

Legal Certainty of Marriage Agreements that Were Not Registered After the Constitutional Court Decision Number 69/Puu-Xii/2015

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Abstract. *The Marriage Law has facilitated couples to make marriage agreements. Before the Constitutional Court Decision No. 69/PUU–XII/2015, the public was more familiar with it as a prenuptial agreement. Basically, the creation of a marriage agreement regulates the assets owned by each husband and/or wife before the marriage takes place, during the implementation of the marriage relationship, the division of responsibilities for paying debt agreements, the transfer of assets, and the division of assets in the event of a divorce. 2 As stated in Article 29 paragraph (1) of the Marriage Law which states that both parties (husband and wife) with mutual consent can enter into a written marriage agreement which agreement will then be ratified by a marriage registrar. The marriage agreement will also apply to third parties if there is a connection found in the contents of the agreement. The research method used is normative legal research. The approach method used in this research is a case study approach and a statutory approach. Data analysis is an activity in research that takes the form of conducting a study of the results of data processing. Before the Constitutional Court Decision Number 69/PUU-XIII/2015, the legal status of a marriage agreement made by a husband and wife after the marriage took place was bound by the provisions of Article 29 of the Marriage Law, namely invalid and non-binding, unless based on a court decision requested by the husband and wife before making the marriage agreement. So without a court decision, the marriage agreement made during the marriage bond is invalid and non-binding. But after the Constitutional Court Decision Number 69/PUU-XIII/2015, the status of a marriage agreement made by a husband and wife during the marriage bond is valid and binding, both to both parties, as well as to third parties as long as the third party is involved.*

Keywords: Agreement; Certainty; Constitutional; Marriage.

1. Introduction

A prenuptial agreement is a written agreement between a prospective husband and wife, drawn up before marriage, to regulate various aspects of their marital relationship, particularly regarding rights and obligations regarding property ownership and asset management. In Indonesia, the need for prenuptial agreements is increasing as public awareness of the importance of partner compliance in a more transparent and legally secure marriage.¹

Notaries play a crucial role in the drafting and ratification of marriage contracts. As authorized public officials, notaries are responsible for ensuring that the contract complies with applicable laws, is clear, and does not contain any elements that could lead to future legal issues. Therefore, a notary's role extends beyond legalizing the document, but also ensures that the rights and obligations of the husband and wife are protected in accordance with the agreements outlined in the marriage contract.

The Marriage Law has facilitated couples to make marriage agreements. Before the Constitutional Court Decision No. 69/PUU–XII/2015, the public was more familiar with it as a prenuptial agreement. Basically, the creation of a marriage agreement regulates the assets owned by each husband and/or wife before the marriage takes place, during the implementation of the marriage relationship, the division of responsibilities for paying debt agreements, the transfer of assets, and the division of assets in the event of a divorce. 2 As stated in Article 29 paragraph (1) of the Marriage Law which states that both parties (husband and wife) with mutual agreement can enter into a written marriage agreement which agreement will then be ratified by a marriage registrar. The marriage agreement will also apply to third parties if there is a connection in the contents of the agreement.

Other related matters can be outlined in the agreement as needed. However, in practice, many couples still do not fully understand the procedures required to create a marriage contract. This lack of public awareness and understanding leads to numerous errors in the process of creating a marriage contract and ultimately becoming a legal deed. Furthermore, the numerous provisions surrounding marriage contracts make it difficult for parties without legal backgrounds to understand the regulations. Based on this background, the researcher conducted a study entitled "Legal Certainty of Unregistered Marriage Contracts Following Constitutional Court Decision Number 69/69/PUU-XII/2015."

¹Abdul Ghofur Anshori. (2012). Marriage Agreement in the Perspective of Islamic Law, *Journal of Islamic Law*, Vol 10, No. 2, 1

2. Research Methods

This type of research is normative legal research. According to Mukti Fajar and Yulianto Achmad, normative legal research is research that positions law as a system of norms. This system of norms refers to the principles, norms, and rules of statutory regulations, court decisions, agreements, and doctrines (teachings).²The approaches used in this research are the case study approach and the statute approach. The case study approach is an in-depth qualitative research approach regarding groups of individuals, institutions, and so on over a specific period of time.³ Types and sources of data come from secondary data. Data collection methods are the ways researchers use to collect the data needed to solve research problems.⁴Data analysis is an activity in research which involves conducting a study or analysis of the results of data processing assisted by previously obtained theories.

3. Results and Discussion

3.1. Notary's Responsibilities Regarding Marriage Agreement Deeds Made by Husband and Wife.

Essentially, a notarial deed, which is an authentic deed, is a written document or agreement that explains a legal act and has the power of perfect proof. Meanwhile, a prenuptial agreement is an agreement made by a prospective couple before entering into marriage, or a couple who are already married, regarding matters that have been agreed upon between them to regulate aspects of their marriage. The prenuptial agreement can contain a collection of agreements made by the couple to regulate their property, responsibilities and obligations in managing their household, and to protect and prevent acts of violence in their household.⁵

A Marriage Agreement Deed made by a Notary is a written or agreement containing a marriage agreement made by a prospective married couple before getting married, or a married couple who are currently carrying out their marriage in order to regulate aspects of their marriage which are stated in an authentic deed made by a Notary. A Notary is a party who has the authority to make an authentic deed because a Notary is a public official who has the

²Mukti Fajar & Yulianto Achmad. (2015). *Dualisme Penelitian Hukum Normatif dan Empiris*, Cetakan Ke-3, Yogyakarta: Pustaka Pelajar, p. 34

³³ Eko Sugiarto. (2015). *Menyusun Proposal Penelitian Kualitatif: Skripsi Dan Tesis*, Yogyakarta: SuakaMedia, p. 12

⁴Rifa'i Abu Bakar. (2021). *Pengantar Metodologi Penelitian*, Yogyakarta: Suka Press UIN Sunan Kalijaga, p. 67

Amanda Charissa. "Peran Notaris Terkait Pengesahan Persetujuan Perkawinan Pasca Putusan Mahkamah Konstitusi TIDAK.Nomor 69/PUU-XIII/2015 Serta Pentingnya Pencatatan Perjanjian Perkawinan Terhadap Pihak Ketiga (Analisis Putusan.59/Ptanggal G/2018/PN(Bgr))".*Jurnal Magister Kenotariatan Fakultas Hukum Universitas Indonesia* Volume 4, 141

authority to make an authentic deed in accordance with Article 1 paragraph (1) of Law No. 2 of 2014 Amendment to Law No. 30 of 2004 concerning the Position of Notary.

In general, a Notary does not play a large role in the preparation of a marriage contract. In fact, more precisely, a Notary only writes down the marriage contract that was previously made by a prospective couple into a Notarial deed in accordance with the Notarial deed format that has been regulated as explained above. This is because the Notary only plays a role in preparing the deed for his client in accordance with the wishes and desires of the interested parties, namely the prospective couple or the couple who wish to make a marriage contract, in accordance with what is regulated in Article 38 paragraph (3) letter c of Law No. 2 of 2014 Amendment to Law No. 30 of 2004 Concerning the Position of Notary. However, in the process of making the deed, there is an important role that the Notary plays so that the preparation of the marriage contract goes well and minimizes dissatisfaction from the prospective couple or the couple who wish to make the marriage contract.⁶

In general, a Notary has the obligation to be responsible for all deeds he has made, even until the time comes for the Notary to retire from his position. This responsibility held by a Notary is regulated by Article 65 of Law No. 2 of 2014 Amendment to Law No. 30 of 2004 concerning the Position of Notary. The responsibility for the deed referred to here is not the responsibility held as the party who made the contents of the agreement in the deed, but rather the Notary's responsibility for the conformity of the contents of the deed with the contents of the agreement that actually occurred, which has been made by the parties concerned.⁷ Therefore, according to the Notary Code of Ethics, a Notary is required to behave in a trustworthy and thorough manner with the hope that whatever the parties request to be included in the Notarial deed will be written well and there will not be a single detail that differs from what they expect, as long as there are no related laws or regulations that prohibit this.

3.2. Legal Certainty Regarding Unregistered Marriage Agreements Following Constitutional Court Decision Number 69/PUU-XII/2015

Article 148 of the Civil Code provides the opportunity for prospective brides and grooms to amend their prenuptial agreement. However, these changes can only be made before the marriage takes place. Furthermore, they must be made in the same format, namely a notarial deed, and must be agreed to by both prospective brides and grooms. The timeframe for amending a prenuptial agreement, which is determined only before the marriage takes place, is also

⁶Kevin Eka Pradana dan Endah Hartati. (2024). Peran Notaris Dalam Pembuatan dan Pengesahan Perjanjian Kawin Berseta Tanggung Jawab Notaris atas Akta Perjanjian Tersebut. *Jurnal Swara Justisia*, Volume 8, Edisi 1, 91

⁷*Ibid*, p. 93

emphasized in Article 149 of the Civil Code, which states: "After the marriage has taken place, the prenuptial agreement may not be amended in any way."

Furthermore, regarding the form of the agreement, the Civil Code requires that a marriage contract be drawn up by a notarial deed. The timeframe for drawing up a marriage contract is determined to be before the marriage takes place. This is explicitly stated in Article 147 of the Civil Code, which carries the threat of nullity if the marriage contract is not drawn up by a notarial deed before the marriage takes place. This means that the Civil Code essentially does not provide the opportunity to create a marriage contract after the marriage has taken place, although this is not explicitly stated in the Civil Code.⁸

Regarding the object of a marriage agreement, the Civil Code does not provide any restrictions on what is or is not included in the object of a marriage agreement, so that a marriage agreement covers all things, as long as it is a certain thing as required in Article 1320 of the Civil Code. Meanwhile, regarding changes to a marriage agreement, Article 149 of the Civil Code expressly states that a marriage agreement cannot be changed after the marriage has taken place. Changes to a marriage agreement are only possible before the marriage takes place, provided that the changes made are agreed upon by both prospective brides and grooms, and are made in the same form as the previously made agreement deed.

A marriage contract is binding on both husband and wife from the moment the marriage takes place. This is affirmed in Article 147 of the Civil Code. For third parties, Article 152 of the Civil Code states that a marriage contract is binding upon third parties from the moment it is registered with the clerk of the District Court where the marriage took place. Alternatively, if the marriage took place abroad, the marriage contract must be registered with the clerk of the District Court where the marriage certificate was registered.⁹

4. Conclusion

In general, a Notary does not play a large role in the preparation of a marriage contract. In fact, more precisely, a Notary only writes down the marriage contract that was previously made by a prospective couple into a Notarial deed in accordance with the Notarial deed format that has been regulated as explained above. This is because the Notary only plays a role in making a deed for his client in accordance with the wishes and desires of the interested parties, namely the prospective couple and the couple who wish to make a marriage contract, in accordance with what is regulated in Article 38 paragraph (3) letter c of Law No. 2 of 2014 Amendment to Law No. 30 of 2004 concerning the Position

⁸Haedah Faradz. (2008). Tujuan dan Manfaat Perjanjian Kawin," *Jurnal Dinamika Hukum*, Vol. 8, No. 3, 250

⁹*Ibid*, p. 255

of Notary. In general, a Notary has the obligation to be responsible for all deeds that he has made, even until the time comes for the Notary to retire from his position. This responsibility that a Notary has is regulated by Article 65 of Law No. 2 of 2014 Amendment to Law No. 30 of 2004 concerning the Position of Notary. The responsibility for the deed referred to here is not the responsibility of the party who made the contents of the agreement in the deed, but rather the responsibility of the Notary for the conformity of the contents of the deed with the contents of the agreement that actually occurred, which was made by the parties concerned. The registration of a marriage agreement as implemented by referring to the Marriage Law and the provisions of Islamic Law indicates that the contents of the marriage agreement are not permitted to contradict the provisions of the laws and regulations to which the parties are subject. In addition, another provision contained in all regulations is that the marriage agreement must be executed with ratification before a Marriage Registrar. The registration of a marriage agreement is one of the elements that is a requirement for the creation and validity of a marriage agreement. This is based on Article 29 paragraph (1) of the Marriage Law which states that the validity of a marriage agreement is if the marriage agreement is made through a notarial deed and registered by a Marriage Registrar. The registration of a marriage agreement can be useful, among other things, to determine the legal certainty of the date of the creation and validity of the marriage agreement. The registration of a marriage agreement is also useful to minimize the occurrence of falsification of the date of the creation of the marriage agreement deed. A notarial deed in a marriage agreement is an official form of deed when compared to the creation of a marriage agreement made privately.

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