

Legal Protection of Husband and Wife That Make a Marriage Agreement after Marriage before the Constitutional Court of Destitution No: 69 / PUU-XIII / 2015

(Study: Against P envoy East Jakarta District Nomor: 2173 / Pdt.P / 2012 and Number : 459 / Pdt / P / 2007)

Rido Cipta

Notary Master's Program
Andalas University

Jl. Pancasila No.10, Belakang Tangsi, Padang,
Kota Padang, West Sumatra

Abstract - The marriage agreement is an alternative prepared in marriage by a prospective husband and wife who want to limit their rights and obligations, especially regarding assets. In paragraph 1 of Article 29 of the Marriage Law No. 1 of 1974 clearly stated that the marriage agreement must be carried out at the time or before the marriage took place, it is also regulated in Article 147 of the Code of Civil Law which states that the marriage agreement must be made with a notarial deed and must be made before the marriage takes place. P No 2015 of the Constitutional Court issued a decision No. 69 / PUU-XIII / 2015 that allows doing marriage agreement after marriage. However, prior to the issuance of the Constitutional Court Decision Number 69 / PUU-XIII / 2015 which added to the dictum of Article 29 of Law Number 1 of 1974 concerning Marriage, the marriage agreement made after the marriage remained legally valid. Problems that could be formulated were legal protection for married couple who entered into a marriage agreement after marriage before the issuance of the Constitutional Court Decision Number: 69 / PUU-XIII / 2015 associated with the East Jakarta District Court Decision number: 2173 / Pdt.P / 2012 and number: 459 / Pdt / P / 2007 and the consequences the law of the marriage agreement.

Keywords - Marriage Agreement, Legal Protection, and Legal Consequences.

I. INTRODUCTION

1.1 Background

The marriage agreement is an alternative prepared in marriage by a prospective husband and wife who want to limit their rights and obligations, especially regarding assets. The marriage agreement becomes very important when deciding marriage with a Foreign Citizen (foreigner) or what we are more familiar with the term mixed marriage, namely marriage between two people in Indonesia subject to different laws due to differences in citizenship and one of the Indonesian citizens. [1] There are many examples of Indonesian Citizens who have marital relations with foreigners, just call celebrities in the country who are again in a trend to have marriages with foreign

citizens. [2]. At the time of deciding to get married do not pay attention to the impact of the future what problems will arise with mixed marriages such as the problem of distribution of property that causes disputes between the two and third parties. With the marriage agreement of married couples and third parties already have protection and legal certainty in the event of a marriage problem.

A marriage agreement according to the Marriage Law can be submitted by a married couple with mutual agreement in writing at the time or before the marriage takes place [3]. According to the elucidation of article 29 paragraph 1 of the Tak Tlik Marriage Law is not included in the definition of marriage agreement. Reasons for the need for a marriage agreement include;

- 1.If the assets of one party (husband or wife) are greater than the assets of the other party.
- 2.Both parties (husband and wife) bring a lot of wealth into the marriage
- 3.Each has their own business, so if one bankrupt (bankrupt), then the other party does not go bankrupt
- 4.Debts made before marriage are the responsibility of each party, not shared debt.[4]

In the Marriage Law there are two categories of marital property, namely joint property and inheritance. Joint property is a property of objects acquired during the marriage took place, a treasure inherited from each couple and property derived respectively as a gift or inheritance is under the control of each round of the parties do not otherwise[5]... Indeed in problems that often occur in marital relations is about the distribution of assets. Then a marriage agreement is needed to limit the distribution of property between married couples. Regarding the assets of this marriage are regulated in articles 119 through article 125 of the Civil Code and in Law Number 1 of 1974 concerning marriages are regulated in articles 35 through article 37. Although regulating the same thing, there are differences in the Law Code Civil.

In the first paragraph of article 29 of Law Number 1 of 1974 concerning marriage clearly stated that the marriage agreement must be carried out at the time or before the marriage took place, the same thing is also regulated in article 147 of the Civil Code which is stated that the marriage agreement must be made by notarial deed and must be made before the marriage takes place. The existence of this provision on the other hand is often an obstacle for some husband and wife parties who want to make a marriage agreement after marriage and not infrequently submit a request for determination to the District Court but the request cannot be accepted. Then later in 2015 the Constitutional Court issued a decision No. 69 / PUU-XIII / 2015 which played into the marriage agreement after marriage. However, the question arises, is it true that before the issuance of the Constitutional Court Decision Number 69 / PUU-XIII / 2015 which added to the Article 29 of Law Number 1 of 1974 concerning Marriage, the marriage agreement made after the marriage was not legally valid? In short, is the marriage agreement that was made after the marriage before the Constitutional Court ruling Number 69 / PUU-XIII / 2015 adding to the dictum of Article 29 of Law Number 1 of 1974 concerning Marriage? The fact is that not all marital agreements made

after marriage before the Constitutional Court's Decision are not valid or are not accepted by the Court. This is clearly stated in the Decision on the Establishment of the East Jakarta District Court namely Stipulation Number: 2173 / Pdt.P / 2012 / PN.jkt.Tim and Stipulation Number: 459 / Pdt / P / 2007 / PN.jkt.Tim . Both of these stipulations clearly endorse the marriage agreement made after the parties (the applicant) have married.

A hanya both Decision determination proved that the mating agreement made after the marriage prior to the Decision of the Constitutional Court Number 69 / PUU-XIII / 2015 is not impossible to do. In other words, there is also legal protection for marriage agreements made after marriage. Therefore it becomes interesting to know the types of legal protection of the marriage agreement for married couples. This is a very interesting issue to be explored and discussed further, therefore the writer decides to examine this issue in a thesis entitled "**Legal Protection of Husband and Wife Who Makes a Marriage Agreement After Marriage Before the Decision of the Constitutional Court Number 69 / PUU -XIII / 2015 (Case Study of Stipulation Number: 2173 / Pdt.P / 2012 / PN.jkt.Tim and Stipulation Number: 459 / Pdt / P / 2007 / PN.jkt.Tim) "**

1.2 Research Objectives

The purpose of this study is to find out how the type of legal protection for married couples who make a marriage agreement after marriage before and after the issuance of the Constitutional Court Decision Number: 69 / PUU-XIII / 2015.

1.3 Problem Formulation

Based on the above background the writer wants to formulate the problem as follows:

1. How is the legal protection for married couples who make a marriage agreement after marriage before the issuance of the Constitutional Court Decree Number: 69 / PUU-XIII / 2015 associated with East Jakarta District Court Decision number: 2173 / P dt. P / 2012 da n numbers: 459 / P dt / P / 2007 ?
2. Bagaimanaka h legal consequences for married couples who married after the marriage agreement before issuing Put usan Constitutional Court Number: 69 / PUU-XIII / 2015 associated with the East Jakarta District Court

Decision number : 2173 / P dt. P / 2012 and number: 459 / P dt / P / 2007 ?

1.4 Research Method

Nature of Research

The research used by the author is the *Analytical Descriptive* method, [6] namely a form of research aimed at describing the prevailing laws and regulations in this case is Law Number 1 of 1974 concerning Marriage, associated with legal theories and the decision of the Constitutional Court Number 96 / PUU- XIII / 2015 concerning marriage agreement.

II. APPROACH METHOD

The method used to address the problems in this study uses juridical-empirical research [7], this is because this juridical-empirical legal research is aimed at obtaining a clear, objectively clear picture of the Constitutional Court's decision regarding the marriage agreement.

Data collection tools used in making this thesis are:

1. Primary Data :

Data is obtained and derived directly from its sources such as the author conducted interviews with parties related to the thesis, namely the parties involved in conducting the marriage agreement after the marriage t.

2. Secondary data:

Data obtained from existing sources are books and other library materials.

The legal materials used are divided into three groups, viz [8]:

a . Primary legal material

Primary legal materials, namely primary and binding legal materials, for this problem because in terms of civil law, the primary legal source is Law number 1 of 1974 concerning Marriage, another source is the Civil Code.

b . Secondary legal material

Secondary legal materials are materials that provide explanations and are complementary to primary legal materials. These secondary legal materials, including scientific books, religious books and articles in newspapers, magazines or data obtained from the internet related to the issues discussed.

c . Tertiary legal material

Tertiary legal materials are materials that provide instructions, understanding, meaning and explanations of primary and secondary legal materials to avoid confusion in the meaning of a word. These materials include legal dictionaries, Indonesian dictionaries and legal encyclopedias.

III. THEORETICAL BASIS

A. Overview of Marriage Agreements

1. Marriage

Marriage is a social bond or a legal agreement between individuals (men and women), with the aim of forming a kinship relationship and which is a institution in the local culture that formalizes the relationship between individuals. Marriage generally takes place in the presence of a marriage ceremony in which this marriage ceremony indicates that the marriage has taken place and has been inaugurated. The purpose of this marriage is nothing but to form a family. At the time the marriage has taken place there will be a legal relationship between husband and wife, the legal relationship contains the rights and obligations of both wife and husband. Marriage also has a great influence on the assets of husband and wife.

2. Definition of Marriage

To understand deeply about the nature of marriage, it must be understood thoroughly the provisions regarding marriage. These provisions are Law No.1 of 1974 concerning Marriage abbreviated as UUP and Compilation of Islamic Law abbreviated as KHI. The provisions of Article 1 of the UUP, formulate that: "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Godhead the Almighty». Furthermore Article 2 and 3 KHI formulates that marriage according to Islamic law is marriage, which is a very strong contract or *mitsaqon ghalidzan* to obey God's commands and carry out them is worship.

3. Marriage Basics

a. The Purpose of Marriage

The purpose of marriage is basically to obtain a legitimate offspring in society, by establishing a peaceful and peaceful household life.[9]

According to Law No.1 of 1974, Article 1 states that:

"Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Godhead." From this formula it is understood that the main purpose of marriage is to form a happy and eternal family. Husband and wife need to help each other so that each can develop his personality to help and achieve spiritual and material well-being. Furthermore Article 3 KHI states;

Marriage aims to realize a household life that is *sakinah*, *mawaddah*, and *mercy*.

b. Terms of Marriage Legality

The promulgation of Law Number 1 of 1974 concerning Marriage (UUP) was then issued Government Regulation (PP) Number 9 of 1975 as the implementation of Law Number 1 of 1974. In Article 2 of the UUP it is stated:[\[10\]](#)

1. Marriage is legal, if it is done according to the law of each religion and belief;
2. Each marriage is recorded according to the applicable laws and regulations; Confirming the UUP and PP mentioned above, in Article 10 PP No. 9/1975 regulates marital procedures;
3. Marriage procedures are carried out according to the law of each of its diversity and beliefs;
4. By heeding the marriage procedure according to his religious law and belief, the marriage was carried out before the Registrar and was attended by two witnesses ".

4. Marriage Agreement

a. Definition of Marriage Agreement

Before knowing the definition of a marriage agreement, we must first know what is meant by the agreement. The definition of the agreement can be seen in Article 1313 of the Civil Code, which states that: "An agreement is an act with which one or more persons commit themselves to one or more other people". Seeing the provisions of Article 1313 of the Civil Code, the elements of the agreement are: 1) An act, 2) Between at least 2 (two) people; 3) The engagement engenders an agreement between the parties who promised.[\[11\]](#)

Based on Article 1320 of the Civil Code, the legal terms of the agreement are: 1) Agree those who bind him, 2) Capable to make an agreement, 3) A certain thing; 4) A lawful cause. If the first and second conditions are not fulfilled, then the agreement can be canceled, which is that

means one of the parties can submit to the court to cancel the agreement that was agreed upon. If the third and fourth conditions are not fulfilled, the agreement is null and void, meaning that from the beginning the agreement was considered to have never existed.[\[12\]](#) In the realm of marriage law it is also known that there is an agreement, which is called a marriage agreement. In the formal sense of a marriage agreement is any agreement that is carried out in accordance with the provisions of the law between the prospective husbands regarding their marriage, no matter what it is.[\[13\]](#) According to Wirjono Prodjodikoro, the word agreement is interpreted as a legal relationship regarding assets between the two parties, where one party promises or is deemed promised to do something, while the other party has the right to demand the implementation of the promise, thus the word agreement if connected with the word marriage will include discussion regarding marriage promises, as a noble agreement between the bridegroom and the bride, and the understanding of marriage agreements of unity or separation of the personal assets of the prospective husband and prospective wife who are the object of the agreement.[\[14\]](#)

b. Legal Basis of Marriage Agreements .

Marriage agreements are regulated in the Civil Code and of course the Marriage Law. In the Civil Code the provisions regarding marriage agreements are included in the book part I about people, contained in Article 139 through Article 167, which basically regulates:

1. Marriage agreements must be made notarially, as well as amendments, if not then threatened with null and void;
2. Marriage agreements may have some deviations from the laws and regulations surrounding the uniting of assets but may not violate law, public order, and decency;
3. A marriage agreement may not contain provisions that reduce all rights resting on the husband as husband and head of the family;
4. Marriage agreements must not reduce the power of a husband over a child when the separation of the table and bed;
5. Marriage agreements cannot reduce the rights granted by law to the husband or wife who lives the longest;
6. A marriage agreement must not contain the rights granted by the law to the husband or wife for family inheritance;

7. A marriage agreement must not promise that a party must pay a portion of the other debt that is greater than the share of the profits [15].

Seeing the provisions contained in the Civil Code regarding marriage agreements, then there are 3 possibilities that can be the contents of a marriage agreement:

1. A marriage agreement that contains no property at all. In this case, the wife must contribute the amount for the household and children's education needs (Article 140 paragraph (2) and Article 145 of the Civil Code);
2. Marriage agreement which contains the unity of results and income, so that the property of the union includes only results and income does not include losses (Article 164 of the Civil Code);
3. The marriage agreement which contains the profit and loss unity, so that in this union all the advantages and disadvantages during the marriage, must be borne together (Article 155 of the Civil Code). [16]

IV. RESEARCH RESULTS AND DISCUSSION

In Law Number 1 of 1974 Concerning Marriage, the marriage agreement is regulated in Article 29 which determines:

1. At the time or before the marriage takes place, the two parties on 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.
2. The agreement cannot be ratified if it violates the legal, religious and moral boundaries.
3. The agreement is valid since the marriage took place.
4. During the marriage the agreement cannot be changed, except if from both parties there is an agreement to amend and the change is not detrimental to the third party.

But in 2015 the Constitutional Court issued a ruling Number 69 / PUU-XIII / 2015 regarding the marriage agreement submitted by the applicant named Ny. Ike Farida. The petitioner submitted a *judicial review* of article 29 of law number 1 of 1974 concerning Marriage because he felt he did not get justice with the enactment of article 29 and a number of articles of the basic agrarian law in 1960. Farida when submitting an application to the Constitutional Court was an Indonesian citizen who cannot get ownership rights in their own country. The applicant is the party that conducts a mixed marriage, where the applicant is a

Japanese citizen, but this couple does not necessarily replace or change citizenship. Each party retains its original citizenship status. From here begins the issue of mixed marriages appearing to the applicant. The applicant has made an agreement to purchase an apartment in Indonesia with the developer, but the developer unilaterally canceled the agreement because the applicant's husband is a foreign national, and the applicant also does not have an agreement to separate assets from her husband.

Although the Constitutional Court has given a ruling that allows a marriage agreement to take place after a marriage is made, in fact, prior to the birth of the Constitutional Court's ruling, in some cases, with certain legal grounds and considerations, a marriage agreement made after marriage by husband and wife can be submitted for ratification in a district court and declared valid and binding as 2 (dua) State Court Decision on Application Development Agreements marriages after breeding, East Jakarta Court Decision Number : 2173 / PDT.P / 2012 / PN.JKT.TIM and P enetapan East Jakarta District Court Number : 459 / PDT / P / 2007 / PN.JKT.TIM .

V. CONCLUSION

Legal protection for the parties to the marriage agreement after marriage before the issuance of the Constitutional Court Decree Number 69 / PUU / XII / 2015 includes:

- a. Legal certainty regarding pembagian treasure by the parties yang is made in the agreement to marry.
- b. The legal rights and obligations of the parties making the marriage agreement. The parties must abide by the contents of the marriage agreement made before the Notary Public and become the legal basis in matters governed in the marriage agreement.

SUGGESTION

Before the issuance of the Constitutional Court Decision Number 69 / PUU / XII / 2015, the marriage agreement could be made through a court decree, although it was not regulated in the Civil Code and Act Number 1 of 1974 concerning Marriage and its implementing regulations, this court decision could actually be jurisprudence for judges as consideration in determining the same cases.

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