

# The Role and Responsibilities of the Notary in Making a Deed of Post-Wedding Marriage Agreement: Study at the Mataram Regional Notary Office, Indonesia

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**Abstract.** This research aims to analyze the mechanism for making marriage agreement deeds before and after marriage in the Mataram Region and explore the role and responsibilities of Notaries in making post-nuptial marriage agreement deeds. The research method used is an empirical normative legal research method. The approaches used are a statutory approach, a conceptual approach, and a sociological approach. The results of the research obtained by the author, first, are related to the mechanism for making pre- and post-nuptial marriage agreement deeds in the Mataram area, namely the process of making the first marriage agreement deed, namely making a marriage agreement deed before the date the marriage takes place by Article 147 of the Civil Code, register the marriage agreement deed with the District Court by Article 152 of the Civil Code, Ratify the marriage agreement deed by a marriage registration officer from the Population and Civil Registry Office by Article 29 § 1 of Law No 1 1974 concerning marriage. There is no significant difference regarding the preparation of marriage agreements before and after marriage. The following research results formulate the role and responsibilities of a Notary in making post-nuptial marriage agreement deeds based on Article 15 of the Answer Law. Notaries play a role in doing authentic deeds and providing counselling, especially regarding marriage agreements. The notary's responsibilities are stated explicitly in Article 65 of Law of the Republic of Indonesia No 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions.

**Keywords:** Role; Responsibilities of Notary; Marriage Agreement

## INTRODUCTION

A marriage between a man and a woman will have physical and spiritual consequences for them, society, and their relationship with the wealth acquired between them before, during, and after the Marriage takes place. The content stipulated in the marriage agreement depends on the parties to the prospective husband and wife as long as it does not conflict with statutory regulations, religion, and propriety or decency. The form and content of the marriage agreement, as with agreements in general, both parties are given freedom by the legal principle of "freedom of contract" as long as it does not conflict with the Law or morality or violate public order [1].

The prospective husband and prospective wife include the essential elements of Marriage in

their marriage agreement because they believe it's necessary for a lasting union. The existence of consent in Marriage is also critical because it is an agreement between the prospective husband and wife to tie the knot as stated in Article 6 § 1 of the Marriage Law No 1 of 1974, which reads: "Marriage must based on the consent of both prospective bride and groom" authors [2].

Marriage agreements by prospective husband and wife like this usually contain promises regarding property acquired during the Marriage. Usually, by obtaining separate assets, each party gets what was earned or received during the Marriage, including profits and losses [3].

The requirements for a marriage agreement it is regulated in Article 29 of Law No 1 of 1974 concerning Marriage, which essentially states that a

marriage agreement must be made by a notarial deed or by a written agreement ratified by the Marriage Registry Officer before the Marriage takes place or at the time of the Marriage. It takes place, and the marriage agreement comes into force when the Marriage occurs; it does not change unless both parties agree to change it and it does not harm a third party [4]. Despite Article 147 of the Civil Code and Article 29 of the Marriage Law stipulating that such contracts should be executed at or before Marriage, society often executes marriage agreements after Marriage.

According to Article 147 of the Civil Code, a marriage agreement made after the Marriage is held is legally valid only if a court has first issued a decision for specified reasons. This creates legal uncertainty because Article 147 of the Civil Code and Article 29 of the Marriage Law explicitly state that individuals can execute a marriage agreement at or before the Marriage takes place. On 27 October 2016, the Constitutional Court (MK), through its decision No 69/PUU-XIII/2015, gave a constitutional interpretation of Article 29 § 1, 3, and 4 of Law No 1 of 1974 concerning Marriage. This interpretation, based on the Constitutional Court's decision regarding Article 29 § 1, 3, and 4 indicate that the implementation of a marriage agreement is no longer limited to only being executed at the time or before the Marriage takes place. Instead, the husband and wife can implement the marriage agreement with mutual consent during the marriage contract.

Marriage agreements are made based on the general conditions that apply to fulfil the requirements for the validity of a deal as regulated in Article 1320 of the Civil Code. The marriage agreement between the two prospective husbands and wife is made correctly in writing or deed, either privately or authentically, created by an authorized public official. However, the marriage agreement should be genuine to provide maximum and binding protection for interested parties. An authentic deed is made by an authorized Public Official, in this case, a Notary, which is strong evidence [5].

Following the background described above, the main problem in this research is what is the mechanism for making marriage agreement deeds made before and after Marriage in the Mataram Region and what are the roles and responsibilities of Notaries in making post-nuptial marriage agreement deeds in the Mataram Region. The *study aims* to analyze the mechanism of

concluding pre- and post-nuptial agreements in the Mataram region and the role and responsibilities of notaries in concluding post-nuptial agreements in the Mataram region.

## METHOD

The type of research used in this research is empirical normative legal research. Empirical normative legal research is a type of legal research that analyses and examines the operation of Law in society or determines the extent to which regulations or statutes and laws operate effectively.

The method used in this research is the statutory approach, namely examining the statutory regulations relating to the issue of marriage agreements, namely the Civil Law and Law No 1 of 1974 concerning Marriage. This approach analyses various laws and regulations related to marriage agreements. The second method, namely the conceptual approach, departs from the views and doctrines developed in legal science. By examining the opinions and doctrines developed in legal scholarship on the issue under study, researchers hope to find ideas that give rise to legal ideas, concepts, and principles relevant to the problem. The third method is the sociological approach, which is the basis for studies or research to study living together in society. A sociological approach can give rise to different perspectives or views regarding social phenomena, so completing this research is not only from one side. It does not give rise to a single claim to truth. The legal sociology approach is an approach that analyses how reactions and interactions occur when the norm system works in society. In this case, it concerns the role and responsibilities of a notary in the marriage agreement deed made after the Marriage.

## RESULTS AND DISCUSSION

### Mechanism for Making Marriage Agreement Deeds Made Before and After Marriage in the Mataram Region

A marriage agreement based on the provisions of Article 29 of the Marriage Law is an agreement made by the prospective husband and wife before or when the Marriage takes place with the consent of both parties. Where the parties make the deal in writing, the marriage registration officer ratifies it, and its contents also apply to third parties as long as all parties agree upon it. As a legal consequence of a marriage agreement be-

tween a husband and wife who make a marriage agreement at the time or before the Marriage takes place regarding the separation of assets, the assets obtained by each husband and wife through their respective efforts during the Marriage become separate assets. Suppose the parties do not make a marriage agreement regarding the separation of assets that will be acquired during the future Marriage at or before the time of Marriage. In that case, they establish joint ownership of the assets. Regarding assets the husband or wife acquired before Marriage, they retain their respective rights, such as inheritance or gifts. Both parties can consent to merging assets into joint property [6].

Article 29 of Law No 1 of 1974 regulates the marriage agreement implementation process. Before the Constitutional Court decision No 69/PUU-XIII/2015, parties could make marriage agreements at or before the Marriage with the presence of a marriage registration officer, as stipulated in Article 29, § 1 of Law No 1 of 1974. Meanwhile, the validity of the marriage agreement begins from the time the Marriage takes place, by Article 29, § 3 of Law No 1 of 1974.

Based on the above, a marriage agreement before the Constitutional Court Decision is issued; namely, a marriage agreement can be made during the marriage bond by a Notary without having to be preceded by an authorized Court decision. A phenomenon in society is a marriage agreement between the husband and wife for specific reasons at the time of Marriage. So, the legal consequence of doing a marriage agreement deed after Marriage before the Constitutional Court Decision is that there is a change in the property status of the husband and wife, binding on both parties and third parties [7]. From the description above, the author interviewed one of the Notaries in the Mataram Region, namely Notary Ermi Purnama Sari SH, MK.n, who explained that the mechanism for making a Deed of Marriage Agreement before the Marriage takes place or before the MK Decision No 69/PUUXIII/2015 comes into force is as follows. In the process of making the first marriage agreement deed, both couples come to the notary's office to submit a photocopy of their KTP, a photocopy of their Family Card, and both of them submit a draft marriage agreement by statutory provisions containing the deal that has been agreed upon by both parties. Third, the parties involved must witness both partners signing the marriage agreement deed before a Notary. Fourth, regis-

tering or recording the marriage agreement deed at the District Court and validating it at the Population and Civil Registration Department [8].

Based on the description above, the author concludes that the mechanism for making a marriage agreement deed before the Marriage takes place is as follows:

1. It was doing a Deed Before the Date of the Marriage. Parties create a marriage agreement deed as the first mechanism for doing the deed before the marriage date. According to Article 147 of the Civil Code, parties must make a marriage agreement in the form of a notarial deed before the Marriage takes place, and it will be void if not made in this way. "The agreement will come into force when the marriage occurs; parties may not specify any other time for the agreement to come into force."

2. They were registering the Marriage Agreement Deed at the District Court. The second mechanism for making the marriage agreement deed is registering the marriage agreement deed at the District Court Registrar's Office. Article 152 of the Civil Code provides that a marriage agreement that contradicts the Law in whole or in part and affects the marital property regime does not apply to third parties until its provisions are registered and kept in a general list in the office of the district court. "In whose jurisdiction does the marriage take place or the registrar's office where the marriage certificate is registered if the marriage takes place abroad?"

3. Ratification of the Marriage Agreement Deed by the Marriage Registration Officer from Dispendukcapil. The third mechanism for making the marriage agreement deed is ratification of the marriage agreement deed by the Marriage Registrar Officer from Dispendukcapil. This result is by the provisions in Article 29 § 1 of Law No 1 of 1974 concerning Marriage, which states that: "At or before the marriage takes place, both parties, with mutual consent, can submit a written agreement that is ratified by the marriage registrar, after where the contents also apply to the third parties involved."

If the above three mechanisms are met, the official marriage contract establishes and confirms the rights and obligations between the husband and wife, binding third parties to them. The interview that the author also conducted with Notary Lawfian Alex Ariwijaya, SH., MK.n, explained

the process or mechanism for doing this deed as follows [9]:

1. The prospective husband and wife come to the notary's office
2. Make a marriage agreement deed before the Marriage takes place by submitting the conditions
3. The prospective husband and wife determine the contents of the articles of the marriage agreement
4. The notary drafts the marriage agreement deed
5. Sign the marriage agreement deed by the parties consisting of the prospective husband, wife, witnesses, and notary.
6. Registration at the District Court Registrar's Office
7. Ratification of the marriage agreement deed by the marriage registration officer from the Population and Civil Registration Office.

Based on the explanation above, we can see that the mechanism for doing a deed before a Notary begins with the prospective husband and wife coming to the notary's office to consult about making a marriage agreement deed. The two prospective husband and wife couples then make a marriage agreement in front of a Notary by submitting identity cards (KTP) and handing over the assets they own in the form of photocopies after submitting a text of the contents of the agreement that has been agreed upon by the prospective husband and wife, the contents of the marriage agreement depend on the interests of the parties, if there is confusion or not clarity in the contents of the agreement. The notary will assist. However, once the parties concerned have completed it before signing, the notary will read the agreement's contents. Then, the notary will issue a deed of the marriage agreement, which the parties will later submit to the District Court and the KUA before the marriage agreement in Kabul. Thus, when both parties make a marriage agreement before a Notary and register the Marriage with the KUA by submitting a marriage agreement deed, they prove their agreement to the drawn-up marriage agreement.

According to the two notaries in this research, prospective husbands and wives often find marriage agreements popular because they consider them helpful if undesirable things happen in the future in their households. Apart from that, mar-

riage agreements are a famous legal institution in Indonesia today. For future legal developments, Law No 1 of 1974 concerning Marriage provides provisions regarding this matter. Law No 1 of 1974 concerning Marriage states that "both parties cannot change the agreement as long as the marriage is in progress, unless they agree to change it and the change does not harm a third party."

Based on Article 29 § 4, we conclude that, in principle, the marriage contract is permanent for the entire period of Marriage. Based on this principle, deviations are possible but limited by the following conditions, namely:

1. With the consent of both parties. The word consent confirms that changes to the marriage agreement must not occur due to coercion. There must be sincerity from both parties. Bearing in mind that changes to a marriage agreement, like any other agreement, must also be made by making a new agreement. In contrast, free consent is one of the conditions for an agreement's validity. What is more important is the "both parties" condition.

2. Does not harm third parties. In prenuptial agreements that cause damage to third parties, the affected third party may file a lawsuit to set aside the amendments, and this lawsuit is directed exclusively at the third party whose interests are affected. Meanwhile, the new marriage agreement remains full force and effect for the rest. Meanwhile, the new marriage agreement remains full force and effect for the rest. Article 29 of Law No 1 of 1974 contains the agreement concerning Marriage. It only regulates the time when the marriage agreement comes into force, who has the authority to make the marriage agreement, the form of the marriage agreement, and the making and amendment of the marriage agreement at the time or before the Marriage takes place.

### **Mechanism for Making Post-Wedding Marriage Agreement Deeds in the Mataram Region**

The marriage agreement after the Constitutional Court Decision, namely based on the Constitutional Court Decision, decided that the provisions in Article 29 § 1, 3, and 4 were conditionally unconstitutional with the 1945 Constitution as stated in its decision. Based on the decision of the Constitutional Court submitted by Mrs. Ike Farida, which partially agreed, namely regarding

Article 29 § 1, 3, and 4, which has provided changes in the Marriage Law, especially in terms of marriage agreements, so the contents of Article 29 of Law No 1 of 1974 concerning Marriage in terms of marriage agreements are:

1. At the time before the Marriage takes place or during the Marriage, both parties, by mutual agreement, can submit a written contract ratified by a marriage registration officer or notary, 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 is valid from when the Marriage takes place unless otherwise specified in the marriage agreement.
4. The marriage agreement may concern marital property or other contracts as the Marriage progresses. It cannot be changed or revoked unless both parties agree to alter or cancel it, and the change or revocation does not harm a third party [10].

However, when the Constitutional Court Decision No 69/PUUXIII/2015 comes into effect, a marriage agreement can be made at the time, before the Marriage or during the marriage contract, before a marriage registrar's officer. Furthermore, the marriage agreement is valid from the time the Marriage takes place unless otherwise specified in the agreement.

Marriage agreements made after the enactment of Constitutional Court Decision No 69/PUU-XIII/2015 can contain marriage agreements related to marital assets or other contracts. According to Article 29 § 4 of Constitutional Court Decision 69/PUU, the marriage agreement states that if a husband and wife make a marriage agreement during the Marriage and the deal is declared valid from the time of the Marriage, then mixed assets have been formed. In a situation like this, dividing the mixed assets becomes difficult, so it is better to recommend that from the time of Marriage until the date of the marriage agreement, individuals keep them as mixed assets, whereas, from the time of the marriage agreement, they separate the assets. This recommendation is critical if objects have been entrusted to the bank, as dividing them between husband and wife could harm the bank's interests.

The results of an interview with Notary Ermi Purnamasari highlight several considerations when making a marriage agreement after or after the Marriage, including the following things;

1. For marriage agreements made during the Marriage, the marriage agreement must be made by a notary.
2. The parties must exclude joint assets as credit collateral objects from the agreement. In other words, the parties must ensure that assets used as objects of credit collateral remain joint assets and cannot be transferred or change their status to become different types of assets other than those remaining as joint assets. This provision serves as a form of legal protection for third parties, ensuring certainty of payment and fulfillment of obligations by both the husband and wife.
3. Marriage agreements made during the Marriage only cover assets acquired after the creation of the marriage agreement, thus excluding assets acquired before the agreement.
4. Marriage agreements made during the Marriage are valid from when the marriage agreement is made, so the marriage agreement does not apply retroactively.
5. The marriage agreement made during the Marriage needs to be made into a model, form, or agreement format that considers norms, ethics, and good faith to realize justice and legal certainty for the interested parties.
6. Consider the permitted marriage period when making a marriage agreement.

Regarding the above, making a marriage agreement before or after the Marriage does not have a significant difference. The mechanism implemented to make a marriage agreement after the Marriage takes place is as follows:

1. A husband and wife come to the notary's office to consult about the deal they want to make
2. The notary provides explanations or directions regarding the preparation of the agreement desired by the two married couples concerned
3. If both husband and wife understand this, the notary asks the husband and wife to fulfill the conditions given to the notary to agree on the question; these conditions are: a) Resident Identity Cards (KTP) of both husband and wife; b) Marriage book; c) Family card; d) Submit a draft of the marriage agreement agreed upon by both parties, namely the husband and wife concerned.

Based on the results of the interview, the contents of the marriage agreement made before the Marriage took place before Notary Ermi Purnama Sari contained the separation of assets, property, proof of ownership, the rights of the parties, costs, and ending or calculation according to Law. Meanwhile, the contents of the marriage agreement made after the Marriage held before Notary Ermi Purnama Sari contains the separation of assets, profits and losses, profits and income, separate assets before and during the Marriage, proof of ownership of movable and immovable property, the rights of the parties regarding assets and debts, costs - costs for household needs and expenses, ending or calculations according to the Law regarding clothing or jewelry, regarding the dissolution of investments in the event of a divorce and regarding other matters that do not need to other issues that do not require inclusion in the contents of the deed of agreement.

This research found that the Ermi Purnama Sari Notary Office and the Latvian Notary Alexs Ariwijaya, SH., MK.n Office in the Mataram Region used the same procedures to do marriage agreement deeds. The two Notaries in this research also indirectly become consultants for prospective and married couples who will make marriage agreements. This is because many prospective husbands, wives, and married couples seek advice from the notary regarding the contents of the marriage agreement, which can benefit both parties. Both Notaries generally advise on debts and receivables, ownership of goods, and the parties' rights.

The conclusion that the authors can explain regarding the contents of the marriage agreement made before a Notary in this research is that it regulates the ownership of inherited assets and the absence of mixing of assets. The content of the marriage agreement deed made after the Marriage held before a notary is more extensive and detailed than the content of the marriage agreement made before the Marriage took place.

### **Roles and Responsibilities of Notaries in Making Post-Wedding Marriage Agreement Deeds in the Mataram Region**

In general, the results of the research carried out by the author, this research found that the role of the notary in making marriage agreement deeds is as follows:

1. Play a role in making authentic deeds, guaranteeing certainty of the date of ratification, storing, and providing copies and quotations of deeds if necessary by statutory provisions
2. Play a role in providing counseling and legal advice to the parties as agreement makers by acting neutrally by statutory provisions.

Legal counseling or explanations regarding the provisions of this Law, especially regarding Marriage Agreements, are provided to assist in the preparation of the necessary deeds and constitute a unit that cannot be separated from one another. This factor differentiates a notary's work from the work of other legal practitioners.

The notary's statement indicating the existence of advice as legal counseling, as in the interview explanation below, is "For example, when agreeing to the separation of assets and income between husband and wife. As a Notary, I offer knowledge and advice to married couples regarding situations where one party purchases items such as cars, bags, clothes, jewelry, or other items that the other party may consider a waste of money. According to the marriage agreement, this is permissible if purchased with personal money, so the other party cannot prohibit it. I usually advise that even though the agreement stipulates that education and household costs are the husband's responsibility, if the husband's financial condition experiences problems, it would be better for the continuity of the household if the wife is willing to help with these costs. But remember that the husband cannot demand that the wife replace this responsibility. Before signing the marriage agreement deed by both parties, I, as a Notary, recommend that each party be willing to remind the other party of the agreement's contents. For example, when a husband or wife wants to take care of the other party's assets, they must be reminded that each party is not permitted to help manage or manage the other party's assets."

The statement from Notary Ermi Purnama Sari, SH., M.kn above indicates that there was advice or suggestions to both parties not to encounter any problems with purchasing goods with their money because the deed of the agreement stipulated that both parties were free to enjoy their possessions. Notary Ermi Purnama Sari also indicated that the advice and suggestions given to both parties were that, as a good wife, she must be willing to help with household costs if the husband's business goes bankrupt. Still, the hus-

band was also reminded not to demand that the wife finance the household even though the wife owns the fixed income. Advisors should constantly remind each party that the contents of a good marriage agreement are permissible, and they should consider whether to act accordingly, as there will be legal consequences if one of the parties violates it.

According to Notary authors, in providing legal counselling, they must explain the actual legal situation by applicable laws and regulations and describe the rights and obligations of the parties to achieve high legal awareness in society, honestly, impartially, and with full feeling responsibility.

The conclusion of the role of the Notary in Making Marriage Agreement Deeds in the Mataram Region shows that before the notary makes the marriage agreement deed desired by his client, the notary has first read the contents of each article of the agreement and provide an explanation of the actual legal situation to the client, their rights and obligations for each party so that the client understands the rights, duties, and legal consequences of violating the contents of the agreement he or she has made, this is by the provisions of Article 16, § 1 letter m of the Notary Position Law.

### **Responsibilities of a Notary in Making Post-Wedding Marriage Agreement Deeds in the Mataram Region**

Notary responsibilities are explicitly stated in Article 65 of Law of the Republic of Indonesia No 2 of 2014 concerning amendments to Law No 30 of 2004 concerning the Position of Notaries, which states that Notaries, Substitute Notaries, Notaries, and Temporary Notary Officials are responsible for every deed they make even if The Notary Protocol has been submitted or transferred to the party holding the Notary Protocol. Notaries in carrying out their duties both in terms of authority and obligations, the notary must be responsible, meaning;

1. Notaries are required to do deeds correctly and adequately, meaning that the deeds made fulfil the legal requirements and requests of interested parties because of their position;
2. Notaries are required to produce quality deeds, meaning that the deeds they make are by legal regulations and the wishes of interested parties in the real sense, not making things up. The notary must explain to interested parties the

correctness of the contents and procedures of the deed he or she is making;

3. It has a positive impact, meaning anyone will admit that the notary's deed has perfect evidentiary power.

A Notary assumes responsibility if they make an error in carrying out their official duties, resulting in losses to the person requesting the notary's services. Acts that violate the Law by a Notary are not only acts that directly violate the Law but also acts that directly violate other regulations, namely regulations that are within the scope of morality, religion, and good manners in society [11].

Several responsibilities can ensnare Notaries in carrying out their duties and authority, namely as follows [12].

*1. Civil Responsibility of Notaries:* Civil liability can be reimbursement of costs, compensation, and interest. Notaries will be asked for sanctions if they receive a lawsuit from parties who feel they have been disadvantaged due to defects in the deed in question law so that it has the power of proof as a private deed or is null and void by Law. A Notarial Deed possesses perfect evidentiary power, but if someone violates specific provisions, it transforms into a private deed with diminished evidentiary value.

*2. Criminal Responsibility of Notaries:* A Criminal, in this case, is a criminal act committed by a Notary as a public official who has the authority to do deeds, not in the context of an individual as a citizen in general. The task of carrying out the office of a Notary is to produce evidence needed by the parties for a particular legal action. The notary makes a deed at the request of the parties. The notary creates a deed based on the parties' evidence, information, or statements. Additionally, notaries offer legal advice to the parties, expressing it within the deed. Thus, the content of the deed reflects the wishes and statements of the parties, not information or statements from the notary.

*3. Administrative Responsibilities of Notaries:* Apart from the civil and criminal responsibilities of Notaries, there are also administrative responsibilities for Notaries as regulated in the Law on the Position of Notaries, which are determined as follows: a) Verbal warning; b) Written warning; c) Temporary suspension; d) Dismissal with honour; e) Dishonourable discharge.

Based on the interview that the author conducted with the notary concerned regarding the preparation of the marriage agreement deed, he explained that the notary is not responsible for the contents of the deed made in his presence because the contents of the deed are the will and agreement desired by the parties. The notary only puts the deal into an authentic deed, so in this case, the notary is only responsible for the formal form of the authentic deed as determined by Law.

The notary's role here is to record or express a legal act carried out by the parties or parties into a deed. The notary confirms what happened and what he saw and experienced from the parties or presenters, adjusting the formal requirements for doing an authentic deed and then putting it into the deed. The notary is not required to investigate the truth of the material contents of the authentic deed. This requirement mandates that notaries remain neutral and impartial, providing legal advice to clients who seek guidance from the respective notary.

Notary Ermi Purnama Sari also stated that, besides the contents of the deed, every action undertaken by a Notary can lead to accountability if a violation occurs and causes losses to the parties. The notary must be accountable for the material correctness of a deed if the legal advice they provide proves to be incorrect later. A notary can face responsibility if they make errors, which include the following elements:

1. Day, date, month, and year facing
2. Facing time (hit)
3. Signature included in the minutes of the deed.

The notary concerned also explained that if the deed made before the notary has problems with the parties themselves, this is a matter for the parties themselves; the notary does not need to be involved, and the notary is not a party to the deed. A notary can face civil responsibility if the parties deny, namely as follows;

1. Day, date, month, year facing
2. Time, his face
3. Signature included in the minutes
4. Feeling never faced
5. The parties do not sign the deed in front of a Notary
6. The act was not read out

7. Other reasons stem from the formality of the deed.

Based on research conducted by the author, the conclusion is that the civil liability of a Notary who commits an unlawful act entails the obligation for the notary to be held accountable for their actions. These consequences include being subject to civil sanctions such as reimbursing costs or compensating the party injured by the notary's unlawful act. However, before a Notary is subject to civil sanctions, the notary must first be able to prove that there has been a loss resulting from Notary 98's unlawful actions against the parties. A causal relationship exists between the loss suffered and the illegal act by the notary, where the prohibited act or negligence resulted from an error for which the concerned notary can be held accountable.

## CONCLUSIONS

The mechanism for creating a marriage agreement deed before a Notary involves following these procedures either before or after the Marriage takes place:

1. Prospective husband and wife or husband and wife come to the notary to make a marriage agreement
2. husband and wife state their intention to make a marriage agreement between them and convey the form and contents of the desired marriage agreement to the notary
3. prospective husband and wife or husband and wife see the marriage agreement that a Notary has made to see whether the marriage agreement made is by their wishes
4. after the prospective husband and wife declare that the marriage agreement is by their wishes, it is signed by a Notary, prospective husband and wife, or married couple and two witnesses.

The role and responsibilities of a Notary in making a marriage agreement deed made after the Marriage, namely the role of a Notary in making a marriage agreement deed after the Constitutional Court Decision No 69/PUU-XIII/2015 where everyone can make any agreement, as long as it meets the requirements of Article 1320 Civil Code and it is not prohibited, a Notary may not refuse to make a deed requested by his client, and a Notary who will make a marriage agreement deed must pay attention to the conditions for the validity of the agreement as regulated in Article 1320 of the Civil Code. The notary's form

of responsibility in making a marriage agreement deed after the Marriage, after the Constitutional Court Decision No 69/PUU- can be sued in court. On the other hand, if it does not meet the requirements for the agreement's validity, then the

deed made by a Notary can be cancelled by a Judge. The annulment the Judge decides regarding the notary's deed may be null and void by Law or can be cancelled.

## REFERENCES

1. Kusuma, R. W. (2010). *Pembuatan Perjanjian Kawin Setelah Perkawinan Dan Akibat Hukumnya Terhadap Pihak Ketiga* [The Making of a Marital Agreement After Marriage and Its Legal Effects on Third Parties] (Thesis); Universitas Diponegoro Semarang (in Indonesian).
2. Dantes, K. F., & Hadi, I. G. A. (2023). *Tanggung Jawab Notaris Atas Pembuatan Perjanjian Perkawinan Berdasarkan Putusan Mk No. 69/Puu-Xiii/2015di Kabupaten Tabanan* [Notary's Responsibility For The Making Of A Marriage Agreement Based On The Decision Of The Mk No. 69/Puu-Xiii/2015 In Tabanan District]. *Jurnal Komunikasi Hukum* 1(2) (in Indonesian).
3. Basyir, A. A. (1999). *Hukum Perkawinan Islam* [Islamic marriage law] Yogyakarta: UII Press (in Indonesian).
4. Nadiyon,, (2021). *Tinjauan Yuridis Mengenai Perjanjian Perkawin* [A Juridical Review of Marital Agreements] (Thesis); Universitas Islam Sultan Agung (in Indonesian).
5. Irjawan, T. A. (2020). *Kewenangan Pengesahan Perjanjian Perkawinan Oleh Notaris Pasca Terbitnya Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015* [The Authority to Validate Marriage Agreements by Notaries After the Issuance of the Constitutional Court Decision Number 69/Puu-Xiii/2015] (Thesis); Universitas Hasanuddin (in Indonesian).
6. Susanto, H. (2008). *Pembagian Harta Gono-Gini Saat Terjadi Perceraian: Pentingnya Perjanjian Perkawinan untuk Mengantisipasi Masalah Harta Gono Gini* [Division of Gono-Gini Property in the Event of Divorce: The Importance of a Marriage Agreement to Anticipate Gono-Gini Property Problems]. Jakarta: Visimedia (in Indonesian).
7. Ahyani, S. (2018). *Implikasi Putusan Mahkamah Konstitusi Nomor 69/PUU/XIII/2015 Terhadap Pasal 29 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan* [Implications of the Constitutional Court Decision No 69/PUU/XIII/2015 on Article 29 of Law No 1 Year 1974 concerning Marriage]. *Jurnal Wawasan Yuridika*, 2 (1), doi: 10.25072/jwy.v2i1.164 (in Indonesian).
8. *Wawancara dengan Ibu Notaris Ermi Purnama Sari, S. H., M. Kn, Hari Rabu tanggal 30 Agustus 2023, Pukul 11.31 WITA* [Interview with Notary Ermi Purnama Sari, S. H., M. Kn, Wednesday 30 August 2023, at 11.31 WITA] (in Indonesian).
9. *Wawancara dengan Bapak Notaris Lawfian Alex Ariwijaya, S. H., M. Kn, Hari Selasa tanggal 29 Agustus 2023, Pukul 09.30 WITA* [Interview with Mr Notary Lawfian Alex Ariwijaya, S. H., M. Kn, Tuesday 29 August 2023, 09.30 WITA] (in Indonesian).
10. Yasa, P. A. (2015). *Analisis Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 tentang Perjanjian Perkawinan* [Analysis of Constitutional Court Decision Number 69/PUU-XIII/2015 on Marriage Agreement]. Retrieved from <https://ojs.unud.ac.id/index.php/kerthasemaya/article/download/46999/28274> (in Indonesian).
11. Prodjudikiro, R. W. ( 2000). *Perbuatan Melanggar Hukum: Dipandang dari Sudut Hukum Perdata* [Unlawful Acts: A Civil Law Perspective]. Bandung: Mandar Maju (in Indonesian).
12. Utama, I. A. (2021). *Pembuatan Akta Otentik Demi Kepentingan Masyarakat Dilihat Dari Sudut Pandang Hukum Progresif* [Making an Authentic Deed in the Interest of the Community Seen from the Point of View of Progressive Law] (Thesis); Universitas Islam Sultan Agung Semarang (in Indonesian).