity and to prevent hasty action since this agreement will be sustainable for a lifetime. Also, it is valued as legitimate evidence. After making the written agreement that is already made by the notary public, the notarial deed is carried to the Office of Religious Affairs (KUA) or Civil Registration Office which will be included in the marriage book. Civil registration is only responsible for recording the agreement which has to make the specification of the legal provision for the family in the future until completion.*
- (2) *The agreement can be drawn up if the marriage is not consummated or confirmed yet. This provision is made so that when the marriage is consummated, there is a law or responsibility that must be carried by each party for the sake of the complete family.*

Article 147 of the Indonesian Civil Code stipulates that a prenuptial agreement must be established before the marriage is consummated.³² This provision is closely related to Article 140 of the Indonesian Civil Code, which states, “*Once the marriage is consummated, the prenuptial agreement cannot be altered in any way.*” Additionally, Article 186 of the Indonesian Civil Code specifies that:

“Following the execution of the marriage, each of the wives has the right to file a claim with the judge for the separation of assets. Hence, only in the following cases:

- a. If the husband manifests by wasting the union assets and leading the whole family to danger of collapse;*
- b. If there is no order to take care of the assets of the husband’s assets, the guarantee of the wife’s marital assets and all that the wife is entitled by the law will be obscured, or if there is any gross negligence in looking after the wife’s marital assets, this asset in the danger.”*

In the Compilation of Islamic Law (KHI), the regulations concerning prenuptial agreements are outlined in Chapter VII, Articles 45 to 52 KHI, which cover several essential aspects of marriage agreements.³³ Article 45 KHI allows prospective spouses to establish a marriage agreement that may include provisions for conditional divorce (*taklik talak*) and other agreements that do not conflict with Islamic law. Article 46 KHI elaborates on the conditions for *taklik talak*, specifying that such conditions must comply with Islamic principles and that the divorce does not take effect automatically if the specified conditions are met; instead, the wife must present the case to the Religious Court for the divorce to be finalized.³⁴ Notably, the *taklik talak* agreement is optional and, once agreed upon, cannot be revoked.³⁵

³² Andhika Rizky Pratiwi et al, “Legal Protection of Marital Property through the Creation of a Marriage Contract” (2022) 5:2 Budapest International Research and Critics Institute-Journal (BIRCI-Journal) 8809–8819.

³³ Asman, Marilang & Kurniati, “Existence of Marriage Agreements in Islam Development Studies in the Community of Malay Border Indonesia-Malaysia” (2021) 19:1 Jurnal Ilmiah Al-Syir’ah 20.

³⁴ *Ibid.*

³⁵ Ira Fitriani, *Aspects of Legal Certainty in Violation of a Marriage Agreement Taklik Talak as a Reason for Cancellation of a Marriage in Indonesia* (Thesis, Universitas Pasundan, 2024) 65.

Article 47 KHI specifies that both parties can enter into a written agreement regarding the position of property before or at the time of marriage, which must be verified by the Marriage Registrar.³⁶ This agreement may cover the mixing of personal property and the separation of financial responsibilities, provided that it adheres to Islamic principles. Furthermore, the agreement may grant each party the authority to enter into mortgage bonds on their personal property or on joint or company property.³⁷ Article 48 KHI emphasizes that any agreement regarding the division of joint or company property cannot absolve the husband of his obligation to meet household needs. If a marriage agreement fails to satisfy this requirement, the husband still retains responsibilities for household expenses, even if assets are separated.³⁸

Lastly, Article 49 addresses the mixing of personal property, allowing for agreements that encompass all property, including what each spouse brought into the marriage and any assets acquired during the marriage.³⁹ It also clarifies that while personal property may be mixed, it does not include assets acquired during the marriage unless explicitly stated. Together, these articles create a comprehensive framework for prenuptial agreements within the KHI, establishing clear guidelines for the financial rights and responsibilities of spouses, thereby promoting transparency and harmony within the marital relationship.⁴⁰

Meanwhile, the Marriage Law has its own perspective regarding prenuptial agreements, particularly concerning property.⁴¹ In the Civil Code, unity of property occurs when the marriage takes place; however, this is not the case with the Marriage Law.⁴² Under the Marriage Law, unity of property refers only to property acquired during the marriage, meaning that the assets

³⁶ *Ibid.*

³⁷ Tanjaya & Djajaputra, *supra* note 29.

³⁸ Assidik & Gassing, *supra* note 13.

³⁹ Ibnu Elmi AS Pelu & Ahmad Dakhoir, "Marital Property within the Marriage Law: A Debate on Legal Position and Actual Applications" (2021) 59:2 *Al-Jami'ah: Journal of Islamic Studies* 288–289.

⁴⁰ *Ibid.*

⁴¹ Wiwid Putri Handayani & Diana Tantri Cahyaningsih, "Marriage Agreement on Common Property in Marriage (Comparative Study of Indonesia and The United States)" (2024) 6:2 1 311–324.

⁴² *Ibid.*

brought in by each party are not considered joint property.⁴³ Additionally, the Compilation of Islamic Law addresses the revocation of a marriage agreement, as outlined in Article 50.⁴⁴

“Article 50 Compilation of Islamic Law

- a. *A marriage agreement regarding property is binding on the parties and third parties starting from the date the marriage is held before the Marriage Registrar.*
- b. *A marriage agreement regarding property can be revoked with the mutual consent of the husband and wife and must be registered at the Marriage Registrar's Office where the marriage is held.*
- c. *Since the registration, the revocation has been binding on the husband and wife, but for third parties the revocation is only binding since the registration date is announced by the husband and wife in a local newspaper.*
- d. *If within 6 (six) months the announcement is not made by the person concerned, the registration of the revocation will automatically be void and will not be binding on third parties.*
- e. *The revocation of a marriage agreement regarding property may not harm agreements that have been previously made with third parties.”*

The Compilation of Islamic Law also outlines the legal consequences of violating a marriage agreement, particularly in the context of subsequent marriages, such as a second, third, or fourth marriage. Article 51 states that a violation of the marriage agreement entitles the wife to request annulment of the marriage or to file for divorce with the Religious Court.⁴⁵ Article 52 further stipulates that when marrying a second, third, or fourth wife, the parties may agree on matters such as the place of residence, the schedule for shared time, and household expenses for the new wife.⁴⁶

⁴³ Yuga Narazua Khanza, Haruki Okubo & Ninda Mirantama, “The Impact of Prenuptial Agreements on Property Ownership Legal Status of Inter-Marriages” (2023) 1:2 Sriwijaya Crimen and Legal Studies 140–143.

⁴⁴ Handayani & Cahyaningsih, *supra* note 41.

⁴⁵ Sri Atmadianti & Mhd Rizal, “Marriage Annulment Application Due to Lies and Fraud: A Case Study of Decree Number 3572/Pdt.G/2023/PA.Ckr” (2024) 27:2 Al-Ishlah: Jurnal Ilmiah Hukum 375.

⁴⁶ Soraya & Althafzufar, *supra* note 28.

According to *Ikhtisar Hukum Islam*, a prenuptial agreement does not only refer to the joint assets that are obtained during the marriage, but also the inheritance of each party, both the husband and wife.⁴⁷ While in Marriage law has its perspective regarding prenuptial marriage, particularly in asset issues. If in the the Indonesian Civil Code the joint assets occurred when the marriage is consummated, otherwise it is not applied in Marriage law.⁴⁸ In Marriage law substantially, the joint assets can be obtained during the marriage only, whereas inherited assets that are obtained separately do not enter the joint assets.

Regarding the expansion of prenuptial agreement contents, essentially the Marriage law does not arrange regarding the content of the prenuptial agreement. Unlike the Indonesian Civil Code which arranges the content of the prenuptial contract, for instance, the relation of the profit and loss, the income,⁴⁹ or the right of the wife to get an amount of money from her assets to fulfill the family requirements.⁵⁰

The Indonesian Civil Code has its principles. One of which is a provision if both of the parties are independent to determine the content of the prenuptial agreement that they signed, as explained in Article 139 of the Indonesian Civil Code. The fundamental freedom of each party to determine the prenuptial contract is restricted by the following provisions:

1. Do not sign anything contrary to the morality norm and public order.
2. It is not permitted to reduce the rights in a prenuptial contract, since the husband's rights; whether the parents' rights or spouses' rights last the longest.
3. Does not include the discharge of inheritance rights regarding the making of the agreement.

⁴⁷ Damanhuri, *supra* note 27.

⁴⁸ Yulius Oktaber, "Implementation National Agreements in The Division of Collective Property in The Time of Divorce" (2023) 4:1 Indonesia Private Law Review 30.

⁴⁹ Article 164 of the Indonesian Civil Code: "*The stipulation that there shall only be a community of property in respect of gain and income between the spouses implies that there shall be no legal community property or shared profit and loss.*"

⁵⁰ Article 145 of the Indonesian Civil Code: "*In the event of exclusion or restriction of community property, the amount that the wife must contribute yearly to the household and education of the children shall be stipulated.*"

4. It is not allowed to pledge if one of the parties will have more debts than the assets.
5. Do not sign any agreement in which the marriage assets will be arranged by foreign law.
6. The content of a prenuptial agreement can be anything as long as it does not violate the existing regulations.
7. Does not violate any legal limits in arranging the agreement, for instance, the wife is not allowed to do any legal act. That case has already violated the legal limits since the law determines if a married woman has the right to do any legal act.
8. The agreement content does not violate any religious boundaries, for instance, the spouses are still allowed to 'get along' whether man or woman. This already clearly violates the religious boundaries, since the religion forbids freedom of association. It violates moral boundaries.⁵¹

Regarding the prenuptial contract in assets issue, there are principal differences between the Indonesian Civil Code and Marriage law. The Indonesian Civil Code arranges if there is no agreement, then since the marriage is already committed, the spouses' assets will be combined.

An ideal prenuptial agreement is an agreement that can protect and enforce justice to the parties in a marriage. Soekarno Aburaera said that sometimes the sense of justice is out of the law so it is hard for the law itself to balance it. As a result, the law itself will be considered unfair.⁵² M. Rezfah Omar said, "The position of agreement before the marriage is more powerful than the regulations in Law No. 1 of 1974 about Marriage. Since that agreement can protect both parties. If there is any divorce and dispute between them, thus the prenuptial agreement can be used as the guidelines for the solution."⁵³

At this moment, we move to the arrangement regarding the prenuptial agreement in South Korea. In South Korea, the prenuptial agreement can

⁵¹ Claudia Derichs & Andrea Fleschenberg, *Religious Fundamentalisms and Their Gendered Impacts in Asia* (Friedrich Ebert Stiftung - Berlin, 2010).

⁵² Rahmatullah & Hasannudin Hidayat, "Justice Dialektics In West, Islam and Indonesia Perspectives" (2020) 3:1 *Meraja Journal* 118-119.

⁵³ Khanza, Okubo & Mirantama, *supra* note 43.

be conducted as a consideration for the South Korean community when they will get married. Yet they are used to involve the property asset agreement since the majority of that community tends to consider the achievement of fulfilled financial requirements. If they appraise that it is already sufficient and that amount can be used to purchase either land or a building, they will be prepared to conceive marriage matters.

In the statutory regulations of South Korea, the prenuptial agreement is a contract that is signed before the marriage occurs. Right after they are married, the spouses must obey and this agreement cannot be altered during the marriage principally. The articles of the Korea Civil Code that review the prenuptial agreement are Article 829 (Agreement and its Alteration on Matrimonial Property) and Article 839 Paragraph (1). The prenuptial agreement can be altered and that matter has been already arranged in Article 829-2 Paragraph (2) of the Korea Civil Code that states:

“부부가 혼인성립전에 그 재산에 관하여 약정한 때에는 혼인중 이를 변경하지 못한다. 그러나 정당한 사유가 있는 때에는 법원의 허가를 얻어 변경할 수 있다“

“If the husband or wife has, before the formation of marriage, entered into a contract concerning their property, such contract may not be altered during the marriage: Provided, if there is a due reason to alter such contract, it may be altered upon approval of the court.”⁵⁴

The prenuptial agreement is used to involve the provision for their property relations. If there is not any in the prenuptial agreement, the relation owned by the spouses will be resolved according to Article 830 until 833 of the Korea Civil Code. Unless, the prenuptial agreement has already been made, then:

“제830조 (특유재산과 귀속불명재산)

- ① 부부의 일방이 혼인전부터 가진 고유재산과 혼인중 자기의 명의로 취득한 재산은 그 특유재산으로 한다.
- ② 부부의 누구에게 속한 것인지 분명하지 아니한 재산은 부부의 공유로 추정한다. <개정 1977. 12. 31.>”

⁵⁴ “제829조 (부부재산의 약정과 그 변경) *Sub-Section 2 Effect on Property, Article 829 (Agreement and its Alternation on Matrimonial property).*” <https://www.law.go.kr/>.

또한 제831조 (특유재산의 관리등) “부부는 그 특유재산을 각자관리, 사용, 수익한다.”

“Article 830 (Peculiar Property and Property of which Title is Uncertain)

(1) *Inherent property belonging to either husband or wife from the time before the marriage and property acquired during the marriage in his or her name shall constitute his or her peculiar property.*

(2) *Any property, of which title is uncertain between the husband and wife, shall be presumed to be in their co-ownership (Article 830, Amended by Act No. 3051, Dec. 31, 1977)”*

Also, Article 831 of the Korea Civil Code (Management, etc. of Peculiar Property) said, “*Husband or wife shall separately manage, use and take profit from his or her peculiar property.*”⁵⁵ Article 829 of the Korea Civil Code stipulates the requirement to make the legal agreement that said:

“제829조 (부부재산의 약정과 그 변경)

① “부부가 혼인성립전에 그 재산에 관하여 따로 약정을 하지 아니한 때에는 그 재산관계는 본관중 다음 각조에 정하는 바에 의한다.

② 부부가 혼인성립전에 그 재산에 관하여 약정한 때에는 혼인중 이를 변경하지 못한다. 그러나 정당한 사유가 있는 때에는 법원의 허가를 얻어 변경할 수 있다.

③ 전항의 약정에 의하여 부부의 일방이 다른 일방의 재산을 관리하는 경우에 부적당한 관리로 인하여 그 재산을 위태하게 한 때에는 다른 일방은 자기가 관리할 것을 법원에 청구할 수 있고 그 재산이 부부의 공유인 때에는 그 분할을 청구할 수 있다.

④ 부부가 그 재산에 관하여 따로 약정을 한 때에는 혼인성립까지에 그 등기를 하지 아니하면 이로써 부부의 승계인 또는 제삼자에게 대항하지 못한다.

⑤ 제2항, 제3항의 규정이나 약정에 의하여 관리자를 변경하거나 공유재산을 분할하였을 때에는 그 등기를 하지 아니하면 이로써 부부의 승계인 또는 제삼자에게 대항하지 못한다.”

⁵⁵ *Ibid.*

“Article 829 (Agreement and its Alteration on Matrimonial Property)

1. *If husband and wife have not, before the formation of marriage, entered into a contract which provides otherwise concerning their property, their property relation shall be governed by the provision of each Article of this Sub-Section.*
2. *If husband and wife have, before the formation of marriage, entered into a contract concerning their property, such contract may not be altered during the marriage: Provided, That if there is a due reason to alter such contract, it may be altered upon approval of the court.*
3. *If in a case where one spouse manages the property of the other by the contract referred to in paragraph (2) and such property is imperiled by mismanagement, the other spouse may claim to the court for permission of its management. In this case, if such property is common property between husband and wife, the other spouse may claim to the court for the division of such property.*
4. *If husband and wife have entered into a contract regarding their property, such contract may not be enforced against a successor in title of the husband or wife or a third party unless it is registered before the formation of their marriage.*
5. *If the manager has been altered or a division of property in co-ownership has been effected by paragraphs (2) and (3) or by a contract, such change or division may not be enforced against a successor in title of the husband or wife or against a third party unless it has been registered.”*

The requirement of an effective prenuptial agreement must be made by the future spouses that will be married that is conducted before that, in any form—whether written or oral. Also, requires the spouses to have the legal capability to marry.⁵⁶

As explained above, thus far the arrangement of the law remains as the benchmark and guidelines of the community in making the prenuptial agreement. Even though the arrangement only focuses on arranging the assets. Before conducting the marriage, it is supposed that the future

⁵⁶ Syafira Amalia Hulukati, “Legal Implications of Prenuptial Agreements in Marriage in Indonesia: Between Protection of Rights and Justice” (2024) 6:2 *Estudiante Law Journal* 330–332.

spouses comprehend and also realize the rights and obligations in a marriage.

Numerous factors trigger the cause of divorce, such as domestic violence, financial issues, adultery, polygamy, etc. Those factors show that the cause of the divorce is not only restricted to asset issues but also related to the rights and obligations of spouses in the continuity of the household.

It is required to be emphasized, that a marriage is a legal bond between a man and a woman, to raise the household, create a happy family, and carry the trustworthy and responsibility together. For instance, providing a living both inner and outer to the family is a husband's responsibility. While in fulfilling the requirements and taking care of the household is trustworthy for the wife.

The next discussion is regarding the legal consequences enactment of the prenuptial agreement between Indonesia and South Korea. The reason for signing a prenuptial agreement for the future spouses is not only for the divorce aim in the future. Yet to protect both parties, the husband and wife if there are detrimental conditions during the marriage. Regarding achieving the aim if both parties fulfill their obligations and respect their common interest in matters, it means that the aim will not be achieved if one of the parties does not fulfill the service obligations. In this term, there is a condition where the loss comes from one of the parties that do violation of the law. those are some possibilities that may occur during the process of signing the prenuptial agreement.⁵⁷ Through the prenuptial agreement, the parties can state that there will be no mixing in assets between them and firmly approve the unity of profit and loss.⁵⁸

In Indonesia, the prenuptial agreement has consequences too. The juridical consequences of the existing prenuptial agreement are:

- a. The binding agreement between a husband and a wife,
- b. The agreement that binds the third party in terms of interests,
- c. That agreement only can be altered by the consent of both parties, does not harm the third party's interest, and is approved by the marriage registration official.

⁵⁷ Soraya & Althafzufar, *supra* note 28.

⁵⁸ *Ibid.*

The prenuptial agreement is considered canceled for the sake of the law if the agreement is conducted after the marriage is consummated since it does not fulfill the existing statutory regulations about the prenuptial agreement and does not meet the objective requirements of validity of the agreement, especially the halal conditions.⁵⁹ The cancellation according to the law means it is never considered as existed agreement and any fellowship since the beginning.⁶⁰

In South Korea, the prenuptial agreement will be respected completely by the court including the asset agreement. If there is any divorce case by the existing prenuptial agreement, then it becomes legal and can be enforced by that state. Yet, if that case continues as a judicial divorce or a contested divorce, the South Korean court applies tighter standards in respecting the validity and scope of application of the prenuptial agreement which in many cases inflicts the cancellation of prenuptial agreement.

Here is not stated that arranging the prenuptial agreement will be in vain by that policy. Instead, having a prenuptial agreement is better than you do not have any. Moreover, in the case of judicial divorce or contested divorce, the existence of a prenuptial agreement can be profitable. Even though, the court is unattached with the prenuptial agreement. The court assesses the prenuptial agreement when they determine which property that will be included as the subject of the division of property which is marriage assets.⁶¹

The consequence of a prenuptial agreement is effective during the marriage and becomes canceled at the time of the divorce or the cancellation of the marriage. The prenuptial agreement can only establish the authority on assets during the marriage not before or after the marriage.⁶²

IV. KEY SIMILARITIES AND DIFFERENCES IN PRENUPTIAL AGREEMENTS BETWEEN INDONESIA AND SOUTH KOREA

⁵⁹ Habib Adjie & Benny Aji Prasetyo, "Cancellation of The Marriage Agreement Dedicated After The Marriage is Conducted" (2021) 17:3 YURISDIKSI: Jurnal Wacana Hukum dan Sains 293–295.

⁶⁰ *Ibid.*

⁶¹ Pelu & Dakhoir, "Marital Property within the Marriage Law", *supra* note 39.

⁶² Soraya & Althafzufar, *supra* note 28.

Prenuptial agreements in Indonesia and South Korea share several similarities, despite the cultural and legal differences between the two countries. Here are some key points of similarity:

Equality/Similarity	
Prenuptial Agreement in Indonesia and South Korea	
1. Legal Recognition	Both countries recognize prenuptial agreements as legally binding contracts, provided they meet specific legal requirements.
2. Protection of Assets	In both Indonesia and South Korea, prenuptial agreements are commonly used to protect individual assets and clarify financial responsibilities before marriage.
3. Customizable Terms	Couples in both countries can customize the terms of their prenuptial agreements to suit their individual needs, addressing issues like property division, debt responsibility, and spousal support.
4. Influence of Personal and Cultural Factors	In both Indonesia and South Korea, the creation of prenuptial agreements is often influenced by cultural factors, such as family expectations and societal norms.
5. Regulations on Content	Both jurisdictions have specific legal requirements regarding what can and cannot be included in prenuptial agreements, ensuring they align with public policy and legal standards.
6. Dispute Resolution	Prenuptial agreements in both countries can include clauses for dispute resolution, such as mediation or arbitration, in case of divorce.

Table 1. Similarities in Prenuptial Agreements Between Indonesia and South Korea. Source: Author's Analysis.

These similarities highlight the growing recognition of prenuptial agreements as important legal tools for couples in different cultural contexts. In addition to the similarities, there are also some differences. Prenuptial Agreements in Indonesia and South Korea have distinct regulatory frameworks shaped by their legal traditions, cultural contexts, and family laws. The following are the differences in the Prenuptial Agreement between Indonesia and South Korea:

Difference	
Indonesia	South Korea
<p>Legal Basis: In Indonesia, Prenuptial Agreements are governed by the Marriage Law of 1974 and the Civil Code. They are recognized as valid, but certain conditions apply.</p>	<p>Legal Framework: In South Korea, the Family Law governs prenuptial agreements, which gained recognition through court rulings. The legal framework has evolved to accommodate Prenuptial Agreements more explicitly.</p>
<p>Formality: A Prenuptial Agreement must be in writing and notarized to be legally binding. It is advisable for couples to register the agreement with the local marriage registry.</p>	<p>Formality: While not strictly required, it is recommended that Prenuptial Agreements be in writing and signed by both parties to enhance enforceability. Registration is not mandatory but can help in disputes.</p>
<p>Content Restrictions: Prenuptial Agreements can regulate property rights and financial matters but cannot contravene public order or morals. They typically cannot address child custody or support issues, which are governed by separate laws.</p>	<p>Content Flexibility: Prenuptial Agreements in South Korea can cover a broader range of issues, including property division, financial responsibilities, and even aspects of child custody and support, although the latter may still be subject to court discretion.</p>

<p>Enforceability: Courts will enforce Prenuptial Agreements as long as they meet legal requirements and do not violate statutory provisions.</p>	<p>Judicial Scrutiny: South Korean courts may review Prenuptial Agreements for fairness and reasonableness, especially in cases involving significant disparities in bargaining power.</p>
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Table 2. The differences in the Prenuptial Agreement between Indonesia and South Korea. Source: Author's Analysis.

From the table above about legal recognition both countries recognize prenuptial agreements, but Indonesia has more rigid restrictions on content, particularly regarding child issues. For formality requirements both require written agreements, but South Korea places less emphasis on formal registration. Judicial review in south korean courts are more likely to scrutinize the fairness of Prenuptial Agreements compared to Indonesian courts. couples in both countries should seek legal advice to ensure their prenuptial agreements comply with local laws and meet their needs.

VI. CONCLUSION

The arrangements regarding prenuptial agreements in Indonesia and South Korea have similarities since both countries apply Civil Law, utilizing the Civil Code (known as the Burgerlijk Wetboek in Indonesia). There are three main legal sources for prenuptial agreements: the Indonesian Civil Code, the Marriage Law, and the Korean Civil Code. The statutory regulations regarding prenuptial agreements in both countries are quite similar, as both primarily address the division of property between spouses in marriage, whether it involves personal or joint assets. The key difference lies in the ratification process of the prenuptial agreement. In Indonesia, there is no requirement to go to court for ratification; the agreement can be validated through a notary public and is considered legal under the law. In contrast, in South Korea, the prenuptial agreement must be created and ratified by a court.

The legal consequences of the prenuptial agreement under Indonesian and South Korean law can lead to various implications. These may include the

division of joint assets and the responsibilities of each party, including those concerning their children and obligations to third parties. Additionally, the agreement is fully recognized by the court, making it a legal document that can be enforced in legal proceedings.

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