

Legal Consequences and Legal Remedies for Third Parties on Late and Unregistered Marriage Agreements

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Introduction

This article aims to explore and analyze the legal consequences for any third parties towards a lately registered or unregistered Marriage Agreement and what legal remedies can be taken by a Third Party against a lately registered or unregistered Marriage Agreement. This research is a form of juridical normative legal research with data collection methods using library research techniques. This journal will examine the legal consequences for third parties towards a lately registered or unregistered Marriage Agreement. The conclusion of this research, it is concluded that a husband and wife engaged in a lately registered or unregistered Marriage Agreement, concludes that third parties are not bound by the the Marriage Agreement on and therefore all assets in the marriage are joint assets and all kinds of legal remedies can be taken against a lately registered or unregistered Marriage Agreement and therefore any third party can immediately take all forms of legal remedies against the assets within the marriage.

Method

This article is conducted through Juridical Normative Research Method by Data Collection Method, namely the Library Study Technique with a prescriptive study. The normative juridical research method itself is a study of library materials or secondary data by only grasping at the legal aspect of the subject. (Prihastuti, 2022)

This study was conducted to collect documents in the form of: concepts, legal principles, theories, and legal regulations related to this topic. Soerjono Soekanto's scope of legal research includes:

- a. Study of legal principles;
- b. Study of legal systematics;
- c. Study on the level of legal synchronization both vertically and horizontally;
- d. The law of comparison;
- e. Legal history.

The scope of research to be carried out is research based on legal principles, which is carried out on written and unwritten positive law. Identification of legal principles in legal interpretation is used in this study. In addition, the goal of this research is the formulation of legal principles both implicitly or explicitly.

Whilst the data collection method in this study uses a technique or library study to collect secondary data related to the issues raised in this study, by studying books, journals, search results and legal regulations such as: the Indonesian Civil Code, the Indonesian Marriage Act and other regulations related to the legal issues of this study.

Discussion

The matter of property within a marriage in the Country of Indonesia is regulated in the Indonesian Civil Code & Law Number 1 Year 1974 concerning Marriage. Article 119 of the Indonesian Civil Code states that the merger and mixing of properties occurs after marriage between husband and wife, however in Law Number 1 of 1974, the matter of property in marriage is included in many provisions such as Article 35 Subsection 1, Article 36 Subsection 1, and Article 37. Provisions on marital property regulated in the Indonesian Civil Code and the Marriage Act regarding mixed assets can be circumvented by a marriage agreement or what is currently known as a "prenuptual agreement". (Masri & Wahyuni, 2021) Currently however, after the Constitutional Court Decision No. 69/PUU-XIII/2015 dated 27 October 2016, Marriage Agreement, which is widely understood within Indonesian law as a *prenuptual agreement*, can also be done by a post-marriage agreement or during the period of marriage, known as a *postnuptual agreement*.

Law Number 1 Year 1974 was re-enacted as an affirmation of the unification of law in the field of marriage, especially in the field of property in accordance with the principle of separation of assets based on the provisions of Article 35 Paragraph 1 and Paragraph 2. Provisions of Law Number 1 Year 1974 concerning Marriage and the provisions of *Burgerlijk Wetboek (BW)* contain differences that can be seen by the BW stipulates that property brought into marriage becomes the joint property of the husband and wife. While Law Number 1 Year 1974 concerning marriage cites, the property of the spouse brought into the marriage (innate wealth) is still the property of the husband/wife. The party's

property, and what becomes the union is the mixed property (wealth obtained in marriage). (Dwinopianti, 2017)

Even though there are differences regarding the two laws, there are similarities between the two laws, namely the regulation regarding the provision of opportunities for both husband and wife to change the arrangement on the issue of property obtained by husband and wife either before or after the marriage, in which the arrangement is permitted by law and regulated on a limited basis by a marriage agreement.

According to Wirjono Prodjodikoro, an agreement is defined as "a legal relationship regarding assets between two parties, where one party promises to carry out something, while the other party has the right to the other party's fulfilment". "Soetojo Prawirohamidjojo gives the understanding that a marriage agreement (*huwelijks* or *huwelijkse voorwaarden*) is the approval of a prospective partner before the marriage of both partners to regulate the provisions of property during the marriage. The implementation of a marriage agreement may deviate from the provisions relating to joint property as determined by statutory regulations, if the regulation does not violate the statutory regulations, religion, truth and decency, and public order. In short, a marriage agreement can be understood as an agreement between both husband and wife, either before, during or after marriage and is recorded in the civil registry or public body. "Marriage agreements that are usually made include (Dewi, Trisna, 2020):

1. Assets inherited from marriage include assets obtained from the work of husband and wife as well as inheritance, gifts or grants received by both partners in marriage;
2. All debts and receivables in the context of marriage which will become the obligations of both spouses and are subject to certain limitations;
3. The wife has the right to take care of her own property, both tangible and intangible property, and the right to enjoy the results and income from her hard work or from other sources;
4. The wife's right to manage her property without the help or power of her husband;
5. Withdrawal of wills, as well as other rules that may protect the property and continuation of the business of the spouse."

Although the Indonesian society has a stigma in thinking that marriage agreements are taboo, however looking from a perspective of benefits, marriage agreements are a preventive measure to minimize problems within a family in relation to their property. As stated by R. Soetojo Prawirohamidjojo, "The purpose of holding a marriage contract is to:

1. If the assets of one party (spouse) exceed the assets of the other party (spouse);
2. The quite large of assets which is brought by the husband/wife into the marriage;
3. The efforts of each partner, in which bankruptcy does not involve both partners at once;
4. The husband and wife will bear their own debts for the debts agreed before marriage.

In Law Number 1 Year 1974 concerning Article 29 stipulates that a marriage agreement is an agreement or agreement made by a prospective partner after or before marriage, and must be registered with the Office of the Marriage Registrar or Notary. The marriage agreement applies as law for the parties entered into the agreement and also for third parties as long as the third party is bound to the promised property. The validity of a marriage agreement, especially for third parties, cannot be separated from the process of ratifying the marriage agreement. There are two different versions of the legislation regarding the process of ratifying a marriage agreement involving a third party, whereas prior to the enactment of the Marriage Act, was previously stipulated by Article 152 of the Indonesian Civil Code. While Law Number 1 Year 1974, *juncto* Constitutional Court Decision No. 69/PUU-XIII/2015 lies a different framework, as stated by Article 29 Paragraph 1. Based on the description above, *BW* is an earlier regulation which is a legacy of the Dutch East Indies era stating that a marriage agreement will bind a third party if it has been registered in advance at the local district court, while Law Number 1 Year 1974 requires it to be registered with the Marriage Registrar at the local Department of Population and Civil Registration in binding third parties. In this matter, the third party feels a big impact on the two differences in provisions regarding registration related to the field of property agreed upon by the husband/wife, and society itself does not necessarily understand the provisions and procedures for the law regarding marriage agreements, often in such cases as marriage agreements should be registered with the Marriage Registrar and not only registered through the Court.

Meanwhile, a Marriage Agreement should also be registered with the Marriage Registrar in ensuring its validity and has legal force for third parties when it is registered with the Marriage Registrar. Thus, this can cause a legal problem if the parties of the marriage agreement, namely the husband and wife are late or does not even register the marriage agreement, then lies the question what legal remedies can be taken by the third party in the event of a legal dispute on the assets contained in the marriage agreement.

Problem Statement

1. What are the legal consequences of a Marriage Agreement for a Third Party if it is not registered or registered late?
2. What are the legal remedies for Third Parties if the Marriage Agreement is not registered or late?

Result

In principle, a Marriage Agreement is an agreement made by a husband and wife to avoid various kinds of problems that can arise in the household, both regarding debts, receivables, Domestic Violence (KDRT), property in marriage, childcare, addressing polygamy and other conflicts that can be a factor in the emergence of various conflicts or quarrels within a marriage.

Prior to the establishment of Law Number 1 Year 1974 concerning Marriage, Marriage Agreement is regulated in Article 119 of the Indonesian Civil Code *juncto* Article 139 of the Indonesian Civil Code in which Article 119 regulates the legality of being permitted to make create a marriage agreement related to joint property before the marriage and is prohibited from changing the contents of the agreement, while Article 139 regulates the prohibition of making agreements that violate ethics, public order and other provisions.

With the existence of the Marriage Act, the two provisions are merged automatically within the Marriage Act in Article 29 which states: "Both parties husband and wife with mutual consent can enter into a written agreement during or before the marriage takes place which is should legalized by the Marriage Registrar, then the marriage agreement also be valid to third parties which is they are involved,"

From the rule of law in Law Number 1 Year 1974 concerning Marriage, it is clearly mentioned that what is meant as a Marriage Agreement is settlement of the two candidate husband and wife before the wedding happens or what is known as the "prenuptial agreement". However, since 2016 by the decree of the Constitutional Court Decision No: 69/PUU-XIII/2015, the term "postnuptial agreement" is known, namely a Marriage Agreement which was agreed within the marriage period. (Rosnidar Sembiring et al., 2021)

However, if studied in depth, in principle the Article 139 of the Indonesian Civil Code *juncto* Article 29 of the Marriage Act and the Decision of the Constitutional Court Number: 69/PUU-XIII/2015 have one fundamental similarity, namely a marriage agreement is interpreted as an act of deviation in marriage related to the field of wealth and allows for deviations committed by the prospective wife and husband about the marital property in a marriage.

However, in practice, an interesting matter can be found to both prior regulations, as before the Decree of the Constitutional Court Decision Number: 69/PUU-XIII/2015, the legal basis used in relation to the Marriage Agreement is Article 147 *BW juncto* Article 29 of Law Number 1 Year 1974 in which the two legal rules expressly stipulate that a marriage agreement can be made after or before the marriage take place, but based on the Decision of the East Jakarta District Court No.: 207/Pdt/P/2005/PN.Jkt.Tim. and Determination of the East Jakarta District Court No: 459/Pdt/P/2007/PN.Jkt.Tim that the phenomenon of court rulings on marriage agreements implemented after marriage is currently shaping in the community. (Dwinopianti, 2017)

One of the factors that underlies the issuance of the Determination of Court is the clause in Article 186 of the Indonesian Civil Code, as it is possible to have a Marriage Agreement or separation of assets during marriage as long as it meets the requirements of Article 186 of the Indonesian Civil Code in which the implementation of marital property separation is carried out through by court order. Thus, this actually results in legal uncertainty because on one hand, according to Article 147 of the Indonesian Civil Code *juncto* Article 29 of Law Number 1 Year 1974 which states that before the marriage the marriage agreement must be made first, but on the other hand Article 186 of the Indonesian Civil Code allows for the separation of assets with applicable conditions.

Decision number: 69/PUU-XIII/2015 issued by the Constitutional Court has applied law progressively to fulfill legal needs for occurrence that happen in community in the face of various possible consequences arising from joint ownership in marriage, both because of the consequences from the wife's or husband's business to personal property, as well as the legal consequences of Paragraphs 1 and 3 of Article 21 of Law Number 5 Year 1960 on Agrarian Principles.

A marriage agreement after marriage has occurred is not known or regulated in the Marriage Act, however after the Constitutional Court decision, Subsection 1, Subsection 3 and Subsection 4 of Article 29 must also be understood when a marital relationship has occurred is it possible to create a Marriage Agreement so long if there was an agreement between the marriage couple.

It should be realized that apart from husband and wife within a Marriage Agreement, that there are other parties who are often referred to the third party in an Marriage Agreement. This third party can be interpreted as another party who has a legal relationship both with the husband and with

the wife relating to property or debts and with the existence of a marriage agreement, said third party also has an impact on the existence of the marriage agreement.

Article 152 of *BW* states: "The conditions in the marriage agreement which according to the law relates the whole or part of the union, not applicable to other parties without general registration at the Registrar's Office at the District Court, in the jurisdiction where the marriage is held, or, if the marriage is carried out abroad, at the Registrar's Office where registration of marriage certificate", this concludes that the marriage agreement will take effect to the third party after the marriage is registered at the Registrar of the District Court.

Article 147 of the Indonesian Civil Code *juncto* Article 152 of the Indonesian Civil Code stipulates that from the moment of marriage, the marriage agreement only applies to the parties namely the husband and wife themselves, while the new agreement applies to third parties from the date of registration at the District Court. However, since the enactment of Law Number 1 Year 1974, regarding the implementation of recording the marriage settlement, it has been transferred to the Office of Religious Affairs (*KUA*) or the Department of Population and Civil Registration as referred to in Section 29 Subsection 1 of Law Number 1 Year 1974 *juncto* Article 50 of the Islamic Law Compilation, which basically regulates the relationship that binds couples with third parties from the date of marriage before civil servants. (Dewi, Trisna, 2020)

However, in the event that there is no Recording or Registration of the Marriage Agreement, the third party as long as the marriage agreement has not been registered may think that the marriage takes place with the property of the union, and in the case of debts and debts with the husband or wife, the settlement is carried out by linking the assets of the marriage. On the other hand, legal force against a third party related to the making of a marriage agreement based on a court order, is effective from the date of determination, and if a loss occurs after the date of determination, the third party cannot claim the loss to his partner from the agreement made after the date of determination. An exception to this case is of a third party being able to ensure that if what is used as collateral for a debt or pledged as collateral in any form is obtained before or after a court order has been issued, then the third party can demand joint assets from the husband/wife for repayment of the agreement that occurred.

Control of marriage property after the marriage occurs is not only regulated in the marriage agreement but there are also arrangements for legal actions against third parties. For example, if one of the husband and wife owns shares in a company owning assets of land and building, and the company has plans to sell the assets, it must be observed whether the seller owns shares of the company before or after the determination, so that the third party in this scenario, namely the buyer in this case, is not harmed or sued by one of the parties either the husband and wife owning shares and the seller sold its assets without any approval due to its couple's status of joint property and the asset is owned before the court ruling occurs. If explored in depth, the purpose of the need for such determination and recording in the Marriage Registrar shows the existence of the principle of publicity in the marriage agreement so that the implementation of the principle of publicity in the legal realm, can be seen from the principle of publicity itself, in the form of announcement or notification for third parties or others related to the existence of a legal event that exists.

The ratification of the Marriage Agreement existence carried out by the Marriage Registrar because of the publication factor to third parties. The Marriage Registrar which is an established institution must ratified the marriage agreement to fulfill the publicity factor, which in essence is this validation is that third party is recognized and also complies with the marriage agreement. This publicity aims as a form of announcement or notification to third parties or others regarding existence of the legal action about marriage agreement, which will later be included in the marriage certificate.

Another matter that increasingly shows the element of publicity in marriage is in accordance with the Circular Letter of the Ministry of Religion of the Republic of Indonesia No: B.2674/DJ.III/KW.00/9/2017 concerning Registration of Marriage Agreements number 1 determines that Marriage Registration Officers (*PPN*) may register the recording of the marriage agreement which was carried out at the time of the marriage, during the marriage or before the occurrence of the marriage whose agreement has been ratified by a notary first.

The institution designated in which where the registration of the marriage agreement is mandatory is crucial, so that the marriage agreement made by the couple is binding on third parties. If there is negligence on registration or forgetting to register the marriage agreement, then the principle of *pacta sunt servanda* applies, which only applies to the husband - wife pair as regulated in Article 1338 *BW*. Even though there is an authentic marriage agreement deed designed before a notary, however if the deed was not recorded and registered at the Office of Religious Affairs (*KUA*) or Department of Population and Civil Registration (*Dukcapil*), then the agreement does not have binding legal force for third parties other than the husband - the wife.

Thus, the marriage agreement must be recorded and registered with the Marriage Registrar, either at the Department of Population and Civil Registration or at the Office of Religious Affairs and therefore has an impact on the marriage agreement also having the equal legal force of an authentic deed.

In principle, the marriage agreement is intended for couples as legal protection with preventive and repressive characteristics, namely not only avoiding the impact of cases in the household, but if problems arise, then the marriage agreement can be used as the basis for each party in carrying out and distributing rights, restrictions, and roles between husband and wife. All matters deemed necessary to protect the rights and needs of all parties can be regulated in the marriage agreement, including relating to property, debts, business ownership, childcare, allotment of household roles, prevention of domestic violence and the like. Basically, these points are flexible according to the agreement of the partners without any pressure from any outside party.

The Marriage Act, implicitly regulates the marriage agreement for husband and wife which is internal between the husband and wife, while for the third party is externally regulated and can only take effect from the registration or registration of the Marriage Registration Officer at the Department of Population and Civil Registration and at the Office of Religious Affairs (*KUA*). Thus, the marriage agreement has the power to bind outward and has an impact on the inability of a third party to dispute the marriage agreement if it is clearly stated in the excerpt of the marriage certificate of the husband and wife in the existence of the marriage agreement.

Law Number 1 Year 1974, by implicitly controlling the marriage agreement for husband and wife, which is internal between husband and wife, on the contrary for third parties are external since officially recorded or registered by a Marriage Registration Officer at the the Office of Religious Affairs (*KUA*) or at Department of Population and Civil Registration has external binding power and results in the inability of a third party to deny the marriage agreement if it is clearly stated in the excerpt of the marriage certificate of husband and wife for the existence of the marriage agreement. (Batubara, 2018)

A matter that needs attention is the impact of the revision of the marriage agreement on third parties due to the husband and wife's actions that change the marriage agreement can cause potential losses to third parties, and third parties may file a claim for compensation if their actions to change the marriage agreement have fulfilled the elements of tort as regulated in Article 1365 of the Indonesian Civil Code.

Conclusion

From the discussion above, it can be concluded that the Legal Issues in this study are:

1. The legal consequences of a marriage agreement that is lately or has not been register at the Department of Population and Civil Registration or *KUA* causes the marriage agreement to be not legally binding for other parties or other parties other than the husband and wife or in other words, the third party may assume that the assets used as collateral, it must be considered as joint property due to the invalidity of the separation of marital property between the couple in the marriage agreement.
2. While legal remedies for Marriage Agreements that lately or has not been registered for a third party are as long as the marriage agreement made by the husband - wife can be proven by a third party made by the husband - wife with the aim of bad faith to avoid their obligations, then against the said marriage agreement, a third party can file a lawsuit claiming tort to the District Court based on Article 1365 of the Indonesian Civil Code.

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