

Suami menjadi pengampu bagi harta istri yang telah dipisah oleh perjanjian perkawinan : analisis penetapan Pengadilan Negeri Bandung Nomor : 245/PDT/2007/PN.BDG = Husband as the guardian of his wife's property distributed through a prenuptial agreement : an analysis of Bandung District Court's Decision Number 245/PDT/P/2007/PN.BDG / Cornelia Riani Iskandar

Cornelia Riani Iskandar, author

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Abstrak

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Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan membedakan harta benda perkawinan berupa harta bersama yang diperoleh selama perkawinan dan harta bawaan yang diperoleh masing-masing suami isteri serta berada di bawah penguasaan masing-masing sepanjang para pihak tidak menentukan lain. Pada saat atau sebelum perkawinan para pihak dapat membuat perjanjian perkawinan yang memisahkan harta kekayaan mereka sehingga masing-masing mengurus sendiri harta baik yang dibawa ke dalam perkawinan maupun yang diperoleh sepanjang perkawinan. Lain halnya jika terdapat penetapan pengadilan yang menetapkan salah satu pihak baik suami maupun isteri berada dalam pengampuan dan tidak dapat mengurus hartanya, sedangkan sidang perceraian sedang berlangsung. Penelitian ini menggunakan metode penelitian yang bersifat yuridis normatif, dimana penelitian mengacu pada norma-norma hukum yang tertuang dalam peraturan perundang-undangan yang berkaitan dengan pengaturan harta perkawinan dan perjanjian perkawinan. Data yang dipergunakan adalah data sekunder berupa bahan kepustakaan. Kesimpulan yang diperoleh adalah dalam Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan belum mengatur secara lengkap mengenai harta bersama dan perjanjian perkawinan. Jika melihat tanggung jawab suami sebagai kepala keluarga yang baik maka pengurusan suami terhadap harta benda istri dapat dibenarkan selama perkawinan tersebut belum berakhir. Suami dapat melakukan pengurusan terhadap harta isteri namun apabila setelah pengampuan tersebut berakhir maka suami harus bertanggung jawab terhadap pengurusan tersebut kepada Balai Harta Peninggalan selaku pengampu pengawas. Pengurusan harta tersebut dilakukan semata-mata untuk kepentingan isteri. Apabila terdapat kerugian akibat kelalaian suami maka suami wajib mengganti kerugian tersebut.

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**ABSTRACT**

Law Number 1 of 1974 on Marriage defines two types of marital properties: joint property, which is acquired during marriage, and separate property, which is acquired by each husband and wife and is under each party's power, providing

that it is never stated otherwise. On the occasion of or prior to marriage, both parties may produce a prenuptial agreement which separates their properties, so that they may administer their own properties which were acquired by each party both before or during the marriage. Nevertheless, similar arrangement does not apply when a court's decision has ruled that one of the parties (either the husband or the wife) is put under the guardianship of her/his spouse and deemed incapable of administering her/his own property, nevertheless, those parties eventually applied for a divorce. This study applies a juridical-normative research approach in which references are made to legal norms stipulated in laws on the management of marital properties and prenuptial agreement. This study utilizes secondary data in the form of literature resources. It concludes that Law Number 1 of 1974 on Marriage does not provide comprehensive regulation on joint property and prenuptial agreement. Based on the assumption that a husband should be a responsible head of his family, which appointed a husband as the guardian of his wife's property, is justifiable provided that the marriage has not been terminated. During marriage, a husband can administer his wife's property; however, when the marriage is terminated, he has to be deemed responsible for anything related to the said property during his guardianship to Balai Harta Peninggalan as a supervisor guardians. He must administer the property only for the benefit of his wife. Should there be any damage or loss due to his negligence, he is required to perform indemnification.