



# PROCEDURE FOR REGISTRATION OF MARRIAGE AGREEMENTS AFTER THE MARRIAGE IS DONE

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**Abstract:** *Marriage can sometimes give rise to problems regarding property, namely regarding joint property with husband and wife as well as personal property and or innate property. On the basis of selfishness, it is often not realized that one party feels that all the wealth obtained in marriage is the result of his own hard work. This is what often triggers a commotion so that household trips are not harmonious and in line. The problem studied is how the procedure for registering a marriage agreement after the marriage has been carried out. The method used is a normative juridical way. Procedure for Registration of Marriage Agreements After Marriage is carried out based on the Post-Constitutional Court Decision Number 69/PUU-XIII/2012 and Circular Letter of the Director General of Dukcapil Number 472. 2/5876/Dukcapil is to make a deed of agreement made before a notary, prepare the conditions that have been determined, one of which is a marriage certificate of husband and wife, then registered with the local Disdukcapil where the place to issue the marriage certificate is for non-Muslims, and KUA for Muslims. The advice given to the relevant agencies in this case Disdukcapil and KUA which handles the issue of marriage agreements in order to provide education and socialization to the community. and to KUA for Muslims. The advice given to the relevant agencies in this case Disdukcapil and KUA which handles the issue of marriage agreements in order to provide education and socialization to the community.*

**Keywords:** *Registration, Marriage Agreement, after the marriage takes place.*

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## I. INTRODUCTION

Fostering a harmonious and happy household is the dream of every human being, but over time there are often disputes with one another, which sometimes lead to divorce. It is clearly regulated in Law Number 16 of 2019 amendments to the Marriage Law Number 1 of 1974 concerning Marriage (hereinafter abbreviated as the Marriage Law) in Article 1 that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of form a happy and eternal family (household) based on God Almighty. Marriage can give birth to problems regarding property, namely regarding joint property of husband and wife as well as

personal property and or innate property.<sup>1</sup> On the basis of selfishness, it is often not realized that one party feels that all the wealth obtained in marriage is the result of his own hard work. This is what often triggers a commotion so that household trips are not harmonious and in line. The Marriage Law clearly explains that during a marriage there are joint assets obtained which become joint property and control, contained in Article 35:

1. Property acquired during marriage becomes joint property
2. The innate 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 determine otherwise.

And reaffirmed in Article 36:

1. Regarding joint property, husband or wife can act with the consent of both parties.
2. Regarding each other's property, husband and wife have the full right to take legal actions regarding their property

It is also regulated in Article 119 of the Civil Code:

1. the wealth of each which he brought into the marriage was mixed into one.
2. The union or mixing of assets throughout the marriage may not be held with an agreement between husband and wife. The unitary assets become joint assets and must be divided in two, so that each gets half.

Based on the articles above, it is explained that assets obtained in marriage become joint assets between husband and wife, even though in life only one of the husbands or wives works, but both parties have the same right to control the acquired property. For the innate assets of each husband and wife and the property obtained by each as a gift or inheritance as long as there is no agreement or unification agreement, it remains in the control of each party. Based on the problems above, the writer is interested in examining how the procedure for registering a marriage agreement after the marriage takes place. The method that the author uses is a normative juridical way, namely by studying literature and using regulations related to the problem.

## II. DISCUSSION

A marriage agreement or what is often called a pre-nuptial agreement is an agreement made by a prospective husband or wife authentically before a notary stating that they have mutually agreed and agreed to make a separation of their property, both the property they brought before they got married and the property. what they got after they got married but belonged to each of them. Likewise, the debt of each party who has the debt.<sup>2</sup> A marriage agreement according to R. Subekti is an agreement regarding the property of husband and wife during their marriage which deviates from the principle or pattern established by law.<sup>3</sup>This opinion states that the marriage agreement made only regulates the assets in the marriage,

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<sup>1</sup>Butar-Butar, Elisabeth Nurhaini, 2012, *Hukum Harta Kekayaan Menurut Sistematika KUHPerdara dan Perkembangannya*, Refika Aditama, Bandung, p. 22

<sup>2</sup>Annisa Istrianty, Erwan Priambada, 2015, *Akibat Hukum Perjanjian Perkawinan Yang Dibuat Setelah Perkawinan Berlangsung*, Privat Law, Vol. III, No. 2 Juli-Desember, p. 85

<sup>3</sup>R. Subekti, 1994, *Pokok-Pokok Perdata*, Intermasa, Jakarta, p. 9

whether they will be combined or remain in the control of each related to inherited assets.

Based on the above understanding, it can be explained that the marriage agreement is carried out before the marriage is carried out in order to clarify the existing assets both obtained before and during the marriage. Traveling in the household is sometimes not as harmonious as imagined, sometimes there are debates, especially the issue of property owned. Article 119 of the Criminal Code which has been described previously has provided an opportunity for husbands and wives when it comes to assets to enter into a marriage agreement. The parties to the prospective bride and groom can make a marriage agreement at or before the marriage takes place. This agreement is notarial in nature or made under the hand and will take effect from the time the marriage takes place and is placed on the marriage certificate and is an inseparable part of the marriage certificate. A marriage agreement can be made by:

- a. By mutual consent or will,
- b. made in writing,
- c. Authorized by the marriage registrar,
- d. Must not be against the law, religion and decency.<sup>4</sup>

Based on the description above, it can be explained that the marriage agreement made there must be an agreement there must be no element of coercion, it is made clearly stated in writing before the authorized official so that it can be ratified, and the main thing is that the marriage agreement must not conflict with applicable law, and must not be contrary to or beyond the boundaries of religion and decency. Article 29 paragraph (2) also provides limitations in making a marriage agreement, namely that the agreement cannot be ratified if it violates the boundaries of law, religion and morality. So from this description there is a clear legal basis regarding the limits and arrangements regarding the making of a marriage agreement, so that the parties cannot make a marriage agreement arbitrarily or unbalancedly so that there is injustice between the two parties.

### **Procedure for Registration of Marriage Agreements After the Marriage is Done**

The marriage agreement is regulated in Article 29 of the Marriage Law, namely:

1. At or before the marriage takes place, both parties with mutual consent may enter into a written agreement ratified by the marriage registrar, after which the contents also apply to third parties as long as the third party is involved.
2. The agreement cannot be ratified if it violates the boundaries of law, religion and morality.
3. The agreement takes effect from the time the marriage takes place.
4. As long as the marriage takes place, the agreement cannot be changed, unless from both parties there is an agreement to change and the change does not harm a third party.

Based on Article 29 paragraph 1 it is clearly stated that a marriage agreement or pre-nuptial agreement must be made before the marriage takes place or is carried

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<sup>4</sup> Prodjohamidjojo, Martiman, 2007, *Hukum Perkawinan Indonesia*, Legal Central Publishing, Jakarta, p. 30

out. In addition to this Article, it is also regulated in Article 147 of the Civil Code (KUHPdt), which states that the marriage agreement must be made with a notary deed before the marriage takes place, and will be void if it is not made that way. The agreement will enter into force at the time the marriage takes place, no other time may be determined for that.

Based on the article, it can be explained that a prenuptial agreement is made before the marriage takes place and this is a common thing to do, but something unique appears that a marriage agreement is made after the marriage. After the decision of the Constitutional Court Number 69/PUU-XIII/2015 on 27 October 2016, it was confirmed that a marriage agreement can be made while in the marriage bond, on the basis of mutual consent between husband and wife. Based on this decision, the Constitutional Court provides an overview in prioritizing the application of progressive law in order to meet legal needs for phenomena and situations or needs that occur in society, in order to avoid the risks that will occur regarding joint property in marriage.

In addition to the separation of assets, a marriage agreement is made to:

1. When selling their assets, there is no need to ask for approval from either party.
2. In the case of accounts payable, it will be the responsibility of each.
3. Guarantee the family inheritance.
4. Protect the interests of the wife if the husband does polygamy.
5. Avoid unhealthy marriages.

From the explanation above, it illustrates that the purpose of making a marriage agreement is to emphasize that in the future there will be no disputes regarding the property they have. The existence of the rules regarding the marriage agreement changed completely after the decision mentioned above where it can or is allowed to make a marriage agreement which should be done before or at the time the marriage takes place according to the rules contained in Law Number 1 of 1974 concerning Marriage and article 147 of the Criminal Code, can now be made or carried out a marriage agreement after the marriage or still in the marriage bond. However, this marriage agreement must be registered and made before a notary or authorized marriage registrar.

The procedure for registering a marriage agreement that is carried out after the marriage takes place is: Based on the Circular Letter of the Director General of Dukcapil Number 472.2/5876/Dukcapil, dated 19 May 2017 are:

1. Marriage agreements can be made before, during and during the marriage with a notarial deed and reported to the implementing agency or technical implementing unit (UPT) of the implementing agency.
2. Requirements and procedures for recording the reporting of marriage agreements as well as changes to marriage agreements or revocation of marriage agreements, as referred to in Appendix I,
3. Regarding the reporting of the marriage agreement as referred to in number 1, the civil registration officer at the implementing agency or the UPT of the implementing agency shall make a margin note on the register of marriage

certificates and certificates of marriage according to the format in attachments II A and II B,

4. Especially for marriage certificates or under other names issued by other countries, but marriage agreements or amendments and revocations are made in Indonesia, the recording of the marriage agreement reporting is made in the form of a certificate as in the format in attachments III A and III B.

Based on the circular letter above, the author can explain that it has been emphasized that the making of a marriage agreement can be carried out before, during and during the marriage. In addition, the author can describe the procedure in making a marriage agreement which is carried out after the marriage is carried out or in other words a marriage agreement is made while in the marriage bond, as follows:

- a. Making Deed of Agreement

The deed of agreement is made before a notary, the basis of the notary's authority in carrying out his duties and position as a notary to make an authentic deed in this case the marriage agreement deed is regulated in Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Position Notary Article 15. The explanation in this article provides a clear picture of the authority of a notary in carrying out the task of making authentic deeds for the parties. Whether it's a marriage agreement deed or other authentic deeds.

After the decision of the Constitutional Court Number 69/PUU-XIII/2012 concerning the basis for making a marriage agreement that can be made before, during and after the marriage, and this decision becomes the juridical basis where this decision has permanent legal force (*inkracht van gewijsde*) and the decision The Constitutional Court (MK) is final and binding, so it must be carried out by all parties, both notaries and parties involved.<sup>5</sup> This decision can absolutely be carried out by the parties involved in order to provide solutions and problem solving for husband and wife who have litigation regarding assets owned during the marriage.

- b. Terms

The requirements and procedures for recording marriage agreement reporting are:

1. The recording of the marriage agreement reporting is carried out by taking into account:
  - a. The marriage agreement is made at or before the marriage takes place;
  - b. The marriage agreement is made while in the marriage bond;
  - c. The marriage agreement is made in Indonesia and the registration of the marriage is carried out in another country.
  - d. Change or revocation of marriage agreement
2. The recording of the marriage agreement reporting as referred to in number 1 letter b is carried out with the following requirements:

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<sup>5</sup>Wahyuni, Rachmat Safa'at, Muhammad Fadli, 2017, *Kewenangan Dan Tanggung Jawab Notaris Dalam Pembuatan Akta Perjanjian Kawin pasca Putusan Mahkamah Konstitusi No. 69/PUU-XII/2015*, JIPPK, Vol. 2, No. 2, p. 144

- a. Photocopy of e-KTP;
  - b. Photocopy of KK;
  - c. Photocopy of notarial deed of marriage agreement that has been legalized by showing the original;
  - d. Excerpt of marriage certificate of husband and wife.
- c. Registration place
- Based on the decision of the Constitutional Court, the marriage agreement is carried out at the local Disdukcapil for non-Muslims. For those who are Muslim, registration can be done at the Office of Religious Affairs (KUA), in this case there is no circular letter that is used as a reference but technically there are some who have registered. This agreement must be registered so that the publicity element of the agreement that has been made is fulfilled. This registration is done so that third parties or people outside of the husband and wife can know and comply with the rules made in the agreement. If it is not registered, the agreement or the separation of assets agreement is only valid or binding for the parties in the deed (the maker of the deed of the separation agreement, or the husband and wife concerned).
- d. Made as a side note or a side note
- After the specified requirements have been collected, it will be processed to be made as a marginal note or additional note in the register of marriage certificates and certificates of marriage. This marginal note is made by the civil registry official who makes and issues the marriage certificate. The function of this record is to explain and confirm that a marriage agreement has been made. The making of this marginal note which is made and issued by the civil registry is for married couples who are religious other than Islam, while for the marriage certificate quotation or known as a marriage book issued by the religious affairs office (KUA) for married couples who are Muslim and not can be recorded in the civil registry.<sup>6</sup> With the decision of the Constitutional Court and the Circular Letter of the Director General of Dukcapil Number 472.2/5876/Dukcapil, it is now possible to provide solutions or solutions to problems related to

### III. CONCLUSION

The Procedure for Registration of Marriage Agreements After Marriage is carried out based on the Post-Constitutional Court Decision Number 69/PUU-XIII/2012 and Circular Letter of the Director General of Dukcapil Number 472.2/5876/Dukcapil is to make a deed of agreement drawn up before a notary, prepare the conditions that have been determined, one of which is The excerpt of the marriage certificate of husband and wife is then registered with the local Disdukcapil where the place to issue the marriage certificate is for those who are not Muslim, and to the KUA for those who are Muslim. It is hoped that the relevant agencies, in this case Disdukcapil and KUA who handle marriage agreement issues, can provide education and socialization to the community and especially for prospective husbands and

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<sup>6</sup> [Update: Prosedur Pencatatan Perjanjian Perkawinan Pada Catatan Sipil | Arko Kanadianto](#), diakses pada tanggal 13 April 2022, pukul 15.30 WIB

prospective wives who will carry out marriages, to educate one of them about the assets obtained, so as not to cause problems in the future day.

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[Update: Prosedur Pencatatan Perjanjian Perkawinan Pada Catatan Sipil | Arko Kanadianto](#)

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