

The Juridical Implications of Cancellation A Marriage Agreement

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Abstract. *The aim of the research is to find out and analyze the juridical implications of canceling the marriage agreement made by a Notary, and to find out and analyze the legal consequences arising from the cancellation of the marriage agreement made by a Notary due to the non-fulfillment of the objective elements in the marriage requirements. This research is a qualitative research with a sociological juridical approach. The assets acquired during the marriage are in the form of land acquired during the marriage if both parties carry out a mixed marriage or marriage between different nationalities the land must be released because there has been a mixture of assets in which Indonesian citizens will lose their rights to their land. The legal consequences arising from the cancellation of the marriage agreement made by a Notary due to the non-fulfillment of the objective elements in the conditions of marriage for the husband and wife concerned after a District Court order is issued, namely returning to its original state before the existence of the agreement, as well as the creation of a joint property union between the husband and wife. While the inheritance will remain under the control of each party that brought it into marriage. It is suggested that the marriage agreement should be made based on the agreement of the parties and set forth in an authentic deed made by a notary so that the agreement has perfect and permanent legal force and is binding for both parties. Legal consequences with the cancellation of the marriage agreement that has been stipulated, for prospective married couples who want to make a marriage agreement in order to better understand all the consequences that will be received after the marriage agreement applies between them.*

Keywords: Agreement; Canceling; Marriage.

1. Introduction

Marriage is a very important event in human life because in it there are elements of the rights and obligations of each party regarding family life issues that must be met. In marriage to guard against all the worst possibilities that will happen later, almost every married couple makes an agreement that we often hear about with a marriage agreement. Marriage agreements can also be used as a means to minimize the occurrence of a divorce.

One of the consequences that often arise from a marriage at this time is property. According to the Civil Code, in Article 119 of the Civil Code, property acquired during the marriage is joint property, which includes all marital assets, namely: assets that existed at the time of the marriage, assets acquired during the marriage. In Act No. 1 of 1974, the marriage agreement is regulated in Article 29 paragraph 4 where the marriage agreement has been made possible to be changed as long as it does not harm third parties.

Based on Article 29, the marriage agreement made by the husband and wife is a written agreement. For the Indonesian people at this time, it is rare to regulate each other's assets in a marriage agreement, this is because the institution of marriage is something sacred which does not only concern legal aspects but also concerns religious aspects. However, this law has provided an opportunity for those who want to arrange it. Marriage agreements can also be used as a means to minimize the occurrence of a divorce. Because, if from the start it was agreed that if there was a divorce, each party felt burdened with the obligations in the agreement so that he would rethink about filing for divorce. Because divorce is something that is very undesirable in a household. People who really only think about wealth will think long and hard if they are offered a marriage agreement because their goal will not be achieved. The marriage agreement is a protection for the bride and groom's property. Through this agreement, the parties can determine their respective assets.

Based on Article 29 above, the marriage agreement held between the husband and wife is a written agreement except for the ta'lik talak which is legalized by the Marriage Registrar, whatever is agreed upon as long as it does not violate the boundaries of law, religion and decency, and if the marriage agreement occurs ratified not by a Marriage Registrar, the agreement cannot be said to be a marriage agreement but an ordinary agreement that applies in general.

The marriage agreement is part of the legal agreement bound by the terms of the validity of the agreement stipulated in Article 1320 of the Civil Code, namely: for the validity of agreements, four conditions are required:

- Agree those who bind themselves;
- The ability to make an agreement;
- Something certain;
- For some lawful reason.

The making of a marriage agreement is carried out either in written form or in a deed, either under the hand or in the form of an authentic deed drawn up by an authorized official. What is meant by a deed is a letter that is signed, which contains all events that are used as the basis of a right or agreement, and was made from the beginning on purpose for proof.

Making a prenuptial agreement with a privately made deed can lead to legal uncertainty, because the public (third parties) do not know that the marriage agreement exists and the strength of proof is still not strong, because it can still be disputed, whereas if it is recognized it only has perfect evidentiary power for the parties. party. Furthermore, after the marriage agreement has been made, it must be registered at the Registrar's Office of the District Court in whose jurisdiction the marriage takes place. The goal is to fulfill the principle of publicity.

Based on the problems that have been formulated above, the objectives to be achieved in this study are: to find out and analyze the juridical implications of canceling a marriage agreement made by a Notary, and to know and analyze the legal consequences arising from the cancellation of the marriage agreement made by a Notary due to the non-fulfillment of the objective elements in the marriage requirements.

2. Research Methods

This research is a qualitative research with a sociological juridical approach. The choice of this qualitative research is based on the reasons that; (1) Law in this study is interpreted as symbolic meanings as manifested and observed in and from the actions and interactions of citizens, (2) in order to reveal and obtain deep and detailed meanings of research objects and informants.

3. Results and Discussion

3.1. The juridical implications of canceling the marriage agreement made by a Notary

Prenuptial Agreement is an agreement made before the marriage takes place and binds the bride and groom to be married, its contents regarding the issue of distribution of assets between husband and wife which includes what belongs to the husband or wife and what is the responsibility of the husband and wife, or related with the assets of each party in order to be able to distinguish which is the property of the prospective wife and which is the property of the prospective husband, in the event of a divorce or death of one of the spouses as well as child rearing matters if the husband is not an Indonesian citizen. Usually a prenuptial agreement is made for the benefit of legal protection of each other's assets, husband or wife and other things that are customary married couples who do not want to be restrained by their partners. Indeed, in the beginning, many upper-class people who had large inheritances chose prenuptial agreements, but at this time it is no longer the only issue contained in the prenuptial agreement.

Making a prenuptial agreement is permissible as long as it does not conflict with religious law and decency, moral values and customs. This has been regulated in accordance with Article 29 paragraph 1 of Act No. 1 of 1974 concerning Marriage, namely: "At the time or before the marriage takes place, both parties by mutual agreement can submit a written agreement which is legalized by the marriage registrar employee after which the contents also apply to third party involved." In the elucidation of Article 29 of Act No. 1/1975 on marriage, it is said that what is meant by an agreement in this article does not include divorce. In verse 2 it says: the agreement cannot be legalized if it violates the limits of religious law and decency.

In addition, the Compilation of Islamic Law also allows pre-nuptial agreements as stated in article 47 paragraph: "At the time or before the marriage takes place, the bride and groom can make a written agreement that is legalized by the Marriage Registrar regarding the position of assets in marriage."

Agreements are usually made for the benefit of legal protection of the assets of each husband or wife, although the law does not regulate the purpose of the marriage agreement and what can be agreed upon, everything is left to both parties³⁶

Legal protection for assets in a marriage agreement applies when the marriage takes place which aims to protect the assets of the bride and groom, where the parties can determine their respective assets. Has there been a separation of assets in marriage from the start or is there joint property, but the method of distribution is regulated in the event of a divorce.

When viewed from the procedure or process of making a marriage agreement regulated in the Civil Code and the Marriage Law, there are similarities that is; First, the marriage agreement is made by the prospective husband and wife

before the marriage takes place (Article 29 of the Marriage Law and Article 147 of the Civil Code). Second, the marriage agreement may not violate public order and decency (Article 29 paragraph 2 of the Civil Code and Article 147 of the Civil Code). Third, the marriage agreement is valid at the time or since the marriage takes place (Article 29 paragraph 4 of the Marriage Law and Article 147 of the Civil Code). Fourth, the agreement in principle may not be changed after the marriage takes place (Article 29 paragraph 4 of the Marriage Law and Article 149 of the Civil Code).

According to Article 119 of the Civil Code, the effects of marriage on the property of the husband and wife are joint property, which includes all marital assets, namely: assets that existed at the time of marriage, assets acquired during the marriage. The purpose of making this marriage agreement is to hold deviations from the provisions regarding joint assets as stipulated in Article 119 of the Civil Code, the parties are free to determine the legal form they want for the assets that are the object. They can only determine that in their marriage there will be absolutely no shared assets (*uitsluiting van gemeenschap van goederen*) or limited shared assets (*beperkte gemeenschap van goederen*). However, there is an exception that the assets are not completely mixed assets, namely if there is: a marriage agreement, there is a grant/inheritance, which is determined by the heir to Article 120 of the Civil Code.

Legal protection for assets in marriage according to the Civil Code is given freedom in determining the contents of the marriage agreement to make deviations from the Civil Code regulations regarding the union of assets but with the following restrictions:

Marriage agreements may not conflict with decency and public order (Article 139 of the Civil Code).

- In the Agreement no promises are made that deviate from:
 - Rights arising from the power of the husband (*maritale macht*): for example to determine the place of residence or the right of the husband to manage the marital property union.
 - Rights that arise from parental authority (*ouderlijk macht*), for example the right to manage children's wealth or children's education.
 - Rights determined by law for husband and wife who live the longest. For example, becoming a guardian or appointing a guardian (Article 140 of the Civil Code).

- No promises were made containing the waiver of the rights to the inheritance of the people who handed them down (Article 141 of the Civil Code);
- They may not promise that one party must pay a portion of the debt that is greater than its share in the profits of the union (Article 142 of the Civil Code).
- Promises cannot be made that their marriage will be governed by foreign law (Article 143 of the Civil Code).

According to Article 147 of the Civil Code, with the threat of cancellation, every marriage agreement must be made with a notarial deed before the marriage takes place. The marriage agreement in any way cannot be changed during the marriage (Article 149 of the Civil Code). This article aims to provide legal certainty and legal protection for husbands and wives as well as for third parties, especially creditors, so that they cannot be faced with changing situations at any time, which can harm them.

The marriage agreement is not binding on third parties if it is not registered at the District Court in the jurisdiction where the marriage takes place or if the marriage takes place abroad, at the registry where the marriage certificate is recorded (Article 152 of the Civil Code). Before the existence of marriage registration institutions (KUA and Civil Registry Office). The District Court has a very important authority in carrying out registration, and if the marriage agreement is not recorded in the general register at the District Court, then automatically the marriage agreement does not have binding force against third parties. This of course will harm the related parties in the future after the marriage takes place.

The marriage agreement must be made with a notarial deed before the marriage takes place, otherwise it is null and void (*van rechtswege nietig*). And comes into force since the marriage took place, another time for that may not be determined.

Article 186 of the Civil Code states; In a marriage, separation of assets is permitted, which states that throughout the marriage, each wife has the right to submit a claim to the judge regarding the separation of assets in matters of:

- if the husband because of his obviously bad behavior has wasted the assets of the union and in that arena it exposes the entire household to the danger of collapse;
- if due to the absence of good order and method, in managing the husband's own assets, the guarantee for the use of the wife's marital property

will be blurred or, if due to some gross negligence in managing the wife's marital property, the wealth may be in a state of danger.

- Respect for a legal agreement is mandatory, if the agreement has a positive effect, has a very large role in maintaining peace, and is very urgent in overcoming difficulties, resolving disputes and creating harmony.

According to Article 29 paragraph 4 of the Marriage Law, it states that as long as the marriage lasts, the agreement cannot be changed, unless the parties have an agreement to change and not harm third parties. This means that the Marriage Law sees that the marriage agreement is not rigid in its implementation because the agreement can protect the rights of both parties. If there is a divorce and dispute between the two, then the prenuptial agreement can be used as a guide for settlement. In fact, what is regulated by the Marriage Law can be canceled by a prenuptial agreement.

Legal protection for assets in the marriage agreement can be seen in the compilation of Islamic law including:

- In the event that the husband and wife have bad intentions in terms of debts owed to third parties.

Based on the Supreme Court Decision Number 1081 K/SIP/1978 that there was a marriage agreement between husband and wife which was not notified to the debtor at the time of the transactions, it is clear that the husband and wife had bad intentions to take refuge in the marriage agreement to avoid lawsuits from the debtor. Which is contrary to order law, so that the agreement must be declared null and void and has no binding legal force for the debtor who has good intentions. Thus the husband and wife with their personal assets are jointly and severally responsible or the debts made by the husband or wife with all the legal consequences.

- If there is a violation of the contents of the agreement by the husband.

After the deed of marriage agreement is drawn up and it turns out that before the wedding took place, the prospective husband violated the contents of the marriage agreement, the prospective wife can request an annulment of the marriage. This can be explained in Article 51 KHI which states "a violation of the marriage agreement gives the wife the right to request an annulment of the marriage".

- If during the course of the marriage the husband violates the contents of the marriage agreement, the wife can file a divorce suit at the Religious Court

(Article 51 KHI).

- If there is a civil dispute regarding the contents of the marriage agreement.

In this case, it is necessary to stipulate in the last article in the marriage agreement deed that "regarding this deed with all its consequences and implementation, the parties have chosen a common and permanent legal residence at the District Court Registrar's Office in which the marriage takes place, or a legal choice is made.

3.2. The legal consequences arising from the cancellation of the marriage agreement made by a Notary due to the non-fulfillment of the objective elements in the marriage conditions

Based on the Notary Office Act (UUJN) it turns out that a Notary as a Public Official, obtains authority by attribution, because this authority was created and granted by UUJN itself. Thus what is obtained by the Notary does not come from other institutions, for example the Ministry of Law and Human Rights. Notary is a profession that can be traced back to the III century, in ancient Rome, where they were known as *scribae*, *tabellius* or *notarius*. At that time, they were a group of people who recorded speeches. The term notary was taken from the name of his servant, *notary*, which later became the term/title for the class of fast writers or stenographers⁴⁵. Notary is one branch the oldest legal profession in the world. Notaries are expected to have a neutral position, so that if they are placed in one of the three state bodies, the notary can no longer be considered neutral. With this neutral position, the notary is expected to provide legal counseling for and for legal actions taken by the notary at the request of his client. In the case of a notary's authority, Article

1 Paragraph 1 of Law Number 30 of 2004 concerning the Office of a Notary Public, states that a Notary is a Public Official authorized to make authentic deeds and other authorities as referred to in this Law.

Regarding the definition of an authentic deed, it is stated in article 1868 of the Civil Code, which says that: "an authentic deed is a deed that is (made) in the form determined by law, made by or in the presence of public officials who have power for that purpose, at the place where the deed was made.

From the definition above, what is meant as an authentic deed must meet the following criteria:

- The form is in accordance with the law;

- Made in the presence of an authorized public official;
- Perfect power of proof;
- If denied about truth, so denial must prove its untruth.

Unlike an authentic deed, a deed under the hand has its own characteristics and characteristics, in the form of:

- Free form;
- It does not have to be made in the presence of a public official;
- Still has the power of proof as long as it is not denied by the maker;
- In the event that it must be proven, then the proof must also be accompanied by witnesses & other evidence. Therefore, usually in private deed, it is better to include 2 (two) adult witnesses to strengthen the evidence.

As stated in Article 29 of the Marriage Law, that the marriage agreement can be changed, as long as it does not harm third parties, then to the notary to safeguard his interests in carrying out his duties and authorities, a clause must be included in the agreement which states that if there is a change in the marriage agreement, the notary is only responsible for making the deed. Whereas regarding the contents of the deed is the responsibility of the deed maker (the parties), this aims to avoid unwanted legal consequences that can harm the notary in the future. Thus we can conclude that the authority and responsibility of a notary in making the deed he made is limited to the contents of the agreement that has fulfilled the legal requirements of the agreement based on Article 1320 of the Civil Code, so he cannot be prosecuted in court. Conversely, if the agreement does not meet the legal requirements, the deed made by a notary can be annulled by a judge. Cancellations decided by a judge on a notarial deed can be in the form of (1) null and void; or can be cancelled. Notary as a noble and dignified profession, of course, must be careful in pouring out the contents of the deed that the appearers want. The issue of the validity of the identity and object agreed upon must be seen as formal and material data before the deed is drawn up and signed. For this reason, before making a deed of marriage agreement, the notary must be sure and believe in the identity of the appearers as well as the object/assets that have been agreed upon, it must be clear.

This Law on marriage has not been comprehensively regulated because there are still flaws in it, this is marked in Article 29 paragraph (4), namely: "As long as the marriage takes place the agreement cannot be changed, except if both parties

have an agreement to change and changes do not harm third parties.

The stated reasons for the cancellation request must be proven by a court decision. If the court states that the reasons are proven or not proven, then it can be used as a basis for the judge's consideration to grant or reject the application that has been submitted. Generally, the legal consequences of a cancellation are retroactive and return to its original state. If defects in legal actions result in null and void, the determination is declaratory in nature, whereas for legal actions that can be revoked, the nature of the decision is constitutive.

The marriage agreement entered into by one of the parties has consequences that must be accepted by the parties for the cancellation of the marriage agreement which has been terminated by a judge. Consequences are the impacts that occur if a certain decision is taken due to a legal relationship. In other words, there are things that arise as a result of a choice, action or decision that we inevitably have to accept. Basically the marriage agreement cannot be changed as long as the marriage agreement lasts. If the change is made unilaterally, both on the part of the husband and wife only. Provisions in the law there are exceptions where the marriage agreement can be changed on the basis of the mutual will of both parties. The provisions of article 148 of the Civil Code state that "all changes in the agreement, which were previously allowed to be made before marriage, cannot be carried out in another way, but with a deed and in the same form, as the deed of the agreement was previously made." During that time, no changes may take effect if the implementation is not attended and not approved by all those who attended and agreed to the agreement.

The provisions of article 149 of the Civil Code that "after the marriage takes place, the marriage agreement in any way, cannot be changed." As the norm above, this is a coercive legal provision that cannot be ruled out by the parties who want to make or have made a marriage agreement. If one day a marriage is broken up due to divorce and then the marriage is reconnected, then the form of marital property in the previous agreement must remain unchanged. Seeing the provisions in article 29 paragraph (4) states that "as long as the marriage lasts the agreement cannot be changed, except if both parties have an agreement to change and the changes do not harm third parties". Based on the provisions of this article, it can be concluded that basically the marriage agreement is permanent as long as the marriage lasts. however, it is possible for deviations to occur with certain limitations or conditions, including:

- With the consent of both parties and

- No harm to third parties.

The above requirements or restrictions confirm that changes to the marriage agreement cannot occur due to coercion. Like an agreement generally must be based on a free agreement. The formation of the law includes the provisions above in order to prevent abuse by husband and wife deliberately to avoid themselves from their responsibility for their debts to third parties or between them having bad faith by controlling one of the assets in their marriage.

The case contained in the decision of the South Jakarta District Court number: 526/Pdt/G/2012/PN.Jkr.Sel, where the judge decided on the application for annulment of the marriage agreement which was carried out unilaterally by the husband who felt aggrieved by the existence of the marriage agreement because he did not understand the plaintiff against the Indonesian language which made the wife have bad faith in making the marriage agreement. However, not only that, in the making of their marriage agreement there was a flaw in the will that had been carried out where the marriage agreement was made on April 29 2003 while they were married in Melbourne Australia on May 18 2002

There is no need to request annulment of non-existent legal actions because legally dogmatically such actions do not exist, while other flawed legal actions can be applied for with a decision or decision of a district court. 9 Generally, the legal consequences of a cancellation are retroactive and return to its original state. If defects in legal actions result in null and void, the determination is declaratory in nature, whereas for legal actions that can be rescinded, the nature of the decision is constitutive.

As with the provisions described above, in principle the law has regulated, where if an agreement is deemed null and void, then the position of the parties is returned to its original position, as if the agreement had never existed. If you look closely, the doctrine teaches, if an agreement is declared null and void, then the logical consequence is that neither party should feel aggrieved by the cancellation of the agreement. Based on these provisions the marriage agreement "returns to its original state" which means that the legal actions that have been carried out by the husband and wife are considered to have never happened, so it is very clear that the parties cannot be harmed, as a result of the return to the original state of the agreement. obtained during marriage, are considered joint property of the husband and wife. A case submitted to the court for the cancellation of the marriage agreement has legal implications for the parties to the dispute, because it involves the rights to each of the assets that have been agreed upon. The panel of judges in making decisions must be observant in adjudicating cases so that the parties feel that they are getting the legal certainty given by the judge. Legal events that occur have legal value and

quality to be held accountable because they have legal consequences for the litigants. Implication means effect, so when it is related to law, it can be interpreted that legal implications are legal consequences arising from legal events. In this discussion, the cancellation of the marriage agreement that occurs has legal consequences, one of which is related to assets, namely the assets contained in the marriage agreement.

The legal consequences of canceling the marriage agreement deed for the husband and wife concerned after the District Court's decision was issued, namely returning to its original state before the existence of the agreement, as well as the creation of a joint property union between the husband and wife. Meanwhile, the inheritance will remain under the control of each party that brought it into the marriage, as referred to in the provisions of Article 35 and Article 36 of the Marriage Law, which started from the moment the cancellation of their marriage agreement was granted.

4. Conclusion

The juridical implications or legal consequences for canceling the marriage agreement made by a Notary in marriage are joint assets that have been regulated that there is no combination of joint assets implicitly as a whole in accordance with the law (UU) and there is no connection of profits and losses during the marriage to become income that obtained during the marriage as well as the profits and losses obtained during the marriage when a divorce occurs must be shared equally. The assets acquired during the marriage are in the form of land acquired during the marriage if both parties carry out a mixed marriage or marriage between different nationalities the land must be released because there has been a mixture of assets in which Indonesian citizens will lose their rights to their land.

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