

Implications of Marriage Agreements on the Status of Couples' Property on Money Laundering Criminal Acts in Indonesia

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Abstract

This study examines the implications of prenuptial agreements on the status of marital property in Money Laundering Crimes (TPPU). The research aims to analyze the legal status of assets separated through prenuptial agreements when one spouse is involved in money laundering, and to evaluate legal protection mechanisms for good-faith spouses. The study focuses on the conflict between the principle of party autonomy in marriage law and the principles of follow the money and asset recovery under the Anti-Money Laundering Act. The method used is normative juridical, employing statutory and theoretical approaches, including the theory of legal protection, the theory of evidence, and the concept of reverse burden of proof. Findings reveal that prenuptial agreements hold a strategic role as instruments of legal certainty under the principle of freedom of contract and the 1945 Constitution. However, in practice, within money laundering and corruption cases, their effectiveness is limited because the principles of follow the money and reverse burden of proof grant broad authority to law enforcement to seize assets even if formally legitimate. The normative conflict between civil and criminal law creates legal uncertainty disadvantaging third parties, while existing protections remain suboptimal due to high evidentiary standards and procedural barriers. Thus, regulatory harmonization is necessary to ensure legal certainty, prevent misuse of prenuptial agreements, and provide effective protection for good-faith spouses.

Keywords: *Prenuptial Agreement, Corruption Crimes, Money Laundering, Legal Protection, Evidence.*

A. INTRODUCTION

Humans, as living beings, possess the fundamental right to continue their lineage through marriage, which in Indonesia is manifested in cultural practices of marriage ceremonies (Adriaman, 2024; Butarbutar, 2012; Hamzah, 2001). These practices vary widely, influenced by diverse cultural traditions and religious beliefs held by individuals or groups. Marriage, as regulated under Law Number 1 of 1974 on Marriage, is legally recognized as Marriage Law. Article 1 of the law defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, with the purpose of establishing a happy and everlasting household based on the belief in God Almighty.

Such relationships carry consequences in the form of mutual rights and obligations, including those toward the children born of the marriage (Martinelli et al., 2024). Accordingly, marriage establishes the roles and responsibilities of both husband and wife within family life. In Indonesia, marriage is an institution that carries social, religious, and legal dimensions. Under Law Number 1 of 1974, marriage is understood as a physical and spiritual bond between a man and a woman to form a happy and eternal family. This bond not only creates a relationship between

husband and wife but also gives rise to rights and obligations, including those related to property ownership (Rafiqi et al., 2025).

Marital property is generally divided into two categories: joint property acquired during the marriage, and personal property owned prior to marriage. However, the law provides flexibility for couples to regulate the status of their assets differently through a prenuptial agreement that stipulates property separation (Butt, 2023; De Sanctis, 2017). Initially, such agreements could only be made prior to marriage, but following Constitutional Court Decision No. 69/PUU-XIII/2015, they may also be executed after marriage. This legal instrument serves a preventive function, safeguarding each party's assets from potential disputes or third-party claims. Theoretically, a marital property separation agreement is intended to protect individual assets from future uncertainties, including third-party claims in civil matters such as bankruptcy (Amal, 2021; Haris, 2019).

Nevertheless, complications arise when one spouse becomes involved in criminal cases, particularly corruption or money laundering (ML). Money laundering is a derivative crime (underlying crime) that conceals the illicit origins of assets to make them appear legitimate. Over time, this practice has expanded beyond narcotics to include corruption, bribery, and other economic crimes (Asmuni et al., 2020; Supriadi et al., 2025).

Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering Crimes grants law enforcement broad authority to trace, freeze, seize, and confiscate assets suspected of originating from criminal activities. The law applies the principles of follow the money and reverse burden of proof, which allow the seizure of assets registered under any name, including that of a perpetrator's spouse. This creates a normative conflict with the marriage law regime, which essentially recognizes the autonomy of couples to regulate their assets through prenuptial agreements. In practice, however, property separation agreements do not always effectively protect good-faith spouses. Law enforcement often seizes household assets without distinguishing the legitimate property of an uninvolved spouse, leading to legal uncertainty (Bureni, 2016; Sunggara, 2025).

Although principles of good faith and third-party objection mechanisms are formally available, such as under Supreme Court Regulation (PERMA) Number 2 of 2022, their effectiveness remains limited due to the heavy burden of proof imposed on the innocent party.

A contemporary example can be seen in the tin trading corruption case involving Harvey Moeis, where several assets registered under his wife, Sandra Dewi, were confiscated despite the existence of a property separation agreement. This raises a fundamental question: does the state have the right to seize the assets of a good-faith spouse, or can a prenuptial agreement legitimately shield illicit assets from confiscation? Consequently, examining the implications of marital agreements on the status of spousal assets in money laundering cases becomes a matter of critical importance.

This research aims to analyze and understand how the enforcement of marital

agreements influences the status of separated assets when one spouse is found guilty of money laundering. Furthermore, it seeks to identify and propose legal mechanisms available to innocent spouses to ensure protection of their property, which may otherwise be at risk of seizure as assets linked to money laundering crimes.

This study employs two primary legal theories as analytical frameworks: the theory of legal protection and the theory of evidence. The theory of legal protection emphasizes the importance of legal mechanisms that safeguard the rights and interests of legal subjects, both preventively and repressively. In the context of marital agreements, this theory is relevant because such instruments hold dual potential: on the one hand, they may be abused to conceal illicit assets; on the other, they are intended to provide legal certainty and protection for good-faith spouses against harm caused by the unlawful acts of their partners. This framework helps assess the extent to which the law can balance individual protection with the state's interest in eradicating money laundering.

The theory of evidence plays a crucial role in analyzing the mechanisms and standards used by judges in adjudicating money laundering cases. In practice, Indonesia's evidentiary system combines legally recognized means of proof with judicial conviction (*negatief wettelijk*). However, money laundering cases introduce a unique dimension through the principle of reverse burden of proof. This often creates difficulties for innocent spouses, who must prove the legitimacy of their property to prevent confiscation. Accordingly, the theory of evidence is employed to examine how third-party objection mechanisms and fair evidentiary standards can protect individual rights without undermining the state's effectiveness in recovering illicit assets.

B. METHOD

This research method uses a normative juridical approach that focuses on the study of laws and regulations and relevant data through literature studies. The research is descriptive and analytical in nature, linking positive law, legal theory, and the practice of its implementation in society. The approach used is a statute approach through a review of all laws and regulations relevant to the research issue. Data were obtained from primary legal materials such as the 1945 Constitution, the Civil Code, the Criminal Code, the Criminal Procedure Code, laws related to marriage, corruption eradication, and Constitutional Court decisions; secondary legal materials in the form of literature, books, research results, and seminars; and tertiary legal materials such as legal dictionaries, newspapers, and encyclopedias. Data collection techniques were carried out through literature studies with descriptive qualitative analysis, systematically arranged to explain the facts and relationships of the problems, and using deductive drawing of conclusions from general principles to specific statements (Surjanti, 2016).

C. RESULT AND DISCUSSION

In the Indonesian legal system, regulations concerning marital property stem from Article 35 paragraph (1) of Law Number 1 of 1974 on Marriage, which stipulates that all assets acquired during the marriage, whether by the husband or the wife, legally constitute joint property. Consequently, neither spouse may freely dispose of such property without the consent of the other. However, this provision may be set aside if the parties enter into a written agreement, either before or during the marriage, known as a prenuptial agreement (*huwelijks voorwaarden*). Such agreements allow for the separation of assets so that each spouse's property remains individually owned.

Normatively, the legal basis for prenuptial agreements is found in Article 29 of Law Number 1 of 1974 in conjunction with Articles 139–154 of the Indonesian Civil Code (KUHPerdata). These agreements are permissible as long as they do not conflict with law, morality, or public order, as stipulated in Article 1337 of the Civil Code. Their function extends beyond regulating the household's economic aspects; they also provide legal certainty, protect individual ownership, and prevent future conflicts.

J. Satrio emphasizes the importance of incorporating cultural values and a sense of justice when drafting such agreements so that they align with the characteristics of Indonesian families. A significant development occurred with the Constitutional Court Decision No. 69/PUU-XIII/2015. Previously, Article 29 paragraph (1) of the Marriage Law permitted prenuptial agreements to be made only before or at the time of marriage. This limitation created difficulties for married couples who later required asset separation arrangements, for instance, due to business ventures or legal risks. Through its ruling, the Court affirmed that prenuptial agreements may be made, amended, or revoked at any time during the marriage, provided they do not harm third parties (Faradz, 2008; Lengkong, 2023). This decision broadened the constitutional scope of freedom of contract while strengthening the position of prenuptial agreements as an instrument for the protection of property rights.

In the criminal context, particularly with respect to Money Laundering Crimes (MLC), prenuptial agreements present a legal dilemma. On one hand, such agreements are intended to shield good-faith spouses from liability for crimes committed by their partners. A valid separation of property may serve as evidence that certain assets should not automatically be subject to state seizure. On the other hand, money laundering law adheres to the principle of *follow the money*, which focuses on tracing the origin of assets regardless of their formal ownership. Law enforcement officers are not required to prove the direct involvement of the lawful owner; it is sufficient to establish a presumptive link between the assets and the predicate crime.

This normative conflict becomes more evident when viewed through the mechanism of non-conviction-based asset forfeiture (NCB). Article 38B of Law Number 8 of 2010 allows for the confiscation of assets even without a criminal conviction, provided it can be proven that the assets originated from criminal activity. While this mechanism is essential for combating transnational crimes effectively, it may conflict with the constitutional right to property ownership as guaranteed under

Article 28H paragraph (4) of the 1945 Constitution. In cases involving prenuptial agreements, good-faith spouses risk losing their rights because assets formally registered in their name may be considered proceeds of crime.

Articles 77 and 78 of Law Number 8 of 2010 on the Prevention and Eradication of Money Laundering authorize investigators to seize assets held by anyone, including a perpetrator's spouse, if indications suggest a connection to a criminal act. The principles of *follow the money* and reverse burden of proof expand the scope of confiscation regardless of civil ownership status. This creates potential clashes between the protection of good-faith spouses' property rights and the state's interest in recovering state losses.

To examine this tension, the theory of legal protection, as articulated by Philipus M. Hadjon, becomes relevant. This theory asserts that law exists to protect legal subjects, both preventively and repressively, ensuring that fundamental rights are not violated. A prenuptial agreement serves as a form of preventive legal protection for good-faith spouses, while third-party objection mechanisms (*derden verzet*) under the Anti-Corruption Law and Supreme Court Regulation (PERMA) No. 22 of 2022 represent repressive protection.

Yet, their effectiveness remains limited due to high evidentiary burdens and restricted access to justice. Such objections, grounded in Article 66 of the Criminal Procedure Code (KUHAP) and Article 19 paragraph (2) of the Anti-Corruption Law, are filed in district courts as independent civil claims, accompanied by valid proof of ownership. In addition, *pretrial* proceedings constitute an important instrument for reviewing the legality of seizures, including those involving third-party property, as regulated under Article 77 of the Criminal Procedure Code and expanded by Constitutional Court Decision No. 77/PUU-IX/2011. Pretrial review is limited to the legality of actions, must be filed before the trial of the main case, and does not apply to seizures already sanctioned by a court ruling.

Protection of third-party property rights is also guaranteed under Article 28G paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution, as well as international instruments such as the UNCAC, which recognize the rights of bona fide third parties in asset seizure and confiscation proceedings.

The theory of evidence also offers a crucial perspective. Indonesia adheres to the *negatief wettelijk* evidentiary system, which combines legally recognized means of proof with the judge's conviction. Within the framework of money laundering law, this system is reinforced by the reverse burden of proof, requiring defendants to demonstrate the lawful origin of their assets. In practice, however, this burden often shifts onto third parties, including good-faith spouses, who must prove the legality of their property even though they should not bear responsibility for the crime. This creates imbalance and risks the criminalization of legitimate owners (Nugraha, 2020; Pradnyawati & Laba, 2018).

The main challenge for third parties in proving ownership lies in the limited availability of formal documentation, particularly for assets acquired through informal means or inheritance. Law enforcement frequently assumes that all

household property constitutes proceeds of crime, whereas civil law recognizes lawfully separated assets as individually owned. The lack of adequate clarification provided to a defendant's spouse also undermines the principles of fair trial and property protection (Agustine, 2019; Fuadi et al., 2024). Thus, the application of prenuptial agreements in the context of money laundering stands in an ambivalent position: while recognized as a legitimate legal instrument for protecting individual ownership, they must not serve as loopholes for concealing illicit assets. The state, through its law enforcement authorities, retains the power to seize assets where evidence of criminal connection exists, yet third-party objection mechanisms must be strengthened to ensure the rights of good-faith spouses are protected. Maintaining continuity between legal protection and asset recovery effectiveness is essential to ensure that the goals of money laundering eradication are achieved without sacrificing justice and legal certainty (Kamil & Uce, 2024; Latifah, 2016).

Within the broader framework of combating corruption and money laundering, asset confiscation is a key instrument for recovering state losses. However, seizures and forfeitures frequently raise serious problems when they extend to the property of uninvolved and good-faith spouses. At this juncture, the theories of legal protection and evidence form the principal foundations for evaluating the balance between the interests of the state and the rights of individuals. According to the theory of legal protection, the state has an obligation to safeguard the constitutional rights of every citizen, including the lawful spouses of offenders who are not themselves implicated in the crime (Denniagi, 2021; Herryanto, 2021).

Assets lawfully owned under a prenuptial agreement or through legitimate acquisition cannot be summarily seized without clear proof of their connection to a criminal offense. On the other hand, the theory of evidence stresses that the burden of proof is central: spouses claiming bona fide third-party status must be able to demonstrate the origin of their assets in detail, including ownership documents, transaction records, and acquisition history, to convince the court that the assets are genuinely separate from the crime (Komnas, 2019; Salasa, 2016).

The need for legal harmonization has thus become urgent. Civil law allows contractual freedom to regulate asset separation through prenuptial agreements, while criminal law prioritizes public interest through the *follow the money* principle and asset recovery. This normative tension must be reconciled to ensure that third-party protection is not merely theoretical but materialized in concrete regulations. Normatively, the Anti-Corruption Law (Article 18 in conjunction with Article 39 of the Criminal Procedure Code) regulates confiscation only of assets directly related to the offense. Meanwhile, the Money Laundering Law is more progressive, as it provides for third-party objection mechanisms (Article 81) and recognizes non-conviction-based asset forfeiture. This distinction reflects the Money Laundering Law's greater accommodation of third-party protection.

Legal remedies available to lawful spouses include:

1. Third-party objection (*derden verzet*), under Article 19 of the Anti-Corruption Law and PERMA No. 22 of 2022, to challenge the validity of asset confiscation

that affects their rights.

2. Pretrial proceedings (Article 77 KUHAP) to review the legality of seizures, reinforced by Constitutional Court Decision No. 77/PUU-IX/2011.
3. Submission of proof of asset origin, as an implementation of evidentiary theory, requiring lawful spouses to demonstrate legitimate ownership and separation from the predicate offense.

Judicial practice has recognized this protective space, as seen in the South Jakarta District Court Decision No. 04/Pid.Prap/2015/PN.Jkt.Sel., which granted a defendant's wife's claim over the seizure of her own house. This ruling underscores the importance of prudence in asset seizure, ensuring that the state's interests do not override the rights of bona fide third parties. Thus, the balance between the state's objective of recovering illicit assets and the protection of individual rights can only be achieved through adherence to due process of law, strengthened objection mechanisms, and rigorous yet proportionate evidentiary standards.

D. CONCLUSION

The results of this study indicate that prenuptial agreements, as an instrument for the separation of assets under civil law, do not have absolute force in facing asset confiscation related to money laundering crimes. Although valid and recognized under the Marriage Law and Constitutional Court Decision No. 69/PUU-XIII/2015, such agreements remain subject to the principle of asset recovery in criminal law. The concept of reversed burden of proof in the Money Laundering Law places the burden on the defendant and/or their spouse to prove that the assets they own do not originate from the proceeds of crime, thus potentially creating legal uncertainty for parties not involved but affected. Therefore, it is necessary to strengthen regulations that explicitly emphasize that separation of assets cannot be used as an instrument to protect the proceeds of crime. The urgency of ratifying the Draft Law on Asset Confiscation is important because this regulation provides a more comprehensive legal basis for the state to confiscate assets resulting from criminal acts, including corruption and money laundering, without having to wait for a final and binding criminal decision. With this regulation, law enforcement officials will have clearer guidelines for conducting investigations and prosecutions carefully, fairly, and proportionally, so that the assets of a spouse derived from legitimate income are not immediately confiscated. Public understanding also needs to be improved so that they recognize that prenuptial agreements are intended as a form of economic independence, not a means of concealing wealth. Further research is needed to more deeply examine the conflicting norms between civil and criminal law, particularly in the context of asset recovery and the protection of well-intentioned third parties.

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