

DOI: <https://doi.org/10.38035/jlph.v4i4>

Received: 29 May 2024, Revised: 9 June 2024, Publish: 16 June 2024

<https://creativecommons.org/licenses/by/4.0/>

Legal Consequences of an Unregistered Marriage Agreement from a Marriage Agreement Deed Canceled by The Supreme Court (Case Study of Marriage in The Decision of The Supreme Court Number 598/PK/PDT/2016)

Widya Anggayesti Handayani¹, Gunawan Djajaputra²

¹ Tarumanagara University, Jakarta, Indonesia, widyaanggayestii@gmail.com

² Tarumanagara University, Jakarta, Indonesia, gunawandjayaputra@gmail.com

Corresponding Author: widyaanggayestii@gmail.com¹

Abstract: In Indonesia, a marriage agreement is regulated in Article 119 of the Civil Code and Article 29 of Law Number 1 Year 1974 concerning marriage. The marriage agreement is made by a notary as an authorized party and legalized by the marriage registrar. However, there are often problems related to marriage agreements, especially when they are not recorded by the marriage registrar. Meanwhile, the recording of a marriage agreement has an important urgency for each party, which provides justice, certainty, and legal benefits. The non-recording of a marriage agreement by a marriage registration officer will have legal consequences, one of which is the potential for legal problems that lead to disputes over joint property after divorce. This research analyzes how the importance of recording a marriage agreement and its legal consequences through Supreme Court Decision Number 598 PK/Pdt/2016 with a normative juridical approach. The results show that the marriage agreement can still be canceled because it does not meet the formal requirements of the provisions of Article 29 paragraph (1) of the Marriage Law, namely the element of being legalized by a marriage registration officer. The legal effect is that the assets obtained during the marriage must be separated and divided equally.

Keyword: Marriage Contract, Not Registered, Property, Marriage Registrar.

INTRODUCTION

Marriage is a very important stage in human life, both for individuals and society. Therefore, the existence of marriage cannot be separated in human life. The existence of marriage has an important position and role in customary law, western civil law, and Islamic civil law in Indonesia.

Historically, the provisions of marriage have been regulated in various sources of law in Indonesia, such as the Civil Code (hereinafter referred to as the Civil Code) and its derivatives. The regulation contains both formal and material law, which contains the conditions of marriage, the rights and obligations of husband and wife, the dissolution of marriage, and its legal consequences. One of the legal products that regulates marriage is Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law).

In Article 1 paragraph 1 of the Marriage Law, marriage is defined as a physical and mental bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family (household) based on the Almighty God. The regulation of marriage in law provides the principles of justice, certainty, and benefits for everyone who wants to get married, because marriage is a legal act. As a legal act, marriage aims to create a lasting and prosperous household.

In the case of marriage, prospective spouses can make an agreement regarding the arrangement of property during the marriage period and after divorce. The agreement contains the rights and obligations of each spouse to the property owned before and during marriage along with the mechanism for dividing the property in the event of a divorce. The benefit of the marriage agreement itself is to protect the rights of each party regarding the status of their property and reduce the potential for conflicts that will arise in the future. The marriage agreement itself is regulated in Articles 119 through 123 of the Civil Code. In the Marriage Law, Article 29 states that couples can make a marriage agreement before or during the marriage, provided that the agreement is made in writing and legalized by a notary, which agreement must not conflict with law, religion and morality. The marriage agreement is in the form of an authentic deed made by a notary, then submitted by the marriage registrar.

In reality, marriage agreements have become commonplace in the general public. This is because the marriage agreement is a preventive form of the possibilities that occur by the couple in the event of a divorce. However, in practice, there are still many couples who do not understand the urgency of a marriage agreement, especially the procedure for making a marriage agreement. However, there is a mistake made by the couple that leads to a court settlement regarding the marriage agreement, namely not registering the marriage agreement.

One of the legal phenomena that occurred due to the non-registration of a marital agreement was a lawsuit filed by HS (Plaintiff) against FMV (Defendant) who had entered into a marriage, but did not register a marital agreement. The case proceeded to the level of judicial review because the Plaintiff had property obtained before and during the marriage with the Defendant which was controlled by the Plaintiff. Thus, the author analyzes the case through Supreme Court Decision Number 598 PK/Pdt/2016.

METHOD

This research was conducted using a normative juridical research form studied through a statutory approach and a conceptual approach, where the author focuses on the consideration of the judge who granted the request for reconsideration and compares several jurisprudence regarding the recording of marriage agreements.

The data sources used are secondary data sources derived from legal materials that have legally binding force, such as the Civil Code (hereinafter referred to as the Civil Code), Law Number 1 of 1974 concerning Marriage, and Supreme Court Decision Number 598 PK/Pdt/2016 and library materials relevant to this research.

In this research, the data analysis method used is a qualitative approach, where the author obtains an understanding based on legal phenomena in depth. This is based on thinking and understanding of the research topics discussed.

RESULTS AND DISCUSSION

Urgency of Prenuptial Agreement

Referring to Article 119 of the Civil Code which reads, from the time of marriage, according to the law there is a comprehensive joint property between husband and wife, to the extent that no other provisions are made in the marriage agreement. The joint property, as long as the marriage lasts, cannot be eliminated or changed by an agreement between

husband and wife. The article explains that marriage causes the mixing and uniting of spouses' assets. Therefore, prospective spouses make a marriage agreement if they want a limit on property in marriage. A marriage agreement is an agreement or agreement made by prospective spouses before or at the time of marriage to regulate their property and the consequences that arise. As for the term *taklik talak* in Islamic law, namely the conditions that have been mutually agreed upon based on the wishes of the parties to the marriage which are then pronounced in the *ijab kabul* in the presence of witnesses in the marriage contract. However, *taklik talak* is not included in the definition of a marriage agreement.

Article 29 paragraph (1) of the Marriage Law explains that the two parties can enter into a written agreement that is legalized by the marriage registration officer by mutual agreement. The content of the marriage agreement can contain many things by paying attention to the limitations provided by law, religion, and decency. The marriage agreement cannot be changed, but it can be done if there is a third party involved in the agreement as long as there is consent from both parties and it does not harm the third party, as in Article 29 paragraph (4) of the Marriage Law.

The making of a marriage agreement still pays attention to the conditions stipulated in Articles 1320 and 1330 of the Civil Code, where the marriage agreement is also a legal act and contains rights and obligations that are fulfilled for the parties. A marriage agreement can be used as strong evidence before the law if the agreement is made before a notary as an authorized official. In principle, a marriage agreement that has been made by a notary will be registered with the Marriage Registration Officer.

Recording a marriage agreement before a Notary provides justice for the parties to understand the boundaries of the agreed assets and regulates the mechanism for distributing assets in a binding manner if things that the parties do not want to happen. In addition, the recording of a marriage agreement aims for legal certainty by knowing the validity period of the marriage agreement itself. This provides legal benefits to minimize the occurrence of default (breach of promise) and unlawful acts by falsifying the identity of the parties, the object of the agreement, and the clauses contained in the agreement.

Legal Analysis of Supreme Court Decision Number 598 PK/Pdt/2016

HS (Review Petitioner/ Cassation Petitioner/ Appellant/ Plaintiff) was a husband who had entered into a marriage with FMV (Review Petitioner/ Cassation Petitioner/ Appellant/ Defendant I) on July 20, 1994 at the Civil Registry Office of Tuban Regency Dati II as evidenced by Marriage Deed Number 15/130/A/1994 dated July 20, 1994. Subsequently, the Plaintiff and the Defendant were separated due to divorce which was validated by the decision of the District Court of Malang Number 203/Pdt.G/2011/PN Malang dated April 16, 2012 in conjunction with the Decision of the Court of Appeal Number 440/PDT/2012/PT Sby, dated November 19, 2012 which has permanent legal force (*inkracht van gewijsde*) and was registered and recorded at the Civil Registry Office of Tuban District as stated in the Deed of Divorce Excerpt Number 3523-CR-27032013-0001 dated March 27, 2013.

Prior to the marriage, the Plaintiff and Defendant I had a marriage agreement as set out in Deed of Marriage Agreement Number 200 dated July 8, 1994 made and signed before Notary Eko Handoko Wijaya S.H. (Co-Defendant). The deed contains the clause "there shall be no union of property between husband and wife, nor shall there be any union of debts and losses, nor shall there be any union of the fruits and revenues of each", as quoted in Article 1 of the Deed of Marriage Agreement. However, the deed of marriage agreement between the Plaintiff and Defendant I was never registered at the Tuban District Population and Civil Registration Office and the Registrar's Office of the Tuban District Court.

It is known that the Plaintiff was unable to obtain or enjoy the assets acquired during the marriage because they were controlled by Defendant I. The assets acquired during the marriage were (1) a house located at Jalan Taman Ijen Blok B-6 Pahlawan Trip Housing,

Klojen-Malang; (2) a house located at Jalan Taman Ijen Blok B-7 Pahlawan Trip Housing, Klojen-Malang; (3) a house located at Jalan Taman Ijen Blok B-8 Pahlawan Trip Housing, Klojen-Malang; (4) a house located at Jalan Taman Ijen Blok B-27 Pahlawan Trip Housing, Klojen-Malang; (5) other assets both movable and immovable. The assets obtained during the marriage were in the name of Defendant I and Defendant I's two biological children, so that the Plaintiff could not enjoy the assets. Thus, the Plaintiff sued Defendant I for violation of the principle of bad faith in the implementation of the marital agreement, so the Plaintiff requested to annul the marital agreement.

Defendant I filed an exception, in which the main point is that the lawsuit filed is a *nebis in idem* lawsuit because the lawsuit has been filed by the Plaintiff with the same object and parties and even the case verdict has permanent legal force through Decision Number 108/Pdt.G/2012/PN Mlg. The Head of the Population and Civil Registry Office of Tuban Regency as a party to the case (Co-Defendant in Cassation/Defendant II/ Co-Appellant) also filed an exception, the main point of which was that Defendant II was not directly related to the interests of the Plaintiff or Defendant I. Through Decision No. 25/Pt.G/2012/PN Mlg.

Through Decision Number 25/Pdt. G/2013/PN Tbn which was decided on November 25, 2013, the Panel of Judges of the Tuban District Court granted the Plaintiff's claim in part, which contained the ruling that the Marriage Agreement was void, declaring all assets obtained during the marriage between the Plaintiff and Defendant I to be the joint property of the Plaintiff and Defendant I, ordered Defendant I to divide the joint property acquired during the marriage of the Plaintiff and Defendant I equally between the Plaintiff and Defendant I, and the confiscation of the joint property acquired during the marriage of the Plaintiff and Defendant I (marital beslag) that had been placed by the Tuban District Court was valid and valuable. On appeal, Defendant I filed an appeal and the Surabaya High Court rejected the appeal through its Decision Number 124/PDT/2014/PT SBY dated April 17, 2014. However, through the Supreme Court Decision Number 503 K/Pdt/2015 which was decided on June 22, 2015, the Supreme Court granted the appeal of Defendant I and annulled the decision of the Surabaya High Court Number 124/Pdt/2014/PT Sby, in conjunction with the Decision of the Tuban District Court Number 25/Pdt.G/2013/PN Tbn by ordering to lift the confiscation of the joint property obtained during the marriage of the Plaintiff and Defendant I (marital beslag) which had been placed by the Tuban District Court.

The Plaintiff filed a request for reconsideration on June 30, 2016, which contained the following cassation memory.

- a. The marriage between the Plaintiff and Defendant I never had a legal separation of property agreement and the marriage agreement was not registered, therefore the agreement was invalid;
- b. The marriage agreement between the Plaintiff and Defendant I did not fulfill the formal requirements as set out in Article 29 paragraph (1) of Law No. 1 of 1974 Concerning Marriage and also Article 12 of Government Regulation No. 9 of 1975 Concerning the Implementing Regulations of Law No. 1 of 1974;
- c. The legal effect of a marriage agreement that cannot be ratified by the marriage registrar is void and has no legally binding force, as in Article 35 of the Marriage Law;
- d. There was an error by the judge who overturned Supreme Court Decision Number 503 K/PDT/2015 on June 22, 2015 in interpreting the marriage agreement which did not use the legal basis of the Marriage Law and Government Regulation Number 9 of 1975, which equated the marriage agreement with agreements in general.

In the consideration of the Panel of Judges at the Supreme Court who heard the Judicial Review, it was stated that the application of Article 29 paragraph (1) of the Marriage Law must be in accordance with the grammar of the article and must not be interpreted in any other way. This is because the provisions of the article are imperative and public in nature

that must be obeyed. Thus, the Panel of Judges granted the Plaintiff's request for judicial review and annulled Supreme Court Decision Number 503 K/PDT/2015 dated June 22, 2015.

Referring to the judge's consideration, the provisions of Article 29 paragraph (1) contain both material and formal requirements. The material requirements in a marriage agreement are the same as in a general agreement as in Article 1320 KUPerdata, namely:

1. Agreement of those who bind themselves;

The Plaintiff and Defendant I are parties who have agreed to enter into a marital agreement. Based on this agreement, the Plaintiff and Defendant I knew and understood the consequences that would occur in the marriage in the division of joint property obtained. In addition, the Plaintiff and Defendant I made the agreement in the presence of the Co-Defendant and it was set out in Deed of Marriage Agreement Number 200 dated July 8, 1994.

2. Capacity to enter into an agreement;

Both the Plaintiff and Defendant I entered into the marital agreement, the parties were legally competent in terms of age and were not under guardianship. The meaning of capacity in the above legal phenomenon is that the parties have a sound mind to perform legal acts.

3. A specific matter; and

The marriage agreement between the Plaintiff and Defendant I contained provisions on the division of joint property during the marriage. This is evidenced in the facts of the trial, by the quotation of Article 1 of the Marriage Agreement Deed as stated in the Plaintiff's argument, namely that from the time of the marriage, according to the law, there is complete joint property between husband and wife, to the extent that no other provisions are made in the marriage agreement. The joint property, as long as the marriage lasts, may not be eliminated or changed by an agreement between the husband and wife.

4. A good cause

A marriage agreement is made in good faith by each party. This must pay attention to matters that are regulated and not regulated in the agreement. In Article 29 paragraph (2) of the Marriage Law, a marriage agreement cannot be legalized if it violates the boundaries of law, religion, and decency, which one of the legal boundaries is to harm one of the parties.

In addition to the material aspects of Article 29 paragraph (1) of the Marriage Law, the formal aspects of the article must also be fulfilled. Referring to this article, the marriage agreement must be legalized by the marriage registrar. The recording of the marriage agreement will have legal consequences for the third party, namely Defendant II through the judicial review decision. However, Defendant II never received the deed of marriage agreement between the Plaintiff and Defendant I, so Defendant II cannot be involved in the case. The recording of a marriage agreement authorized by a marriage registration officer is absolute and must be adhered to by the parties.

Although the deed of marriage agreement is authentic because it has been made by a notary as an authorized party, the marriage agreement does not necessarily involve the notary being the party responsible for continuing the procedure of validating the marriage agreement until it is recorded by the marriage registrar. Thus, because the marriage agreement between the Plaintiff and Defendant I did not fulfill the formal requirements, the marriage agreement was void.

CONCLUSION

Marriage agreements have been expressly regulated in Article 29 of the Marriage Law. Article 1 has required that a marriage agreement can be made before the marriage takes place in the form of a written agreement that is legalized by the marriage registrar and applies to

third parties as long as the third party is involved. Then, the marriage agreement must contain conditions that do not violate the limits of law, religion, and decency in order for the agreement to be legalized. The marriage agreement can take effect from the time the marriage takes place and cannot be changed unless there is consent from both parties and it does not harm third parties.

The urgency of recording a marriage agreement is to ensure the fulfillment of the rights and obligations of the parties in managing the assets obtained during marriage. This is intended in good faith for the common interest if there are consequences or risks that occur in marriage, namely divorce. By recording the marriage by the marriage registrar, the marriage agreement can be used as strong evidence in the event of a dispute over the joint property obtained by each party. This aims to minimize the potential for default or illegal acts committed by one of the parties.

In Supreme Court Decision Number 598 PK/Pdt/2016, the marriage agreement was void due to not fulfilling the formal requirements in Article 29 paragraph (1) of the Marriage Law, namely not registering the deed of marriage agreement with the marriage registrar. This resulted in a joint property dispute carried out by Defendant I by controlling and enjoying the joint property that had been obtained during the marriage, while the Plaintiff and Defendant I had broken up their marriage due to divorce.

Therefore, the author agrees with the consideration of the Panel of Judges who heard the judicial review of the legal phenomenon above because Article 29 paragraph (1) of the Marriage Law is clear and can be understood by the community. This also means that each party who will enter into a marriage can make a marriage agreement and is not required. If the marriage agreement has been made, the parties can apply for ratification of the marriage agreement to the marriage registrar so that the marriage agreement can be valid and legally binding. In the event of legal problems with all the consequences that arise, the marriage agreement that has been ratified by the marriage registrar can become strong evidence in court.

REFERENCE

- Abdillah, Yasin Yusuf. 2017. Perjanjian Perkawinan Sebagai Upaya Membentuk Keluarga Bahagia (Tinjauan Maqasid asy-Syari'ah). *Jurnal Al-Ahwal*: Vol. 10: No. 2.
- Jamaludin. Amalia, Nanda. 2016. *Buku Ajar Hukum Perkawinan*. Lhokseumawe: Unimal Press.
- Kitab Undang-Undang Hukum Perdata
- Prawirohamidjojo, P. Soetojo. 1988. *Pluralisme dalam Perundang-Undangan Perkawinan di Indonesia*. Airlangga University Press.
- Rahmatika, Wisda Rauyani Efa. Khisni, Akhmad. 2017. Analisis Yuridis Atas Perjanjian Perkawinan Ditinjau Dari Undang-Undang NO.1 TAHUN 1974 Tentang Perkawinan Dan Implikasi Putusan MK NO.69/PUU-XIII/2015. *Jurnal Akta*: Vol. 4; No. 3.
- Ramadhanti, Gita. Elmiyah, Nurul. Humaira, Lauditta. 2023. "Kepastian Hukum Perjanjian Perkawinan yang Tidak Didaftarkan (Studi Kasus Putusan Pengadilan No.449/PDT/2016/PT.BDG)," *Lex Patrimonium*: Vol. 2: No. 1, Article 7.
- Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan