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Marriage Agreements and Asset Confiscation in Money Laundering: Indonesian Court Analysis

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ABSTRACT

This study examines the legal position of marriage agreements that eliminate joint property formation when money laundering crimes occur, focusing on the tension between contractual property separation and criminal asset confiscation. Using normative legal research methods with statutory and case analysis approaches, this study analyzes Indonesian marriage law, anti-money laundering legislation, and judicial decisions, specifically Decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst and its appellate decision Number 1/Pid.Sus-TPK/2025/PT DKI. The findings reveal that while marriage agreements provide legal protection for individual property rights, courts apply the "follow the money" principle to trace and confiscate assets regardless of formal ownership structures when money laundering is suspected. Marriage agreements are not recognized as absolute barriers to asset seizure if spouses cannot prove the lawful origin of their property or if evidence indicates they benefited from proceeds of crime. This study contributes to understanding the limitations of marriage agreements as protective instruments in criminal proceedings and demonstrates that substantive proof of asset origins supersedes formal contractual arrangements in money laundering cases. The research recommends that spouses executing marriage agreements maintain meticulous documentation of property origins, including purchase receipts, income records, and endorsement contracts, to avoid unjustified confiscation while acknowledging that legitimate law enforcement interests in recovering proceeds of crime may override private contractual protections.

Keywords: *Asset Confiscation, Marriage Agreement, Marital Property, Money Laundering, Prenuptial Agreement*

INTRODUCTION

One fundamental principle of marriage is its purpose: to establish a happy and eternal family based on the belief in the One Supreme God, as articulated in Article 1 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law). The objective of marriage is not confined to a specific timeframe, as it is intended to be eternal and incorporates religious elements as a manifestation of transcendental relationships. Creating a *Sakinah, Mawaddah Wa Rahmah* household constitutes the purpose of marriage as stated in the Compilation of Islamic Law (hereinafter referred to as KHI), thereby harmonizing the objectives of marriage in both the Marriage Law and the KHI.

In the current millennial era, an increasing number of Indonesian citizens have become aware of the importance of law in protecting their personal interests.¹ One form of self-protection involves safeguarding individual rights within a marital relationship.² The protection of individual rights in marital relationships under Indonesian positive law can be achieved by executing a marriage agreement. Article 29 of the Marriage Law, which regulates marriage agreements, does not provide a clear and explicit definition regarding the purpose and scope of such agreements, thereby granting couples considerable discretion. The content of marriage agreements is left entirely to the mutual consent of both parties, namely the husband and wife. Furthermore, the content of marriage agreements may extend beyond the regulation of marital property to encompass other matters related to marriage, such as responsibilities toward children born during the marriage and the future careers of the spouses. However, Article 29 paragraph (2) of the Marriage Law imposes certain limitations that cannot be violated when creating marriage agreements, specifically boundaries established by law, religion, and morality. Consequently, if a marriage agreement violates these boundaries, it shall be deemed invalid.

Marriage agreements are created to deviate from the principle established in Article 35 of the Marriage Law, particularly Article 35 paragraph (2), which stipulates that the prevailing principle concerning marital property under the Marriage Law is property separation. As a legal consequence of a valid marriage, marital property is formed, consisting of joint property and separate property. Article 35 of the Marriage Law explains that property in marriage includes: (a) Joint property, which comprises property acquired during the marriage; and (b) Separate

¹ Abraham Ethan Martupa Sahat Marune and Brandon Hartanto, "Strengthening Personal Data Protection, Cyber Security, and Improving Public Awareness in Indonesia: Progressive Legal Perspective," *International Journal of Business, Economics, and Social Development* 2, no. 4 (November 7, 2021): 143–152, <https://journal.rescollacomm.com/index.php/ijbesd/article/view/170>.

² Muhammad Sopiyan, "ANALISIS PERJANJIAN PERKAWINAN DAN AKIBATNYA MENURUT UNDANG-UNDANG PERKAWINAN DI INDONESIA," *Misykat al-Anwar Jurnal Kajian Islam dan Masyarakat* 6, no. 2 (July 13, 2023): 175–190, <http://localhost:8080/ojs/index.php/MaA16/article/view/17973>.

property, which comprises property obtained by each spouse before the marriage and property obtained as gifts or inheritance, remaining under the control of each respective spouse.

The authority to act with regard to joint property and separate property is explicitly regulated in Article 36 of the Marriage Law, which states that concerning joint property, either spouse may act with the consent of both parties. Regarding separate property, each spouse has full authority to perform legal acts concerning their respective property. However, these provisions may be modified through a marriage agreement. Such modifications may include, for instance, the elimination of joint property formation during the marriage, such that property acquired by either spouse during the marriage remains the individual property of that spouse, or marriage agreements concerning the separation of debts incurred before and after marriage.³⁴

According to Moch. Isnaeni, the functions of creating marriage agreements are as follows: First, marriage agreements are created to legally protect property, both the separate property of each spouse and joint property.⁵ Second, they serve as a basic guideline for spouses in regulating their rights and obligations concerning the future of the family, including matters such as children's education, business ventures, and place of residence, provided these do not contradict legal, religious, and moral boundaries. Third, they protect family members from threats of domestic violence.⁶

Generally, marriage agreements are executed when there is a substantial disparity in wealth between the parties, when both parties contribute significant assets, when each party operates their own business such that if one becomes bankrupt the other is not implicated, and when debts incurred before marriage will be borne by each respective spouse.⁷⁸ Additionally, the purpose of creating marriage agreements is to regulate the consequences of marriage concerning property and assets.⁹¹⁰

³ Handayana Br Surbakti, "Marriage Agreements as Legal Protection of Collective Property," *Al-Ubudiyah: Jurnal Pendidikan dan Studi Islam* 4, no. 1 (June 17, 2023): 139–147, <http://jurnal.staiddimakassar.ac.id/index.php/aujpsi/article/view/186>.

⁴ Sri Iin Hartini, "LEGAL PROTECTION OF MARRIAGE AGREEMENTS FOR HUSBAND AND WIFE," *Awang Long Law Review* 7, no. 1 (December 19, 2024): 82–87, <https://ejournal.stih-awanglong.ac.id/index.php/awl/article/view/1376>.

⁵ Moch Isnaeni, *Hukum Perkawinan Indonesia* (Refika Aditama, 2016).

⁶ Sopiyan, "ANALISIS PERJANJIAN PERKAWINAN DAN AKIBATNYA MENURUT UNDANG-UNDANG PERKAWINAN DI INDONESIA."

⁷ Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Intermasa, 2002).

⁸ Alna Fadliah Ais Fatchun Ni'mah and Yunanto Yunanto, "Analisis Manfaat Dan Pentingnya Perjanjian Perkawinan," *AL-MANHAJ: Jurnal Hukum dan Pranata Sosial Islam* 5, no. 2 (August 8, 2023): 1327–1334, <https://ejournal.insuriponorogo.ac.id/index.php/almanhaj/article/view/2932>.

⁹ Anwar Rachman, Prawitra Thalib, and Saepudin Muhtar, *Hukum Perkawinan Indonesia Dalam Perspektif Hukum Perdata, Hukum Islam Dan Hukum Administrasi* (Jakarta: Prenada Media Group, 2020).

¹⁰ Ni'mah and Yunanto, "Analisis Manfaat Dan Pentingnya Perjanjian Perkawinan."

A marriage agreement that eliminates the formation of joint property allows each spouse to retain full ownership of property acquired during the marriage without any pooling or division of property obtained throughout the marriage. In this case, property acquired by each spouse remains personal property, separate from the spouse's property. However, when money laundering crimes occur, the position of marital property under a marriage agreement that eliminates joint property can become complicated. As evidenced in the case of actress S and businessman H, who are husband and wife, in Decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst, actress S and businessman H had executed a marriage agreement from the beginning of their marriage, wherein the Marriage Agreement Deed stated that “between husband and wife there shall be no community of property under any name whatsoever, whether community of property according to law or community of profit and loss or community of income and proceeds.” Actress S had been working as an artist since 2004 and had contracts with major companies as a brand ambassador, resulting in property acquired by actress S including branded bags, gold jewelry, and gold bars. However, the property acquired by actress S was confiscated by the state because her husband, businessman H, was implicated in a money laundering crime case, which resulted in the property of businessman H, including the property of his wife, actress S, being confiscated. This occurred despite the existence of a marriage agreement between businessman H and actress S that eliminated the formation of joint property. This decision was reinforced by Decision Number 1/PID.SUS-TPK/2025/PT DKI on appeal.

The intersection of marriage agreements and money laundering crimes presents a complex legal issue that requires careful examination. Previous scholarly work has explored various dimensions of this intersection, though gaps remain in understanding how marriage agreements function when one spouse engages in criminal activity. Research on asset confiscation in money laundering cases has established that property can be forfeited regardless of formal ownership structures when it is proven to be proceeds or instruments of crime.¹¹ Studies examining the Malaysian context have demonstrated that confiscation systems represent serious encroachments on private property rights, particularly under non-conviction based asset forfeiture regimes where property, rather than the property owner, is presumed guilty until proven innocent.¹² Furthermore, scholars analyzing money laundering

¹¹ Ferry Agus Sianipar, Nandang Sambas, and Oksidelfa Yanto, “THE INDONESIAN ARRANGEMENT OF ASSET FORFEITURE DRAFT AS REFORM EFFORTS IN RECOVERING STATE LOSSES DUE TO CORRUPTION: A COMPARATIVE STUDY OF UNITED STATES CODE,” *Journal of Court and Justice* 3, no. 2 (May 10, 2024): 29–46, <https://journal.jfpublisher.com/index.php/jcj/article/view/509>.

¹² Zaiton Hamin, Normah Omar, and Muhammad Muaz Abdul Hakim, “When Property Is the Criminal: Confiscating Proceeds of Money Laundering and Terrorist Financing in Malaysia,” *Procedia Economics and Finance* 31 (2015): 789–796, <https://linkinghub.elsevier.com/retrieve/pii/S2212567115011685>.

cases have identified that qualification of property as criminally acquired requires considerable time and expertise, with prosecution often considering evidence of legal origin insufficient, leading to unjustified confiscations that violate human rights.^{13,14} In the Indonesian context, research has highlighted that implementing anti-money laundering law for asset recovery in corruption cases remains suboptimal, with only 12 percent of state losses being recovered despite comprehensive legal frameworks.¹⁵ Studies on marital property division in Indonesia have examined criminal law implications when spouses transfer or sell marital assets without proper agreement, revealing significant enforcement challenges and the need for clearer legal reforms to protect spousal rights.¹⁶

However, existing literature has not adequately addressed the specific legal position of marriage agreements that eliminate joint property when money laundering crimes occur. While research has examined asset forfeiture mechanisms and marital property disputes separately, the intersection of these two areas remains underexplored, particularly regarding how courts treat prenuptial agreements that establish property separation when one spouse engages in money laundering. This gap is critical because marriage agreements are intended to provide legal certainty and protection for spouses' individual property rights, yet their efficacy may be compromised when criminal proceeds are involved. The extent to which marriage agreements can shield innocent spouses from asset confiscation, and under what circumstances such agreements are disregarded by courts in money laundering cases, requires systematic analysis. Furthermore, the evidentiary standards that spouses must meet to prove the lawful origin of their property, and the implications of benefiting from proceeds of crime even without direct participation in the criminal activity, demand clarification within the framework of Indonesian marriage and criminal law.

Therefore, this study aims to analyze the position of marriage agreements that eliminate the formation of joint property in cases of money laundering crimes. This

¹³ Liene Neimane, "Money Laundering Issues and Recent Trends," *SOCRATES. Rīgas Stradiņa universitātes Juridiskās fakultātes elektroniskais juridisko zinātnisko rakstu žurnāls / SOCRATES. Rīga Stradiņš University Faculty of Law Electronic Scientific Journal of Law* 2, no. 23 (2022): 96–110, <https://dspace.rsu.lv/jspui/handle/123456789/9651>.

¹⁴ Ahmad Afandi Maulana, "AN ANALYSIS OF JUDGES JURIDICAL JUDEX FACTIE WHO UNCHECKING THE FACTS AND TRIAL EVIDENCE IN MONEY LAUNDERING: THE CASE STUDY OF JUDGE'S DECISION NO. 383 K/PID.SUS/2017," *Journal of Law Theory and Law Enforcement* 1, no. 1 (December 28, 2021): 34–46, <https://journal.jfpublisher.com/index.php/jlte/article/view/2>.

¹⁵ Yoserwan Yoserwan and Fausto Soares Dias, "Implementing The Anti-Money Laundering Law: Optimizing Asset Recovery in Corruption Cases in Indonesia," *Jurnal Hukum dan Peradilan* 13, no. 2 (July 31, 2024): 227, <https://jurnalhukumdanperadilan.org/index.php/jurnalhukumperadilan/article/view/1047>.

¹⁶ Aswadi and Muhamad Adystia Sunggara, "Analysis of the Criminal Law Implications on the Sale of Marital Property Prior to the Agreement on Joint Property Division in Indonesia," *Journal of Law, Politic and Humanities* 5, no. 3 (February 14, 2025): 1988–1993, <https://dinastires.org/JLPH/article/view/1213>.

research addresses the gap in existing scholarship by examining how Indonesian courts apply marriage agreement provisions when confronted with money laundering allegations, specifically analyzing the circumstances under which marriage agreements are recognized or disregarded in asset confiscation proceedings. The novelty of this study lies in its comprehensive examination of the intersection between marital property law and anti-money laundering enforcement, providing insights into the limitations of marriage agreements as protective instruments when criminal activity is involved. By analyzing Decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst and its appellate decision Number 1/PID.SUS-TPK/2025/PT DKI, this research contributes to understanding the practical application of legal principles governing marriage agreements in the context of money laundering crimes, offering guidance for spouses seeking to protect their legitimate property interests while ensuring that marriage agreements are not exploited to shield proceeds of crime from lawful confiscation.

RESEARCH METHODOLOGY

This study constitutes legal research, which is defined as a process undertaken to discover rules, principles, or legal doctrines for the purpose of resolving legal problems.¹⁷ This research employs normative legal research methods to generate arguments, theories, or new concepts as prescriptions for addressing legal issues¹⁸ The approaches utilized in this study are the statutory approach and the conceptual approach. The statutory approach examines relevant legislation and regulations governing marriage agreements and money laundering crimes, while the conceptual approach analyzes legal concepts and principles embedded within the legal framework to understand the position of marriage agreements when money laundering occurs.

The legal materials used in this research comprise primary legal materials and secondary legal materials. Primary legal materials include the *Burgerlijk Wetboek* (Indonesian Civil Code), Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes (Anti-Money Laundering Law), Constitutional Court Decision Number 69/PUU-XIII/2015, and judicial decisions, specifically Decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst and Decision Number 1/PID.SUS-TPK/2025/PT DKI. Secondary legal materials encompass reference books, national and international journal articles, and scholarly publications related to the research topic. These materials provide theoretical foundations and comparative perspectives on marriage agreements and money laundering crimes.

¹⁷ Peter Mahmud Marzuki, *Penelitian Hukum*, Revision Edition. (KENCANA, 2021).

¹⁸ *Ibid.*

The research procedure involves several systematic steps. First, legal materials were identified and collected through library research and document analysis. Second, the collected materials were analyzed using legal interpretation methods, including grammatical, systematic, and teleological interpretation, to understand the meaning and application of legal norms concerning marriage agreements and money laundering crimes. Third, case analysis was conducted on the selected judicial decisions to examine how courts applied legal principles regarding marriage agreements when confronted with money laundering allegations. Fourth, the findings from statutory analysis and case examination were synthesized to determine the legal position of marriage agreements that eliminate joint property in money laundering contexts. Finally, conclusions were drawn and recommendations were formulated based on the analysis conducted throughout the research process. This methodological framework enables a comprehensive examination of the intersection between marital property law and anti-money laundering enforcement within the Indonesian legal system.

RESULT AND DISCUSSION

Property in Marriage According to the Marriage Law

One of the primary triggers of disputes in marriage involves property issues, particularly the determination of whether property constitutes joint property or separate property, especially in divorce proceedings.^{19,20} Separate property fully belongs to its owner and cannot be divided upon divorce. Conversely, joint property belongs to both husband and wife collectively, and therefore must be divided equally if divorce occurs.²¹ The scope of joint property encompasses: (a) income earned by the husband; (b) income earned by the wife; and (c) income derived from the personal property of either husband or wife, even if the principal property is not included in joint property, provided all such income is obtained during the marriage.²²

Separate property refers to property obtained by each spouse before marriage, including property received as gifts or inheritance. Regarding separate property,

¹⁹ Andi Indah Zahra Murdiani Anas, Muhammad Zulkifli Muhdar, and Syamsul Alam, "Legal Analysis of Division of Joint Property in Divorce Based on the Civil Code," *Qawanin Jurnal Ilmu Hukum* 6, no. 1 (March 11, 2025), <https://jurnal.fh.umi.ac.id/index.php/qawaninjih/article/view/875>.

²⁰ Olena Nagorna, Karyna Lahun, and Mykola Siatynia, "SEPARATE ISSUES REGARDING THE DIVISION OF MOVABLE AND IMMOVABLE PROPERTY OF THE WIFE IN DIVORCE," *Naukovyy Visnyk Dnipropetrovs kogo Derzhavnogo Universytety Vnutrishnikh Sprav*, no. 1 (November 15, 2024): 136–142, <https://visnik.dduvs.edu.ua/index.php/visnyk/article/view/935>.

²¹ Rachman, Thalib, and Muhtar, *Hukum Perkawinan Indonesia Dalam Perspektif Hukum Perdata, Hukum Islam Dan Hukum Administrasi*.

²² Lily Andayani, Sherly M. Imam Slamet, and Indah Dwiprigitaningtias, "KEDUDUKAN HARTA BAWAAN (HARTA ASAL) DALAM PROSES PERALIHAN HAK MENURUT PRESPEKTIF UNDANG-UNDANG NOMOR 1 TAHUN 1974 TENTANG PERKAWINAN," *Jurnal Academia Praja* 7, no. 1 (February 29, 2024): 111–124, <https://ejournal.fisip.unjani.ac.id/index.php/jurnal-academia-praja/article/view/2052>.

each spouse possesses full authority to perform legal acts concerning their own property without requiring consent from their partner. The separation of joint property and separate property as regulated in Article 35 paragraphs (1) and (2) does not constitute mandatory provisions but rather supplementary provisions (aanvullend recht), because the parties may set aside these provisions by executing a marriage agreement as regulated in Article 29 of the Marriage Law in conjunction with Constitutional Court Decision Number 69/PUU-XIII/2015. Thus, marriage agreements serve as legal instruments that provide couples with the means to determine their own property management arrangements.

According to Article 29 paragraph (1), marriage agreements may be executed before or at the time of marriage. However, following Constitutional Court Decision Number 69/PUU-XIII/2015, marriage agreements may also be executed during the marriage. Within marriage, couples may agree to execute a marriage agreement or choose not to create one. The distinctions between marriages with and without marriage agreements can be summarized in Table 1 below.

Table 1 Differences Between Marriage With Marriage Agreement and Marriage Without Marriage Agreement

Criteria	With Marriage Agreement	Without Marriage Agreement
Marital Property Stipulated	The property of husband and wife can be clearly separated or unified through marriage agreement. Marriage agreements may encompass joint property, separate property, property acquired during marriage, and its management.	By law, all property acquired during marriage becomes joint property and is therefore owned jointly, while property obtained before marriage as separate property remains the respective property of each spouse.
Advantages/Benefits	Provides legal protection for the respective property of each spouse. Prevents conflicts over property division in the event of divorce.	No additional processes required, such as drafting and recording marriage agreements. Couples need not create special agreements regarding property separation or other rights. The position of marital property thus follows Article 35 of the Marriage Law.
Legal Consequences	Property is divided according to the contents of the marriage agreement if divorce occurs. Marriage agreements are executed in	If divorce occurs, based on court decisions, joint property is divided

Criteria	With Marriage Agreement	Without Marriage Agreement
	authentic deeds by notaries and registered with the Office of Religious Affairs (KUA) for Muslims and with the Department of Population and Civil Registration (Dispendukcapil) for non-Muslims.	equally (50:50) unless proven otherwise.

Source: Marriage Law, Compilation of Islamic Law, Constitutional Court Decision No. 69/PUU-XIII/2015

Marriage agreements function not only as property arrangements but also as instruments to prevent future disputes between husband and wife and to provide clear foundations for resolving conflicts if divorce occurs. Moreover, marriage agreements can have important implications for protection in cases of money laundering crimes, particularly regarding the legal separation of property ownership between husband and wife, thereby facilitating asset tracing when suspicious financial transactions are indicated.

The Relationship Between Marriage Agreements and Money Laundering Crimes Under the Anti-Money Laundering Law

Money laundering crimes constitute processes of concealing or disguising the origin of money and property obtained from criminal acts (proceeds of crime) as dirty money or hot money, for instance, money or property derived from illegal practices such as corruption, trafficking in women and children, terrorism, bribery, smuggling, sale of illegal drugs, gambling, prostitution, banking crimes, and other unlawful and illegal practices. These processes are undertaken solely to eliminate traces and obscure the origins of money or property, thereby enabling perpetrators to enjoy profits without revealing their sources of acquisition.²³

Money laundering crimes consist of several processes: the placement process, the layering process, and the integration process. Placement constitutes the phase of introducing proceeds of crime into the financial system, such as dividing large amounts of cash into smaller amounts and depositing them in bank accounts or purchasing financial instruments (checks, money orders). This phase also includes smuggling cash across borders or commingling illegal money with legitimate funds. Layering constitutes the process of separating proceeds of crime from their source through a series of complex transactions, such as transferring funds between accounts, to disguise the origin of illegal money. Integration constitutes the stage at which proceeds of crime are transferred into legitimate activities, thereby appearing

²³ Dwidja Priyatno and Kristian Kristian, *Tindak Pidana Pencucian Uang* (Prenada Media, 2023).

legal and unconnected to the original crime, and reintroduced into circulation in accordance with law.²⁴

According to Article 1 number 1 of Law Number 8 of 2010 Concerning Prevention and Eradication of Money Laundering Crimes (Anti-Money Laundering Law), money laundering is defined as any act that fulfills the elements of criminal acts in accordance with the provisions of the Anti-Money Laundering Law. Simply stated, money laundering constitutes an effort to conceal or disguise money or funds generated from criminal acts or proceeds of crime so as to appear to be legitimate assets.²⁵

Article 2 of the Anti-Money Laundering Law also stipulates that criminal acts that can serve as sources of money laundering derive from various types of crimes; among several predicate offenses, there are 26 categories, including corruption, bribery, narcotics, psychotropic substances, labor or migrant smuggling, embezzlement, human trafficking, and others. This demonstrates that money laundering is not limited to one particular type of crime but may originate from various criminal acts that damage legal and economic systems. By encompassing various forms of crime, the Anti-Money Laundering Law provides broader coverage to combat the circulation of proceeds of crime in society and to minimize the potential misuse of financial systems for illegal purposes. In its development, money laundering methods have become increasingly complex as the facilities and transaction instruments offered by financial service providers and goods and service providers have become more varied, even utilizing institutions outside the financial system.²⁶

Under the Anti-Money Laundering Law, money laundering crimes are divided into three types: active money laundering crimes, passive money laundering crimes, and crimes committed by those who enjoy the proceeds of money laundering.²⁷ Active money laundering crimes are found in Articles 3 and 4 of the Anti-Money Laundering Law. They are termed active money laundering crimes because of the presence of active conduct to conceal and disguise property resulting from criminal acts. Passive money laundering crimes are found in Article 5 of the Anti-Money Laundering Law. They are termed passive money laundering crimes because of the absence of active conduct to conceal and disguise property resulting from criminal acts. For those who enjoy the proceeds of money laundering crimes as provided in Article 4 of the Anti-Money Laundering Law, that article explains

²⁴ Fadhil Raihan and Nurnita Sulistiowati, "KEBEBASAN PENCUCIAN UANG DIPENGARUHI OLEH KEAHLIAN PIDANA MENGUASAI: PLACEMENT, LAYERING, DAN INTEGRATION (SUATU KAJIAN STUDI LITERATUR MANAJEMEN SUMBERDAYA MANUSIA)," *Jurnal Ekonomi Manajemen Sistem Informasi* 2, no. 6 (July 11, 2021): 694–701, <https://dinastirev.org/JEMSI/article/view/610>.

²⁵ Pusat Pelaporan dan Analisis Transaksi Keuangan, *Tipologi Pencucian Uang Berdasarkan Putusan Pengadilan Tahun 2018*, 2018.

²⁶ Ibid.

²⁷ Ibid.

that money laundering crimes may be imposed upon any person who conceals or disguises the origin, source, location, allocation, transfer of rights, or actual ownership of property that the person knows or should reasonably suspect constitutes proceeds of crime as referred to in Article 2 paragraph (1). This is also considered equivalent to committing money laundering.

By understanding the differences among active money laundering crimes, passive money laundering crimes, and those who enjoy the proceeds of money laundering crimes as regulated in Articles 3, 4, and 5 of the Anti-Money Laundering Law, it becomes important to examine the relationship between marriage agreements and money laundering crimes that affects aspects of legal accountability. In this context, marriage agreements that eliminate joint property legally between husband and wife can become an important factor in determining whether the partner of a money laundering crime perpetrator, particularly one categorized as a passive perpetrator, can be exempted from responsibility for proceeds of crime that the partner enjoys. Marriage agreements can serve as grounds for defense that the partner had no control over or knowledge of the source of the wealth. Conversely, if it is proven that the perpetrator's partner knew or should have known the origin of the property, then despite the existence of a marriage agreement, the husband or wife may still be held accountable as a passive perpetrator. Thus, marriage agreements do not automatically eliminate the potential for involvement in money laundering crimes but can influence the scope of investigation and seizure of related assets.

The legal consequences of marriage agreements in money laundering cases can affect the processes of tracing, seizure, and confiscation of assets in money laundering proceedings.²⁸ The partner's property is not automatically considered to belong to the money laundering perpetrator because it has been legally separated from the outset; thus, law enforcement must prove that the partner knew of or was involved in money laundering if they wish to seize property in the partner's name. Without evidence of involvement or suspicious acquisition, such property cannot be subject to criminal law. The danger lies in the potential misuse of marriage agreements to conceal assets resulting from crime because the asset owner's name is not that of the money laundering perpetrator. For instance, a perpetrator may purchase property in the wife's name, whose property is legally separate, but this may constitute a layering or placement technique in money laundering. The legal consequences when a marriage lacks a marriage agreement are that marital property during marriage is considered jointly owned; thus, property in the partner's name can be immediately considered part of proceeds of crime unless proven otherwise. Because of the existence of joint property, the partner is deemed to receive benefits from the criminal act even without direct involvement. Without a marriage

²⁸ Khilmatin Maulidah et al., "The Urgency of Enacting the Asset Confiscation Bill for the Eradication of Corruption and Money Laundering in Indonesia," *Prophetic Law Review* (July 9, 2025): 95–116, <https://journal.uin.ac.id/JPLR/article/view/30010>.

agreement, the partner's property can be immediately examined, blocked, seized, and even confiscated because it is considered part of joint property.

The relationship between money laundering crimes and the property of husband and wife becomes increasingly relevant when a marriage agreement exists, particularly one that eliminates joint property. Such an agreement aims to prevent the formation of joint property, such that if one partner is involved in money laundering crimes, the property of the uninvolved partner is expected to remain protected. However, despite the existence of a marriage agreement eliminating joint property, if it is proven that property owned by one partner originates from illegal activities or proceeds of crime, such property may still be subject to seizure or confiscation in money laundering legal proceedings. Marriage agreements provide legal protection but do not fully guarantee that separated property will not be threatened due to criminal actions undertaken by one party.²⁹³⁰

If one partner is indeed involved in money laundering crimes, Article 77 of the Anti-Money Laundering Law states that for the purposes of examination in court proceedings, there is an obligation to prove that property is not proceeds of crime. This rule applies to perpetrators as well as to third parties, including spouses. A spouse who is not involved in money laundering crimes may file objections or intervention with the court to prove that the spouse did not know the origin of the property and can prove lawful ownership of such property. Marital property that may be seized or confiscated in money laundering cases depends on the connection of such property to proceeds of crime and its legal ownership status. Joint property obtained during marriage, whether in the name of the husband, wife, or both, may be seized if proven to originate from money laundering crimes even if the partner is not directly involved.

Table 2 Characteristics of Marital Property Related to Money Laundering Crimes

Property Category	Characteristics	Potential Connection to Money Laundering
Separate Property	Owned before marriage, derived from personal business, inheritance, or gifts	Low potential, unless obtained from proceeds of crime before marriage
Joint Property	Obtained during marriage, regardless of in whose name the property is held	High potential if there is an illegal flow of funds during the marriage

²⁹ Agus Yudha Hernoko, "Asas Proporsionalitas Sebagai Landasan Pertukaran Hak Dan Kewajiban Para Pihak Dalam Kontrak Komersial," *Jurnal Hukum dan Peradilan* 5, no. 3 (November 2016): 447.

³⁰ Aidatul Fitriyah, "Pentingnya Perjanjian Pisah Harta Di Mata Hukum," *Unair News* (Surabaya, April 2024), accessed November 27, 2025, <https://unair.ac.id/pentingnya-perjanjian-pisah-harta-di-mata-hukum/>.

Property Category	Characteristics	Potential Connection to Money Laundering
Transferred Property	Property transferred to partner/relatives to conceal the origin of funds	Very high risk of being used as an instrument of money laundering (layering or placement method)

Source: Financial Transaction Reports and Analysis Centre (PPATK)

In money laundering crimes, not all property within the scope of marriage can be automatically seized or confiscated by the state. The Anti-Money Laundering Law provides room for protection of third parties acting in good faith, including the wife of a crime perpetrator.³¹ However, a clear distinction must be made between marital property that is not proven to originate from proceeds of crime and property that is lawfully proven to be connected with money laundering activities. If property owned by a wife can be proven to originate from legitimate sources, such as personal income before marriage, endorsement proceeds as in the case of actress S that can be proven with supporting documents, or from the wife's professional work independently, then such property cannot be seized or confiscated by the state. In this case, the burden of proof may be reversed to the public prosecutor to prove that the property has a connection to criminal acts based on Article 77 of the Anti-Money Laundering Law. If the public prosecutor fails to prove the connection of such property to criminal acts, then the property must be returned to its lawful owner.

Conversely, if marital property is proven to originate from proceeds of money laundering crimes, whether directly or through layering, integration, or placement processes, then such property may be seized or confiscated even if held in the wife's name. This aligns with the "follow the money" principle in money laundering crimes, which permits tracing the flow of funds across names, accounts, and forms of formal ownership. Proof in this case is conducted through financial analysis of fund flows and examination of transactions that are unusual or disproportionate to the owner's economic profile. If it is found that property was obtained without support from legitimate fund flows or originated from the principal money laundering perpetrator's account, then a judge may order confiscation even without the wife's active role. The "follow the money" approach in uncovering money laundering crimes is complemented by detection schemes involving the financial industry and supported by various legal breakthroughs that attempt to overcome weaknesses in conventional law enforcement.³² This is because the more effective

³¹ Annuur Fitria Rahayu, "INTERFAITH MARRIAGE AFTER THE ISSUANCE OF SUPREME COURT CIRCULAR LETTER NO. 2 OF 2023," *Journal of Court and Justice* 4, no. 4 (October 11, 2025): 39–50, <https://journal.jfpublisher.com/index.php/jcj/article/view/847>.

³² Kharisma Fatmalina Fajri and Dekar Urumsah, "Crypto Laundering Prevention in Indonesia: The Role of Regulatory Technology and Financial Intelligence Unit," *Journal of Accounting and Investment* 25, no. 3 (September 30, 2024): 1133–1155, <https://journal.umy.ac.id/index.php/ai/article/view/22170>.

law enforcement is against a crime, the better.³³ The follow the money/assets method constitutes a highly effective method in money laundering law enforcement. This method emphasizes pursuit of proceeds of crime, which are viewed as the life blood of crime; naturally, if this bloodstream is cut off, it will also cut off the supply that sustains crime perpetrators.^{34,35}

In the case of actress S, who had executed a marriage agreement eliminating joint property with businessman H stating that there would be no community of property in any form, in reality the court still seized and confiscated a number of assets physically under the household's control, including jewelry, luxury bags, and precious metals originating from endorsement activities or personal gifts. Normatively, marriage agreements should provide clear boundaries between the husband's and wife's property, as regulated in Article 29 of the Marriage Law in conjunction with Constitutional Court Decision Number 69/2015, which permits such agreements to be executed before or during marriage. However, in money laundering proceedings, the focus of legal proof lies not only on the juridical form of the marriage agreement but also on the substance of proving the origin of property. This aligns with the provisions of Article 77 of the Anti-Money Laundering Law, which places the burden of proof on the party controlling property to prove that such assets do not originate from criminal acts.

Marriage agreements can provide legal protection for partners regarding the division of rights to property; however, in the realm of criminal law, the “follow the money” principle in handling money laundering cases constitutes part of the investigation process, namely in collecting initial evidence and gathering sufficient facts or evidence, focusing on money or property that constitutes proceeds of crime.³⁶ This principle constitutes an investigative approach that emphasizes tracing the flow of funds or property suspected to originate from proceeds of crime. In this process, law enforcement officials focus not only on perpetrators but also follow financial traces to uncover structures, patterns, and parties involved in money laundering, including possible connections with the perpetrator's partner, without necessarily considering the existence of marriage agreements that eliminate the formation of joint property. Follow the money is useful in helping to prove the

³³ Yuni Priskila Ginting, “Pemberantasan Pencucian Uang Dengan Pendekatan Follow the Money Dan Follow the Suspect,” *Mulawarman Law Review* (December 31, 2021): 105–114, <https://e-journal.fh.unmul.ac.id/index.php/mulrev/article/view/442>.

³⁴ Yaris Adhial Fajrin and Ach. Faisol Triwijaya, “Punishment Asset Forfeiture for Corruptor In Perspective of Indonesian Community Justice,” *FIAT JUSTISIA: Jurnal Ilmu Hukum* 13, no. 3 (October 4, 2019): 209, <https://jurnal.fh.unila.ac.id/index.php/flat/article/view/1702>.

³⁵ Yofiza et al., “Implementasi Pendekatan Follow The Money Dalam Tindak Pidana Pencucian Uang (TPPU) Dari Sisi Penegakan Hukum Di Indonesia,” *Jaksa: Jurnal Kajian Ilmu Hukum dan Politik* 3, no. 1 (2025): 1–12.

³⁶ Yudhistira, “PENERAPAN PRINSIP FOLLOW THE MONEY DALAM PENEGAKAN HUKUM TINDAK PIDANA PENCUCIAN UANG PERKARA KORUPSI,” *Janaloka* 2, no. 2 (July 3, 2023): 177–190, accessed November 27, 2025, <https://janalokajournal.id/index.php/jnk/article/view/34>.

existence of money laundering acts such as fund transfers, layering, and so forth. After sufficient evidence is obtained, the process continues to the investigation stage to apprehend perpetrators.³⁷³⁸ Based on Article 77 of the Anti-Money Laundering Law, anyone who possesses property, including partners, may be required to prove that such property is not proceeds of crime.

In the money laundering case, actress S, as the wife of businessman H, stated that she did not know the origin of the property and that the jewelry and luxury goods she possessed came from endorsement work or gifts from third parties, not from the defendant. Actress S stated that these items were forms of endorsement cooperation or gifts from companies, not from her husband H. However, in court decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst and the appellate decision, Decision Number 1/Pid.Sus-TPK/2025/PT DKI, based on trial facts, such claims were not accompanied by concrete evidence such as purchase receipts, endorsement cooperation contracts, or financial reports demonstrating lawfully the origin of such goods. Consequently, such property was deemed unable to be proven as legitimate proceeds free from crime funds and was therefore declared part of money laundering crimes and confiscated for the state.

Control over property originating from proceeds of crime still opens opportunities for law enforcement officials to conduct seizure, regardless of the status of marriage agreements that eliminate the formation of joint property. This demonstrates that in the context of criminal law, marriage agreements that eliminate the formation of joint property do not automatically eliminate the possibility of criminalization or seizure of a partner's property, particularly if proof of the origin of property cannot be conducted convincingly. The existence of marriage agreements in marriage cannot serve as an absolute legal protection barrier, particularly if direct or indirect connections are shown between such property and criminal acts committed by one partner in marriage. Thus, court decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst and the appellate decision, Decision Number 1/Pid.Sus-TPK/2025/PT DKI, serve as examples that protection of property in marriage using marriage agreements can no longer be used as grounds to avoid legal responsibility if it is proven that such property is connected with criminal acts committed by one partner.

The findings of this study both extend and refine the understanding established in previous scholarly work on asset confiscation and marital property in the context of financial crimes. The research extends the observations of Zaiton et al. regarding the serious encroachment on private property rights in asset forfeiture regimes by demonstrating that even contractual arrangements such as marriage agreements, which are designed to protect individual property rights, may be

³⁷ Ibid.

³⁸ Joeroy Joeroy, Jeane N. Sally, and Wiratno Wiratno, "Implementation of Follow the Money in Eradicating Corruption and Money Laundering," *International Journal of Social Health* 2, no. 5 (May 27, 2023): 249–264, <https://ijsh.ph/index.php/rp/article/view/43>.

insufficient to shield assets from confiscation when money laundering is involved.³⁹ While Zaiton et al. focused on the presumption of guilt applied to property rather than property owners under non-conviction based forfeiture systems, this study reveals that Indonesian courts apply similar principles even when formal legal separation of marital property exists. The case of actress S and businessman H illustrates that the “follow the money” principle operates to trace assets regardless of nominal ownership structures established through marriage agreements, thereby confirming the expansion of state power over private property when criminal proceeds are suspected.

Furthermore, this research substantiates and contextualizes the concerns raised by Liene Neimane regarding the evidentiary challenges in proving the legal origin of property in money laundering cases.⁴⁰ Neimae argued that prosecution often considers evidence of legal origin insufficient, leading to unjustified confiscations that violate human rights.⁴¹ The present study provides empirical support for this argument through the analysis of Decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst, where actress S's claims regarding endorsement income and gifts from third parties were rejected due to insufficient documentation, despite the existence of a marriage agreement legally separating her property from her husband's. This finding reveals a critical gap between the theoretical protection afforded by marriage agreements and the practical evidentiary standards required by courts in money laundering proceedings. The burden of proof placed on innocent spouses under Article 77 of the Anti-Money Laundering Law, requiring them to demonstrate that their property is not proceeds of crime, creates substantial obstacles that may indeed result in violations of property rights when legitimate assets cannot be adequately documented.

However, while Yoserwan and Fausto Soares Dias highlighted the suboptimal implementation of anti-money laundering law for asset recovery in Indonesia, this study offers a more nuanced perspective.⁴² Their research indicated that only 12 percent of state losses were recovered despite comprehensive legal frameworks. The present study suggests that the low recovery rate may not solely result from inadequate legal mechanisms but may also reflect legitimate challenges in distinguishing between proceeds of crime and lawfully acquired marital property. The case examined in this research demonstrates that courts are willing to confiscate assets even when marriage agreements exist and when spouses claim independent sources of income, indicating that enforcement mechanisms are functioning, albeit potentially at the expense of individual property rights. This finding suggests that

³⁹ Hamin, Omar, and Hakim, “When Property Is the Criminal: Confiscating Proceeds of Money Laundering and Terrorist Financing in Malaysia.”

⁴⁰ Neimane, “Money Laundering Issues and Recent Trends.”

⁴¹ Ibid.

⁴² Yoserwan and Dias, “Implementing The Anti-Money Laundering Law: Optimizing Asset Recovery in Corruption Cases in Indonesia.”

the optimization of asset recovery must be balanced against the protection of innocent parties whose property may be commingled with or adjacent to proceeds of crime within marital relationships. The intersection of marriage agreements and money laundering enforcement thus reveals a fundamental tension between the state's interest in recovering proceeds of crime and the protection of individual property rights established through private contractual arrangements, a tension that requires careful calibration through clearer evidentiary standards and procedural safeguards for spouses who can demonstrate the legitimate origin of their assets.

CONCLUSION

The position of marital property in money laundering proceedings presents complex legal implications, particularly regarding marriage agreements. Property acquired during marriage is considered joint property; consequently, when one partner is involved in money laundering crimes, all such property, whether in the name of the perpetrator or the partner, may be examined, blocked, seized, and confiscated unless proven to originate from legitimate sources. Although marriage agreements that eliminate joint property formation normatively grant each partner rights to manage their own property independently, the "follow the money" principle in money laundering investigations permits investigators to continue tracing and seizing a partner's property if there is suspicion that such property is connected to criminal acts, even without direct involvement. Thus, while marriage agreements can serve as legal protection instruments, they cannot provide absolute protection against asset seizure if it is proven that such property constitutes proceeds of money laundering or is enjoyed without lawful basis. The analysis of Decision Number 70/Pid.Sus-TPK/2024/PN.Jkt.Pst and its appellate decision Number 1/Pid.Sus-TPK/2025/PT DKI demonstrates that courts prioritize substantive proof of asset origins over formal contractual arrangements when determining confiscation in money laundering cases.

This study recommends that married couples who execute marriage agreements, particularly those eliminating joint property formation, maintain actual property separation with meticulous documentation, including purchase receipts, personal bank accounts, income documents, and endorsement contracts, to avoid potential seizure resulting from connection to criminal acts committed by their partners. Furthermore, spouses should exercise heightened diligence in understanding the sources of property entering the household and maintain financial independence through verifiable income streams. Legislative reforms should also be considered to establish clearer evidentiary standards that balance the state's legitimate interest in recovering proceeds of crime with the protection of innocent spouses' property rights, thereby preventing unjustified confiscations while maintaining the effectiveness of anti-money laundering enforcement mechanisms.

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