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Annulment Of Marital Property Agreements Due To Vitiating Factors: A Comparative Study Between Indonesian And English Law

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Abstract: This article examines how annulment of marital property agreements occurs when consent is tainted by vitiating factors. The research object focuses on prenuptial agreements in Indonesia and financial settlement agreements in England. The objective of this study is to analyze the legal framework, judicial practice, and consequences of annulment caused by error, misrepresentation or fraud, or duress in both jurisdictions. Using normative legal research, this study employs statutory, conceptual, comparative, and case approaches, supported by deductive analysis of legislation, jurisprudence, and scholarly opinion. The results show that under Indonesian law, annulment is possible when an agreement is proven to be based on false or misleading information, as exemplified by Denpasar District Court Decision No. 1308/Pdt.G/2019/PN.Dps, which annulled a prenuptial agreement due to misrepresentation. Meanwhile under English law, annulment is recognized in cases of fraudulent misrepresentation, as highlighted in *Sharland v Sharland* [2015] UKSC 60, where intentional dishonesty invalidated a financial settlement agreement. The conclusion affirms that such agreements are voidable and although annulment safeguards fairness and genuine consent, the division of marital property must still be pursued through separate judicial proceedings as the consequences in both legal systems.

Keyword: Annulment Agreement, Marital Property, Vitiating Factors.

INTRODUCTION

Private law views contracts as one of the principal instruments regulating legal relationships between parties (Shalilah, Sepang, & Londa, 2022). The general concept of contract is founded upon the principle of freedom of contract, which grants individuals the autonomy to enter into agreements in accordance with their will, so long as such agreements do not contravene the law, morality, or public order (Nabila & Djayaputra, 2023). This principle guarantees that any contract that is validly concluded, fulfilling both formal and substantive requirements, shall be legally binding between the parties and must be performed in good faith (Devi, Azhari, & Yulfasni, 2023). The freedom of contract thus serves as an

essential foundation in the formation of various types of agreements, including those concerning marital property.

Indonesian agreement law adheres to the civil law system, as codified in the Indonesian Civil Code (Kitab Undang-Undang Hukum Perdata, hereinafter 'KUHPerdata'). Agreements in Indonesia are strictly regulated, particularly through Article 1320 KUHPerdata, which stipulates the essential validity requirements of an agreement, namely: consent of the parties, legal capacity, a specific subject matter, and a lawful cause (Article 1320 KUHPerdata). By contrast, the law of agreement in England falls under contract law, which is rooted in the common law system. The essential elements of a valid contract in English law include offer, acceptance, consideration, intention to create legal relations, and capacity (Hanifah, Syafiq, & Saepudin, 2024).

Marital agreements hold a special status under Indonesian law and are expressly regulated under Article 29 of Law Number 1 of 1974 on Marriage (hereinafter "Marriage Act") (Jamaluddin & Amalia, 2016). According to Article 29 Marriage Act, a prenuptial agreement must be made in writing by prospective spouses prior to or at the time of marriage and must be legalized by the marriage registrar (Wafa, 2018). One of its main purposes is to regulate the legal consequences of marriage in relation to the parties' assets, which also binds third parties insofar as they are concerned (Widanarty, 2018). Hence, a nuptial agreement terminates joint ownership of property, rendering the property in question the exclusive ownership of the party concerned (Habibie & Rhamdani, 2025).

In England, agreements concerning the division of marital assets are not limited to nuptial agreements but also include financial settlement agreements made after divorce. Prenuptial agreements are not statutorily regulated; rather, their recognition has developed through judicial decisions, particularly following the landmark case of *Radmacher v Granatino* [2010] UKSC 42 (Patterson, 2024). A financial settlement agreement in the context of divorce constitutes a legally binding arrangement governing the distribution of assets, liabilities, and spousal maintenance between separating spouses, with the objective of achieving a fair and legally enforceable division (Osbornes Law, n.d.). The process requires full disclosure of each party's financial circumstances and is typically formalized through a court consent order, thereby acquiring binding legal force (Higgins Miller Solicitors, 2019). Thus, the regulation of agreements concerning marital property in England derives from principles of common law, judicial discretion under the Matrimonial Causes Act 1973, and relevant jurisprudences (Patterson, 2024).

Despite the detailed regulation of contractual legality, contracts in practice may still be tainted by vitiating factors. Under Indonesian law, vitiating factors are addressed in Article 1321 KUHPerdata, which provides that an agreement is vitiated if it is given by error (*dwaling*), obtained by fraud (*bedrog*), or extorted by duress (*bedreiging*). These vitiations render the contract voidable (Arrodli, Ramadhan, Anggita, Pamungkas, Muhammad, & Anugrah, 2024). In English law, the doctrine of vitiating factors protects the genuineness of consent in contractual relations. Vitiating factors are generally divided into two categories: the absence of true consent, such as in cases of mental incapacity or fundamental mistake, which renders a contract void; and the vitiation of consent due to bad faith, such as misrepresentation, duress, undue influence, and unconscionability, which render a contract voidable (Spark, 2013).

In terms of joint property arrangements, nuptial agreements are often made to protect the interests of each party (Putra, Alamsyah, Herawati, & Hasiah 2021). In practice, nuptial agreements are very important, especially for regulating the rights and obligations of husband and wife regarding joint property, separation of property, and other agreed matters (Fatnysari, 2021). However, it is not uncommon for a nuptial agreement that has been made to be subsequently annulled by the court, either due to formal vitiations, coercion, or against the laws and regulations (Permatasari, Wardhana, & Wahjuni 2020).

In Indonesian judicial practice, the annulment of a prenuptial agreement due to vitiating factors can be found in the decision of the Denpasar District Court No. 1308/Pdt.G/2019/PN.Dps, where the agreement was annulled on the basis of misrepresentation during its drafting process. Meanwhile in England, unlike nuptial agreements, the case of *Sharland v Sharland* [2015] UKSC 60 became an important precedent regarding the annulment of a financial settlement agreement after divorce, which was annulled due to fraud or fraudulent misrepresentation. These cases demonstrate how courts in Indonesia and England address the annulment of agreements relating to marital property when tainted by vitiating factors.

Based on this description, the issues examined in this study focus on two main points. First, this study analyzes the regulation and application of the annulment of prenuptial agreements due to vitiating factors in the form of fraud and misrepresentation according to the Indonesian legal system. Second, this study discusses the concept and application of fraudulent misrepresentation as the basis for the annulment of financial settlement agreements in the English legal system.

METHOD

The type of research used in this paper is normative research, which is research that examines law as norms or rules contained in legislation, jurisprudence, doctrine, and the opinions of legal experts (Muhaimin, 2020). The approaches used in this study are the statute approach, the conceptual approach, the comparative approach, and the case approach. This study applies the deductive method, which draws conclusions from general norms to specific cases (Ulum, 2022). The analysis also includes an interpretation of the judges' considerations in related decisions to understand the direction of the practical application of legal norms in the context of cross-legal system marital property agreements (Widiarty, 2024).

RESULTS AND DISCUSSION

Annulment of a Prenuptial Agreement Due to Fraud and Misrepresentation under Indonesian Law

According to the Marriage Act and the Constitutional Court Decision No. 69/PUU-XIII/2015, a nuptial agreement is a form of agreement between prospective spouses, made before or at the time of marriage, with the purpose of regulating the proprietary relations between spouses (Putri & Salma, 2024). Such agreements are subject to the general provisions of contract law as regulated under Article 1320 KUHPerdata, which sets out the essential requirements for the validity of a contract (Musadad, 2023). In this context, an agreement may lose its legal force by being deemed void or voidable if it fails to fulfill the requirements under Article 1320 KUHPerdata (Badrulzaman, 2023). Within marriage, the nuptial agreement serves as a legal instrument to further regulate the rights and obligations of the spouses with regard to ownership and management of assets, and to prevent potential disputes in the future (Cahyani, 2020).

It is not uncommon for agreements to be concluded under the influence of vitiating factors, such as fraud (*bedrog*), duress (*dwang*), or error (*dwaling*) (Efendi, 2024). Vitiating factors may serve as grounds for annulment of a contract, including prenuptial agreements. One particularly relevant factor in this study is misrepresentation, which arises when a party enters into an agreement based on inaccurate or misleading information provided by the other party (Efendi, 2024).

The vitiating factors in the prenuptial agreement as described above occurred in a case examined by the Denpasar District Court through Decision Number 1308/Pdt.G/2019/PN.Dps, in which one of the parties, the husband (Plaintiff), an Australian citizen, claimed that the agreement was made based on misrepresentation by the wife (Defendant I) that influenced its agreement. The parties had lawfully married on 8 August 2016 in Tasmania, Australia, and the

marriage was subsequently reported to the Civil Registry Office of Tabanan Regency on 23 January 2017, as evidenced by Marriage Registration Receipt No. 470/0189/DISDUKCAPIL.

The purpose of the prenuptial agreement was to enable the Plaintiff to purchase and own land and buildings in Indonesia. As a foreign citizen, he was legally prohibited from holding property rights in his own name under Article 21(1) of Law Number 5 of 1960 on Basic Agrarian Principles (Agrarian Act). The property would therefore be registered under the name of the Indonesian spouse (Defendant I). Relying entirely on this explanation, the Plaintiff and Defendant I entered into a prenuptial agreement recorded in Deed No. 04 dated 5 July 2016, signed before a Notary (Defendant II).

However, after the divorce, the Plaintiff discovered that the prenuptial agreement contained contradictory clauses that materially disadvantaged him. Although Articles 1, 2, and 4 affirmed the separation of property, Article 3(2) provided that immovable property whose ownership could not be proven would be deemed joint property, divided equally (50:50). These contradictions supported the Plaintiff's argument that he had not fully understood the legal consequences of the agreement he signed.

The Plaintiff further asserted that his consent was tainted by misleading explanations from Defendant I and that Defendant II, the Notary, failed to perform his statutory duties under Article 43(2) and (5) of Law Number 30 of 2004, as subsequently amended by Law Number 2 of 2014, on the Notarial Profession (Notarial Profession Act), namely to explain or translate the deed to parties unable to understand the Indonesian language. Since the Plaintiff lacked proficiency in Indonesian, he argued that his consent to the agreement was legally vitiated.

The use of Bahasa Indonesia in contracts is mandated under Article 31(1) of Law Number 24 of 2009 on National Flag, Language, Emblem, and Anthem. However, Article 31(2) provides, "...the agreement referred to in paragraph (1) involving foreign parties shall also be written in the national language of the foreign party and/or English" (Article 31 Law on National Flag, Language, Emblem, and Anthem). Thus, an agreement that involved Indonesian and foreigners shall be drafted in bilingual contract (Olbata, Gerungan, & Tinangon, 2025).

The absence of an English version of the prenuptial agreement constituted a significant negligence, both on the part of Defendant I as the spouse and Defendant II as the notary, who had a duty to ensure that the agreement was comprehensible to all parties. The Plaintiff's inability to understand the language represented a substantial barrier to free and informed consent, thereby undermining the principle of consensualism in contract law.

In its judgment, the Panel of Judges upheld the Plaintiff's claim, finding that misrepresentation had been established, by reference to Article 1321 in conjunction with Article 1449 KUHPperdata, which provides, "Contracts concluded under duress, or due to misrepresentation or fraud, shall result in a legal claim to nullify such" (Article 1449 KUHPperdata). The Court further noted that where an agreement is concluded in bad faith and results in material loss to one party, the principle of good faith under Article 1338 KUHPperdata is not fulfilled.

Accordingly, the Denpasar District Court declared the prenuptial agreement between the Plaintiff and Defendant I annulled. The ruling emphasized the importance of free will and full understanding in contract formation, affirming that a prenuptial agreement is not merely an administrative formality but a legal instrument subject to principles of justice.

Nevertheless, the annulment of the prenuptial agreement did not automatically affect the distribution of marital property, as this was not the subject of the Plaintiff's lawsuit. Annulment merely removed the legal basis for the separation of marital property, thereby restoring the default regime under Article 35 of the Marriage Act, which states, "Property acquired during marriage becomes joint property." This is aligned with civil procedural law and has been affirmed by Supreme Court jurisprudence, notably Decision No. 913 K/Sip/1982, which held that divorce proceedings cannot be combined with claims for division of joint property.

The division of joint property following divorce is regulated under Article 37 of the Marriage Act, which provides that “the division of joint property shall be conducted according to the applicable law,” meaning through the filing of a separate claim before the district court. Therefore, although the prenuptial agreement was annulled, the Plaintiff was required to pursue further legal proceedings to obtain clarity and legal certainty regarding the division of marital assets (Permatasari, 2025).

Annulment of Financial Settlement Agreement due to Fraudulent Misrepresentation under English Law

The United Kingdom adopts the common law system. Matters relating to marital property are governed under the Matrimonial Causes Act 1973 (Hereinafter “MCA 1973”), which specifically regulates the distribution of marital assets upon divorce. Based on the fundamental principle of marital property arrangements, England and Wales adhere to the separate property system, whereby the assets of the husband and wife remain distinct during the marriage (Asnawi, 2020).

Within the English legal system, the court has wide discretion in determining how marital assets should be divided between spouses upon divorce. The court also plays a role in determining financial settlement agreements for the parties, which are typically formalized in the form of consent orders (Rešetar, 2008).

Although the court in England possesses broad authority in approving financial orders incorporated into a financial settlement agreement, such agreements are not absolute. In certain circumstances, they may be rendered voidable or even declared void. This demonstrates that, while flexibility is afforded in financial settlements, there remain strict legal boundaries governing their validity (Miles & Hitchings, 2018).

One of the legal grounds that may invalidate or annul an agreement is misrepresentation, as regulated under the Misrepresentation Act 1967 (Zhou, 2011). Under English law, misrepresentation is classified into three categories. First, fraudulent misrepresentation, where the aggrieved party has the right to rescind the contract or file a claim for damages if it is proven that there was intentional fraud. Meanwhile, negligent misrepresentation refers to incorrect statements made due to negligence, and is generally handled through tort litigation rather than contract litigation. Innocent misrepresentation refers to false statements made without intent or negligence, but still entitles the aggrieved party to rescind the contract or claim damages if the statement is considered material. (Hondius, 2016).

In practice, courts have set aside financial settlement agreements on the ground of vitiating factors, specifically fraudulent misrepresentation. This principle was reinforced in *Sharland v Sharland* [2015] UKSC 60, where the court considered not only the substantive content of the agreement but also the process of its formation, including the duty of honesty and candour between the parties. In this case, the wife (appellant) argued that the settlement had been procured through material non-disclosure and false testimony by the husband (respondent), particularly regarding plans for an Initial Public Offering (IPO) of his company, AppSense Holdings Ltd. The parties, married in 1993 and separated in 2010 after 17 years with three children, held significant marital assets, including the respondent’s shares in AppSense and liquid assets worth £17 million.

In July 2012, a consent order was reached in the Family Court under which the appellant would receive £10 million in cash/property and 30% of the value of AppSense shares if it was sold in the future. However, before the order was sealed, the appellant discovered evidence that the respondent had been actively preparing for an IPO since January 2012, with an estimated valuation between USD 750 million and 1 billion, which he had deliberately concealed during proceedings. The respondent even met potential IPO bankers a week after the trial, directly contradicting his sworn statement that no IPO was imminent.

The appellant filed a lawsuit to annul the consent order on grounds of fraudulent misrepresentation. Although the High Court and Court of Appeal acknowledged the respondent's dishonesty, it nonetheless upheld the order on two grounds: (i) the IPO had not taken place until April 2013, and (ii) the asset division was considered not materially different from what it would otherwise have been. This decision was overturned by the UK Supreme Court, which invoked the principle of fraud unravels all. The Court emphasized that intentional fraud vitiates the entirety of the agreement, regardless of whether the eventual outcome may have been materially different.

The Supreme Court's reasoning was grounded in several principles. First, *Smith v Kay* (1859), which established that a fraudster cannot dispute the materiality of their deception. Second, fraudulent misrepresentation fundamentally undermines the agreement and prevents the court from exercising its statutory duty under Section 25 of MCA 1973 to ensure a fair distribution of assets. Third, the duty of full and frank disclosure, affirmed in *Livesey v Jenkins* [1985], which obliges parties to disclose material facts honestly. Finally, Section 34(1) of MCA 1973 explicitly invalidates any clause in a maintenance agreement that seeks to restrict applications to the court for financial arrangements.

In paragraph 36, the Supreme Court categorically ruled that the consent order of 19 July 2012 should not be sealed, and remitted the matter back to the Family Division of the High Court for further directions. Importantly, the judgment was confined solely to the annulment of the consent order on grounds of fraudulent misrepresentation and did not itself determine the substantive division of marital assets. This reflects the principle that while fraud vitiates agreements, the division of assets must be reconsidered through the proper judicial process.

CONCLUSION

Under Indonesian law, the annulment of a prenuptial agreement due to vitiating factors may be pursued where it can be proven that one of the parties entered into the agreement based on false or misleading information, as stipulated under Articles 1321 and 1449 of the Indonesian Civil Code (KUHPerdata). A notable precedent is the Denpasar District Court Decision No. 1308/Pdt.G/2019/PN.Dps, in which the court declared a prenuptial agreement was voidable. The plaintiff, a foreign citizen, had signed the agreement without understanding its substance due to the absence of an English version and adequate explanation. Although the agreement was annulled, the division of joint marital property had to be brought through a separate legal action, as it is not automatically considered part of the divorce proceedings, consistent with the provisions of the Marriage Act and Supreme Court jurisprudence.

Meanwhile, under English law, a financial settlement agreement may be annulled if it is tainted by fraudulent misrepresentation, that deliberate deception in the disclosure of material facts during the drafting process of the agreement. In *Sharland v Sharland* [2015] UKSC 60, the UK Supreme Court affirmed that intentional dishonesty remains sufficient to annul the agreement, in line with the principle that "fraud unravels all." However, similar to the Indonesian private law system, the annulment of an agreement due to vitiated consent does not in itself determine the division of marital assets, such division must still be resolved separately through the appropriate judicial mechanisms.

In both jurisdictions, such agreements are considered voidable rather than void, meaning their validity remains intact until a competent court declares otherwise. That the existence of a vitiating factor, such as misrepresentation, fraud, or mistake, does not automatically nullify the agreement. Instead, the aggrieved party must seek judicial intervention to have the agreement annulled. This approach reflects the broader principle of contractual autonomy recognized in both Indonesian and English private law, where the law protects parties' freedom to contract while providing remedies for those whose consent was impaired.

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