

The Validity of Marriage Through Constitutional Court Decision Number 69/Puu-XIII/2015 Reviewed from Law Number 1 Of 1974

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Abstrak

Manusia sebagai makhluk sosial tentunya tidak dapat dipisahkan dari keberadaan manusia lainnya. Dalam meneruskan keturunannya, seorang laki-laki dan seorang perempuan harus mempunyai ikatan yang sah atau yang disebut dengan perkawinan. Berdasarkan Pasal 1 Undang-undang Nomor 1 Tahun 1974 tentang Perkawinan jo. Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan (UU Perkawinan), pengaturannya menunjukkan bahwa Perkawinan merupakan suatu ikatan perjanjian seumur hidup antara seorang laki-laki dan seorang perempuan. Pada dasarnya perkawinan adalah suatu peristiwa yang memuat hak dan kewajiban antara suami istri yang akan menimbulkan akibat hukum berupa hak dan kewajiban suami istri selama perkawinan, tanggung jawab suami istri terhadap anak, dan akibat terhadap harta benda yang timbul sesudahnya. pernikahan. Berdasarkan Pasal 139 BW, apabila suami istri ingin memisahkan hartanya, maka harus dibuat perjanjian perkawinan. Bahkan BW mengatur bahwa perjanjian perkawinan hanya dapat dilakukan sebelum perkawinan dilangsungkan. Pada tanggal 27 Oktober 2016 Mahkamah Konstitusi melalui putusan Nomor 69/PUU-XIII/2015 melakukan uji materi terhadap ketentuan Pasal 29 ayat (1) UU Perkawinan. Adanya uji materi terhadap ketentuan Pasal 29 ayat (1) UU Perkawinan, menimbulkan permasalahan baru pada landasan hukum perjanjian perkawinan, serta penafsiran hukum antara UU Perkawinan dengan Putusan Mahkamah Konstitusi.

Kata Kunci: *Pernikahan; Perjanjian Pernikahan; Akta Notaris; Undang-Undang Perkawinan; Keabsahan Pernikahan*

Abstract

Humans as social creatures certainly cannot be separated from the existence of other humans. In continuing their offspring, a man and a woman must have a legal bond or what is called marriage. Based on Article 1 of Law Number 1 of 1974 concerning Marriage jo. Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (Marriage Law), the arrangement shows that Marriage is a lifelong covenant bond between a man and a woman. Basically, marriage is an event that contains rights and obligations between husband and wife that will cause legal consequences in the form of rights and obligations of husband and wife during the marriage, the responsibility of husband and wife to children, and consequences for property arising after marriage. Based on Article 139 BW, if a husband and wife want to separate their property, a marriage agreement should be made. BW even stipulates that marriage agreements can only be made before the marriage takes place. On October 27, 2016 the Constitutional Court through its decision Number 69/PUU-XIII/2015 conducted a judicial review of the provisions of Article 29 paragraph (1) of the Marriage Law. The existence of judicial review of the provisions of Article 29 paragraph (1) of the Marriage Law, raises a new problem with the legal basis of the marriage agreement, as well as the legal interpretation between the Marriage Law and the Constitutional Court Decision.

Keywords : *Marriage; Matrimonial Agreement; Notarial Deed; Marriage Act; Marriage Validity*

INTRODUCTION

As social creatures, of course, humans cannot be separated from the existence of other humans. In continuing their offspring, a man and a woman must have a legal bond or what is called marriage. The basis for the rules regarding marriage in Indonesia has been stated in the preamble to the 1945 Constitution article 28 B paragraph 1 where it is said that "Everyone has the right to form a family and continue offspring through legal marriage." Based on this description, it is clear that the article means that the purpose and ideals of the Republic of Indonesia are to promote the welfare of the people by giving the right to each of their people to maintain their lives by continuing their offspring, and everyone is given the right to form a family, because it is an inseparable unity of human rights. Furthermore, the legal basis regarding national marriage of the Republic of Indonesia is further regulated in Law Number 16 of 2019 Amendments to Law Number 1 of 1974 concerning marriage. The arrangement shows that marriage is a lifelong covenant bond between a man and a woman. In line with this, Indonesian society interprets marriage as a sacred and sacred bond. This can be clearly seen from the norms of customs and norms of decency of Indonesian society which still strongly oppose the existence of sexual relations outside marriage or adultery. Indonesian society upholds the principle that marriage must be based on the teachings of the religion or belief they believe in.

In marital problems, of course, it results in very systematic legal consequences, especially the issue of rights and obligations of husbands and wives, the legal status of husband and wife, family property, and children born in marriage, property, and property from husband and wife that is not clearly regulated is feared to cause a mixture of each other's property and cause problems between the two parties. On the other hand, Indonesia provides an obligation for its people to register marriages when they have entered into marriage. This can be clearly seen in Article 2 paragraph (2) of the Marriage Law. The provision stipulates that every marriage is recorded according to applicable laws and regulations. Moreover, the Constitutional Court also requires Indonesians to register marriages for administrative purposes. Unfortunately, Indonesian people do not have a high enough awareness to register their marriages, even though they have been legally married according to their religion or belief. This can be seen from the phenomenon that occurs in society that they often consider a valid marriage according to religion is enough without any recording. For them, their marriage is valid. Not a few Indonesian citizens, including ethnic Thionghoa, do not register their marriages with the State. They consider that marriage is valid if it is carried out according to their respective religions and beliefs. When examined more deeply, marriages registered in countries with unregistered marriages have different juridical consequences. One of the most prominent juridical consequences is child-related. In fact, there are still many children born from unregistered marriages who experience discrimination in the fulfillment and protection of children's rights, including relations in family law. In addition, children's rights to social services and education will also be different. Another thing that stands out most is that a child born into an unregistered marriage will have a birth certificate out of wedlock (<https://www.kpai.go.id/berita/tinjauan/perkawinan-tidak-dicatatkan-dampaknya-bagi-anak>:2023)

The marriage takes place, there is a mixture of property / wealth between the property of husband and wife (*algehele gemenschap van goederen*), if the husband and wife do not make a marriage agreement. If they want to deviate from these provisions, they must make a marriage agreement. The marriage agreement is regulated in the *Burgelijk Wetboek* (hereinafter referred to as BW). Based on Article 139 BW, if a husband and wife want to separate their property, a marriage agreement should be made. BW even stipulates that marriage agreements can only be made before the marriage takes place. On October 27, 2016 the Constitutional Court through its decision Number 69/PUU-XIII/2015 conducted a judicial review of the provisions of Article 29 paragraph (1) of the Marriage Law. The existence of judicial review of the provisions of Article 29 paragraph (1) of the Marriage Law, raises a new problem with the legal basis of the marriage agreement, as well as the legal interpretation between the Marriage Law and the Constitutional Court Decision.

The Constitutional Court decision stipulates that the marriage agreement must be ratified by a Marriage Registrar or Notary Officer. If it has been recorded, then the agreement is legally binding on the parties who make it, and third parties during the marriage bond. With changes in provisions related to marriage agreements, there is authority to ratify marriage agreements which is also given to Notaries. Where the authority of the Notary Public to ratify the marriage agreement raises polemics related to the principle of publicity in order to bind the third party concerned. The principle of publicity means the obligation to disclose information to the public so that the public can be aware of the existence of a marriage agreement. To fulfill the principle of publicity, it is required that information can be accessed by everyone, and not personal (Gusti Muhammad Faruq Abdul Hakim Sutikno: 2018). While the Notary in carrying out his position is obliged to keep everything about the deed he made. As in Article 16 paragraph (1) point f of the Notary Office Law, it is stipulated that in carrying out his office, the Notary Public must keep everything about the deed he makes secret and all information obtained for the preparation of the deed in accordance with the oath / promise of office, unless the Law specifies otherwise.

Based on this background, it is necessary to understand the implementation of marriage law regarding the validity of marriage through a marriage agreement by a Notary in view of Law Number 1 of 1974 concerning Marriage.

METHOD

This research is a normative legal research, which uses secondary legal materials as the main data. This normative legal research is research in the field of law that aims to find legal methods. This normative legal research also uses primary legal materials such as laws and regulations.

The type of research used by the author is normative-empirical research. Normative legal research is legal research that examines through written law from aspects of theory, history, philosophy, comparison, structure and composition, scope and material, general explanation of the articles discussed, formalities and forces that bind a law but are not binding on applied aspects or implementation (Abdulkadir Muhamad: 2004). While empirical legal research is an unwritten positive legal research on the nature of the behavior of community members in relationships living in society or social life (Abdulkadir Muhamad: 2004).

Broadly speaking, there are two categories in the nature of research, namely the nature of research through Qualitative and Quantitative approaches (Asep Saepul Hamdi and E. Bahrudin: 2014). In writing this time, the author uses a qualitative approach. Where the qualitative approach is the nature of research that can describe and analyze a phenomenon, event, social activity, attitude, belief, perception of a person or a group towards something (Asep Saepul Hamdi and E. Bahrudin: 2014).

In this study the authors used primary and secondary data.

- 1) Primary data is data obtained directly through research in the field, namely by making observations and interviews
- 2) Secondary data is data obtained from library materials from reading and reviewing literature materials and data obtained from customary law sources.

RESULT AND DISCUSSION

Marriage Agreement is a form of agreement made between one party and another party before holding a marriage ceremony to certify both as husband and wife. A marriage agreement made jointly by a prospective married couple serves to:

1. Separating wealth between husband and wife so that their property does not mix;
2. The debts owed by the husband or wife will be the responsibility of each;
3. If one intends to sell his property then there is no need to seek the consent of his spouse;
4. In the event that the husband or wife will apply for a credit facility, there is no need to seek the consent of his spouse to pledge the price of his wealth;
5. Guarantee the continuity of family property;
6. Protect the interests of the wife if the husband practices polygamy;

7. Avoiding unhealthy marital motivations.

After the Decision of MK 69 / PUU / XIII / 2015 there are changes to Article 29 of Law Number 1 of 1974 concerning Marriage, husband and wife can make a marriage agreement while in the marriage bond. Previously, marriage agreements made before marriage or when marriage took place, often referred to as *prenuptial agreement*. The marriage covenant during the marriage period is referred to as *postnuptial agreement* it also increases the notary's authority to make marriage agreements.

Marital agreements can now be made at the time, before, or during the marriage bond. This has been regulated in Article 29 of the Marriage Law jo. Constitutional Court Decision Number 69/PUU-XIII/2015:

1. At any time, prior to, or during the marriage union, both parties by mutual consent may submit a written agreement ratified by the registrar or notary public, after which the contents shall also apply to third parties to the extent that third parties are involved.
2. Such agreements cannot be ratified if they violate the boundaries of law, religion and decency.
3. The agreement shall enter into force from the moment the marriage takes place, unless otherwise provided in the Marriage Agreement.
4. During the course of the marriage, the marriage agreement may be regarding marital property or other agreements, it cannot be changed or revoked, unless both parties agree to change or revoke, and the change or revocation is not detrimental to a third party.

The marriage agreement is made in writing and ratified by the marriage registrar or notary official. This marriage agreement applies as law to those who make it, also applies to third parties to the extent that this third party is involved.

The marriage agreement as an agreement between prospective husband and wife, is basically the same as an agreement in general, because both are bound by Article 1320 of the Civil Code which regulates the legal conditions of an agreement, including agreement, legal competence, a certain thing and a lawful cause. Because the marriage agreement is the same as the agreement in general, the marriage agreement has legal consequences such as the Law for the parties who make it, as stated in Article 1338 paragraph (1) of the Civil Code which states "All agreements made validly apply as Law to those who make them". The parties to the agreement must respect and implement the content of the agreement, must not commit acts contrary to the content of the agreement.

The main point of the Constitutional Court decision Number 69 / PUU-XIII / 2015 that a marriage agreement can be made at the time or before or during the marriage, both parties by mutual consent can enter into a written agreement ratified by the marriage registrar employee. This means changing the previous regulations in the Civil Code and Law Number 1 of 1974 that a marriage agreement must be made before the marriage is held. In making a marriage agreement can be done by notarial deed. The basis for the notary's authority in carrying out his duties and position as a notary to make an authentic deed in this case the marriage agreement deed is regulated in Law of the Republic of Indonesia Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the position of notary.

In the implementation of making a marriage agreement deed in the field, Notaries may use the provisions in the Civil Code or follow the provisions in the Constitutional Court Decision Number 69 / PUUXIII / 2015 concerning amendments to Article 29 of Law Number 1 of 1974 which allows marriage agreements to be made before, during and after the occurrence of marriage as long as it is still in the marriage period. The marriage agreement is binding and enforceable as a law for both husband and wife and third parties, to the extent that the parties are concerned. If there is a dispute from changes in the content of the marriage agreement after the decision of the Constitutional Court Number 69 / PUU-XIII / 2015 can be resolved by litigation and non-litigation disputes. Therefore, in order for this marriage agreement to be binding on the parties and can be held by a third party, it must be registered and ratified by the marriage registration officer or the local civil registry office. So that there is validity from the

authorized official that will have an impact on the enforceability of the contents of the agreement itself for the parties and third parties related to the agreement.

Making a marriage presentation during the marriage bond causes multiple interpretations among notaries and the public, whether the marriage agreement is valid since the marriage took place or since it was signed. There is a sufficient period of time for the husband and wife from the date the marriage takes place to the date of making the marriage agreement to enter into legal actions with third parties relating to joint property.

The retroactive application of the marriage agreement will change the status of joint property to the property of each husband and wife which will be related to the third party involved, because legal actions committed by husband and wife related to joint property are certainly with the consent of both parties. Third parties must remain protected by retroactive marriage agreements, husband and wife must include clauses that do not harm third parties, and retroactive enforceability of marriage agreements remains valid and binding on the parties. To be able to bind a third party, the marriage agreement must be submitted to the Marriage Registrar and in written form made before a Notary.

CONCLUSION

After the Decision of MK 69 / PUU / XIII / 2015 there were changes to Article 29 of Law Number 1 of 1974 concerning Marriage, husband and wife can make a marriage agreement while in the marriage bond. Previously, marriage agreements made before marriage or when marriage took place, often referred to as *prenuptial agreement*. Making a marriage agreement during the marriage period is referred to as *a postnuptial agreement* also increases the authority of the notary to make a marriage agreement.

Marital agreements can now be made at the time, before, or during the marriage bond. This has been regulated in Article 29 of the Marriage Law jo. Constitutional Court Decision Number 69/PUU-XIII/2015. The marriage agreement is made in writing and ratified by the marriage registrar or notary official. The marriage agreement is binding and enforceable as a law for both husband and wife and third parties, to the extent that the parties are concerned. If there is a dispute from changes in the content of the marriage agreement after the decision of the Constitutional Court Number 69 / PUU-XIII / 2015 can be resolved by litigation and non-litigation disputes. Therefore, in order for this marriage agreement to be binding on the parties and can be held by a third party, it must be registered and ratified by the marriage registration officer or the local civil registry office. So that there is validity from the authorized official that will have an impact on the enforceability of the contents of the agreement itself for the parties and third parties related to the agreement.

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