



Legal Status of Marriage Agreement based on Civil Code and Marriage Law

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Abstract

This study aims to How is the validity of the marriage agreement that was changed after the marriage took place? How does the court judge analyze the marriage agreement passed by the District Court at the time of divorce. The method used is a normative method with a statutory approach and a case approach. The results of the research prove that the validity of the marriage agreement that was changed after the marriage took place is legal and remains binding for the parties. The Civil Code explicitly prohibits changes to the marriage agreement after marriage, but the Marriage Law regulates differently, namely that the marriage agreement can be changed as long as it is agreed by the parties and has been promised beforehand by the parties, so by referring to the *lex specialist derogate legi generali* principle, marriage agreements may be changed.

Keywords: *Marriage Agreement; Civil Code; Marriage Law*

Introduction

The development of engagement law at this time is influenced by the dynamics of public relations which has had a developmental impact on positive law in Indonesia. The Civil Code itself is deemed unable to accommodate changes that are adapted to the needs of modern society, including the acceptance of the influence of other legal systems. This is in view of the historical background of its formation which is so old a legacy of the Dutch era. Changes to the Civil Code are needed to be able to meet the needs that are tailored to the needs of today's society.

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Provisions regarding the legality of the agreement are stipulated in Article 1320 of the Civil Code, which must contain terms of agreement, skills, certain matters, and legal causes. An agreement also has elements, namely the rule of law, the existence of legal subjects, the existence of persuasion, the existence of an agreement, and the existence of legal consequences. The legal rules referred to in an agreement can be in the form of written regulations, such as agreements or treaties or unwritten regulations such as customary law. Legal subjects in an agreement are usually carried out by fellow individuals, fellow Legal Entities, or between individuals and Legal Entities. Persuasion in an agreement is the desire of the parties to do or not do something, the agreed matter is regulated in Article 1320 of the Civil Code regarding the wishes of the parties in the agreement. The legal consequences themselves see whether an agreement creates rights and obligations for the parties.

Marriage is a sacred and noble bond between men and women which is based on mutual love between the two. The people themselves see marriage as an ordinary event that naturally occurs. Unwittingly, marriage is one legal act that has many consequences for people's lives. A marriage is not as simple as what ordinary people think. Marriage is related to many things such as problems of rights and obligations of husband and wife, problems of property in marriage, and problems of marriage breakup. One of the things that is often raised as an issue in society today is the matter of property in marriage. Couples usually tend to pay less attention to the problem of arranging marital property because it is felt that it can damage marital values that are considered sacred, this is because marriage also contains religious aspects, especially in terms of making written agreements on property in marriage.

Recently in daily life, the phenomenon of marriage agreements has arisen among celebrities. They marry with a partner they love using a marriage agreement. This is still felt oddly by the people of Indonesia who tend to have eastern values that still adhere to customs. Indonesian society still feels strange if a marriage that is considered sacred and sacred is limited by a marriage agreement. A marriage agreement is an agreement made by a male and female couple who will get married before the marriage. The agreement regulates the interests of the parties in it which usually regulate matters of property, but can also regulate other matters such as child custody and matters of domestic violence or commonly abbreviated as domestic violence.

Often Indonesian people still feel unethical discussing marriage agreements because it is like thinking later that they will get divorced, therefore this is still considered taboo. In general, people who are interested in using a marriage agreement are people who are already established and have a steady income or people who have already been married. A marriage agreement is made to legally protect the property of each party, meaning that a marriage agreement can function as a legal medium to resolve household problems that are forced to expire, both due to divorce or death, so it is clear to distinguish which assets belong to gono-gini and which which is each other's personal property. The marriage agreement is also to safeguard the family's assets and economic conditions in the event of the confiscation of all family assets. Marriage agreements are also useful to protect women's rights. The marriage agreement arrangements are contained in Book One of the People in the Civil Code and are contained in Article 29 of the Marriage Law, but with the existence of the *lex specialist derogate legi generali* principle, what is now used is the Marriage Law, except for those who Having a marriage when the Marriage Law has not yet been formed is still subject to the Civil Code. Legal issues raised by the author in this study look at the Marriage Law and the Civil Code, which both regulations provide protection for different assets arising from marriage after a marriage agreement.

The author wants to refer to the strength of the marriage agreement to protect the property in completing this research. Unlike what is stipulated in the Civil Code, Article 29 paragraph (4) of the Marriage Law allows changes to the marriage agreement, which were made before or at the time of the

marriage will take place. Looking at the article, the next legal issue that the author wishes to examine is the validity of the marriage agreement that was changed after the marriage took place. This research also refers to Article 1320 of the Civil Code which contains the legal conditions of the agreement. The marriage agreement regulated in the Civil Code and Marriage Law has provided an illustration of how this marriage agreement should apply in people's lives. Marriage agreements in the making have requirements that must be met in order for a marriage agreement to be valid and can be used properly.

However, in practice in the community there are still deviations that occur. As in the case analysis with the decision number: 69 / Pdt.G / 2010 / PN. Dps, in which case there is a problem which can become a debate. In accordance with what is stipulated in the Civil Code and Marriage Law, that the marriage agreement is made and registered before / during the marriage, but what happens in this case is the marriage agreement made before the marriage is not registered in the Civil Registry, but at the time of divorce takes place endorsement for the marriage agreement that has not been registered. The subject of debate is whether the District Court has the authority to ratify a marriage agreement that was made before the marriage took place but was not registered in the Civil Registry, because the Civil Code and Marriage Laws have regulated the registration of marriage agreements. The problems examined in this study are: How is the validity of the marriage agreement changed after the marriage takes place? How does the court judge analyze the marriage agreement passed by the District Court at the time of divorce.

Result and Discussion

1. Case Position

In this chapter the researcher will describe and analyze the legal status of the marriage agreement that has been disputed in the Denpasar District Court in case No.69 / Pdt.G / 2020 / PN.Dps.

Before the Plaintiff filed a lawsuit to the Denpasar District Court, between the Plaintiff and the Defendant had agreed to make and sign a marriage agreement before Eddy Nyoman Winarta, SH, Notary in Kuta on September 5, 2006, as Deed of Marriage Agreement No. 21 dated September 5, 2006. The marriage agreement was made and signed just before the marriage took place.

After that they did divorce (Plaintiff and Defendant), however, the marriage agreement was not registered with the Civil Registry, as required by the Marriage Law.

As it turns out in Decision Number 69 / Pdt.G / 2010 / PN.Dps, the chronology of the case is as follows:

a. Plaintiff

- 1) On January 29, 2010, the Plaintiff filed a claim letter to the Registrar of the Denpasar District Court.
- 2) Before the marriage took place, the Plaintiff and Defendant had made and signed a marriage agreement before Eddy Nyoman Winarta, SH, Notary in Kuta on September 5, 2006, as evidenced in the Deed of Marriage Agreement No. 21 dated September 5, 2006.
- 3) The marriage between the Plaintiff and Defendant was held on October 18, 2006 in Hong Kong, as evidenced in the Certificate of Marriage registration number BK8285 and was registered at the Office of Population and Civil Registry of Badung Regency on February 13, 2007, with registration number 06/2007.
- 4) In the marriage 3 (three) children have been born named:

X, male, was born in Denpasar on February 25, 2007 (aged 3 years), as quoted by Birth Certificate No. 000003 / B4 / 2007 dated 7 March 2007 issued by the Office of Population and Civil Registry of Badung Regency, Bali.

Y, female, was born in Denpasar on July 26, 2009 (aged 6 months), as quoted in Birth Certificate No. 2609 / Um. CAMP / 2009 dated September 25 issued by the Office of Population and Civil Registry of the city of Denpasar, Bali.

Z, female, was born in Denpasar on July 26, 2009 (aged 6 months), as quoted in Birth Certificate No. 2610 / Um. CAMP / 2009 dated September 25 issued by the Office of Population and Civil Registry of the city of Denpasar, Bali.

Based on these reasons, the Plaintiff requested the Judges of the Denpasar District Court to be able to decide on the following matters:

- 1) Accept and grant the Plaintiff's claim for all;
 - 2) Declare valid according to the law of Marriage Agreement No. 21 dated September 5, 2006 drawn up and signed before Eddy Nyoman Winarta, SH, Notary in Kuta;
 - 3) Declares legal according to law, the marriage between the Plaintiff and the Defendant which took place on October 18, 2006 in Hong Kong, as Certificate of Marriage No. Registration BK8285 and was registered at the Office of Population and Civil Registry of Badung Regency on February 13, 2007, Regno: 06/200;
 - 4) Stating according to law, the marriage between the Plaintiff and the Defendant was held on October 18, 2006 in Hong Kong, as Certificate of Marriage No. Registration: BK8285 and was registered at the Office of Population and Civil Registry of Badung Regency on February 13, 2007, Regno: 06/2007, terminated due to divorce with all its legal consequences;
 - 5) Punish the Defendant to pay the costs of this case.
 - 6) If the Panel of Judges at the Denpasar District Court believes otherwise, the Plaintiff requests justice as fairly as possible (*ex aequo et bono*).
- b. Defendant Defendant filed an answer dated March 11, 2010 against the Plaintiff's claim, which basically reads as follows:

2. Judge's Consideration

The court in its consideration that between the Plaintiff and the Defendant often had quarrels and quarrels that continued so that there was no hope for life to be sentenced again; the Plaintiff's claim the Defendant denied it, namely the quarrel was not started by the Defendant, but the quarrel began since the Plaintiff had an affair with another ideal woman.

The Plaintiff in upholding the arguments has submitted evidence of letters marked P.1 through P.7 and 2 (two) witnesses, while the Defendant only submitted evidence in the form of letters marked T.1 and T.2 and did not submit witnesses; because the Plaintiff's claim was disputed by the Defendant, then referring to article 283 R.Bg jo the Decision of the Supreme Court of the Republic of Indonesia No. 272 / K / Sip / 1973 dated November 27, 1975, the burden of proof will first be borne by the Plaintiff.

The Assembly considered that in accordance with the statements of witnesses and evidence P.1 that between the Plaintiff and the Defendant had been legally married in Hong Kong on October 18, 2006 in accordance with Certificate of Marriage No. BK82825 issued by the Indonesian Consulate General in Hong Kong on October 20, 2006 and was also registered at the Office of Population and Civil Registry of Badung Regency on February 13, 2007.

Based on evidence P.1 as considered above, according to the Panel of Judges it has been proven that the marriage between the Plaintiff and the Defendant has been valid, and with a marriage between the Plaintiff and the Defendant, it is reasonable for the Panel of Judges to consider the divorce claim of the Plaintiff.

Before the marriage took place between the Plaintiff and the Defendant had made a marriage agreement as mentioned in the Marriage Agreement Deed number 21 dated September 5, 2006 before the Notary Eddy Nyoman Winarta, SH. By not reducing the principle of freedom of contract between the Plaintiff and the Defendant as stated in Article 1320 of the Civil Code, the marriage agreement is still valid, because the Plaintiff and Defendant self-regulate everything concerning their marriage.

From the above descriptions, the Assembly concludes that facts have been obtained which show that the Plaintiff and Defendant's household are no longer harmonious, so that it will be difficult for the Plaintiff and Defendant to foster a harmonious, happy, and harmonious household as the purpose of marriage. in articles 1 and 30 of Law Number 1 of 1974.

In the Jurisprudence of the decision of the Supreme Court of the Republic of Indonesia the notion of continuous, irreconcilable fit (onheel bare tweesplast) is not emphasized on the cause of the conflict which must be proven, but seeing the reality, it is true that there is evidence of a continuous dispute so that it cannot be reconciled. From the descriptions above obtained a fact that the reasons for divorce filed by the Plaintiff have proved to be proven and also in accordance with the reasons for divorce as regulated in Article 19 letter f Government Regulation Number 9 of 1975, therefore the Plaintiff's claim to divorce should be granted, namely by stating that the marriage between the Plaintiff and Defendant is terminated due to divorce, so that petitum number 4 can be granted.

From all of the above considerations, the Plaintiff's claim is worthy to be granted and in accordance with the provisions of Article 35 of the 1975 Government Regulation instructed the Registrar of the Denpasar District Court to send an official copy of this decision which already has permanent legal force without stamp duty to the Office of Population and Civil Registry of the Regency Badung, in order to be registered / registered in the register intended for it;

In the Judge's decision regarding the ratification of the Marriage Agreement Deed, if it is related to the laws and regulations governing the registration of the marriage agreement, namely the Civil Code, then the decision, in the opinion of the author, is not appropriate because it contradicts the existing regulations. Even though the Marriage Law does not regulate registration of marriage agreements, looking at the closing provisions of the Marriage Law, the marriage agreement registration is still based on the Civil Code. Especially as discussed earlier above, regarding the registration of marriage agreements has become a habit in the Civil Registry and in the District Court itself. In the opinion of the author, the Judge should ratify the Marriage Agreement Deed pay more attention to this matter, because the validity of a marriage agreement has legal consequences for the property in the marriage of the parties as well as for the relevant third parties. The Marriage Agreement Deed should be null and void, because the conditions of the provisions of a marriage agreement are not fulfilled as stipulated in Article 152 of the Civil Code, and if related to Article 1320 of the Civil Code also, the marriage agreement is canceled by law because it does not fulfill one of the legal requirements for the agreement, which is contrary to the law, decency, or public order, which in this case is contrary to the law. Judges in deciding cases should pay more attention to the existing regulations, not only in terms of the contents of the marriage agreement but also in terms of the technical validity of a marriage agreement, because the marriage agreement is part of family law not just an agreement in general, especially regarding the registration of the marriage agreement itself has become a habit in the District Court.

Conclusion and Recommendations

1. Conclusion

- a. The validity of the marriage agreement that is changed after the marriage takes place is legal and remains binding for the parties. The Civil Code explicitly prohibits changes to the marriage agreement after marriage, but the Marriage Law regulates differently, namely that the marriage agreement can be changed as long as it is agreed by the parties and has been promised beforehand by the parties, so by referring to the *lex specialist derogate legi generali* principle, marriage agreements may be changed. The Marriage Law does not regulate how the procedure for amending the marriage agreement or cancellation, so that in practice it is usual practice. A marriage agreement that has undergone a change remains in force, the changes being made in an additional deed, where the old one still remains binding. The additional deed does not need to be registered again in the District Court and does not need to be recorded again in the Civil Registry, because it is deemed to have been registered and previously registered. Changes as long as they do not harm a third party, only relate between the parties and the Notary. The parties who want to cancel the marriage agreement that has been made can be done by filing the cancellation request first in the District Court, then only submitting it to the Civil Registry, to then be given a marginal note on the Marriage Certificate which states that the marriage agreement is canceled.
- b. Marriage agreements have terms, both in terms of content and technical terms so that they can be declared legally valid. In the decision which is the material of analysis in this thesis, one of the decisions made by a judge is to ratify a Marriage Agreement Deed that is not registered in the Civil Registry or in the District Court. This should be contrary to what is stipulated in the Civil Code which guides the registration of a marriage agreement. A marriage agreement should be said to be valid if it meets the provisions of the law, both in terms of content and technical aspects. In this case, the judge in making decisions does not pay attention to the applicable regulations and does not pay attention to the existing habits. The Marriage Law does not regulate registration of marriage agreements, but it should be as determined in the Closing Chapter Chapter on Marriage Law, then what applies is the Civil Law Book, moreover it has become a habit in the Civil Registry and District Court.

2. Recommendations

- a. The author suggests a change in the content of Article 29 paragraph (1) of the Marriage Law to: based on a collective agreement, a written agreement can be made regarding the form of deviation of assets in the form of a notary deed registered with the District Court and then endorsed and declared to the marriage registrar, after which the content is valid for the parties also regarding the matter added by the author in the article, is regarding the form of assets deviation, in the form of a notarial deed, and registration to the District Court. This is because in some cases, marriage agreements in practice still use many customs as a legal basis, so the authors suggest changes in the content of the article because Indonesia is a positive law country, besides changing the content of this article is expected to reduce the differences in interpretation that often occurs.
- b. The author suggests that matters relating to the procedure for amendment and cancellation of the marriage agreement be contained and regulated in Government Regulation Number 9 of 1975 concerning Regulations for Implementing Law Number 1 of 1974 concerning Marriage. This is based on the idea that marriage agreements can be changed, but there are no rules that explain how the procedure is, so that what still applies are habits. The amendment and cancellation procedure can be adjusted to what has become a habit, only needs to be formally regulated for legal certainty.

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