

The Role of Notaries in Making Marriage Agreement Deeds After the Constitutional Court Decision Number 69/PUU-XIII/2015 in 2015

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Abstract. *Problems in marriage certainly result in very systematic legal consequences, especially regarding the rights and obligations of husband and wife, the legal status of husband and wife, family assets and children born in marriage, and assets of husband and wife that are not clearly regulated are feared to cause a mixture of the assets brought by each party and cause problems between the two parties. The purpose of this study is to analyze the implementation of the Marriage Agreement before and after the Constitutional Court Decision Number 69/PUU-XIII/2015 and to determine the role of the Notary in relation to the preparation of the Marriage Agreement deed after the Constitutional Court Decision Number 69/PUU-XIII/2015. The research method used is the Sociological legal approach method, namely research that focuses on the legal science aspect and connects the legal rules that apply in society. This approach method is used because it focuses on existing legislation and is related to practice in the field. From the results of the analysis and discussion regarding the role of Notaries in making Marriage Agreement Deeds after the Constitutional Court Decision Number 69/PUU-XIII/2015, it can be concluded that before the Constitutional Court decision, marriage agreements can only be made before the marriage takes place, while after the Constitutional Court decision, marriage agreements can be made before and during the marriage takes place and Notaries still have the authority to make marriage agreement deeds. The mechanism used is to write down the wishes of the husband and wife by applying Article 1338 of the Civil Code concerning the freedom to make contracts and Article 1320 of the Civil Code concerning the valid requirements for agreements.*

Keywords : Agreement; Constitutional; Court; Decision; Marriage.

1. Introduction

Humans are social creatures that cannot be separated from the presence of other humans, to fulfill biological needs and continue the lineage of humans must have a bond between men and women or what is called marriage. To step into the level of marriage must go through stages, one of which is that both prospective husband and wife must get married.

Article 1 of Law No. 1 of 1974 concerning Marriage, provides an understanding of marriage, namely a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy family (Household) based on the Almighty God. On this basis, marriage is expected to form a happy and eternal family that believes in the Almighty God, and is expected to be happy forever in accordance with the principles or principles of a marriage.¹

Problems in marriage certainly result in very systematic legal consequences, especially regarding the rights and obligations of husband and wife, the legal status of husband and wife, family assets and children born in marriage, and assets of husband and wife that are not clearly regulated are feared to cause a mixture of the assets brought by each party and cause problems between the two parties.

It is known that there is a marriage agreement regulated in Chapter VII of the Civil Code Article 139, but after the issuance of Law No. 1 Article 29 of 1974, the marriage agreement in the Civil Code is rarely used. In the Compilation of Islamic Law, the marriage agreement is also regulated in Article 47. The definition of a marriage agreement is not obtained in this article, this article only regulates the time of implementation, its validity, the time of validity and the possibility of changing the agreement.

Although it is not stated in the Marriage Law, the intent and purpose of the marriage agreement is intended to be regarding the management of the marital assets of the husband and wife in the marriage, so it can be concluded by interpreting the term marriage agreement in the Civil Code in connection with Article 29 of Law No. 1 of 1974 and the marriage agreement according to the Compilation of Islamic Law which was previously in effect.²

The making of a marriage agreement must fulfill the valid conditions for an agreement as stated in Article 1320 of the Civil Code which states "for an agreement to be valid, four conditions are required: 1. The agreement of those who bind themselves 2. The capacity to make an agreement 3. A certain thing 4. A

¹Soemiyati, 1974, *Islamic Marriage Law and Marriage Law Law No. 1 of 1974*, Liberti, Yogyakarta, p. 55.

²Martiman Prodjohamidjojo, 2002, *Indonesian Marriage Law*, Indonesia Legal Center Publishing, Jakarta, pp. 49-50.

lawful cause"³. it can be said that if the four conditions in an agreement are not met then it will automatically be void by law.

Article 1338 of the Civil Code states that "all agreements made legally apply as laws for those who make them". So it can be concluded that a marriage agreement can be made according to the wishes of the prospective bride or groom that does not conflict with the Constitution of the Republic of Indonesia, does not violate religious law and morality, marriage agreements usually regulate the separation of joint assets and assets brought, about the separation of debts, and the responsibility of children from the marriage and so on.

Making an agreement in marriage is permissible, meaning that someone may make an agreement or may not make one. However, once it has been made, how is the law to fulfill the requirements contained in the marriage agreement, has become a topic of discussion among scholars. The majority of scholars are of the opinion that fulfilling the requirements stated in the form of the agreement is obligatory, just as the law to fulfill other agreements, even the requirements related to marriage are more entitled to be implemented. The obligation to fulfill the requirements contained in the agreement and being bound by the continuation of the marriage depends on the form of the requirements contained in the agreement. In this case, scholars divide the requirements into three:⁴

1. Conditions that are directly related to the implementation of husband and wife obligations in marriage and are demands of marriage itself.
2. Conditions that are contrary to the essence of marriage or that are specifically prohibited from being carried out or cause harm to certain parties.
3. The conditions do not violate the requirements of marriage and there are no specific prohibitions, but there is no requirement from the sharia to do it.

There are differences regarding the provisions of the marriage agreement between the Civil Code and Article 29 of Law No. 1 of 1974. The Civil Code formulates the provisions of the marriage agreement in concrete terms, but the scope of the agreement is not expressly regulated. In terms of procedures, according to the Civil Code, the marriage agreement is ratified by a Notary and cannot be changed without exception. In contrast to Law No. 1 of 1974, which stipulates that the marriage agreement is ratified by a marriage registrar and there is a possibility of

³Prof. Subekti, SH, 2004, *Contract Law*, PT Intermasa, Jakarta, p. 15.

⁴Amir Syarifuddin, 2014, *Islamic Marriage Law in Indonesia*, Kencana, Jakarta, p. 146.

changing it as long as there is the consent of the husband and wife and the change does not harm a third party.⁵

On October 27, 2016, the Constitutional Court through its decision on the petition for judicial review of the Marriage Law and UUPA with registration number 69/PUU-XIII/2015 has made a new breakthrough regarding the marriage agreement in Article 29 of the Marriage Law. The Constitutional Court is given special authority to conduct a judicial review of the material content of a Law that considered to be in conflict with the 1945 Constitution of the Republic of Indonesia in accordance with Article 24 C paragraph (1).⁶

Based on the Constitutional Court Decision Law No. 1 of 1974 Article 29 paragraph (1), paragraph (3), paragraph (4) and Article 35, it was decided that:

1. "at the time or before the marriage takes place, both parties, with mutual consent, may enter into a written agreement, which is ratified by a marriage registrar, after which the contents shall also apply to third parties as long as the third party is involved". Should be read "at the time or before or during the marriage takes place, both parties, with mutual consent, may enter into a written agreement which is ratified by a marriage registrar, after which the contents shall also apply to third parties as long as the third party is involved."
2. "The agreement shall come into force from the time the marriage takes place" should be read as "the agreement shall come into force from the time the marriage takes place, unless otherwise specified in the marriage agreement"
3. "during the marriage, the agreement cannot be changed, unless there is an agreement from both parties to change it, and the change does not harm a third party". Should be read "during the marriage, the marriage agreement regarding marital property, or other agreements cannot be changed or revoked, unless there is an agreement from both parties to change it or revoke it, and the change or revocation does not harm a third party".
4. "Property acquired during marriage becomes joint property". Should be read as "joint property, except for Land Ownership Rights and Building Use Rights for Indonesian citizens who marry foreign nationals, only the rights of Indonesian citizens, while still applying the principle of nationality and not harming the rights of foreign nationals in Indonesia in accordance with applicable laws and regulations."

⁵A. Damanhuri, 2012, *Legal Aspects of Joint Property Marriage Agreements*, CV. Mandar Maju, Bandung, p. 24

⁶DY Witanto, 2012, *Family Law: Rights and Status of Children Born Outside of Marriage (After the Issuance of the Constitutional Court Decision on the Judicial Review of the Marriage Law)*, Prestasi Pustakaraya, Jakarta, p. 222

Constitutional Court Decision Number 69/PUU/XII/2015 has had a major impact on legal developments in Indonesia, especially regarding marriage law and ownership of property rights in Indonesia.

The existence of the Constitutional Court Decision certainly has constitutional changes and implementation related to Article 29 of Law No. 1 of 1974 concerning Marriage Agreements and Article 147 of the Civil Code concerning the making of marriage agreements that must be made by a Notary.

2. Research Methods

The research approach method used in this thesis is the sociological legal research method. Sociological legal research emphasizes research that aims to obtain legal knowledge empirically by going directly to the object.⁷The specification of this research uses descriptive analysis, namely research that in addition to providing a description, writing and reporting an object or an event will also draw general conclusions from the problems discussed. Data sources come from primary data and secondary data. Data collection methods include interviews, Document Studies or Library Materials. The data analysis method used in analyzing data is an interactive qualitative model analysis as proposed by miles and Huberman.

3. Results and Discussion

3.1. Implementation of Marriage Agreement before and after the Constitutional Court Decision Number 69/PUU-XIII/2015 of 2015

This type of marriage agreement is commonly referred to as a pre-nuptial agreement (abbreviated as pre-nupt), or pre-marital agreement. In addition, the marriage agreement must also be made in writing, it cannot be made in the form of a private agreement. This is because the marriage agreement can have legal consequences for a third party, if the third party in question is involved in the marriage agreement made by the prospective bride and groom.

According to Article 29 of Law No. 1 of 1974, a marriage agreement is ratified by a marriage registrar, not by a notary, which has been the case for agreements in general.⁸

The existence of a marriage agreement can clarify the status of each person's property, whether it is joint property or original property. Basically, Islamic law does not explain marriage agreements in detail, but rather signals about the truth and permissibility of making agreements (universally) as long as the object does

⁷Soejono Soekanto, 2005, Introduction to Legal Research, University of Indonesia Press, Jakarta, p. 88.

⁸*Ibid*, p. 8.

not conflict with Islamic law and has elements of benefit and goodness. In a marriage agreement, we can find the benefits and advantages of a marriage agreement for the husband and wife and also benefits for other parties.

Regarding the legal consequences for third parties, Article 29 paragraph (1) confirms that a marriage agreement is binding on third parties after being ratified by a marriage registrar. This ratification is carried out by recording the marriage agreement in a marriage certificate, as regulated in Article 12 letter h of Government Regulation Number 9 of 1975 concerning the Implementation of Law No. 1 of 1974 concerning Marriage. Apart from that, a marriage agreement can bind third parties as long as the third party is involved.

The provisions of Article 29 paragraph (3) emphasize the validity period of the marriage agreement, namely since the official marriage took place. While paragraph (4) emphasizes changes to the marriage agreement during the marriage. Unlike the Civil Code which does not allow changes to the marriage agreement after the marriage has taken place, the Marriage Law provides the opportunity to change the marriage agreement, as long as both parties (husband and wife) agree to the changes, and the changes made do not harm a third party.

On October 27, 2016, the Constitutional Court decided on the judicial review of the provisions of Article 29 paragraph (1) of the Marriage Law. Constitutional Court Decision Number 69/PUU-XIII/2015 has changed the provisions regarding marriage agreements. If previously marriage agreements could only be made before and at the time of the marriage, the Constitutional Court stated that marriage agreements can be made by a husband and wife after the marriage has taken place, or during the marriage bond.

The changes in the provisions of the marriage agreement basically before and after the Constitutional Court Decision Number 69/PUU-XIII/2015 dated October 27, 2016 are only at the time of making the marriage agreement. If previously the marriage agreement could only be made by the prospective bride and groom before and at the time of the marriage, now the marriage agreement can not only be made by the prospective bride and groom before or at the time of the marriage, but can also be made by the husband and wife after the marriage takes place, or during the marriage bond.

Meanwhile, regarding the provisions for changing the marriage agreement, in essence, the opportunity has been given in the Marriage Law. Likewise, regarding the revocation of the marriage agreement, it has also been regulated in the Compilation of Islamic Law. Meanwhile, the binding power of the marriage agreement against third parties, both provisions before and after the Constitutional Court decision have not changed.

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 not binding, unless based on a court ruling requested by the husband and wife before making a marriage agreement. So without a court ruling, the marriage agreement made during the marriage bond is invalid and not binding. However, after the Constitutional Court Decision Number 69/PUU-XIII/2015, the legal 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.

Marriage agreement has its own advantages for the parties when or parties who have concerns with the husband and wife regarding all matters, especially debt or credit. With the existence of a marriage agreement letter, it will usually be written regarding the responsibility of who will pay the debt or debt bill to the third party.

The legal impact of a marriage agreement includes:

- a) The agreement binds the husband and wife.
- b) The agreement is binding on interested third parties
- c) The agreement can only be changed with the consent of both husband and wife, and must not harm the interests of a third party, and must be approved by a marriage registrar.

If there is a violation of the marriage agreement committed by a husband and wife that causes losses to a third party who has good intentions with the husband and wife because the marriage agreement is an agreement that arises due to the Law and there is no agreement made by the husband and wife and the third party, the violation is not a breach of contract because the husband and wife did not promise any performance to the third party, then the violation committed by the husband and wife that causes losses to the third party, then it can be said that the husband and wife have committed an unlawful act.

3.2. The role of a notary in the preparation of a marriage agreement deed following the Constitutional Court's decision Number 69/PUU-XIII/2015 of 2015

The main point of the Constitutional Court's decision Number 69/PUU-XIII/2015 is that a marriage agreement can be made at the time or before or during the marriage, both parties with mutual consent can enter into a written agreement that is legalized by a marriage registrar. This means changing the previous regulation in the Civil Code and Law No. 1 of 1974 that a marriage agreement must be made before the marriage is held.

The process of making a marriage agreement can be done with a notarial deed. The basis of the notary's authority in carrying out his duties and office as a notary to make an authentic deed in this case a marriage agreement deed is regulated in Law of the Republic of Indonesia Number 2 of 2014 concerning amendments to

Law No. 30 of 2004 concerning the position of a notary Article 15 Which states that: "Regarding all acts, agreements, and stipulations required by laws and regulations and/or desired by the interested party to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, storing the deed, providing grosse, copies and extracts of the deed, all of which are as long as the making of the deed is not also assigned or excluded to other officials or other people determined by law".

Mrs. Dr. Dahniarti Hasana SH,.M.Kn Notary in the Semarang administrative area, precisely in Cluster Permata, Jl. Soekarno Hatta No.Km. 26, Sikunir, Karangjati, C1, Semarang Regency, Central Java, emphasized that until now notaries still have the authority to make marriage agreements. She explained that she had made marriage agreements before and after the Constitutional Court decision Number 69/PUU-XIII/2015, she was of the opinion that the relevant time to make a marriage agreement is at the time of the contract or when the marriage takes place, so it coincides with the signing of the marriage contract at the same time.

He also stated his attitude that he respects the Constitutional Court Decision Number 69/PUU-XIII/2015, because this decision is a jurisprudence which is one of the sources of law. Jurisprudence is a decision that has permanent legal force (*inkracht van gewijsde*) and the decision of the Constitutional Court is final and binding.

He is of the opinion that the Constitutional Court Decision Number 69/PUU-XIII/2015 is very relevant because it provides an opportunity for couples to enter into agreements on the separation of property and other matters, which perhaps before or during the marriage they had not realized or understood how important it was to make such a marriage agreement.

In the implementation of making a marriage agreement deed in the field, a Notary may use the provisions contained in the Civil Code or follow the provisions contained in the Constitutional Court Decision Number 69/PUU-XIII/2015 concerning amendments to Article 29 of Law No. 1 of 1974 which permits a marriage agreement to be made before, during and after the marriage as long as it is still within the marriage period.

The marriage agreement is made with an authentic deed, referring to Article 39 of the Notary Law regarding the provisions for appearing, that the procedure for making a marriage agreement at the Notary Office of Dr. Dahniarti Hasan SH,. M.kn before the Constitutional Court Decision Number 69/PUU-XIII/2015 is as follows:

Administrative requirements that must be brought by prospective husband and wife:

- 1) KTP (Resident Identity Card)

2) KK (Family Card)

3) Birth certificate

Prospective husband and wife who wish to make a marriage contract must appear to make a marriage contract deed.

1) The notary writes down the wishes or contents of the marriage agreement that they want.

2) After the marriage agreement deed is made, it is then registered at the Office of Religious Affairs (KUA) for Muslims and the Population and Civil Registry Service (Dukcapil) for non-Muslims.

3) Next, after the prospective husband and wife have carried out the marriage contract and the marriage agreement has been ratified by the marriage registrar, the contents of the marriage agreement will be written in the marriage book of both parties.⁹

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Administrative requirements that must be brought by prospective husband and wife:

4) KTP (Resident Identity Card)

5) KK (Family Card)

6) Birth certificate

7) Proof of Ownership of Assets that have been owned.

Prospective husband and wife who wish to make a marriage contract must appear to make a marriage contract deed.

1) The notary makes a deed of agreement regarding the separation of assets.

2) The notary writes down the wishes or contents of the marriage agreement that they want.

⁹Interview with Notary Dr. Dahniarti Hasan SH,. M.kn on May 14, 2024 at the Notary's office.

3) After the marriage agreement deed is made, it is then registered at the Office of Religious Affairs (KUA) for Muslims and the Population and Civil Registry Service (Dukcapil) for non-Muslims.

4) Next, after the prospective husband and wife have carried out the marriage contract and the marriage agreement has been ratified by the marriage registrar, the contents of the marriage agreement will be written in the marriage book of both parties.

The marriage agreement is binding and applies as a law for the husband and wife and third parties, as far as the parties are concerned. If there is a dispute over the changes in the contents of the marriage agreement after the Constitutional Court's decision Number 69/PUU-XIII/2015, it can be resolved through litigation and non-litigation disputes. Therefore, in order for this marriage agreement to be binding on the parties and to be used as a reference by third parties, it must be registered and legalized by the local marriage registrar or civil registry office. In order for there to be validity from the authorized official which will have an impact on the validity of the contents of the agreement itself for the parties and third parties related to the agreement.

4. Conclusion

The implementation of the marriage agreement before and after the Constitutional Court decision Number 69/PUU-XIII/2015 has changed slightly, before the Constitutional Court decision the marriage agreement could only be made before the marriage took place, after the Constitutional Court decision the marriage agreement could be made before and during the marriage.

The role of a Notary as a Public Official regulated in Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of a Notary, in the making of a marriage agreement deed after the Constitutional Court decision Number 69/PUU-XIII/2015 is still very much needed, Notaries still have the authority to make marriage agreement deeds. the mechanism used is to write down the wishes of the husband and wife by applying Article 1338 of the Civil Code concerning the freedom to make contracts and Article 1230 of the Civil Code concerning the valid requirements of an agreement. The role of society is also needed in socializing marriage agreements after the Constitutional Court decision so that the public knows the changes related to marriage agreements which can later have a positive impact and provide new knowledge for the public.

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