

LEGAL CONSEQUENCES OF A MARRIAGE AGREEMENT THAT IS NOT RATIFIED BY THE REGISTRAR MARRIAGE TO JOINT PROPERTY (CASE STUDY OF COURT DECISION SUPREME REPUBLIC OF INDONESIA NUMBER 589/PDT/2016)

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Abstract.

This study will examine the legal consequences of marriage agreements that are not ratified by marriage registrar employees on joint property (case study of Supreme Court Decision of the Republic of Indonesia Number 598 PK / Pdt / 2016). This study used normative juridical research methods. The results of the study suggest that the validity of a marriage agreement that is not ratified by the marriage registrar employee is a marriage agreement that remains valid for the parties who make it, in this case husband and wife, where as long as the marriage agreement has fulfilled the legal requirements of an agreement as in Article 1320 of the Civil Code. However, a marriage agreement cannot bind the third party concerned. In addition, the results of the study also show that the legal position of a marriage agreement that is not ratified by the Marriage Registrar Employee is still binding for the parties who make it, in this case husband and wife. A marriage agreement that is not ratified by a marriage registrar cannot bind a third party. Where the ratification of the marriage agreement is to meet the principle of publicity, so that the ratification of the marriage agreement by the marriage registrar employee cannot be used as a parameter of validity in the marriage agreement.

Keywords: legal consequences of marriage agreements, Supreme Court Decision of the Republic of Indonesia

INTRODUCTION

Marriage is an important event in human life, the definition of marriage according to Article 1 of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law) is an inner birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal household based on the One and Only Godhead. Marriage is one of the legal acts that has many consequences for people's lives. The marriage agreement is regulated in the First Book of the Civil Code on Persons and is also regulated in Article 29 of the Marriage Law, the regulation regarding the

marriage agreement in the first book of the Civil Code is no longer used as a basis for dispute resolution due to the promulgation of the Marriage Law, except for those who have entered into marriage when the Marriage Law has not been promulgated, and still makes the Civil Code the legal basis for the marriage agreement.

The definition of a marriage agreement is not regulated in the Civil Code or the Marriage Law, but the Marriage Law regulates the ratification of a marriage agreement by a marriage registrar employee as stipulated in Article 29 paragraph (1) of the Marriage Law. The definition of a marriage agreement according to Prof. Ali Afandi, S.H., states that a marriage agreement is "an agreement that regulates the consequences of a marriage in the field of property".¹ Meanwhile, in J. Satrio's opinion, a marriage agreement is a "covenant, regarding property or regarding the management of property".² From some of the expert opinions above, the author concludes that a marriage agreement is an agreement made by the bride and groom, which is made before, during, or after the marriage takes place with the aim of regulating property obtained in marriage as well as child custody rights and so on.

Marriage agreements began to be widely used by society today, for the benefit of parties who regulate several matters in marriage, including the separation of property in marriage. This is what often happens in people's lives today and therefore marriage agreements are starting to be widely adopted by people today because marriage agreements are felt to protect and provide legal certainty when divorce occurs. But often Indonesian people feel unethical or taboo about discussing marriage agreements as if thinking in the future they will divorce their partners. In general, marriage agreements are used by people who are established and have a fixed income or people who have had previous marriages, so they are traumatized and feel the need to use marriage agreements to protect if there is a dispute related to the division of property or child custody in the event of divorce.³

The marriage agreement in its making has conditions that must be met in order for a marriage agreement to be valid. However, in the application of Article 29 paragraph (1) of the Marriage Law, there are multiple interpretations for judges to decide a case related to a marriage agreement, so that until now there is still a debate about the application of Article 29 paragraph (1) of the Marriage Law, due to the absence of an explanation in Article 29 paragraph (1) of the Marriage Law, where the marriage agreement is not authorized by the marriage registrar employee and is not related to a third party, whether the marriage

¹Ali Afandi, *Inheritance Law, Family Law, Law of Evidence*, PT. Bina Askara, Jakarta, 1986, p.12.

²J. Satrio, *Marital Property Law*, Citra Aditya Bakti, Bandung, 1993, p.146.

³*Ibid*, p.109.

agreement becomes void or remains valid, for example the multiple interpretations carried out by the judge in deciding cases related to the validity of the marriage agreement are cases in the Supreme Court Review Decision Number: 598 PK / Pdt / 2016, in which the judge stated that the marriage agreement was invalid, because the marriage agreement is not ratified by the marriage registrar as stipulated in Article 29 paragraph (1) of the Marriage Law, even though it is not related to a third party.

Thus, the author will examine the theory of the validity of an agreement as stipulated in Article 1320 of the Civil Code on marriage agreements, where there are special arrangements for marriage agreements regulated in Article 29 paragraph (1) of the Marriage Law, which must be ratified by a marriage registrar employee. With the special arrangement regarding the marriage agreement stipulated in Article 29 paragraph (1) of the Marriage Law, can it be categorized as a condition for the validity of the agreement, especially the marriage agreement as stipulated in Article 1320 of the Civil Code.

RESEARCH METHODS

This type of research in legal research is normative legal research, which is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced.⁴ Researchers use the normative type of research because this research is to find coherence, namely whether there are legal rules in accordance with legal norms and whether there are norms in the form of orders or prohibitions in accordance with legal principles, and whether a person's actions are in accordance with legal norms or legal principles.⁵

RESULTS AND DISCUSSION

The marriage agreement made by the parties does not mean without purpose. The purpose of the marriage agreement according to Husni Syawali the purpose of making a marriage agreement is to make a deviation from the provisions on the separation of property. In addition to having the purpose of the marriage agreement, it also has benefits in married life. The benefits of a marriage agreement as stipulated in the Civil Code have several forms, namely:⁶

a. No Unity of Property

Husband and wife can make an agreement regarding the separation of property, which in the agreement must not reduce the rights granted to the husband as the

⁴Peter Mahmud Marzuki, Legal Research, Kencana Prenada Media Group, Jakarta, 2011 (hereinafter referred to as Peter Mahmud Marzuki II), p. 35.

⁵Peter Mahmud Marzuki, Legal Research Revised Edition, Prenada Media Group, 2014 (hereinafter referred to as Peter Mahmud Marzuki III), p. 47.

⁶Husni Syawali, Management (Bestuur) of Marital Property: According to the Civil Code Law Number 1 of 1974 concerning Marriage and Islamic Law, Graha Ilmu, Bandung, 2009, p.70.

head of the conjugal union, as well as the wife has the right to promise for herself, will manage her own personal property affairs both movable and immovable, and will enjoy herself freely all her income personally, as stipulated in Article 140 paragraph (2) of the Civil Code. Although there is no union of property, the wife can also keep her personal property for domestic purposes, as stipulated in Article 154 of the Civil Code.

b. Existence of Property Unity

The agreement of the union of property between husband and wife, in which the parties can freely determine, where the union of property can only include results and income, excluding the union of profit and loss. If a loss occurs, the husband is responsible for the loss as the head of the household, as stipulated in Article 164 of the Civil Code. However, if the bride and groom do not make a marriage agreement, the proceeds and income from the wife's wealth can also become part of the property, as stipulated in Article 146 of the Civil Code.

c. Existence of Profit and Loss Union

Husbands and wives who do not make a separation agreement, not necessarily among them do not regulate the union of profit and loss, as stipulated in Article 144 of the Civil Code. In Article 156 of the Civil Code, it is stated that the union of profit and loss is borne together. When the union of husband and wife's property ends, a fair calculation must be made. The husband and wife cannot agree that either party must pay part of the debt greater than the share in the union profit, as provided for in Article 142 of the Civil Code.

The marriage agreement has elements that must be fulfilled in its formation in order to have binding legal force as stipulated in Article 139 and Article 147 of the Civil Code. The validity of the marriage agreement is the same as other agreements in general, where there are 4 (four) conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code, namely:

1. Agree those who bind themselves;
2. Ability to make an engagement;
3. A certain thing;
4. A lawful cause.

The legal terms of the agreement in points 1 (one) and 2 (two) are called subjective conditions, because they regulate the legal subjects who make the agreement. While the legal terms of the agreement in points 3 (three) and 4 (four) are called objective conditions, because they regulate the object of an agreement. Non-fulfillment of subjective and objective conditions can cause the agreement to become invalid.

An invalid agreement due to non-fulfillment of one (1) subjective condition results in the agreement being requested for cancellation by one (1) party. That is, one (1) party can claim the cancellation to the judge at the District Court. And if the agreement does not fulfill one (1) of the objective conditions, then the agreement is null and void. That is, legally from the beginning it was

considered that there was never an agreement. The agreement is said to be valid not only must meet the 4 (four) conditions above, but for everything that according to the nature of the agreement must meet propriety, custom or law, as stipulated in Article 1339 of the Civil Code.

Discussing legal consequences, as in general agreements will have legal consequences for the party who made it, as well as interested third parties, this also applies to marriage agreements. As explained in Article 29 paragraph (1) of the Marriage Law which states "at or before the marriage takes place, both parties by mutual agreement may enter into a written agreement ratified by the marriage registrar employee, after which the contents also apply to third parties as long as the third party is involved". From the regulation, it can be seen that for the validity of a marriage agreement, the agreement must be registered to be ratified by the marriage registrar employee. If the agreement is not registered, it will naturally have its own risks or legal consequences. Legal consequences that are not registered namely with the provisions of Article 29 paragraph (1) of the Marriage Law that the marriage agreement must be made in writing. With the provision that requires the marriage agreement to be in written form, the marriage agreement made has strong evidence, because the marriage agreement is made in writing.

In accordance with the principle of the birth of a covenant, namely the principle of consensualism. which says that the agreement is born from the moment of agreement between the parties, then by itself the marriage agreement binds the party who made it when both agreed on the marriage agreement made, whether registered or not. Whether the marriage agreement is registered or not, the marriage agreement remains valid and has legal and binding consequences for the husband and wife who agree to make it. In other words, both remain bound by the agreement contained in the marriage agreement.⁷

If the marriage agreement is not registered According to the Marriage Law in Article 35 paragraph (2), it has been affirmed that "The property of each husband and wife and the property obtained by each as a gift or inheritance are under the control of each as long as the parties do not specify otherwise". Inherited property is property that each husband or wife brings into marriage, can be obtained from inheritances, grants, gifts, and so on.⁸ While joint property is really pure from the results of the livelihood of the husband and wife during marriage, both the husband's property is obtained from the results of his work and from the work of the wife which is called joint property. In this case, both husband and wife have the same rights and obligations over the joint property

⁷Tutik Quarterly Point, Introduction to Civil Law in Indonesia, First Print (Jakarta: Prestasi Pustaka Publisher, 2006), p. 249.

⁸J. Andy Hartanto, Marital Property Law (According to Burgerlijk Wetboek and the Marriage Law), Laksbang Grafika, Yogyakarta, p. 63.

and all legal actions over the joint property must have the consent of both parties. Based on the provisions of Article 35 of the Marriage Law.

In this case, if the marriage agreement made by the husband and wife is not validated by the marriage registrar, then the marriage agreement becomes unenforceable. Because based on Article 29 paragraph (1) of the Marriage Law, it has provided provisions that the marriage agreement that has been made must be ratified by the marriage registrar employee of the religious affairs office. In addition, a marriage agreement that is not ratified by a marriage registrar employee does not comply with Article 12 of Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law. A marriage agreement that is not ratified by the marriage registrar automatically does not contain the marriage certificate in the marriage certificate.

Based on Article 29 paragraph (1) it has been explained that a legalized marriage agreement will bind a third party, so the marriage agreement will not bind a third party if it is not ratified by a marriage registrar employee. Based on the provisions of the Marriage Law above and also based on the provisions of Article 1340 of the Civil Code, a marriage agreement that is not ratified by a marriage registrar employee, the marriage agreement is not binding on third parties. Article 12 of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage also states that the marriage agreement must be listed on the marriage certificate. So even though the marriage agreement exists and is made by the husband and wife, but because it is not ratified by the marriage registrar, the agreement is not contained in the marriage certificate. So that if there is a problem related to a third party, the marriage agreement is considered non-existent and not binding on the third party. The Marriage Law has regulated marriage agreements, including the conditions for applying to third parties. In this case, in accordance with the provisions contained in Article 29 paragraph (1) of the Marriage Law which states that the marriage agreement also applies to third parties involved after the marriage agreement has been validated or registered by the marriage registrar employee.

The legal consequences for third parties are different from the legal consequences for a husband and wife who make a marriage agreement if it is not registered, on third parties if the marriage agreement is not ratified or registered with a marriage registrar employee, the marriage agreement itself has no binding force against third parties. In this case, in accordance with the provisions of Article 29 paragraph (1) of the Marriage Law, which states that "at or before the marriage takes place, both parties to the collective agreement may enter into a written agreement ratified by the marriage registrar employee, after which the contents shall also apply to third parties as long as the third party is involved".

In this case, seeing that in accordance with these circumstances, the legal effect on the third party is that the third party as long as the marriage agreement has not been registered may assume that the marriage took place with the union of marital property together. So that if there is a debt relationship with the husband or wife, the settlement is carried out by involving joint property between the husband's property or the wife's property, because in the absence of a marriage agreement by itself there is only joint property. However, the presumption of ignorance of a third party about the existence of a marriage agreement can only be given to a third party who does not know that the husband and wife have made a marriage agreement but have not registered it. While a third party who knows that a husband and wife have made a marriage agreement but the marriage agreement has not been registered, then he must not assume that the marriage agreement does not exist and the husband and wife are married with a union of marital property.

So if the marriage agreement is not registered, then for husband and wife it remains binding for both parties. When it comes to third parties, if the marriage agreement is not interpreted, the legal effect of the marriage agreement has no binding force on third parties.

CONCLUSION

The validity of a marriage agreement that is not ratified by the marriage registrar is that the marriage agreement remains valid for the parties who make it in this case husband and wife, as long as the marriage agreement has fulfilled the conditions for the validity of an agreement stipulated in Article 1320 of the Civil Code, but the marriage agreement cannot bind the relevant third party.

The legal position of a marriage agreement that is not ratified by the Marriage Registrar Officer remains binding on the parties who make it, in this case husband and wife. A marriage agreement that is not ratified by a marriage registrar cannot bind a third party. Where the ratification of the marriage agreement by the marriage registrar employee is to fulfill the principle of publicity. So that the ratification of the marriage agreement by the marriage registrar officer cannot be used as a benchmark or parameter for the validity of the marriage agreement.

SUGGESTION

Amendment to Article 29 paragraph (1) of the Marriage Law which states that a marriage agreement made by a husband and wife is valid and binding as long as it is made in accordance with applicable regulations.

Added an explanation in the event that the marriage agreement cannot bind a third party, if the marriage agreement is not ratified by the marriage registrar.

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