

RESEARCH ARTICLE

Application of the Constitutional Court of the Republic of Indonesia Concerning the Married Agreement Made by Notary to the Land Ownership in the Land in Batam City (Study Research in Notary Office in Batam City)

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Abstract: With the issue of the decision of the Constitutional Court indirectly answered anxiety over the legal issues mentioned above. The Constitutional Court's decision becomes a guideline for the Notary to make a marriage agreement after marriage. However, in carrying out the Notary does not have the courage to make a marriage agreement after the marriage? the main problem of research is how the Application of the Constitutional Court Decision of the Republic of Indonesia Number 69 / PUU-XII / 2015 Against the Notary Marriage Agreement by Public Notary and the obstacles in the Application of the Constitutional Court Decision Number 69 / Puu-Xii / 2015 Against the Marriage Agreement by Notary. The purpose of this study was to determine the Application of the Constitutional Court Decision of the Republic of Indonesia Number 69 / PUU-XII / 2015 Against the Deed of Marriage Agreement by Notary Public and the obstacles in the Application of the Constitutional Court Decision of the Republic of Indonesia Number 69 / Puu-Xii / 2015 Against the Marriage Agreement Deed By Notary Public. This thesis research is a normative legal research supported by empirical legal research. Decision of the Constitutional Court is final and binding, so the Notary can make a marriage agreement after the Constitutional Court's decision No. 69 / PUU-XII / 2015. MK Decision. No. 69 / PUU-XII / 2015 is jurisprudence which is one source of law.

Keywords: *Notary, Marriage Agreement.*

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Preliminary

The rule of law adopted by Indonesia is a form of the concept of a welfare state. In the teaching of state welfare state and the government is actively involved in the economic and social life of society, as a step to realize public welfare, in addition to maintaining order and security (rust en order) [1].

The activeness of the state and the government is indicated by the making of regulations to maintain public welfare. The involvement of the state in the socio-economic life of its people does not mean that the state interferes too much with the social life of its people. This shows that the task of government is not solely in the field of government, but must also carry out social welfare in order to achieve the goals carried out through national development.

National development launched by the state is essentially a modernization effort in various fields of life including the development of Indonesian society as a whole. As social beings, humans cannot live alone because they always need one another. In life, humans will always have interests between one individual and another. Besides that humans also always have an instinct to live together and interact with each other, including the instinct to gather or live together with the opposite sex to form a family [2].

Forming a family is done through a process called marriage. Marriage not only unites a man and woman in a family but also brings legal consequences for both his wife and husband who have been legally married. Various legal consequences that arise as a

result of the marriage include, among others, the rights and obligations of each party during the marriage, their responsibilities towards children, the consequences for their assets, both joint and individual assets, and the legal consequences for third parties. . These things are important to be understood by every prospective husband and wife in order to prevent future problems in marriage.

Marriage is an important event in the life of every human being. Marriage that occurs between a man and a woman will have both physical and mental consequences between them, the community and also the relationship with the wealth obtained between them both before, during and after the marriage takes place. Marriage has the meaning of *aqad*, which justifies association and limits both rights and obligations and helps to help, between a man and a woman, both of whom are not *muhrim* [3].

In Indonesia, the rules regarding marriage are not only influenced by local customs, but are also influenced by various religious teachings, such as Hinduism, Buddhism, Christianity and Islam. The existence of various influences in the community resulted in the occurrence of many rules governing marital problems. Differences in the way of marriage as an influence of marital arrangements bring consequences on the way of family life, kinship, and wealth of a person in social life [4].

Provisions relating to marriage have been regulated in the statutory regulations specifically for Indonesian citizens in the form of laws, namely Law Number 1 of 1974 concerning Marriage and the implementing regulations in the form of Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning Implementation of Laws Law Number 1 of 1974 concerning Marriage.

This law is the material law of marriage, while the formal law is stipulated in Law Number 7 of 1989. Meanwhile, as a supplementary rule that will become a guideline for judges in religious justice institutions is the Compilation of Islamic Law in Indonesia which has been established and disseminated through Instruction President Number 1 of 1991 concerning Compilation of Islamic Law [5]. Article 1 of Law Number 1 of 1974 It is stated: That

marriage is an inner and outer bond between a man and woman as husband and wife, with the aim of forming a happy family based on a supreme God. The existence of an agreement in a marriage is also important because a marriage agreement is important because it is an agreement between a prospective husband and wife to tie in the marriage rope as mentioned in Article 6 Paragraph (1) of Law Number 1 of 1974 which reads: "Marriage must be based on the agreement of the two brides."

Approval or agreement from the prospective husband and wife is an essential element of marriage because it contains a necessity for the nature of the marriage will take place that lasting. Therefore, the agreement must be based on the awareness of the parties concerned and also the agreement must be free from any particular influences that interfere with this freedom because marriage in principle is to take effect and last forever or forever. Before the entry into force of Law Number 1 of 1974 concerning Marriage, the Indonesian people were already familiar with the enactment of a plural law that was applied based on population groups [6].

During the colonial administration implemented a policy of classifying Indonesian population into groups as stated in the *Indische staatsregeling* (IS), namely: the European population group, the Indigenous group and the Middle Eastern population group, each of which differed in their civil status treatment.

One of the provisions which is still valid today is related to the regulation of assets in a marriage. This arrangement has experienced significant development and has become a topic of debate in the renewal of Indonesian national law.

When discussing the problem of property in marriage, then basically the assets obtained during marriage become one, become joint property. In the Civil Code it is stated that "the wealth of the individuals brought into the marriage is mixed into one". It was further stated that the union (mixing) of the property during the marriage should not be held with an agreement between husband and wife. The unity becomes joint wealth and if there is a divorce, the shared assets must be divided in half, so that each gets a half ".

After the entry into force of Law Number 1 of 1974 concerning Marriage, the marriage agreement is regulated in Article 29, which determines:

- 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.
- The agreement cannot be ratified if it violates the boundaries of law, religion and morality.
- The agreement is valid since the marriage took place.
- 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.

Under the provisions of European Civil law, each prospective husband or wife has enormous freedom to determine for themselves the consequences of their marriage, especially regarding their property. Each prospective husband or prospective wife can determine whether all their assets will be mixed or only a portion will be mixed and some will be separated, or there will be no mix of assets at all, so that each has his own property, according to Article 119 of the Law on Civil Law, if a prospective husband or wife before marriage is held, no marriage agreement is made that unanimously regulates the unity (mix) of assets between wife and husband's assets, resulting in a mixed union of marriage assets.

Mixing that occurs with the property they bring, and they will get during the marriage. According to Soedjono Soekanto, husband and wife assets are distinguished as assets obtained after the marriage takes place and some are obtained before the marriage takes place and some are obtained because the wife's or husband's inheritance is not uncommon because of inheritance or grants to one of the parties.

In other words, wealth between husband and wife can be divided into 2, namely wealth before marriage and after marriage. There is a separation between before marriage and after marriage. If the property is obtained

after marriage, the rights to the property are with the husband and wife. Meanwhile, if the property is obtained before marriage, then the right holder is only one party, whether husband or wife. The marriage agreement was made as an effort to anticipate future events. In general, the marriage agreement is made before the marriage. The contents stipulated in the marriage agreement depend on the parties of the prospective husband-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 the agreement in general, is given to both parties 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. The legal basis of the above conditions can be seen from the sound of Article 1320 juncto Article 1338 of the Civil Code. Article 1320 of the Civil Code states that an agreement requires four conditions:

- Agree those who bind themselves;
- The ability to make an engagement;
- A certain thing;
- A lawful cause.

Article 1338 of the Civil Code states as follows: "All treaties made legally apply as a law for those who make them. An agreement cannot be withdrawn other than by agreeing between the two parties, or for reasons stated by law to be sufficient for that. An agreement must be carried out in good faith ". Marriage agreements made by such prospective husband and wife usually contain promises about property obtained during the marriage.

Typically the acquisition of separate assets, each party obtains what is obtained or obtained during the marriage including profits and losses. This marriage agreement applies as a law for those who make it, also applies to third parties as long as these third parties are involved. But today the marriage agreement can be made for mixed marriages between Indonesian citizens and foreign nationals.

However, problems arise because the marriage agreement is usually made before marriage, or at the time of marriage. While most of the mixed marriages do not have a marriage agreement.

This is increasingly a dilemma when a husband / wife who is an Indonesian citizen wants to own land in Indonesia. According to Law Number 5 of 1960 concerning Agrarian Principles, that foreign nationals are not permitted to own land that is certified as Ownership, Right to Build, or Right to Use.

Therefore, on October 27, 2016, the Constitutional Court of the Republic of Indonesia has issued Decision Number 69 / PUU-XIII / 2015 which in essence has granted the request for judicial review of the provisions regarding the Marriage Agreement regulated in Article 29 paragraph (1), paragraph (3) and paragraph (4) of Law Number 1 of 1974 concerning Marriage.

The Constitutional Court granted conditional request from Ike Farida, an Indonesian citizen married to a Japanese citizen . The ruling of the Constitutional Court granted the application for a part of which, in Article 29 paragraph (1) of Act No.1 of 1974 concerning Marriage "At the time, before it took place or during the marriage bond, both parties with mutual agreement could submit an agreement written authorization by the marriage registrar or notary public, after which the contents also apply to the third party concerned ".

In Article 29 paragraph (3) of Law Number 1 of 1974 concerning Marriage, "This Agreement shall enter into force on the date of the marriage, unless specified otherwise in the Marriage Agreement". Then Article 29 paragraph (4) of Law No.1 Year 1974 concerning Marriage "During the marriage, the marriage agreement can be regarding marriage assets or other agreements, cannot be changed or revoked, with the issuance of the decision of the Constitutional Court indirectly answered anxiety over the legal issues mentioned above.

The Constitutional Court's decision becomes a guideline for the Notary to make a marriage agreement after marriage. However, in carrying out the Notary does not have the courage to make a marriage agreement after the marriage. Based on the above analysis, the compiler is interested in further researching and will be outlined in the form of a research proposal entitled "Application of the Constitutional court of the republic of Indonesia about the kawin Agreement that is created by notaries on the

ownership of ownership in Batam city (Study of Question in kantor City in notant) ".

Formulation of the Problem

Based on the background description above, the main research problems can be formulated as follows:

- What is the legal arrangement regarding the marriage agreement deed made by a notary to the ownership of land rights in Batam City?
- How is the implementation of the Constitutional Court ruling of the Republic of Indonesia Number 69 / PUU-XII / 2015 concerning the marriage agreement deed made by a notary to the ownership of land rights in Batam City?
- What factors influence the implementation of the Constitutional Court ruling of the Republic of Indonesia Number 69 / PUU-XII / 2015 concerning the marriage agreement deed made by a notary to the ownership of land rights in Batam City?

Research Methods

Research basically is, "an effort to search" and not to observe closely to something that is already held, in the hand. Research is an English translation of research, which comes from the words re (back) and to search (search). Thus logically means looking for "back". If a research is a search effort, then a question arises what is sought. Basically, the thing that is sought is none other than "knowledge" or rather "true knowledge", where this correct knowledge can later be used to answer certain questions or ignorance.

Normative Legal Research, this type of legal research method can also be referred to as doctrinal law research or library research because this research is only aimed at written regulations so that this research is very closely related to the library. The empirical legal research method is a legal research method that functions to see the law in the real sense and examine how law works in the community. Because in this study examines people in living relationships in society, the empirical legal research method can be said as a sociological legal research. Based on the explanation above, this thesis research is normative legal research supported by empirical legal research.

Discussion

- legal arrangements regarding the marriage agreement deed made by a notary on ownership of land rights in Batam City

The court's ruling is law for the parties to the litigation, so the court's ruling is only binding and must be carried out by the parties to the litigation. In legal science, this court decision is called jurisprudence. According to Sudikno Mertokusumo, jurisprudence is the implementation of law in a concrete case where there is a claim for rights carried out by an independent body and held by the state and free from any influence whatsoever and by giving binding and authoritative decisions.

In brief, according to Sudikno, jurisprudence is a court decision. According to Subekti, jurisprudence is a decision of a Judge or a permanent Court and is justified by the Supreme Court as the Court of Cassation or the decision of the Supreme Court itself which is fixed. Hans Kelsen argued, the court's decision not only had the character of the declaration.

The court not only "discovered" (in German: *das Recht finden*) a law that had been created; the function of the court is not merely as "jurisdiction", namely legal decisions in a declarative sense. Legal discoveries only occur when the general norms that will be applied in concrete cases must be ensured; and even this assurance has a constitutional character, not just a declaration.

The court must apply norms that are generally valid from a legal order in a concrete case, must decide whether or not the constitutional norm will be applied, namely created by legislative procedures established by the constitution or by the traditions represented by the constitution. Based on the description above it can be said that the Constitutional Court's decision is final and binding, then the Notary can make a marriage agreement deed after the Constitutional Court's decision No. 69 / PUU-XII / 2015.

MK Decision. No. 69 / PUU-XII / 2015 is jurisprudence which is one source of law. Jurisprudence is a decision that has permanent legal force (*inkracht van gewijsde*) and the decision of the Constitutional Court (MK) is final and

binding, so it must still be implemented by all parties, both the Notary, and the parties.

The legal consequences of the marriage agreement can provide legal certainty for third parties. Marriage agreement after the Constitutional Court's decision. No. 69 / PUU-XII / 2015, can be recorded in Dukcapil if they meet two conditions, i.e.

- The marriage agreement must be in the form of a notarial deed, drawn up before the Notary. He also stated that the Dukcapil officer would not accept a marriage agreement that was not made with a notarial deed;
- Marriage that will make a marriage agreement after the Constitutional Court's decision. No. 69 / PUU-XII / 2015, must be a marriage that has been registered through Indonesian law. No siri marriage, because there is no register and quote marriage certificate.
- Implementation of the Republic of Indonesia's Constitutional Court Decision Number 69 / Puu-Xii / 2015 Regarding Deed of Marriage Agreement Made by Notary Against Ownership of Land Rights in Batam City

Basic Notary Authority in carrying out their duties and positions as a notary to make an authentic deed in this case the marriage agreement deed regulated in Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 Concerning Notary Position Article 15. Explanation in Article this provides a clear picture of the authority of a notary in carrying out the task of making an authentic deed for the parties.

Whether it's a marriage agreement or other authentic deeds. After the decision of the Constitutional Court No. 69 / PUU-XII / 2015 concerning the basis of making marriage agreements that can be made before, during and after marriage many become notary studies. According to Robert B. Seidman's theory of the working system of law, then when the Notary public carries out his / her office in the field of notary, the position of the notary as a legal implementer, while at the time of the notary is liable, the position of the notary is liable to the law against the application of sanctions. Limitation of notary liability can be requested as long as they are still authorized in carrying out their duties as

a notary or mistakes made in carrying out their duties as notary and sanctions that may be imposed on the authorized notary to carry out their position as a notary public.

- Factors influencing the implementation of the Constitutional Court ruling of the Republic of Indonesia Number 69 / PUU-XII / 2015 regarding the marriage agreement deed made by a notary to the ownership of land rights in Batam City

The first problem is from the legal factor itself. The legal factor becomes the most basic problem which results in the failure of the Constitutional Court's decision regarding the marriage agreement because the law itself does not explicitly mention who has the right to make the marriage agreement so the notary has doubts in making the agreement.

This doubt is due in accordance with the Law of Notary Position which requires the notary to always be careful in making an agreement. In addition, the notary must also consider the impact of the marriage agreement made on the third party. The second problem is the law enforcement.

In terms of making marriage agreements, the notary public officer who has been given the power of attorney by the state in making the agreement should have been and should also be given clarity regarding the making of the marriage agreement. In the Marriage Law it does not mention any official authorized to make the marriage agreement. So the average notary is reluctant to make the agreement. The third problem is the facilities and facilities.

In relation to the implementation of the marriage agreement, the socialization of a notary is carried out by a body authorized to handle this matter. This certainly affects the performance of a notary to make the marriage agreement.

In addition to notary information, education should be made to the public about the advantages and disadvantages of making marital agreements so that people no longer become blind to this problem. The fourth problem is the community factor. Indonesian people still feel taboo or are reluctant to make a marriage agreement because there is an assumption that when they make a marriage agreement there is a high possibility of divorce.

This is certainly not true because not all who make a marriage agreement will end in divorce. Indonesian people still feel taboo or are reluctant to make a marriage agreement because there is an assumption that when they make a marriage agreement there is a high possibility of divorce.

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Conclusion

Decision of the Constitutional Court is final and binding, so the Notary can make a marriage agreement after the Constitutional Court's decision No. 69 / PUU-XII / 2015. MK Decision. No. 69 / PUU-XII / 2015 are jurisprudence which is one source of law. Jurisprudence is a decision that has permanent legal force (inkracht van gewijsde) and the decision of the Constitutional Court (MK) is final and binding, so it must still be implemented by all parties, both the Notary, and the parties.

The legal consequences of the marriage agreement can provide legal certainty for third parties. Marriage agreement after the Constitutional Court's decision. No. 69 / PUU-XII / 2015, can be recorded in Dukcapil if it meets two conditions, namely:

- The marriage agreement must be in the form of a notarial deed, drawn up before the Notary. He also stated that the Dukcapil officer would not accept a marriage agreement that was not made with a notarial deed;
- Marriage that will make a marriage agreement after the Constitutional Court's decision. No. 69 / PUU-XII / 2015, must be a marriage that has been registered through Indonesian law. No siri marriage, because there is no register and quote marriage certificate.

Since the issuance of the Basic Decision of Notary Authority in carrying out their duties and positions as a notary to make an authentic deed, in this case the marriage

agreement certificate is regulated in Law of the Republic of Indonesia Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position Article 15.

The explanation in this Article provides a clear picture of the authority of a notary in carrying out the task of making an authentic deed for the parties. Whether it's a marriage agreement or other authentic deeds. After the decision of the Constitutional Court No. 69 / PUU-XII / 2015 concerning the basis of making marriage agreements that can be made before, during and after marriage many become notary studies. The factors that caused the Constitutional Court's decision to not be implemented. 69 / PUU-XII / 2015 concerning the basis for making marriage agreements is due to legal factors, law

enforcement factors, facilities and infrastructure factors, community factors.

Suggestion

The suggestions that can be given by the author are as follows:

- The Ministerial Regulation was made as a guideline for the implementation of the marriage agreement to the provisions of Article 29 Paragraph (1) of the Marriage Law Number 1 of 1974 post Constitutional Court ruling No. 69 / PUU-XII / 2015.
- It is recommended for Notaries to provide important legal information that clients should know as long as they are dealing with legal issues before putting the wishes of the parties into a deed [7-13].

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B. Legal regulations

The 1945 Constitution of the Republic of Indonesia

Code of Civil law

Law Number 5 of 1960 concerning Agrarian Principles

Law Number 1 of 1974 concerning Marriage

Law Number 2 of 2014 concerning Position of Notary Public