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Embodiment of Constitutional Court Decision Number 69/PUU-XIII/2015 concerning Marriage Agreements in Notarial Deeds

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Abstract

This research aims to analyze and discuss the implementation of the Constitutional Court Decision Number 69/PUU-XIII/2015 concerning Marriage Agreements in Notarial Deeds. The Constitutional Court through Decision Number 69/PUU-XIII/2015 has expanded the meaning of the time a marriage agreement is made. The extension of the time limit for making a marriage agreement occurred in line with the granting of part of the request submitted by Mrs. Ike Farida, an Indonesian citizen who married a foreigner (Japan) to the Constitutional Court. The research method used in this research is the normative legal research method, namely research into the legal rules themselves (legislation, jurisprudence, customary law or other unwritten law) and legal principles. The research results show that based on the Constitutional Court Decision and the Marriage Law which regulates marriage agreements, it can be concluded that there are several visible changes, namely: 1. Time when the marriage agreement is made, 2. Entry into force of the marriage agreement, 3. Contents of the marriage agreement, 4. Revocation of the marriage agreement. If it does not refer to the provisions of the Civil Code, there is no obligation to put the agreement in the form of a notarial deed, as long as the agreement is made with mutual consent. A marriage agreement can also be made in writing privately, but this has weaknesses in proof. Therefore, it is better to set out a marriage agreement in the form of a notarial deed, because a notarial deed is an authentic deed that has the highest evidentiary power guaranteed in the Law on the Position of Notaries, the Constitutional Court Decision is the basis for jurisprudence in making marriage agreement deeds in line with changes in the regulation of marriage agreements through MK decision Number 69/PUU-XIII/2015 in relation to the duties and authority of notaries. The embodiment of Constitutional Court Decision Number 69/PUU-XIII/2015 in relation to the duties and authority of Notaries so that it reflects legal certainty, justice and expediency is by means of a marriage agreement that has been made in writing by the parties using a Notarial deed (authentic deed) must be registered with the parties to marriage registrar employees for the sake of perfection and security of the parties and third parties. Furthermore, it is necessary to include the concept of marriage agreement guidelines in the implementation of Constitutional Court Decision Number 69/PUU-XIII/2015 in the form of Law Implementation Regulations in order to create detailed and comprehensive guidelines for drafting marriage agreements, considering that currently there are no guidelines for drafting them.

Keywords: Marriage Agreement, Constitutional Court Decision Number 69/PUU-XIII/2015, Notarial Deed.

1. Introduction.

The Constitutional Court of the Republic of Indonesia (MKRI) has decided through Decision Number 69/PUU-XII/2015 on October 27, 2016 on the application for constitutional testing of Law Number 1 Year 1974 concerning Marriage (hereinafter referred to as the Marriage Law). Through this decision, the Constitutional Court expanded the meaning of the time for making a Marriage Agreement. The expansion of the time limit for making a marriage agreement occurred when the Constitutional Court granted in part the petition filed by Mrs. Ike Farida, an Indonesian citizen married to a foreign color (Japan).The petitioner filed a judicial review of Article 21 paragraph (1), paragraph (3) and Article 36 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA), Article 29 paragraph (1), paragraph (3), paragraph (4) and Article 35 paragraph (1) of the Marriage Law against the 1945 Constitution. The substance of the norms of the law petitioned for review to the Constitutional Court is related to the constitutional rights of Indonesian citizens who enter into mixed marriages with foreign citizens who do not have a marriage agreement.

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It is concluded that Article 29 (1) of the Marriage Law states that Indonesian citizens (women) who marry foreigners (men) can make a marriage agreement before and at the time of marriage, while afterwards during the marriage bond cannot make a marriage agreement, this is related to the ownership of fixed property in the form of land with the status of property rights. Article 147 of the Civil Code requires a marriage agreement to be made before the marriage takes place and set out in a Notarial deed. Meanwhile, in the Marriage Law, a marriage agreement can be made at the time or before the marriage takes place and is not required to be made in a notarial deed but only said to be made by written agreement. The KUHPer emphasizes that a marriage agreement can be made for the unity of property, while the Marriage Law does not explicitly regulate the contents or matters in the marriage agreement. [1]

With the decision of the Constitutional Court above, there has been a new constitutional interpretation of the time of making a marriage agreement stipulated in the Marriage Law. The marriage agreement made by a married couple after the marriage or during the marriage clearly affects the joint property obtained during the marriage. In the Civil Code and the Marriage Law, if the prospective marriage partners do not make a marriage agreement, there is a merger of assets called joint property in marriage. A marriage agreement can be made upon mutual consent and agreement, not just the will of one party. It must be made in the form of a written agreement authorized by a Marriage Registrar or Notary before or during the marriage and takes effect from the time the marriage takes place. The marriage agreement that has been made directly applies as a law to those who make it, and also applies to third parties who have an interest in it in the future.

A notary is a Public Official who is authorized to make authentic deeds and has other authorities, based on Law Number 2 of 2014 (UU Jabatan Notaris/ UUJN). Meanwhile, according to Article 1868 of the Civil Code, an authentic deed is a deed in the form prescribed by law, made by or before public officials authorized to do so in the place where the deed is made. So that a deed made by a notary has a strong legal basis and can be accounted for, which has birth evidentiary power, formal evidentiary power and material evidentiary power.

The embodiment of the Constitutional Court Decision Number 69/PUU-XIII/2015 in relation to the duties and authority of the Notary is by means of a marriage agreement that has been made in writing by the parties using a Notary deed (authentic deed) must be registered to the marriage registrar for the sake of perfection and security of the parties and third parties. The responsibility of the Notary in the event of a lawsuit against a notarial deed regarding a marriage agreement made during the marriage, if the notary issues a deed of marriage agreement that is not in accordance with existing procedures and results in harm to other parties, then it can be held accountable in criminal law, civil law, administration and code of ethics in accordance with the level of error.

2. Research Methods.

This research uses normative legal research methods, namely research on the legal rules themselves (legislation, jurisprudence, customary law or other unwritten law) and legal principles related to the implementation of Constitutional Court Decision Number 69/PUU-XIII/ 2015 Concerning Marriage Agreements in Notarial Deeds.

3. Discussion & Analysis.

3.1 Marriage Agreement as outlined in a Notarial Deed.

Article 1 of the Marriage Law states that marriage is "a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the Almighty God". The issue of property is one of the factors that can cause various disputes or problems in a marriage, and can even eliminate harmony, peace and welfare between husband and wife in the life of a family. To avoid this, a marriage agreement is made between the prospective husband and wife before they enter into marriage. Making a marriage agreement, there are a number of benefits that can be reaped. First, providing legal protection for the husband and wife's assets if they divorce or die can prevent unwanted things from happening. Second, each party will be responsible for the debts they make during the marriage. Third, a husband or wife does not need to ask their spouse's permission to sell their assets. Fourth, just like with applying for credit, married couples do not need to ask their spouse's permission to guarantee assets registered in the name of one of them. Fifth, it prevents the husband's control over the wife's joint and personal property and protects rights and justice for women. Sixth, it guarantees the welfare of children towards their development and education expenses.

A marriage agreement can be made upon mutual consent and agreement, not just the will of one of the parties. It must be made in the form of a written agreement authorized by a Marriage Registrar or Notary before or during the marriage, and takes effect from the time the marriage takes place. The agreement set out in the marriage agreement contains the promises and property acquired during the marriage. It usually deals with separate property, and each party gets what they get during the marriage, including profits and losses. The KUHPer and the Marriage Law state that a marriage agreement can be made by the prospective husband and wife before the marriage takes place or at the time of the marriage in order to express what property is promised as a result of the marriage. According to the Marriage Law, there are 2 (two) assets in marriage, namely inherited assets and joint assets. Congenital property is property that already exists before the

[1] Shidqi, M (2021) *Perjanjian Perkawinan Pemisahan Harta Bagi Pasangan Suami Istri Dalam Putusan Mahkamah Konstitusi No.69/PUU-XIII/2015 Prespektif Maqasid Al Syari'ah.* Masters thesis, IAIN Ponorogo

occurrence of marriage brought by each into marriage, such as inheritance, grants, gifts. Meanwhile, joint property is property that is obtained during marriage, outside of each other's innate property. Against joint property, husband and wife can carry out legal actions with the consent of their spouse. [2]

The regulation regarding the Marriage Agreement in the Marriage Law is contained in Article 29, which reads:

1. At the time of or before the solemnization of marriage, the parties by mutual consent may enter into a written agreement which shall be legalized by the marriage registration officer, after which the contents shall also apply to third parties to the extent that third parties are concerned.
2. The agreement cannot be ratified if it violates the limits of law, religion and morality.
3. Such agreement shall come into force as from the solemnization of the marriage.
4. During the marriage the agreement may not be amended, unless both parties consent to the amendment and the amendment does not prejudice a third party. [3]

However, in the regulation of marriage agreements, there are differences in the Civil Code and the Marriage Law, among others:

1. The KUHPer stipulates that marriage agreements must not contradict the norms of decency and public order, while in the Marriage Law marriage agreements are not allowed to violate the law, religion and decency;
2. According to the Civil Code, a marriage agreement must be made in the form of a notarial deed, while the Marriage Law does not require it to be made in a notarial deed but only says that it can be made by written agreement;
3. In KUHPer, the validity of a marriage agreement to third parties is from the time it is recorded in the general register at the district court where the marriage is held, whereas in the Marriage Law, a marriage agreement is valid to third parties from the time it is recorded and legalized by the marriage registration officer at the Civil Registry Office;
4. The KUHPer stipulates that a marriage agreement can be made before the marriage takes place, while in the Marriage Law, a marriage agreement can be made at or before the marriage takes place;
5. The KUHPer stipulates that after a marriage has taken place, it is not allowed to make changes to the contents of the agreement. Meanwhile, in the Marriage Law, the marriage agreement basically cannot be amended, unless both parties agree to make such changes and do not harm third parties. In other words, according to the Marriage Law, it is possible to make changes to the agreement after marriage as long as there is an agreement from both parties and it does not harm third parties.[4]

Article 147 of the Civil Code (hereinafter referred to as KUHPer) states that "A marriage contract shall be made by Notarial deed before the marriage takes place and shall be void if it is not so made. The agreement shall come into force at the time of the marriage, no other time shall be specified for it". It can be concluded that Article 147 of KUHPer requires the marriage agreement to be made before the marriage takes place and set out in a Notarial deed. A marriage agreement can also be made in writing under the hand. However, this has a weakness, namely in terms of proof must include other evidence, because the agreement under the hand is not a perfect evidence, one of the parties may deny or deny the agreement he made. The legal basis for the permissibility of a marriage agreement made under hand is found in Article 10 paragraph (2) of the Decree of the Minister of Religious Affairs of the Republic of Indonesia Number 477 of 2004 concerning Marriage Registration (hereinafter referred to as Kepmenag 477/2004), "The agreement as mentioned in paragraph (1) (marriage agreement) is made in duplicate 4 on paper with sufficient stamp duty according to statutory regulations; the first sheet for the husband, the second for the wife, the third for the Penghulu and the fourth for the Court ". Unlike the KUHPer, the Marriage Law does not explain in detail or require the making of a marriage agreement with a notarial deed, but it would be nice if it was made with a notarial deed.

Article 1 of Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Position of Notary (hereinafter referred to as UUJN) states that a Notary is a Public Official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other laws. Based on Article 1868 of KUHPer, an authentic deed is a deed in the form prescribed by law, made by or before public servants authorized to do so in the place where the deed is made. An authentic deed has three evidentiary powers that are not possessed by a deed under the hand, namely:

a. Outward evidentiary force (uitwendige *bewijskracht*)

   That is the ability of the deed itself to prove that the deed is an authentic deed, where the words in the deed come from a public official (Notary).

[2] Gorda, A., N., S., R. 2023. *Akibat Hukum untuk Pemegang Hak Tanggungan Atas Vonis Mahkamah Konstitusi Nomor. 69/ PUU-XIII/ 2015 Tentang Perjanjian Pernikahan.* Jurnal Analisis Hukum, Vol. 6, No. 1, 115-131

[3] Sopiyan, M. 2023. *Analisis Perjanjian Perkawinan dan Akibatnya Menurut Undang-Undang Perkawinan di Indonesia.* Jurnal Kajian Islam dan Masyarakat, Vol. 6, No. 2, 175-190.

[4] Iliyin, I., N., & Bayuaji, R., & Yaqin, K. 2023. *Kedudukan Hukum Perjanjian Kawin Pada Masa Perkawinan yang Dibuat Dihadapan Notaris.* Jurnal Ilmu Hukum Wijaya Putra, Vol. 1, No. 2, 79-91.

b. Formal evidentiary power (*formele bewijs kracht*)

Namely where the Notary states in his deed regarding the truth of the contents of the deed as something that is done and witnessed by the notary himself in carrying out his position.

c. *Material* evidentiary power (*materiele bewijs kracht)*[5]

Thus, a deed made by a notary has a strong legal basis and can be accounted for. UUJN guarantees the legal force of a deed made by a notary which has the power of birth proof, formal proof and material proof. Authentic deeds are binding evidence. An authentic deed does not require additional evidence; therefore, whatever is stated in the deed must be trusted by whoever is concerned, and is considered true as long as the untruth cannot be proven.

3.2 Duties and Authorities of Notary in relation to the making of Authentic Deed.

Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in Article 1 point 1 of UUJN. The term public official is a legal status that is attached to a person in order to be valid as an official in performing legal acts. Status as a public official determines the nature and value of a deed. The nature of a deed made by a public official is an authentic deed that has perfect evidentiary value. Notary is one of the honorable, noble and noble professions (*officium nobile*), therefore it is appropriate to feel this profession as a choice and at the same time a life calling to serve the community.

Notary has a very important role in the making of authentic deeds. Not only because he is referred to as a public official referred to in Article 1868 of the Civil Code, but also because of the orientation of the appointment of a Notary as a public official who is intended to serve the public interest and receive income for providing his services. The authority of a Notary in terms of deed-making appears in Article 1 point 1 of UUJN, which is to make authentic deeds. A deed is a signed letter, containing legal events or actions and used as evidence. Based on the provisions of Article 16 of the UUJN, the main duties of a notary are:

1. In carrying out his/her office, Notary must:

a. act trustworthy, honest, careful, independent, impartial, and safeguard the interests of the parties involved in legal actions;

b. make the Deed in the form of a Minuta Akta and keep it as part of the Notary Protocol;

c. attaching letters and documents as well as the fingerprints of the confrontants to the Deed Minute;

d. issue a Grosse Deed, Deed Copy, or Deed Quotation based on the Deed Minute;

e. provide services in accordance with the provisions of this Law, unless there is a reason to refuse;

f. to keep confidential all matters concerning the Deed made by him and all information obtained for the purpose of making the Deed in accordance with his oath/pledge of office, unless the law provides otherwise;

g. bind the Deeds made in 1 (one) month into books containing no more than 50 (fifty) Deeds, and if the number of Deeds cannot be contained in one book, the Deeds may be bound into more than one book, and record the number of Minuta Deeds, the month, and the year they were made on the cover of each book;

h. make a list of Deeds of protest against non-payment or non-receipt of securities;

i. make a list of Deeds relating to wills in the order in which the Deeds are made every month;

j. send the list of Deeds as referred to in letter i or the nil list relating to wills to the central register of wills at the ministry that organizes government affairs in the field of law within 5 (five) days in the first week of the following month;

k. record in the repertorium the date of delivery of the register of wills at the end of each month;

l. has a stamp or seal containing the symbol of the Republic of Indonesia and in the space around it is written the name, position, and place of residence concerned;

[5] Abady, A., R., P., & Rahayu, M., I., F. 2023. *Penyuluhan Hukum Pembuatan Akta oleh Notaris Berdasarkan Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris.* Journal on Education, Vol. 5, No. 2, 4248-4258.

m. read out the Deed in the presence of the proponent in the presence of at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of a testament Deed under hand, and signed at that time by the proponent, witnesses, and Notary; and

n. accepting apprenticeship of Notary candidates. [6]

The main task of a Notary is to make authentic deeds. The authentic deed according to Article 1870 of the Civil Code provides the parties who make it with perfect proof. In addition, the Notary also has other main duties such as keeping the Minuta Akta (Article 16 paragraph (2) UUJN). This is where the importance of a Notary lies, that the Notary because of the law is authorized to create a perfect means of proof, in the sense that what is stated in the authentic deed is basically considered true as long as there is no evidence to the contrary. Notaries who violate the provisions of Article 16 paragraph (1) letters i and k of the UUJN, in addition to being subject to sanctions contained in Article 85 of the UUJN, can also be subject to sanctions in the form of deeds made before a Notary only have evidentiary power as deeds under the hand, or a deed becomes null and void. This can also harm the parties concerned, so that the injured party can claim costs, compensation, and interest from the Notary. This is in accordance with the provisions of Article 84 of UUJN.[7]

The authority granted by law to notaries, it can be seen that notary is a job with special expertise that requires extensive knowledge and heavy responsibility to serve the public interest, because the task of notaries is to regulate in writing and authentically the legal relationship between the parties who consensually request notary services. So it is not uncommon for various matters in the legislation to require certain legal acts to be made in an authentic deed, such as the establishment of a limited liability company, cooperative, fiduciary guarantee deed and so on in addition to the deed being made at the request of the parties.

Based on the UUJN, it turns out that Notary as a Public Official, obtains authority by attribution, because the authority is created and given by the UUJN itself. In terms of the authority of a Notary, Article 1 point 1 of the UUJN, states "A Notary is a Public Official who is authorized to make authentic deeds and has other authorities as referred to in this Law or based on other Laws.". Article 15 of the UUJN mentions what is the authority of a Notary, including the authority to make authentic deeds (paragraph (1). In addition, Notaries are also authorized to: a. certify signatures and determine the certainty of the date of letters under the hand by registering in a special book; b. record letters under the hand by registering in a special book; c. make copies of original letters under the hand in the form of copies containing descriptions as written and described in the letter concerned; d. certify the suitability of the photocopy with the original letter; e. provide legal counseling in connection with the making of legal deeds. provide legal counseling in connection with the making of deeds; f. make deeds relating to land or; g. make deeds of minutes of auction; Notary may not make deeds for himself, his wife, blood relatives or relatives in a straight line without distinction of level in the side line with the third level, acting as a party either personally or represented by his attorney.

The main authority of the Notary is to make authentic deeds, a deed can be said to be authentic then it must fulfill the provisions stipulated in Article 1868 of the Civil Code, namely:

a) The deed must be made by or in the presence of a public official, which means that Notarial deeds concerning acts, agreements and decrees must make the Notary a public official;
b) The deed must be made in the form prescribed by law, so in the event that a deed is made but does not fulfill this requirement, the deed loses its authenticity and only has the strength of a deed under hand if the deed is signed by the confronters (*comparanten*);
c) The public official by or in front of whom the deed is made, must have the authority to make the deed, because a Notary can only perform or carry out his office within the jurisdiction that has been determined for him. If a Notary makes a deed that is outside the jurisdiction of his/her office, the deed will be invalid.[8]

In carrying out their duties and authorities, Notaries are bound by a set of moral rules called the Notary Code of Ethics. Regulations regarding the Notary Code of Ethics are needed to prevent or can be said to be a guideline for Notaries in carrying out their duties and carrying out their positions as Notaries in carrying out their positions often get many challenges / temptations that come their way such as wanting to quickly get money or to meet economic needs, this will affect every deed they make and also affect the public who use Notary services. If there is a violation of the Notary Code of Ethics, sanctions will be imposed that are adjusted to the quantity and quality of violations committed by members. Sanctions imposed can be in the form of Reprimand, Warning, *Schorsing* (temporary dismissal) from members of the association, and *Onzetting* (dismissal) from members of the association. The Minister of Law and Human Rights in this

[6] Ayuningtyas, P. 2020. *Sanksi Terhadap Notaris dalam Melanggar Kode Etik*. Jurnal Ilmiah Hukum Kenotariatan, Vol. 9, No. 2, 95-104.
[7] Sirait, G., N., & Djaja, B. 2023. *Pertanggungjawaban Akta Notaris Sebagai Akta Autentik Sesuai Dengan Undang-Undang Jabatan Notaris.* UNES LAW REVIEW, Vol. 5, Issue 4, 3363-3378

[8] Setiadewi, K., & Wijaya, I., M., H. 2020. *Legalitas Akta Notaris Berbasis Cyber Notary Sebagai Akta Otentik*. Jurnal Komunikasi Hukum (JKH) Universitas Pendidikan Ganesha, Vol. 6, No. 1, 126-134.

case is the supervisor of notaries from the government, where Notaries are under its auspices and there is also a Notary professional organization, namely the Indonesian Notary Association (INI) which functions to establish and enforce the Notary Code of Ethics.[9]

3.3 The Role of Notary in Making Marriage Agreement After the Constitutional Court Decision Number 69/PUU-XIII/2015.

The ratification of a marriage agreement by a marriage registration officer is not merely about whether the marriage agreement is valid or not, but is also related to the recording of the marriage agreement in the marriage certificate. The marriage agreement ratified by the marriage registration officer is an inseparable part of the marriage certificate in which the agreement is recorded on the marriage certificate with the aim that third parties are aware of the existence of a marriage agreement so that the marriage agreement also applies to third parties.

A marriage agreement made before or during the marriage ceremony by or before and signed by a Notary is still valid as long as the contents of the agreement do not violate the law, religion and decency, but the marriage agreement is only valid for both parties if it is not recorded at the marriage registrar. The recording of the marriage agreement into the marriage certificate is considered important, the husband and wife during the marriage period must have carried out a legal action with a third party, if no recording is made, then the marriage agreement is only binding for the parties who made it.

In relation to the post-implementation of the Constitutional Court Decision No. 69/PUU-XIII/2015, there is a void in technical instructions regarding the reporting and recording of marriage agreements for the parties involved in the formation of marriage agreements. These parties include the couple making the marriage agreement, the notary and the Civil Registry. Notaries are authorized to provide legal counseling in connection with the deeds they make. Notaries in this case have the authority to provide legal counseling regarding the importance of reporting and registering marital agreements to married couples who come to appear. However, some time after the issuance of the Constitutional Court Decision No. 69/PUU-XIII/2015, there is no legal certainty regarding the regulations on the reporting and registration of marriage agreements.

The authority of a Notary is only limited to legalizing a marriage agreement. The phrase does not explicitly specify that the marriage agreement must be made by a Notary in the form of a notarial deed. As a result, the Directorate of Population and Civil Registry perceived that there was a need to issue implementing instructions in relation to the registration of marriage agreements based on the Constitutional Court Decision No. 69/PUU-XIII/2015. Thus, they issued Directorate General of Dukcapil Circular Letter No. 472.2/2017 in 2017, which was intended and socialized to all Civil Registry Offices across Indonesia stating that marital agreements must be made in the form of a notarial deed in order to be registered with the marriage registrar.

Referring to the authority of the Notary, the Notary can register the marriage agreement through the process of *waarmerking* or legalization of the marriage agreement. Prior to the issuance of the Constitutional Court Decision, Notaries had no history of being authorized to register marriage agreements and make them binding on third parties. Under Article 147 of the Civil Code, marital agreements had to be made in the form of a Notarial deed, followed by registration with the District Court after which the contents of the agreement would be binding on third parties. Subsequently, this provision was replaced by Article 29(1) of Law No. 1/1974 where the marriage agreement must be registered with the Civil Registry after which its contents will be binding on the relevant third parties. As seen from the previous regulation, Notaries were never authorized to certify or register marriage agreements so as to give binding force to the relevant third parties.[10]

Based on the provisions of Article 16 (1) of UUJN, a Notary must keep the deed he makes confidential including all information obtained from the deed, which is in accordance with the Notary Oath / Promise, unless otherwise provided by law. Meanwhile, the purpose of registering a marriage agreement is to fulfill the publicity element of the marriage agreement. If the Notary has to keep the content of the deed secret, the element of publicity is not achieved. In practice, banks require marriage agreements made under the Constitutional Court Decision to be registered with the Civil Registry once the content binds the relevant third parties. In other words, a marriage agreement made before a Notary is not sufficient to bind third parties. A marriage agreement that has been made in writing using an authentic deed based on the agreement of the parties, although it has bound the parties who made it, but still needs to be registered with the civil registry. This is because the purpose and essence of the actual marriage agreement is for third parties to know that the parties signed a marriage agreement over their property. This is also related to the principle of publicity.

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[9] Achmad, A., S. 2023. *Tanggung Jawab Profesi Hukum Notaris dalam Tindakan Malapraktik dan Deliberate Dishonesty Action.* Jejak Pustaka: Yogyakarta

[10] Charissa, A. 2022. Peran Notaris Terkait Pengesahan Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi No. 69/PUU-XIII/2015 Serta Pentingnya Pencatatan Pencatatan Perjanjian Perkawinan Terhadap Pihak Ketiga (Analisa Putusan No. 59/Pdt.G/2018/PN Bgr). Indonesian Notary, Vol. 4, No. 2.

Although the Constitutional Court Decision contains a phrase that gives the option to record the marriage agreement to a Notary, we must still refer to Article 29 (1) of the Marriage Law where the marriage agreement must be registered with the Civil Registry. This has been the practice since the provisions of the article in question were implemented. Therefore, it is suggested that for the sake of perfection and security, the marriage agreement should be made in the form of a notarial deed for reporting to the Civil Registry which will be followed by recording by the Civil Registry. Therefore, a Notary must be appointed by Law No. 1 Year 1974 to make a marriage agreement in the form of a Notarial deed.

There is a lack of implementation instructions after the Constitutional Court Decision was issued. Thus, Notaries feel that there is legal uncertainty caused by a legal vacuum in relation to the implementation instructions of the Constitutional Court Decision No. 69/PUU-XIII/2015. In addition, there is ambiguity and legal uncertainty in the phrase "submit a written agreement" contained in the Constitutional Court Decision No. 69/PUU-XIII/2015. There is a legal vacuum (not regulated) related to the guidelines for preparing the initial part to the closing part of the marriage agreement before and after the decision of the Constitutional Court Decision Number 69/PUU-XIII/2015. Supposedly, the decision can provide legal solutions in marital disputes, especially regarding the validity, stages, period, form, content, and limitations of the marriage agreement, but in fact the Constitutional Court Decision Number 69 / PUU-XIII / 2015 has not fully resolved the problem, so it still causes legal uncertainty. There should be a concept of form / formulation and the full content of the preparation of an ideal and / or appropriate marriage agreement in accordance with legal principles and laws and regulations, so that the concept of guidelines for the preparation of this marriage agreement can fulfill the elements of legal certainty and expediency.

4. Conclusions.

The Constitutional Court through Decision Number 69/PUU-XIII/2015 has expanded the meaning of the time a marriage agreement is made. The extension of the time limit for making a marriage agreement occurred in line with the granting of part of the request submitted by Mrs. Ike Farida, an Indonesian citizen who married a foreigner (Japan) to the Constitutional Court.

The essence of a marriage agreement in the perspective of statutory regulations is a legal act made in writing based on the agreement of the prospective husband and wife or husband and wife before the marriage or during the marriage bond in order to protect all the rights and interests of the husband and wife in the future, which is stated in the form of a marriage agreement deed. and ratified by a marriage registrar or Notary and followed by registration with the District Court after which the contents of the agreement will be binding on third parties.

Whereas based on the Constitutional Court Decision and the Marriage Law which regulates marriage agreements, it can be concluded that there are several visible changes, namely: 1. Time when the marriage agreement is made, 2. Entry into force of the marriage agreement, 3. Contents of the marriage agreement, 4. Revocation of the marriage agreement. If it does not refer to the provisions of the Civil Code, there is no obligation to put the agreement in the form of a notarial deed, as long as the agreement is made with mutual consent. A marriage agreement can also be made in writing privately, but this has weaknesses in proof. Therefore, it is better to set out a marriage agreement in the form of a notarial deed, because a notarial deed is an authentic deed that has the highest evidentiary power guaranteed in the Law on the Position of Notaries, the Constitutional Court's decision is the basis for jurisprudence in making marriage agreement deeds in line with changes in the regulation of marriage agreements through MK decision Number 69/PUU-XIII/2015 in relation to the duties and authority of notaries.

The embodiment of Constitutional Court Decision Number 69/PUU-XIII/2015 in relation to the duties and authority of Notaries so that it reflects legal certainty, justice and expediency is by means of a marriage agreement that has been made in writing by the parties using a Notarial deed (authentic deed) must be registered with the parties to marriage registrar employees for the sake of perfection and security of the parties and third parties. It is necessary to include the concept of marriage agreement guidelines in the implementation of Constitutional Court Decision Number 69/PUU-XIII/2015 in the form of Law Implementation Regulations in order to create detailed and comprehensive guidelines for drafting marriage agreements, considering that currently there are no guidelines for drafting them.

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