

**REGULATING PRENUPTIAL AGREEMENTS IN MALAYSIA: SPECIAL
REFERENCE TO THE POSITION IN UNITED KINGDOM AND AUSTRALIA**

By

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ABSTRACT

Prenuptial agreement is a contract entered into before marriage. It sets out the terms on property or alimony division in the event divorce takes place is given legal recognition in countries such as Australia and United Kingdom.

Malaysia however does not encourage prenuptial agreement because of the socio-culture that values the sanctity of marriage and the adequacy of the laws such as Law Reform (Marriage and Divorce) Act 1976 (LRA) that eloquently governs property division and alimony in the event of divorce.

Hence, this project sets forth a research on:

- i. The role and significance of a prenuptial agreement; and
- ii. Whether prenuptial agreement needs to be regulated in Malaysia in the event that it gains recognition over and above the provisions as provided in the LRA.

The research findings upon comparative analysis of the laws between Malaysia, UK and Australia as well as interviews conducted, found that:

- i. There is no imminent need to regulate on prenuptial agreement because of the socio-culture and custom of the Asian society
- ii. The provision in the LRA gives a wide discretion to the judges to decide on property division and alimony.

Nonetheless, in the event when prenuptial agreement gains recognition, it must be governed by proper provision.

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CHAPTER 1 : Introduction

1.1 Research Background

According to Longman Dictionary of Contemporary English, the word 'regulating' in which derived from the word regulate means to control an activity or process, especially by the rules. The word 'prenuptial agreement' means a legal document that is written before a man and a woman get married, in which they agree things such as how much money each will get if they divorce. The word 'in' is used with the name of a container, place or area to say where someone or something is. In this context, the word 'in' is used to show the place where this study is taking place and that place is Malaysia. According to L.B. Curzon, Dictionary of Law, the word 'agreements' means a consensus of minds, or evidence of such consensus, in spoken or written form relating to anything done or to be done. Generally, regulating prenuptial agreements in Malaysia means to make rules that control the process of making legal document that is written by a couple that is going to get married. Special reference is by means of referring specifically to the position of law regarding prenuptial agreement in other countries.

Usually a prenuptial agreement includes provisions for division of property and spousal support in the event of divorce or break up. In some countries such as the Netherlands, prenuptial agreement does not only provides in the event of divorce, but also to protect some property or assets during the marriage, for example in the case of bankruptcy. The parties involved are the future husband and wife to be.

Nowadays, entering into a prenuptial agreement is socially accepted. The prenuptial agreement is no longer a taboo especially in Western countries because many people are considering a prenuptial agreement before their marriage. However, in Asian community, prenuptial agreement is seen as a threat to the marriage sanctity because the couples think about divorce before it even happen. It may undermine trust between couples whom are about to get married. Most Asians believe that the purity of marriage should not be questioned and doubted. Hence, in Malaysia, the practice of prenuptial agreement is not given due recognition. Plus, in Section 24(e) of