
**JUDICIAL REVIEW OF POST-NUPTIAL AGREEMENT AFTER
CONSTITUTIONAL COURT DECISION NUMBER 69/PUU-XIII/2015**

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ABSTRACT

For the purpose of regulating the financial effects of their marriage, a husband and wife may enter into a prenuptial or postnuptial agreement. In light of Law No. 1 of 1974, the author seeks to clarify the effect of a postnuptial agreement and the subsequent status of the spouses' property. Juridically, the research is based on an approach to the principles of legal principles and rules relating to the applicable legislation, the Implementing Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974, and the decision Number 69/PUU-XIII/2015 of the Constitutional Court of the Republic of Indonesia. Constitutional Court decision 69/PUU-XIII/2015 governs the process by which a husband and wife can enter into a marriage agreement after their wedding by using a District Court Decision.

Untuk tujuan mengatur dampak keuangan pernikahan mereka, suami dan istri dapat membuat perjanjian pranikah atau pascanikah. Berdasarkan Undang-Undang No. 1 Tahun 1974, penulis mencoba untuk menjelaskan akibat dari perjanjian pascanikah dan status harta suami isteri selanjutnya. Secara yuridis penelitian ini didasarkan pada pendekatan asas-asas dan kaidah-kaidah hukum yang berkaitan dengan peraturan perundang-undangan yang berlaku, Peraturan Pemerintah Pelaksana Republik Indonesia Nomor 9 Tahun 1975 tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974, dan Keputusan Nomor 69/PUU-XIII/2015 Mahkamah Konstitusi Republik Indonesia. Putusan Mahkamah Konstitusi 69/PUU-XIII/2015 mengatur tentang tata cara suami istri dapat mengadakan perjanjian perkawinan setelah menikah dengan menggunakan Putusan Pengadilan Negeri.

Kata Kunci: *Marriage Agreement, Constitutional Court marriage, Post-nuptial Agreement.*

A. INTRODUCTION

According to Article 1 of Law Number 1 of 1974 Concerning Marriage, a man and a woman who have chosen to live together as husband and wife in the name of Believing in the One Supreme God develop an inner and exterior link with each other for the purpose of establishing a joyful and eternal family (household). Marriage marks a significant milestone in every person's existence. Marriage between a man and a

woman has physical and spiritual effects on the couple themselves, on their community, and on their financial standing before, during, and after the wedding (Puspitasari, 2015).

In the marriage literature, it has the meaning as an *aqad*, which justifies association and limits both rights and obligations as well as helping each other, between a man and a woman, both of whom are not *muhrim* (Hastuti, 2020). Marriage according to religious terms is called marriage, namely: carrying out a contract or agreement to justify sexual relations between men and women in order to realize a happy life filled with peace and love by means of the grace of God Almighty (Atabik & Mudhiyah, 2016) (Abhitama & Kuswardani, 2023).

In Indonesia, rules regarding marriage are not only influenced by local customs. The existence of various influences in the community resulted in the occurrence of many rules governing marriage matters. Differences in how to get married as an influence from marriage arrangements, have consequences for the way of life in a family, kinship, and one's wealth in social life (Eternal, 2021).

Prior to the enactment of Law Number 1 of 1974 Concerning Marriage, the Indonesian nation was familiar with the application of plural laws which were applied based on population groups (Fatnisary & Cahyono, 2021). In the case of making a marriage agreement, there are conditions in its implementation that must be considered for the validity of the marriage agreement. These conditions are regulated, among other things, that the marriage agreement must be made in written form, and made before the marriage takes place, and is valid from the time the marriage takes place. The agreement is placed on the marriage certificate and is an integral part of the marriage certificate, and the marriage agreement is made by mutual agreement or will, made in writing, ratified by a civil registry employee, and may not conflict with law, religion and decency (Arief, 2017).

Joint assets are assets managed by the husband and wife during the marriage (Firdawaty, 2016). Regarding marital assets this is regulated in Law Number 1 of 1974 concerning marriage is regulated in Articles 35 to Article 37. It can be seen from the contents of the article that in Law Number 1 of 1974 concerning Marriage marital assets that are brought into marriage (inheritance) remain the property of each and what is mixed into one is only the assets obtained from business during the marriage (commonly called property together) Deviations regarding marital assets can only be done in one way, namely by entering into a marriage agreement (Royani, 2017).

The content regulated in the marriage contract depends on the parties of the prospective husband and wife, as long as it does not conflict with the law, religion and propriety or decency. The form and content of the marriage agreement, as is the case with agreements in general, both parties are given freedom (in accordance with the legal principle of freedom of contract) as long as it does not conflict with the law, decency or does not violate public order (CIDL Dewi, 2021).

The marriage agreement made by the prospective husband and wife of this kind usually contains a promise regarding the property acquired during the marriage. Usually in the form of obtaining separate assets, each party gets what is obtained or obtained during the marriage including profits and losses (Inayatillah, Judiasih, & Afriana, 2018).

The purpose and objective of the prospective husband and wife in making marriage promises is to regulate the legal consequences of marriage, namely regarding assets so that there is no unanimous union of marital assets between husband and wife during the marriage. Marriage agreements that contain deviations from unanimous unions are usually made by prospective husbands and wives whose total wealth is very unequal-the husband-to-be is very rich, while the prospective wife has none or vice versa (Kusuma, 2010).

First, if either spouse has received a gift or bequest from their parents with the express instruction that it not be commingled with their share of marital assets, the newlyweds may choose to rethink their postnuptial agreement. *Second*, safeguard the household budget. If one spouse's business is destroyed, the other's can continue function as a source of income; this means that the family can put money aside for the kids' college tuition and other essentials even if one spouse loses their job.

Third, it serves as a precaution against even higher losses. If a husband or wife is serving as a director of a limited liability business that owes money to a bank, the bank can only pursue repayment from the husband's or wife's personal assets in the event of an error or negligence on the part of the director. At first, the existence of a marriage agreement in Indonesia did not attract much notice or popularity since many Indonesians saw it as inappropriate and even offensive for prospective spouses to engage into an agreement addressing assets before getting married.

But, it is possible that there is an absolute necessity that needs to be considered from the outset, as changes in the field of marriage vary from the established pattern, ensuring that the emergence of new developments will always be actual and occasionally produce polemics (pros and cons). After that, the mentality shifts to one of counting costs and benefits before tying the knot. One that catches our eye is the one on the post-nuptial agreement, which piques our interest because of its significance and novel nature (Syah & Tholatif, 2022).

Marriage is defined as the "physical and spiritual link between a man and a woman as husband and wife with the objective of building a happy and eternal family (home) based on Belief in the One Almighty God" in Article 1 paragraph (1) of Marriage Law No. 1 of 1974. Marriage is a binding agreement to follow Allah's directives, as stated in Article 2 of the Compilation of Islamic Law, and doing so is considered an act of worship "The legal definition of marriage is a cohabiting relationship between a man and a woman who both agree to and abide by the conditions set forth in the marriage laws.

Marriage is a contract between a man and a woman to live together and have children. It is governed by Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage and Government Regulation of the Republic of Indonesia No. 9 of 1975 on Implementation of Law No. 16 of 2019 on Amendments to Laws -Law of the Republic of Indonesia No. 1 of 1974 Concerning Marriage.

The parties have legally bound themselves to the agreement 1313 of the Civil Code (KUHPerdata), which means that if one of the parties commits a breach of the agreement, the other parties are not released from their obligations under the agreement. A marriage agreement is an agreement made by a prospective husband or prospective wife to regulate the consequences of their marriage on their assets.

The provisions of Article 1320 of the Civil Code governing the legal terms of agreements apply, in principle, to marriage agreements as well as agreements between prospective husband and wife "Agreements made in accordance with the law have the same force and effect as statutes for the parties to the agreement. The only way out of this arrangement is for both sides to agree to terminate it. for reasons deemed adequate by a court of law. Good faith is required in the execution of all agreements. Only a valid agreement can bind the parties involved in the agreement, for an agreement to be valid it must be guided by Article 1320 of the Civil Code. In order for the marriage agreement to be considered valid and have legal certainty and bind the parties in it, the procedure for the marriage agreement must comply with the provisions in Article 29 of the Marriage Law. A marriage agreement is an agreement made by the prospective husband and the prospective wife before or at the time the marriage is held (held), to regulate the consequences of the marriage on their property.(Susanti, 2018).

In Law Number 1 of 1974 concerning Marriage does not provide the meaning of a Marriage Agreement. In Article 29 of the Law it only says "At the time or before the marriage takes place, both parties by mutual agreement can enter into a written agreement that is ratified by the Marriage Registrar, after which the contents also apply to third parties as long as the third party is involved". According to Subekti, a marriage agreement is an agreement regarding the property of husband and wife during their marriage which deviates from the principles or patterns set out in the law.(Hastuti, 2020).

The marriage agreement is made with the aim of providing clarity about everything that is mutually agreed upon by both parties, generally the marriage agreement only regulates assets that are privately owned by both spouses or what is commonly called a marriage agreement to separate assets.(Ananda & Pulungan, 2022). Before getting married, the prospective husband and wife can determine for themselves how their assets in marriage will be arranged. This arrangement is carried out by both parties through a marriage agreement as a form of deviation from the laws and regulations regarding marital property unions. If a marriage agreement is not made, it

means that between the two parties there is joint ownership of property in marriage, because Indonesian law adheres to a system of mixing assets in marriage.

Research on marriage agreements made after marriage has been carried out a lot. For example, research conducted by (Zamroni & Putra, 2020) discusses the legal position of the marriage agreement made after the marriage took place. In addition, research conducted by (Judiasih, Yuanitasari, & Inayatillah, 2018) discuss about the format of the model marriage agreement which can be used as a guide for notaries who will make a marriage agreement deed and there is also a circular letter from the Director General of Dukcapil regarding the Recording of Reporting of Marriage Agreements. The difference with this research is that this study discusses the position of joint assets after the marriage agreement after the marriage takes effect.

The problem is stated as follows, with the above context in mind: First, to Understand the Purposes of a Postnuptial Agreement. Second, as required by Law No. 1 of 1974, to ascertain the status of the husband and wife's property following the marital settlement.

B. METHOD

Doctrinal research in law is sometimes known as legal literature review or a study of precedent (Soerjono Soekanto and Sri Mamudji, 2007). Research or demonstrations based on written regulations or other legal documents constitute doctrinal legal study. Secondary sources found in libraries are primarily used for this investigation (Ishaq, 2017). Only secondary sources, such as books, diaries, statutes, rules, judicial judgements, legal theories, and the opinions of eminent legal academics, are employed in normative legal research (Susanti & Efendi, 2022). Empirical Legal Research is a strategy for studying the law that takes into account the practical realities of everyday life.

Because the research is grounded in the principles and rules of law relating to the applicable laws and regulations of the implementing government of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Laws Law No. 1 of 1974, as well as books and literature diktats on civil law, Marriage, and various forms of district court decisions, the methodology employed in this study is a normative juridical approach. The goal of using secondary data in a normative juridical approach is to ascertain the impact of legal principles and legal conclusions on a given problem (Syahrums, 2022).

The research specification is analytical and descriptive, detailing relevant Statutes connected to legal theory and constructive legal practise on the issue at hand. Since this research is intended as a response to the current issues, it is hoped that it will lead to a more complete and systematic understanding of the factors related to the marriage

agreement following the passage of Law Number 1 of 1974 concerning Marriage, as well as its many legal implications.

C. RESULTS AND DISCUSSION

1. Analysis of Post-nuptial Agreement After Constitutional Court Decision Number 69/PUU-XIII/2015

Basically husband and wife make a marriage agreement after marriage based on the principle of freedom of contract. stated in Article 1338 of the Civil Code and there is a Constitutional Court decision Number 69/PUU-XIII/2015 concerning the review of Law Number 5 of 1960 concerning Basic Agrarian Regulations and Law No. 1 of 1974 concerning marriage against the 1945 Constitution of the Republic of Indonesia which has changed the provisions regarding marriage agreements. If previously a marriage agreement could only be made before and at the time the marriage took place, then since October 27 2016 through its decision the Constitutional Court stated that a marriage agreement can be made by a husband and wife after the marriage takes place, or during the marriage bond.(S. Dewi, 2017). In addition, it is also based on provisions that apply universally that the District Court is prohibited from rejecting every application and/or case that is submitted, however, the freedom to make a marriage agreement has been given signs or may not violate/contrary to the moral system (oenden senden), public order (operbaar orde) and may not conflict with the law of marriage itself.

Based on the decision of the Constitutional Court, it can be interpreted that the parties, namely the prospective husband and wife or husband and wife, can determine for themselves the time when the marriage agreement will take effect. Regarding the time when the agreement takes effect, it is the same as when the agreement was born which consists of four theories, namely: First, the theory of statements, Second, the theory of delivery. Third, the theory of knowledge. Fourth, acceptance theory(S, 2021).

The marriage agreement carried out by Indonesian people is not a taboo act. The legal institution of the marriage agreement has actually been recognized in Indonesian civil law. The institution was adopted from western civil law. Many people are not aware of the existence of a marriage agreement made by a husband and wife after the marriage takes place, what is widely known is that a marriage agreement is made before or at the time the marriage takes place according to the provisions in both the Civil Code and the Marriage Law.(Istrianty & Priambada, 2016). From that, it creates the impression of undermining the meaning of the institution of marriage itself; it can also create an image that marriage is only defined as a business, like cooperation, so that must be anticipated risks or losses if one day a divorce occurs.

The enormous number of married couples that engage into marriage agreements both before and after marriage is indicative of the widespread trend towards making marriage agreements in today's urban society. This marriage contract is a cultural norm in metropolitan places that might help couples avoid the economic disruption that can result from marital strife. This is due to the fact that, as education levels rise, more and more couples find themselves in a situation where both partners need to find employment outside the home in order to make ends meet. If one partner starts a business or is appointed to the board of a company, such as a bank (which is almost certainly a Limited Liability Company), and the stability of the bank has been a problem while the other has been in charge, then the new board may be at risk of seeing a decline in the company's fortune. A marriage contract is created to govern their relationship after they tie the knot. They are enacting Postnuptial Agreements and the Legal Effects on Others of Doing Doing. The couple eventually settled their differences through a Marriage Agreement. They are enacting Postnuptial Agreements and the Legal Effects on Others of Doing Doing. The couple eventually settled their differences through a Marriage Agreement. They are enacting Postnuptial Agreements and the Legal Effects They Have on Others.

The reasons that can be used as the basis for making a marriage agreement after marriage are (Kusuma, 2010): *First*, there is negligence and ignorance that Law Number 1 of 1974 has a provision governing the Marriage Agreement before the marriage occurs. *Second*, some risks may arise from shared assets. The applicants are worried that there will be a risk to their joint property in marriage because the applicant's work has consequences and responsibilities on personal assets so that each of the assets obtained can remain the personal property of the applicants.

Third, the presence of these individual attitudes in the life of Indonesian society, which is becoming increasingly fertile under the impact of the environment and human civilization, which ultimately is carried away by husband and wife couples to establish a marriage agreement. " Neither the Quran nor the Hadith, the Islamic legal texts, support the concept of a prenuptial agreement. The Marriage Agreement Institution is well-known for its liberal western lifestyle imitation and environmental effects. *Fourth*, maintaining possession of a land title certificate is highly desired. Only Indonesian citizens are allowed to have Property Rights certificates, as specified in the Basic Agricultural Law and its Implementing Regulations; if the certificate holder marries a foreign national after acquiring Property Rights, the certificate will be null and void (not an Indonesian citizen).

This statute mandates the creation of a prenuptial agreement prior to or simultaneously with the wedding. If a husband and wife have already tied the knot but haven't signed a prenuptial agreement, they can still establish one later on that addresses legal matters. Where the value of certain marital assets is unequal or disproportionately bigger on one side of the marriage, a postnuptial agreement may

be used to manage the disposition of these assets. An asset dispute is always at the heart of a postnuptial agreement.

For this reason, a marriage agreement is drafted to ensure that the assets of the husband and wife remain separate and distinct after the marriage. Hence, in the event of a future divorce, each party's assets will be safeguarded and there will be no contention over marital property. Second, each spouse will be solely responsible for his or her share of the marital debt. Finally, there is no requirement to get the other party's approval before selling any property. In a similar vein, they no longer need to consult their married friends before applying for credit facilities that require guarantee assets registered in the name of one of them (Kusuma, 2010). A postnuptial agreement can be requested by submitting an application to the Head of the District Court, which must be signed by both spouses and notarized with a stamp duty of Rp. 10,000. The application must attest to the following, among other things: first, the applicants have married on the appropriate date with a marriage certificate. Second, the hopefuls cooperate with one another.

Third, the applicants each have sufficient income to sustain life both for their personal and family interests, so that the applicant does not need assistance in the economic or financial sector between one and the other; however, in matters of family, the applicant whose status as husband is still responsible for the welfare of the family and the education of the children to be born by his position as the head of the family.

Fourth, because of the social status of each where the applicant's work has a risk to joint assets in marriage and also because the applicant's work has consequences and responsibilities up to his assets, after a decision from the District Court, the assets will arise in the future to remain separate from one another, so that they will no longer have the status of mixed assets.

Sixth, the prospective spouses must have settled any disputes about shared property before getting married. But, the applicants have been so careless and uninformed that they are only now planning to reach a consensus on the joint ownership of their assets. Sixth, a stipulation from the District Court is necessary to carry out the separation of joint assets because the marriage of the applicants has taken place on the date according to the excerpt of the marriage certificate. Finally, the petitioners seek the Chief of the District Court to grant their petition for the grounds stated above.

2. Position of Husband and Wife's Assets after the Marriage Agreement

Property law covers two fields, namely property and partnership assets. Property, namely legal regulations covering material rights which are absolute, meaning rights to objects that everyone must respect and recognize (Mumek, 2017). Meanwhile, the assets of the engagement are the regulations governing property-

based relationships between 2 or more people where the first party is entitled to an achievement or a fulfillment of something and the other party is obliged to fulfill an achievement (Tarigan, 2021). Suppose the District Court grants the application for a postnuptial marriage agreement. In that case, it must be interpreted that the separation of their assets is only specific to assets acquired after the determination date. In contrast, assets before the determination date remain joint property of the husband and wife. This should be interpreted that way, which is to avoid losses from third parties.

The position of assets after the Marriage Agreement in the form of a District Court Decision becomes even more vital because each party has received consideration from a court decision that has solid legal force. The husband and wife must comply with all the contents of the stipulation from the District Court because all matters relating to the separation of assets have also been separated for other assets that arise later to remain separate from one another so that they no longer have the status of joint property.

Article 164 of the Civil Code highlights that if a combination of results is promised from revenue, there will be no unanimous combination of assets and a profit-and-loss union. The argument is that the basis of the petitioners is the parties' opinion that each of them has sufficient money to sustain life for his personal and family interests. Yet, as the head of the household, the husband still has ultimate responsibility for his family's well-being. There are also fears that the husband's high-risk employment can result in the loss of his personal property for the benefit of the husband's business.

If at the time the application for the Determination of the Marriage Agreement was submitted at the District Court, the husband and wife who applied did not represent any assets, when the date the said District Court order is issued, the assets acquired by the husband and wife from that date belong to each whose name is listed as the owner. While everything that was owned before the stipulation signifies the status is joint property. At the same time, the judgement of the District Court about the marriage agreement is the authority of the Judge since the Judge must decide on the application brought to the District Court. Creating a marriage agreement is a legal umbrella since the method for forming a postnuptial agreement is not defined in Law Number 1 of 1974 about Marriage and its Implementing Regulations.

If the Third Party can show that the collateral used to secure a debt or that which was promised as collateral in any form was obtained before or exists, then the relationship with the Third Party will take effect as of the date of the Court's decision so that the Third Party does not suffer a loss in the future because of an agreement on the separation of assets beforehand, for the reasons as presented in the District Court.

As referred to in the provisions of the Civil Code, if the marriage agreement has been registered at the district court, the marriage agreement applies to third

parties.(Roman, 2017). Registration of the Marriage Agreement in the general register at the District Court Office is to provide an opportunity for third parties to find out about the existence of the Marriage Agreement(Asyatama & Ridwan, 2021). Interested third parties can examine the contents of the marriage agreement. Regarding the consequences of a marriage agreement that is not registered in the District Court, a third party may consider that the assets of the husband and wife in marriage are joint property.(Prasetyawan, 2018).

D. SIMPULAN

When a marriage has taken place, a marriage agreement can be drafted based on the District Court's ruling to govern the effects of the marriage on marital assets. Due to the separation of assets based on the marriage agreement, the assets that were originally considered joint property after the marriage have changed status to become private property according to their individual ownership. The District Court might be asked to rule on the status of the husband's and wife's assets following the marriage agreement, including both their own and their post-nuptial assets.

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