

# Reconstruction of the Concept of Premarital Agreements from the Perspective of Substantive Justice & Gender Equality

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## Abstract

Prenuptial agreements in Indonesia still face issues of gender inequality and are often dominated by formalistic legal approaches that do not fully reflect substantive justice. This study aims to reconstruct the concept of prenuptial agreements from the perspective of substantive justice and gender equality in order to formulate a more balanced model of legal protection for both spouses. This research employs a normative legal method using statutory, conceptual, and philosophical approaches, supported by literature studies and semi-structured interviews with notaries, which are analyzed qualitatively. The findings indicate that existing legal frameworks, particularly the Civil Code and Marriage Law, continue to emphasize formal legality rather than substantive justice. Although Constitutional Court Decision No. 69/PUU-XIII/2015 has expanded the flexibility of prenuptial agreements, unequal bargaining positions remain due to economic disparities and patriarchal cultural influences. Furthermore, the role of notaries remains largely administrative and has not yet optimally ensured equality between parties. This study introduces a reconstruction model of prenuptial agreements that integrates transparency, protection of vulnerable parties, standardization of contractual clauses, and substantive review mechanisms beyond mere formal legality. In conclusion, prenuptial agreements in Indonesia need to be reoriented from purely formal legal instruments into gender-responsive instruments that promote substantive justice and provide fair and proportional legal protection for both parties.

**Keywords:** Substantive Justice; Gender Equality; Notary; Prenuptial Agreement; Legal Reconstruction.

## Introduction

Marriage is a social and legal institution that holds a fundamental position in the structure of society because it establishes personal, social, economic, and moral relationships between men and women (Wahyuni & Kusrin, 2025; Merdekawati, 2026). Within the national legal framework, marriage is regulated by Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, which affirms that the purpose of marriage is to form a happy and eternal family based on the One Almighty God. This legal framework reflects the state's recognition of marriage as not only a private contract between individuals but also an institution with significant social and moral responsibilities that must be upheld in practice. However, in social reality, various studies show that marital relations are still marked by gender inequality, particularly in aspects of decision-making authority, economic control, and the distribution of domestic roles (Zhao, 2025). These inequalities often place one party, especially women, in a subordinate position, thereby limiting their autonomy and meaningful participation within the household. As a result, such imbalances may create structural injustice in marriage, where formal legal equality does not automatically translate into substantive equality in lived experiences. Therefore, this condition highlights the need for stronger legal and social mechanisms that actively promote equality, fairness, and mutual respect between spouses in both normative and practical dimensions (Indriyani & Aziz, 2022; Putri & Sari, 2023).

Marriage law in Indonesia is primarily regulated by Law No. 1 of 1974 on Marriage as amended by Law No. 16 of 2019, which formally recognizes equality between husband and wife within marital relations. However, in practice, gender inequality continues to persist due to economic disparities, patriarchal cultural structures, and unequal bargaining power between spouses. Prenuptial agreements function as legal instruments intended to regulate property relations and protect the rights and obligations of both parties in marriage. Nevertheless, their implementation remains largely dominated by formalistic legal approaches that emphasize administrative validity rather than substantive fairness (Royani, Nortjahjo Sobirov, & Triana, 2024). Empirical findings indicate that prenuptial agreements are predominantly used as instruments for asset separation, without

sufficient negotiation concerning gender equality or the protection of vulnerable parties. Although Constitutional Court Decision No. 69/PUU-XIII/2015 expanded the legal scope of prenuptial agreements by allowing them to be made during marriage, there is still no structured supervisory mechanism to assess substantive fairness within notarial practice. In addition, both the Civil Code and the Marriage Law continue to contain property-based assumptions that may reinforce inequality. This condition also raises important questions regarding the boundaries between notarial intervention in safeguarding justice and the principle of contractual freedom within marital agreements (Kurnia, 2023; Sutanto & Lestari, 2021).

However, in practice, prenuptial agreements still tend to be oriented toward economic aspects, particularly in relation to the separation of assets, debt responsibility, and financial protection between spouses (Humaira, et al. 2025). This narrow economic focus often limits the broader potential of prenuptial agreements as instruments for promoting fairness and balanced marital relationships. As a result, important issues such as the distribution of domestic responsibilities, decision-making authority, and protection against gender-based inequalities are frequently overlooked in their formulation. This condition indicates that prenuptial agreements have not yet fully reflected the principles of substantive justice, which require fairness not only in formal legal arrangements but also in social and relational realities within marriage. Moreover, the lack of a gender-sensitive approach in drafting such agreements may inadvertently reinforce existing power imbalances rather than addressing or correcting them. In many cases, this leads to agreements that appear neutral on paper but are unequal in their practical implications (Rosyiid & Lismawati, 2026). Therefore, a more comprehensive and progressive understanding of prenuptial agreements is needed so that they can function not only as economic arrangements but also as instruments for advancing gender equality, justice, and balanced family relations.

The main problem that arises is that the regulation of prenuptial agreements in Indonesian positive law remains largely formalistic, emphasizing procedural validity rather than ensuring substantive fairness between the parties. This legal

approach tends to focus on whether the agreement satisfies administrative requirements and formal legal procedures, while paying insufficient attention to the social realities and power dynamics that exist within marital relationships. As a result, the principles of substantive justice and gender equality are not yet adequately accommodated in both the formulation and implementation of prenuptial agreements. This condition creates an imbalance in the bargaining position between husband and wife, particularly disadvantaging women who are often in a more vulnerable social and economic position due to structural inequalities in society. Such unequal bargaining power may lead to agreements that appear consensual on a formal level, but in practice reflect coercion, limited autonomy, or constrained freedom of choice for one party. In this context, the notion of consent becomes problematic because it may not fully represent an equal and informed decision-making process. Therefore, legal reform is necessary to ensure that prenuptial agreements function not only as formal legal documents, but also as instruments that genuinely protect equality, justice, and the rights of both spouses in a substantive and meaningful way (Nugroho, 2022; Rahmawati, 2024).

Based on these conditions, this study formulates three main research problems. First, it examines how the concept of prenuptial agreement regulation in Indonesian positive law can be analyzed through the principles of substantive justice and gender equality, particularly in assessing whether existing legal norms have adequately protected the rights and interests of both spouses. Second, this study explores the appropriate model for reconstructing prenuptial agreements so that they can provide balanced legal protection for husbands and wives, while also addressing unequal bargaining positions that may arise within marital relationships due to social, economic, and cultural factors. This reconstruction is expected to produce a more responsive, equitable, and context-sensitive legal framework that better reflects contemporary social realities as well as constitutional values of justice and equality. Third, the study analyzes the roles and responsibilities of notaries in realizing prenuptial agreements from the perspective of substantive justice and gender equality, considering that notaries play a central role in drafting, providing legal counseling, and ensuring the legal

validity of such agreements. In this regard, notaries are not only technical drafters but also actors who influence the fairness and balance of contractual relationships between spouses (Yasin, et al. 2024). Through these three problem formulations, the research seeks to contribute to the development of a more just, balanced, and gender-sensitive system of prenuptial agreement regulation in Indonesia.

In notarial practice, notaries play a strategic role as public officials authorized to create authentic deeds, including prenuptial agreements, which serve as legally binding instruments for the parties involved (Sirait, et al. 2024). Their function is not limited to ensuring the formal validity of legal documents, but also includes safeguarding legal certainty, protecting the interests of both parties, and ensuring that the substance of the agreement reflects fairness and balance. As legal professionals, notaries occupy a crucial position in providing legal counseling and guidance so that both prospective spouses fully understand the rights, obligations, and legal consequences of the agreement they are entering into. However, various studies indicate that notarial practice still tends to be formalistic, with a stronger focus on administrative compliance and procedural requirements than on examining the substantive fairness of the agreement. This tendency may result in the neglect of important issues such as unequal bargaining power, gender-based vulnerability, and the broader principles of substantive justice and gender equality. Consequently, agreements that are formally valid do not always guarantee fairness in their substantive outcomes. Therefore, strengthening the role of notaries through a more gender-sensitive and justice-oriented approach is essential to ensure that prenuptial agreements function as instruments of balanced legal protection and social justice within marriage (syah, 2023; Lestari & Hidayat, 2025).

This indicates a significant gap between legal ideals and practical implementation, particularly in the realization of justice and equality within the framework of prenuptial agreements. Although existing legal regulations formally provide opportunities for legal protection, their application in practice often fails to fully address the unequal social and economic conditions experienced by the parties involved. As a result, the intended purpose of

prenuptial agreements as instruments of balanced legal protection is not always achieved in real marital contexts. This gap demonstrates that a purely formal legal approach is insufficient to respond to the complexities of marital relationships and existing gender-based power imbalances. Instead, it shows that legal certainty alone cannot guarantee substantive fairness in social practice. Therefore, a legal reconstruction is necessary to ensure that the regulation and implementation of prenuptial agreements become more responsive to the values of equality, substantive justice, and the protection of human dignity. Such reconstruction is expected to create a more inclusive and adaptive legal framework that better reflects contemporary social realities and promotes genuine fairness for both spouses.

From a theoretical perspective, substantive justice demands that laws be not only formally valid but also materially just in regulating social relations, ensuring that legal norms produce fair outcomes for all parties involved. In the context of marriage, this means that prenuptial agreements should not be limited solely to regulating property ownership and financial matters, but should also function as instruments to prevent subordination and unequal power relations between spouses. Such an approach emphasizes that marriage is a partnership based on mutual respect, dignity, and balanced rights and obligations. The principle of gender equality, as recognized in national law and international instruments such as Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), further underscores the importance of equal relations between men and women within marriage and the elimination of discriminatory legal practices. Moreover, the Maqasid al-Sharia approach highlights the protection of essential human values, including life, honor, and property, as fundamental objectives of justice in family relations. Therefore, integrating these theoretical perspectives provides a stronger normative foundation for reconstructing prenuptial agreements so that they promote substantive justice, gender equality, and balanced legal protection within marriage (Hidayat, 2023; Septiani et al., 2022).

Although there has been considerable research on prenuptial agreements and gender equality, most existing studies remain normative-descriptive in

nature, focusing primarily on the interpretation of legal norms without offering practical solutions for implementation. As a result, there is still a lack of conceptual reconstruction models that are applicable in notarial practice and capable of addressing the complexities of marital relations in contemporary society. Therefore, this study aims to analyze the concept of prenuptial agreement regulation in Indonesian positive law through the lens of substantive justice and gender equality, in order to identify its existing limitations and normative gaps. Furthermore, this research seeks to formulate a reconstruction model of prenuptial agreements that can guarantee balanced legal protection for husbands and wives, while also analyzing the role and responsibilities of notaries in realizing prenuptial agreements that are fair, equitable, and gender-responsive in practice.

## **Research Method**

This study employs normative legal research, which examines law as a system of norms and rules within the positive legal framework, with particular emphasis on the analysis of legislation, legal principles, legal doctrines, and court decisions related to prenuptial agreements (Soekanto & Mamudji, 2015). The research adopts a descriptive-analytical specification, aimed at describing the existing legal provisions while critically analyzing their normative and practical weaknesses based on the principles of substantive justice and gender equality in order to formulate a more responsive legal reconstruction model. The methodological approach used in this study consists of statutory, conceptual, and philosophical approaches, enabling a comprehensive examination of the legal framework governing prenuptial agreements in Indonesia. The data used are secondary data consisting of primary legal materials, including the 1945 Constitution of the Republic of Indonesia, the Marriage Law, the Civil Code, the Notary Law, and relevant Constitutional Court decisions; secondary legal materials, including books, scientific journals, and previous research relevant to the study; and tertiary legal materials, such as legal dictionaries and encyclopedias, which function to clarify legal concepts and terminology. Data collection was conducted through literature study and supported by semi-structured interviews

with notaries as key informants to obtain empirical insights related to the implementation and practice of prenuptial agreements. Data analysis was carried out qualitatively using interpretative and deductive approaches, through statutory, conceptual, and philosophical analysis, to identify normative problems and formulate a reconstruction of prenuptial agreement law based on substantive justice and gender equality, with conclusions drawn systematically and comprehensively (Marzuki, 2017).

## **Results and Discussions**

### **The Concept of Premarital Agreement Regulation in Indonesian Positive Law when Analyzed Based on the Principles of Substantive Justice and Gender Equality**

The provisions of prenuptial agreements under Indonesian positive law essentially provide legal space for prospective husbands and wives to determine the distribution of property and regulate the legal consequences of marriage through a written agreement. Within the framework of the Indonesian Civil Code, prenuptial agreements are traditionally limited in scope and primarily emphasize the separation of property, without adequately considering the power relations and social dynamics that may exist within marriage. Meanwhile, Law Number 1 of 1974 concerning Marriage provides clearer legitimacy for prenuptial agreements by recognizing them as valid legal instruments that can regulate the rights and obligations of spouses. However, in practice, these legal provisions still tend to be formalistic, focusing mainly on procedural validity and administrative compliance rather than evaluating whether the agreement reflects fairness and balance between the parties. This condition demonstrates that the current legal framework remains predominantly oriented toward legal certainty, prioritizing predictability and enforceability over substantive justice and social equity. Consequently, there is a clear need to reconstruct the legal approach to prenuptial agreements so that they not only fulfill formal legal requirements but also promote meaningful justice, equality, and balanced protection for both spouses (Harahap, 2023).

Prenuptial agreements in Indonesian law are formally recognized as valid legal instruments under the existing legal framework, particularly through the provisions of the Civil Code, the Marriage Law, and reinforced by Constitutional Court Decision No. 69/PUU-XIII/2015, which broadened the opportunity for couples to establish such agreements both before and during marriage. However, in practice, the implementation of prenuptial agreements remains predominantly procedural and administrative in nature, focusing primarily on formal legal requirements such as written documentation, notarial authentication, and registration, rather than ensuring substantive fairness between the parties. This formalistic approach often overlooks the broader social realities surrounding marital relationships, particularly the unequal power dynamics that may influence the negotiation process. As a result, gender inequality continues to persist, largely driven by patriarchal social structures that position women in weaker bargaining positions within marriage, as well as by economic dependency that limits their ability to negotiate contractual terms freely and equally (Nisa & Tjempaka, 2025). Consequently, although prenuptial agreements are intended to provide legal certainty and protection, they have not yet fully functioned as instruments capable of promoting substantive justice and gender equality in marital relations.

When analyzed based on the principle of substantive justice (Guari, Situmeang & Disemadi, 2026), prenuptial agreements cannot simply emphasize the parties' freedom of contract as the sole foundation for their validity and enforcement. Although freedom of contract remains an important principle in private law, in practice there is often a structural imbalance in bargaining power between prospective husbands and wives, which may significantly shape both the content and fairness of the agreement. These imbalances frequently arise from social, cultural, and economic inequalities that place one party in a weaker negotiating position during the drafting process. Therefore, the principle of substantive justice requires that legal arrangements be not only formally valid, but also materially fair in their outcomes, ensuring that rights and obligations are distributed in a balanced manner between both parties. In this context, the role of the state and notaries becomes crucial in supervising, reviewing, and guiding

the drafting process to ensure that no clauses are discriminatory, coercive, or detrimental to either party, particularly the more vulnerable spouse. This includes a responsibility to critically assess whether the agreement reflects genuine consent and equal participation, rather than merely formal approval. Ultimately, this approach aims to protect the weaker party within the marital relationship and ensure that prenuptial agreements function as instruments of justice, equality, and balanced legal protection in both normative and practical dimensions (Pratama, 2025).

From a gender equality perspective, prenuptial agreements continue to face significant challenges in their implementation, despite being formally recognized as neutral legal instruments. Normatively, the law does not differentiate between men and women, and both parties are granted equal legal standing in entering into a prenuptial agreement. However, in social practice, the negotiation process is often dominated by one party, reflecting existing inequalities in power, influence, and access to resources within the relationship (Purwanti & Natalis, 2026). This imbalance is frequently shaped by strong patriarchal economic, social, and cultural structures that place women in a less advantageous bargaining position during the drafting of the agreement. As a result, women may, in certain cases, have limited capacity to freely determine or meaningfully negotiate the content of the agreement, even when formal consent is present. Such conditions may lead to agreements that are legally valid in form but unequal in substance. This situation demonstrates that formal equality before the law does not necessarily translate into substantive equality in lived reality, thereby highlighting the need for a more gender-sensitive legal and notarial approach that ensures genuine fairness, equal participation, and balanced protection for both spouses (Judiasih, 2023).

Legal developments through Constitutional Court Decision No. 69/PUU-XIII/2015 demonstrate significant efforts to provide greater flexibility in the regulation of prenuptial agreements within Indonesian law. This decision expanded the timeframe for drafting such agreements, allowing them to be made not only before marriage but also during the marriage, thereby broadening the legal options available to married couples. In principle, this legal change

represents an important advancement because it strengthens legal protection by enabling spouses to adjust their marital arrangements in response to changing social, economic, or personal circumstances. However, despite this expanded legal flexibility, there remains a significant risk of unequal bargaining power between spouses, particularly when one party holds greater economic or social influence over the other. Such inequality can directly affect the substance of the agreement, potentially resulting in clauses that are formally valid but substantively unfair (Kurnia, Citra, Saragih & Mahmudi, 2025). Therefore, this development highlights the increasing importance of substantive oversight and legal review of prenuptial agreement content to ensure that these agreements genuinely uphold justice, equality, and balanced legal protection for both parties (Nugroho, 2020).

In notarial practice, the implementation of prenuptial agreements often focuses more on the formal aspects of the deed, such as administrative completeness, procedural compliance, and legal validity, rather than on evaluating the fairness of its substantive content. Although notaries are legally obligated to ensure that all formal requirements are fulfilled, their role in assessing whether the agreement reflects balance, equality, and justice between the parties is often still limited in practice. As a result, prenuptial agreements may function merely as legal formalities that serve procedural purposes without adequately addressing the broader principles of substantive justice. This formalistic approach can allow unequal power relations between prospective spouses to remain unchallenged, particularly when one party possesses greater economic, social, or cultural influence during the negotiation process. Furthermore, limited public understanding of the legal implications and long-term consequences of prenuptial agreements often reinforces the dominance of one party in drafting the agreement, thereby reducing the ability of the other party to negotiate on equal terms. In some cases, this situation leads to consent that is formal rather than truly informed or autonomous. Therefore, strengthening the advisory, preventive, and ethical role of notaries is essential to ensure that prenuptial agreements are not only legally valid but also substantively

fair, equitable, and responsive to the principles of gender equality and balanced legal protection (Pradana and Hartati, 2024).

Normatively, Indonesian positive law provides a sufficient legal basis for regulating prenuptial agreements as instruments of legal protection for married couples, particularly in defining rights, obligations, and property arrangements within marriage (Windayanti, Narsudin, & Natanegara, 2025). Through existing legal provisions, the state formally recognizes the freedom of prospective spouses to determine their marital legal relations based on mutual agreement and consent. However, in its implementation, there remains a significant gap between legal certainty and substantive justice, as the legal framework often prioritizes formal validity and procedural compliance over the fairness and balance of the agreement's content. This gap is evident in the continued presence of gender inequality and economic dominance during the drafting process, where one party may exert greater influence over negotiation outcomes due to stronger financial, social, or cultural positions. Such conditions indicate that formal legal equality alone is insufficient to guarantee genuinely fair and equitable outcomes for both spouses in practice. Moreover, this imbalance may result in agreements that are legally valid but substantively unequal in their impact on the parties involved. Therefore, strengthening the role of notaries as legal advisors, along with increasing public legal awareness, is an essential step to ensure that prenuptial agreements are not only legally valid but also socially just, equitable, and responsive to the principles of substantive justice and gender equality (Wulandari, 2022).

Based on the above description, it can be concluded that the regulation of prenuptial agreements in Indonesian positive law has provided a clear legal basis for recognizing and enforcing such agreements as instruments of legal protection within marriage (Sholikhah & Umami, 2026). However, despite this normative recognition, significant challenges remain in realizing the principles of substantive justice and gender equality in their practical implementation. Although the law formally guarantees the freedom of parties to enter into agreements, in reality there are still unequal bargaining positions influenced by economic disparities, cultural norms, and patriarchal social structures that shape

the negotiation process. These conditions may affect the fairness of the agreement's content and result in outcomes that are not equally beneficial for both spouses. The principle of substantive justice therefore requires that prenuptial agreements be assessed not only in terms of formal legality, but also in terms of whether they produce materially fair and balanced consequences for both parties. Similarly, the principle of gender equality has not yet been fully realized, as patterns of domination and unequal power relations within marriage continue to influence the drafting of agreements. Therefore, strengthening the role of notaries as guardians of substantive fairness, along with increasing public legal awareness, is essential to ensure that prenuptial agreements genuinely reflect balanced justice, equal protection, and social fairness for both spouses.

## **A Prenuptial Agreement Reconstruction Model that Guarantees Equal Legal Protection for Husband and Wife**

A reconstruction model for prenuptial agreements is needed as part of broader legal reform aimed at making the regulation of such agreements more responsive to the principles of substantive justice and gender equality. This reconstruction should address not only the normative legal framework but also the practical implementation of agreements drafted and authenticated by notaries, who play a central role in ensuring legal validity and fairness in marital agreements. The primary objective of this model is to create a more balanced distribution of rights and obligations between husband and wife, thereby strengthening equality within the marital relationship. In current positive legal practice, prenuptial agreements still tend to be heavily oriented toward the principle of contractual freedom, often emphasizing the autonomy of the parties without sufficient substantive oversight regarding fairness and existing power imbalances. As a result, agreements that are formally valid may still contain provisions that disadvantage one party, particularly the more vulnerable spouse, thereby undermining the principle of substantive justice. This condition demonstrates that legal certainty alone is not sufficient to guarantee fairness in

practice. Therefore, a reconstruction model is required that can systematically correct this imbalance by integrating legal certainty, substantive justice, gender sensitivity, and effective notarial supervision into a coherent and applicable legal framework that ensures equitable protection for both spouses (Rahardjo, 2022).

The ideal reconstruction model positions the notary as a key actor in ensuring the balance and fairness of the contents of a prenuptial agreement. In this framework, the notary functions not only as the official authorized to draft and authenticate the deed but also as a guardian of substantive justice within the agreement-making process. This expanded role requires the notary to go beyond merely verifying formal legal requirements by actively analyzing the agreement's clauses to identify potential inequalities, unfair terms, or imbalances in bargaining power between the parties. Such scrutiny is essential to prevent domination by one party, particularly in economic matters where disparities in financial capacity may significantly influence the substance of the agreement. The notary is also expected to ensure that both parties truly understand the implications of each clause, so that consent is informed and genuinely voluntary. By adopting this approach, the notary contributes to ensuring that the agreement reflects real balance in rights and obligations, rather than merely formal equality on paper. Therefore, this reconstruction strengthens the role of the notary from a purely administrative function into a more substantive and ethical role aimed at promoting justice, equality, and fairness in marital legal relations (Wulandari, 2022).

The reconstruction of the prenuptial agreement model must also be grounded in the principles of transparency and equal access to information between the parties. Every prospective husband and wife should receive adequate, clear, and comprehensive legal explanations regarding the content, purpose, and legal consequences of the agreement before signing it. This is essential to ensure that neither party is placed in a position of limited understanding or legal disadvantage due to insufficient information. In this regard, the notary plays an important role in facilitating equal legal literacy for both parties, so that each individual has the same capacity to understand and evaluate the agreement. By guaranteeing equal access to legal knowledge, both

parties are given a genuine opportunity to participate actively and fairly in negotiating the terms of the agreement. The principle of transparency therefore becomes a crucial foundation for realizing truly free and informed consent, which is a central requirement for the legitimacy and fairness of any legal agreement. Without transparency, consent risks becoming merely formal rather than substantive, especially in situations marked by power imbalances. Through this approach, prenuptial agreements can move beyond being unilateral instruments and instead become balanced legal arrangements that reflect mutual understanding, equality, and substantive justice (Pratama, 2025; Dewi, Situmeang & Disemadi, 2026).

The reconstruction model must incorporate the principle of protecting parties who are economically and socially more vulnerable within the marital relationship. In many cases, economic inequality becomes a dominant factor in shaping the content of prenuptial agreements, as the party with greater financial resources often holds stronger bargaining power during the negotiation process. This imbalance creates a risk that the agreement will contain clauses that disproportionately benefit one party while disadvantaging the other, thereby undermining the principle of fairness and equality. Such conditions indicate that freedom of contract, when exercised without adequate safeguards, may reproduce existing social inequalities rather than correct them. Therefore, an effective control mechanism is necessary to prevent exploitation and ensure that contractual freedom operates within the boundaries of justice and substantive equality. In this context, the state and notaries play a crucial role in providing oversight, legal safeguards, and substantive review to ensure that no clauses unfairly burden or marginalize one party. By integrating protective measures for vulnerable parties, the reconstruction model ensures that prenuptial agreements function not merely as contractual instruments, but as legal tools that uphold balanced justice, equality, and meaningful protection for both spouses (Sari, 2021).

The reconstruction model also emphasizes the importance of establishing minimum standardization in the drafting of prenuptial agreements by notaries. This standardization is not intended to restrict the principle of freedom of

contract or limit the autonomy of the parties in determining the terms of their agreement, but rather to ensure that such freedom operates within a framework of equal legal protection and substantive fairness. By introducing minimum standards, notaries are provided with clear guidelines for evaluating whether specific clauses have the potential to create imbalance, discrimination, or harm to one of the parties. These standards function as preventive tools that enable early identification of unfair provisions before the agreement is finalized, thereby reducing the risk of exploitation or unequal bargaining outcomes. In addition, standardized guidelines strengthen the consistency, accountability, and quality of notarial practice, ensuring that similar cases are treated according to comparable principles of justice and legal protection. This also helps reduce disparities in interpretation among notaries when assessing the fairness of contractual clauses. Consequently, this approach enhances both legal certainty and fairness simultaneously, enabling prenuptial agreements to better fulfill their role as instruments of balanced and equitable legal relations within marriage (Pradana and Hartati, 2024).

The reconstruction of the prenuptial agreement model must also explicitly integrate the principle of gender equality into every stage of the agreement's drafting process, from negotiation and consultation to the final formulation of its clauses. This integration is essential to ensure that both women and men have equal opportunities, equal bargaining power, and an equal voice in determining the content of the agreement. Without a gender-sensitive approach, prenuptial agreements risk reproducing existing social inequalities rather than functioning as instruments of balanced legal protection. In many cases, persistent gender inequality: shaped by cultural norms, patriarchal structures, and economic disparities, continues to influence the dynamics of marital decision-making and may place women in a less advantageous position during negotiations. These structural conditions often operate subtly, making inequality appear natural or acceptable even when it limits genuine participation. Such realities demand a corrective and progressive legal approach that not only recognizes formal equality before the law but also actively addresses structural barriers to substantive equality in practice. Therefore, integrating gender equality as a core principle in

the reconstruction model is essential to ensure that prenuptial agreements genuinely promote justice, fairness, and equal dignity for both spouses (Judiasih, 2023).

Based on the above description, it can be concluded that a reconstruction model for prenuptial agreements is essential to create a more balanced system of legal protection for husbands and wives within marital relationships. This reconstruction should not only focus on reforming the normative legal framework but also strengthen its practical implementation through the active and substantive role of notaries in ensuring fairness during the drafting process. In this context, notaries are expected to function not merely as deed-makers, but also as legal professionals who safeguard substantive justice and equality between the parties. Key elements of this model include transparency of information, equal participation of both parties, protection for socially and economically vulnerable individuals, and minimum standardization in the drafting of agreements to prevent unfair or discriminatory clauses. These components are necessary to ensure that prenuptial agreements do not merely fulfill formal legal requirements, but also reflect genuine balance, fairness, and justice in their substance. Furthermore, the integration of the principles of substantive justice and gender equality becomes a crucial foundation in developing an ideal legal model that is responsive to existing structural inequalities within marriage. Through this approach, prenuptial agreements can evolve into legal instruments that are more equitable, balanced, and aligned with the needs and realities of modern society.

## **The Role and Responsibilities of Notaries in Realizing Prenuptial Agreements with a Substantive Justice and Gender Equality Perspective in Notarial Practice in Indonesia**

Notaries play a strategic role in implementing prenuptial agreements based on the principles of substantive justice and gender equality, particularly in ensuring that such agreements provide balanced legal protection for both parties.

Their role extends beyond merely creating an authentic deed, as it also encompasses a broader moral and professional responsibility to ensure that the substance of the agreement reflects fairness, equality, and legal certainty. In practice, notaries act as neutral legal professionals who bridge the wishes and interests of the prospective husband and wife, translating those intentions into a legally valid and enforceable document. This position places notaries in an important role as legal advisors who must explain the rights, obligations, and legal consequences arising from the agreement to both parties. Furthermore, notaries are expected to assess whether any clauses in the agreement contain potential inequalities or unfair terms that may disadvantage one party, particularly the more vulnerable spouse (Anwar, Sulaiman, & Sopyan, 2025). By doing so, they help prevent the inclusion of provisions that may reinforce economic, social, or gender-based domination within the marital relationship (Luthviah, Agustiawan, & Hifni, 2025). This expanded role highlights the notary's preventive function within the marriage legal system, aimed at minimizing future legal disputes and protecting the principle of balanced justice. Ultimately, the notary serves not only as a formal state official but also as a key actor in promoting equitable and gender-responsive legal relations within marriage (Habib Adjie, 2022).

Notaries primarily function as formal deed drafters whose responsibilities are largely limited to ensuring the administrative and procedural validity of prenuptial agreements, including verifying the identity of the parties, drafting the agreement in authentic deed form, and ensuring compliance with statutory requirements. In practice, this role tends to emphasize formal legality rather than examining whether the substance of the agreement reflects fairness and balance between the parties. As a result, notarial involvement has not yet optimally addressed the unequal bargaining positions that may arise from economic dependency, social pressure, or patriarchal cultural structures (Hulukati, 2024). This study therefore proposes a reconceptualization of the role of notaries, positioning them not merely as passive legal documenters but as substantive fairness gatekeepers who actively ensure that prenuptial agreements uphold justice and equality. Within this reconstructed model, notaries are expected to

promote transparency by ensuring that both parties fully understand the legal consequences of the agreement, provide greater protection for vulnerable parties, encourage the standardization of fair and balanced contractual clauses, integrate gender equality principles throughout the drafting process, and exercise substantive review authority to assess whether the contents of the agreement meet the principles of fairness, proportionality, and substantive justice before formalizing the deed.

A notary's responsibility from the perspective of substantive justice requires not only technical legal competence but also sensitivity to the content and social implications of the agreements entered into by the parties. In the context of prenuptial agreements, notaries must not limit their role to ensuring that all formal requirements and procedural standards have been fulfilled (Sirait & Marsal, 2025). They are also expected to evaluate whether the substance of the agreement reflects a fair balance of rights and obligations between the prospective husband and wife. This requires notaries to carefully analyze the clauses contained in the agreement and identify any provisions that may potentially disadvantage one party, particularly the more vulnerable spouse. Such an approach demands a more active and critical role, where the notary functions not merely as a document drafter but also as a guardian of fairness and legal balance. By exercising this responsibility, notaries contribute to preventing the institutionalization of unequal power relations within marriage through legally binding agreements. Therefore, the notary's role becomes essential in realizing substantive justice, ensuring that prenuptial agreements serve not only as formal legal instruments but also as mechanisms for equitable and balanced legal protection (Dimas Pratama, 2025).

Notaries have a fundamental responsibility to ensure that the parties entering into a prenuptial agreement are in a balanced and equitable position throughout the drafting process. This responsibility is particularly important because, in practice, one party often dominates the other, whether through greater economic resources, stronger social status, or cultural influence, which can affect the fairness of the agreement. In such circumstances, the notary must act as an impartial legal professional who provides equal legal explanations and

guidance to both parties without favoritism or bias. This includes ensuring that each party fully understands the rights, obligations, and legal consequences arising from the agreement before giving consent. Furthermore, notaries must ensure that the negotiation and signing process takes place voluntarily, free from coercion, pressure, or undue influence from either side. By safeguarding a fair and transparent process from the beginning, notaries help ensure that the principle of gender equality is addressed from the initial stages of the agreement. Through this role, notaries contribute significantly to creating prenuptial agreements that are not only legally valid but also substantively fair and responsive to the principles of equality and justice (Sonny Dewi Judiasih, 2023).

The notary's role also includes providing comprehensive legal counseling to prospective husbands and wives before a prenuptial agreement is signed. This counseling is essential to ensure that both parties fully understand the legal implications, rights, obligations, and long-term consequences arising from the agreement they intend to enter into. In many cases, limited public understanding of legal concepts and contractual consequences can create significant imbalances in the content of prenuptial agreements, particularly when one party has greater legal awareness or access to resources than the other. Therefore, notaries must act not only as legal drafters but also as educators who help both parties make informed decisions. The information provided by the notary must be clear, objective, balanced, and communicated in language that is easy for both parties to understand, regardless of their educational or social background. This process helps ensure that consent is truly informed and that neither party agrees to terms they do not fully comprehend. By fulfilling this counseling function effectively, notaries strengthen the fairness, transparency, and substantive justice of prenuptial agreements within the marital legal framework (Rini Wulandari, 2022).

Furthermore, notaries have a responsibility to maintain independence throughout the entire prenuptial agreement process. This independence is essential to ensure that notaries remain neutral and are not influenced by the interests, pressure, or expectations of either party (Guswandi, Nelli, Alwi & Sarifandi, 2026). The need for such neutrality becomes even more crucial when

there are significant economic disparities between the prospective husband and wife, as these conditions may create unequal bargaining power that could influence the substance of the agreement (Hartono, 2020). In such situations, the notary must carefully avoid taking sides or allowing external interests to shape the drafting process. Instead, they are expected to apply an objective and professional legal approach that prioritizes fairness, legal balance, and compliance with applicable regulations. By maintaining this independence, notaries help safeguard the integrity of the agreement-making process and ensure that both parties are treated equally. Ultimately, this role reinforces the notary's function as an impartial public official who upholds substantive justice and protects the legal interests of both spouses (Pradana and Hartati, 2024).

In notarial practice in Indonesia, the role of notaries in realizing substantive justice and gender equality still faces various significant challenges. One of the main obstacles is the absence of clear and comprehensive operational standards that can be used to assess the fairness of the content of prenuptial agreements beyond their formal validity. As a result, notaries often rely on individual interpretation in determining whether an agreement reflects balance between the parties, which leads to inconsistencies in practice. In addition, differing levels of understanding among notaries regarding substantive justice and gender-sensitive approaches further contribute to variations in how prenuptial agreements are drafted and reviewed. This condition may result in agreements that are formally valid but not necessarily fair in substance, particularly in situations involving unequal bargaining power. Therefore, this situation highlights the urgent need for strengthened legal regulations and more detailed technical guidelines to support notaries in carrying out their functions. Such improvements are essential to ensure that the implementation of notarial duties becomes more consistent, professional, and capable of providing equal legal protection for all parties involved (Indah Permata Sari, 2021).

Based on the above description, it can be concluded that notaries have a crucial role and responsibility in the implementation of prenuptial agreements that prioritize substantive justice and gender equality (Damarjati, 2025). This role is not limited to fulfilling formal legal requirements in the creation of

authentic deeds, but also extends to broader educational, preventive, and supervisory functions regarding the substance of the agreement. In carrying out these functions, notaries are expected to ensure that both parties fully understand the legal implications of the agreement through clear and objective legal counseling. They are also required to identify and prevent potential imbalances or unfair clauses that may arise due to differences in economic, social, or bargaining power between the parties. Furthermore, notaries must maintain independence and professionalism to ensure that their decisions and guidance are not influenced by the interests of either party. Sensitivity to gender equality and substantive fairness becomes an essential aspect of their professional responsibility in assessing the content of prenuptial agreements. Through this comprehensive role, notaries contribute significantly to ensuring balanced legal protection and strengthening the realization of justice within marital legal relations.

## **Conclusion**

Based on the results of the research and discussion on prenuptial agreements from the perspective of substantive justice and gender equality, it can be concluded that prenuptial agreements in Indonesia continue to prioritize formal legality over substantive justice, as their implementation remains largely focused on fulfilling procedural requirements such as written form, notarial authentication, and legal registration, rather than ensuring fairness in the substance of the agreement. This formalistic approach often results in unequal bargaining outcomes, particularly when one party occupies a weaker social or economic position within the marital relationship. Therefore, a legal reconstruction model is needed to transform prenuptial agreements from merely procedural instruments into mechanisms that ensure a balanced distribution of rights and obligations between spouses. Such a reconstruction should emphasize substantive justice by integrating principles of equality, proportionality, and protection for vulnerable parties. In this context, notaries must assume a stronger and more active role, not only as formal deed drafters but also as legal professionals responsible for ensuring fairness, transparency, and gender equality

throughout the process of negotiating, drafting, and validating prenuptial agreements. Furthermore, the reconstruction model of prenuptial agreements required to ensure balanced legal protection is a model that emphasizes proportional equality of rights and obligations between spouses, guarantees transparency of the agreement's contents, and provides protection for parties who are socially and economically more vulnerable. This model is also designed to prevent domination by one party and to ensure that contractual freedom is exercised within the boundaries of fairness and substantive justice. In addition, the role and responsibility of notaries in realizing prenuptial agreements from the perspective of substantive justice and gender equality are highly important and strategic. Notaries do not only function as public officials who create authentic deeds, but also bear moral and professional responsibilities to ensure that the contents of the agreement do not contain inequality. They are expected to provide objective legal counseling to both parties and to ensure that the agreements drafted remain aligned with the principles of justice, equality, and comprehensive legal protection within marital relations.

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## **Declaration of Generative AI Use**

In preparing this manuscript, the authors employed ChatGPT (OpenAI) to enhance textual clarity, organization, and overall readability. Grammarly was also used to support language editing. Following the use of these tools, the authors carefully reviewed, revised, and validated the entire manuscript to ensure that all content faithfully reflects their own ideas and interpretations. The authors take full responsibility for the integrity and originality of the published work.

## **Competing Interest**

The authors declare that there are no conflicts of interest regarding the publication of this article.