

Recording of Marriage Agreements and Consequences for Third Parties

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ABSTRACT

In recent years, the demand for Marriage Agreements has increased among couples planning to marry, as it allows them to regulate the property consequences of their marriage. The Marriage Law requires that these agreements be made prior to marriage; however, Constitutional Court Decision Number 69/PUU-XIII/2015 has opened the possibility of creating postnuptial agreements after marriage, a practice that has gained popularity. Despite this, a significant issue remains in the implementation of postnuptial agreements, particularly regarding the lack of regulation on publicity. This research explores the challenges surrounding the principle of publicity in Marriage Agreements and examines the implications of a third party's right to refuse the implementation of a postnuptial agreement. The study uses a normative legal research method, analyzing relevant legal texts and case law. The findings indicate that the absence of clear regulations on publicity leads to uncertainties about the enforceability and legal protection of postnuptial agreements, particularly in relation to third-party interests. This paper suggests that clearer legal provisions are needed to address the issue of publicity, ensuring better legal certainty and protection for all parties involved in postnuptial agreements.

Keywords: marriage agreement, joint property, marriage

INTRODUCTION

Marriage Agreements are currently in great demand by parties who wish to enter into marriage. In line with the provisions in the Civil Code ("*Kitab Undang-Undang Hukum Perdata*") and Law Number 1 of 1974 concerning Marriage ("*Undang-Undang Perkawinan*"), the main purpose of a Marriage Agreement is to override provisions regarding property in marriage.

Marriage Agreements fall under the realm of civil law. Civil Law is a body of law that regulates relationships between individuals, and the interests that take precedence in civil law focus on individual rights. However, even though it is not part of public law, the rights of parties outside the agreement are still protected by law. The Marriage Agreement ensures fairness towards third parties, as affirmed in the Marriage Law. This writing will focus on the issue of the position of third parties harmed by the creation of a Marriage Agreement, both before and after the marriage takes place, and the legal consequences on the content of the agreement and the parties involved if a

third party raises objections to the Marriage Agreement (Haar et al., 2020b; Marwan, 2017; Purbacarakan & Halim, 2012; Tumbuan, 2017).

The Marriage Agreement has different meanings put forward by each legal expert, but it has one common goal: the property to be owned by the married couple in their marriage. The form and content of the Marriage Agreement can be freely determined by the parties, unless there are specific prohibitions stipulated in the positive law of each country (Hijma & Snijders, 2010; I. S. D. J. Ikhwansyah & Pustikasari, 2012; Khairandy, 2017).

Furthermore, the Constitutional Court, in its decision Number 69/PUU-XIII/2015, rendered on October 27, 2016, provided new provisions regarding the creation of Marriage Agreements. On the basis of justice, the Marriage Agreement can be made after the marriage, as long as both parties agree, and it does not harm third parties. This writing will further explain how the reasoning for allowing the creation of a marriage agreement throughout the marriage is justified and its implications for the parties, including third parties involved in the postnuptial agreement.

Previous research has explored the legal aspects of Marriage Agreements, particularly regarding their creation and enforcement. A study by Wibowo (2019) examined the legal consequences of Marriage Agreements in Indonesia, emphasizing the importance of the agreement in protecting the property interests of the couple, especially in the event of divorce. Another study by Pratiwi (2017) focused on the Constitutional Court's decision regarding postnuptial agreements, highlighting the significance of allowing such agreements to be made after marriage to ensure justice and fairness. However, these studies did not sufficiently address the implications of third-party interests in postnuptial agreements, particularly regarding the publicity and enforceability of such agreements. This research contributes to the existing literature by exploring the legal challenges related to the position of third parties, especially the lack of clarity on publicity, and examines the legal consequences of objections raised by third parties to postnuptial agreements.

The study aims to analyze the legal implications of postnuptial agreements, particularly focusing on the position of third parties who may be harmed by the agreement. The findings of this research will provide recommendations for legal reforms that ensure better protection for third parties, improving the legal certainty surrounding postnuptial agreements. This research is expected to benefit both legal practitioners and the public by offering clearer guidelines on the position of third parties in Marriage Agreements, as well as promoting fairness and transparency in marriage contracts.

METHOD

This study uses a normative juridical research method, where the object or basis of analysis is the provisions of laws and regulations and jurisprudence that are related to the analysis normatively, as well as explorative research, which is conducted to obtain information, explanations, and experiences about things that are not yet known, or also referred to as exploration research that is fundamentally basic in nature.

For data collection, the study will use a qualitative approach, focusing on legal texts, case law, and legal documents that address the issue of Marriage Agreements and their impact on third-party rights. This includes reviewing relevant statutes such as the *Kitab Undang-Undang Hukum Perdata* (Civil Code), *Undang-Undang Perkawinan* (Marriage Law), and Constitutional Court Decisions. The research will also analyze jurisprudence and academic articles to gather a broad range of perspectives on the topic. Interviews with legal experts, notaries, and practitioners in family law may also be conducted to gain practical insights into the implementation and challenges surrounding postnuptial agreements.

Data analysis will involve a qualitative evaluation of the legal documents and case studies, with a focus on interpreting legal provisions and their practical application. The analysis will seek to identify gaps in the law, particularly regarding third-party protection and the implications of postnuptial agreements, and suggest reforms to improve legal clarity and fairness for all involved parties.

RESULTS AND DISCUSSION

Property in Marriage

Marriage is regulated in Book I of the Civil Code and the Marriage Law. The Civil Code as a codification of civil law, is basically a product made by the Dutch government and was also enforced in Indonesia in 1848 based on the principle of concordance. The content in the Civil Code has a spirit that is far different from the spirit of Indonesia as a nation. For example, the problem of population classification, where there is clearly a provision in the Civil Code that the provisions only apply to foreign and European groups of eastern residents. In 1974, the Marriage Law was promulgated which was intended to unify national marriage law. As a result of the promulgation of the Marriage Law, all provisions regarding marriage are binding on all Indonesian citizens from regardless of ethnicity.

One of the main differences between the Marriage Law regulated in the Civil Code and the Marriage Law is regarding the element of the validity of marriage, where in the Civil Code it is expressly stated that marriage is

reviewed from the civil point of view only, while the Marriage Law contains social, biological, religious, and juridical elements. Furthermore, in Article 2 of the Marriage Law, it is found that the religious element has a position that takes precedence over the juridical element, where it is stated that marriage obtains validity, if it is carried out according to the law of each religion and belief.

Another difference is regarding the conception of property in marriage. Article 119 of the Civil Code stipulates that from the moment of the marriage, according to the law, there is a complete union of property between husband and wife, insofar as there are no other provisions in the marriage agreement. The Civil Code adheres to the conception of unanimous unity or total unity, so that the combination of property is seen as a whole without taking into account when the property began to be acquired, or in other words, the property obtained since before the marriage took place is subject to joint property and as a result the spouse also obtains his rights to the property. (Safioedin, 1994, p. 3)

The provisions regarding the unity of property as a whole as stipulated in the Civil Code are no longer valid with the regulation of the Marriage Law. Property in Marriage is regulated in Article 35 of the Marriage Law, which states that property obtained during marriage becomes joint property. (Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan (Pasal 35 Ayat (1)), 1974) This article also explains what is meant by Inherited Property, which is property brought from each husband and wife and obtained by each as a gift or inheritance. Inherited Property is under the control of each other as long as the parties do not determine otherwise. (Muhammad, 2014)

The property that is jointly owned by the husband and wife is called Joint Property. The calculation of Joint Property is calculated from the beginning of the marriage, so that the property obtained before marriage remains the full authority of each party as an inherited property. The element of time when property is acquired is a major factor in determining the property that is part of the common property. Furthermore, among the inherited assets are assets obtained before the marriage takes place and assets obtained as grants, wills, or inheritances from parents and family, even if these grants, wills, and inheritances are obtained when a person is married, their position remains as inherited property.

A Joint Property is a joint right of husband and wife. So that the division of the two is half a share each, regardless of which party generates more wealth into the marriage. (Darmabrata, 1997a, p. 79) In addition to property which is an asset, the conception of joint property also applies to passive property in the form of debts and obligations. (Kie, 1994, p. 9) As a

result, all debts and obligations that are the responsibility of one of the parties are also the responsibility of the spouse as long as they are still tied to the marriage.(Darmabrata, 1997b)

In the event of a divorce in marriage, it should be for the couple who are subject to the provisions of joint property, the division of property is also divided in two in equal parts, as long as the property is obtained at the time of the marriage.(Rasyidi, 1981, p. 4) This provision also applies to debts and receivables made during the marriage, joint dependents remain valid until the marriage is terminated due to divorce. Among the problems that often occur is when a married couple binds themselves in consumptive credit, home ownership loans, or other types of loans during the marriage period and then the couple separates, often the law is unable to confirm to whom the rest of the debt will be charged.(Subekti, 2003, p. 2)

Marriage Agreement

Marriage Agreement is a method regulated in the Marriage Law and the Civil Code which is intended to regulate the consequences of marriage on property. Judging from the regulation in the Marriage Law, it is stated that:

- “(1) At the time or before the marriage takes place, both parties to a collective agreement can enter into a written agreement that is ratified by the Marriage Registrar, after which the contents also apply to the third party as long as the third party is involved.*
- (2) The agreement cannot be ratified when violating the limits of law, religion and morality.*
- (3) The agreement comes into effect from the moment the marriage takes place.*
- (4) During the marriage the agreement cannot be changed, unless there is an agreement from both parties to change it and the change does not harm the third party.”*

From the overall reading of Article 29 paragraphs (1) to (4), it can be concluded that the important elements regarding the Marriage Agreement regulated in the Marriage Law are the Time of Making the Marriage Agreement, the elements of the Agreement or Agreement, made in writing, the existence of ratification by the chosen Institution, the Validity Period, the Amendment of the Marriage Agreement, and Denial by a Third Party.

The Marriage Law does not provide additional provisions related to the Marriage Agreement, so we can draw from the conclusion of Article 66 of the Marriage Law which states that regarding the provisions that have been regulated in the Marriage Law, all the provisions of its predecessors, including the Civil Code, are declared invalid. This also applies to the opposite, that

related to provisions that have not been regulated in the Marriage Law, all the provisions of its predecessors, including the provisions in the Civil Code, can be enforced.

The Marriage Agreement is regulated in Chapter Seven in Book I of the Civil Code, where the term given is the Marriage Agreement. The use of the term "Marriage Agreement" has the same meaning as a *Nuptial Agreement* that is recognized in other countries.

The provisions in the Civil Code clearly state that the purpose of making a Marriage Agreement is to deviate from the provisions of laws and regulations regarding the union of property, as long as it does not violate morality and public order. This provision adheres to a more complete material content compared to the provisions in the Marriage Law which only states that the parties can enter into a written agreement. So currently, the purpose of holding a Marriage Agreement in order to deviate from the provisions of joint property as stipulated in the Civil Code is still considered valid.

Furthermore, Article 147 of the Civil Code regulates:

"Under the threat of nullity, every marriage agreement must be made with a notary deed before the marriage takes place. The agreement comes into force from the moment the marriage takes place, other times for which it may not be determined."

The provisions in this Civil Code emphasize that formal problems that are not regulated in the Marriage Law must be made with a notary deed with the threat of nullity, so that a Marriage Agreement that is not made with a notary deed becomes null and void.

Therefore, based on the combination of the provisions obtained from the Marriage Law and the Civil Code, it can be concluded that: (1) Marriage Agreement is a Written Agreement made in a Notary deed and must be ratified by the Marriage Registrar;(Agustina, 2012, p. 142) (2) Made before the marriage takes place or when the marriage is held; (3) The content is about deviations from the provisions of Joint Property in Marriage; (4) It must not violate the limits of religious law, morality and public order.

The Civil Code and the Marriage Law mention the Marriage Agreement as an Agreement. Although it is not mentioned directly, the meaning of the agreement contained in a Marriage Agreement is subject to the provisions of Book III of the Civil Code concerning Engagement.(Prodjodikoro, 2000, p. 4) The Marriage Agreement as an agreement that gives birth to an alliance, must be followed directly by the marriage between the two parties who make it.(Basuki, 2010, p. 33) An engagement in a Marriage Agreement is born when the marriage between the parties begins.(Kitab Undang-Undang Hukum Perdata (Pasal 154), 1945)

"Covenant" in the Marriage Agreement

Article 1313 of the Civil Code stipulates that:

"A covenant is an act by which one or more binds himself to another or more persons."

The main element in the agreement is the existence of an active act to bind oneself. Furthermore, Article 1233 explains that an alliance can be born from an agreement.

A Marriage Agreement must meet all elements of the validity of an agreement as stipulated in Article 1320 of the Civil Code. The Parties who bind themselves in the Marriage Agreement, namely the prospective husband and wife, must fulfill the elements of agreement. The Marriage Agreement must be made between capable couples, must be about the exclusion of joint property as the fulfillment of certain elements, and is a halal cause, namely not violating religious law, morality and public order.

Because it is subject to the provisions of the Agreement as stipulated in Book III of the Civil Code, the fulfillment of the general elements of an agreement as stated in Article 1320 and Article 1338 of the Civil Code must be very considered. For example, related to the element of proficiency, where the Civil Code has stipulated that the age limit of adulthood is 21 years old, so basically each party must reach the age of at least 21 years in order to make a Marriage Agreement. This is a polemic in itself when reviewing from the minimum age of marriage. Prior to the promulgation of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (hereinafter referred to as "Law Number 16 of 2019"), which had changed the age norms in the Marriage Law, Marriage could be carried out with a minimum age of 16 years for women and 19 years for men, thus, for women who want to marry under the age of adulthood could not bind their marriage with the Marriage Agreement because of age restrictions as a determinant of proficiency.

This problem can basically be overcome at this time. Considering that the Marriage Agreement must meet the formal provisions in the form of being made by a notary deed, the provisions are also subject to Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the

Notary Position (hereinafter referred to as the "Notary Position Law"), where Article 39 stipulates that the Attendee must meet the minimum age requirement of at least 18 years. Furthermore, if referring to the minimum age of marriage which has been changed by Law Number 16 of 2019 to 19 years for women and men, then basically at this time everyone who wants to get married can bind themselves to make a Marriage Agreement.

A common thread regulated in the Marriage Agreement that makes it can be considered as an agreement that is subject to the provisions of Book III of the Civil Code is that the content must be about deviations from the provisions of property in marriage, because basically an agreement falls into the realm of property law. However, basically, an agreement adheres to the principle of freedom of contract,^(Badrulzaman, 2015, p. 84) The result of this principle of freedom of contract is that there is a free will of each party to make a contract or not to make a contract, the limitation is only for the public interest and in the contract there must be a reasonable balance. So that in a marriage, it is common and permissible if the parties want to include other provisions as desired by the parties, for example an agreement not to commit polygamy or acts of domestic violence.^(Prawirohamidjojo, 1988, p. 6)

A Marriage Agreement must be based on the principle of good faith.^{(Kitab Undang-Undang Hukum Perdata (Pasal 1338), 1945)} The meaning of this provision is that the making of the Marriage Agreement must be free from bad faith, such as for example to free oneself from debts and receivables or to save wealth from a crime. Good faith in the implementation of the agreement uses objective standards by heeding the norms of propriety and expediency.^(Subekti, 1998, p. 41) Another benchmark used in the Marriage Agreement is what has been regulated in Chapter Seven of Book I of the Civil Code, such as for example it is not permissible to agree that a party will pay off a debt greater than his or her spouse,^{(Kitab Undang-Undang Hukum Perdata (Pasal 142), 1945)} and it must not reduce the rights that the Law has given to each party in his or her position as husband and wife.^{(Kitab Undang-Undang Hukum Perdata (Pasal 140), 1945)}

The basis of an agreement is an agreement, therefore an agreement can be changed and terminated because of an agreement. This principle is adopted in the Marriage Law, where the Marriage Law stipulates that the Marriage Agreement can be amended only based on the agreement of the Parties. However, the Civil Code adheres to a different principle, where in the Civil Code, it is not allowed to change or terminate the Marriage Agreement that has been made.

Like an Engagement that has Achievements that are subject to the provisions of Article 1234 of the Civil Code, (Satrio, 1999, p. 122) Achievements in the Marriage Agreement are basically internal, only if the parties agree that there is a burden or act that must be done or not done by a person. Meanwhile, the result as an exception to property in marriage is not an achievement. So even though it is an Agreement, a Marriage Agreement is not an Agreement so that it does not cause consequences as stipulated in Article 1243 of the Civil Code in the event of default from one party. (Prawirohamidjojo & Safioedin, 1972, p. 70)

An Agreement can be amended by agreement. The Marriage Law in Article 29 paragraph (4) states that the Marriage Agreement can be amended based on the agreement of both parties husband and wife. In other words, the renewal of the Marriage Agreement can be done by making a new deed. However, the Marriage Law does not mention that a registered Marriage Agreement can be revoked or abolished. If it is withdrawn from the provisions of the Civil Code, Article 149 states that the Marriage Agreement, after the marriage takes place, cannot be changed in any way. Similar to the provisions of the Marriage Law, basically the Civil Code does not determine whether a Marriage Agreement can be revoked or abolished. The Directorate General of Population and Civil Registration in its Circular Letter Number 472.2/5876/DUKCAPIL dated May 19, 2017, (Direktorat Jenderal Kependudukan dan Pencatatan Sipil, 2023) as well as the Directorate General of Islamic Community Guidance of the Ministry of Religion of the Republic of Indonesia in Circular Letter Number B.2674/DJ. III/KW.00/9/2017 dated September 28, 2017, has provided provisions and requirements to be able to amend or revoke a Marriage Agreement. Thus, it can be concluded that currently the Marriage Agreement that has been ratified and applicable to the parties can be revoked and abolished as long as there is an agreement between the husband and wife.

The Principle of Publicity in Marriage Agreements

The Marriage Law affirms that a Marriage Agreement must be ratified by a marriage registrar. This ratification by the Marriage Registrar is part of

the application of the principle of publicity in the Marriage Agreement which affects its applicability to Third Parties. Or in other words, if this Marriage Agreement does not meet the principle of publicity by not being ratified by the marriage registrar, then for the sake of the law, the contents of the Marriage Agreement will not be binding on a Third Party. (Subekti, 1998b)

The recording of the Marriage Agreement has significant consequences, for example in the event that there is a couple who makes a loan or credit agreement, even if the couple has made a Marriage Agreement, but in the event that there is negligence in the recording, then to the creditor, the debt and receivables will still be considered as a joint debt. (I. Ikhwanisyah et al., 2012, p. 64) However, the application of the recording of the Marriage Agreement as a fulfillment of the principle of publicity has not yet found a legal certainty. There are still doubts in the community about which institution is actually authorized to register the Marriage Agreement. In the directory of decisions in the District Court and Religious Courts, it is known that there are many applications for the registration of the Marriage Agreement where in each of these decisions, the Court gives authority to the Civil Registration Office or the local Religious Affairs Office to record the Marriage Agreement. The problem now is whether registration in the registry book of clerks in the District Court and Religious Court is still necessary.

In the letter of the Director General of Islamic Community Guidance of the Ministry of Religion Number B.2674/DJ. III/KW.00/9/2017 states that the Marriage Agreement is ratified by a Notary deed and recorded by the Marriage Registrar in the note column on the marriage certificate and in the note column on the marital status in the marriage certificate citation. Meanwhile, for marriages legalized by other countries, Marriage Agreements made in Indonesia can still be valid with a certificate made by the Office of Religious Affairs at the sub-district level. (Direktorat Jenderal Bimbingan Masyarakat Islam, n.d.) This provision applies to couples who embrace Islam.

Furthermore, in the Letter of the Director General of Population and Civil Registration of the Ministry of Home Affairs Number 472.2/5876/DUKCAPIL concerning the Recording of Marriage Agreement Reporting, it is stated that the Marriage Agreement is made in a notarized deed and reported to the Implementing Agency or the Technical Implementation Unit ("UPT") of the Implementing Agency. The Civil Registration Officer at the Implementing Agency or UPT of the Implementing Agency makes a fringe note on the register of deeds and citations of marriage certificates. (Direktorat Jenderal Kependudukan dan Pencatatan Sipil, n.d.) For couples who get married in another country and make a marriage agreement deed in Indonesia, the marriage agreement report is made in a certificate. The registration of a

marriage agreement in Indonesia will have an impact on every property belonging to a married couple in Indonesia.

Even though in the above Circular Letter it has been stated that the institution authorized to register the Marriage Agreement is the Office of Religious Affairs and the Population and Civil Registration Office, in practice, there are still many parties who submit applications for the registration of Marriage Agreements to the District Court. The recording of the Marriage Agreement has a great impact on the property of the married couple and their relationship with the third party involved. Henry Lee A Weng in his dissertation gave a statement that could change the paradigm of the importance of recording the marriage agreement, it was stated that:

".... If the husband or wife can prove that the unannounced terms (meaning 'authorized' from the author) were known to the third party before or at the time of their legal relationship with the husband or wife, the terms apply to the third party who knows. The third party can know the existence of the provisions because the marriage agreement deed has been shown by the husband or wife to the third party."

It is stated that as long as the Third Party knows that a Marriage Agreement has been made between the married couple before they bind themselves to a Third Party, then the validity of the contents of the Marriage Agreement can also apply to the Third Party, even if the recording has not been held. The author has an opinion that is contrary to this statement. Basically, in order to achieve legal certainty, the element of recording as a fulfillment of the principle of publication is the most important element in the procedure for making a Marriage Agreement that cannot be eliminated. So that even if the Third Party knows that the debtor has made a Marriage Agreement before his engagement with a Third Party, but the Marriage Agreement is not registered or has never been recorded with the authorities, then the Marriage Agreement does not have any consequences with the interested Third Party.

Legal Consequences of Holding a Marriage Agreement

As stipulated in the Civil Code, the Marriage Agreement is intended to deviate from the provisions of Property in Marriage regulated in the Law. The provisions of Property in Marriage when referring to the provisions of the Civil Code are about the union of property in full or also known as mixed property.

Meanwhile, when referring to the provisions of the Marriage Law that is currently in force, the Property that is diverted through the Marriage Agreement is about Joint Property. In other words, if each couple makes a Marriage Agreement, then there will be no Common Property between their property. As a result, each party has full authority over their respective property and will not share their rights and obligations related to the property to their spouse.

Marriage Agreements are currently widely made by couples because the awareness of the conception of marital property among the community is increasing, as a result of which more and more parties feel that by making a Marriage Agreement, they can further protect their property, not only for personal interests, but also for the interests and safety of their families.

The Marriage Agreement is not only a protector in the event that there is a couple who wants to continue the divorce, so that the struggle for gonogini property can be avoided, but also a financial protector of a whole family, for example, in the event that a family head is affected by bankruptcy, then if his property is bound in the Marriage Agreement, then the wife does not need to be dragged to pay off her husband's debts so that the family's finances can be maintained. (Haar et al., 2020a, p. 50)

Constitutional Court Decision Number 69/PUU-XIII/2015

The Constitutional Court Decision No. 69/PUU-XIII/2015 which was decided on October 27, 2016 (hereinafter referred to as the Constitutional Court Decision No. 69/2015") was enforced because there were parties who felt that their subjective rights as an Indonesian citizen were violated due to the provisions of the Marriage Agreement. This has given a new application of Marriage Agreements in Indonesia, where Marriage Agreements can be made when the marriage has taken place. As mentioned that:

"At the time, before it takes place, or during the marriage bond, both parties by mutual agreement can submit a written agreement ratified by the marriage registrar or notary, after which the contents also apply to the third party as long as the third party is involved".

Constitutional Court Decision 69/2015 reaffirms the limits of law, religion, and morality regulated in the Civil Code and the Marriage Law, as stated:

"The agreement cannot be ratified if it violates the limits of law, religion and morality".

However, the Constitutional Court Decision 69/2015 also adds the content of the Marriage Agreement, as stated:

"During the marriage, the marriage agreement may be about marital property or other agreements, it cannot be amended or revoked, unless there is an agreement from both parties to change or revoke, and the change or revocation is not detrimental to the third party".

This provision states that the content of the Marriage Agreement can also be about the Agreement other than that which is meaningful to override the provisions of joint property, as long as it does not violate the laws of religion, propriety, and decency in society. Furthermore, the Constitutional Court Decision Number 69/2015 emphasizes that the content of the Marriage Agreement can be amended and revoked, as long as it does not harm the Third Party, this provision is followed by the Circular Letter of the Population and Civil Registration Office Number 472.2/5876/DUKCAPIL, and the Circular Letter of the Directorate General of Islamic Community Guidance of the Ministry of Religion of the Republic of Indonesia in Number B.2674/DJ. III/KW.00/9/2017 which regulates the formal procedural of these provisions.

Constitutional Court Decision No. 69/2015 provides leeway to the parties to determine the validity period of the Marriage Agreement, as stated: *"The Agreement shall take effect from the time the marriage is solemnized, unless otherwise specified in the Marriage Agreement."*

This provision is contrary to the provisions stipulated in Article 147 of the Civil Code and the Marriage Law, where it is stipulated that the Agreement comes into force from the moment the marriage takes place. Even the Civil Code emphasizes that:

"Another time for that should not be determined".

In the Civil Code and the Marriage Law, it is not allowed to stipulate that a Marriage Agreement can be started other than from the moment the marriage begins. This is related to legal certainty and its relationship with the consequences caused in the Making of Marriage Agreements.

Third Party in the Marriage Agreement

Third Party objections have a great influence on the validity of the Marriage Agreement. Especially when associated with the Constitutional Court Decision Number 69/2015, many elements of Third Parties are mentioned in its implementation. The period of its validity, its changes and its revocation. All provisions stipulated in the Constitutional Court Decision Number 69/2015 descend to the element of "as long as the third party is not harmed". It is an unresolved problem if there is a third party who is harmed and opposes the making of the Marriage Agreement. Therefore, the law gives the right to the Third Party to file an objection that may result in the cancellation of the Marriage Agreement or amendment.

Because of the great authority given to the Third Party, the law should provide a means of information disclosure to the Third Party to be able to access whether the debtor makes a Marriage Agreement that has a direct impact on the liability for his debt. Currently, the law only provides an obligation for the parties who make the Marriage Agreement to register or record the Marriage Agreement with the effect of enforceability on the Third Party if it is not recorded. The law has not seen the potential for bad faith from the parties if they deliberately make a Marriage Agreement without prior notice to the Third Party. In fact, the enactment of the latest provisions as contained in the Constitutional Court Decision Number 69/2015 opens up greater opportunities for abuse of the law by the Parties to the Marriage Agreement.

CONCLUSION

The Marriage Agreement is an institution that has long been regulated to create deviations in the provisions of common property, so that if one spouse makes a Marriage Agreement, then in the marriage, they will not be bound by the common property. The provisions regarding the Marriage Agreement have evolved, from those initially regulated in the *Kitab Undang-Undang Hukum Perdata* (Civil Code), the *Undang-Undang Perkawinan* (Marriage Law), and now, due to the public interest to be achieved, subject to the provisions of the Constitutional Court Decision Number 69/2015. The Constitutional Court's Decision Number 69/2015 provides a wider scope regarding the regulation. Although well-intentioned, it still poses a greater risk of abuse of the law.

Third parties involved in the Marriage Agreement play a significant role in the sustainability of the implementation, as well as the amendment and revocation of the Marriage Agreement. Therefore, the government needs to create a means for third parties to obtain access and disclosure of information about their debtors who are bound by the Marriage Agreement. The author suggests that the government could create a one-stop access system for registration and disclosure of information about Marriage Agreements, similar to the reporting of wills on the AHU website. The government could then establish a website for recording, registration, amendments, and revocation of Marriage Agreements.

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