

Legal Satisfaction in Agreement

Post-Decided Marriage Marriage Constitution Number 69 / Puu-Xiii / 2015

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ABSTRACT

On October 27, 2016 the Constitutional Court through its decision No. 69 / PUU-XIII / 2015 gave a constitutional interpretation of Article 29 paragraph (1), (3), and (4) Marriage Law. Marriage agreements after previous marriages are not known or regulated in the Marriage Law. Based on this background, the following issues were formulated: How was the implementation and legal certainty in the drafting of the marriage agreement after the Constitutional Court ruling number 69 / PUU-XIII / 2015? The research method used in this proposal is the normative legal research method. The marriage agreement after the birth of the Constitutional Court's Decision, which is based on the Constitutional Court's Decision decides the provisions of Article 29 paragraph (1), paragraph (3) and paragraph (4) unconstitutional with conditionality to the 1945 Constitution is contained in the ruling of the ruling. The phenomenon that occurs in this community which is one of the considerations of the Constitutional Court for such articles is unconstitutional with regard to the legal considerations of the Constitutional Court described above, this is done simultaneously with the Constitutional Court to provide legal certainty and justice. Based on the theory of legal certainty and the value to be achieved, namely the value of justice and happiness. Legal certainty in the drafting of the marriage agreement after the Constitutional Court's decision is of course seen in the judge's consideration to grant the petition filed by the petitioner, so Article 29 of the Marriage Law is affirmed more broadly related to happiness.

Keywords: *Legal Certainty, Implementation of Marriage Certificate Deed Making, Marriage Certificate*

1. INTRODUCTION

In Indonesia, there are various kinds of norms such as customary norms, religious norms, moral norms and legal norms. Where from the various existing norms, legal norms are the highest norms used as a reference or benchmark for other norms. The rule of law was born because it was the goal of the country itself which had been stated in a rule believed to state that the Indonesian state was a state of law. The term legal state itself comes from German, namely *rechtstaat* and into Indonesian literature through Dutch. So that Indonesia makes the law as a constitutional foundation that becomes the rule in social, national and state life. Indonesia is a state of law and not a state based on power. The 1945 Constitution of the Republic of Indonesia states that the Republic of Indonesia is a law state and the

principle of the rule of law must have justice and truth including rights and obligations that must be based on and based on law.

Based on the above, then in following the natural instincts of humans then to continue or continue the descent, which can be done by marriage as stipulated in law. Marriage itself is an act carried out by two people, done according to their own desires and following the rules. From the marriage itself will give birth to a legal act in which there will be rights and obligations, as well as relationships with other parties outside of those who are married. That way there will be a result of the actions that will be done. Marriage is valid if it is in accordance with existing laws. That way it will give birth to a consequence that is the cause and effect of an act done in marriage.

Marriage itself is regulated in Law Number 1 of 1974 concerning Marriage (Marriage Law). In the Marriage Law

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in Article 35 paragraph (1) and in paragraph (2) it is known as the principle of asset separation. Seen between the provisions governed by the Marriage Law and the Civil Code (Civil Code) there are differences, the difference between the two rules lies in the case where the assets of the parties that bind themselves in the marriage are mixed into assets as a whole or known as assets together in general. However, it is different from the rules in a particular marriage, which states that the assets of a marriage made by the parties that already existed before the marriage continues to belong to each of the parties. While the assets that exist after the marriage are only known as *gono gini* assets which can be divided if there is a problem or divorce. There are similarities in the two rules where there is an opportunity for the parties to the marriage in deciding the assets owned or obtained by the parties either before or after the marriage is carried out. This is a *contra* right which is considered correct by law but is limited in an agreement. Marriage agreements are contained in various rules such as in the Civil Code and Marriage Law, where the agreement is an agreement made by the parties who will do the marriage, the agreement was made before a notary. If you see a statement about an opportunity for the parties to the marriage in deciding the assets owned or obtained by the parties either before or after the marriage is carried out. This is a *contra* right which is considered correct by law but is limited in an agreement. With that limited nature, all deviations that are considered true by law must be guided by or referring to the law. This is in accordance with applicable regulations, because everything must be sourced and based on the law.

While the terms of the marriage agreement are regulated in Article 29 of the Marriage Law basically states that the marriage agreement must be made in the presence of a notary and in the form of an act, related to the authority of the notary in his office regulated by law. Thus of course automatically then the agreement will be in writing and must be registered with the authorities. In this case the authority is the Marriage Registrar. In addition, the clause in an agreement that has been made by the parties of course can not be changed. Even if you want to change, it must be with the agreement of the parties themselves and can not harm the third party of course in practice or application.

An interesting problem in this writing is in terms of its implementation. There are differences in the timing of the execution of a marriage agreement. The marriage agreement itself is not a new thing, but it is a difficult phenomenon to talk about for the parties especially when they want to get married, especially in Indonesia. About the agreement itself in society is known to be done before the occurrence of marriage, known as the pre-marriage agreement. Further development, where the marriage agreement can be entered into after its execution, provided that there must be a court ruling. With the determination of the court, the marriage is considered valid according to the law if it has obtained a court order in advance. Further development, where the marriage agreement can be entered into after its execution, provided that there must be a court ruling. This of course leads to differences between the rules that apply, which governs the marriage agreement.

With this marriage agreement, if a mixed marriage is carried out, it can avoid problems in the future. This is because there are other regulations related to marriage related to one's nationality (citizenship). The regulations relating to citizenship include Act Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (LoGA), namely the right to land that can be granted by a person or legal entity by looking at citizenship. This arises a problem when mixed marriages are conducted by Indonesians with people outside Indonesia. On October 27, 2016 the Constitutional Court (MK) through its decision Number 69 / PUUXIII / 2015 submitted by Ny. Ike Farida.

The marriage agreement itself is not new, but it is a phenomenon which is difficult to discuss for the parties, especially when they want to have a marriage, especially in Indonesia. Regarding the agreement itself in the community known to be done before the marriage, known as a prenuptial agreement. Developing further, where the marriage agreement can be done after it is carried out, with the condition that there must be a court decision.

The issuance of Decision of the Constitutional Court Number 69 / PUUXIII / 2015, influences the legal system of marriage agreements that have been regulated in the Marriage Law, where after the ruling was issued there was a change which became a difference of meaning to Article 29 paragraph (1), (3), and (4). That way it will certainly lead to new views that occur in people's lives in the implementation of marriage agreements. Based on the background description above, the writer feels interested to further analyze the matter with the title of writing, namely "Legal Certainty in Making Deed of Marriage Agreement Post Constitutional Court Ruling Number 69 / PUU-XIII / 2015".

2. PROBLEMS

Berdasarkan uraian latar belakang di atas, maka permasalahannya adalah:

1. How is the implementation of the Drafting of Marriage Agreement After the Constitutional Court Ruling Number 69 / PUU-XIII / 2015?
2. How is Legal Certainty in the Implementation of the Making of Deed of Marriage Agreement Post Constitutional Court Ruling Number 69 / PUU-XIII / 2015?

3. ANALYSIS

3.1 Implementation of the Deed of Marriage Agreement Post MK Decision Number 69 / PUU-XIII / 2015

The marriage agreement itself is not new, but it is a phenomenon which is difficult to discuss for the parties, especially when they want to have a marriage, especially in Indonesia. Regarding the agreement itself in the community known to be done before the marriage, known as a prenuptial agreement. Developing further, where the marriage agreement can be done after it is carried out, with the condition that there must be a court decision. With the existence of a court ruling, which indicates that the marriage agreement was made after the marriage is considered valid. Based on Article 15 of the UUJN it states that the notary is given the authority to make other deeds, including the marriage agreement, especially after the marriage takes place to be valid and have legal force. Based on UUJN relating to the authority of a notary public, the notary can make a marriage agreement by looking at the provisions that must obtain a decision issued by the court first if he wants to make an agreement after the marriage took place.

However, after the issuance of the Constitutional Court Decision Number 69 / PUU-XIII / 2015 there were changes or differences relating to the time of making the marriage agreement, the decision was based on the request of an Indonesian citizen who engaged in mixed marriages. Next to the petition filed with the Constitutional Court, a legal consideration was made, namely: to take care of the time of making a marriage agreement that is known to the public at this time which was made before the marriage, where in reality there are several things or cases where there is a desire to make a marriage agreement after the occurrence or implementation of a marriage for various reasons. The word "at the time or before the marriage took place", that is what is known by the general public before the request. Regarding the agreement itself in the community known to be done before the marriage, known as a prenuptial agreement.

Such Constitutional Court verdicts, will obtain permanent and binding legal force since after being pronounced before a hearing open to the public, which means that, the Constitutional Court's decision immediately obtains permanent and binding legal force after being pronounced and no other legal remedies can be taken (final and binding). The legal consequences of the Constitutional Court Decision above which granted the Petitioner's petition were null and did not have binding legal force against a legal norm requested by the Petitioner, therefore in this case Article 29 paragraph (1), (3), and (4) Marriage Law. By looking at it, the contents of the decision submitted by the applicant is that there is a different meaning from the previous one. So that the ruling becomes something new, especially in the creation of a law in a country, especially in the case of this marriage.

Looking at the previous explanation regarding the decision, the Constitutional Court's decision has binding legal force. That way it will apply to all members of the community, not only to the parties involved. So it has also executive power.

The Constitutional Court's decision is in accordance with developments or needs so it tends to be good. The thing to note once is that it lies in the words "may be made", meaning that it depends on the husband and wife itself, when it is made and what its contents are like. Another thing that can be done by a married couple is not only about the making but also can be about changing the contents of the existing marriage agreement.

The phenomenon that occurs in the community which is one of the considerations of the Constitutional Court to declare such articles as conditional unconstitutional as the legal judgment of the Constitutional Court described above, this is solely done by the Constitutional Court in order to provide legal certainty and justice guaranteed by the NRI of the NRI Year of the Year 1945 for the people of their constitutional

rights in making an agreement (the principle of freedom of contract) in this case the marriage agreement.

But in terms of its implementation is still less effective, there are still many notaries who are hesitant to make a marriage agreement after the Constitutional Court's Decision is issued. It is better to be given guidelines so that they can become a basis or reference for the notary in exercising his authority in order to be guaranteed and not violate the existing rules, especially when a marriage agreement is made after the marriage takes place, of course it will have a relationship with a third party. In connection with the above matter, the marriage agreement before the ruling is only made during the agreement of the parties, which is made by a notary. But in terms of its implementation is still less effective, there are still many notaries who are hesitant to make a marriage agreement after the Constitutional Court's Decision is issued. It is better to be given guidelines so that they can become a basis or reference for the notary in exercising his authority in order to be guaranteed and not violate the existing rules, especially when a marriage agreement is made after the marriage takes place, of course it will have a relationship with a third party.

Given a guideline can become a basis or reference for a notary in exercising his authority so that it can be guaranteed and does not violate existing rules, especially when a marriage agreement is made after the marriage takes place, of course it will have a relationship with a third party.

Based on the decision of the Constitutional Court filed by Mrs. Ike Farida which granted in part that Article 29 paragraphs (1), (3) and (4) has given changes in the Marriage Law, especially in the case of marriage agreements, so that the contents of Article 29 of the Marriage Law in marriage agreement becomes: At the time, before the execution or during the marriage contract of both parties by mutual agreement

may submit a written agreement ratified by the registrar or notary, after which the contents also apply to the third party as long as the third party is involved; Such an agreement cannot be ratified when it violates the boundaries of law, religion and morality; The agreement is valid since the marriage took place unless otherwise specified in the marriage agreement; As long as the marriage is in force, the marriage agreement may apply to the marriage property or other agreement, cannot be altered or revoked, unless both parties have the consent to change or revoke, and the change or revocation does not harm the third party.

Regarding the time of the validity of a marriage agreement, that agreement made during the marriage will apply and regulate the property contained in the marriage only and does not apply to the property before the marriage is performed or is known by the term innate property. And if it is made after the marriage then it will apply to the property in the marriage only, known as gono gini property.

Based on the results of the interview also mentioned that there are differences in the implementation of the making of marriage agreements after the Constitutional Court Decision, which lies in the format in the writing as in the comparison and the contents of the clause of the deed. The process of making a marriage agreement among notaries also differs from the rules and documents shown or made, but agreed with the husband and wife before making a deed of statement. The following are the results of the interview: First, when you see Article 35 of the Marriage Law stipulates that assets obtained during marriage become joint property. Provisions for the dissolution of shared assets (gono-gini) are regulated in Article 126 of the Civil Code. Gono-gini's assets have been dispersed for the sake of law, some of which are due to the separation of assets.

Before the Constitutional Court ruling No. 69 / PUU-XIII / 2015 regarding marriage agreements, we know

2 (two) agreements, which can be made before the marriage takes place and can be made during the marriage bond based on the determination of the Court. The drafting of the marriage agreement must be made authentically, that is, before a notary.

The process of making a marriage agreement post the Constitutional Court's decision among the notary public is different from the rules and documents shown or made, but agreed with the husband and wife beforehand to make a deed of statement (can be made under the hand or authentically) the contents of which explain that between them are not in the process of divorce, a list of movable or immovable inventories, debt or not, no problems with the tax directorate, not as a debtor who is in default and is not harming a third party and attaching a marriage certificate. There are some notaries who require to be reported in advance in the newspaper for 2 weeks, if there is no objection to the notary to make a marriage agreement. After the marriage agreement deed has been made, the husband and wife submit the application of the decision to the court so that the court granted the request of the applicant and ordered the KUA or the civil registry office where they used to have a marriage to register the marriage agreement they had made.

There are differences in the format of the writing in the marriage agreement deed which was carried out before the marriage took place and after the issuance of the Constitutional Court's decision in writing in the comparison and the contents of the clause of the deed. Every marriage agreement made will have advantages and disadvantages. This marriage agreement was made to save property owned by each party from third party interference.

The second interview, namely: The marriage agreement made before or during the marriage and after the Constitutional Court's ruling is only a different legal process, the material remains the same and most importantly is not allowed to harm a third

party. The implementation of a marriage agreement certainly has differences, especially in relations with third parties.

If it is made after a marriage takes place like the Constitutional Court's Verdict, of course it could have happened a lot or has legal relations with a third party, so a marriage agreement must be made carefully and thoroughly in its making. Unlike if a marriage agreement is made before the marriage takes place, there may not be a relationship with a third party, even if there is a relationship with a third party it will be easier to find a way to resolve it.

The Constitutional Court's decision is in accordance with developments or needs so it tends to be good. The thing to note once is that it lies in the words "may be made", meaning that it depends on the husband and wife itself, when it is made and what its contents are like. Another thing that can be done by a married couple is not only about the making but also can be about changing the contents of the existing marriage agreement.

3.2 Legal Certainty in Making Deed of Marriage Agreement Post MK Decision Number 69 / PUU-XIII / 2015

Based on the legal certainty aspect, the provisions of the marriage agreement, both according to the Marriage Law have explicitly regulated, that the marriage agreement cannot be made or changed after the marriage takes place, this is to avoid abuse by third parties.

Based on Gustav's view or opinion regarding legal certainty, which in the end is positive law must always be obeyed. Based on the theory of legal certainty and the value to be achieved, namely the value of justice and happiness. The legal certainty in making a marriage agreement after the Constitutional Court's verdict is certainly seen in the judge's consideration to grant the petition filed by

the petitioner, so Article 29 of the Marriage Law is interpreted more broadly based on justice and happiness.

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With the issuance of the Constitutional Court's decision it is clear that it has legal certainty, because it is guaranteed by law. Although in practice there will certainly be differences that must be adjusted to the existing rules. In essence, in making a marriage agreement, the most important thing is that it must not be detrimental to any third party.

4. CONCLUSION

The process of making a marriage agreement post the Constitutional Court's decision among the notary public is different from the rules and documents shown or made, but agreed with the husband and wife beforehand to make a deed of statement (can be made under the hand or authentically) the contents of which explain that between them are not in the process of divorce, a list of movable or immovable inventories, debt or not, no problems with the tax directorate, not as a debtor who is in default and is not harming a third party and attaching a marriage certificate. In connection with the implementation, there are differences in the format in writing in the marriage agreement deed which was carried out before the marriage took place and after the issuance of the Constitutional Court's decision in writing in the comparison and the contents of the clause of the deed. Every marriage agreement made will have advantages and disadvantages. This marriage agreement was made to save property owned by each party from

third party interference. In addition, in practice there will certainly be differences that must be adjusted to the existing rules. In essence, in making a marriage agreement, the most important thing is that it must not be detrimental to any third party. But in terms of its implementation is still less effective, there are still many notaries who are hesitant to make a marriage agreement after the Constitutional Court's Decision is issued.

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REFERENCES

- [1] Amiruddin dan H. Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Cetakan ke-1. (Jakarta: PT Raja Grafindo Persada, 2004).
- [2] Dwinopianti, Eva. "Implikasi dan Akibat Hukum Putusan Mahkamah Konstitusi Nomor 69/Puu-XIII/2015 terhadap Pembuatan Akta Perjanjian Perkawinan Setelah Kawin yang Dibuat di Hadapan Notaris". Yogyakarta. Lex Renaissance, Volume 2, Nomor 1, Januari, 2017.
- [3] Farida Indrati, Maria. *Ilmu Perundang-Undangan Dasar-Dasar dan Pembentukannya*, Cetakan Ke-5. (Yogyakarta, Kanisius, 1998).

- [4] Farida Indrati S, Maria. *Ilmu Perundang Undangan Jenis, Fungsi, dan Materi Muatan*, Cetakan ke-18. (Yogyakarta: Kanisius, 2007).
- [5] Mahmud, Peter. *Penelitian Hukum*. Cetakan ke-7. (Jakarta: Kencana Prenada Media Group, 2016).
- [6] Maslul, Syaiful. “Putusan Mahkamah Konstitusi Nomor 69/PUUXIII/2015 ditinjau dari pemenuhan hak-hak asasi manusia dan asas-asas pembentukan perjanjian”. *Jurnal Mahkamah*, Volume 1 Nomor 2, 2016.
- [7] Naja, Daeng. *Teknik Pembuatan Akta*. (Yogyakarta: Pustaka Yustisia. 2012).
- [8] Nazir, Moh. *Metode Penelitian*. (Bogor: Ghalia Indonesia, 2005).
- [9] P. Sibuea, Hotma. *Asas Negara Hukum, Peraturan Kebijakan & Asas-asas Umum Pemerintahan Yang Baik*. (Jakarta, Erlangga, 2010).
- [10] Rato, Dominikus. *Filsafat Hukum Mencari: Memahami dan Memahami Hukum*. (Yogyakarta: Laksbang Pressindo, 2010).