

Legal Status of Marriage Contract Deeds Made Before a Notary Without Registration at a Marriage Registration Office

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Abstract. *This research aims to determine the legal status of marriage agreement deeds made before a notary without being registered at the Marriage Registration Office as well as the legal impact for third parties of marriage agreements made before a notary without being registered at the Marriage Registration Office if a dispute occurs. The type of research is qualitative with a statutory approach. Data collection techniques are documentation, observation and literature study. This type of research is a normative approach or doctrinal research which is oriented towards approaches to various statutory and regulatory norms. The research results show that 1) the legal position of a marriage agreement deed made before a notary without being registered at the Marriage Registry Office is that the agreement remains valid and binding for husband and wife, but does not have binding legal force on third parties. 2) A marriage agreement made before a notary but not registered at the Marriage Registry Office does not have binding legal force on third parties. The legal consequence is that third parties are not bound by the agreement and can assume that the assets of the husband and wife are joint assets. In the event of a dispute or debt, a third party can demand a settlement involving the couple's joint assets, because there is no legally recognized separation of assets.*

Keywords: Agreement; Marriage; Notary.

1. Introduction

Marriage is a fundamental social institution in human life. In Indonesia, marriage is regulated by Law Number 16 of 2019 concerning Marriage, which outlines that 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 (household) based on the Almighty God. This aspect of marriage covers various dimensions, including legal, social, cultural, and economic aspects.¹

¹Law Number 16 of 2019

One of the important aspects in the context of marriage law is the marriage agreement (prenuptial agreement). A marriage contract is an agreement made by a prospective husband and wife before entering into marriage, which regulates property and other matters deemed necessary by both parties. Marriage contracts in Indonesia have been permitted since the Civil Code was enacted on May 1, 1848.²The marriage agreement is intended to anticipate problems that may arise if the marriage has ended. A marriage agreement as an agreement regarding the property of husband and wife may be made and held as long as it does not deviate from the principles or patterns established by law.³

A marriage agreement is created to regulate the division of assets and financial responsibilities between husband and wife. The main purpose of this agreement is to provide legal certainty and avoid potential conflicts regarding the division of assets in the future. This agreement allows both parties to clearly and firmly establish how assets acquired before and during the marriage will be managed and divided, as well as the financial responsibilities of each party. This is especially important in situations where one or both partners have significant assets or businesses that need to be protected.⁴

A prenuptial agreement is a written contract made by a prospective husband and wife to regulate their rights and obligations regarding marital property and other matters deemed necessary. For example, Andi, a successful businessman, and Budi, a professional in finance, decided to create a prenuptial agreement to protect their personal assets. Andi wants to protect his family's property, investments, and potential inheritance, while Budi also wants to ensure that his savings and investments remain safe. This agreement covers the division of personal and joint property, where property owned before marriage remains the property of each, and property acquired during the marriage is divided based on financial contributions. They also agree that inheritances will be the recipient's personal property, and any debts taken on personally will be their respective responsibilities. With this agreement, Andi and Budi hope to reduce the potential for future conflict and ensure legal clarity in the division of property and financial responsibilities.

In order for a marriage agreement to have binding legal force, the agreement must be set out in the form of an authentic deed made before a notary.⁵Notaries, as authorized public officials, play an important role in this process. First, notaries ensure that the agreement is drafted in accordance with applicable laws and regulations, so that there are no clauses in the agreement that are contrary to

²Arief, Hanafi. (2017). "Agreement in Marriage (A Review of Positive Law in Indonesia)". *Al'Adl Journal* Vol IX No.2 .

³R. Soebekti, *Family Law and Inheritance Law*, (Jakarta: Intermedia, 2004), pp. 8-9

⁴Happy Susanto. *Division of Marital Assets During Divorce (The Importance of a Marriage Agreement to Anticipate Marital Asset Problems)*. (South Jakarta: Visimedia. 2008), 5

⁵Rizal, S, S, *Legal Power of Notarial Deed Regarding Marriage Agreement Against Determination of Civil Case No. 264/Pdt.P/2010 at Probolinggo District Court*, *Voice Justisia*, 3 (1) (2019)

the law. Second, notaries provide legal certainty by preparing documents officially and formally, which provide authentic evidence of an agreement between the two parties.

Talking about the relationship with authentic deeds and the authority of a notary as a public official who is authorized to make authentic deeds, it can be further seen in Law Number 30 of 2004 concerning the Position of Notary, especially in the considerations of point b. It is stated there that in order to guarantee legal certainty, order, and legal protection, authentic written evidence is needed regarding the circumstances, events, or legal acts carried out through certain positions.⁶This shows that notaries have a legal basis that strengthens their profession in providing legal certainty to the public.

Law Number 30 of 2004 provides a strong legal basis for notaries to carry out their duties. Notaries as public officials have the authority to make authentic deeds, which are official documents that have perfect evidentiary power. Authentic deeds made by notaries provide higher legal certainty compared to private deeds. This is because authentic deeds are made by fulfilling the formal requirements stipulated by law and before an authorized notary.

Registration of a marriage agreement with a third party after being legalized by a notary is an important step to ensure that the agreement is officially recorded in the state administration system and can be recognized by third parties. Without registration, a marriage agreement may not have binding legal force, thus creating legal uncertainty for the husband and wife and third parties who interact with them.

2. Research Methods

Research Methods are steps that are owned and carried out for research efforts in terms of finding, developing, or studying with scientific truth that will be used in research. The method used by the author to write this thesis uses a legislative approach. This type of research is a normative approach or doctrinal research that is oriented towards an approach to various norms of laws and regulations and the type of research taken in this study is to use the qualitative research type. The main purpose of qualitative research is to understand social phenomena or symptoms by emphasizing a complete picture of the phenomena being studied rather than detailing them into interrelated variables.

3. Results and Discussion

3.1 Legal Status of Marriage Agreement Deeds Made Before a Notary Without Registration at the Marriage Registration Office

Marriage is basically a bond between two human sexes, namely male and female, which is usually preceded by mutual attraction. Marriage is included in the category of legal acts. Legal acts can be classified into two types: first,

⁶Law Number 30 of 2004 concerning the Position of Notary

unilateral legal acts, namely acts carried out by one party and giving rise to rights and obligations for that party, such as the granting of a will or gift; second, bilateral legal acts, namely acts involving two parties that give rise to rights and obligations for both, such as a sale and purchase agreement, lease agreement, or marriage agreement. A marriage agreement, in particular, is an agreement that regulates aspects of marriage during the marriage period.⁷

This agreement is important to establish the rights and obligations of the couple regarding property, provide legal protection, and create certainty for both parties. To ensure that the marriage agreement has legal force and binds third parties, this agreement must be legalized by a marriage registrar or notary, as regulated in the Marriage Law and Constitutional Court Decision Number 69/PUU-XIII/2015.

A notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws. This is stated in Article 1 number 1 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN). to a notary or public official is a position held or given to those who are authorized by legal regulations in making authentic deeds⁸

Notarial deeds play an important role as official evidence that guarantees legal certainty regarding the agreement.⁹With the existence of a notarial deed, the marriage agreement becomes valid and legally binding. This agreement comes into effect from the time the marriage takes place and, during the marriage, cannot be changed unless there is a mutual agreement between both parties to make changes, provided that the changes do not harm a third party. The notarial deed and ratification by the marriage registrar provide legal certainty and protection for the rights and obligations of the husband and wife in accordance with the agreement that has been made.

Marriage agreements are also regulated in Law Number 1 of 1974, the State Gazette on Marriage consists of only one Article on marriage agreements, namely Article 29 that marriage agreements must be made with a notarial deed and can be legalized by a marriage registrar. A notarial deed provides legal certainty and makes the agreement legally valid. However, this Article also stipulates that marriage agreements that wish to bind third parties must be registered.

When a marriage agreement deed is made before a notary but not registered at the Marriage Registry Office, the agreement remains valid between the parties who made it. However, the agreement cannot bind a third party if it does not go

⁷Achmad Ichsan, *Islamic Marriage Law*, Pradya Paramitha I, Jakarta, 1960, p. 15

⁸Adjie, H. (2020). *Selected Problems and Solutions Regarding Indonesian Notary Law*. Bandung: Citra Aditya Bakti.

⁹H. Suwignyo, "The Validity of Thumbprints as a Substitute for Signatures in Making Authentic Deeds." *NOTARIUS Journal*, Vol. 1, No. 1, (2009), p. 74

through the registration process. This is because registration at the Marriage Registry Office is a requirement to make the marriage agreement effective against a third party.

Registration of a marriage agreement at the Marriage Registry Office is to fulfill the element of publicity. With registration, third parties can know and acknowledge the existence of the agreement and the obligations arising from the agreement. Without registration, the agreement is only valid between the parties who made it and has no effect on third parties.

A marriage agreement deed made before a notary without being registered at the Marriage Registry Office is still valid and binding between the parties who made it. However, the agreement will not bind third parties if it does not go through the registration process.

3.2 Legal Protection for Unregistered Third Parties

According to the Marriage Law, there are two types of assets in a marriage, namely original assets or assets brought in and joint assets. Original assets are assets brought by each husband or wife into the marriage, where the management is handed over to each party. Meanwhile, joint assets are assets obtained during the marriage, in accordance with the provisions of Article 35. Unlike the provisions in the Civil Code, the Marriage Law still distinguishes between original assets and joint assets, so that the original assets of the husband and wife remain separate and do not become joint assets.

With a marriage agreement, a husband and wife can arrange the separation of assets obtained by each during the marriage, so that no joint assets are formed. The marriage agreement must be made in writing with the consent of both parties and approved by a marriage registrar. Once approved, the agreement binds the parties and related third parties. This agreement is valid from the time the marriage takes place and can only be changed with the consent of both parties, provided that the change does not harm the related third party.

A marriage contract is a written agreement between a prospective husband and wife that regulates the separation of assets and obligations that will apply during the marriage. However, not all marriage contracts automatically bind third parties, especially if the agreement is not registered or approved by a marriage registrar. This raises significant legal implications for third parties, especially in the context of financial transactions or debts involving one or both parties to the marriage.

According to Article 29 paragraph (1) of the Marriage Law, a marriage agreement must be ratified by a marriage registrar in order to bind a third party. Without this ratification, the third party cannot be considered to know or acknowledge the existence of a marriage agreement, so that they have the right to assume that the assets of the husband and wife are joint assets. This means that if there is a debt or obligation that arises, the settlement can involve joint assets, not just the assets of one party.

In cases where a marriage contract is not registered, third parties who are unaware of the existence of the contract may assume that the assets of the husband and wife are joint assets. This can cause complications in the settlement of debts or obligations, because without a valid contract, there is no legally recognized separation of assets. On the other hand, third parties who are aware of the existence of a marriage contract but have not registered it cannot ignore the contract. An unregistered marriage contract remains binding on the husband and wife, but has no legal force against third parties until it is registered. Therefore, registration and ratification of the marriage contract by a marriage registrar is crucial to provide clear and definite legal protection for third parties. This also ensures that the marriage contract can be legally enforced, both by the husband and wife and by interested third parties.

4. Conclusion

Based on the research results, it can be concluded that the legal status of a marriage agreement deed made before a notary without being registered at the Marriage Registry Office is that the agreement remains valid and binding for the husband and wife, but does not have binding legal force against third parties. Without registration, third parties can assume that the marriage took place with a union of joint property, and all matters or disputes involving the husband and wife's property will be treated as joint property. Registration at the Marriage Registry Office is required so that the marriage agreement is also binding and recognized by third parties. A marriage agreement made before a notary but not registered at the Marriage Registration Office does not have binding legal force against third parties. The legal consequence is that the third party is not bound by the agreement and may assume that the assets of the husband and wife are joint assets. In the event of a dispute or debt, the third party may demand a settlement involving the joint assets of the couple, because there is no legally recognized separation of assets. The absence of registration makes the agreement legally invalid, thus not providing legal certainty for the parties.

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