

IMPLEMENTATION OF MARRIAGE AGREEMENTS NOT REGISTERED AFTER VERDICT OF THE CONSTITUTIONAL COURT NUMBER; 69 / PUU-XIII / 2015

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Abstract: Article 29 of law No.1 of 1974 on marriage and the decision of the Constitutional Court of the Republic of Indonesia No. 69 / PUU-XIII / 2015 allows prospective husband and wife to make a marriage agreement. The marriage contract must be made with an authentic deed. This in Padang City is still not done in accordance with the rules. Based on this, the author conducted a study entitled: "Implementation of Unregistered Marriage Agreement After the Constitutional Court Decision Number: 69 / PUU-XIII / 2015", and the formulation of the problem is How to implement the post-Constitutional Marriage Agreement Number, 69 / PUU-XIII / 2015, what are the factors that cause the implementation of the marriage agreement, the legal consequences of the marriage agreement that is not registered in the city of Padang.

Key Words: Agreement, Marriage Agreement, Legal Consequences.

1. INTRODUCTION:

Marriage is an act in which the parties who can do it have been determined by law and against it will cause a legal consequence for the parties, this legal act will give birth to rights and obligations for husbands and wives who have promised to bind themselves to each other physical and spiritual and therefore will have legal consequences for both parties [1]

After the enactment of Law 1 of 1974 concerning Marriage as a legal unification in the field of Marriage which adheres to the principle of separation of assets as regulated in the provisions of Article 35 paragraph (1) it is stated that property obtained during marriage becomes joint property and in paragraph (2) further states that the property of each husband and wife, and property obtained by each as a gift or inheritance are under their respective control as long as it is not determined. There are differences in the provisions regarding the agreement as regulated in the Marriage Law and the Civil Code. The Civil Code regulates that the wealth of a husband and wife brought into marriage is mixed into union assets, namely joint assets between them (husband and wife), while in the law on marriage, the assets of marriage brought into marriage (inherited property) remain the property of each other. each and that is mixed into one is only assets obtained from and / or during the marriage (assets gono gini). However, there are similarities between these regulations, namely, giving the husband and wife the opportunity to decide differently on the good assets obtained before and or after the marriage takes place, and which is a deviation that is justified by law which is determined limitatively through the act of the Marriage Agreement. The Marriage Agreement which is made by and before a Notary which states an agreement to separate the assets obtained before or during the marriage in accordance with the principles of the agreement as it should be applied.

Based on the provisions of Article 186 of the Civil Code above, legally speaking, a marriage agreement made after the marriage is considered valid according to law if it has received a court order, with valid reasons determined. This raises a legal uncertainty, because based on Article 147 of the Civil Code and the Marriage Law in Article 29 it explicitly states that the marriage agreement can be carried out at or before the marriage takes place.

Various empirical facts show that divorce occurs not only differences in social status or property disputes, many other factors, for example, economic problems, polygamy, adultery, and domestic violence, hereinafter abbreviated as (KDRT). This shows that the causes of divorce are not only limited to matters of property in marriage, but also regarding the rights and obligations of husband and wife in fostering a household. It needs to be addressed that the importance of marriage is a legal bond to foster a happy household and family, where the husband and wife assume the mandate and responsibilities, for example a husband is responsible for providing support for his family and a wife has the mandate to take care of all the needs of the house stairs.

2. CONCEPTUAL FRAMEWORK:

- Legal Protection:

Marriage is the inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family (household) based on the Oneness of Godhead.

- Marriage Agreement

According to the Marriage Agreement is an agreement (agreement) made by the prospective spouse before or at the time of the marriage is held to regulate the consequences of the marriage on their property. According to the explanation of Article 29 of the Marriage Law (Law Number 1 of 1974 on Marriage).

- Legal Registration

Legal Registration is a registration of marriage administration handled by a marriage registrar (VAT) with the aim of creating legal order.

3. THEORITICAL FRAMEWORK:

- Theory of Legal Protection

According to legal certainty is certainty of legal rules, not certainty of actions against or actions in accordance with legal rules. Because the phrase legal certainty is not able to describe the certainty of behavior towards the law really. [2]

- Balance Theory

The theory of equilibrium is put forward by Herlien Budiono, in his dissertation, entitled "The Principle of Balance for Indonesian Agreement Law, Agreement Law Based on the Indonesian Wigati Principles" original title is " *whose Het evenwichtsbeginsel voor Gescheid*", he proposed the addition of one basic principle for contract law, namely the principle of balance.

- Theory of Law Effectiveness

The effectiveness of the law put forward by Anthoni Allot, as quoted by Felik, is as follows. Law will be effective if the purpose of existence and implementation can prevent unwanted actions and eliminate chaos. Effective law in general can make what is designed to be realized. If there is darkness then the possibility of easy rectification occurs, if there is a necessity to implement or apply the law in a new, different atmosphere, the law will be able to resolve.

4. LITERATURE REVIEW:

Article 1313 of the Civil Code (hereinafter referred to as the Civil Code) provides the meaning of an agreement which reads: "an act whereby one or more persons bind themselves to one or more other people".

As it is known that the agreement begins with an agreement between the parties and this agreement must occur with the will of the parties. Sometimes what makes the agreement, therefore the question often arises whether there has been an "agreement".

Termination of the agreement means eliminating all pre-existing will statements. In the Civil Code, there is no explicit mention of when an agreement ends. Regarding the termination of an agreement, it must be clearly distinguished from the abolition of an agreement, because an agreement can be canceled, while the agreement which is the source of it still exists. Only if all the agreements from the agreement have been deleted, will the agreement terminate. In this case the termination of the agreement as a result of the termination of the agreements, that is, if an agreement is canceled retroactively, for example as a cancellation due to default (Article 1226 of the Civil Code), all agreements that have occurred are nullified.

5. METHOD:

The method used in this research is sociological juridical. This research is a non-doctrinal approach (*juridical sociology*).

6. DISCUSSION:

Decision of the Constitutional Court Number: 69 / PUU-XIII / 2015, bringing a shift in the meaning and new legal norms in the national legal constellation, the term Marriage Agreement in legal norms in Indonesia is regulated in Chapter VII (seven) part I (to one) Article 139 to Article 154 *Burgerlijk Wetboek* hereinafter abbreviated as (BW) [3] or better known as the Civil Code, hereinafter abbreviated as (KUHPerdata). Further regulation regarding the Marriage Agreement is regulated in Law Number 1 of 1974 concerning Marriage which explicitly regulates the Marriage Agreement in Chapter V Article 29.

Particularly for citizens who embrace Islam, the marriage agreement arrangement is regulated in the Islamic Law Compilation (KHI) through Presidential Instruction Number 1 of 1991, in Chapter VII Article 45 to Article 52 [4]. The three statutory regulations governing marriage agreements serve as guidelines in conducting marriage agreements, the marriage agreement [5] regulates assets or property alone (materialistic concept). The Marriage Agreement has the character of providing protection for married couples as long as they are bound in marriage and / or when the marriage bond is broken. Marriage agreements made before marriage are no longer taboo for the people of Indonesia, especially notaries are accustomed to making the marriage agreement deed, the implementation of this is

solely to protect the property obtained by each party, so that in the future, the legal consequences of a legal act can be accounted for by each party who did it so that it does not involve the assets obtained by each party. However, the interesting thing about this marriage agreement is in terms of the implementation of the marriage agreement, which is based on the provisions stipulated in both Article 147 of the Civil Code and the Marriage Law in Article 29 states that the marriage agreement is carried out after the marriage takes place based on a court ruling.

7. ANALYSIS:

A. Implementation of the Making of a Marriage Agreement

The marriage agreement is regulated in Article 29 paragraph (1) of the Marriage Law jo. Constitutional Court Decision Number 69 / PUU-XIII / 2015 (“Decision MK 69/2015”):

At the time, before or during the marriage contract of the two parties by mutual agreement may enter into 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.

The decision of MK 69/2015 has expanded the meaning of the marriage agreement so that the marriage agreement is no longer interpreted only as *aprenuptial agreement*, but can also be made during the *postnuptial agreement*.

Marriage agreement between Indonesian Citizen (“WNI”) and Foreign Citizen (“WNA”) whose marriage is performed and whose marriage agreement is made in Indonesia. Basically, the marriage agreement governs all matters of property but can also regulate matters beyond that agreed upon by the original parties not contrary to law, law, religion, and propriety or morality as regulated in Article 139 of the Book Civil Law Law (“KUH Perdata”) Prospective husbands and wives by marriage agreement may deviate from the legal provisions of common property as long as it is not contrary to good morals or to general discipline.

Furthermore, Notary Lenny Agustan stated that the marriage agreement that is not recorded either in the religious affairs office or the civil registry office should not be implemented, such as the marriage agreement between Mr. X and Mrs. Y on the position of common property acquired at the time of marriage -each to the land in the name of the couple. As stated in the content of the marriage agreement but according to Lenny Agustan must get the consent of each couple because he has not registered the marriage agreement and if you want to implement the content of the agreement must be registered first.

B. Obstacles Found in the Implementation of the Marriage Agreement and Its Solution:

The marriage agreement which is a written agreement must be recorded, and ratified in the institution of marriage registration. This means that at the time of the marriage, the marriage agreement must also be confirmed by the Registrar of Marriages of the Office of Religious Affairs and the Office of Civil Records. This is in order to fulfill the provisions of Article 29 Paragraph (1) of the Marriage Law. However, from the data that the author can not have a marriage agreement confirmed and recorded by the Marriage Registrar.

Until now, many marriage agreements have not been ratified by the Registrar of Marriages, so the agreement can not be said to be a marriage agreement but a common agreement that applies in general. The couple making the marriage contract is unaware of the obligation to register the marriage agreement. At the time of making the marriage agreement at the notary's office, the notary also did not provide the couple with knowledge of the importance of the marriage agreement to be registered. An unregistered marriage agreement only binds the husband and wife who made it, whereas if the marriage agreement is registered then it also binds a third party who has an interest in the wealth of the husband and wife. Given the importance of registering a marriage agreement for a third party, it is advisable for the Registrar of Marriages in this case, the Office of the Office of Religious Affairs and Civil Records of Padang City to better understand the knowledge of the marriage agreement, then socialize to the interested parties (prospective husband and wife) can bind themselves as well as bind third parties.

C. Consequences of the Law From the Execution of the Marriage Agreement

The marriage agreement provides legal certainty to the property for both spouses regarding the property of their respective spouses as well as property acquired during the marriage in a marriage that we know as joint property. in Article 35 of Law no.1 of 1974 on Marriage in the event of divorce, both death and divorce in the case of division of property is difficult because it is not clear classification about common property, innate property and gift or inheritance. it will be easier to settle the division of property than not to make a marriage agreement. This will be a complicated problem when an Indonesian citizen with a foreigner without having a marriage agreement in advance and feels more unfair when they will have a house on property rights and building rights will stumble on article 21 paragraph 3 of the Agrarian Principles Law. Only Indonesian citizens have property rights and article 36 that Indonesian citizens can have building rights and more ironically when the perpetrators of mixed marriages have to reduce property rights and building rights into use due to the absence of separation of property in marriage.

In principle, the Marriage Agreement made by the parties adds to the written rules of law in terms of obtaining rights and obligations. With the existence of a marriage agreement there is no need for proof either of the joint property or the matter in question, but simply refer to the marriage agreement that has been made. For household conflicts that have been bound by the marriage agreement, , for example in property acquired during the marriage should not be processed in court, because both parties have fully accepted the contents of the marriage agreement made, provided that the marriage agreement must first be registered with the dukcapil or religious affairs office.

8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- The process of making and registering a marriage agreement is in principle the making of the same as the agreements in general, because each other is bound by Article 1320 of the Criminal Code on the terms and conditions of the agreement. Regarding the ratification of the marriage agreement related to the marriage implementation process, because the submission of the confirmation of the marriage agreement at the same time at the time of filing the marriage application. Marriage agreements can be made in the form of deeds under hand or in the form of authentic deeds, as long as the content does not violate the boundaries of law, religion and morality. The marriage agreement that has been made must be approved by the Registrar of Marriages before or at the time of the marriage which is then recorded in the marriage deed.
- The constraints faced are the prospective husband and wife who make a marriage agreement do not register their marriage agreement in the background due to several factors namely the Marriage Registrar does not understand the marriage agreement and lack of knowledge of the couple making the marriage agreement about the obligation to register the marriage agreement. So it can be said that the marriage agreement is not valid and is just a normal agreement and is not binding on third parties.
- Due to the law of the unregistered marriage agreement, and when the husband and wife have a relationship with a third party then it is assumed that the husband and wife are never bound by the marriage agreement and any legal act involving marital property must be approved by both parties. With the registration of the marriage agreement with the Registrar of Marriages, then the marriage agreement has legal consequences against a third party who is involved in the property of the husband and wife.

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3. R. Subekti R. Tjitrosudibio, 2009, *Kitab Undang Undang Hukum Perdata*, Cetakan 40, Jakarta. PT. Pradnya Paramita, page, 34-154.
4. Himpunan Peraturan Perundang Undangan Kompilasi Hukum Islam, Jakarta , Fokus Media, 2010, page, 18.
5. Marriage certificate, a document that is executed by the religious or civil official presiding at a marriage ceremony and filed with a public authority (usu the county clerk) as evidence of the marriage also termed certificate of marriage Cf marriage license (case Marriage 3J C.J.S. Marriage 35) “the texts of the floman Law do not supply a definition of contract. The word contractus–contrahere-like contract in English, are used in various senses, sometimes wider, sometimes narrower , labeled gives contractus the meaning of a reciprocal obligation, such as purchase and sale, here partnership but when the Roman speak of obligation arising from contract they mean obligation arising from convention or agreement in roman law it was far from being the case that all agreements. In Roman law it was far from being the case that all agreements which might be wxpected to produce a legal obligation did so “ R.W. Lee The element of Floman Law 285 (4th ed.1956).