

# **The Urgency Of Registering Marriage Agreements For Husband And Wife (Study At The Population And Civil Registry Office Of Medan City)**

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## **ABSTRACT**

Registration of Marriage Agreement is a series of marriage implementation. Therefore, marriage registration is an inseparable part of the implementation of the marriage in question (husband and wife). Marriage agreements experienced a shift when there was Constitutional Court Decision No. 69 / PUU-XIII / 2015, namely: "At the time, before or during the marriage bond, both parties with mutual consent can enter into a written agreement that is legalized by a marriage registrar or notary, after which the contents also apply to third parties as long as the third party is involved." The shift in norms on marriage agreements is seen from "when" the marriage agreement was made. This study aims to analyze how the registration of husband and wife marriage agreements (study at the Medan City Population and Civil Registration Office) after Constitutional Court Decision No. 69/PUU-XVIII/2015 using empirical juridical methods with a qualitative approach, this research involves document analysis, interviews with Medan City Population and Civil Registration Office employees. The research findings reveal that the Validity of Marriage Agreement Registration According to Indonesian Positive Law is regulated in Article 29 paragraph (1) of Law No. 1 of 1974 Jo. Constitutional Court Decision No. 69/PUU-XIII/2015. For Muslim couples register marriage agreements at the Office of Religious Affairs (KUA) and for couples of non-Muslim religions register their marriage agreements at the Office of Population and Civil Registration (Disdukcapil) and the Urgency of Marriage Agreement Registration at the Office of Population and Civil Registration of Medan City is firstly to fulfill the requirements in accordance with Article 29 paragraph (1) of Law No. 1 of 1974 Jo. Constitutional Court Decision No. 69/PUU-XIII/2015, secondly, the registration of a marriage agreement can be useful, among other things, to find out the legal certainty regarding the date of creation and the validity of the marriage agreement.

**Keywords:** Urgency, Registration, Marriage, Husband, Wife.

## INTRODUCTION

Marriage is essential for humans because it provides a balance in life, socially, biologically, and psychologically. By marrying, a person can fulfill all their biological needs. They can channel their sexual needs with their partner. Meanwhile, mentally and spiritually, married people are better able to control their emotions.

According to Bushar Muhammad, from a legal anthropology perspective, the legal structure of families in Indonesia which is united in a marriage has a heterogeneous legal character, which is determined by the principle of descent (genealogy) and the principle of regionality (territoriality). Through a fairly long academic process preceded by research and scientific meetings, the unification of national marriage law was born, which was realized in the form of Law Number 1 of 1974 concerning Marriage.

Law Number 1 of 1974 concerning Marriage was amended to become Law No. 16 of 2019, but this amendment did not immediately revoke Law Number 1 of 1974. The changes that occurred in Law No. 16 of 2019 were related to the age limit for marriage, which previously in Law No. 1 of 1974 differentiated the age limit for marriage where men were 19 years old and women were 16 years old, now in Law No. 16 of 2019 it was changed to be the same, both men and women have an age limit of 19 years.

Marriage generally has three legal consequences. First, it has legal consequences for the husband and wife, second, it has legal consequences for property, and finally, it has legal consequences for children. Marriage creates a legal relationship between a man and a woman, which gives rise to individual and joint rights and obligations within the family. In other words, marriage creates roles and responsibilities for both husband and wife within the family, both individually and individually.

Marriage has legal consequences for property, where Indonesia adheres to a system of uniting property between husband and wife known as "joint property". In addition to the realization of these rights and obligations, one important aspect that makes the relationship between husband and wife equal in Indonesia is the determination of joint property (gono-gini) which is contained in Articles 35 to 37 of Law Number 1 of 1974 concerning Marriage. Article 35 states: (1) Property acquired during marriage becomes joint property; (2) Property

brought by each husband and wife and property obtained by each as a gift or inheritance, is under the control of each, as long as the parties do not determine otherwise.

A married couple can enter into a prenuptial agreement regarding their property. Regarding prenuptial agreements, various legal principles also regulate them, specifically the Marriage Law. Article 29 regulates, among other things: Paragraph (1): At the time or before the marriage takes place, both parties with mutual consent can make a written agreement which is ratified by the marriage registrar after which the contents also apply to the third party involved. ; Paragraph (2): The agreement cannot be ratified if it violates the boundaries of law, religion and morality; Paragraph (3): The agreement comes into effect from the time the marriage takes place; Paragraph (4): As long as the marriage lasts, the agreement cannot be changed. Except if both parties agree to change it and the change does not harm the third party.

Having a prenuptial agreement provides a sense of security for the husband and wife, as if their relationship eventually breaks down and even leads to divorce, they have something to rely on and a legal basis. Divorcing couples often argue over the division of joint assets, arguing over who each gets their share. A prenuptial agreement makes the division of joint assets easier, as it allows for the separation of joint assets from acquired and acquired assets. Marriage agreements experienced a shift when there was a Constitutional Court Decision No. 69/PUU-XIII/2015, namely: "At the time, before or during the marriage bond, both parties with mutual consent can enter into a written agreement that is legalized by a marriage registrar or notary, after which the contents also apply to third parties as long as the third party is involved." The shift in norms on marriage agreements is seen from "when" the marriage agreement was made. If before the Constitutional Court decision, a marriage agreement could only be made before the marriage took place, but after the issuance of the Constitutional Court decision above, a marriage agreement can be made before the marriage takes place, during the marriage, or during the marriage. For example, A and B have been married for 10 years, then A and B want to make a marriage agreement, then A and B can still make a Marriage Agreement.

Regarding the principle of marriage registration, Number 4 letter b of the General Explanation of Law 1/1974 states the following: "In this Law it is stated that a marriage is

valid if it is carried out according to the laws of each religion and belief; and in addition, each marriage must be recorded according to the applicable laws and regulations. The registration of each marriage is the same as important events in a person's life, for example birth, death which is stated in certificates, an official certificate which is also included in the registration.

From the explanation above, it is clear that marriage registration is a part of the marriage process. Therefore, marriage registration is an integral part of the marriage itself, determining the validity of a marriage as a legal act. It is no exaggeration that some legal experts consider marriage registration an administrative requirement that also determines the validity of a marriage.

If a marriage is not registered, the husband and wife have no authentic proof that they have entered into a legal marriage. Consequently, from a legal perspective, the marriage is not recognized by the government. Therefore, it has no legal force. Therefore, the marriage is not protected by law and is even considered invalid or never existed.

One example related to the non-registration of a marriage agreement can be seen in the case of the Supreme Court Cassation decision Number 598 PK/PDT/2016 which is a decision that has annulled the marriage agreement deed made before a notary with all its legal consequences so that the assets obtained during the marriage become joint assets and divide the joint assets obtained during the marriage in equal amounts. Based on the Marriage Law, specifically Article 29 paragraph (1) and Article 152 in conjunction with Article 147 of the Civil Code because it is not registered at the Population and Civil Registration Office or has never been registered with the local District Court Clerk's Office, the marriage agreement is legally flawed both in terms of formal and material aspects.

Similarly, for marriages, if the marriage is Muslim, it is registered with the Office of Religious Affairs (KUA), and if non-Muslim, it is registered with the Population and Civil Registry Office (Disdukcapil). Marriage contracts are also registered: for Muslim couples, the marriage contract is registered with the KUA, and for non-Muslim couples, the marriage contract is registered with the Disdukcapil Office. There are still many problems with registering marriage contracts at the Civil Registration Office (Disdukcapil), one of which is the lack of knowledge among civil registration staff on how to register marriage contracts.

Particularly at the Medan Disdukcapil Office, many employees are reluctant to register marriage contracts. This is due to fear of becoming a third party and fear of going to court. Indonesian positive law regarding marriage agreements after the enactment of Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage, the power of a marriage agreement which was originally regulated in the Civil Code is binding after being registered at the clerk's office at the District Court where the marriage took place, however, the Marriage Law regulates new provisions, namely that its binding power applies from the time it is registered and ratified by the Marriage Registrar.

Considering that the legal issue regarding marriage agreements has a fairly broad scope of discussion from various legal disciplines (such as marriage law, contract law, etc.), in order to narrow it down so that it does not become too broad, the author emphasizes the urgency of marriage agreements made by non-Muslim couples to be registered with the Population and Civil Registry Office along with its legal implications.

There are at least several reasons why this research is necessary. First, a marriage agreement has binding force if it is registered. Many couples still feel that a marriage agreement that is already in the form of an authentic deed no longer needs to be registered, even though this can make the marriage agreement invalid and can lead to the annulment of the marriage agreement. Second, the regulation of the registration of Marriage Agreements at the Disdukcapil Office has not been expressly regulated, either in the Constitutional Court Decision or in the Basic Law on Marriage.

## **METHOD**

This study uses an empirical legal method with a qualitative approach to analyze how marriage agreements are recorded for husbands and wives, conducted through a direct study at the Medan City Population and Civil Registry Office. Previous studies on marriage registration for husbands and wives are often examined only through library research, resulting in the neglect of challenges and obstacles in the field directly. Therefore, empirical legal research is considered more suitable to capture the complexity of the urgency of registering marriage agreements for husbands and wives (a study at the Medan City Population and Civil Registry Office), because it combines legal analysis with direct

observation and interviews with stakeholders.

This research uses a qualitative approach, meaning that the research will focus more on data quality, resulting in descriptive-analytical results. According to Sugiyono, a descriptive method is one used to describe or analyze research results but not to draw broader conclusions.

The data for this study were collected through document analysis, and in-depth interviews with prison officials, and conducting interviews with Interviews will be conducted with several parties including the Disdukcapil office, the Notary, the KUA, and the Husband and Wife who executed the marriage agreement analyzed using the Marriage Law and Constitutional Court Decision No. 69/PUU-XIII/2015.

Through analytical descriptive data analysis, this research describes the description of the data obtained and connects them to each other to obtain clarity regarding a truth or vice versa, so as to obtain a new picture or strengthen an existing picture or vice versa related to the urgency of registering marriage agreements for husband and wife (study at the Population and Civil Registry Office of Medan City).

## **DISCUSSION**

Marriage has 3 legal consequences, namely legal consequences for husband and wife, legal consequences for children, and finally legal consequences for property. Marriage has legal consequences for property in accordance with Article 119 of the Civil Code, namely: "from the time the marriage takes place, by law the unity of property applies completely between the assets of the husband and wife, only regarding this matter with the marriage agreement no other provisions are made." so that from these provisions a marriage agreement can be made that deviates from the principle of complete mixing of assets made based on morality, public order and applicable regulations as stated in Articles 139 to 167 of the Civil Code.

A marriage does not always go as expected, namely the realization of a peaceful and eternal family life (household) in the sense of a *sakinah*, *mawaddah* and *mawarahman* family. But many things are twists and turns, thorns and thorns, and often there are incompatibilities, which usually only occur when sailing the ship of marriage. When there have been fights or

prolonged arguments, sometimes there is a sense of worry for the husband and wife about things and various possibilities that occur in their household that could end in divorce.

According to Article 29 paragraph (1) of Law No. 1 of 1974, it only regulates that the ratification of a marriage agreement can be carried out by a Marriage Registrar. Article 29 Paragraph (1) of Law No. 1 of 1974 is: "At the time or before the marriage takes place, both parties with mutual agreement can make a written agreement that is ratified by a Marriage Registrar, after which the contents also apply to third parties as long as the third party is involved." After the issuance of Constitutional Court Decision No. 69 Puu XIII 2015, changes related to the ratification of a Marriage Agreement changed by requiring a notarial deed and then being registered by a Marriage Registrar so that it can bind third parties.

To follow up on the recording of marriage agreements by the KUA as a form of ratification of the agreement, the Ministry of Religion issued Circular Letter Number: B.2674/DJ.III/KW.00/9/2017 concerning the Registration of Marriage Agreements as a follow-up to the Constitutional Court Decision Number 69/PUU-XIII/2015 dated September 28, 2017. The Ministry of Home Affairs has also issued Circular Letter Number 472.2/5876/DUKCAPIL as a follow-up regarding the recording of marriage agreement reports after the Constitutional Court Decision Number 69/PUU-XIII/2015 dated May 19, 2017. The ratification of marriage agreements carried out by notaries after the Constitutional Court Decision Number 69/PUU-XIII/2015 is not the same as the ratification carried out by Marriage Registrars. Following the Constitutional Court's decision Number 69/PUU-XIII/2015, notaries continue to exercise their authority to create authentic deeds of marriage agreements, which are required for registering marriage agreements at the KUA and Disdukcapil as stated in Circular Letter Number: B.2674/DJ.III/KW.00/9/2017 and Circular Letter Number 472.2/5876/DUKCAPIL. The authentic deeds of marriage agreements must still be validated by the Marriage Registrar. The purpose is to bind the third parties bound by the marriage agreement.

Marriage Registration at the Civil Registration Office is carried out for residents of religions other than Islam, which has a Legal Basis, namely: Law No. 24 of 2013 concerning amendments to Law No. 23 of 2006 concerning Population Administration, Article 78 of Presidential Regulation No. 96 of 2018 concerning Requirements and Procedures for

Population Registration and Civil Registration, Article 98 and Article 99 of the Regulation of the Minister of Home Affairs No. 108 of 2019 concerning Implementing Regulations of Presidential Regulation No. 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration.

A marriage agreement that is ratified by a marriage registrar is an inseparable part of the marriage certificate, where the agreement is recorded in the marriage certificate with the aim of ensuring that third parties are aware of the existence of a marriage agreement so that the marriage agreement also applies to third parties.

The addition of notaries' authority to validate marriage contracts inevitably creates legal uncertainty in society, especially among notaries in carrying out their duties and positions. This is because the validation of a marriage contract not only concerns the validity of the marriage contract but also involves recording it in a marriage certificate, so that third parties are aware of the existence of a marriage contract, thus making the marriage contract valid for third parties. Notaries do not have the authority to record a marriage contract in a marriage certificate, as the authority to draw up a marriage certificate rests with the marriage registry officer where the marriage is registered.

According to the Director General of Population and Civil Registration of the Ministry of Home Affairs (Dirjen Dukcapil Kemendagri) Zudan Arif Fakrulloh, there are two requirements for a marriage agreement to be recorded in Dukcapil, namely First, the marriage agreement must be in the form of a notarial deed, this has been regulated in Circular Letter 472.2 / 5876 / Dukcapil Concerning the Recording of Marriage Agreement Reporting. A notarial deed is a deed that is made and read and signed in front of a Notary. Dukcapil Service officers do not accept Marriage Agreements that are not in the form of a notarial deed. Then Second, a marriage agreement is recorded in Dukcapil if the marriage has been registered under Indonesian law. A marriage agreement cannot be implemented if a marriage is a siri marriage or is not registered at the Office of Religious Affairs.

A marriage contract, besides binding the parties who make it, namely the husband and wife, can also bind third parties. The third party in making a marriage contract is usually a creditor where the husband or wife has a debt to the creditor. The making of a marriage contract is related to this creditor because the repayment of this debt is related to the assets owned by



the husband and wife. The provisions regarding the marriage contract binding third parties are regulated in Article 152 of the Civil Code, where this provision states that third parties will not be involved in the marriage contract if the marriage contract is not registered in the general register at the clerk's office of the District Court where the marriage was conducted or if the marriage was conducted abroad, the agreement is registered at the place where the marriage certificate was registered. Judging from the provisions in Article 152 of the Civil Code, a marriage contract can also bind third parties if the marriage contract is registered at the Clerk's Office of the District Court.

The impact of the Constitutional Court Decision Number 69/PUU-VIII/2015 concerning Marriage Agreements for third parties is that the marriage agreement must be in the form of an authentic deed from a Notary and must be registered both at the KUA for Muslim couples and at the Disdukcapil Office for non-Muslim couples.

A marriage agreement can have legal consequences for a third party if the third party is involved in the marriage agreement made by the prospective bride and groom. Regarding the legal consequences for third parties, Article 29 paragraph (1) confirms that a marriage agreement is binding on third parties after it is ratified by a marriage registrar. This validation is carried out by recording the marriage agreement in the marriage certificate, as regulated in Article 12 letter h of Government Regulation no. 9 of 1975 concerning Implementation of Law no. 1 of 1974 concerning Marriage. Apart from that, a marriage agreement can bind a third party as long as the third party is involved. Furthermore, Article 29 paragraph (2) confirms that a marriage agreement cannot be ratified if it violates the boundaries of law, religion and morality. This provision reflects the existence of the principle of freedom of contract in marriage agreements, by giving the prospective bride and groom the freedom to agree on any matters in the marriage agreement that is made, as long as it does not violate legal provisions, religious rules, and norms of dignity that exist in society. The provisions of Article 29 paragraph (3) stipulate that the marriage agreement is valid from the date the marriage officially takes place. Meanwhile, paragraph (4) stipulates changes to the marriage agreement.

The Marriage Agreement must be made in written form, and made before the marriage takes place, and comes into effect from the time the marriage takes place. The agreement is

attached to the marriage certificate and is an inseparable part of the marriage certificate, and the marriage agreement is made based on mutual agreement or will, is made in writing, ratified by a civil registry officer, and must not conflict with law, religion and morality.

## **CONCLUSION**

The Validity of Marriage Agreement Registration According to Indonesian Positive Law is regulated in Article 29 paragraph (1) of Law No. 1 of 1974 Jo. Constitutional Court Decision No. 69 Puu XIII 2015. For Muslim couples, register marriage agreements at the Office of Religious Affairs (KUA) and for couples of non-Muslim religions, register their marriage agreements at the Population and Civil Registration Office (Disdukcapil). The implementing regulations for marriage agreement registration for Muslim couples are contained in the KUA Circular Letter Number: B.2674/DJ.III/KW.00/9/2017 Jo Article 39 and Article 40 of the Regulation of the Minister of Religious Affairs of the Republic of Indonesia Number 22 of 2024 Concerning Marriage Registration. The implementing regulations for registering marriage agreements for non-Muslim couples are contained in Circular Letter Number 472.2/5876/DUKCAPIL Jo Article 78 of Presidential Regulation Number 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration Jo Article 98 and Article 99 of Regulation of the Minister of Home Affairs Number 108 of 2019 concerning Requirements and Procedures for Population Registration and Civil Registration Jo Law No. 24 of 2013 Amendment to Law Number 23 of 2006 concerning Population Administration.

The urgency of registering a marriage agreement at the Medan City Population and Civil Registry Office is firstly to fulfill the requirements in accordance with Article 29 paragraph (1) of Law No. 1 of 1974 Jo. Constitutional Court Decision No. 69 Puu XIII 2015, secondly, registering a marriage agreement can be useful, among other things, to find out the legal certainty of the date of creation and validity of the marriage agreement. Registering a marriage agreement is also useful to minimize the occurrence of falsification of the date of the creation of the marriage agreement deed. The legal consequences if the marriage agreement is not registered are considered to have never existed externally, this is because

it does not have an element of publicity and will open up opportunities for denial of the contents of the agreement itself. A marriage agreement that is not registered is considered to have never existed, of course it will not be affected by the separation of assets, so that the agreement will result in a mixture of assets according to the provisions of the Civil Code. In addition, if there are interests involving third parties (outside the husband and wife) regarding marital assets, it is considered never and is not binding on third parties.

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