

The Juridical Review of Making a Marriage Agreement Deed Based on a Decision of the Jepara District Court

Dewi Rahmawati*)

*) Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: dewaraahma@gmail.com

Abstract. *The implication of the Constitutional Court Decision Number 69/PUU-XIII/2015 on the making of a marriage agreement deed after marriage made before a Notary changes the legal mechanism for making a marriage agreement. On a scientific basis, writing is motivated to carry out a scientific study in the form of systematic and fundamental research with the title "Juridical Review of Making a Marriage Agreement Deed Based on a Jepara District Court Decision (Case Study of Decision No.46/Pdt.P/2020/Pn.Jpa)". The research method used is a Normative juridical approach, namely legal research that uses primary data as initial data, which is then followed by secondary data or field data, in the form of interviews with District Court Judges to find relationships (correlation) between various symptoms or variables as a data collection tool. consisting of document studies, observations (observations), and interviews (interviews). Researching the Juridical Review of Making Marriage Agreement Deeds Based on Jepara District Court Decisions. In Article 1338 of the Civil Code, besides that it is also based on universally applicable provisions that the District Court is prohibited from rejecting any application and/or case that is submitted and Legal Certainty Regarding the Making of the Deed of Marriage Agreement Based on the Decision of the Jepara District Court, namely the legal consequences that arise from making a marriage agreement after marriage, namely: against the party who made it, where the marriage agreement is legally binding for the husband and wife who make it comply with the agreement contained in the marriage agreement; with regard to marital assets, each husband and wife will become stronger legally, both regarding the separation of assets and debts incurred after the marriage agreement.*

Keywords: Agreement; Deed; Determination; Marriage.

1. Introduction

The consequences of a marriage have quite broad dimensions, including social and legal, starting at the time of marriage, during marriage and after marriage, because in a marriage many things will happen and will be obtained, such as problems of property and offspring. If there are no clear stipulations, especially

the distribution of inheritance including the inheritance of each will cause problems, then for some people the marriage agreement is a way to avoid unwanted problems in the future.¹Before discussing the marriage agreement, a marriage also has a marriage principle according to Act No. 1/1974 are (1) The purpose of marriage is to form a happy and eternal family;

(1) The validity of a marriage depends on the provisions of religious law and the beliefs of each;

(2) The principle of monogamy;

(3) Prospective husbands and wives must be mentally and physically mature;

(4) Make it difficult for divorce;

(5) The rights and position of husband and wife are equal.

Marriage agreements are regulated in Law 16 of 2019 concerning Amendments to Act No. 1 of 1974 concerning Marriage Chapter V Article 29 which allows prospective husbands and prospective wives to enter into marriage agreements, it is stated that: "(1) At the time or before the marriage takes place both parties with mutual consent can submit a written agreement which is legalized by the marriage registrar, after which the contents also apply to the third party involved. (2) The marriage agreement cannot be legalized if it violates the boundaries of law, religion and decency. (3) The agreement begins to take effect from the time the marriage takes place. (4) As long as the marriage takes place, the agreement cannot be changed, unless from both parties there is an agreement to change and the changes do not harm third parties.

The marriage agreement involves a third party, namely a notary who is the official who made the deed of agreement which is legal and can be accounted for for its validity. Based on Article 147 of the Civil Code, every marriage agreement must be made with a notarial deed before the marriage takes place with the threat of annulment. Thus based on Article 29 UUP jo. 147 of the Civil Code, a marriage agreement must be made before or at the time the marriage takes place and made in a notarial deed and ratified by a marriage registrar. And the content of the amendment to the marriage agreement is to change what is the object of the marital property and the responsibilities of both parties (husband and wife). As stated in Article 139 of the Civil Code.²

¹Subekti, 2004, *Fundamentals of Civil Law*, PT. Intermedia, Jakarta, p. 35.

²R. Soetojo Prawirohamidjojo, 2002, *Pluralism in Indonesian Marriage Laws*, (Surabaya: Airlangga University Press,), p. 64.

The obligation to fulfill the requirements contained in the agreement and being bound by the continuity of the marriage depends on the form of the conditions contained in the agreement. In this case the legal experts divide the conditions into three:

1. Conditions that are directly related to the implementation of husband and wife obligations in marriage and are demands of the marriage itself.
2. Terms that conflict with the nature of marriage or that are specifically prohibited from being carried out or cause harm to certain parties.
3. The conditions do not violate the demands of marriage.³

Even though the two prospective bride and groom make an agreement in the form of a marriage agreement, the agreement cannot eliminate the husband's obligation to meet household needs. This is also regulated in Article 31 of Law 16 of 2019 concerning Amendments to Act No. 1 of 1974 concerning Marriage which states that: "(1) The rights and position of a wife are in balance with the rights and position of the husband in household life and association of living together in society. (2) Each party has the right to take legal action. (3) The husband is the head of the family and the wife is a housewife.

Seeing the development of law in society, it will be found that the role of law in regulating people's lives experiences changes and differences from one period to another. In a simple society, law functions to create and maintain security and order. This function develops in accordance with the development of society itself which includes various dynamic aspects of social life that require certainty, order and legal protection with the core of truth and justice.⁴

The life of people who need legal certainty in the public service sector which is currently growing along with the increasing public demand for services, this also has an impact on increasing notary services. The role of a notary in the service sector is as an official who is authorized by the state to serve the public in the civil field, especially making authentic deeds. As stated in Article 1 paragraph (1) of Act No. 2 of 2014 concerning Amendments to Law 30 of 2004 concerning the Position of Notary (UUJN). The notary profession is very important, because the nature and nature of the work of a notary is very legalization oriented, so that it can become the main legal guideline regarding the status of property, rights and obligations of the parties involved.

According to Article 119 of the Civil Code, it is stated that "the wealth each brings to the marriage is mixed into one". Furthermore, in Article 119 paragraph (2) it is

³Syarifuddin, Amir, 2014, *Islamic Marriage Law in Indonesia*, Kencana, Jakarta, p. 146.

⁴Basyir, Ahmad Azhar, 2005, *Islamic Marriage Law*, Library Faculty. UII Yogyakarta Law, Yogyakarta, p. 39.

stated that the union (mixing) of assets throughout the marriage may not be held with an agreement between husband and wife. The assets of the union become joint assets and if there is a divorce, the joint assets must be divided in half, so that each gets half. After the enactment of Law 16 of 2019 concerning Amendments to Act No. 1 of 1974 concerning Marriage. Marriage is regulated in Article 29, which determines:

1. At the time or before the marriage takes place, both parties with mutual agreement can enter into a written agreement that is legalized by the marriage registrar, after which the contents also apply to third parties as long as the third party is involved.
2. The agreement cannot be ratified if it violates the boundaries of law, religion and decency.
3. The agreement is valid since the marriage took place.
4. As long as the marriage lasts, the agreement cannot be changed, unless both parties agree to change and the change does not harm the third party.⁵

The function of the marriage agreement is to regulate the union (mixing) of assets between husband and wife. This is based on Article 119 of the Civil Code which states that if the prospective husband or wife before the marriage takes place is not made a marriage that regulates a unanimous (mix) of assets between the assets of the wife and husband, it will result in a mixing of the unanimous union of marital assets. This mixing occurs with respect to the assets they bring, as well as those they will acquire throughout their marriage. The content that is regulated in marriage depends on the parties of the prospective husband and wife, as long as it does not conflict with the law, religion and decency or decency. The form and content of marriage, as is the case with agreements in general.⁶

2. Research Methods

The research method that will be used in this study is the Normative juridical approach, namely legal research that uses primary data as initial data, which is then followed by secondary data or field data, in the form of interviews with District Court Judges to find relationships (correlation) between various symptoms or variables as a data collection tool consisting of document studies, observations, and interviews (interviews).⁷ Researching the Juridical Review of Making a Marriage Agreement Deed Based on the Decision of the Jepara District Court.

⁵Effendi, Satria, 2004, Contemporary Islamic Family Law Problems, Kencana, Jakarta, p. 20.

⁶Bisri, Cik Hasan, 2009, Compilation of Islamic Law and Religious Courts in the National Legal System, Logos, Jakarta, p. 175-177.

⁷Bambang Sunggono, 2006, Legal Research Methods, Rajawali press, Jakarta, p.75

3. Results and Discussion

3.1. Juridical Review Making a Deed of Marriage Agreement Based on the Decision of the Jepara District Court

Jepara District Court Decision Number 46/Pdt.P/2020/PN.JPA is a stipulation regarding the making of a marriage agreement made before marriage based on the consideration of a District Court Judge which was decided based on the principle of freedom of contract, as stated in Article 1338 of the Civil Code, "all agreements lawfully made shall apply as a law for those who make it".

The legal basis and considerations of the judge in deciding the application for making a marriage agreement after marriage are as follows:

1. There was negligence and ignorance of the applicants regarding the provisions of the marriage agreement.

The basis and legal considerations of the judges granted the request for separation of assets on the grounds of their negligence or ignorance regarding the provisions for making a marriage agreement, which is still weak because there is no legal basis. The Civil Code and the Marriage Law themselves are laws, because they contain legal principles to protect human interests. So that human interests can be protected, then the law must be known by everyone. In fact, everyone is considered to know the law (*iedereen wordt geacht de wet te kennen, nemo ius ignorare consetur*). That everyone knows each of these laws is a principle that applies today.⁸

2. There is an occupational risk to joint assets

From the petition of the applicants it is known that the applicants are concerned about the risk that their work will pose a risk to their joint property in marriage, because the work of the applicants has consequences and responsibilities extending to personal assets, so that each of the assets obtained can remain the property of the individual applicant. In particular, applicants who serve as directors or directors of a Limited Liability Company, where their respective positions have a risk to joint assets in marriage, because the consequences and responsibilities of their work extend to personal assets, so that each of the assets obtained remains become the private property of the applicant. If we review this from Act No. 40 of 2007 concerning Limited Liability Companies in Article 97 paragraph (3) which reads: "Each member of the Board of Directors is personally fully responsible for the loss of the Company if the person concerned is guilty or negligent in carrying out his duties in accordance with the provisions referred to in paragraph (2)", then it is clear that the job risk requires the Board of Directors to compensate the limited liability company losses up to personal assets if Directors or directors are guilty or negligent in carrying out their positions in making decisions or legal actions that are detrimental to the company. So that

⁸Sudikno Mertokusumo, Knowing the Law of an Introduction, (Yogyakarta: Liberty, 2003), p. 88.

the husband and wife, in this case the applicants who have not made a marriage agreement, finally make a marriage agreement to protect the assets of each husband and wife by submitting a request for a marriage agreement from the District Court.

3. There is a desire to continue to have ownership rights to land

The desire to own this land is because one of the applicants is not an Indonesian citizen, namely Petitioner II (Kavita Uttam) in Determination Number: 207/Pdt/P/2005/PN.Jkt.Tmr and Petitioner I (Dubagunta Ramesh) in Determination Number: 459/Pdt/P/2007/PN.Jkt.Tmr, where according to the provisions in Article 21 of Act No. 5 of 1960 concerning the Basic Agrarian Regulations which states that only Indonesian citizens can hold certificates of ownership rights to land and if the person concerned, after obtaining a certificate of property rights then marries an ex-patriate (not an Indonesian citizen), then within 1 year after the marriage without a marriage agreement (mixing of assets), then he must relinquish ownership of the land within 1 (one) year after the marriage.

4. There is income for each applicant.

The existence of the District Court's stipulation becomes a guideline and legal basis for both husband and wife parties to administer and regulate their marital assets because a court stipulation is a judicial product, which contains rules or legal regulations that bind the parties concerned. This was taken because the District Court as a legal institution is upheld, where its legal products must be obeyed by anyone involved in it.

3.2. Legal Certainty Regarding the Making of the Marriage Agreement Deed Based on the Decision of the Jepara District Court

Considering, that in this way, apart from the marriage agreement, it must be made before or at the time the marriage is held and ratified by the Registrar of Marriage at the time the marriage is held and recorded by the Registrar in the Marriage Deed, also the contents may not violate the boundaries of law, religion and decency (Article 29 paragraph 2 Act No.1 of 1974) or in more detail as stipulated in Article 139 of the Civil Code to Article 143 of the Civil Code;

Based on the determination above, there will be consequences⁹

1. Law Against the Party Who Makes It

The making of a marriage agreement after marriage based on a District Court Decision is an agreement and agreement from both husband and wife parties to make a marriage agreement after the marriage takes place. Making a marriage agreement after this marriage is valid and binding for both parties who make the

⁹Interview with VENI MUSTIKA ETO, SHMH Jepara district court judge

marriage agreement. This is in accordance with the provisions in Article 1338 of the Civil Code which reads: "all agreements made legally apply as laws for those who make them".

2. Legal Consequences of Property and Assets

As stated in Article 164 of the Civil Code that if a combination of income results is promised, then there will not be a unanimous combination of assets and a profit and loss union. Likewise, the debts incurred as a result of the legal actions of the spouse which were carried out after the marriage agreement became the responsibility of the party who carried out the legal action without being able to involve the responsibility of the spouse so that the establishment of this marriage agreement can legally protect property and wealth owned by each husband and wife

3.3 sample marriage agreement deed

MARRIAGE AGREEMENT

Number :XII/12/PERKA/2017

On this day, (Thursday 12 May 2022)-----

Facing me, Dewi Rahmawati Bachelor of Law, Notary in Pekalongan City, -----

in the presence of witnesses that I, the notary know and which will be mentioned at the end of this deed: -----

-

1. Mr. Adi Laksono -----

- According to his statement, he is not in a marital bond. -----

- The first party. -----

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2. Miss Prawita Lestari -----

- According to his statement, he is not in a marital bond. -----

-

- The second party. -----

- All are Indonesian Citizens; -----

The appearers that I, the notary, have known in connection with -- the
marriage they will carry out as long as it is possible according to --

The law/statute explains hereby making the marriage agreement as follows: -----

----- Article 1 -----

Between the parties there will be no mixing of innate assets, assets obtained by
inheritance or gifts or assets obtained during marriage from goods,
rights or from debts, as well as any mixture of profits and losses or
from the union of results. and income will not occur. -----

Wealth and debts of each party even though it happened before and after the
marriage was carried out remain the rights or responsibilities of each
party. -----

----- Section 2 - -----

The parties each have the right to manage and control their own assets both
movable and immovable and use all their income and income for
themselves. -----

The First Party is prohibited from relinquishing the ownership rights of the
Second Party's assets without the consent of the Second Party,
likewise the Second Party is prohibited from relinquishing the
ownership rights of the First Party's assets without the approval of the
First Party. -----

----- Article 3 - -----

The First Party is obliged to protect the Second Party and provide everything
necessary for household life according to his ability. -----

The Second Party is obliged to manage household affairs as well as possible. -----

All costs related to the education and maintenance of children born throughout the marriage will be jointly borne and will be agreed later by the parties. -----

----- Article 4 - -----

Movable property which each party obtains from anything after the marriage takes place must be proven by a statement signed by both parties without prejudice to the right of the Second Party to prove the existence of said goods or their value in the manner referred to in Article 166 of the Book Indonesian Civil Code. -----

----- Article 5 - -----

The clothes and jewelery which were owned by each party at the time the marriage was decided or when the calculation was held according to law will be considered as the property of the parties who use or are considered to be used to using these items, there will be no calculation, as long as these objects have not been given/presented by one party to another. -----

All kinds of goods for household needs in the form of furniture for eating, drinking and sleeping which were in the house of the parties at the time the marriage was decided or when the calculation was held according to law will be considered the property of the Second Party so that these goods will not be held calculation. -----

----- Article 6 -----

Goods obtained due to or in any way whatsoever by each party must be proven by documents. -----

If there is no documentary evidence, then for the parties or their heirs, other evidence or general knowledge can be considered and accepted as valid evidence. -----

In the event that a dispute arises regarding the ownership of an object in the form of a right to show or a movable object, where each party cannot prove its ownership, it is considered and accepted that the said object belongs to the parties together, each for an equal share. . This assumption should not be detrimental to third parties. -----

----- Article 7 -----

For all matters relating to this agreement with all the consequences, both parties choose a public and permanent residence at the Class I (one) A District Court Registrar's Office, Pekalongan City. -----

Furthermore, the appearers explained that the respective parties had brought the following items: -----

The first party: -----

- a made car etc. -----

- 10 (ten) shares in a limited liability company "PT Lestari" domiciled in Pekalongan each with a nominal price of Rp. 12,000,000,000-----

The second party: -----

- a residential house built on a plot of land with Freehold Number 2213, located in Pekalongan with an area of 6000 square meters, locally known as Jalan Pemuda -----

- a number of jewelery with details as evident from the sufficiently stamped register, signed by the parties attached to the minutes of this deed. -----

Article 8

CLOSING

This agreement is made on sufficiently stamped paper signed and made in duplicate with the same legal force and held by the FIRST PARTY and SECOND PARTY respectively.

THE FIRST PARTY

[Adi Laksono]

THE SECOND PARTY

[Prawita Lestari]

WITNESS:

[Abdul] [Ghani]

4. Conclusion

the determination regarding the making of a marriage agreement is based on the considerations of the District Court Judge which is decided based on the principle of freedom of contract, as stated in Article 1338 of the Civil Code, besides that it is also based on universally applicable provisions that the District Court is prohibited from rejecting any application and/or case that is submitted. Legal certainty regarding the making of a marriage agreement deed based on the decision of the Jepara District Court, namely for the party who made it, where the marriage agreement is legally binding for husband and wife who make it comply with the agreement contained in the marriage agreement so that it binds all assets owned by both parties as husband and wife. A clear arrangement is needed regarding the making of a marriage agreement after marriage to avoid the emergence of confusion and controversy from various groups regarding the making of a marriage agreement after marriage.

5. References

Books:

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Interview:

Interview with Veni Mustika Eto, SH, MH Jepara district court judge