

## LEGAL REVIEW OF MARRIAGE AGREEMENTS MADE POST-MARRIAGE AFTER THE APPROVAL OF THE CONSTITUTIONAL CONSTITUTIONAL CONSTITUTION 'S DECISION

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### *Abstract*

The legal provisions governing the marriage contract according to the Republic of Indonesia Law No. 1 of 1974 and the Constitutional Court Decision No. 69/PUU-XIII/2015 can be carried out after marriage, because the meaning of Article 29 paragraph (1) of the Marriage Law is interpreted as long as the parties are bound. The agreement of both parties can submit a written agreement that is accepted by the contract drafter or notary. The Judge's opinion that the relevant application is stated in the Applicant's Marriage Agreement and the legal issues are also acceptable. The legal analysis of the permissibility of the marriage contract arises from the perspective of the law of the contract that the legal provisions of the marriage contract also bind third parties, so that the marriage contract must be registered with the Civil Service Secretariat or the Ministry of Religion. Because the MK decision as it is does not mean anything about registration, whether registration must be carried out immediately or wait for further registration/registration laws. Therefore, the legal consequences of a marriage contract can create legal guarantees for others.

### *Abstrak*

Ketentuan hukum yang mengatur tentang akad nikah menurut Undang-Undang Republik Indonesia No. 1 Tahun 1974 dan Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 dapat dilakukan setelah perkawinan, karena pengertian pasal 29 ayat (1) UU Perkawinan diartikan selama para pihak terikat. kesepakatan kedua belah pihak dapat mengajukan perjanjian tertulis yang diterima oleh perancang kontrak atau notaris. Pendapat Hakim bahwa permohonan yang bersangkutan tercantum dalam Perjanjian Perkawinan Pemohon dan masalah hukumnya juga dapat diterima. Analisis hukum kebolehan akad nikah muncul dari perspektif hukum akad bahwa ketentuan hukum akad nikah juga mengikat pihak ketiga, sehingga akad nikah harus didaftarkan pada Sekretariat Pegawai Negeri Sipil atau Kementerian Agama. Karena putusan MK sebagaimana adanya tidak berarti apa-apa tentang pendaftaran, apakah pendaftaran harus segera dilakukan atau menunggu undang-undang pendaftaran/pendaftaran lebih lanjut. Oleh karena itu, akibat hukum dari suatu akad nikah dapat menimbulkan jaminan hukum bagi orang lain.



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## INTRODUCTION

On October 27 2016, the Constitutional Court (MK) issued Decision Number 69/PUU-XIII/2015 concerning the Review **Post-Marriage** of the Provisions of Marriage Contracts as regulated in Article 29 paragraph (1) paragraph (3) and paragraphs (1) and (4) Law Number 1

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of the Republic of Indonesia of 1974 concerning Marriage. The court granted the petition of Ike Farida, an Indonesian citizen married to a Japanese citizen.

The decision in several cases was confirmed by the Constitutional Court (MK), which was based on Indonesian Federal Law No. 1 of the 1974 Marriage Law, paragraph (1), Article 29, namely: In this case, both before and during the marriage, both parties can submit a written agreement issued by a marriage registrar or notary, the contents of which also apply to third parties regarding this matter.

In Article 29 Paragraph (3) of the Republic of Indonesia Marriage Law Number 1 of 1974 "The agreement is valid from the date of marriage, unless otherwise specified in the Marriage Contract". Article 29 paragraph (4) of the Republic of Indonesia Law Number 1 of 1974 concerning Marriage "During the marriage, the marriage agreement relates to joint property or other agreements, which cannot be changed or revoked, except at the request of both parties." agree to change or cancel the marriage contract. , and transfer or withdrawal does not affect third parties".

Thus, Law No. 1 of 1974 concerning Marriage does not recognize post-marital contracts, but in reality, contracts are in stark contrast to medieval legal norms, as it is the right of every citizen to enter into a contract with another citizen, in accordance with the provisions of applicable laws and regulations. Therefore, if a legal review of default marriage is issued or confirmed, it will provide additional legal certainty for those who have never been bankrupt and wish not to marry.

In the decision of the Constitutional High Court issued or reserved. Decision No. 69 / PUU-XIII / 2015 concerning post-nuptial agreements, recently allowed some couples at the time of marriage to enter into a prenuptial agreement, to agree to enter into a post-nuptial agreement, because the agreement of one of the two was presented after four marriages, the contract of Bun Su Sian alias Su Sian and Lin Yi who married each other in a legal marriage, as explained in the decision of the Pontianak District Court Number 80 / Pdt.P / 2020 / PN.Ptk. Based on the submission, the Judge approved the application for a marriage contract after the marriage and issued an order to the Civil and Customary Registry Officer of Pontianak City or the authorized agency to approve and / or record the Marriage Agreement.

### **RESEARCH METHODS**

This study used a formal survey. The research method used is descriptive. The data used in this study were books (*library research*). The data source for this study was secondary data. The data analysis used qualitative data analysis .

### **RESULTS AND DISCUSSION**

#### **1. Legal Provisions Regarding Marriage Agreements According to Law of the Republic of Indonesia No. 1 of 1974 and Constitutional Court Decision No. 69/PUU-XIII/2015**

On October 27, 2016, the Constitutional Court (MK) with its decision no. 69/PUU-XIII/2015 provided a constitutional interpretation of Article 29 of the Republic of Indonesia Law Number 1 of 1974 concerning Marriage and Mrs. Ike Farida, the main message of which is that as long as a marriage contract cannot be performed "while still in the marriage", the provision according to the Constitutional Court does not apply.

This means that, in accordance with the Constitutional Court's decision in Article 29 paragraphs (1), (3) and (4), the Constitutional Court provides a broad interpretation to provide a procedural scheme based on Article 29 paragraphs (1) , ( 3), and ( 4) regarding the implementation of the agreement. Currently, not only during or before marriage but also during marriage, couples can make a marriage contract with mutual consent. Therefore, in this case, the Constitutional Court recommends the application of progressive rules and regulations to meet the general legal requirements in the danger of joint property in marriage, the work of the

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spouse and income due to 'one's wealth and obligations, or as a result of the Law Article 21 paragraphs (1) and (3) UUPA.

Marriage contracts after a previous marriage are not recognized or regulated by the Republic of Indonesia Law Number 1 of 1974 concerning Marriage, but also by the decision of the Constitutional Court based on Article 29 paragraph (1), (3) as Article 186 has not been ratified by the Civil Law Law relating to the use of Marriage Certificates after marriage (marriage division) subject to initial determination by the court.

Article 29 paragraph (1) of the Marriage Law limits the duration of the marriage contract to "on" or "as" the marriage. This provision limits the right to enter into a marriage contract between couples living in a husband-wife relationship, including married Indonesian citizens (WNI) and foreign citizens (WNA). In general, a marriage contract can be changed in accordance with Article 29 paragraph (4) of the Marriage Law with the consent of the husband and wife concerned, and changes to the marriage contract include property acquired during the marriage with business property and husband, husband's business, or husband-wife business which is called joint property .

Some legal experts argue that according to Article 1 Article 35 of the Marriage Law, joint property exists because of the formation of marriage. Sajuti Thalib argues that the existence of syirkah (combined) property of husband and wife, especially joint property, and others, because it has been determined by law, as well as by written and oral (oral) syirkah contracts, or based on contracts. . in social situations where property is divided by the husband and wife involved.

Wantjik Saleh is of the opinion that as a source of law for joint property, Article 35 paragraph (1) of the Marriage Law, property can be separated in a husband and wife marriage. The provisions on property as referred to in Article 35 paragraph (1) of the Marriage Law cannot deviate from customary law, because the definition of property does not conflict with Pancasila, customs, which contain opinions because all sources of general law, such as when given because in Article 35 paragraph (1) of the Marriage Law. Article 2 of Law No. 12 of 2011 defines the process of forming law. As a result, common law standards regarding joint property must continue to color marriage law.

## **2. Judge's Considerations in Granting a Post- Nuptial Agreement Request**

Marriage contracts conducted after the issuance of Constitutional Court Decision No. 69/PUU-XIII/2015 can be implemented in the form of marriage contracts related to marital property or other contracts. The marriage contract in the decision issued by the Constitutional Court No. 69/PUU-XIII/2015 can be applied to marital property or other contracts, so that the parties can arbitrate the terms of the marriage contract, among other things, these nails must be considered. If the couple enters into a prenuptial agreement during the marriage, even if the agreement is said to be valid from the date of marriage, it creates separate property. In this case, it becomes difficult to divide mixed assets, especially since the marriage until the date of the marriage contract remains mixed property, but since the marriage contract the assets are divided. Worse still when there are mandates such as mortgages that, if divided between the spouses, can break the bank.

The distribution of most of the assets is mixed with one party, for example the woman gets half (three-quarters) of the share and the man gets one-quarter (three-quarters). The law prohibits husband and wife in marriage, except to give or grant movable property of small value according to the donor's ability.

In Pontianak District Court Decision No. 80/Pdt.P/2020/PN.Ptk, the division and distribution of joint assets cannot be carried out with the consent of both parties because there is no reason to do so in the linked joint assets. This relationship is only possible in the case of

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the death of a partner or separation of the couple. It is unacceptable for one party to owe more than their share of the company's profits; this condition is void.

For a marriage contract to be considered valid from the moment it is made, it is preferable if it lists pre-marital assets, is signed by both husband and wife, and is attached to their records. If participation is not disclosed in the document, additional information unknown to the parties involved can be proven through other means. If a future dispute arises about what constitutes intangible property, it will be treated as the property of the parties for equitable distribution. This reason should not be detrimental to the creditors of either spouse. It is possible to accept the validity of a marriage contract under certain conditions, such as the existence of a termination or annulment, and the timeframe or procedure.

### **3. Legal Analysis of the Permissibility of Post-Marriage Prenuptial Agreements Following the Constitutional Court Decision No. 69/PUU-XIII/2015**

The Constitutional Court clarified the interpretation of Article 29 of the Marriage Law regarding the marriage contract (more commonly known as the property division agreement). This provision governs the validity of a prenuptial agreement, which must be drawn up before or concurrently with the marriage contract. The High Constitutional Court subsequently ruled that divorce can be obtained during or after marriage (Constitutional Court Decision No. 69/PUU-XIII/2015).

Article 29, first paragraph of the Marriage Law must be interpreted as follows: "At that time, before or during the marriage bond, both parties can make a written agreement and together with their consent. which has been received by the registrar or marriage registrar must contain conditions that apply to other people, then third parties, as long as there is a third party involved."

The High Court's decision is final and binding and is solely responsible for the official translation. Rather than being the official body interpreting the Constitutional Court's decision, the Court also provides additional information. This, of course, is a difficult issue. On the one hand, all parties must support the Constitutional Court's decision as the government institution authorized to review the interpretation of unconstitutional laws. Like it or not, the Constitutional Court's decision must be approved and implemented.

The first issue related to the Constitutional Court's ruling has been resolved. The Office of Religious Affairs (KUA) has now approved marriage registration for couples wishing to perform or annul their marriage contracts. For mixed-race couples, the solution lies in reforming marriage law, particularly regarding land ownership, which has previously penalized foreigners in marriages with Indonesian citizens. However, this ruling also raises new challenges. These challenges stem from the registrar's "authority" to approve marriage contracts (referred to in the ruling as a written contract) based on their own opinion. Various parties question whether the registrar can validate marriage contracts and fulfill the principle of notification, as stipulated by the registrar, so that third parties involved can also implement the marriage contract.

The problem appears to stem from the meaning of the term "approved by." The Constitutional Court's ruling appears to provide two ways to approve a marriage contract. First, it can be issued by a marriage registrar. Second, it can be performed by an official. The second method means that the marriage contract does not need to be registered because it is already valid. The assumption that the Constitutional Court's ruling authorizes a notary to approve a marriage contract is understandable, given that the grammatical construction of the Constitutional Court's ruling allows for such an interpretation.

## **CONCLUSION**

### **A. Conclusion**

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1. The legal requirements related to the marriage contract according to the Republic of Indonesia Law No. 1 of 1974 and the Constitutional Court Decision. 69/PUU-XIII/2015 can be carried out after marriage, because the meaning of Article 29 paragraph (1) of the marriage law is determined with the understanding that in the marriage bond, a written agreement can be offered to both parties. has been received by the marriage registrar or notary, after which the contents also apply to third parties if the third party exists. So the contract is valid from the date of marriage, unless otherwise stated in the marriage contract.
2. The judge's opinion in granting the post-nuptial agreement, where the judge considers that the request in question as indicated by the Applicant's Marriage Certificate was made within the time limit according to the law and based on the decision of the Supreme Court of the Republic of Indonesia No. 69/PUU-XIII/2015 dated October 27, 2016 which has closed the marriage period, so that the lawsuit and request of the Applicants in question can be granted. provided that it is interpreted as recorded in the marriage contract records in connection with Marriage Certificate No. 10/A/2002 concerning registration and recording in the name of Lin Yi and Bun Su Sian's Marriage Certificate. at the Population and Civil Registry Office of Pontianak City according to the Republic of Indonesia Law Number 1 of 1974 concerning Marriage with the Decision of the Constitutional Court of the Republic of Indonesia No. 69/PUU-XIII/2015 dated October 27, 2016.
3. The legal analysis of post-marital divorce ratification was carried out after the Constitutional Court decision no. 69 / PUU-XIII / 2015 related to the provisions of No. 80 / Pdt.P / 2020 / PN.Ptk can be seen from a legal perspective in the contract but the legal requirements in the marriage contract also bind others, so they must be recorded in the civil registry or marriage contract. Office of Religious Affairs. Because the Constitutional Court decision does not mean anything about registration, registration must be carried out immediately or wait for further registration / registration laws. Therefore, the legal consequences of a marriage contract can create legal guarantees for others .

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