Legal Consequences of the Marriage Agreement Made by Notaries, Then Not Registered

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Abstract
The marriage agreement is based on Law Number 1 of 1974 Concerning Marriage, a marriage agreement is a means of protecting the assets of a husband and wife, this agreement the parties can determine their respective inheritance. Is there a separation of assets in the marriage from the beginning or is there a shared asset, but the method of division is divided if a divorce occurs. The inheritance of each husband and wife and property obtained as a gift or inheritance, respectively, is under the control of each other as long as the parties do not specify otherwise. The method used in this research is the normative juridical approach. The data used in this paper are secondary data and primary data as a complement to secondary data. The results of research and discussion, namely the marriage agreement that is not recorded or registered, is invalid according to the provisions of Article 29 paragraph (1) of Law Number 1 of 1974. The legal consequences of marital property if the marriage agreement is not registered is that the property becomes joint property and assets default. Legal protection for a disadvantaged third party is by means of preventive legal protection in which a third party has the right to assume that the marriage agreement does not exist, whereas the refractive legal protection that is the third party has the right to file a lawsuit in court. Suggestions that the notary provides guidance to register the marriage agreement deed to the Population and Civil Registry Office in order to obtain validity and publicity. And the marriage agreement must be registered so as not to harm a third party.

Keywords: Registration of Marriage Agreement, Marriage Property, Legal Protection of Third Party

Abstrak

Kata kunci: Pendaftaran Perjanjian Kawin; Harta Perkawinan; Perlindungan Hukum Pihak Ketiga
Introduction

Marriage is a sacred, strong, solid covenant to live legally together between a man and a woman to form an eternal, well-mannered, and loving home (Thalib, 1986). Article 1 of Law No. 1 of 1974 explains that Marriage is a birth bond between a man and a woman as a husband and wife that aims to form a happy and eternal family (home) based on the One True Godhead. Marriage according to the KuHPerdata is a recorded relationship between a man and a woman in co-living as a husband and wife (Dalio, 1995).

For Indonesians who are compound in customs, tribal and religious, each has a different view of life from one another, especially in terms of marriage and family life. Marriage has a very wide influence both in family relationships in particular and in public and state life in general. Therefore, in this case, there needs to be a rule of law governing matters relating to marriage. The government established a National Marriage Law namely Law No. 1 of 1974 (Statute Book No. 1/1974) and the explanation is contained in the addition of Statute Book No. 3019 enacted on January 2, 1974, for the smooth running and guidelines in the implementation of the law, the Government issued Government Regulation of the Republic of Indonesia No. 9/1975 on the Implementation of Law No. 1/1974 (Statute Book No. 12/1975) on April 1, 1975, then with the exit of Government Regulation No. 9 of 1975 began Law No. 1 of 1974 implemented throughout Indonesia.

Marriage is no longer viewed from the point of view of the relationship stipulated in civil law only (as it is governed by state law) but also from a religious point of view. The right or not of marriage is determined by the law of each religion and its beliefs. For the State as a sign of the validity of the marriage, it should be noted according to the prevailing laws and regulations (Ichsan, 1986). After the marriage is declared valid, there is a right and obligation between the husband and wife including the appearance of marital property. Marital property often causes problems in the family, in anticipation
of conflict over marital property, then a marriage agreement is made either before or at the time of the marriage agreement.

The marriage agreement is stipulated in Article 29 of Law No. 1 of 1974 on Marriage, namely:

(1) At the time, before or during the marriage, the two parties upon mutual consent may submit a written agreement ratified by the Marriage Registrar or Notary, after which its contents apply also to the third party as long as the third party is stuck.

(2) The Agreement is inseparable if it violates the limits of law, religion, and decency.

(3) The agreement is effective from the moment the marriage is held.

(4) During the marriage, the agreement cannot be changed, unless both parties have an agreement to change and the change does not harm the third party.

Under the above provision stipulated as long as it does not violate the limits of law, religion, and decency, it is considered lawful (Damanhuri, 2007: 11). Marriage agreements are made in the form of a deed, both underhand and in the form of the authentic deed made by an authorized official. The marriage agreement is a means of protecting the brides’ property. Through this agreement, the parties can determine their respective possessions. Whether from the beginning there is a separation of property in marriage or there is a shared property but regulated the way it is a division in the event of divorce. The innate possessions of each husband and wife and the possessions obtained by each as a gift or inheritance are under their mastery as long as the parties do not determine the other.

On October 27, 2016, the Constitutional Court (MK) issued Ruling No. 69/PUU-XIII/2015, the Court of Appeal granted the application for a portion of article 29 paragraph (1), paragraph (3) and paragraph (4) of Law No. 1 of 1974 on Marriage, as for the changes as follows:

**The old one:**

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(1) At the time or before the marriage is held, the two parties by mutual consent may enter into a written agreement ratified by the Clerk of the marriage registrar, after which its contents apply also to the third party as long as the third party is stuck.
(2) The Agreement is inseparable if it violates the limits of law, religion, and decency.
(3) The agreement is effective from the moment the marriage is held.
(4) During the marriage, the agreement cannot be changed, unless both parties have an agreement to change and the change does not harm the third party.

**What's New:**
(1) At the time, before or during the marriage bond of the two parties upon mutual consent may submit a written agreement ratified by the marriage registrar or Notary, after which its contents apply also to the third party as long as the third party is stuck.
(2) The Agreement is inseparable if it violates the limits of law, religion, and decency.
(3) The Agreement is effective from the date the marriage is held unless otherwise specified in the Marriage Agreement.
(4) During the marriage, the marriage agreement may be regarding the property of the marriage or any other agreement, irreversible or revoked, unless from both parties there is an agreement to change or revoke, and the change or revocation does not harm the third party.

Based on the above description there are legal facts found in Verdict No. 25/Pdt.G/2013/PN. Tuban summarized that the marriage between DR. F.M. Valentina, S.H., M.Hum, and Dr. Hardi Soetanto who had held the marriage at the Civil Records Office of Dati II Tuban District on July 20, 1994, as described in The Excerpt of Marriage Act No. 15/130/A/1994 dated July 20, 1994. The marriage has broken up due to divorce as stated in the Malang District Court Ruling No.203/Pdt.G/2011/PN. Malang dated April 16, 2012 jo. High Court Ruling No. 440/PDT/2012/PT. SBY dated
November 19, 2012, and which ruling has permanent legal force (inkracht van gewijsde) and has been registered and recorded in the Tuban District Civil Records Office as stated in the Divorce Act Excerpt No. 3523-CR-27032013-0001 dated March 27, 2013, but after the divorce, there was a problem with the joint property obtained during the marriage due to all the possessions obtained during the marriage all on behalf of DR. F.M Valentina, S.H., M.Hum, and her two biological children. In addition, there are lawsuits from third parties who feel harmed, namely those who cooperate with companies run by Dr. Hardi Soetanto and DR. F.M Valentina, S.H., M.Hum during the marriage so that the joint property acquired during the marriage is declared execution/auction in accordance with the Malang District Court Ruling No. 23/Pdt.Plw/2018/PN Mlg because the third party is not aware of any marriage agreement deed made by the spouse.

Prior to the marriage, both parties had made marriage agreements as stated in The Deed of Marriage Agreement No. 200 dated July 8, 1994, which was made and signed before Notary Eko Handoko Wijaya, SH Notary in Malang, but the marriage agreement made and signed between the two parties was never registered in the Office of Population and Civil Registry of Tuban Regency or never registered with the Clerk’s Office of tuban District Court and according to the Judge’s Consideration of the Decision of Tuban District Court No. 25/Pdt.G/2013/PN.Tbn, the marriage agreement has a legal defect in terms of both formal and material and contrary to Article 29 paragraph (1) of Law No. 1 of 1974 on Marriage jo. Article 147 of the Civil Code. Whereas according to Article 15 paragraph (1) of Law No. 2 of 2014 of the Notary Department that the Notary has the authority to make an authentic deed as a means of evidence including the deed of marriage agreement, from the above description arises the question of the marriage agreement made in front of the notary but not registered will be a valid marriage agreement.

According to Article 37 of Law No. 1 of 1974 on Marriage "If a marriage breaks up due to divorce, the joint property is governed by its own law", if in marriage there is an unregistered marriage agreement and then there is a divorce how the legal consequences of the marital property are.
The making of marriage agreements throughout the marriage will result in the legal status of the property contained or obtained in the marriage. The making of the marriage agreement should not harm third parties. In the Ruling the Constitutional Court does not govern this, and in Law No. 1 of 1974 only determines that if the marriage agreement has been ratified by the marriage registrar then the marriage agreement is binding on a third party. In this case, there is no provision explicitly mentioned to protect the interests of the third party and the procedure that must be taken in order for the third party to be given the opportunity to object to the marriage agreement made by the husband and wife so that there needs to be an arrangement regarding the protection of the law against the third party. In the above case that the joint property acquired during the marriage ends in execution/auction because the marriage agreement made by the parties is not registered, this will cause harm to the third party, how the legal protection of the harmed third party is.

Research Problems

Based on the issues outlined above, it is interesting for the authors to carry out this research, so the legal issues raised in this study are:

1. What are the legal consequences of the status of marriage certificate deed made by Notary and not registered?
2. What are the legal consequences of marital property if the marriage agreement is not registered and there is a divorce?
3. How is the legal protection against third parties harmed by unregistered marriage agreements?

Research Methods

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This study uses a type of normative juridical research. Research into normative juridical law or literature has 3 (three) approaches applied in this study, among others: Statute approach, Case approach, and analytical approach. The data used in this study is secondary data and primary data as a complement to secondary data. While the data analysis techniques used are qualitative normative.

Discussion

1. As a result of the Law Against Marriage Agreements That Are Only Made in the Presence of Notaries and Not Registered.
   a. The validity of Marriage Agreement Deed Only Made In Front of Notary, Which Is Not Registered

   The marriage agreement is essentially a legal action in the legal space of the treaty, therefore the terms of its validity shall refer to Article 1320 of the Criminal Court (Isnaeni, 2016). The Agreement can be said to be valid if it has fulfilled Article 1320 of the Civil War in which case there are 4 (four) conditions, namely:
   1) There is an agreement between those who bind themselves;
   2) Ability to make agreements;
   3) A specific thing or a specific object;
   4) There is a reason (causa) that is halal.

   Law No. 1/1974 on Marriage Article 29 paragraph (1) with amendments based on Constitutional Court Ruling No. 69/PUU-XIII/2015, it has been determined that marriage agreements must be made at the time or before marriage in writing and ratified by the Clerk of the Marriage Registrar. The confirmation of the Marriage Registrar's Office conducted by the Clerk of Marriage is indeed one of the conditions that must be fulfilled by the parties who make the marriage agreement. However, there is obscurity about the meaning of the word passed in Article 29 paragraph (1) of Law No. 1 of 1974 concerning Marriage because there is no further explanation in either The
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Explanation of Law No. 1 of 1974 concerning Marriage or government regulation No. 9/1975 on the Implementing Regulation No. 1 of 1974 on Marriage whether the ratification in question to ratify a previously unauthorized marriage agreement becomes valid or for publication of a third party or another party about the existence of the marriage agreement. The arrangement of the marriage agreement in Law No. 1 of 1974 and its implementing regulations are considered incomplete thus causing a multi interpretation of the substance of the rule of law itself. What is meant by the multi interpretation here is that the ratification of the Clerk of marriage has the function of ratifying the Marriage Agreement or simply as a condition of publicity. Also, the confirmation of the Clerk of marriage is done to ratify the entire contents of the agreement that binds all parties or only confirms part and concerns the third party only. People who do not understand the terms relating to the law will assume that the ratification made by the Clerk of the Marriage Registrar in the Office of Civil Records or the Clerk of the Registrar of Marriage in the Office of civil records or the Clerk of the marriage of the Office of Religious Affairs is necessary to make their unauthorized marriage agreement valid so that if the agreement is not ratified by the Registrar of Marriage, the public will consider the marriage agreement void and invalid.

Based on the above description, there are 2 (two) important points in Article 29 paragraph (1) of Law No. 1 of 1974 on Marriage, namely:

a. First, the marriage agreement must be registered, thus to fulfill the publicity principle of the marriage agreement. This is for a third party (outside the spouse or wife) to know and submit to the rules of the marriage agreement made by the couple. If the marriage agreement is not registered, then the marriage agreement is not binding on the third party but only binding or applicable to the parties who make it, namely the husband and wife concerned.

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b. Secondly, since the enactment of Law No. 1 of 1974, the registration or recording of marriage agreements is no longer done in the Clerk of the District Court but in the Clerk of marriage. For couples who are Muslim the recording of marriage agreements is done by the Office of Religious Affairs, while non-Muslim couples, the recording is done by the local Civil Records Office (online law, http://m.hukumonline.com, retrieved 17 October 2019, at 10.28 WIB.).

Marriage agreements not recorded in the Registrar of Marriage have legal consequences on several aspects including (Adelin, 2013):

a) The legal consequences of the deed of a marriage agreement

Marriage agreements are the same as treaties in general have terms that must be fulfilled. One of the terms of the marriage agreement stipulated in Article 29 paragraph (1) of Law No. 1 of 1974 is regarding its recording. Marriage agreements must be recorded to be valid and have legal consequences. Unidentified marriage agreements are considered to never exist externally because they have no element of publicity and denial of the content of the marriage agreement is easier for both parties to do because the juridical consequences are not so strong.

b) Legal consequences on marital property

Marriage agreements that are not recorded are considered to exist so that there is no effect on the absence of separate property, therefore in marriage, there will be a mixture of property by the provisions in the Civil War for those who held marriage before the Marriage Act was enacted and there is a joint property for those who held the marriage after the Marriage Act was enacted.

c) Legal consequences on third parties

The third-party that is outside the two parties (husband and wife) who have an interest in property in the marriage, if the marriage is
not recorded brings the result of the law of the marriage agreement is considered never there and is not binding on the third party.

Article 29 paragraph (1) of Law No. 1 of 1974 applies the principle of freedom of contract, in that article gives freedom for the parties to self-regulate what the content of the marriage agreement should not conflict with the norms of decency and legal norms. The agreement is also binding on the law for the parties after there is an agreement from the parties who make the agreement as well as the marriage agreement. After there is an agreement between the prospective husband and the prospective wife to make the marriage agreement then the marriage agreement is binding for the parties who make it in this case the married couple who make the marriage agreement, but in the marriage agreement by Article 29 paragraph (1) of Law No. 1 of 1974, there is little difference which is that the marriage agreement must be ratified by the Registrar of Marriage to be able to bind the third party for the third party to obtain legal protection.

Based on the results of the case data study Court Ruling No. 25/Pdt.G/2013/PN.Tbn that the marriage agreement struck by Dr. Hardi Soetanto and DR. Linna who was never registered with the Civil Records Office is invalid so that if it is related to the provisions of Article 29 paragraph (1) of Law No. 1 of 1974 and the opinion of the experts who determine that the marriage agreement should be recorded in the Clerk of the Marriage Registrar is contradictory, according to the provisions in Article 29 paragraph (1) of Law No. 1 of 1974 on Marriage that marriage agreements made before January 2, 1974, are on the date of enacting the Marriage Act, registered in the general register organized by the Clerk of the District Court, after January 2, 1974, the marriage agreement must be ratified to the Clerk of marriage in both the Office of Civil Records and the Office of Religious Affairs (KUA) so that its contents are also (binding) of third parties. But what if the marriage agreement forgot to be recorded
either because of the oblivion of the parties or the notary’s insanity in notifying the correct recording. The solution for married couples after the enacting of Law No. 1 of 1974 on Marriage and intending to register their marriage agreement in the Marriage Registrar's Office is to file a marriage agreement recording through an application to the District Court in the form of a determination. The parties shall apply for the determination to the District Court whose contents order that the marriage agreement is recorded in the register book of marriage registration both in the Office of Civil Registry and in the Office of Religious Affairs (KUA) so that the contents also apply (binding) third parties, (Wiryomartani, Legal Studies in Practice, 2018) and as evidence than on the marriage deed in the backyard will be typed according to the determination of the court that a marriage agreement has been made between the husband and wife. As for Non-Muslim couples, the recording is done based on the Director-General of Population and Civil Registration of the Ministry of Home Affairs Number: 472.2/5876/DUKCAPIL on The Recording of Marriage Agreement Reporting (Letter of the Director-General 472.2/2017) in the letter annex stating that the marriage agreement can be made before, at the time, and during the marriage with a notary deed and reported to the Implementing Agency or Technical Implementing Unit (UPT) of the Implementing Agency. On the reporting of the marriage agreement, the Civil Registry Officer of the Implementing Agency or UPT of the Implementing Agency makes marginal records on the deed register and the quotation of the marriage certificate.

Based on the consideration of the Panel of Judges that considers that in addition to the Deed of Marriage Agreement No. 200 dated July 8, 1994, was made and signed before the Defendant/Eko Handoko Wijaya, SH, Notary in Malang contravenes and violates Law No. 1 of 1974 on Marriage in Chapter V Article 29 paragraph (i) because it is not registered in the Tuban District Civil Service office and has

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never been registered with the Clerk’s Office of Tuban district court, as well as the freedom of contract principles, especially the principle of good faith and legal defects both formal and material, then the marriage agreement must be declared void with all legal consequences by the Tuban District Court.

For the above explanation, the researchers argue that the marriage agreement that was never registered with the Office of Civil Records by the Registrar of Marriage is invalid and only binds the parties that make it the husband and wife, while against the third party the marriage agreement is considered invalid or considered invalid until the third party considers that the married couple is married with a mixture of assets. Looking at the principle of applying publicity in the realm of law, it can be seen that from the principle of publicity itself is a notice or announcement to another party or a third party to legal events occurring. By the provisions of Article 29 paragraph (1) of Law No. 1 of 1974 concerning Marriage that the legalization of marriage agreements made by the Clerk of marriage there is an element that is publicity to the third party in connection with the existence of the marriage agreement, to fulfill the publicity element of the marriage agreement must be ratified by the Registrar of Marriage at the specified institution, the importance of this authorization so that the third party knows and submits to the marriage agreement. The confirmation made by the Registrar of Marriage is only to record the marriage agreement which is later the marriage agreement is included in the marriage certificate so that the relevant third party will know about the presence of the marriage agreement. The principle of publicity in the marriage agreement is to include consensuality i.e. self-publicity as an integral part of the policy while the documenting process has been carried out.

b. As a result of the Law of The Deed of Marriage Agreement Made by the Notary, which was annulled by the Court.
The annulment of the marriage deed may be based on the agreement of the parties or through a court ruling, not only because of the result of notary errors or omissions in making the deed, but the cancellation of the notarial deed may also be caused by the error or omission of the parties who bind each other in the deed so that in the absence of error or negligence leads to a claim from either party. Broadly the cancellation of notary deed includes (Adjie, 2011):

a) Canceled by the parties themselves

The parties come back to the notary to make a deed of annulment on the deed, and thus the canceled deed is no longer binding on the parties, and the parties bear all the consequences of the annulment (Supreme Court of the Republic of Indonesia Decision No. 1420 K/Sip/1978, dated May 1, 1979.).

b) Evidenced by the principle of valid presumption

If the parties do not agree on the deed to be canceled, one party may sue the other party, with a lawsuit to degrade the notary deed into a deed underhand. Once relegated, the judge who examines the lawsuit can give its interpretation of the degraded notary deed, whether it remains binding on the parties or is overturned. It depends on the proof and judgment of the judge.

Notary authority in making marriage treaty deed in addition to referring to the general terms of the agreement stipulated in Article 1320 of the Civil War also refers to Article 29 paragraph (1) of Law No. 1 of 1974 on Marriage in which the Article still retains the phrase marriage agreement with a written agreement. The marriage agreement is necessary with a notary deed due to its long-term nature and only expires if the marriage ends due to death or divorce if the marriage agreement is made with a notary deed and signed by the parties means the notary guarantees the contents of the marriage agreement by what is stated in the minuta of the deed, to the parties given a copy of the deed that is equal to the minuta of the deed and
applies as a means of proof that has perfect evidentiary power, thus there is a guarantee of legal certainty regarding the content of the agreement against the third party.

Based on the data of the judge's legal consideration in the case of The Verdict No. 25/Pdt.G/2013/PN.Tbn which cancels the deed of marriage agreement which states that:

1) The deed of marriage agreement that is not registered by the Registrar of Marriage at the Office of Civil Records, then the deed of marriage agreement becomes invalid;

2) The Deed of Agreement does not qualify formal and material as stipulated in Article 29 paragraph (1) of Law No. 1 of 1974 On Marriage;

3) In its implementation is not by the rules, so the deed of the marriage agreement seems to save the property owned by the Plaintiff. So the Judge's Decision in The Case of The Verdict No. 25/Pdt.G/2013/PN.Tbn is correct and has been by the prevailing laws and regulations.

2. The legal consequences of marital property if the marriage agreement is not registered and there is a divorce.

The content of the marriage agreement may concern anything that does not conflict with the terms of the agreement in general, only the agreement is ratified in front of the Clerk of the Registrar of Marriage. The marriage agreement under Law No. 1 of 1974 is essentially irreversible unless both parties agree to change by record shall not harm the third party. In essence, marriage agreements under the Marriage Act can be amended as long as it is agreed by both parties of origin does not harm the third party, while the marriage agreement according to the Civil War should not be changed during the marriage. (Hartanto, 2017)

The provisions of Article 35 of Law No. 1 of 1974 on Marriage are stipulated that:
a. Property acquired during the marriage becomes a joint property;
b. The innate possessions of each husband and wife and the innate possessions obtained by each as a gift or inheritance are under their mastery as long as the parties do not specify the other.

From the provisions of Article 35 (b) above it can be known that the principle contained in the Marriage Law on a property in marriage in Indonesia is to adhere to a separate principle. And whoever is in the marriage, he is the All-be of the unable to do so.

The marriage agreement has a good purpose and benefit which is a preventive measure in the event of a divorce because with the making of the marriage agreement will facilitate the distribution of gono-gini property. With this path of discord between ex-spouses who are divorced, it does not need to be prolonged. (Faradz, Journal of Legal Dynamics 3, Vol. 8.). In this case, if the marriage agreement made by the husband and wife is not ratified by the Registrar of Marriage then the marriage agreement becomes unauthorize. Because based on Article 29 paragraph (i) of Law No. 1 of 1974 on marriage stipulates that the marriage agreement that has been made must be ratified by the Clerk of a marriage of the Office of Civil Records or the Clerk of a marriage of the Office of Religious Affairs.

Article 36 of Law No. 1 of 1974 on Marriage states:
1) Regarding the joint property of the husband or wife may act with the consent of both parties;
2) Regarding the property of each husband and wife have the full right to do legal deeds concerning a joint property.

Property is the property controlled by each owner, namely husband or wife. Each husband or wife has the right to do legal action regarding his property.

The provisions of Article 37 of Law No. 1 of 1974 on Marriage state that if a marriage breaks up due to divorce, the joint property is governed by its law. So if the whole marriage of a husband or wife wants to do a
legal action concerning mutual property, then they must obtain approval from the other party first. But in the event of divorce, there is no need for permission from the spouse, so the joint property is regulated according to its laws in the form of religious law, customary law and other laws. In the event of a divorce in the absence of a marriage agreement concerning the separation of property, in practice it usually has difficulty in proving it, so that to be clear about "each part", there is a marriage agreement concerning the separation of the property. To marital property, Djuhaendah Hasan said that under Article 37, the arrangement of marital property is returned by law to the family law that applies before the enactment of the Marriage Act (Hasan, 1983). The Marriage Act is more oriented towards customary law and avoids European Civil Law which is much different from Indonesian Law. This does not mean that the Marriage Act has accepted the Customary Law concerning marital property. Indeed, this is possible for families who are parental, but not by patrilineal or matrilineal families or households, therefore in the Marriage Act the word "as long as the parties do not specify another" and the words "governed according to their laws".

For prospective spouses who want to avoid the mixture of property unanimously in the marriage to be carried out, the law regulates the provisions of such irregularities by making a marriage agreement. In general, a marriage agreement is made on the grounds of:
1. Where there is a greater amount of wealth on one party than the other;
2. Both parties each bring considerable input (aanbrengst);
3. Each has its own business, so that if the word one falls (failliet), the other is not stuck;
4. For the debts they make before marriage each will be solely responsible (Tutik, 2006: 129).

Based on case data of Court Ruling No. 25/Pdt.G/2013/PN. Tbn because the marriage agreement was never registered with the Office of Civil Records and also the third party was not aware of any mating
agreement between Dr. Hardi Soetanto and Dr. Linna. By Habib Adjie's opinion referring to the Jurisprudence of the Supreme Court Decision No. 3405/K/PDT/2012 dated February 19, 2014 affirming the marriage agreement that is not recorded to be without legal force, so that the existing joint property must be divided by two divorced spouses 50%-50%. Therefore, Habib stressed the importance of recording marriage agreements (Adjie, 2011).

The Judge's Legal Consideration stipulates that based on the inventory of the assets produced by the spouse either from the ownership and year of the acquisition of the property, it turns out that the moving goods and immovable goods obtained by the spouse during the period of 1994 to 2011 or during the marriage, then the Panel of Judges held that the properties as mentioned in the Verdict consisted of immovable goods in the form of land and buildings and moving goods in the form of cars and deposits are joint assets obtained by the couple during the marriage.

Based on the study, the researchers argued that when it comes to legislation, expert opinion, and judge's legal consideration that marriage agreements are not registered by marriage registrars, the marriage agreement does not have legally binding powers in accordance with the provisions of Article 35 of Law No. 1 of 1974 on Marriage in which the marriage certificate is not registered or not recorded by the Clerk of Marriage at the Office of Civil Records then the legal consequences of the property of marriage return to the Joint Property and Innate Property.

3. Legal Protection against Third Parties Harmed by Unregistered Marriage Agreements.

There is a legal void regarding the protection of the law for citizens to unregistered marriage agreements, forcing judges based on their authority to dig or make legal efforts so that the agreement can provide legal certainty for those who make it and are used accordingly especially in legal actions concerning third parties. In general, those
referred to by third parties are those who are not for themselves or based on a representative, whether legal or representative by agreement, agreeing. "Those classified in this Category of Third Parties are broad and dependent on their relationship with the parties to an agreement." (Budiono, 2007). Looking at the application of the principle of publicity in the legal realm, it can be seen that from the principle of publicity itself is a notice or announcement to another party or a third party to the event of the law occurring. The ratification of the marriage agreement made by the Registrar of Marriage there is an element that is publicity to the third party in connection with the existence of the marriage agreement. To fulfill the publicity element of the marriage agreement must be ratified by the Registrar of Marriage at the specified institution, the importance of this confirmation so that the third party knows and submits to the marriage agreement, for example in the event of a trade by the husband or wife, if there is a marriage agreement then the marriage agreement will bind it in legal action that it will do. The confirmation made by the Registrar of Marriage is only to record the marriage agreement which is later the marriage agreement is included in the marriage certificate so that the relevant third party will know about the presence of the marriage agreement.

As long as the marriage agreement has not been recorded in the Marriage Registrar’s Office, the third party may consider the marriage to take place without separation of property, but if the third party does not know that the marriage agreement is not registered with the Marriage Registrar, then the third party may assume that the husband and wife are married without separation of property, whereas if the third party knows that the marriage agreement held by the married couple associated with it is not registered with the Registrar of the District Court and/or in the Registrar of Marriage, then he should not assume that there is no marriage agreement between the spouse, until in the event of a debt between the husband and/or the wife with the third party, then the
settlement of the debt is carried out by involving the joint property owned by the spouse.

According to R. Soetojo Prawirohamidjojo and Marthalena Pohan, "if the husband and wife do not want that the marriage agreement will apply to a third party, then the entire marriage agreement does not have to be registered in the public register. However, if they wish that only some provisions apply to third parties, then only those provisions must be recorded in those registers. It is up to the husband and wife what they want to register. They are not obliged to register, as long as they are willing to bear the consequences." (Prawirohamidjojo and Marthalena, 2000).

As a fulfillment of the principle of publicity so that the marriage agreement applies also to the third party then the marriage agreement must be registered to the clerk of the marriage, as stipulated in Article 29 paragraph (1) of Law No. 1 of 1974 On Marriage. This registration process is included in the scope of administrative law and administrative law is part of public law (Marzuki, 2012). In order to fulfill the principle of publicity, the marriage agreement made in the marriage of its binding power against a third party is calculated from the date registered. In relation to third parties, the marriage agreement is binding going forward and does not apply retroactively.

If the marriage agreement is required to separate the property that has been there before, then it must also pay attention to the rights of the third party if in the past has entered into an agreement with a third party. The legal relationship is reflected in the rights and obligations granted by law and also guaranteed by law. A right and obligation will arise in the event of a legal event, according to Van Apeldorn the legal event is a law-based event that may give rise to rights and can also abolish rights (Soekanto, 1979).

Based on data from Verdict No. 25/Pdt.G/2013/PN.Tbn which summarizes that marriage between DR. F.M. Valentina, S.H., M.Hum with Dr. [113]
Hardi Soetanto who had held the marriage at the Office of Civil Records of Dati II Tuban Regency on July 20, 1994, as described in the Excerpt of Marriage Act No. 15/130/A/1994 dated July 20, 1994. The marriage has broken up due to divorce as stated in the Malang District Court Ruling No. 203/Pdt.G/2011/PN. Malang dated April 16, 2012 jo. High Court Ruling No. 440/PDT/2012/PT. Sby dated November 19, 2012, and which ruling has permanent legal force (inkracht van gewijssde) and has been registered and recorded in the Tuban District Civil Records Office as stated in the Divorce Act Excerpt No. 3523-CR-27032013-0001 dated March 27, 2013, and on joint property acquired during the marriage was declared execution/auction in accordance with Malang District Court Ruling No. 23/Pdt.Plw/2018/PN Mlg. Prior to the marriage, both parties had made a marriage agreement as stated in Marriage Treaty Deed No. 200 dated July 8, 1994, which was made and signed before Notary Eko Handoko Wijaya, SH Notary in Malang, but the marriage agreement made and signed between the two parties was never registered in the Office of the Civil Registry and Civil Registry of Tuban Regency nor was it registered with the Clerk's Office of Tuban district court.

Based on the Judge's Consideration of The Decision of Tuban District Court No. 25/Pdt.G/2013/PN.Tbn, the marriage agreement is flawed in both formal and material and contrary to Article 29 paragraph (1) of Law No. 1 of 1974 on Marriage, where the witnesses explained that did not know that in the marriage of Plaintiff and Defendant I there was a marriage agreement especially sister witness Lisa Megawati who according to her confession was a man who built a joint business between himself and plaintiff and Defendant I was never told that in marriage between Plaintiff and Defendant I there was a marriage agreement, whereas according to the provisions of Article 29 paragraph (1) of Law No. 1 of 1974 on Marriage that to bind a third party to the marriage agreement must be registered with the Office of Population and Civil Registration in order to notice to the third party the marriage agreement if the husband and wife do business or business with the third party as it may harm the interests of the third party.
Philipus M. Hadjon divides the protection of the law into 2 (two) preventive legal protections which are the protection of the law that prevents disputes where the third party has the right if the marriage agreement is not registered then the marriage agreement is considered to be none, as for the protection of repressive law which is the protection of the law that resolves the dispute. Preventive legal protection in marriage agreements is by the existence of confirmation by the marriage registrar but because the husband and wife because of their negligence forgetting the confirmation and causing a dispute that harms the third party, then the third party can ask for repressive legal protection that is to file a lawsuit to the court. In this case, a third party may file an unlawful action because the marriage agreement is an agreement arising out of the law (Kusuma, 2017). The existence of fair legal protection for third parties in unauthorized marriage agreements is the protection of repressive laws in the form of a ruling from the court that decides the rights violated by the married couple to the third party due to bad faith and the negligence of the couple's obligations is by indemnity and the third party may assume that the married couple has no marriage agreement or in other words, the husband and wife's marital property is considered joint property. At the settlement stage of the case in court, the evidentiary event is the most important stage to prove the truth of the event or a particular legal relationship, or the right, which is the basis for the plaintiff to file a lawsuit with the court. At the evidentiary stage as well, the defendant may exercise his right to deny the evidence submitted by the plaintiff. Through proof using these evidence tools, the judge will obtain the basics for sentencing in resolving a case.

Thus based on the above explanation, if attributed between the legislation, the opinion of the experts and the legal considerations of the research judge stipulates that in order for the interests of the third party to be protected in connection with the marriage agreement, then the marriage agreement must be registered by the Clerk of marriage in
accordance with the provisions of article 29 paragraph (1) of Law No. 1 of 1974 On Marriage which aims to protect the interests of third parties from losses current from the legal actions of the husband or wife who made the marriage agreement, not to give the husband or wife the opportunity to bind the third party to something that is not true (bad faith). The registration of marriage agreements by the clerk of marriage is very important and should not be forgotten by the husband and wife because in each relationship the law will inevitably give rise to rights and obligations, in addition, each individual certainly has different interests and faces and opposites, therefore to reduce tension then each individual needs protection.

**Conclusion**

The marriage agreement that was never registered with the Office of Civil Records is invalid, and only binds the parties who make it the husband and wife, while against the third party the marriage agreement is considered invalid or considered invalid until the third party considers that the married couple is married with a mixture of property in accordance with the provisions of Article 29 paragraph (1) of Law No. 1 of 1974.

The marriage agreement that is not registered by the marriage registrar carries the legal consequences of the marital property i.e. the marriage agreement does not have the legally binding power in accordance with the provisions of Article 35 of Law No. 1 of 1974 on Marriage i.e. the property in the marriage consists of joint property and property so that the marriage agreement that is not registered with the Office of Civil Records results in the
property obtained during the marriage is joint property and the congenital property obtained by each husband and wife is in the under their respective mastery as long as the parties do not specify another.

Legal protection against third parties who are harmed by unregistered marriage agreements, namely:

a. Preventive Legal Protection
   Legal protections where third parties have the right to assume that marriage agreements that are not registered with the Office of Civil Records do not exist.

b. Refresive Legal Protection
   Legal Protection where third parties have the right to sue through the Court if they have been harmed by the unregistered marriage agreement to the Office of Civil Records.

Suggestions

It is recommended that the Notary provide an explanation or briefing/counsel to the public on the benefits of registering a marriage agreement to The Office of Population and Civil Records in order to obtain the validity and publicity element to bind the third party.

We recommend that marriage agreements should be registered so as not to harm third parties. For third parties it is important to know how the husband and wife's property is positioned, if the violation committed by the husband and wife fulfills the unlawful act then the third party can seek legal protection against the court or by means of consensus deliberation because obtaining legal protection is the hope of all legal subjects in an agreement.

References


[117]
Legal Consequences of the Marriage Agreement...

Meisha Poetri Perdana


[118]


