
**AUTHORITY AND RESPONSIBILITY OF NOTARIES IN MAKING
MARRIAGE AGREEMENT DEED**

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ABSTRACT

Keywords: authority; responsibility; deed; marriage agreement.

A look is taken in this study at the function that notaries play in the process of drafting deeds for marriage agreements. One of the key objectives of this study is to investigate the significance of marriage contracts and the part that notaries play in the process of drafting them. This research technique includes the use of normative legislation due to the fact that it is founded on both theoretical and legislative principles. It is possible to draw the conclusion, on the basis of the results of this research, it is conceivable to infer that a notary's competence to generate a marriage agreement deed is restricted to the provisions of the agreement itself. These conditions must satisfy the requirements for the legality of the agreement, which are specified in Article 1320 of the Civil Code. Consequently, notary is exempt from all legal repercussions that may come from his acts. If, on the other hand, the certificate that certifies the marriage agreement does not fulfill these standards, the court has the jurisdiction to reject the deed that was issued by the notary. In a post-marriage marital agreement, it is the responsibility of the notary to ensure that the preparation of the contract does not do any harm to any other parties involved.



Introduction

Marriage, based on Article 1 of Law number 1 of 1974, an individual who is a man and a woman are born into a holy union as husband and wife, with the purpose of building a joyful and everlasting household based on the teachings of trinity (Zakiyyah & Wahyuningsih, 2021). The institution of marriage in Indonesia is founded on the principles of Pancasila and the law, trust in God, and the institution of a new life together as husband and wife, guided by the teachings of religious traditions. The wedding bond outcomes inside the beginning and mind of the husband and spouse's assets primarily based on the Civil Code in article 119, particularly, the assets gained in the course of the marriage into joint assets, including all marital assets (Zaharnika & SH, 2019). The wedding bond outcomes inside the birth and mind of the husband and spouse's belongings based on the Civil Code in article 119, specifically, the assets received at some point of the marriage into joint belongings, along with all marital assets. The husband and wife can form a marriage agreement to preserve the property owned by each party so that in undergoing marriage, there is no property conflict in the future (Zaharnika, 2019). Husbands and wives can open up to each other by making a marriage covenant. They can share a desire to be agreed upon without harming either party (Wiryomartani, 2021).

It is possible to adopt a marriage agreement in order to reduce the risk of a divorce occurring. The objective here is to provide legal protection for the property of either the husband or the wife (Pratiwi, Nawi, & Khalid, 2021). As a result of the fact that divorce is never accepted in any household, the couple could reconsider obtaining a divorce if they come to an agreement up front that in the event that the marriage ends in divorce, one of them would be responsible for all of the financial and emotional duties (Ridwan, 2020).

It is possible for a written agreement to function as a marriage contract, regardless of whether the assets of the marriage are kept jointly or split.

The Constitutional Court Decision Number 69 / PUU – XIII / 2015 has broadened the meaning of the marriage agreement so that it can now be interpreted as an agreement made during the marriage bond (postnuptial agreement) as well as an agreement made before marriage (Moertiono & Mansar, 2022). The marriage contract must be in writing, with mutually agreed-upon material (husband and wife) and ratified by a civil / marriage registry employee or notary (Muslim & Hadiwinata, 2017). They must not contradict law, religion, and decency. A marriage agreement that becomes a mutual agreement between husband and wife without being notarised by a notary, just being ordinary, cannot be legally protected. The marriage agreement for Muslim couples must be ratified by a notarial deed that can be recorded by the Marriage Registration Officer (PPN), while couples who are non-Muslim, the document must be certified by an authorized public official, and then submitted to the appropriate implementing installation's technical implementation unit (UPT) or implementing agency. Achieving the idea of transparency is the objective of this endeavor (Mahfiyyah & Hafidz, 2021). This description has piqued the author's interest, and he intends to do more research on the subject of "Authority and Responsibility of Notaries in Making Marriage Agreement Deeds."

Research Methods

As a research method that pertains to descriptive analyses that are primarily associated with the development and execution of the law, this methodology is characterized as a normative legal or juridical research approach. This in-depth study answers the question, "What is the authority and responsibility of the notary in making the marriage agreement deed?" as the problem statement that is being investigated. In addition, via the use of a conceptual approach, a legislative approach, a normative approach, and a comparison to the policy of generating a deed of marriage agreement, the question "What is the urgency of the marriage agreement certificate?" is posed. This research source provides an overview of the laws and regulations that belong to marriage agreement deeds, as well as the rights and responsibilities of notaries and the key legal sources that were used in the production of these documents. Secondary legal materials include various publications on law (journals, books, etc.) related to marriage agreement deeds, notary authorities and responsibilities in making marriage agreement deeds. At the same time, non-legal materials include various research and non-legal data. The ministry's strategic plan document is related to the implementation of making marriage agreement

deeds and the authority and responsibility of notaries in making marriage agreement deeds.

This type of research data collection is based on literature studies and searches for various research materials and data through available media, such as the Internet and legal documentation networks relevant to this research. This research data analysis technique uses qualitative data analysis methods by elaborating and analysing various secondary data and legal materials obtained to answer each problem formulation.

Results and Discussion

1. Authority and responsibility of notary in ratifying marriage agreement

Authority is a legal act given and regulated to a position based on applicable laws and regulations governing the position concerned (Prasetyawan, 2018). In Administrative Law, authority can be obtained by attributes, delegation, or mandate. Article 15, paragraph 1 of regulation of the Republic of Indonesia variety 2 of 2014 concerning amendments to regulation wide variety 20 of 2004 establishes notary's authority in making authentic marriage agreement deeds, when it comes to notarial positions, notaries are authorized public officials who have the authority to make legally binding deeds, agreements, also determinations in accordance with what is stated in the deed and what is guaranteed by the parties involved. However, this authority cannot be delegated or waived to any other official or individual that is specified by law.

Some of the additional powers that the notary possesses include the following: verifying the signature and confirming the date of a letter by recording it in a special book; keeping records of letters by recording them in a special book; making copies of the originals with the same or similar descriptions; attesting that the photocopies match the originals; providing legal advice in relation to the preparation of deeds; creating land deeds; or making auction minute deeds.

Constitutional Court Decision in 2015, numbered 69 / PUU-XIII, in relation to the grounds for premarital, marital, and postmarital agreements, has resulted in a significant number of individuals making the decision to become notaries. A body of jurisprudence has been established as a result of this ruling's precedent. The verdict of the Constitutional Court's decision (MK) is final and binding, and jurisprudence is a field of law that creates decisions that have a lasting influence on the law (Eintracht vangenwijsde).

Marriage agreement deeds can be prepared by notaries in accordance with the Civil Code (KUH Percivil) or the Constitutional court docket Decision (MK) Number 69 / PUU - XIII / 2015, which permits marriage agreements to be made at any time prior to, during, or after marriage, provided that it is still within the marriage period. This decision modifies Article 29 of Law Number 1 of 1974 also allows marriage agreements to be made at any time. Researchers may be able to draw the conclusion that the decision ruling (MK) Number 69 / PUU – XIII / 2015 have to be carried out due to the fact it is far very last and binding, and there are no alternative legal remedies available. This conclusion is based on what we know about the legality of the verdict.

Parties and notaries are allowed to create marriage agreements anytime they like, whether it be before, during, or after the wedding, as long as it does not break the norms that were described in Constitutional Court Decision Number 69 / PUU - XIII / 2015. This is the case as long as it does not jeopardize the rights of third parties or notaries. According to the Civil Code, a marriage contract can also handiest be created prior to the actual marriage taking place. Additionally, the parties will be required to adhere to the regulations that are outlined in regulation number 1 of 1974 concerning Marriage and the Civil Code. Based on Article 1320 Civil Code, which stipulates that "some of the conditions for the validity of an agreement requires the agreement of those who bind themselves," the notary's power to create the marriage agreement deed that he prepares is restricted to the things that are included in the agreement. On the off chance that the agreement does not fulfill these prerequisites, the notary will not be subject to legal action.

Therefore, according to Article 139 of the Civil Code, it is responsibility of the notary to make certain that the marriage contract is in accordance with all of the rules and regulations that are relevant, including those that apply to the distribution of property. However, the parties to the contract are free to make whatever adjustments they see appropriate, provided that they do not violate public decency or the norms that are outlined in the sections that follow.

The Notary's responsibility is limited only to the formalities of the deed he made because, as a partij deed, the parties are responsible for the content and intent of the deed of agreement. At the same time, the notary, as a general office, is only authorised to pour into his deed what are their will and agreement. The notary's responsibility in the marriage agreement is to ensure that no third party is harmed by the making of a marriage agreement after the marriage. Within the Civil Code are given more restrictions on the content of the marriage agreement, namely:

- a. In line with Article 139, the agreement must not come into conflict with public order or morals;
- b. The contract must respect the power that the husband has as the top of household, the head of the household, as stipulated by the Civil Control. In accordance with the provisions of paragraph one of Article 140, for instance, it should not promise that the woman will have her residence.
- c. According to Article 141 of the Covenant, it is forbidden for husbands and spouses to leave their respective halves of their children's estates to one another to inherit.
- d. Neither the husband nor the wife shall be obligated to pay their respective halves of the debt in the event of a termination of the common property owing to interference with property rights (Article 142);
- e. It is stated in Article 143 of the treaty that the regulations that apply in another country are not to be interpreted as being part of the treaty.

The substance of the marriage contract is handed over to the possible partner, who will marry on conditions that it is miles contents need to now not war with public order, decency, regulation must not conflict with public order, decency, law, and religion. The legislation essentially imposes a burden of liability or responsibility for the activity

taken. However, it does not imply that the notary bears exclusive responsibility for all losses suffered by third parties.

The law itself establishes bounds for gracious litigation and notary responsibilities, ensuring that not all losses fall under the jurisdiction of the notary. This is known as a sort of legal protection for Notaries as general officers in charge of providing public services in legal science. Before the marriage can take place, the Marriage Agreement must be signed, and the contract must be made in front of a Notary; else, the contract is null and void. These Terms are meant to:

- a. The marriage agreement is set forth inside the form of an authentic erased document with great evidentiary force;
- b. Offer felony reality approximately the rights and obligations of husband and spouse over their belongings, thinking about that the marriage agreement has a long way far-reaching repercussions.

To make a marriage settlement, it takes someone who simply masters the regulation of marital assets and may formulate all of the conditions cautiously. This relates to the availability that the form of marital belongings must remain at some point if the wedding. Third parties are not necessarily legally bound by a marriage agreement made into a Notary Deed. However, it only legally binds the parties who make it because binding third parties requires action related to publication principles. The principle of publication is the obligation to disclose information so that the general public is aware of it. The principle of publication seems to be contrary to the principle of confidentiality used by Notaries in their duties and positions specified in paragraph (1) of article 16 and paragraph (1) article 54 of regulation number 2/2014. Article 16 paragraph (1) letter f of Law 2 of 2014 Notaries have the obligation to "keep everything about the deed made secret and all information obtained for the preparation of the deed in accordance with the oath/promise of office unless the law specifies otherwise".

Article 54, paragraph (1) of Law number 2 of 2014 states, "Notaries can only provide, show, or notify the contents of the deed, gross deed copy, or quotation of the deed to persons directly interested in the deed, heirs, or persons who obtain rights unless otherwise stipulated by laws and regulations." Based on this, if the Notary records the marriage agreement into the repertorium in the same way that other Notary Deeds are recorded, it cannot be said to be publication principle where the marriage agreement is binding on third parties because the repertorium is not accessible to the general public. Only parties directly interested in the deed heirs, or persons acquiring rights have access to the repertorium. In contrast to the recording of marriage certificates carried out by marriage registration employees, which the general public can access. The regulation imposes a burden of legal responsibility of obligation for the motion committed. However, it does not now not suggest that each loss to third parties events is totally the duty of the notary. The law itself affords limitations and signposts of liability and notary duty in order that no longer all losses emerge as the duty of notary. This is what in legal science know-how is referred to as a shape of criminal protection for Notaries as general officials in charge of imparting public services.

Article 54 of the UUJN regulates notary rights. Notaries are not allowed to present groose, copies, or quotations, nor are they allowed to expose or disclose the contents of deeds other than to persons directly interested in the deed, such as heirs or persons who achieve/beneficiary of their rights, unless otherwise precise by means of laws and regulations and obtain honorarium for criminal services supplied in accordance with their authority and so on. Notaries, when carrying out their responsibilities as notaries, hold the position of the executor of the law. However, when the notary is subject to liability, the notary's position as challenge to the law faces the utility of sanctions. Boundaries on notaries responsibilities can be requested as long as they are still authorised to carry out the obligations of the notary office, mistakes committed in the course of these duties, and sanctions that can be imposed on authorised notaries to carry out their positions as notaries.

This notary responsibility stems from his obligations and authorities. This notary obligation stems from his duties and authorities. These obligations and government are legally binding and take effect the instant the notary takes his oath of office. The oath administered should govern all actions taken by notaries in the course of their duties.

2. The urgency of the marriage agreement deed

The urgency of a marriage agreement certificate in protecting all rights and obligations between husband and wife regarding joint property and assets, ensuring that conflicts are minimised and clarity is established, especially in the event of a future divorce. A marriage agreement is a contract that regulates the consequences of the marriage bond, one of which pertains to property. Marriage agreements are rare in Indonesia. This is because most people in Indonesia hold the belief that marriage is sacred, binding the hearts and minds of husband and wife based on faith. However, some argue that marriage is a mutual agreement in society, akin to agreements in buying and selling or renting. The existence of customary law and the strong kinship relationship between prospective husband and spouse are also factors contributing to the rarity of marriage agreement deeds in Indonesia.

In Indonesia, marriage contracts are controlled by three pieces of legislation: the Civil Code (KUHPdata) or Burgerlijk Wetboek (BW), Law Number 1 of 1974 jo Law Number 16 of 2019 about Marriage, and Presidential Instruction Number 1 of 1974 regarding the Compilation of Islamic Law. All of these laws were enacted in 1974. Since the enactment of Law Number 1 of 1974 jo Law Number 16 of 2019 concerning Marriage, there has been unification in the field of Marriage Law in the State of Indonesia, except as long as it has not been or is not regulated in the law, the old regulations can be used. Although the law regulates marriage, it further regulates matters related to marriage or all legal consequences related to marriage so that it can be categorised as Family Law.

Basically, the marriage agreement is not as horrific as society thinks, which most people consider incompatible with Eastern culture and less ethical. The marriage agreement is not only limited to promising property or financial problems; other important things are promised, such as domestic crimes, promising one party to continue his career even though he is married, and so on. The benefits of the marital covenant for

the state are enormous. The existence of a marriage agreement provides limits for married couples to reduce and prevent marital conflicts. The marriage agreement may be a reference for each husband and wife to find out their rights and obligations if a conflict arises in the future, even though the conflict is not desired, such as when there is a conflict that must end in divorce. By making a marriage agreement, married couples have the opportunity to open up to each other and share their feelings for the agreed desire to live the contents of the agreement.

Article 139 of the Civil Code stipulates that a marriage contract is a contract between a future husband and his wife to manage the effect of marriage on their respective estates. In reality, a marriage contract is a compact between a future husband and husband. Therefore, a marriage agreement can be made either if the husband and wife will marry a mixture of property unanimously or if they covenant the existence of separate property or property outside the union. The function of making a marriage agreement according to Indonesian Marriage Law is as follows:

a. Made to protect property legally, both the property of each party and joint property.

Regarding the separation of property, if there is no property, the condition must be made before b. A guide that regulates the rights and obligations of husband and wife regarding the future of the family, both in terms of children's education, business, residence, and others, so long as they do not contradict the rule of regulation and decency.

b. Protect family members from the threat of domestic violence.

Given the significance of the marriage contract, it turns out that there are numerous advantages for both husband and wife. When splitting property without a marital agreement, there are frequently conflicts/disputes. A marriage agreement has the advantage of regulating the resolution of difficulties that may develop during the marriage, such as:

The marriage have to be recorded at the place of marriage registration or notary.

- 1) Regarding the separation of debts, the marriage agreement can be arranged regarding the issue of debts that will remain the responsibility of the party that incurred the debt. The debt in question is the debt that occurred before marriage, during the marriage, after divorce, and even death.
- 2) Responsibility for the children resulting from the marriage is mainly regarding the issue of children's living costs, and the cost of education must be regulated in such a way as to contribute to each parent. In this case, the aim is that the welfare of the children remains guaranteed. A marriage registrar or notary public may ratify a written agreement that both parties have voluntarily agreed to engage into. This agreement can be confirmed and signed by both parties. It is possible to reach this agreement either before to the marriage or when the couple is already in the process of getting married. In accordance with Article 29 of the Constitutional Court Decision Number 69 / PUU-XIII / 2015 of the Marriage Law, the provisions of this agreement may be extended to other parties so long as those third parties are involved. The following is a summary of the actual provisions of the Act:

- a) Either party may, at any stage prior to or during the marriage, produce a written agreement to be confirmed by using the marriage registrar or a notary public; the conditions will practice to any third parties involved, to the extent that any are involved, after the event, the conditions will apply to any third parties involved, to the extent that any are involved.
- b) If the agreement violates the law, religion, or morals, then it cannot be ratified. This also applies to situations when the agreement violates the law.
- c) The agreement will take effect on the day of the wedding, provided that the Marriage Agreement does not specify a different date than the wedding itself.
- d) A modification or revocation of the marriage agreement, which may regulate marital property or other things, will not be lawful during the marriage unless both parties agree to it, and no third party shall incur any loss as a consequence of such a modification or revocation. The marriage agreement may govern marital property or other topics.

The marriage agreement is entered into in writing through the agreement and consent of both parties, husband and wife. It must meet the general requirements of an agreement unless, in special regulations, otherwise provided. This has felony outcomes that imply the event have bound themselves to the settlement and must no longer violate the agreement, as said in article 1313 of the Civil Code. The events should follow this agreement as stipulated in the Civil Code. As an agreement, if one party commits a contrevention (broken promise), a lawsuit can be made, both a divorce lawsuit or compensation.

The marriage agreement must be in written form and must be notarised by a notary. The marriage agreement for Muslim couples must be ratified by a notarial deed that can be recorded by the Marriage Registration Officer (PPN). In contrast, couples who are non-Muslim are legalised by a notary and reported to the Implementing Agency or Technical Implementation Unit (UPT) of the Implementing Installation

Within the framework of the Civil Code, Article 1320 specifies the elements that must be met for an agreement to be considered genuine. The marriage contract must have been entered into in good faith in order for it to be executed in accordance with the criteria of Article 1338. This is in addition to the fact that it must be lawful within the eyes of the law for the parties concerned. Both parties are required to comply with Article 1320 of the Civil Code, which defines the criteria of the legality of agreements. In essence, the marriage contract is not different from any other agreement between a potential husband and wife. This is due to the Civil Code governs the conditions under which agreements are legitimate. If a marriage contract satisfies the standards for the validity of an agreement, as specified in Article 1320 of the Civil Code, then the law must acknowledge that the marriage contract is lawful for the parties making the contract.

The marriage agreement that is made is formal because an agreement is reached between the parties who make it; then, by itself, the marriage agreement binds the parties who make it when both agree on the marriage agreement made. Marriage agreements

made by the parties, both those provided in Civil Code provisions, Law Number 1 of 1974 jo, Law Number 16 of 2019 on Marriage, and those based totally on the District Court docket's selection, have binding legal consequences for husband and wife who agree to make them. In other words, both parties, namely husband and wife, remain bound by the agreement contained in the marriage agreement. It can be said that couples who bind themselves in the marriage agreement will get guarantees during the marriage and afterwards so that to break the marriage means also breaking the agreement; it is very rare considering the legal consequences that will be borne / risk if one party disobeys the marriage agreement, there are usually sanctions that must be imposed on the party who violates the agreement The marriage.

Legal protection of property in the marriage agreement applies when the marriage takes place, which objectives to guard/protect the assets of the bride and groom, wherein the events can decide each other's belongings. The spouses are the only ones who are allowed to exercise control over the marital property and any assets that are acquired as gifts or inheritances, unless the parties have reached an agreement to the contrary. A marriage agreement after marriage is entered into to regulate the cause and effect of marital property after the marriage has occurred when there is an unequal or greater amount of property on one side of the husband or wife. As a result, the marriage agreement is always linked to the problem of assets in marriage.

Based on Article 149 of the Civil Code, after the wedding has taken place, the marriage contract cannot be altered in any way until the wedding has been completed. Contrast this with the Marriage Law No. 1 of 1974, which stipulates in Article 29, paragraph (4) that a marriage contract cannot be changed without the permission of both spouses and without causing any harm to any other parties. This law was passed in 1974. This principle of irrevocability of the marriage agreement pertains to the gadget of marital property chosen by the husband and spouse at the time of the marriage, which awakens to the point of subject that during marriage, the husband may force the wife to make adjustment that his spouse does not desire. In essence, the prohibition to change the marriage agreement is to defend the pursuits of third parties, specifically to prevent losses from the possibility of abuse by husband and spouse, that is deliberately done to keep away from duty.

Conclusion

Notaries public are required to sign marital agreement deeds due to the fact that they are legally permitted. A notary public is the person who is authorized to validate a written contract that pertains to a marriage. To the extent that the terms of the agreement have satisfied the conditions for the legitimacy of the agreement as outlined in Article 1320 of the Civil Code, he is exempt from legal action. If, on the other hand, the marriage agreement certificate does not meet the requirements for the legitimacy of the agreement, then a court has the authority to reject the deed that your notary has issued. The notary's responsibility in the marriage agreement is to ensure that the making of a marriage agreement harms no third party after the marriage occurs.

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