

Legal Position of Marriage Agreement Deeds that are Not Registered in Court (Study of Supreme Court Decision Number 598 PK/PDT/2016 dated November 24, 2016)

Ariyani Kurnia Illahi

Master of Notary Law, Faculty of Law, Universitas Islam Sultan Agung (UNISSULA)
Semarang, Indonesia, E-mail: ariyanikurniaillahi.std@unissula.ac.id

Abstract. *A prenuptial agreement is an important legal instrument in regulating marital property as regulated in Article 29 of Law Number 1 of 1974 concerning Marriage. Registration of a prenuptial agreement in a court or authorized institution is a formal requirement that determines the legal force of the agreement, particularly in providing legal certainty for the parties and protection for third parties. However, in practice, prenuptial agreements are still found to be made before a notary but not properly registered, giving rise to legal uncertainty regarding their validity and legal consequences. Supreme Court Decision Number 598 PK/PDT/2016 is an important precedent that provides a new perspective in understanding the legal status of unregistered prenuptial agreements. This study aims to analyze the legal status of unregistered prenuptial agreements in court and the legal implications they have for the parties and third parties. The normative juridical method with a statutory and conceptual approach, analyzes Supreme Court Decision Number 598 PK/PDT/2016 as a case study. The results of the study indicate that unregistered prenuptial agreements remain binding on the parties based on the principle of pacta sunt servanda (Article 1338 of the Civil Code), but do not have legal force against third parties according to the principle of publicity. The legal implications include difficulties in proving the agreement in court, the application of a unity of property regime to third parties, the risk of execution of assets by creditors, and complexity in inheritance distribution. The study recommends the need for regulatory revisions, simplification of registration procedures, implementation of electronic systems, and increased public outreach to ensure legal certainty and protection of the rights of all parties.*

Keywords: Agreement; Implications; Legal; Marriage; Registration.

1. Introduction

Marriage is a sacred bond with complex legal implications in Indonesian society. Every married couple has the right to enter into a prenuptial agreement, a legal instrument governing marital property. A prenuptial agreement serves as an important tool to protect the interests of each party in a marriage. The complexity of managing marital property demands legal clarity in every agreement. Applicable legal mechanisms require specific procedures for drafting and registering prenuptial agreements. Failure to comply with legal procedures often creates complex problems. The evolving dynamics of the law require an in-depth study of the legal implications of unregistered prenuptial agreements.¹

Supreme Court Decision No. 598 PK/PDT/2016 is an important starting point in understanding the legal status of unregistered marriage contracts. This decision presents a new perspective in interpreting legal provisions related to marriage contracts. The Supreme Court provides complex legal considerations regarding the legal status of marriage contracts that do not undergo official registration procedures. The urgency of this research lies in the need to comprehensively analyze the legal implications of this decision. The legal issues that arise related to the evidentiary power of unregistered marriage contracts are the main focus of the study. The evolving legal dynamics demand a deep understanding of the legal consequences of procedural non-compliance. The complexity of this legal issue requires critical analysis to uncover the various dimensions of the problem.²

Legal developments related to prenuptial agreements demonstrate the increasingly complex and dynamic nature of legal issues. The Supreme Court, through its ruling, has provided a new interpretation regarding the legal standing of unregistered prenuptial agreements. The legal implications of this ruling have opened up broader academic discussion. This research aims to comprehensively analyze various legal aspects related to this issue. The complexity of legal regulations demands in-depth study to understand the various dimensions of the problem. The evolving legal dynamics demonstrate the need for a holistic approach to understanding family law issues. The urgency of this research lies in the need to make an academic contribution to the realm of civil law.

Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Almighty God.³In the context of Indonesian positive law, marriage is not only seen as a sacred bond but also has significant legal implications, especially regarding marital property.⁴Law Number 1 of 1974 concerning Marriage stipulates that couples who are going to marry can make a marriage agreement to regulate the

¹Law Number 1 of 1974 concerning Marriage

²Supreme Court Decision Number 598 PK/PDT/2016

³Article 1 of Law Number 1 of 1974 concerning Marriage.

⁴Sonny Dewi Judiasih, 2019. Marital Property: A Study of the Equality of Rights and Position of Husband and Wife in Ownership of Property in Marriage, Bandung: Refika Aditama, p. 23.

management of property during the marriage. The marriage agreement as a legal instrument has a preventive function in anticipating problems that may arise related to property in marriage. Article 29 of the Marriage Law stipulates that the marriage agreement must be made in writing and approved by a marriage registrar.⁵ However, in practice, it is not uncommon to find marriage agreements made before a notary but not registered with a marriage registrar.⁶ This condition gives rise to legal problems regarding the validity and binding force of the marriage agreement.

A marriage agreement is a legal instrument that allows husband and wife to regulate the separation of assets during the marriage, as regulated in Article 29 of Law Number 1 of 1974 concerning Marriage.⁷ This agreement aims to protect the rights of the parties to the marriage, particularly regarding property, both before and during the marriage. In practice, a marriage agreement is usually drawn up in the form of an authentic deed by a notary to ensure its evidentiary validity.⁸ According to Indonesian civil law, a marriage contract deed drawn up before a notary must meet formal and substantive requirements to be considered valid and legally binding. One important formal requirement is the obligation to register the marriage contract at the Civil Registry Office or the Office of Religious Affairs after the contract is drawn up. This is regulated in Article 29 paragraph (1) of the Marriage Law, which states that a marriage contract must be drawn up before or at the time of the marriage and must be registered.⁹

However, in practice, there are several cases where marriage agreements made before a notary are not properly registered, thus giving rise to legal uncertainty regarding the validity of the deed.¹⁰ One important case that raised this issue was Supreme Court Decision No. 598 PK/PDT/2016, which ruled that unregistered marriage contracts have no legal force. This decision raises important questions about the legal status of marriage contracts drawn up before a notary but that do not fulfill the registration requirement. This case raises several significant legal issues. First, can an unregistered marriage contract still be considered legally valid, given its function of protecting the interests of the parties in the marriage? Second, what are the legal implications for the parties, particularly regarding the separation of marital assets and the rights of third parties, if the marriage contract

⁵Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage.

⁶Damanhuri HR, 2019, *Legal Aspects of Joint Property Marriage Agreements*, Bandung: Mandar Maju, p. 12.

⁷Article 29 of Law Number 1 of 1974 concerning Marriage.

⁸R. Soetojo Prawirohamidjojo and Marthalena Pohan, 2020, *Law of Individuals and Families*, Surabaya: Airlangga University Press, p. 74.

⁹Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage.

¹⁰Tan Thong Kie, 2019, *Notary Studies and All About Notary Practice*, Jakarta: Ichtiar Baru van Hoeve, p. 87.

is deemed invalid? Third, how does the Supreme Court view this issue in its decision, and does the decision reflect progressive legal developments or not.¹¹

This problem is further complicated by the Supreme Court Decision Number 598 PK/PDT/2016 which gives rise to a new interpretation regarding the validity of unregistered marriage agreements.¹² This ruling offers a different perspective from the conventional understanding of the formal requirements of a marriage contract as stipulated in laws and regulations. This has created legal uncertainty in notarial practice and the marriage registration system in Indonesia.¹³ In the context of legal certainty, the existence of a notarial deed as an authentic document should provide legal assurance and protection for the parties. However, when a notarially executed marriage contract is not registered, questions arise regarding its validity and binding force, particularly regarding the principles of publicity and third-party protection. This issue is increasingly relevant given the growing public awareness of the importance of a marriage contract as an instrument of legal protection in marriage.¹⁴

The phenomena of globalization and modernization also have implications for the complexity of legal relationships within marriage, including the management of property. Increasing social and economic mobility, as well as the growing number of mixed marriages, have made the need for prenuptial agreements increasingly significant. Therefore, the study of the validity of unregistered prenuptial agreements has become increasingly relevant in the context of contemporary developments in Indonesian marriage law.

Based on the complexity of these issues, a comprehensive study is needed regarding the validity of marriage agreements made before a notary but not registered, by analyzing the Supreme Court Decision Number 598 PK/PDT/2016 as a landmark decision that provides a new perspective in the discourse of marriage law in Indonesia. This study is not only important for the development of legal science but also has practical significance for notarial practice and the marriage registration administration system in Indonesia.

2. Research Methods

This study uses a normative juridical research method with a statutory approach and a conceptual approach. The statutory approach is carried out by examining Law Number 1 of 1974 concerning Marriage, the Civil Code, Law Number 30 of 2004 concerning the Position of Notary as amended by Law Number 2 of 2014, and other related laws and regulations governing marriage agreements. The

¹¹Peter Mahmud Marzuki, 2019, *Introduction to Legal Science*, Jakarta: Kencana, p. 158.

¹²Decision of the Supreme Court of the Republic of Indonesia Number 598 PK/PDT/2016.

¹³Habib Adjie, 2019, *Civil and Administrative Sanctions Against Notaries as Public Officials*, Bandung: Refika Aditama, p. 92.

¹⁴Wahyono Darmabrata and Surini Ahlan Sjarif, 2020, *Marriage and Family Law in Indonesia*, Jakarta: Publishing Agency of the Faculty of Law, University of Indonesia, p. 96.

conceptual approach is used to analyze legal concepts such as legal standing, agreement deeds, registration, and legal implications related to the research problem. In addition, this study also uses a case approach through an analysis of the Supreme Court Decision Number 598 PK/PDT/2016 as the main case study that is the focus of the study. The specifications of this research are descriptive analytical, which seeks to describe and analyze in depth the legal standing of unregistered marriage agreement deeds in court and the resulting legal implications. This study describes the legal provisions governing marriage agreements, registration procedures, and the legal consequences of non-registration. It then analyzes these issues within the context of legal certainty theory and legal protection theory. The analysis is conducted comprehensively by examining various related legal dimensions, including aspects of civil law, family law, and civil procedural law. The data collection method used is library research with documentation techniques. The data collected consists of primary legal materials covering laws and regulations related to marriage, the position of notary, and civil law, as well as Supreme Court Decision Number 598 PK/PDT/2016. Secondary legal materials are obtained from law books, scientific journals, legal articles, research results, and scientific papers relevant to the research topic. Tertiary legal materials used include legal dictionaries, legal encyclopedias, and other supporting materials that provide explanations of primary and secondary legal materials. Data collection is carried out through inventory, classification, and systematization of legal materials in accordance with the research problem formulation. The data analysis method used is a qualitative method with descriptive analysis techniques. The collected data was analyzed qualitatively by systematically organizing the data, interpreting the meaning contained in the legal materials, and connecting one piece of data to another to find answers to the research problems. The analysis was conducted using deductive logic, drawing conclusions from the general to the specific. The analysis process begins by reviewing the general provisions regarding marriage agreements in laws and regulations, then analyzing specifically the legal status and legal implications of unregistered marriage agreements based on Supreme Court Decision Number 598 PK/PDT/2016. The results of the analysis are then presented descriptively in the form of a logical and argumentative systematic explanation to answer the research problems and provide constructive recommendations for improving legal regulations in the future.

3. Results and Discussion

3.1. Legal Status of Marriage Agreement Deeds That Are Not Registered in Court

A prenuptial agreement is a legal instrument regulated in the Indonesian marriage law system, with specific characteristics. According to Law Number 1 of 1974 concerning Marriage, a prenuptial agreement is an agreement made by a prospective husband and wife before or during their marriage to regulate the legal

consequences for their assets.¹⁵This concept was then strengthened by the Constitutional Court Decision Number 69/PUU-XIII/2015 which provides wider space for married couples to make marriage agreements not only before marriage but also during the marriage bond. Marriage agreements are essentially a manifestation of the principle of freedom of contract regulated in the Civil Code, specifically Article 1338 which states that all agreements made legally apply as law for those who make them.¹⁶In the context of family law, a prenuptial agreement plays a strategic role as an instrument for regulating the separation or union of assets between husband and wife. A distinctive characteristic of a prenuptial agreement is its personal nature and its close relationship to the legal status of the parties as husband and wife. Regulations regarding prenuptial agreements are found not only in the Marriage Law but also in the Civil Code as a general rule governing agreements. The complexity of these regulations demonstrates that prenuptial agreements have a multifaceted legal dimension, encompassing both family law and contract law. Therefore, a comprehensive understanding of the legal standing of prenuptial agreements is crucial in legal practice. The registration or recording of prenuptial agreements is a crucial issue affecting their legal force and effectiveness. In practice, there are various interpretations and views regarding the legal consequences of unregistered prenuptial agreements. This complexity requires in-depth analysis to understand the proper legal standing of prenuptial agreements within the Indonesian legal system.

The legal basis for marriage agreements in the Indonesian legal system comes from various interrelated and complementary laws and regulations. Law Number 1 of 1974 concerning Marriage in Article 29 paragraph (1) explicitly stipulates that at the time or before the marriage takes place, both parties with mutual consent can enter into a written agreement that is ratified by a marriage registrar.¹⁷This provision then underwent significant changes through Constitutional Court Decision Number 69/PUU-XIII/2015, which extended the time period for making a marriage agreement not only before marriage but also during the marriage bond. Article 29 paragraph (2) of the Marriage Law further emphasizes that the agreement cannot be validated if it violates the boundaries of law, religion, and morality.¹⁸The Civil Code also provides a strong legal basis through Articles 139 to 154, which regulate marriage agreements in detail. Article 147 of the Civil Code specifically stipulates that a marriage agreement takes effect on the day the marriage takes place and cannot be changed during the marriage.¹⁹ The provisions in Article 152 of the Civil Code regulate the obligation to announce a marriage agreement in a newspaper designated by the judge. Furthermore, Article 1338 of

¹⁵Abdul Manan 2006, *Various Problems of Islamic Civil Law in Indonesia*, Jakarta: Kencana Prenada Media Group, p. 89

¹⁶Subekti 2005, *Contract Law*, Jakarta: Intermasa, p. 45

¹⁷Hilman Hadikusuma 2007, *Indonesian Marriage Law According to Statutes, Customary Law, and Religious Law*, Bandung: CV. Mandar Maju, p. 156

¹⁸Wahyono Darmabrata 2009, *Civil Marriage Law*, Jakarta: Rizkita, p. 78

¹⁹R. Subekti and R. Tjitrosudibio 2008, *Civil Code*, Jakarta: PT Pradnya Paramita, p. 45

the Civil Code serves as the philosophical basis that stipulates that all legally made agreements apply as law to those who make them.²⁰ Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage in Article 12 also regulates the procedures for registering marriage agreements.

Failure to register a marriage contract with the courts has complex legal consequences, particularly for the relationship between the parties to the marriage. From a contract law perspective, an unregistered marriage contract remains binding on the parties based on the principle of *pacta sunt servanda* as stipulated in Article 1338 of the Civil Code.²¹ This means that even if it is not registered, the marriage contract remains binding on the husband and wife who made it as long as it meets the requirements for a valid agreement. However, this lack of registration can create problems in terms of proof in court if a dispute arises between husband and wife. The court may question the validity and legal force of the agreement given that formal procedures stipulated in the law have not been followed. In judicial practice, there is a tendency for courts to be more cautious in recognizing the legal force of unregistered marriage contracts, even if the agreement does not substantially violate applicable law. The aspect of legal certainty is a key issue in this case, because lack of registration can create uncertainty regarding the legal status of the agreement. In terms of the burden of proof, the party alleging the existence of an unregistered marriage contract will face greater difficulties in proving the existence and contents of the agreement in court.²² This can impact legal protection for one of the parties, especially the economically weaker party. Furthermore, unregistered agreements can also create problems in the enforcement of agreements, particularly those related to property transactions. Nevertheless, some court decisions tend to recognize the legal force of unregistered marriage agreements as long as their existence can be proven and they do not conflict with law, morality, or public order. This complexity demonstrates the need for caution in drafting marriage agreements and the importance of understanding the legal consequences of such unregistered agreements. Therefore, although unregistered marriage agreements still have legal force for the parties, the legal risks they pose are quite significant and must be carefully considered.

Failure to register a marriage contract has a significant impact on third parties and the public interest, which is one of the fundamental reasons why the law stipulates the obligation to register. Based on the principle of publicity stipulated in Article 152 of the Civil Code, a marriage contract must be announced to protect the interests of third parties acting in good faith.²³ Without registration and

²⁰Abdulkadir Muhammad 2010, *Contract Law*, Bandung: PT. Alumni, p. 92

²¹Mariam Darus Badruzaman 2001, *Compilation of Contract Law*, Bandung: PT Citra Aditya Bakti, p. 234

²²Riduan Syahrani 2013, *The Ins and Outs and Principles of Civil Law*, Bandung: Alumni, p. 176

²³J. Satrio 2004, *Marital Property Law*, Bandung: PT Citra Aditya Bakti, p. 198

publication, third parties lack access to information regarding the legal status of the marital assets, which can lead to disadvantages in business transactions or other agreements. In the context of business law, unregistered marriage agreements can create serious problems for creditors or parties engaging in transactions with one or both parties to the marriage. Creditors may have difficulty determining which assets can be used as collateral or enforced to settle debts. This contradicts the principles of legal certainty and legal protection for third parties, which are integral to a healthy legal system. From the perspective of state administrative law, unregistered marriage agreements can also create problems in population registration and documentation. Government agencies that handle population affairs require accurate information regarding the legal status of a citizen's marriage and assets for various administrative purposes.²⁴In banking and financial institutions, unregistered marriage contracts often hinder the granting of credit or loans. Banks and financial institutions require legal certainty regarding the status of assets pledged as collateral, and the unclear status resulting from an unregistered marriage contract can hinder access to credit facilities. Furthermore, in the context of property sales and purchase transactions, unregistered marriage contracts can create problems in determining who has the right to transact property. Notaries and Land Deed Officials (PPAT) often experience difficulty in ensuring the validity of transactions when the status of assets is unclear due to an unregistered marriage contract. The impact on the judicial system cannot be ignored either, as unregistered contracts can lead to increased legal disputes due to unclear legal status of assets.²⁵From a public policy perspective, the failure to register a marriage contract can hinder good governance in government administration, particularly in public services that require accurate data on citizens' legal status. The complexity of these impacts demonstrates that registering a marriage contract is not only a private matter for the parties but also a broader public interest.

3.2. Legal Implications of Unregistered Marriage Contracts

A prenuptial agreement is a legal instrument regulated in the Indonesian marriage law system, which provides prospective husbands and wives with the opportunity to manage their assets differently from generally applicable legal provisions. According to Article 29 of Law Number 1 of 1974 concerning Marriage, a prenuptial agreement must be made in writing and certified by a marriage registrar.²⁶ This registration obligation is not merely an administrative formality, but rather a substantive requirement that determines the legal force of the agreement. Article 29 paragraph (1) expressly states that a marriage agreement that is not validated by a marriage registrar has no binding legal force against third parties. This provision was later strengthened by Constitutional Court Decision Number

²⁴Titik Triwulan Tutik 2008, *Civil Law in the National Legal System*, Jakarta: Kencana Prenada Media Group, p. 267

²⁵Soedharyo Soimin 2009, *Law of Individuals and Families*, Jakarta: Sinar Grafika, p. 145

²⁶Ahmad Rofiq 2013, *Islamic Marriage Law in Indonesia*, Raja Grafindo Persada, Jakarta, p. 145.

69/PUU-XIII/2015 which allows the creation of a marriage agreement after the marriage has taken place, but still with the condition that it must be registered with a marriage registrar.²⁷ Registration of a marriage contract serves as a form of legal publicity that provides legal certainty for both parties and interested third parties. Without proper registration, a marriage contract loses its function as an effective instrument of legal protection. The implications of not registering a marriage contract encompass various complex legal aspects, ranging from material and contractual aspects to protection of third parties. This registration provision aligns with the principle of publicity in property law, which requires the announcement or registration of legal acts that may affect the rights of third parties. In the context of Indonesian marriage law, registration of a marriage contract is a manifestation of the principle of legal certainty, a key pillar of the national legal system. Therefore, examining the legal implications of not registering a marriage contract is highly relevant in providing a comprehensive understanding of the importance of compliance with procedural provisions established by law. The complexity of this issue increases when linked to various other laws and regulations related to property law, contract law, and civil procedure.

The most significant implication of not registering a marriage contract is the distribution of marital property, which is the core purpose of the marriage contract itself. In the Indonesian marriage legal system, there are two marital property regimes that prospective husbands and wives can choose from: the community of property regime (*gemeenschap van goederen*) and the separation of property regime.²⁸ Without a valid marriage agreement, the community of property regime automatically applies as regulated in Article 35 of the Marriage Law, which states that property acquired during the marriage becomes joint property.²⁹ When a marriage agreement governing the separation of assets is not registered, the community of assets regime still applies to third parties, even though the husband and wife may have agreed to the separation of assets. The practical consequence of this situation is that creditors of one party can claim assets that have been internally agreed to as separate assets, because legally, these assets are still considered joint assets. Article 1131 of the Civil Code stipulates that all assets of the debtor, whether movable or immovable, whether existing or new, will be secured for all individual obligations.³⁰ In the context of marital property, this provision means that joint property between husband and wife can be subject to execution to settle the debts of one of the parties, unless there is a valid marriage agreement that stipulates otherwise. The failure to register a marriage agreement also has implications for the rights of husband and wife to take legal action against certain assets, because under the community of property regime, there is a

²⁷Bismar Nasution 2016, "Implications of the Constitutional Court's Decision on Marriage Agreements", *Constitutional Journal*, vol. 13, no. 2, p. 234.

²⁸Abdulkadir Muhammad 2017, *Property Law*, Citra Aditya Bakti, Bandung, p. 189.

²⁹Wahyono Darmabrata 2018, *Marriage and Family Law in Indonesia*, Publishing Agency of the Faculty of Law, University of Indonesia, Depok, p. 201.

³⁰R. Subekti and R. Tjitrosudibio 2019, *Civil Code*, Pradnya Paramita, Jakarta, p. 289.

restriction that legal action against joint assets must be carried out with the consent of both parties. This situation can give rise to internal conflict within the household when there are differing perceptions regarding the status of certain assets. The complexity of the problem increases when linked to the provisions of Law Number 5 of 1960 concerning Basic Agrarian Regulations, which regulates land and building registration. In practice, the National Land Agency often requires information regarding the status of marital assets for the registration or transfer of land rights, and the absence of a registered marriage agreement can complicate these administrative processes.³¹

Given the complexity of the legal implications arising from unregistered marriage contracts, concrete steps are needed to address this issue, both preventively and curatively. From a preventive perspective, legal education for the public regarding the importance of registering marriage contracts is crucial, given that many couples still do not understand the legal consequences of non-compliance with registration requirements. The Ministry of Law and Human Rights, as the institution responsible for civil law, can collaborate with the Ministry of Religious Affairs and other relevant agencies to conduct comprehensive outreach regarding the provisions of Article 29 of the Marriage Law.³² From a curative perspective, couples who have a marriage contract but have not yet registered it can utilize the provisions of Constitutional Court Decision Number 69/PUU-XIII/2015, which allows for the creation or registration of a marriage contract after the marriage has taken place. This step requires the consent of both parties and must not harm third parties who have acted in good faith in carrying out previous legal acts. In the event of a dispute arising from the failure to register a marriage contract, the parties can resort to mediation or arbitration as stipulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution.³³ Legal remedies through the courts are also possible, but it must be recognized that the prospects for victory are limited, especially when involving a good-faith third party. To mitigate legal risks, it is recommended that couples with unregistered marriage contracts periodically review their property status and consider registering the marriage contract as soon as possible. From a legal policy perspective, harmonization of various laws and regulations related to property law is needed, particularly in providing certainty regarding the procedures and consequences of registering marriage contracts. The development of an integrated legal information system can also help third parties obtain accurate information regarding the status of marriage contracts before undertaking significant legal actions. Collaboration between notaries, lawyers, and financial institutions in advising clients on the importance of registering marriage contracts can also be a practical solution to reduce similar cases in the future. Ultimately, a

³¹Urip Santoso 2020, *Agrarian Law: A Comprehensive Study*, Kencana, Jakarta, p. 178.

³²Neng Djubaedah 2025, *Registration of Marriages and Unregistered Marriages According to Written Law in Indonesia and Islamic Law*, Sinar Grafika, Jakarta, p. 201.

³³Suyud Margono 2016, *ADR Alternative Dispute Resolution and Arbitration Institutionalization Process and Legal Aspects*, Ghalia Indonesia, Bogor, p. 178.

comprehensive solution to this problem requires a commitment from all stakeholders to uphold the rule of law and ensure legal certainty for all parties involved in the institution of marriage.

4. Conclusion

Based on the analysis, an unregistered marriage contract remains binding on the husband and wife based on the principle of *pacta sunt servanda* (Article 1338 of the Civil Code) as long as it meets the requirements for a valid contract. However, non-registration has serious consequences in the form of difficulty in proving the contract in court, legal uncertainty, and the non-binding of the contract on third parties in good faith due to the failure to fulfill the principle of publicity (Article 152 of the Civil Code). Although valid for the parties, the legal risks are very large, so registration remains essential for legal certainty for all interested parties. Based on the analysis, the main legal implication of an unregistered marriage agreement is that the agreement is only binding internally between husband and wife (Article 1338 of the Civil Code), but does not bind third parties (Article 29 paragraph 1 of the Marriage Law). Unregistration results in the application of a unity of property regime to third parties even though the separation of assets has been agreed upon, so that creditors can execute the separated assets, giving rise to complex problems in the distribution of inheritance, and difficulties in proving because the deed loses its authentic quality. Thus, registration is not merely an administrative formality but a substantive requirement that determines the effectiveness of the agreement in providing legal certainty and protection for all parties, including third parties in good faith.

5. References

Journals:

Nasution, Bismar. 2016. Implikasi Putusan Mahkamah Konstitusi Terhadap Perjanjian Perkawinan. *Jurnal Konstitusi*, 13(2), 234.

Books:

Adjie, Habib. 2019. *Sanksi Perdata dan Administratif Terhadap Notaris Sebagai Pejabat Publik*. Refika Aditama, Bandung.

Badruzaman, Mariam Darus. 2001. *Kompilasi Hukum Perikatan*. PT Citra Aditya Bakti, Bandung.

Darmabrata, Wahyono & Sjarif, Surini Ahlan. 2020. *Hukum Perkawinan dan Keluarga di Indonesia*. Badan Penerbit Fakultas Hukum Universitas Indonesia, Jakarta.

Darmabrata, Wahyono. 2009. *Hukum Perkawinan Perdata*. Rizkita, Jakarta.

- Darmabrata, Wahyono. 2018. *Hukum Perkawinan dan Keluarga di Indonesia*. Badan Penerbit Fakultas Hukum Universitas Indonesia, Depok.
- Djubaedah, Neng. 2025. *Pencatatan Perkawinan dan Perkawinan Tidak Dicatat Menurut Hukum Tertulis di Indonesia dan Hukum Islam*. Sinar Grafika, Jakarta.
- Hadikusuma, Hilman. 2007. *Hukum Perkawinan Indonesia Menurut Perundangan, Hukum Adat, Hukum Agama*. CV Mandar Maju, Bandung.
- HR, Damanhuri. 2019. *Segi-Segi Hukum Perjanjian Perkawinan Harta Bersama*. Mandar Maju, Bandung.
- Judiasih, Sonny Dewi. 2019. *Harta Benda Perkawinan: Kajian terhadap Kesetaraan Hak dan Kedudukan Suami Istri atas Kepemilikan Harta dalam Perkawinan*. Refika Aditama, Bandung.
- Kie, Tan Thong. 2019. *Studi Notariat dan Serba-Serbi Praktek Notaris*. Ichtiar Baru van Hoeve, Jakarta.
- Manan, Abdul. 2006. *Aneka Masalah Hukum Perdata Islam di Indonesia*. Kencana Prenada Media Group, Jakarta.
- Margono, Suyud. 2016. *ADR Alternative Dispute Resolution dan Arbitrase Proses Pelembagaan dan Aspek Hukum*. Ghalia Indonesia, Bogor.
- Marzuki, Peter Mahmud. 2019. *Pengantar Ilmu Hukum*. Kencana, Jakarta.
- Muhammad, Abdulkadir. 2010. *Hukum Perjanjian*. PT Alumni, Bandung.
- Muhammad, Abdulkadir. 2017. *Hukum Harta Kekayaan*. Citra Aditya Bakti, Bandung.
- Prawirohamidjojo, R. Soetojo & Pohan, Marthalena. 2020. *Hukum Orang dan Keluarga*. Airlangga University Press, Surabaya.
- Rofiq, Ahmad. 2013. *Hukum Perkawinan Islam di Indonesia*. Raja Grafindo Persada, Jakarta.
- Santoso, Urip. 2020. *Hukum Agraria Kajian Komprehensif*. Kencana, Jakarta.
- Satrio, J. 2004. *Hukum Harta Perkawinan*. PT Citra Aditya Bakti, Bandung.
- Soimin, Soedharyo. 2009. *Hukum Orang dan Keluarga*. Sinar Grafika, Jakarta.
- Subekti, R. & Tjitrosudibio, R. 2008. *Kitab Undang-Undang Hukum Perdata*. PT Pradnya Paramita, Jakarta.
- Subekti, R. & Tjitrosudibio, R. 2019. *Kitab Undang-Undang Hukum Perdata*. Pradnya Paramita, Jakarta.

Subekti, R. 2005. *Hukum Perjanjian*. Intermasa, Jakarta.

Syahrani, Riduan. 2013. *Seluk Beluk dan Asas-Asas Hukum Perdata*. Alumni, Bandung.

Tutik, Titik Triwulan. 2008. *Hukum Perdata dalam Sistem Hukum Nasional*. Kencana Prenada Media Group, Jakarta.

Regulation:

Supreme Court Decision of the Republic of Indonesia Number 598 PK/PDT/2016.

Law Number 1 of 1974 concerning Marriage.