

The Role of Notary towards the Implications of Recording a Post-Marriage Marriage Agreement Based on the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-/XIII/2015

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ABSTRACT

The Constitutional Court Decision Number 69/PUU-XIII/2015 brought significant changes to the provisions of marital agreements in Indonesia, which previously could only be made before marriage. With this decision, married couples can now make a marriage agreement after marriage, thus affecting the legal and administrative aspects of recording the agreement. This research aims to analyze the role of notaries in making and recording marital agreements after the Constitutional Court's decision and identify the legal implications for married couples and third parties. The research method used is normative juridical with a statutory approach and analysis of literature related to civil law and marriage law in Indonesia. The results showed that notaries have an important role in making an authentic deed of marriage agreement, providing legal certainty, and ensuring that the agreement can bind not only the husband and wife, but also third parties. Recording the marriage agreement at the Population and Civil Registration Office is a key factor in ensuring the validity and legal force of the agreement. The implication of this research confirms that the registration of marriage agreements provides legal certainty for couples in the management of marital property and the protection of the rights of third parties. Therefore, a clearer policy regarding the recording procedure is needed as well as an increase in public understanding of the importance of the marriage agreement as a legal instrument that can protect the rights of related parties.

Keywords: Marriage Agreement, Marriage Law, Notary, Recording Agreement.

INTRODUCTION

A marriage agreement in English is known as a 'marriage agreement' and if made before the marriage takes place, it is also referred to as a 'prenuptial agreement'. A marriage agreement basically comes from the translation of the word 'huwelijkesvoorwaarden', which is taken from the Burgerlijk Wetboek (BW) and also appears in the Civil Code (Hapsari, n.d.). 'Huwelijk' means marriage between a man and a woman, while 'voorwaard' means condition or agreement (Ramadhan et al., 2025). The definition of a marriage agreement is an agreement made for and in the context of marriage between a man and a woman (Sibarani et al., 2024).

In principle, marital agreements are similar to other agreements, where there must be an agreement between the parties and must be legalized in order to become a valid document. The content of this agreement can vary according to the agreement between husband and wife. Frumkes states that "the contents of prenuptial agreements vary widely: among other things, they provide for the parties rights and responsibilities with respect to support and disposition of property at the dissolution of the marriage, separation, or death" (Hapsari, n.d.). This means that the content of a prenuptial agreement can vary widely, including that it provides for the rights and responsibilities of both parties with respect to financial support and disposition of property in the event of divorce, separation, or death.

In the positive legal system in Indonesia, the regulation of marriage agreements is regulated through several products of legislation that have an important position. One of the main legal bases in this regard is the Civil Code (KUHPerdota) or also known as Burgerlijk Wetboek (BW) and has been known since its enactment in Indonesia on May 1, 1848 (Arief, 2017). In the context of a marriage agreement, the Civil Code contains provisions that provide a legal basis for couples to make agreements related to the arrangement of property in marriage before or during marriage.

In addition to the Civil Code, Indonesia also has national regulations that more specifically regulate the issue of marriage, namely Law Number 1 of 1974 concerning Marriage (Lestari, 2017). This law is a law that applies to all Indonesian citizens regardless of religion, ethnicity, or social background, and regulates more clearly the conditions of marriage, the rights and obligations of husband and wife, as well as the mechanism for managing property in marriage, including marriage agreements.

Regulations regarding marriage agreements are also regulated in Presidential Instruction Number 1 of 1991 concerning the Compilation of Islamic Law (KHI) (Putri et al., 2024). KHI provides guidelines for the implementation of Islamic law in Indonesia in the aspect of family law, including provisions on marriage agreements for Muslims (Sulistiani, 2022). The presence of the Civil Code, Marriage Law, and Compilation of Islamic Law shows the complexity and diversity in legal arrangements related to marriage agreements in Indonesia, which reflects the plurality of legal systems that apply in this country. Each of these regulations has different characteristics and scope of application according to the legal background and norms adopted by the parties to the marriage.

In 2015, the Constitutional Court through Decision Number 69/PUU-XIII/2015 decided to expand the time for making a marriage agreement (Ahyani, 2018). Now, a marriage agreement can also be referred to as a post-marital agreement because it can be made after the marriage takes place.

The following is a comparison of the provisions regarding marriage agreements in Article 29 of Law Number 1 Year 1974 concerning Marriage and the provisions in Constitutional Court Decision Number 69/PUU-XIII/2015:

Table 1. Comparison of Article 29 of Law 1/1974 and Constitutional Court Decision

Article 29 of Law 1/1974	Constitutional Court Decision 69/2015
(1) At the time of or before the solemnization of marriage, both parties by mutual consent may propose a written agreement which shall be legalized by the marriage registrar, after which the contents shall also apply to the third parties concerned	(1) At the time of, before the solemnization of marriage or during marriage, both parties by mutual consent may propose a written agreement which shall be legalized by a marriage registrar or a Notary, after which the contents shall also apply to third parties to the extent that third parties are concerned.
(2) The marriage cannot be legalized if it violates the limits of law, religion and decency.	paragraph 2 NOT CHANGED
(3) The agreement shall take effect from the day of the marriage.	(3) Such agreement shall come into force as from the date of the marriage, unless otherwise specified in the Marriage Agreement.
(4) During the continuance of the marriage, the agreement may not be amended, unless both parties agree to the amendment and the amendment does not prejudice a third party.	(4) During the continuance of marriage, marital agreements, whether concerning marital property or other agreements, may not be amended or revoked, unless both parties consent to the amendment or revocation, and the amendment or revocation does not prejudice a third party.

Source : (Dwiputra, 2023)

It can be seen that before the decision of the Constitutional Court No. 69/PUU-XIII/2015, a marriage agreement could only be made and ratified before the marriage took place. This is based on the provisions of Article 29 paragraph (1) of Law No. 1 of 1974 concerning Marriage, which states that a marriage agreement must be concluded before marriage. If a couple is already married and wants to make a marriage agreement, the provision does not allow changes or new arrangements related to the status of property.

Through the Constitutional Court Decision No. 69/PUU-XIII/2015, there was a significant change in the regulation of marriage agreements. The Constitutional Court stated that a marriage agreement can be made not only before marriage but also during marriage. The Court views that the time limitation for making a marriage agreement only before marriage is contrary to the principle of freedom of contract recognized in Indonesian civil law. This decision provides flexibility for married couples to make a marriage agreement at any time during the marriage period, thus providing more options for couples in managing their assets. Of course, this is with due regard to the provisions in Article 139 of the Civil Code.

Through this decision, the Constitutional Court also authorized Notaries to certify or record marriage agreements made as in Article 29 paragraph (1) and registered at the local dukcapil in accordance with domicile. The implication is that the status of the agreement is legally recognized in law, and can bind both the husband and wife and also third parties bound by the marriage agreement (Charissa, 2022).

This research will discuss how the role of notaries in marriage agreements after the Constitutional Court Decision Number 69 of 2015 and the implications of recording marriage agreements after the Constitutional Court Decision Number 69 of 2015. The purpose of this research is to comprehensively analyze the role of notaries in the process of making marital agreements after the Constitutional Court Decision Number 69/PUU-XIII/2015, which expands the scope of making marital agreements until after the marriage is held. This research also aims to identify and evaluate the legal implications of recording the marriage agreement, especially in the context of administration and legal protection for married couples and third parties. This research is expected to provide a deeper understanding of the changes in the role of notaries after the decision and its impact on the legal implementation of marriage agreement registration in Indonesia.

RESEARCH METHOD

The legal research method used is normative juridical, reviewing how a legal issue is harmonized with the applicable positive law. Data collection techniques are carried out by means of library research on legal materials in the form of laws and regulations concerning marital agreements in positive law in Indonesia. Other legal materials from books, journals, reports, and printed and electronic articles related to marriage agreements were also used.

RESULT AND DISCUSSION

The Role of Notaries in Recording Marriage Agreements After the Constitutional Court Decision Number 69 of 2015

The Constitutional Court's decision formulated the purpose of the marriage agreement in Decision Number 69 of 2015 as to:

- a. To separate the assets of husband and wife to avoid mixing assets. Thus, in the event of a divorce, each asset remains protected. In addition, there will be no further debate regarding the division of joint property.
- b. Each party is responsible for the debt they owe.
- c. If either party wishes to sell their assets, the consent of the spouse is no longer required.

The role of a Notary in making authentic deeds only begins after the person takes the oath of office and is one of the Notary's authorities regulated in the Notary Position Law Number 2 of 2014. Notary according to Article 1 point 1 of Law Number 2 Year 2014 on the Amendment to Law Number 30 Year 2004 on Notary Position stipulates that "notary is a public official authorized to make authentic deeds and other authorities as referred to in this law" (Husain & Lahae, 2022). The definition of Notary in this UUJN refers to the duties and authorities that are carried out. This means that the Notary has the duty as a public official, and on the one hand the Notary also has the authority to make authentic deeds and other authorities which are also regulated in the

UUJN. Based on Article 15 paragraph 1 of Law number 2 of 2014 concerning Notary Position, the authority of a Notary is to make authentic deeds related to several matters regarding:

"All deeds, 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, keeping the deed, providing a grosse, copy and quotation of the deed, all to the extent that the making of the deed is not also assigned or excluded to another official or other person stipulated by law."

In line with the responsibility of the Notary in preparing authentic deeds, this confirms that the Notary has an important role in society to create legal certainty and guarantee the rights and obligations of the parties requesting the making of authentic deeds, both those present before the Notary and those represented by the Notary (Prajitno, 2010).

Article 147 in conjunction with Article 149 of the Civil Code states that the Marriage Agreement must be made by Notarial deed before the marriage takes place, the agreement shall take effect from the time the marriage takes place and may not be revoked or amended in any way during the marriage. The Marriage Agreement must be made with a Notarial deed, or with a written agreement authorized by the Marriage Registrar, before the marriage takes place or at the time of the marriage and the Marriage Agreement takes effect from the time the marriage takes place. This is also in line with the Circular Letter of the Directorate General of Dukcapil No. 472.2/2017 of 2017 which also emphasizes that marriage agreements must be made in the form of a notarial deed in order to be registered with the marriage registration officer.

The Marriage Agreement made or legalized and then recorded by a Notary is basically a form of authentic deed. Article 1868 of the Civil Code states what is meant as an authentic deed "is a letter or deed that from the beginning was deliberately made officially for the evidentiary process. This means that, from the beginning, this deed is made for proof if there is a dispute in the future."

The Constitutional Court's decision authorizes notaries and marriage registration officers to handle marriage agreements that have been made, and must be registered with the civil registration agency (Hamnan & Cahyono, 2024). Previously, Notaries did not have the authority to certify or register marital agreements, so the agreements did not have binding force against third parties.

Regarding the procedure for making a marriage agreement, it refers to the provisions as in the Marriage Law, Civil Code, and or other provisions, especially regarding the separation of assets between husband and wife. As already mentioned, notaries have the authority to make authentic deeds of marital agreements, both those made before and during marriage. This provides legal certainty and protection for married couples who want to organize their assets. After the preparation of the marriage agreement is carried out in the form of a deed, the next step is to ratify the agreement so that it has binding force for the parties who make it. The existing

marriage agreement must then be registered at the civil registry in order to fulfill the principle of publicity and can also be binding for third parties (Charissa, 2022).

Implications of Recording Marriage Agreements After Constitutional Court Decision Number 69 of 2015

Recording a Marriage Agreement is important and necessary, considering the many benefits both in terms of administration and proof later in court.

Implications in Administrative Order

Recording a marriage agreement has an important role as part of the fulfillment of orderly population administration. As a legal document that regulates the agreement between husband and wife regarding the management of property in marriage, recording this agreement provides legal certainty for both parties, especially regarding rights and obligations in terms of property ownership.

A marriage agreement that is officially recorded at an authorized institution, such as the Office of Religious Affairs (KUA) or the Population and Civil Registry Office, becomes a valid basis in state administration, especially in terms of identity, marital status, and property ownership (Waruwu, 2021). This administrative order not only facilitates the exercise of the couple's civil rights in daily life, such as the purchase of assets or bank loans, but is also important in preventing legal disputes in the future. In addition, the correct and timely recording of marital agreements facilitates data updates in the national civil registration system, so that the state can have accurate data on marital status, which directly affects inheritance rights, taxes, and protection of personal assets.

The legal basis for this recording is related to Law Number 24 of 2013 concerning Population Administration, which emphasizes the importance of recording important events, including marriages and related agreements, in order to create an orderly population administration in Indonesia.

Embodiment of the Principle of Publicity

Registration of marriage agreements is an important manifestation of the principle of openness, which plays an important role in binding third parties to the terms of the agreement. The principle of openness essentially requires certain information to be available to the public, so that everyone can access and know about it. For the principle of openness to be considered fulfilled, relevant information must be accessible to all members of the public and must not be classified as private or confidential. In the context of a marriage agreement, registration of the agreement with the local civil registry office or dukcapil, will effectively fulfill this principle of openness. The ratification of the marriage agreement by the marriage registration officer in fact contains a public element relating to third parties (Setiyaningsih & Khisni, 2019).

Circular Letter of the Directorate General of Dukcapil No. 472.2/2017 in the first attachment point six, also stipulates that the recording and reporting of marriage agreements is carried out through certain procedures. The civil registration officer at the responsible UPT will

make a marginal note on the register of deeds and marriage certificate extract, or issue a marriage agreement statement letter for agreements made in Indonesia and marriages registered abroad. Subsequently, the marriage certificate extract that has been given the declaration letter will be handed over to each husband and/or wife.

This openness is important, as it enables individuals and entities outside the marriage to understand the legal framework governing the relationship and any potential implications it may have for them. The application of the principle of publicity is basically so that third parties (outside the husband or wife) know and are subject to the provisions and rules in the marriage agreement that has been made (Werdiningsih, 2023). The ratification carried out by the marriage registration officer only aims to record the marriage agreement, which will then be included in the marriage certificate. Before the Constitutional Court Decision No. 69/2015, this registration was carried out at the Registrar of the District Court, and this decision was carried out at the Local Population Office. The procedures and mechanisms are clearly regulated in Directorate General of Dukcapil Circular Letter No. 472.2/2017 of 2017.

Strength of Proof

When this marriage agreement has been made based on a predetermined form, in this case an authentic deed by a notary and then registered at the Civil Registry Office, then this marriage agreement has strong and binding legal force.

The evidentiary power of a marriage agreement that is registered at the Civil Registry Office in a trial or when a dispute occurs has strong legal force as authentic evidence. A marriage agreement made legally before a notary and then registered at the Civil Registration Office has the status of an authentic deed, which is in accordance with Article 1868 of the Civil Code (KUHPer) (Dwinopianti, 2017). This authentic deed serves as perfect evidence in court, unless it can be proven otherwise through valid evidence.

In the context of disputes, both disputes between spouses and with third parties such as creditors, a marriage agreement that has been registered at the Civil Registration Office will become a binding basis for the parties. Article 29 of Law Number 1 Year 1974 on Marriage, which was updated in the Constitutional Court Decision Number 69/PUU-XIII/2015, emphasizes that a marriage agreement must be made in writing and can be made either before or after marriage. In order for the agreement to have binding force, it must be registered at the Civil Registration Office or Religious Affairs Office (KUA), which serves as part of the principle of publicity.

This registered marriage agreement deed has evidentiary power as formal evidence that cannot be denied, unless there is other evidence to the contrary. If there is a dispute related to the division of property or debt between husband and wife or with a third party, the marriage agreement recorded at the Civil Registration Office becomes the main legal instrument used in the trial. This provides legal certainty for the parties because the deed has been verified and recognized by the state. In addition, recording at the Civil Registration Office ensures that third

parties, such as creditors, can know the status of the couple's assets that have been regulated in the agreement, thus avoiding further potential disputes.

In essence, the legal implications of a marital agreement depend on whether the agreement has faithfully followed the existing procedures from start to finish. If the agreement is not recorded or registered, it means that the agreement has not gone through the necessary legalization process. This relates to orderly administrative procedures, the application of the principle of publicity, and also the binding force and evidentiary power of the marriage agreement. The result if this is not fulfilled will lead to the marriage agreement not having the binding force needed to apply to third parties. Because in order for the agreement to achieve a status that makes it enforceable not only between the couple but also against other parties, the agreement must go through the process of recording or registration at the Dukcapil. It is only through this formal recognition that the marriage agreement can achieve the validity and enforceability that is important for its legal position in wider community interaction, in this case third parties outside of the parties to the marriage agreement.

CONCLUSION

The decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015 has a significant impact on the process of recording a marriage agreement after marriage. This change expands the role of notaries, who can now not only make an authentic deed of marriage agreement, but also become part of the legally binding recording process. With the registration at the Civil Registration Office, the marriage agreement has legal force and is recognized by the state, and provides legal certainty for third parties. This emphasizes the importance of recording a marriage agreement as a legal instrument that serves to protect the rights and obligations of married couples and provides certainty in terms of property division and debt responsibility, both between spouses and with third parties.

Notaries play an important role in ensuring legal certainty and creating authentic legal documents, but there is an urgent need to increase their capacity and clarify their responsibilities in the recording process. To achieve this, it is important to implement stricter training and supervision measures, ensuring that notaries are well equipped to understand the latest regulatory updates and can perform their duties with a high level of professionalism. In addition, the government should simplify administrative procedures while maintaining legal certainty. This includes ensuring proper integration of civil registration systems to eliminate data discrepancies. Furthermore, it is imperative to strengthen the protection of third parties involved in marriage agreements. The government should facilitate access to information regarding the status of the marital agreement for third parties, such as creditors or those involved in property transactions between the couple, by providing a transparent and integrated record system. This will help ensure that all parties have the necessary information at their fingertips, promoting fairness and clarity in legal transactions related to marriage.

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