

## The Position of Digital Pre-Nuptial Agreements in The National Civil Law System

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**Abstrak:** *The development of digital technology has brought fundamental changes to the civil law paradigm in Indonesia, particularly in the drafting and ratification of prenuptial agreements. The shift from physical documents to electronic documents raises legal questions regarding the validity, evidentiary power, and legal legitimacy of digitally created agreements. This article aims to comprehensively analyze the position of digital prenuptial agreements in the national civil law system through a normative and theoretical approach, by examining the synchronization between applicable regulations and their conformity with the principles of contract law. This research uses a normative juridical method with qualitative analysis, focusing on the interpretation of Article 29 of Law Number 1 of 1974 concerning Marriage, Articles 1338 and 1868 of the Civil Code, and Law Number 11 of 2008 concerning Information and Electronic Transactions. The research results show that in principle, Indonesian positive law has recognized electronic documents and digital signatures as valid evidence, but their application in the context of notaries and family law is still hampered by regulatory rigidity and the absence of explicit provisions regarding digital notaries. The absence of norms that expressly regulate electronic prenuptial agreements creates a legal vacuum that impacts uncertainty and vulnerability of legal protection for the parties. Therefore, the urgency of notary law reform and cross-regulatory harmonization is absolute to guarantee the validity, evidentiary power, and legal protection of digital prenuptial agreements.*

**Keywords:** *Prenuptial Agreement; Digital; Civil Law; Electronic*

### INTRODUCTION

Marriage, as a social and legal institution, is constantly evolving in the face of societal change. In Indonesia, the relationship between the social, moral, and legal dimensions of marriage is regulated by Law Number 1 of 1974 concerning Marriage, which emphasizes the goal of establishing a harmonious, loving, and compassionate family.<sup>1</sup> This regulation not only defines the requirements for a valid marriage but also governs the legal relationship between husband and wife, including the

consequences for property.<sup>2</sup> However, this regulation was established during a time when social dynamics and societal structures were still conventional and therefore did not take into account the development of digital technology and the complexity of modern transactions and objects of property.

As society evolves, digital transformation and globalization have brought changes to patterns of human interaction, including family relationships.<sup>3</sup> Activities

<sup>1</sup> Arifin, Syamsul. "The THE IMPORTANCE OF REACHING ADULTHOOD FOR BUILDING A HARMONIOUS FAMILY IN ISLAMIC MARRIAGES IN INDONESIA." *Al Hakam: The Indonesian Journal of Islamic Family Law and Gender Issues* 5.1 (2025): 44-56. <https://doi.org/10.35896/alhakam.v5i1.1003>

<sup>2</sup> Hakim, M. Arif, and M. A. Arifin. "Tinjauan Batas Usia Perkawinan Pasal 1 Ayat 1

Undang-Undang Nomor 16 Tahun 2019 Perubahan Atas Pasal 7 Ayat 1 Undang-Undang Nomor 1 Tahun 1974 Perspektif Teori Sistem Jasser Auda." *Mizan: Jurnal Ilmu Hukum* 11.1 (2022): 100-118.

<https://doi.org/10.32503/mizan.v11i1.2664>

<sup>3</sup> Hapsah, Romlah Harniati, Fatimah Az Zahrah, and Muhammad Yasin. "Dinamika interaksi manusia, masyarakat, dan budaya dalam era

previously confined to face-to-face interaction can now be conducted online, from personal communication and economic transactions to legal activities. Academic literature shows that digital technology has penetrated the realm of family civil law, marked by the emergence of digital assets, the use of electronic media in the creation of legal documents, and even the implementation of online marriage contracts.<sup>4</sup> This phenomenon is shifting the way humans understand legal relationships, as the relationship between husband and wife is no longer limited to the physical dimension but also encompasses the digital space.

These changes have necessitated adaptations to legal instruments governing family relationships, particularly those related to asset protection mechanisms. Digitalization has not only transformed communication media but also created new objects in the form of data, electronic assets, and technology-based ownership.<sup>5</sup> Electronic documents, electronic signatures, and online deed creation have become increasingly commonplace in public services and legal services.<sup>6</sup> However, not all civil law instruments are ready to embrace these changes, as existing regulations are still based on physical mechanisms, manual authentication, and the in-person presence of the parties.

In family law, a prenuptial agreement is a central instrument related to the distribution

of marital assets. A prenuptial agreement is an agreement between prospective husband and wife before or during marriage to regulate their rights and obligations, particularly regarding the distribution of assets.<sup>7</sup> In civil law literature, this agreement is understood as an embodiment of the principle of freedom of contract, whereby the parties have the right to determine the best arrangements as long as they do not conflict with law, morals, or public order.<sup>8</sup> This means that this instrument provides space for the parties to protect their economic interests and assets, including in relationships with third parties.

The legal basis for prenuptial agreements is strong. Article 29, paragraph 1 of the Marriage Law, grants the parties the right to submit a written agreement regarding the distribution of assets before or during the marriage. In the civil law system, provisions in Articles 139 to 154 of the Civil Code also stipulate that prenuptial agreements may deviate from provisions regarding the division of assets in marriage as long as they do not conflict with morality and public order. Therefore, Indonesian positive law explicitly recognizes the existence and legitimacy of prenuptial agreements as part of the legal protection of each party's assets. However, in practice, the use of prenuptial agreements remains low. Empirical data shows that only around 3% to 5% of couples enter into

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globalisasi dan modernisasi." *Jurnal Ilmu Pendidikan & Sosial (Sinova)* 2.2 (2024): 191-202. [https://miftahul-](https://miftahul-ulum.or.id/ojs/index.php/jps/article/view/149)

[ulum.or.id/ojs/index.php/jps/article/view/149](https://miftahul-ulum.or.id/ojs/index.php/jps/article/view/149)

<sup>4</sup> Riani, Khafifah Anjar, Raisa Mahfuzhia Aufa, and Anwar Hafidzi. "Implikasi Hukum Teknologi Digital Terhadap Institusi Perkawinan: Pernikahan Virtual, Aset Digital Dalam Harta Bersama, Dan Cyber Divorce." *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3.2 (2025): 1680-1694. <https://doi.org/10.62976/ijjel.v3i2.1158>

<sup>5</sup> Kalesaran, Astika A. "Akibat Hukum Digitalisasi Perdagangan Saham Menurut Undang-Undang Informasi Dan Transaksi Elektronik Di Indonesia." *LEX ADMINISTRATUM* 11.2 (2023). <https://ejournal.unsrat.ac.id/index.php/administratum/article/view/45845>

<sup>6</sup> Ningrum, Ari Setya, and Ana Silviana. "PENGARUH DIGITALISASI TERHADAP PROSES PEMBUATAN AKTA OLEH NOTARIS DI ERA TEKNOLOGI INFORMASI by Notaries in the Information Technology Era." *Jurnal Yustisiabel* 9.2 (2025): 155-176. <https://doi.org/10.32529/yustisiabel.v9i2.3976>

<sup>7</sup> Pratitis, Sugih Ayu, and Rehulina Rehulina. "Keabsahan Perjanjian Pra Nikah dan Akibat Hukumnya Ditinjau dari Perspektif Hukum." *Jurnal Hukum, Politik Dan Ilmu Sosial* 2.2 (2023): 60-71. <https://doi.org/10.55606/jhapis.v2i2.1593>

<sup>8</sup> Gumanti, Retna. "Kajian Filsafat Ilmu Asas Kebebasan Berkontrak Pada Pelaksanaan Standart Contract Pada Kontrak-Kontrak Perdata Di Indonesia." *Jurnal Al Himayah* 6.2 (2022): 95-124. <https://journal.iaingorontalo.ac.id/index.php/ah/article/view/3322>

prenuptial agreements before marriage.<sup>9</sup> This low level of implementation is due to limited legal literacy, the stigma that prenuptial agreements represent a lack of trust in the marital relationship, and the perception that the administrative procedures and costs of drafting an agreement through a notary are an additional burden. This situation demonstrates a gap between legal norms that provide opportunities for asset protection and a social reality that has not yet fully accepted this practice.

As digitalization enters the realm of property and legal transactions, prenuptial agreements face new issues related to the validity of digital forms. Several studies have noted that the use of electronic documents, video conferencing, and electronic signatures in notarial deeds has given rise to debates regarding the validity of the deeds, the presence of the parties, and identity authentication.<sup>10</sup> The legal question is whether electronically executed deeds can be considered the same as authentic deeds executed by public officials in accordance with statutory provisions. This debate is increasingly important because the concept of cyber notary is recognized in practice, but its regulations are not yet fully clear in Indonesia. Specifically for digital prenuptial agreements, there are no explicit norms governing the creation or recording of prenuptial agreements in electronic format. Yet, digitalization has introduced new assets such as cryptocurrencies, digital assets, or intellectual property on online platforms. This situation raises questions about how clauses in prenuptial agreements should adapt to the volatile, decentralized, and intangible nature of digital assets, unlike conventional assets such as land or movable property.

From the perspective of contract theory, the principle of freedom of contract, *pacta sunt servanda*, authentic deed theory, and the

principle of publicity are the basis for assessing how digital pre-nuptial agreements can be accepted in the legal system. These principles require the fulfillment of legal requirements, certainty of evidence, and protection of third parties. As digital technologies expand forms of legal communication and interaction, theories of legal change suggest that legal systems must adapt to remain relevant without losing certainty and legitimacy.<sup>11</sup> Thus there is important research space. Although positive law regulates written pre-nuptial agreements and requires ratification by a registrar so that they can bind third parties, there are no regulations that clearly regulate digital pre-nuptial agreements. The low use of pre-nuptial agreements, the emergence of digital wealth objects, and the development of the practice of making electronic deeds are the reasons for the need for critical academic research regarding the position of digital pre-nuptial agreements in the national civil law system. This research is relevant because it will produce an understanding of the validity, binding strength of digital deeds, as well as recommendations for regulatory updates to be able to answer the challenges of the digital era.

## RESEARCH METHODS

This study uses a normative juridical research method with a statutory and conceptual approach. The normative juridical research was conducted by examining primary legal materials in the form of Law Number 1 of 1974 concerning Marriage, the Civil Code, and regulations related to the validity of electronic documents and the authority of notaries in making deeds. Secondary legal materials were obtained from journal literature, legal expert opinions, and doctrines that outline the concepts of freedom of contract, *pacta sunt servanda*, the principle of publicity of deeds, and the theory of authentic deeds. This study aims to construct the legal status of digital

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<sup>9</sup> Nurillah, Nuyun. "Tinjauan Yuridis Perjanjian Pra Nikah Dalam Perspektif Hukum Islam Dan Hukum Positif Indonesia." *Jurnal Ilmiah Wahana Pendidikan* 9.2 (2023): 427-436. <https://doi.org/10.5281/zenodo.7578873>

<sup>10</sup> Kinasih, Nadia Pitra. "Kepastian Hukum Notaris Menerapkan Cyber Notary Dalam Verlidjen Akta Notaris Secara Digital." *Acten Journal Law*

*Review* 1.3 (2024): 231-252. <https://journal.matracendikia.id/ajlr/article/view/7>

<sup>11</sup> Anwar, Syaiful, and Johan Edi Nepri. "Harmonisasi Hukum Digital: Tantangan Global dan Strategi Adaptif Indonesia dalam Era Kedaulatan Siber." *Hutanasyah: Jurnal Hukum Tata Negara* 4.1 (2025): 69-88. <https://doi.org/10.37092/hutanasyah.v4i1.1297>

## **RESULTS AND DISCUSSION**

### ***Prenuptial Agreements in the National Civil Law System***

prenuptial agreements through systematic and teleological interpretation, namely by assessing whether digital instruments meet the formal and material requirements of prenuptial agreements in the national civil law system. In addition, this study uses prescriptive analysis to generate arguments regarding solutions and alternative normative implications for the practice of digital prenuptial agreements.

In exploring the theoretical basis, this study refers to the thoughts of legal experts, such as the theory of freedom of contract put forward by Subekti, that an agreement is an event in which one person promises to another to carry out something, and the agreement has binding legal consequences for the parties as long as it does not conflict with public order and morality.<sup>12</sup> Furthermore, Roscoe Pound's theory of legal change, which states that the law must be able to adapt to societal developments, is used as an argument that digital transformation requires updates to the practice of making deeds and agreements.<sup>13</sup> The thoughts of notarial experts such as Habib Adjie are also used to assess the authentic character of a deed, namely that an authentic deed is not only determined by its physical form, but also by the authority of public officials and the certainty of the process of its creation.<sup>14</sup> By combining theory and expert opinion, this study not only describes legal norms but also provides critical legal arguments to determine whether digital prenuptial agreements can be recognized as valid instruments in the national civil law system.

Prenuptial agreements are the result of the evolution of civil law thought that places the will of the individual at the center of every legal relationship. In the context of the Indonesian legal system, which is rooted in the civil law tradition, this concept not only reflects the flexibility of legal norms in adapting to societal needs but also demonstrates recognition of private autonomy as part of the civil rights of every citizen.<sup>15</sup> Article 29 of Law Number 1 of 1974 concerning Marriage serves as the primary normative foundation, providing space for prospective husbands and wives to determine their own arrangements regarding property and the legal consequences arising after marriage. This provision emphasizes that state law is not deterministic in determining the form of civil relations between husband and wife, but rather provides freedom as long as it does not violate the values of public morality and public order.

The normative construction of prenuptial agreements as stipulated in Articles 139 to 154 of the Civil Code demonstrates the continuation of colonial legal logic that positions prenuptial agreements as a legitimate deviation from the community of property system. In other words, civil law recognizes a plurality of forms of property management within a household, including full unity, absolute separation, or a combination of both.<sup>16</sup> Nevertheless, the validity of the clauses in these agreements remains subject to the principles of public order and morality, which legally serve as limits to contractual freedom. This is where the tension arises between the autonomy of

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<sup>12</sup> Sinaga, Niru Anita. "Implementasi hak dan kewajiban para pihak dalam hukum perjanjian." *Jurnal Ilmiah Hukum Dirgantara* 10.1 (2019).

<sup>13</sup> Wibowo, Afrizal Mukti, et al. *Perkembangan Hukum Keperdataan di Era Digital*. Sada Kurnia Pustaka, 2024.

<sup>14</sup> Huda, Miftakhul, and Ivanda Aprilia. "Degradasi Akta Notaris dalam Perkara Pidana (Analisa Putusan Pengadilan Negeri Sidoarjo Nomor: 862/Pid. B/2019/PN Sda)." *Dewantara:*

*Jurnal Pendidikan Sosial Humaniora* 3.1 (2024): 172-187.

<sup>15</sup> Nabila, Fitri, et al. "SEJARAH PERANAN HAKIM DALAM SISTEM HUKUM CIVIL LAW." *Jurnal Media Akademik (JMA)* 3.1 (2025). <https://doi.org/10.62281/v3i1.1514>

<sup>16</sup> Djuniarti, Evi. "Hukum Harta Bersama Ditinjau dari Perspektif Undang-Undang Perkawinan dan KUH Perdata (The Law of Joint Property Reviewed from The Perspective of Marriage Law and Civil Code)." *Jurnal Penelitian Hukum P-ISSN 1410* (2017): 5632.

individual will and the regulation of public law, as on the one hand, the law provides space for freedom, but on the other, limits the expression of that freedom in order to maintain the integrity of the national legal system.

From a civil law theoretical perspective, a prenuptial agreement is a concrete manifestation of the principle of freedom of contract, which places the will of the parties as the primary source of the agreement.<sup>17</sup> According to Subekti, an agreement is law for those who make it, a principle known as the principle of *pacta sunt servanda* as stipulated in Article 1338 of the Civil Code.<sup>18</sup> This principle has a dual function: as an instrument for empowering individuals to determine their own legal destiny and as a mechanism to ensure the certainty and stability of civil relations. Within this framework, a prenuptial agreement is not merely a moral contract between two individuals, but rather a legal obligation that gives rise to binding consequences as stipulated in positive norms enacted by the state.

A critical analysis of this normative foundation reveals structural problems in the application of the principle of freedom of contract in the realm of family law. While theoretically, the parties are free to determine the content of prenuptial agreements, in practice, this freedom is often limited by unequal power relations between men and women, as well as by patriarchal social constructs. The law, in this case, is not always neutral because it operates within a value-laden social context. When marriage law is

formulated within a gender-biased moral framework, prenuptial agreements have the potential to become instruments of domination, rather than protection.<sup>19</sup> Feminist critiques of civil law highlight that freedom of contract is often merely formal, disregarding the material and sociological conditions of the parties signing the contract. Furthermore, prenuptial agreements also function as instruments of social engineering, reflecting the transformation of modern societal values. In traditional societies, the concept of prenuptial agreements was considered taboo because it contradicted the view that marriage is a total union of two individuals without economic boundaries.<sup>20</sup> However, in modern societies that emphasize financial independence and legal protection of private property rights, prenuptial agreements have become symbols of rationality and legal awareness. Therefore, the existence of this instrument is not only a manifestation of civil norms, but also a reflection of a change in the social paradigm regarding the meaning of marriage and individual rights within it.

The relationship between legal norms and social change demonstrates that prenuptial agreements serve a dual function as both a legal protection tool and an instrument of social legitimacy. From the perspective of Luhmann's legal systems theory, prenuptial agreements can be viewed as legal communication connecting the legal subsystem with the socioeconomic subsystem, where the prospective spouses negotiate the meaning of the concepts of justice and balance in their relationship.<sup>21</sup> Thus, the

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<sup>17</sup> Lestari, Diah Ayu, Diah Arimbi, and Haris Djoko Saputro. "PERJANJIAN PRA-NIKAH SEBAGAI SARANA PERLINDUNGAN HUKUM DAN MEWUJUDKAN KESEIMBANGAN HAK DAN KEWAJIBAN DALAM PERKAWINAN." *Rechtswetenschap: Jurnal Mahasiswa Hukum* 2.2 (2025). <https://doi.org/10.36859/rechtswetenschap.v2i2.4208>

<sup>18</sup> Haris, Oheo Kaimuddin, Deity Yuningsih, and Muh Hasrul La Aci. "Perjanjian di Bawah Tangan Ditinjau dari Asas Pacta Sunt Servanda." *Halu Oleo Legal Research* 6.2 (2024): 247-257.

<sup>19</sup> Agustin, Hanna Jenifer, Muhammad Darwis, and Zulfahmi Nur. "PROBLEMATIKA NIKAH SIRI: MENCARI TITIK TEMU ANTARA MORALITAS DAN LEGALITAS PERSPEKTIF FILSAFAT HUKUM ISLAM." *Al-Furqan: Jurnal Agama, Sosial, dan Budaya* 4.3 (2025): 453-464. <https://publisherqu.com/index.php/Al-Furqan/article/view/2289>

<sup>20</sup> Widhy, Widhy Andrian Pratama, and Halimah Endang Widyaningsih Endang. "Urgensi Perjanjian Pra Nikah dalam Perspektif Hukum Islam." *Maqashid* 7.1 (2024): 75-91. <https://doi.org/10.35897/maqashid.v7i1.1528>

<sup>21</sup> Sofyan, Aa. "Perjanjian Pra-Nikah Perspektif Islam: Studi Fenomenologi Di Era

norms contained in these agreements are not merely formal legal norms but also the result of dynamic and contextual social construction. This demonstrates how law operates not statically but adaptively to the dynamics of human needs.

Philosophically, the legitimacy of prenuptial agreements can be traced to the Aristotelian principle of justice, which distinguishes between distributive justice and corrective justice.<sup>22</sup> In this context, prenuptial agreements constitute a form of corrective justice that seeks to restore balance between the rights and obligations of the parties before potential disputes arise in the future. When the law provides space for prospective couples to determine the structure of their own civil relationship, the law is actually carrying out a preventive function against conflict, not merely a repressive one. Thus, the principle of freedom of contract not only guarantees private rights but also contains a more substantive dimension of justice. However, it cannot be denied that the normative framework for prenuptial agreements in Indonesia still leaves legal ambiguity, particularly regarding the registration mechanism and legal consequences for third parties. The provisions of Article 29 paragraph (1) of the Marriage Law require that the agreement be made in writing and validated by a marriage registrar, which means it acquires a public character through the principle of publicity.<sup>23</sup> However, the law does not yet explicitly regulate how this principle is applied in a digital or electronic context, raising questions about the validity of prenuptial agreements made in non-conventional forms. This lack of clarity demonstrates the gap between rigid legal norms and the evolving needs of society in the digital age.

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Society 5.0." *Qonuni: Jurnal Hukum Dan Pengkajian Islam* 3.02 (2023): 1-11.

<sup>22</sup> Pratama, Febrian Duta, Rafly Pebriansya, and Mohammad Alvi Pratama. "Konsep Keadilan dalam Pemikiran Aristoteles." *Praxis: Jurnal Filsafat Terapan* 1.02 (2024). <https://journal.forikami.com/index.php/praxis/article/view/610>

From a theoretical perspective, this gap demonstrates that Indonesian civil law still operates within a formalistic paradigm that emphasizes procedural validity over substantive effectiveness. Consequently, legal innovations such as digital prenuptial agreements are often delayed in their recognition because the legal system has not yet developed a hermeneutic approach responsive to technological change. Yet, Satjipto Rahardjo's progressive legal theory emphasizes that law should serve humanity, not the other way around.<sup>24</sup> Therefore, affirming the legitimacy of prenuptial agreements, both conventional and digital, should be seen as part of a legal transformation toward a more adaptive and humanistic paradigm. Finally, it can be emphasized that the normative and theoretical basis of prenuptial agreements in the national civil law system is not merely a formal legal issue, but rather a broader philosophical and sociological one. It represents the dialectical relationship between individual freedom and restrictions imposed by social norms, between formal justice and substantive justice, and between traditional values and modern rationality. By rereading prenuptial agreements through a critical lens, we can see that their existence not only strengthens the position of civil law as the guardian of legal certainty, but also as an arena for the reconstruction of human values in the context of marriage as a continuously evolving social institution.

### ***The Position of Digital Prenuptial Agreements in the Era of Technological Transformation***

The digital transformation in the legal world has shifted the traditional paradigm that based the validity of legal documents on the physical form and material presence of the parties. In the context of prenuptial agreements, digitalization presents both opportunities and

<sup>23</sup> Yunita, Laila, and Suprpto Suprpto. "Ratification Of Marriage Agreement After The Enforcement Of The Constitutional Court Decision Number 69/PUU-XIII/2015 In Accordance With The Principle Of Authentication." *Jurnal Hukum Sehasen* 10.2 (2024): 577-590. <https://doi.org/10.37676/jhs.v10i2.7075>

<sup>24</sup> Rahardjo, Satjipto. *Penegakan hukum progresif*. Penerbit Buku Kompas, 2010.

challenges for the Indonesian civil law system, which remains oriented towards the conventional form of written deeds.<sup>25</sup> This shift is not simply a matter of administrative technicalities, but rather a conceptual change in how the law understands the existence of documents, signatures, and the authenticity of an agreement. When a prenuptial agreement is created digitally using a certified electronic signature and validated through an online mechanism, the fundamental question that arises is whether such an instrument still has the same legal force as an authentic, physical deed. This question places us in a dilemma between the demands of technological efficiency and the principle of formal legality firmly upheld by positive law.

The changing legal landscape resulting from digitalization demands a reinterpretation of the concept of an “authentic deed” as stipulated in Article 1868 of the Civil Code. Habib Adjie emphasized that the authenticity of a deed lies not in its medium, but rather in the authority of the official who made the deed and the guarantee of certainty of the procedure for its creation.<sup>26</sup> From this perspective, it can be understood that the essence of authenticity does not depend solely on the physical form of the paper and a wet signature, but rather on the guarantee of the integrity, authenticity, and authority of the institution that validates it. Thus, if the legal system is able to guarantee the authenticity and authority of the official who makes the deed digitally, then electronic prenuptial agreements should be able to obtain legal standing equal to conventional authentic deeds. The problem is, to date, the Notary Law has not explicitly regulated the full mechanism

of electronic notary public affairs, thus creating a normative vacuum in digital notary practice.

This normative vacuum demonstrates the legal lag in adapting to the rapid development of information technology. While Law Number 11 of 2008 concerning Electronic Information and Transactions (ITE Law) and its amendments have recognized electronic signatures and electronic documents as valid evidence, implementation in the field of family civil law has not been fully consistent. Notaries are still bound by the obligation of the parties' physical presence when drafting deeds, as emphasized by Article 16 of the Notary Law, which requires the reading of the deed in person.<sup>27</sup> In digital practice, this is problematic because online meetings via video conference are not explicitly recognized as a form of valid presence. Consequently, although technology has enabled the electronic drafting of prenuptial agreements, rigid regulations hinder the validation and registration of these deeds in the national legal system.

From the perspective of Satjipto Rahardjo's progressive legal theory, this situation indicates that law is still lagging behind current social realities. Law should function as a dynamic instrument that adapts to societal developments, not merely a static text governing the past.<sup>28</sup> In this context, digitalization is not a threat to the legal system, but rather a challenge to renew legal thinking. Digital prenuptial agreements can be a momentum to test the extent to which the Indonesian legal system is capable of transforming toward a more flexible, participatory, and technologically responsive paradigm.<sup>29</sup> If law remains within a formalistic

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<sup>25</sup> Zulkarnaen, Zulkarnaen, et al. "Formulasi Pembekalan Pra Nikah bagi Generasi Z: Pendekatan Konseptual untuk Penguatan Ketahanan Keluarga di Era Digital." *Sulawesi Tenggara Educational Journal* 5.1 (2025): 148-159. <https://doi.org/10.54297/seduj.v5i1.936>

<sup>26</sup> Habib Adjie. *Kewenangan & Peran Penting Notaris Dalam Pembuatan Akta Pernyataan Transplantasi Organ Tubuh Manusia*. Guepedia.

<sup>27</sup> Kusumaningrum, Endah. "RELEVANSI PEMBACAAN DAN PENANDATANGANAN

AKTA DI HADAPAN NOTARIS DALAM PEMBUATAN AKTA NOTARIL ERA DIGITAL." *TANJUNGPURA LAW JOURNAL* 7.1: 50-64. <https://doi.org/10.26418/tlj.v7i1.61794>

<sup>28</sup> Unger, Roberto M. *Teori Hukum Kritis: Posisi Hukum dalam Masyarakat Modern*. Nusamedia, 2019.

<sup>29</sup> Sudharma, Kadek Januarsa Adi. "Pengaruh Perjanjian Pranikah Terhadap Perlindungan Aset Perkawinan Pada Generasi Z Dalam Kerangka Undang-Undang Perkawinan Dan Putusan Mahkamah Konstitusi Nomor 69/PUU-

framework, it will lose its social relevance and fail to fulfill the adaptive function that is a key characteristic of modern law.

The validity of digital prenuptial agreements cannot be separated from the issue of evidentiary power. In civil procedural law, written evidence holds a central position because it serves as the basis for justifying legal facts in court.<sup>30</sup> Electronic documents, as stipulated in Article 5 paragraph (1) of the ITE Law, are recognized as valid legal evidence equivalent to written documents, as long as they meet the requirements of integrity and authenticity. However, in judicial practice, the acceptance of electronic evidence still faces resistance due to a lack of understanding among law enforcement officials regarding technical mechanisms of digital security such as encryption and electronic signature certification. This demonstrates an epistemological gap between traditional, physically based legal logic and algorithmic, technological logic. Therefore, increasing digital literacy among legal practitioners is an important prerequisite for full recognition of the evidentiary power of digital prenuptial agreements.

Furthermore, digital transformation has also expanded the scope of legal objects in prenuptial agreements. While previously regulations only focused on conventional movable and immovable property, new categories have now emerged, such as digital assets, cryptocurrencies, NFTs, and digital intellectual property rights.<sup>31</sup> These digital assets are intangible, decentralized, and cross-jurisdictional, necessitating specific regulatory clauses in prenuptial agreements to ensure legal certainty and protection for each party. In this

regard, civil law must adapt to the new realities of the digital economy, which no longer recognizes territorial boundaries, while ensuring that the principles of distributive justice remain applicable in the management and distribution of such property. Without normative adaptation, the law will lose its ability to regulate complex and transnational modern legal relations.

From a regulatory perspective, the biggest challenge in implementing digital prenuptial agreements is harmonizing various laws with differing regulatory regimes. On the one hand, the ITE Law and its derivative regulations have opened up legal space for electronic documents, but on the other hand, the Marriage Law and the Notary Law still require physical documents and in-person attendance. This lack of synchronization creates legal uncertainty that can potentially harm the parties. Within the framework of Lawrence Friedman's legal system theory, this indicates a disharmony between the structure, substance, and culture of the law.<sup>32</sup> The legal structure, which includes notary institutions, has not yet undergone digital transformation; the legal substance has not been integrated across regulations; and the legal culture of officials remains conservative toward innovation. Without this integration, the legal legitimacy of digital prenuptial agreements will remain a gray area.

From a sociological perspective, resistance to digitalization in law is often rooted in fears of the loss of formal authority and state control over legal processes. Digital deed creation is seen as reducing administrative control because documents can be created, signed, and stored without the direct

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XIII/2015." *Consensus: Jurnal Ilmu Hukum* 4.1 (2025): 77-86.  
<https://ojs.stihpada.ac.id/index.php/consensus/article/view/1554>

<sup>30</sup> HSB, Rajo Inal Hamonangan, et al. "Alat Bukti Dalam Hukum Acara Perdata." *Innovative: Journal Of Social Science Research* 5.3 (2025): 6008-6015.  
<https://doi.org/10.31004/innovative.v5i3.19878>

<sup>31</sup> Thalib, Emmy Febriani, and Ni Putu Suci Meinarni. "Non-Fungible Token (NFT) Sebagai

Aset Digital: Sebuah Fenomena Dan Perlindungan Hukum Kekayaan Intelektual Di Indonesia." *Ganesha Civic Education Journal* 4.2 (2022): 366-374.  
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<sup>32</sup> Al Kautsar, Izzy, and Danang Wahyu Muhammad. "Sistem hukum modern Lawrence M. Friedman: Budaya hukum dan perubahan sosial masyarakat dari industrial ke digital." *Sapientia Et Virtus* 7.2 (2022): 84-99.  
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involvement of public officials. However, this view contradicts the spirit of efficiency and transparency that characterizes modern governance. With the implementation of encryption and blockchain systems, for example, the authenticity and security of digital deeds can be more assured than physical documents that are vulnerable to forgery. Therefore, resistance should not be maintained but rather addressed through regulatory reform and strengthening of digital legal infrastructure that balances security, efficiency, and legitimacy.

From a legal policy perspective, the need for digital prenuptial agreements reflects the urgent need to reconstruct the national legal paradigm to align with the direction of technology-based legal development. Roscoe Pound emphasized that law must be a tool of social engineering that adapts to societal changes.<sup>33</sup> In this context, marriage law and notarial law cannot continue to adhere to traditional doctrines that reject digitalization, as this would actually hinder the law's function as a facilitator of modern life. By accommodating digital prenuptial agreements, the state is actually strengthening the principles of legal certainty, legal protection, and utility—three key principles in Gustav Radbruch's theory that must be balanced in any legal reform.<sup>34</sup>

Ultimately, the position of digital prenuptial agreements in the era of technological transformation cannot be viewed merely as a technical administrative issue, but rather as a symbol of the transition to a more modern and responsive legal paradigm. Their validity and evidentiary strength are not merely a matter of formal recognition, but also a reflection of the extent to which national law is able to adapt to digital civilization. Emerging regulatory challenges are not a reason for rejection, but rather an impetus for cross-regulatory harmonization and institutional reform. Thus, the urgency of regulating digital prenuptial agreements is not only a matter of

legal certainty, but also of state legitimacy in facing an era of technological disruption that demands flexibility, rationality, and the courage to change.

## CONCLUSION

The position of digital prenuptial agreements within the national civil law system reflects the dynamic between continuity and change in Indonesian legal practice as it adapts to the era of technological transformation. Normatively, this instrument remains rooted in the principles of freedom of contract, legal certainty, and protection of the civil interests of the parties as stipulated in the Civil Code and the Marriage Law. However, in fact, it faces challenges due to the lack of synchronization of notary regulations, evidence law, and the recognition of electronic documents. The advent of digital technology demands a reinterpretation of the concepts of authenticity, signature validity, and legal publication mechanisms to ensure legal integrity and authority in the digital space. Therefore, clear and integrative regulations regarding digital prenuptial agreements are urgent and cannot be postponed, not only to provide legal certainty and protection for modern society, but also as a strategic step in realizing a national civil law system that is progressive, adaptive, and relevant to the development of information technology civilization.

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<sup>34</sup> Laia, Aturkian. "Kebenaran Dan Keadilan Hukum." *Jurnal Panah Keadilan* 2.1 (2023): 1-14. <https://doi.org/10.57094/jpk.v2i1.709>

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<sup>33</sup> Chandra, William, and Marcellius Kirana Hamonangan. "Hukum sebagai Alat Rekayasa Sosial: Gagasan Roscoe Pound dan Relevansinya Bagi Reformasi Hukum di Indonesia." *Jurnal*

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