

Legal Consequences of Making and Changing Marriage Agreements Made After Marriage

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Abstract. This research examines and analyses the legal consequences and protection for third parties from making and changing marriage agreements after marriage following Constitutional Court decision No 69/PUU-XIII/2015. The type of research used is normative, using statutory and conceptual approaches. The sources of legal materials used are primary, secondary, and tertiary legal materials. The analysis used is prescriptive. Based on the research results, we know that making and changing marriage agreements after marriage, following Constitutional Court decision No 69/PUU-XIII/2015, results in changes to the property status of the husband and wife, making them legal protection for third parties repressive because the identity and interests of third parties are not visible if there is no legal relationship between them and either one or the husband and wife.

Keywords: Constitutional Court Decision; Marriage Agreement; Legal Consequences

INTRODUCTION

As social creatures, humans have the instinct to live together and interact. As a legal event, marriage is a human need that includes physical and spiritual needs. This external need is the human instinct to have legitimate biological offspring. Inner needs include the human desire to live in pairs to form a harmonious, harmonious, and eternal, happy household.

Marriage is a sacred union. Husband and wife cannot separate marriage from the religion they adhere to. Marriage is a sacred agreement between a man and a woman to form a family [1].

Marriage is one of the crucial events in human life. Etymologically, marriage is a word derived from the essential word marriage. This word comes from the ancient Javanese kaawin (kaahwin), carried or brought. Marriage means forming a family relationship with the opposite sex, having a husband or wife relationship, and getting married [2].

A valid marriage will have legal consequences for the husband and wife, one of which concerns marital property. In marriage, the husband and

wife obtain marital assets intended to meet the needs of the formed family. In marriage, the husband and wife acquire marital assets to fulfil the needs of the family they have formed. This scenario is not about determining which party generates more wealth, as both partners are responsible for earning income to ensure the family's welfare [3].

Husband and wife can regulate the consequences of marriage by making a marriage agreement. Generally, they make marriage agreements to regulate assets in marriage. A marriage agreement is a written agreement by a prospective husband and wife stating that they have agreed and reached a consensus to separate their assets from the marital assets authors [4].

The term agreement is a translation of the Dutch overeenkomst, an event where two people or parties promise each other something. From this incident, a relationship emerged between the two people, which is called an alliance [5].

An agreement is an act by which one or more people bind themselves to one or more other people. A contract or agreement that the parties legally execute applies as law to the parties who

make it. An agreement contains the meaning of a property law relationship, which gives one party the right to obtain achievement and simultaneously obliges the other party to fulfil the achievement.

A marriage agreement is a form of agreement made by husband and wife only regarding property or wealth between husband and wife. The assets listed in the marriage agreement will then be agreed on whether they are united in their entirety, united only in a limited way, or separated without uniting them authors [6].

The Marriage Law and the Compilation of Islamic Law (KHI) do not directly explain the definition of a marriage agreement, but several statutory regulations regulate it. The Civil Code (KUHPer) regulates marriage agreements in Articles 139-154.

The compilation of Islamic Law regulates marriage agreements in Articles 45-52, which divide marriage agreements into talk and other contracts that do not conflict with Islamic law authors [7]. Based on these legal provisions, husband and wife can make a marriage agreement other than the divorce agreement related to assets regulated in KHI. In Law No 1 of 1974, marriage agreements are regulated in one article, namely Article 29 § 1, which states that:

"At or before the marriage takes place, both parties, by mutual agreement, can enter into a written agreement ratified by the marriage registrar, after which the contents also apply to third parties as long as the third party is involved".

The regulations regarding marriage agreements do not directly state the meaning of marriage agreements. The purpose of a marriage agreement is to separate the assets between the husband and the wife so that their assets are not mixed and are protected from arbitrary actions by either party regarding the assets brought into the marriage.

After the issuance of decision No 69/PUU-XIII/2015 on 27 October 2016 by the Constitutional Court, there were changes and additions to norms in the rules for marriage agreements previously regulated in the UUP and Civil Code. Among these changes and additions are 1) a marriage agreement can be made before, at the time of the marriage, or during the marriage and can be ratified by a marriage registrar or Notary; 2) the marriage agreement comes into force at the time the marriage takes place unless other-

wise specified in the agreement marriage; 3) the marriage agreement can be changed and revoked with the consent of both parties as long as it does not harm a third party.

After the Constitutional Court Decision No 69 of 2015, a marriage agreement is no longer interpreted only as an agreement made before the marriage. Husband and wife can also make it after the marriage takes place. As well as the additional phrase in Article 29 § 1, "ratified by a Notary." The following change was that the Constitutional Court raised the alternative of ratifying the marriage agreement by a notary. Previously, marriage registrar employees could only ratify marriage agreements. However, Constitutional Court Decision No 69/PUU-XIII/2015 interpreted that Notaries can also ratify Marriage Agreements. This raises a dilemma regarding whether a deed ratified by a Notary meets the principle of publicity as intended, ensuring that the Marriage Agreement applies to third parties.

After the issuance of Constitutional Court decision No 69/PUU-XIII/2015, changes and additions to norms regarding the provisions of marriage agreements expanded the meaning, allowing them to be made not only before or at the time the marriage takes place but also during the marriage bond. The parties write the marriage agreement and have it ratified by the Marriage Registrar and Notary. The marriage agreement can cover marital assets or other contracts. Based on the background described above, the formulation of the problem in this research is what are the legal consequences of making and changing marriage agreements made after marriage after the Constitutional Court decision No 69/PUU-XIII/2015 and what is the legal protection for third parties (three) if the marriage agreement is made before a Notary after the marriage has taken place.

METHOD

The type of research used is normative legal research, namely, research conducted on legal principles, legal rules in the sense of values (norms), concrete legal regulations, and legal systems [8], which relate to the material studied.

The statutory approach is employed to examine the problems in this research. This method scrutinizes society's statutory regulations, principles, and legal norms from laws, books, documents, and other sources. Experts use the conceptual

approach by examining their views/concepts regarding the discussed problem. Authors take this approach when legal regulations do not or do not yet exist so that experts' opinions become one of the bases for strengthening their views authors [9]. The technique for collecting legal materials used is library research, namely by recording information from legal materials related to what will be researched, both normatively and in the form of ideas or thoughts. We selectively carry out this recording to support and complement legal material from other sources. All legal materials obtained from library research are then analyzed using prescriptive analysis, namely analysis carried out by arguing the research results by providing a prescription or assessment regarding right or wrong or what should be according to the law regarding legal facts or events, authors [10] which are then linked to related concepts and theories to gain clarity on the problems studied through logical, systemic and coherent legal reasoning.

RESULTS AND DISCUSSION

Legal Consequences of Making and Amending Marriage Agreements Made After Marriage Post Constitutional Court Decision No 69/PUU-XIII/2015. A Marriage Agreement is a mutual agreement made when a prospective husband and prospective wife marry to regulate matters relating to assets or other authors [11]. The marriage agreement comes into effect from the moment the marriage takes place. Its contents generally dictate how the husband and wife will divide their assets in the event of a divorce. The Civil Code, Article 139, explains that with a marriage agreement, individuals can deviate from the provisions of the law regarding joint property as long as this does not conflict with sound morals or public order, and they must also consider the requirements explained in the following explanation.

The marriage agreement in Article 29, § 1–4 of Law No 1 of 1974 concerning marriage which states that [12]:

- 1) At or before the marriage takes place, both parties, with mutual agreement, can submit a written contract 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 boundaries of law, religion, and morality.

3) The agreement begins to take effect when the marriage occurs.

4) The agreement is not changed during the marriage unless both parties agree and the change does not harm third parties.

After the issuance of Constitutional Court decision No 69/PUU-XIII/2015, the meaning of a marriage agreement has been expanded so that it is no longer an agreement made before marriage but an agreement that spouses can create during their marriage bond.

A marriage agreement is a legal event with consequences regulated by the applicable law [13]. We are talking about legal consequences and the impact we will receive. As we know, agreements generally give rise to legal consequences for the parties who make them, as well as for interested third parties. The same thing also applies to marriage agreements.

As explained in Article 29, § 1 of Law No 1 of 1974 concerning Marriage, which reads: "At or before the marriage takes place, both parties may, by mutual agreement, enter into a written agreement ratified by the Marriage Registrar, after which the contents also apply to third parties as long as the third party is involved".

The words contained in Article 29, § 1 of Law No 1 of 1974 concerning marriage read: "Both parties can enter into a written agreement based on a mutual agreement which the Marriage Registrar ratifies." Readers can see from this article that the marriage agreement regulated in Law No 1 of 1974 concerning Marriage must be in written form. A provision mandates that the marriage agreement must be in written form, as it provides strong evidence when documented in writing.

As for the principle of validity, Article 1338 of the Civil Code (Burgerlijk Wetboek) reads all agreements made legally apply as law for those who create them. Based on the explanation of the two articles above, if a marriage agreement is not registered, it still applies to both parties who made the marriage agreement, namely the husband and wife, because in Law No 1 of 1974 concerning Marriage, there is not a single article that states that the marriage agreement only takes effect if it has been registered or ratified.

According to the principle of the birth of an agreement, namely the principle of consensual [14], which states that an agreement is born from the moment parties reach a deal; the marriage

agreement automatically binds the party who makes it when both agree on the created marriage agreement, whether it is registered or not. Thus, whether registered or not, the husband and wife who decide to make the permanent marriage agreement will face legal consequences that remain binding. In other words, both of them remain bound by the agreements contained in the Marriage Agreement.

In contrast to the legal consequences for husband and wife who make a Marriage Agreement if it is not registered, for a third party, if the Marriage Agreement is not legalized or registered with a marriage registrar, then the Marriage Agreement itself does not have binding force on the third party. This refers to what the author explained in the previous sub-chapter regarding the requirements for a Marriage Agreement to be Binding on Third Parties and the provisions contained in Article 29 § 1 of Law No 1 of 1974 concerning marriage, which reads: at or before When a marriage takes place, both parties can, by mutual agreement, enter into a written agreement ratified by the Marriage Registrar, after which the contents also apply to third parties as long as the third party is involved.

The Compilation of Islamic Law (KHI) confirms the same in Article 50, stating that marriage agreements regarding property legally bind both the parties and third parties from the date the marriage occurs before a marriage registrar's officer. So, in this situation, the legal consequences for the third party are the parties. Thirdly, until the marriage agreement is registered, we can assume that the parties entered the marriage with a joint union of marital assets. So, suppose there is a debt dispute between the husband and wife. In that case, the settlement involves joint assets between the husband and the wife's assets because there are only joint assets without a marriage agreement.

Parties can implement the marriage agreement between prospective husband and wife as regulated in Article 29 of the Marriage Law in conjunction with Constitutional Court Decision No 69/PUU-XIII/2015 of 2015, especially those that regulate assets, namely assets acquired before the marriage took place (assets inheritance) and assets acquired during the marriage (joint assets), as regulated in Chapter VII Article 35 and Article 36 of the Marriage Law, which is a form of exception to the provisions regarding the mixing of assets as regulated in the Civil Code.

In Article 29 of the Marriage Law, the legal basis for marriage agreements remains general (abstract), containing only a cursory understanding of everything the parties may agree upon except for divorce. As the legal basis for marriage agreements that precede the Marriage Law, the Civil Code has concretely regulated such contracts. The Marriage Law does not entirely remove the provisions in the Civil Code except regarding several matters expressly regulated and the marriage agreement referred to in Article 29 § 1 of the Marriage Law, namely the agreement ratified by the Marriage Registrar.

According to Article 29 § 1 of the Marriage Law in conjunction with the Constitutional Court Decision No 69/PUU-XIII/2015 of 2015 regarding the ratification of the marriage agreement, which reads: "At the time or before the marriage takes place or during the marriage, both parties with mutual consent can submit a written agreement ratified by a Marriage Registrar or Notary, after which the contents also apply to third parties as long as the third party is involved."

From the description above, there are two critical points in Article 29, § 1 of the Marriage Law: First, "the marriage agreement must be registered to fulfil the principle of publicity of the marriage agreement. This aims to ensure that third parties (excluding the husband or wife) know and comply with the rules in the marriage agreement that the couple has made. If the marriage agreement is not registered, it does not bind third parties but only binds or applies to the parties who created it, namely the husband and wife concerned.

Second, as of the promulgation of the Marriage Law, the recording of marriage agreements is no longer carried out at the District Court Registrar's Office but at the Marriage Registrar's Staff. For Muslim couples, the Religious Affairs Office registers the marriage agreement, while the local Civil Registry Office handles the registration for non-Muslim couples. In contrast, the local Civil Registry Office carries out the registration for non-Muslim couples.

Furthermore, what are the legal consequences of registering a marriage agreement according to the Civil Code and the Marriage Law, where there are differences in registration and ratification procedures? It's important to remember that, in principle, a marriage agreement resembles any other agreement.

As long as the agreement meets the requirements contained in Article 1320 of the Civil Code, then the marriage agreement is valid and binding on both parties (husband and wife) who made it and by the principles of agreements, especially the principle of *pacta sunt servanda*, where an agreement is a contract and is binding on those who create it. However, because the ratification procedure does not comply with the provisions of the Marriage Law, the legal standing of the agreement made is weak. Parties with bad intentions can easily deny it.

The contents of the marriage agreement, apart from binding the parties who make it, also bind third parties involved with the parties. In general, what is meant by third parties are those who do not do for themselves or based on a representative, whether a representative by law or a representative by agreement. The classification of those in this third-party category is comprehensive and depends on their relationship with the parties to an agreement [15].

The relationship between marriage agreements and third parties (externals) in this thesis research is parties other than husband and wife. In a credit agreement, for example, if there is no marriage agreement, the bank, in this case acting as a creditor, considers the assets owned by the husband and wife to be joint assets (*harta gono gini*), then the debts incurred during the marriage are joint debts which the husband and wife jointly bear. However, for husband and wife who have made a marriage agreement, debts incurred during the marriage are only the responsibility of one of the parties wishing to apply. In contrast, one party is not bound by it and has no obligation to participate in paying the spouse's debts.

As long as the marriage agreement has not been registered with the Marriage Registrar, a third party can assume that the marriage occurred without separating assets. However, suppose the third party does not know that the marriage agreement was not registered with the Marriage Registrar. In that case, the third party can assume that the husband and wife are married without the separation of assets. Meanwhile, suppose a third party knows that the marriage agreement held by a married couple related to him has not been registered with the Registrar of the District Court or the Marriage Registrar. In that case, he must not assume that there is no marriage agreement between the husband and wife. So, if a debt arises between the husband and wife and a

third party, the debt is settled by involving joint assets owned by the husband and wife.

Marriage agreements not registered with the marriage registrar have legal consequences in several aspects, as noted by [16].

1) Legal consequences of the marriage agreement deed. Like agreements in general, parties must fulfil conditions in marriage agreements. One of the conditions for a marriage agreement regulated in Article 29 § 1 of the Marriage Law is its registration. The marriage agreement must be registered to be valid and have legal consequences. A marriage agreement that is not registered is considered to have never existed because it lacks an element of external publicity, and denying the contents of the marriage agreement is more accessible for both parties to carry out because the juridical consequences are not so substantial.

2) Legal consequences on marital assets. If a marriage agreement is not registered, parties deem it to have never existed; thus, it does not affect the existence of separate property. Therefore, individuals who entered into marriage before the implementation of the Marriage Law will have a mixture of assets following the provisions of the Civil Code. Those who entered marriage after the enactment of the Marriage Law will have joint assets.

3) Legal consequences for third parties. If the marriage is not registered, third parties, namely those outside the two parties (husband and wife) who have an interest in the property in the marriage, face legal consequences: the marriage agreement is deemed to have never existed and is not binding on them.

The legal consequences of the existence of a post-nuptial marriage agreement on the status of property are inherently related to the time this agreement comes into force. As previously explained, the parties enter into the marriage agreement during the marriage based on the provisions of Article 29 of the Marriage Law. The marriage agreement becomes enforceable from the moment the marriage occurs. Referring to the Constitutional Court decision No 69/PUU-XIII/2015, which in the ruling reads: "the agreement comes into force from the time the marriage takes place unless otherwise stipulated in the marriage agreement." The marriage agreement entered into during the marriage is also enforceable from when the marriage takes place unless the marriage agreement contains other

provisions. Before the Constitutional Court's decision issuance, the regulation containing marriage agreements in Indonesia was Article 29 of the Marriage Law. This article includes marriage agreements. Prospective married couples can enter into marriage agreements during or before marriage. If the married couple wishes to change the deal in question, it must be mutually agreed upon and not cause harm to related third parties. Regarding marriage agreements entered into before the Constitutional Court's decision is issued, these agreements are valid for both parties entering into them if they do not violate the rules contained in the Marriage Law.

After the Constitutional Court issues its decision, parties can implement the marriage agreement anytime. The marriage agreement entered into before the Constitutional Court's decision remains valid and applies to both parties who entered into it. However, suppose a husband and wife wish to change the contents of the marriage agreement, which initially constituted joint property. In that case, they want to modify it so that it becomes the property of each party, as mutually agreed. To achieve this, they must obtain a District Court decision regarding separating their assets. Based on the changes to the marriage agreement after Constitutional Court Decision No 69/PUU-XIII/2015, we can understand that the marriage agreement contains a mutual agreement between the husband and wife regarding their property and other matters. It binds the parties and third parties as long as they are involved. The husband and wife make a marriage agreement to guide them in managing their property during marriage and to avoid misunderstandings or differences of opinion regarding property ownership status.

The existence of a marriage agreement is beneficial, especially if one of the parties between husband and wife enters into a transaction with a third party involving marital assets. With a marriage agreement, there is certainty regarding the status of property ownership and certainty regarding the separation and mixing of assets. All legal actions related to marital assets can provide a sense of calm for husband and wife when carrying them out [17].

Thus, the amendment to the agreement after Constitutional Court Decision No 69/PUU-XIII/2015 has provided convenience by expanding the time for making a marriage agreement, which the husband and wife can agree upon at

any time according to their needs. The parties can agree upon objects that include marital assets and other contracts as long as they do not violate the law, religion, and morality.

Legal protection for 3rd parties if the marriage agreement is made before a notary after the marriage takes place. The husband and wife agree to establish a legal agreement regarding their inherited assets. Even though the law does not explain the purpose of the marriage agreement, both parties understand what they obtain from the marriage agreement and what is handed over to them.

According to the Marriage Law, the marriage agreement becomes effective for the husband and wife (internal) when a marriage occurs. In contrast, for third parties (external), the marriage agreement can also be interpreted to become effective after registering it with the Marriage Registration Officer on the marriage certificate extract (KUA). It has binding power for Muslims and Dispendukcapil for non-Muslims) as a form of approval by the authorized official. So, if the marriage agreement is clearly stated in the extract from the marriage certificate of the husband and wife, a third party cannot deny it.

Regarding changes to the marriage agreement, as stated in Article 29 § 4 of the Marriage Law, Jo. Constitutional Court Decision No 69/PUU-XIII/2015 states that it is still permissible to change the marriage agreement after the marriage occurs, and these changes do not harm third parties.

As stated, the prospective husband and wife can still change their marriage agreement after marriage. However, these changes require a notarial deed. Furthermore, individuals previously involved as parties in implementing the marriage agreement must be included again. If they disagree, then they cannot make any changes.

We need to consider the impact of marriage agreement changes on third parties. The actions of a husband and wife who change the marriage agreement are detrimental to a third party entitled to legal protection. Please note in advance that there are two types of legal protection. The first is preventive legal protection, which Muchsin defines as "legal protection provided by the government aims to prevent violations before they occur." authors [18]. The second is repressive legal protection, which Philipus M. Hadjon

defines as "a form of legal protection which is more aimed at resolving disputes" [19].

Parties can make a marriage agreement before the Constitutional Court Decision only before or during the marriage act. Based on mutual agreement, the parties can change the deal at a later date but cannot revoke it. This differs from the post-MK decision arrangement, which allows marriage agreements to be made and enforced at any time according to the time the parties agree. This new interpretation also allows for the changing or revoking of a marriage agreement. This differs from the previous situation, where changes were allowed, but revocation was not permitted.

A legal principle or basis emerged, becoming the foundation for thinking, opinions, and actions in statutory regulations to analyze the position of the Marriage Law after its promulgation, namely the principle of *lex posteriori derogate*. This principle states that new laws and regulations defeat or paralyze old rules and regulations if the two laws and regulations contain conflicting provisions. This principle is applied when two conflicting laws and regulations have the same status or position, which in this research refers to the Civil Law Code and the Marriage Law.

The legal protection provided in the arrangement of marriage agreements for the interests of third parties is more repressive. However, a comparison between pre and post-Constitutional Court Decisions shows that the previous marriage agreement arrangements had the nature of preventive legal protection. By making it impossible for a couple to make a marriage agreement after the marriage has taken place, the time for a marriage agreement to come into force is inevitable, and the revocation of a marriage agreement is not allowed, providing a smaller window for problems to occur due to negligence or even bad faith on the part of the husband and wife.

Changes to Constitutional Court Decision No 69/PUU-XIII/2015 regarding ratification of marriage agreements by Notaries, not only is it a monopoly of Marriage Registrar Employees, this is a new norm which is undoubtedly seen as progressive by some groups. People who need a marriage agreement do not have to have it ratified by a Marriage Registrar but have another alternative, namely a Notary.

A notary is a position in the new interpretation of the Constitutional Court Decision, added to § 1.

Notaries had a role in marriage agreements well before the Constitutional Court Decision based on Article 147 of the Civil Code. After the Constitutional Court's decision reaffirmed that notary officials have an essential role in marriage agreements, this caused notary officials to pay more attention to the legal consequences of the Constitutional Court's decision, especially for couples who want to make a marriage agreement while still married.

Paragraph 1 of Article 16 letter a UUJN states that "notaries are obliged to safeguard the interests of the parties involved in legal actions." Apart from that, when carrying out their duties simultaneously, notaries must prioritize the principle of caution. Notaries must take preventive legal protection measures when making deeds to protect themselves and the parties to the deed.

Habib Adjie gave his opinion on how notaries should act in making marriage agreements after the MK Decision based on the precautionary principle. Apart from protecting the Notary from being involved in disputes that arise in the future, this opinion is also helpful so that the interests of third parties are protected. The matters in question must be considered, such as [20].

- 1) Request an inventory list of assets acquired during the marriage, which will be included in the deed;
- 2) The statement asserts that no one has ever transacted these assets in any way or form.

After the emergence of the Constitutional Court, decision no 69/PUU/XII/2015, a marriage agreement can be made by the husband and wife after the marriage. Several situations are reasons for making a marriage agreement after the marriage; in more detail, they are authors [21]:

- 1) There is negligence and ignorance; Law No 1 of 1974 concerning Marriage has provisions governing Marriage Agreements made before marriage.
- 2) Some risks may arise from joint assets. The parties choose to be responsible regarding their respective personal assets.
- 3) The existence of an individual attitude. Husband and wife both do not want to be involved in the problems suffered by their partners because of the influence of the environment and human civilization, which is increasingly liberal and imitates Western life, ultimately leading husband and wife to make a Marriage Agreement.

4) There is a desire to continue to have a certificate with ownership rights to the land. Indonesian citizens who marry foreign citizens cannot have property rights, business use rights, or building use rights because of joint property in marriage. Married couples of different nationalities must make a marriage agreement to deviate from these provisions.

Making a marriage agreement during the marriage period changes the legal status of property and debts contained or acquired during the marriage, which are closely related to third parties. Thus, making a marriage agreement should not harm third parties. However, no regulations have governed the procedures for making a marriage agreement during the marriage period, thus opening up a vast space for interpretation [22].

Based on the provisions of Article 29 § 4 of Law No 1 of 1974 concerning Marriage After Constitutional Court Decision No 69/PUU-XIII/2015, husband and wife can determine the contents of the marriage agreement they will make because marriage agreements can contain marital assets or other contracts as long as they do not burden or harm either party.

In connection with Constitutional Court Decision No 69 / PUU / XII/2015, if the parties do not determine when the marriage agreement comes into force, it will be interpreted as the marriage agreement coming into force from when the marriage takes place.

Suppose there has previously been a legal action related to a third party, such as a credit agreement. In that case, the change in the legal status of marital property, which was previously in a unified union to become separate, can give rise to legal problems.

Therefore, when making a marriage agreement after the marriage, several things must be considered and done to protect third parties:

1) *The marriage agreement must be made before a Notary.* Making a marriage agreement before a Notary is essential to ensure certainty, order, and legal protection. This relates to the need for authentic written evidence regarding circumstances, events, or legal actions carried out through certain positions. A notary is a specific position that carries out the profession of providing legal services to the community. A marriage agreement drawn up by a notary with the principle of notarial caution, suitable deed formulation, and education provided to the parties, the contents of

the marriage agreement can protect all parties, including third parties.

The precautionary principles that must be carried out by a Notary before making a marriage agreement, according to the author [20], include:

a. Listen and understand the wishes of the parties regarding the contents of the marriage agreement;

b. Asking questions that need to be invited, such as identity and complete documents, when the marriage took place, and asking the parties to make an inventory of all assets and their status (whether they are collateral for credit or not);

c. Educate the parties about the risks that may occur in making this marriage agreement so that the parties have good intentions in making this agreement;

d. As self-protection from criminalization by a Notary, a Notary can make or ask the parties to create a statement that everything said by the parties is true;

e. Ask the parties to announce in the mass media that they will make a marriage agreement.

2) *The marriage agreement is made in good faith between the parties.* The good faith of the parties in agreeing is essential. Especially in relationships with third parties, because only the husband and wife know if they have a credit agreement with a third party, which is not known to the Notary, who will make the marriage agreement during the husband and wife's marriage.

Good faith is the basis for implementing contracts/agreements. When making or executing an agreement, the parties must pay attention to the principle of good faith. In implementing the agreement, they must pay attention to the norms of compliance and decency. Article 1339 of the Civil Code explains the implementation of the doctrine of good faith, which is closely related to etiquette. It states that an agreement binds not only for things expressly stated but also for everything required by etiquette, customs, and laws according to the nature of the agreement [23].

3) *The marriage agreement must be registered with the marriage registrar.* Ratifying a marriage agreement is an essential thing. The husband and wife who make the marriage agreement should not overlook ensuring legal protection for third parties and fulfilling the principle of publicity, as regulated in Article 29 § 1 of the Civil Code jo. Article 3 Marriage Law.

Therefore, making a Marriage Agreement throughout the marriage will impact the legal status of property and debts contained or acquired in the marriage, so of course, making the Marriage Agreement must not harm third parties. The problem is determining if third parties have suffered injury while making a marriage agreement.

The Notary, as the spearhead of the birth of the marriage agreement in question, needs and is obliged to take several anticipatory steps, namely:

- a) Please request that the husband and wife provide a detailed statement regarding the list of assets, their status, and whether they are using them as collateral for a third party,
- b) Make a statement by the parties explaining to release the Notary from all legal consequences for the making of this Marriage Agreement,
- c) Check the status of the property (especially certificates), which are the object of the marriage agreement, to determine whether they are guaranteed to a third party,
- d) Obtaining approval from the third party involves, for example, that the assets that are the object of the marriage agreement are collateral for bank credit.

By taking these anticipatory steps, we hope to avoid losses to third parties, especially banking creditors, and to minimize the risk of a third party suing the Notary for cancelling the marriage agreement. When drafting a marriage agreement deed during the marriage by notarial deed, a Notary ensures they consider the interests of third parties to prevent harm while performing the "mandatory" agreement.

The validity of making a marriage agreement ratified by a marriage registrar and a notary is that

they both have the authority to approve the marriage agreement. This authority stems from Constitutional Court Decision No 69/PUU-XIII/2015 and Minister of Religion Regulation No 19 of 2018. Thus, the validity of the marriage agreement issued by the two legal officials has permanent legal force starting from being made and ratified by the authorized party, in this case, the marriage registrar and Notary.

CONCLUSIONS

Following Constitutional Court Decision No 69/PUU-XIII/2015, making and amending marriage agreements after marriage have legal consequences that result in changes to the property status of the husband and wife who made them, affecting both assets obtained before the agreement. After making the deal, the husband and wife will receive assets acquired, including their debts, which involve third parties. Therefore, there is a need for a strict inventory of assets regarding which assets and debts they will include in the agreement and who the responsible party is.

Legal protection for 3rd parties, if the marriage agreement is made before a Notary after the marriage has taken place following the Constitutional Court's decision No MK 69/PUU-XIII/2015, is more repressive because the identity and interests of the third party are not visible if there is no legal relationship between himself with either one or a husband and wife pair. The disturbed interests of third parties also only become visible when there are problems between the parties, so repressive legal protection is more effective than preventive legal protection in resolving cases.

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