

Development of Rules Concerning Indonesian Marriage Agreements

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Abstract

This study aims to examine the legal consequences caused by the marriage bond between a man and a woman, namely for the sake of law there is a mixture of assets between the two. This mixing of treasures led to the emergence of common property. However, there are exceptions to this mixture of assets, namely assets obtained before marriage, assets obtained based on gifts and assets obtained based on inheritance. So even though the mixing of assets occurs by law, it does not mean that this situation cannot be avoided. The existence of a marriage agreement that explicitly separates the assets of husband and wife in marriage. By entering into a Marriage Agreement, the two prospective husband and wife are entitled to prepare some deviations from the laws and regulations regarding the association of assets, as long as the agreement does not violate good morals or general rules and as long as all provisions are respected. This article will analyze and discuss the development of regulations regarding Marriage Agreements in Indonesia.

Keywords:

Development; Regulation; Marriage agreement

INTRODUCTION

Man as an individual has a life of the soul alone, but as a social being can not be separated from society because a man from birth, life develops and always dies in the environment of community and it is human nature to live side by side with fellow human beings and strive to continue the offspring in a way getting married (Zulfiani, 2015). Marriage is a human instinct since the existence of man himself to fulfill his life's needs in carrying out a biological relationship in a family, involving the involvement of at least two parties (legal relationship) each party has rights and obligations, there is

an objective law that regulates it, namely the Law of Marriage (Widanarti, 2018).

The most profound meaning is formulated in Law No.1 of 1974, Article 1: "Marriage is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One Godhead." Furthermore, Article 2 Paragraph (1) Marriage is valid, if it is carried out according to the law of each religion and belief, and Paragraph (2) "Every marriage is disfigured according to the prevailing laws and regulations."

With the existence of a marriage bond between a man and a woman, by law, there is a mixture of assets between the two of them, as stipulated in Article 35 paragraph 1 of the Marriage Law. This mixing of assets results in the emergence of joint assets, namely all assets obtained during the marriage period. However,

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there are exceptions to the mixture of assets, namely assets acquired before marriage, assets purchased by giving and assets seized by inheritance (Khisni, 2012).

Even if the mixing of assets occurs for the sake of law, this does not mean that this situation cannot be avoided. Positive law provides a solution, namely by making a Marriage Agreement that explicitly separates husband and wife assets in a marriage. With this kind of agreement, there is a separation of property between husband and wife. By entering into a marriage agreement, the two prospective husbands and wives are entitled to prepare several deviations from the statutory regulations regarding the association of assets. The deal does not violate ethical moral or general rules and as long as all provisions are respected (Swarnatirta, 2011).

In essence, a Marriage Agreement is an agreement regarding the property of husband and wife during their marriage, which deviates from the principles or patterns stipulated by law. Likewise, the debts of each of these parties will remain the responsibility of the party who has the obligation (Desviastanti, 2010). Furthermore, in article 147 juncto 149 KUH Perdata it is stated that the Marriage Agreement must be made with a Notary Deed before the marriage takes place, which agreement comes into force from the moment the wedding takes place and may not be withdrawn or changed in any way during the duration of the marriage.

It is regulated in Law Number 1 of 1974 concerning Marriage, Article 29, which stipulates that:

1) At or before the marriage takes place, the two parties with mutual consent

may enter into a written agreement, which is legalized by a marriage registrar, after which the contents also apply to the third party involved.

- 2) The contract cannot be ratified if it violates the boundaries of law, religion, and morality.
- 3) The agreement is valid since the marriage was entered into.
- 4) During the wedding, the contract cannot be changed unless both parties have a deal to turn, and the change does not harm the third party.

From the provisions contained in article 29 of the Marriage Law, it is stipulated that the Marriage Agreement must be carried out at the time or before the marriage takes place, the same is also regulated in Article 147 of the Civil Code which states that the Marriage Agreement must be made with a Notary Deed and must be made. Before the marriage takes place.

Based on these regulations, the Civil Code and the Marriage Law do not allow making a Marriage Agreement after the marriage has taken place. This clean condition applies without exception to every Indonesian citizen ("WNI"), including Indonesian citizens who are married to foreign nationals ("WNA"), as well as Indonesian citizens who are married outside Indonesia. The problem then is, the mixture of assets that occurs between Indonesian citizens and foreigners causes the loss of the rights of the Indonesian citizens concerned to own land with the title of property rights ("HM"), right to build ("HGB") and Right to Business Use ("HGU") (Adhim et al., 2020).

This problem was then tested before the Constitutional Court of the Republic

of Indonesia ("MKRI") by Mrs. Ike Farida. The provisions petitioned for review are the provisions in Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations ("UUPA") and Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage ("Marriage Law"). The petition submitted primarily aims to specify the legal status of Indonesian citizens as the party entitled to hold land with the title HM and HGB, change the provisions regarding the period for making the marriage agreement and its amendments, and impose limits on the mixing of assets (by excluding HM and HGB when the Marriage occurs between Indonesian citizens and foreigners). The provisions of Article 56 paragraph (1) of the Marriage Law state that marriages conducted by Indonesian citizens outside Indonesia may not violate the rules in the Marriage Law. See, Indonesia (1), Law on Marriage, Article 56 paragraph (1).

On October 27, 2016, the Constitutional Court partially granted the case Number 69 / PUU-XIII / 2015 submitted by sister Ike Farida as the Petitioner. The main content of the petition is related to judicial review of several provisions in Law Number 5 of 1960 concerning Basic Agrarian Principles and Law Number 1 of 1974 concerning Marriage (Law 1/1974). The Petitioner filed a judicial review of Article 21 paragraph (1) and paragraph (3), as well as Article 36 paragraph (1) UUPA and Article 29 paragraph (1), subsection (3), paragraph (4) and Article 35 paragraph (1) of the Law 1/1974:

1) The addition of norms can be seen in the ruling as follows: Article 29 paragraph (1) of Law Number 1 of

1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019) contradicts the Law The 1945 Constitution of the Republic of Indonesia as long as it is not interpreted. stuck";

2) Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage (State Gazette of the Republic of Indonesia of 1974 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 3019) does not have binding legal power as long as it is not interpreted "At the time, before taking place or during a marriage bond between the two parties based on mutual consent can submit a written agreement that is legalized by a marriage registrar or notary public, after which the contents also apply to the third party as long as the third party is involved";

Issuance of the Decision of the Constitutional Court No. 69 / PUU-XIII / 2015 contained in the ruling will have legal consequences for the litigant and also all Indonesian people because the decision is final and binding. Thus the decision needs to be actively enforced through legislation and adjudication (Soeroso, 2016). Based on this description, the author raises this issue in an academic study through a paper entitled "Development of Rules Regarding Marriage Agreements in Indonesia." As for the problem formulations in this article, namely, how is the implementation of the Marriage Agreement in Indonesia before the decision of the Constitutional Court

issued? How is the application of the conclusion of the constitutional court?

RESULTS AND DISCUSSION

Implementation of Marriage Agreements in Indonesia before the issuance of the Constitutional Court decision No. 69 / PUU-XIII / 2015

Before discussing the problems in this article, it is necessary to know in advance that; Article 24 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia states that judicial power is exercised by an institution called the Supreme Court (MA) and judicial bodies under it such as general courts, religious courts, military courts, state administrative courts, and by a court agency. The Constitution (MK). The difference between the judiciary in the Constitutional Court and other courts is that the bench in the Constitutional Court is a court that is normative which only decides the norms that exist in the provisions of the 1945 Constitution of the Republic of Indonesia where the decisions issued apply to everyone and are not only aimed at the person submitting the examination. Whereas in other courts other than the Constitutional Court court, it is referred to as the real court where every decision issued applies to the party who submitted it or impacted the decision (Achmad, 2013).

According to Asshidiqie, the Constitutional Court is constructed as a constitutional guardian to uphold legal justice amid public life, so that the Constitutional Court also functions as the guardian of democracy, the protector of citizens' constitutional rights.), as well as the protector of human rights (Toryanto, 2019). As a constitutional court, the Constitutional Court has 4 (four) powers

and 1 (one) obligation as stipulated in Article 24C Paragraph (1) and (2), namely; (Toryanto, 2019).

- a) The authority to judge at the first and last levels whose decisions are final to test the law against the Basic Law.
- b) Resolving disputes over the body of State institutions whose authority is granted by the Constitution.
- c) Deciding to dissolve political parties.
- d) Resolving disputes about the results of general elections.
- e) Obligated to give a decision on the Opinion of the House of Representatives regarding suspected violations by the President and / or Vice President according to the Constitution.

In the case of the Petitioners' legal standing, that based on Article 51 paragraph (1) of the Constitutional Court Law and its Elucidations, those who can apply for judicial review of the 1945 Constitution are those who consider their constitutional rights and / or authorities granted by the 1945 Constitution to be impaired. by the enactment of a law, namely:

- a) Individual Indonesian citizens (including groups of people who have the same interest);
- b) Indigenous peoples as long as they are still alive and by the development of society and the principles of the Unitary State of the Republic of Indonesia as regulated in Law;
- c) Public or private legal entities; or
- d) State institutions;

Thus, the Petitioner in reviewing the Law against the 1945 Constitution, must first explain:

- a) Its position as a Petitioner as referred to in Article 51 paragraph (1) of the Constitutional Court Law.
- b) Whether or not there is a loss of constitutional rights and / or authority granted by the 1945 Constitution resulting from the enactment of the law petitioned for review. Failure of legal rights and / or obligations suffered by a citizen must meet 5 (five) requirements;
- c) The Petitioners have constitutional rights and / or authorities granted by the 1945 Constitution;
- d) The Petitioner deems the legal rights and / or powers impaired by the coming into effect of the Law petitioned for review;
- e) The constitutional impairment must be specific (individual) and actual or at least potential which according to logical reasoning can be sure to occur;
- f) There is a causal relationship (*causal verband*) between the loss in question and the enactment of the law petitioned for review;
- g) There is a possibility that by granting the petition, the constitutional impairment argued will not or will no longer occur;

In the Constitutional Court Decision Number 69 / PUU-XII / 2015, it was proposed by Mrs. Ike Farida, an Indonesian citizen (WNI), who married a Japanese citizen (WNA). During the marriage, Mrs. Ike Farida wanted to buy assets in the form of an apartment. Still, because at the time when she was married she did not make a Marriage Agreement, the developer could not sell the apartment unit because of the provisions that apply in the context of national land law, namely requirements in the Law

Agrarian Principles (UUPA) which adhere to the principle of nationality. The principle of citizenship means that only Indonesian citizens can have rights to Indonesian land. By the provisions of Article 36 Paragraph (1) and Article 35 Paragraph (1) of the Company Law, an Indonesian citizen who is married to a foreign citizen cannot have property rights to buy land and or buildings without a prior marriage agreement.

Therefore, the developer decided not to enter into a Sale and Purchase Agreement (PPJB) or make a Sale and Purchase Deed (AJB) with Mrs. Ike Farida, because it was deemed to violate the provisions of Article 36 Paragraph (1) and Article 35 Paragraph (1) of the Company Law. With this, Petitioner Mrs. Ike Farida felt that her rights as an Indonesian citizen were differentiated, and submitted a Judicial Review regarding the matter to the Constitutional Court because she felt that her rights had been impaired. The articles which are deemed to have damaged their rights are as follows;

- a) Article 21 Paragraph (1) UUPA reads, "Only Indonesian citizens can have property rights."
- b) Article 21 Paragraph (3) which reads "Foreigners who after the enactment of this law obtain property rights due to inheritance without a will or mixing of assets due to marriage, as well as Indonesian citizens who have property rights and after the enactment of this law, lose their citizenship is obliged to release this right is within a period of one year from the time the power was acquired, or the nationality was lost. If, after that period, the ownership

rights are not relinquished, then said rights are nullified because the law and landfall on the State, provided that the rights of other parties that impose them continue. "

- c) Article 36 Paragraph (1) UUPA reads: "Those who can have building use rights are: Indonesian citizens, and a legal entity established under Indonesian law and domiciled in Indonesia. "
- d) Article 29 Paragraph (1) of the Company Law which reads: "At the time or before the marriage is entered into, both parties with mutual consent may submit a written agreement which is legalized by the marriage registrar, after which the contents also apply to the third party involved"
- e) Article 29 Paragraph (3) of the Company Law reads: "The agreement starts to take effect from the time the marriage takes place."
- f) Article 29 Paragraph (4) of the Company Law which reads: "As long as the marriage is taking place, the agreement cannot be changed unless from both parties there is an agreement to change and the amendment does not harm the third party."
- g) Article 35 Paragraph (1) UUP reads, "Assets acquired during the marriage become joint assets."

Based on this Article, the applicant feels discriminated against, and the Petitioner's human rights have been violated to have property rights and build use rights as Indonesian citizens. The Petitioners' constitutional rights to live in and have a suitable living environment have been deprived forever. Everyone

would want to have/provide provisions for themselves and their children for the future. One of them is by buying land and buildings, apart from being a place to live, as a shelter, also as savings/provisions for the future (old age). Also, the Petitioner feels that as long as he is an Indonesian citizen, he always upholds the law, carries out his obligations properly and is loyal and obedient to the Indonesian State, however with the enactment of this Article the Petitioner feels that his rights are differentiated from those of other citizens.

Based on this, according to the Constitutional Court the Petitioners' loss was due to the enactment of Article 21 paragraph (1), paragraph (3) and Article 36 section (1) of Law 5/1960; and Article 29 paragraph (1), subsection (3), paragraph (4), and Article 35 paragraph (1) of Law 1/1974 are specific, real, and actual, and have occurred and been felt by the Petitioner. It also has a cause and effect relationship and a causal relationship with the Petitioner (*causal verband*). It is undeniable that the petition for judicial review of the Petitioners' Law has met all the requirements.

Based on Article 51 paragraph (1) of the Constitutional Court Law and the Court's decision regarding legal standing and related to the losses suffered by the Petitioner, according to the Court:

- a) The Petitioner has constitutional rights granted by the 1945 Constitution, particularly Article 28D paragraph (1), Article 27 paragraph (1), Article 28E paragraph (1), as well as Article 28H paragraph (1) and paragraph (4), and the Petitioner considers the right to be constitutional said it is harmed by the

- coming into effect of the law petitioned for review;
- b) The Petitioners' legal impairment is at least potential which, according to reasonable reasoning, will undoubtedly occur;
 - c) There is a cause-and-effect relationship (*causal verband*) between the loss in question and the enactment of the law petitioned for review, and there is a possibility that by granting the petition, constitutional impairments as argued will not or will no longer occur;

Therefore, since the Court has the authority to decide the quo petition and the Petitioner has legal standing to submit the quo petition, the Court will consider the principal of the request. In the leading case the appeal of the Constitutional Court examines the articles deemed detrimental and discriminated against the applicant listed in the Logga, namely in Article 21 Paragraph (1) and (3) and Article 36 Paragraph (1) as well as in the UUP listed in Article 29 Paragraph (1), (3), and (4) as well as Article 35 Paragraph (1).

Marriage, as referred to in Article 1 of Law 1/1974 is a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family or household based on Almighty God. As a physical and mental bond, husband and wife must help and complement each other to develop their personality and help achieve spiritual and material well-being (William N. Eskridge, 2010). That the rights and position of the wife are balanced with the rights and views of the husbands, both in household life and in social interactions, so that everything in the family can be

discussed and decided together between husband and wife (Prianto et al., 2013).

Whereas in the life of a family or household, apart from issues of rights and obligations as husband and wife, property issues are also factors that can cause various disputes or tensions in a marriage, and can even eliminate the harmony between husband and wife in life. A family. To avoid this, a marriage agreement between the prospective husband and wife is made before entering into marriage. The marriage agreement is made based on a written agreement between the two parties, which is legalized by the Marriage Registry Officer before the wedding takes place or when the marriage takes place. The marriage agreement comes into force from the time the marriage takes place. The marriage agreement is valid as a law for those who make it, also applies to third parties who have an interest in it (Paramita & Darori, 2017).

The reasons that are generally used as the basis for the making of agreements after marriage are the negligence and ignorance that in Law 1/1974 provisions are regulating the Marriage Agreement before the wedding takes place. According to Article 29 of Law 1/1974, the Marriage Agreement can be made at or before the marriage takes place. Another reason is that there is a risk that may arise from joint assets in marriage because the work of the husband and wife has consequences and responsibilities on personal assets so that each property obtained can remain private (Mulyadi, 2016).

That the purpose of making the Marriage Agreement is:

- a) Separating the assets between the husband and the wife so that their assets do not mix. Therefore, if one day they divorce, the assets of each party are protected, there is no seizure of joint assets or "*gono-gini*".
- b) For the debts of each party that they incurred in their marriage, each will be responsible separately.
- c) If one of the parties wants to sell their assets, they do not need to ask the spouse (husband/wife).
- d) Likewise, with the credit facility that they applied for, they no longer have to ask for permission from their spouse (husband/wife) in advance in pledging the assets registered in the name of one of them.

The existing provisions only regulate marriage agreements made before or at the time the marriage takes place. In contrast, in reality, there is a phenomenon of husband and wife who, for some reason, just felt the need to make a Marriage Agreement while in the marriage bond. So far, by Article 29 of Law 1/1974, such an agreement must be concluded before the marriage can take place and must be put in a notary deed. This marriage agreement comes into force between husband and wife from the time the wedding is carried out. The contents stipulated in the marriage agreement depend on the understanding of the parties to the prospective husband and wife, as long as they do not conflict with law, religion, and dignity or morality. As for the form and content of the marriage agreement, both parties are granted the broadest possible freedom or independence (by the legal principle of "freedom of contract").

The phrase "at the time or before the marriage took place" in Article 29 paragraph (1), the phrase "... since the marriage took place" in Article 29 paragraph (3), and the phrase "while the marriage took place" in Article 29 paragraph (4) Law 1 / 1974 restricts the freedom of 2 (two) individuals to do or when to make an "agreement," so that it is contrary to Article 28E paragraph (2) of the 1945 Constitution as argued by the Petitioner. Thus, the phrase "at the time or before the marriage takes place" in Article 29 paragraph (1) and the sentence "while the marriage takes place" in Article 29 paragraph (4) Law 1/1974 is conditionally contradicting the 1945 Constitution as long as it is not interpreted as long as in the bond of marriage.

Meanwhile, about the Petitioner's argument regarding the unconstitutionality of Article 35 paragraph (1) of Law 1/1974, the Court considered that by declaring Article 29 paragraph (1) of Law 1/1974 conditionally contradicting the 1945 Constitution, the provisions of Article 35 paragraph (1) of Law 1 / 1974 must be understood about Article 29 section (1) of Act 1/1974 referred to. In other words, there is no problem with the unconstitutionality of Article 35 paragraph (1) of Law 1/1974. It's just that for the parties making a marriage agreement, the joint assets referred to in Article 35 paragraph (1) of Law 1/1974 apply the provisions regarding the marriage agreement as referred to in Article 29 paragraph (1) of Law 1/1974 as stated. In this verdict. Therefore, the Petitioners' argument as far as the unconstitutionality of Article 35 paragraph (1) of Law 1/1974 is groundless according to law.

Considering based on all of the above considerations, according to the Court, the Petitioner's petition as far as Article 29 paragraph (1), paragraph (3), and paragraph (4) of Law 1/1974 is grounded in part by law, while it concerns Article 35 paragraph (1). Law 1/1974 is not legally grounded.

Juridical Implications of the Constitutional Court Decision No. 69 / PUU-XIII / 2015 on the Implementation of Marriage Agreements in Indonesia

It is known that Article 29 Paragraph (1) of the Marriage Law contradicts the 1945 Constitution and does not have binding legal force as long as it is not interpreted. A marriage registrar or notary public, after which the contents also apply to third parties as long as the third party is involved ". Article 29 paragraph (3) of the Marriage Law contradicts the 1945 Constitution. It does not have binding legal force as long as it is not interpreted as "The agreement comes into force since the marriage took place unless otherwise stipulated in the Marriage Agreement".

Article 29 Paragraph (1) The Marriage Law contradicts the 1945 Constitution and does not have binding legal force as long as it is not interpreted. "As long as the marriage takes place, the marriage agreement can be about the dignity of a marriage or other agreement; it cannot be changed or revoked, unless there are both parties. agreement to change or revoke, and the change or revocation does not harm the third party."

With the issuance of the Constitutional Court decision Number 69 / PUU-XIII / 2015, it must be carried out because the Constitutional Court decision

is final and binding in which the decision is valid without any legal remedies and is erga omnes which means that the Constitutional Court Decision applies to all citizens. Indonesia, not only limited to the applicant who filed it.

The implementation of the Constitutional Court Decision is the most crucial step because the implementation of the Constitutional Court Decision concretizes the measures contained in the Law by the typical values that exist in society in everyday life and to protect the rights of citizens to be fully fulfilled.

After the issuance of the decision of the Constitutional Court Number 69 / PUU-XIII / 2015 on 27 October 2016, in the framework of implementing the decision, a Circular of the Director-General of Population and Civil Registration - Ministry of Home Affairs No. 472.2 / 5857 / DUKCAPIL for religions other than Islam and the Circular of the Director-General of Islamic Community Guidance - Ministry of Religion of the Republic of Indonesia Number B.2674 / DJ.III / KW.00 / 9/2017 for those who are Muslims, which regulates the professional recording and reporting of Marriage Agreements made before, during, and during the marriage bond.

The technical records and reporting of Marriage Agreements made before, during, and during the marriage bond are based on the Circular of the Director-General of Population and Civil Registration - Ministry of Home Affairs No. 472.2 / 5857 / DUKCAPIL. The recording of the Marriage Agreement Reporting shall be carried out with due regard to; Marriage agreements are made at the time. Before the marriage takes place, the marriage agreement is made

while in the marriage bond, the marriage agreement is made in Indonesia. The marriage registration is carried out in another country, and changes or cancellations of the marriage agreement.

The recording of the reporting of the marriage agreement made while in the marriage bond must be done by fulfilling the following requirements; Photocopy of e-Identity card, photocopy of Family card, legalized Marriage Agreement Notary Deed by showing the original. The recording of the reporting of the marriage agreement as long as it is in the marriage bond is carried out with conditions; Photocopy of e-Identity card, Photocopy of Family card, Notary Deed of Marriage Agreement that has been legalized by showing the originals, and excerpts of marriage certificates of husband and wife. The recording of reports on marriage agreements made in Indonesia and registration of marriages in other countries shall be carried out with conditions; Photocopy of e-Identity card, photocopy of Family card, Notary Deed of Marriage Agreement that has been legalized showing the original, an excerpt of marriage certificate or with another name issued by another country, Certificate of reporting marriage certificate issued by other countries. The recording of a marriage agreement report made for amendments or cancellation of a marriage agreement is carried out with conditions; Photocopy of e-Identity card, photocopy of Family card, Photocopy of Notary Deed concerning amendment / revocation of Marriage Agreement which has been legalized by showing the original, an excerpt of husband and wife's marriage certificate, Certificate of

reporting of marriage certificate issued by other countries.

The recording of the marriage agreement *pelaopran* is carried out in a manner; A husband and / or wife submit the requirements as in numbers 2, 3, 4 and 5, Civil Registration Officials at the UPT Implementing Agency or Implementing Agency make marginal notes on the certificate register and excerpt of marriage certificates or issue a Certificate for Marriage Agreement made in Indonesia, and the registration of the marriage is carried out in another country. The passage of the marriage certificate, which has been made a marginal note or a guarantee is given to each husband and / or wife.

Professional recording and reporting of Marriage Agreements made before, during, and during the marriage bond Circular of the Director-General of Islamic Community Guidance - Ministry of Religion of the Republic of Indonesia Number B.2674 / DJ.III / KW.00 / 9/2017. The recording of the reporting of the marriage agreement made before or when the marriage was carried out with the community as follows; Photocopy of Identity card, Photocopy of Family card, Photocopy of legalized notary deed of the marriage agreement. Recording and reporting of marriage agreements made during the marriage bond with the following requirements; Photocopy of Identity card, Photocopy of Family card, Photocopy of legalized notary deed of marriage agreement, Marriage Book of Husband and Wife. Records of reporting on marriage agreements made in Indonesia, while marriages are recorded abroad or in other countries with the following requirements; Photocopy of

Identity card, Photocopy of Family card, Photocopy of legalized notary deed of marriage agreement, Marriage Book of Husband and Wife or marriage certificate issued by other countries. Recording changes or cancellation of marriage agreements with the following requirements; Photocopy of Identity card, Photocopy of Family card, Photocopy of notary deeds concerning amendments/revocation of legalized marriage agreements, Marriage Book of Husband and Wife or marriage certificates issued by other countries, Procedures for recording reporting of marriage agreements as follows, Husband and / or The wife submits the requirements as referred to in numbers 1, 2, 3, and 4, the Head of the District KUA as PPN makes a note in the lower column of the marriage certificate in the marital status note column in the marriage book by writing the sentence "marriage agreement with a notary certificate... ..number.... has been recorded in the marriage certificate on the date "...", or made a certificate for marriage that is recorded abroad and a marriage agreement made in Indonesia, the note on the marriage agreement document is built on the back of the last page with the sentence "agreement This marriage has been recorded on the marriage certificate number:... /... /... /... on behalf of... with... date... then signed by PPN, the marriage book of the husband and wife on which a record of the marriage agreement has been made, or the certificate is submitted to each husband and wife.

With the issuance of a circular both within the scope of the Population and Civil Registry Service and within the

range of the Ministry of Religion of the Republic of Indonesia after the issuance of the Decision of the Constitutional Court Number 69 / PUU-XIII / 2015, the implementation of the existing verdicts can be carried out for related parties, namely, the parties who entered into the agreement marriage, Notary, Judge, and third parties involved in the Marriage Agreement.

The making of the Marriage Agreement as described in the circular is carried out by using a deed made before a notary or an authentic act, even though article 29 of the Marriage Law which has been amended based on the Constitutional Court decision Number 69 / PUU-XIII / 2015 does not mention the necessity to be made. Before a notary.

The circular made should not contradict the laws and regulations above it; in this case, the Marriage Law, which is circular, is required to create an authentic deed against the Marriage Agreement. In the Marriage Law, it does not.

Based on the results of the articles that have been conducted, there are several opinions regarding this marriage agreement, namely the idea of Mrs. Ria Desvia, S.H., M.Kn. As a Notary based in Bekasi, West Jakarta District Court judge Mr. Agus Setiawan, SH., M.Hum. And the party who submitted a request for review of the Marriage Law and Basic Agrarian Law against the 1945 Constitution, namely Mrs. Dr. Ike Farida, S.H., LL.M.

According to Ria Desvia, S.H., M.Kn. As a Notary in the Bekasi area said that he had not dared to do a Marriage Agreement deed because there was no clear and firm regulation regarding its implementation rules for notaries. This is

based on the principle of greater prudence from the notaries as an effort to protect themselves from things that might happen in the future due to the bad faith of the parties. Irresponsible parties can carry out legal smuggling and the possibility of causing harm to the third party involved with the existence of this Constitutional Court decision, which allows the making of marriage agreements to be made before, during, and after the marriage occurs.

Before the Decision of the Constitutional Court, the making of a Marriage Agreement after marriage was already regulated in Article 186 of the Civil Code. The agreement made in the marriage bond must have certain reasons behind it. However, before making a marriage agreement, it must be preceded by applying to the competent court to obtain a request from the judge. Subsequently, after receiving a ruling from the court, both husband and wife can only make a marriage agreement after marriage before a notary public.

After obtaining an order from the court, it will place the notary in a safer position because the Marriage Agreement deed is based on a court order. With the existence of a court order, it can minimize the possibility that in the future, there will be no lawsuit filed by a third party in court because the judge has examined the applicant, both husband, and wife, to make a marriage agreement (Desvia, 2019).

Another opinion was put forward by the West Jakarta District Court Judge, Mr. Agus Setiawan, SH., M.Hum, which stated that they agreed with the Constitutional Court Decision Number 69 / PUU-XIII / 2015. All agreements are

agreements of all parties, including marriage agreements. So that between the parties agree and agree, a Marriage Agreement after marriage can be made, and if in the future there are parties who feel aggrieved because of the Marriage Agreement, they can sue in court. In the case of loading the marriage agreement before a notary public, if there is a problem in the future, the duty to be responsible for the start and end of the Marriage Agreement is that it is true that on that day and date, the parties concerned did appear before the notary and signed the agreement deed. Still, the contents of the agreement are all become the responsibility of the parties making the marriage agreement.

In matters relating to the interests of the third party in the marriage agreement made after marriage, it raises unrest against the third party involved; he thinks that after the marriage agreement has been made and refers to the Constitutional Court's decision, then submitting a decision request to the court to order the Civil Registry Office. And the Office of Religious Affairs to register it or register it, so that the legal consequences of the marriage agreement can provide legal certainty for third parties (Setiawan, 2016).

The same thing was conveyed by the party who submitted a request for a judicial review of the Marriage Law and the Basic Agrarian Law against the 1945 Constitution, namely Dr. Ike Farida, SH, LL.M., That in the implementation of the marriage agreement that was carried out after marriages must be recorded and registered with the competent authority, in this case, the Civil Registry Office for those who embrace a religion other than

Islam and the Office of Religious Affairs for those who embrace Islam. In the case of a marriage agreement by a husband and wife, it must be made in the presence of a notary. They were making it before a notary will make the marriage agreement an authentic proof that has a robust legal force if there are things that are not desired.

After it has been made in the presence of an appointed notary public, the marriage agreement is recorded at the registrar's office, both the Civil Registry Office and the Office for Religious Affairs. The recording is carried out to provide legal certainty for the parties, including the third party so that they do not suffer losses after the marriage agreement is made after getting married. After the transaction is recorded, it can be used as an attachment to evidence for Indonesian citizens who are married to foreigners and will buy land/buildings with HGB and HM status so that the sale and purchase of the land or construction can be carried out because the ownership status of the land/building is not a joint property owned by the spouse FOREIGNERS and WNI, but only owned by Indonesian citizens, so that the principle of nationality is still attached. Indonesian citizens still have the right to hold the land/building (Farida, 2019).

The problem of mixed marriages is very complicated because many Indonesian citizens of diverse marriages are married religiously. This is due in part to Law Number 62 the Year 1958 concerning Citizenship (the old rule), which stipulates that Indonesian women who marry foreigners automatically lose their citizenship. Therefore, to avoid losing their Indonesian citizenship, many

Indonesian citizens of mixed marriages do not register their weddings at the civil registry office or KUA.

In the case of the legality of a marriage agreement for mixed marriages conducted in series, it is necessary to know that one of the objectives of the marriage agreement is to deviate from the association of assets regulated in article 29 paragraph (1) of the Marriage Law. Then the marriage registrar and notary officers only accept marriages that have been registered. This provision is in line with the requirements of national law which state that every wedding is registered according to the applicable law (Hutagalung & Farida, 2018).

CONCLUSION

Based on the descriptions that have been described in the discussion above, a conclusion can be drawn, namely:

The judge's consideration in issuing Court Decision Number 69 / PUU-XIII / 2015 relating to the marriage agreement is that everything that happens in the family can be discussed and decided together by the husband and wife, even with mutual consent can make a written agreement as long as it does not violate the law valid, religion, morality, and legal terms of the contract. Then there is often negligence and disregard for the provisions of the marriage agreement and risks that arise against joint assets belonging to husband and wife. According to the panel of judges, the purpose of making a Marriage Agreement is; Separating the assets between the husband and the wife so that their assets do not mix. Therefore, if one day they divorce, the assets of each party are protected, there is no seizure of joint assets or *gono-gini*. For the debts of each

party that they incurred in their marriage, each will be responsible separately. If one of the parties wants to sell their assets, they do not need to ask the spouse (husband/wife). Likewise, with the credit facility that they applied for, they no longer have to ask for permission from their spouse (husband/wife) in advance in pledging the assets registered in the name of one of them.

The juridical implication of this decision was the issuance of a Circular of the Director-General of Population and Civil Registration - Ministry of Home Affairs, Republic of Indonesia No. 472.2 / 5857 / DUKCAPIL for religions other than Islam and the Circular of the Director-General of Islamic Community Guidance - Ministry of Religion of the Republic of Indonesia Number B.2674 / DJ.III / KW.00 / 9/2017 for Muslims, which regulates the professional recording and reporting of Marriage Agreements made before, during, and during the marriage bond. In this case, the parties concerned are the Notary, the Civil Registry Office, and the Office of Religious Affairs. The recording is done to protect the interests of the parties, both husbands, wives, and third parties. The recording of a marriage agreement can only be carried out on a married couple who is legally and on record, while a marriage contract cannot be made.

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