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## Legal Certainty of Binding Power of Marriage Agreements Not Registered of Notary

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**Abstract:** This study discusses the legal certainty related to the binding force of marriage agreements that are not registered by a notary, by referring to the Constitutional Court Decision Number 69/PUU-XIII/2015. In this decision, notaries are given the authority to validate marriage agreements. However, agreements that are only validated by a notary without being registered with the Office of Religious Affairs or the Population and Civil Registration Service do not fulfill the principle of publicity, which is important to ensure that the document can be accessed by third parties who may be affected. Without registration, the agreement does not have binding legal force for third parties, thus potentially causing legal uncertainty and disputes in the future. The principle of publicity aims to provide protection for third parties by ensuring access to the rights and obligations stipulated in the agreement. Registration of marriage agreements at the Population and Civil Registration Service provides stronger legal certainty, maintains transparency, and protects the rights of all parties involved in accordance with applicable legal provisions.

**Keywords:** Legal Certainty, Binding Power, Marriage Agreement, Registration, Notary

### INTRODUCTION

Before the birth of Constitutional Court Decision Number 69/PUU-XIII/2015, Notaries were not given the authority to register marriage agreements and make them binding on third parties. The provisions of Article 147 BW, marriage agreements must be made in the form of a Notarial deed and followed by registration with the District Court after which the contents of the agreement will bind third parties and then the provisions of this rule were replaced by Article 29 paragraph (1) of the Marriage Law where marriage agreements must be registered with the Civil Registry after which the contents will bind the related third parties. As explained below, Notaries have never been given the authority to validate or register marriage agreements so as to provide binding power to the related third parties (Khoirudin Nasution, 2004). According to the BW (Burgerlijk Wetboek) rules, a marriage agreement is valid for third parties after being registered with the District Court Clerk. If the registration has not been carried out, then the third party assumes that the husband and wife have entered into a marriage agreement with the principle of mixing assets. In the explanation of Article 29 of the Marriage Law, a marriage agreement no longer has to be registered with the District Court, but a marriage agreement must be registered with the Civil Registry after which the

contents of the marriage agreement bind third parties (Annisa Istrianty dan Erwan Priambada, 2015).

The existence of a new norm regarding the making of a marriage agreement, Article 29 paragraph (1) of the Marriage Law in conjunction with Constitutional Court Decision Number 69/PUU-XIII/2015, the explanation of the phrase "can submit a written agreement that is legalized by a marriage registrar or Notary", which is printed in bold is that a marriage agreement can be registered with either a marriage registrar or Notary and the function of registration is considered the same, namely binding third parties. Based on Article 16 paragraph (1) of the Notary Law, a Notary must keep the deed he makes confidential, including all information obtained from the deed in accordance with the Notary's Oath/Promise, unless otherwise determined by law (Annisa Istrianty dan Erwan Priambada, 2015). Meanwhile, in the registration of marriage agreements in accordance with the Letter of the Director General of Population and Civil Registration of the Ministry of Home Affairs Number 472.2/5876/Dukcapil concerning the Recording of Reporting of Marriage Agreements, the Population and Civil Registration Service as the Implementing Agency or Technical Implementation Unit makes marginal notes on the list of deeds and extracts from the marriage certificate. Meanwhile, marriage certificates issued by other countries but the marriage agreement is made in Indonesia, the report is made in the form of a statement letter. According to Article 1 number 15 of Law Number 24 of 2013 concerning Amendments to Law Number 23 of 2006 concerning Population Administration (hereinafter referred to as the Adminduk Law), Civil Registration is the registration of important events experienced by a person in the Civil Registration list at the Implementing Agency, one of which is related to marriage. In addition, the Directorate General of Population and Civil Registration has the function of implementing policies in the field of facilitating population registration and civil registration. Therefore, those who have the authority to register a marriage agreement should only be the Civil Registry Office or and not a Notary (Annisa Istrianty dan Erwan Priambada, 2015).

The purpose of issue the Letter of the Director General of Population and Civil Registration of the Ministry of Home Affairs Number 472.2/5876/Dukcapil concerning the Recording of Reporting of Marriage Agreements is to follow up on the Decision of the Constitutional Court Number 69/PUU-XIII/2015. In addition, the Letter of the Director General of Population and Civil Registration of the Ministry of Home Affairs Number 472.2/5876/Dukcapil concerning the Recording of Reporting of Marriage Agreements (hereinafter referred to as the Letter of the Director General 472.2/2017) was issued with the aim of regulating the technical procedures for registering marriage agreements based on the Decision of the Constitutional Court Number 69/PUU-XIII/2015 (Dyah Ochterina Susanti, 2018).

The problem in practice is that many couples make marriage agreements without registering them with a notary. This raises questions about the legal certainty of the agreement, especially regarding its binding power if there is a dispute or problem in the future. Without registration by a notary, the agreement is considered an underhand agreement, which has weaker binding power and is vulnerable to cancellation (Dyah Ochterina Susanti, 2018). Legal Consequences If the Agreement is Not Registered by a Notary Agreements that are not registered by a notary can be considered to have no strong evidentiary force in court. This is because private agreements do not have the nature of an authentic deed. This can make it difficult for one party to obtain the rights stipulated in the marriage agreement, especially when the agreement is disputed. Legal and Jurisprudential Perspectives Legal certainty regarding the binding force of a marriage agreement without a notary needs to be reviewed from various legal and jurisprudential perspectives. The Interests of the Spouse in the Binding Force of the Agreement The couple who make the marriage agreement have the hope that the agreement will provide legal protection and regulate the

rights and obligations during the marriage. Weak legal certainty in an unregistered agreement can reduce the sense of security for both parties. Here, registration by a notary has a role to strengthen the agreement and protect the rights of the couple legally.

## **METHOD**

This research method uses a normative legal approach, which aims to examine the legal certainty and binding force of marriage agreements that are not registered by a notary based on the laws and regulations in force in Indonesia. The main data sources in this study are primary legal materials in the form of laws and regulations, especially the Marriage Law, Constitutional Court Decision Number 69/PUU-XIII/2015, and the Notary Law. In addition, secondary legal materials in the form of journals, books, and relevant articles are used to enrich the analysis. The data collection technique is carried out through library research to collect and analyze various legal documents and supporting literature. The collected data are then analyzed descriptively qualitatively, by interpreting laws and regulations and legal theories related to the principle of publicity and the authority of a notary in ratifying marriage agreements. This analysis aims to understand the legal implications of the absence of registration of marriage agreements that are notarized, as well as their consequences for legal certainty and protection of third party rights.

## **RESULTS AND DISCUSSION**

### **Legal Certainty Of Binding Power Of Marriage Agreements Not Registered By A Notary**

The expansion of the meaning of Article 29 paragraph (1) of the Marriage Law which states "At the time, before it is carried out or during the marriage bond, both parties with mutual consent can submit a written agreement that is legalized by a marriage registrar or Notary..." refers to the Constitutional Court Decision Number 69/PUU-XIII/2015 in this case that the institution that has the right to participate in legalizing the marriage agreement from the word "or" indicates an option between the Marriage Registrar and the Notary. The question is whether the existence of a Constitutional Court Decision which is final and binding can automatically be applied by a Notary to legalize the Marriage Agreement that has been made, so that it applies to the third party involved or is there still a need for further regulations as a legal umbrella in implementing the process and procedures for making a marriage agreement. Without any further regulations regarding the legalization of the marriage agreement by a Notary, how is the process, procedures, and procedures for implementing the marriage agreement related to a legal problem regarding the new authority held by the Notary due to the enactment of the Constitutional Court Decision Number 69/PUU-XIII/2015. This is related to the principle of publicity, which gives rise to a legal problem as to whether a notary has the authority to ratify a marriage agreement and whether it meets the requirements for publicity and how a notary can ratify a marriage agreement so that the agreement made is known and binding on third parties (Dyah Ochterina Susanti, 2018).

As explained above, the element of publicity is very important in a marriage agreement. If the marriage agreement has not been recorded or registered with the Office of Religious Affairs or the Population and Civil Registration Service as a substantive requirement in the marriage rules as stated in Article 2 of the Marriage Law, then the agreement has no binding legal force. Legal certainty in the context of recording or registering a marriage agreement refers to the affirmation of the legality, content, and existence of the agreement. Recording or registering a marriage agreement is a formal step that validates the agreement legally. With this process, the agreement is officially recognized by the competent authority, such as the Office of Religious Affairs or the Population and Civil Registration Service in Indonesia. As a result, the agreement becomes valid and has legal force recognized by the relevant parties.

A marriage agreement that is not registered does not comply with the principle of publicity, considering that the function of registering a marriage agreement is to fulfill the publicity element of the marriage agreement. If related to the explanation above, regarding the function of registering a marriage agreement as a Notary must keep the contents of the deed he made confidential, automatically the element of publicity is not achieved. The Constitutional Court Decision Number 69/PUU-XIII/2015 should provide a clear and unambiguous interpretation so that in addition to the marriage agreement deed being made at the notary, it is also registered with the Civil Registry in order to bind the related third party. In other words, a marriage agreement made before a notary is not sufficient to bind a third party (Dyah Ochtorina Susanti, 2018).

The principle of publicity as a legal principle that emphasizes the importance of announcing or publishing documents or agreements that have legal impact. In the context of a marriage agreement, the principle of publicity requires that the agreement be officially registered so that it can be accessed by interested parties, including third parties who may be affected by the agreement. By not fulfilling the principle of publicity, an unregistered marriage agreement will have limitations in terms of its validity and legal force. This is because the parties involved will trigger the impact of the agreement who cannot clearly know the contents and provisions contained in the agreement. This can cause legal uncertainty and give rise to potential disputes in the future (Dyah Ochtorina Susanti, 2018).

The process of registering a marriage agreement made before a notary is very significant. The registration allows the marriage agreement to be accessible to interested parties, including third parties. Although the content of the deed of agreement remains protected by the notary's confidentiality obligations, registration ensures that general information related to the agreement can be accessed transparently. Official registration provides legal certainty regarding the existence and content of the marriage agreement. This becomes a valid and accountable reference in a legal context. Registration of the marriage agreement helps protect third parties who have interests or rights related to the agreement. They can verify the information and rights stated in the agreement officially and take appropriate action if necessary. The registration process ensures that the marriage agreement is legally recognized by the Civil Registry. Registration of a marriage agreement with the Civil Registry has significant importance in the context of marriage law. Registration with the Civil Registry also reflects formal recognition of the marriage agreement. This makes the agreement stronger and legally binding for all parties involved, including third parties who have interests or rights. Thus, the agreement will be officially and legally binding, not only for the parties who made the agreement, but also for third parties who may be involved or affected by the agreement (Firman Floranta, 2020).

By registering with the Civil Registry, a marriage agreement can provide better legal protection for third parties who have an interest or right to the agreement. This prevents the possibility of conflict or dispute in the future involving third parties. The process of registering with the Civil Registry provides legal certainty for all parties involved. Thus, the rights and obligations stipulated in the marriage agreement become clear and can be implemented appropriately in accordance with applicable provisions. Registration with the Civil Registry also reflects the transparency and publicity of the marriage agreement. Information regarding the agreement can be accessed more easily by interested parties, thus providing an important level of clarity and openness in the context of marriage law. A marriage agreement is not sufficiently legalized by simply registering or recording it in the deed register book (repository) as stipulated in Article 58 paragraph (1) and paragraph (2) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as the Notary Position Law), because recording in the deed register book is only a form of monthly reporting by the Notary to the Regional Supervisory Council based on the Notary's work area (Firman Floranta, 2020). Recording in

the deed register book (repository) does not function as a form of publicity for notarial deeds, but rather as stated in Article 4 paragraph (2) and Article 16 paragraph (1) letter f of the Notary Law, it regulates that notaries must keep the contents of the deeds they have made confidential, indirectly meaning that not all groups can know the contents of the deeds made by a notary (Firman Floranta, 2020).

Registration of a marriage agreement will provide protection for third parties in making a marriage agreement at a notary and registration with the Civil Registry, this helps clarify the rights and obligations related to the agreement. Third parties who have interests or rights can clearly know what is regulated in the agreement and how the agreement will affect them. Registration of the agreement with the Civil Registry provides legal certainty to third parties (Firman Floranta, 2020). They can be sure that the agreement is officially and legally recognized by the authorized institution, so that their rights are protected in accordance with applicable provisions. Thus, the potential for disputes between the parties involved can be minimized. Third parties who have interests or rights related to the agreement have better access to understand the contents of the agreement and take the necessary steps to protect those interests. Registration of the marriage agreement will ensure that the contents of the marriage agreement are in accordance with applicable legal provisions. The Civil Registry Office that carries out the registration usually checks the conformity of the contents of the agreement with existing rules and norms, so that the agreement does not violate the law or protected rights (Kolang Febrinayanti Dantes dan I Gusti Ayu Apsari Hadi, 2023). The process of recording and registering confirms the existence of the agreement is more easily accessible and read by interested parties, including third parties who may be affected or have an interest in the agreement. This creates transparency and openness which is important in the context of marriage law (Kolang Febrinayanti Dantes dan I Gusti Ayu Apsari Hadi, 2023).

Substantive requirements in marriage regulations refer to the requirements that must be met in order for a marriage agreement to be considered legally valid. One of the substantive requirements that is often regulated in marriage laws is the Registration of the marriage agreement. This is discussed in Article 2 of the Marriage Law in several countries, including Indonesia. Registration of the marriage agreement is considered a substantive requirement that must be met in order for the agreement to be legally recognized and have binding force. This is an effort by the state to regulate and ensure legal protection for third parties involved in the marriage agreement. Article 16 paragraph (1) of the Notary Law states that "in carrying out his/her position, a Notary is obliged to keep confidential everything regarding the deeds he/she makes and all information obtained for the purpose of making the deeds in accordance with the oath/promise of office, unless the law stipulates otherwise." Thus, regarding the oath/promise of office of a Notary as regulated in Article 4 paragraph (2) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Office of a Notary (hereinafter referred to as the Notary Office Law), which states "that I will keep confidential the deeds and information obtained in the performance of my office" (Priesty Yustika Putri, 2018).

This explains that the action to keep the contents of the deed with all its information confidential by the Notary is so that it is not known by other parties other than the interested parties. With the provision of keeping the contents of the deed confidential, it can be understood that the Notary's deed does not meet the requirements of publicity. Based on Article 66 paragraph (1) of the Notary Law as referred to in other provisions where there is a loophole for a Notary to be able to provide information regarding everything related to the deed he made by deviating from the provisions of Article 4 paragraph (2) and Article 16 paragraph (1) letter f of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary's Office (hereinafter referred to as the Notary's Office Law). Regarding the element of publicity in a marriage agreement, an authentic deed made by a Notary does not meet the element of publicity because it relates to the deed made by the

Notary which can only be done in certain circumstances as long as the law determines otherwise. It is known that every marriage agreement always requires an element of publicity (binding power for third parties) in the act of ratification (Priesty Yustika Putri, 2018).

### **Legal Consequences Of Marriage Contracts Not Registered By A Notary**

In Decision Number 449/Pdt.G/2016/PT. Bdg, regarding the *ratio decidendi*, the Judge stated in his considerations containing the minutes of the examination and the letters of evidence of witness statements and considering the Decision of the District Court Number 11/Pdt.G/2016/PN.Cbi, which turned out that there were no new things to consider regarding the plaintiff's claim. Therefore, the Panel of Judges at the Appellate Level can agree and confirm the Panel of Judges at the First Level, that there was no error or mistake in providing considerations at the First Level Court (*Judex Fectic*). Therefore, in his legal considerations, he has explained correctly and correctly. All circumstances and reasons that are the basis for the Decision that are considered have also been stated in the Appellate Level Decision. In this regard, based on the above considerations, the legal considerations of the First Level Panel are used as the basis for the consideration of the decision of the Appellate Panel of Judges themselves, so that the Decision of the Cibinong District Court on June 29, 2016 Number 11/Pdt.G/2016/PN.Cib can be maintained and therefore must be strengthened.

Related to the Judge's *ratio decidendi* above, that the Plaintiff before marrying the Defendant in 2002 had made an agreement regarding the legal consequences of the marriage to be held and regarding the assets brought or acquired during the marriage would be the rights and control of each and there would be no mixing of assets which were stated in written form before Elvina Maisyarah, S.H., Notary in Jakarta hereinafter referred to as the Prenuptial Agreement Deed No. 11 dated 20-11-2011. However, on December 28, 2015 the relationship between the plaintiff and the defendant ended due to divorce, resulting in legal consequences for the object of the dispute, namely that it had to be returned to PT. Horizon, which is currently under the registered ownership of the Defendant. However, the Defendant still insists on his statement that the disputed object is considered joint property and is claimed by himself as his right because it is listed in the Defendant's name in the Sale and Purchase Agreement. Because the letters of the disputed object and the management of payment/compensation of PT. Horizon Biru at that time were also represented to the Defendant for the PPJB (Sales and Purchase Agreement) which was in the form of one house unit and land, one plot unit and one shophouse unit, so the Defendant rejects the legal consequences of the disputed object mentioned by the Plaintiff because the disputed object submitted by the Plaintiff is also unreasonable and there is no legal basis that is said to be evidence of the disputed object.

The Defendant reiterated that there was no agreement letter agreed upon and signed by the Plaintiff and the Defendant either integrally or authorized by law relating to the ownership of the three properties in the name of PT Horizon Biru. Based on the Marriage Agreement in Article 1 which reads, "between husband and wife there is no mixing of joint property in marriage, whether owned by each and brought into the marriage, or obtained during the marriage by way of inheritance, gifts, grants, purchases or other income", there is no mention of company property either in Article 1 or in other articles in the Marriage Agreement. Regarding the property mentioned in the Marriage Agreement related to the dissolution of the marriage between the Plaintiff and the Defendant is regarding the property of each, and not regarding the company's property. The object of the dispute which is an inseparable part of the unity of the company's property PT. Horizon Biru which is obtained from compensation payments for cooperation that has been bound in 2003-2009 between the company PT. Misaya Properindo and PT. Mekanuasa Cipta as the owner of the Bogor tourism development project. As is known, the management carried out by the plaintiff as the director of PT. Horizon Biru is the management of the assets of PT. Horizon Biru in

accordance with the provisions of the company law that the company's assets are separate from the personal assets of the company's organs as long as the assets are not the object of the company's capital, therefore the assets owned by the company are separate and not mixed with the defendant's personal assets as the company's organs, if there is a payment made by PT. Mekanusa Cipta and PT. Misaya Properindo is a management that if successful will be written in the name of PT. Horizon Biru. If drawn from the case above, at the time of the management that was given power of attorney to the defendant when she was still the plaintiff's wife.

Legal certainty based on the above case is concrete evidence that the importance of Marriage Agreement Registration: Ultimately, marriage agreement registration is very important to minimize disputes that occur. This is evident in Decision Number 449/Pdt.G/2016/PT. Bdg where the court confirmed that there was no error or mistake in the legal considerations made by the Panel of Judges of the First Level. This means that the registered marriage agreement provides legal certainty and is a strong basis for resolving disputes. Legal certainty in an agreement has a strong belief that the contents and existence of the agreement are recognized and legally valid. In the context of marriage agreement registration, this eliminates doubts regarding the legal status of the agreement, so that the parties can be sure that the rights and obligations stipulated in the agreement are recognized by legal institutions. Registration of the marriage agreement, the document will receive legality that is legally recognized (Wira Dharma Pratiwi, Syahrudin Nawi dan Hasbuddin Khalid, 2021). Registration provides legal protection for the agreement. If a dispute arises in the future, registration is strong evidence that the agreement has indeed been made and officially recognized, so that the dispute resolution process can be carried out in a more structured and fair manner. This helps prevent disputes related to the validity or existence of the agreement. By registering, the parties show their seriousness in making a marriage agreement. The parties receive protection against disputes that arise in the future, so that they can avoid potentially detrimental conflicts (Wira Dharma Pratiwi, Syahrudin Nawi dan Hasbuddin Khalid, 2021).

A strong legal basis in the context of registering a marriage agreement refers to Decision Number 449/Pdt.G/2016/PT. Bdg which strengthens the importance of such registration as a solid foundation for the court in resolving disputes related to the agreement. Registration of a marriage agreement provides strength and validity to the document. This shows that registration of a marriage agreement provides a clear and unambiguous basis for the court in deciding related disputes. Registration of a marriage agreement regulates the rights and obligations of each party to be clear and firm. Officially registered documents become a strong reference related to the rights and obligations that have been agreed upon, thus reducing the possibility of different interpretations among the parties involved. Registration of a marriage agreement also provides a strong legal reference in resolving disputes that may arise. The court can refer to the registered marriage agreement document to decide disputes more fairly and appropriately for the parties involved (Wira Dharma Pratiwi, Syahrudin Nawi dan Hasbuddin Khalid, 2021). Because in a marriage agreement, there will be a better understanding of each other's rights and obligations with the existence of a registered document. This can reduce uncertainty and tension in a marriage relationship. Registration of a marriage agreement has important benefits in regulating the legal process related to the agreement. The registered marriage agreement document becomes structured and well documented in the legal system. This makes the process of interpreting and applying the law to the agreement clearer and more focused. Thus, the Court can use the officially registered document as a proper reference in assessing disputes that arise. A structured document helps the court to understand the contents of the agreement as well as the rights and obligations that have been agreed upon by the parties (Wira Dharma Pratiwi, Syahrudin Nawi dan Hasbuddin Khalid, 2021). The listed documents provide an objective basis for the

court to decide the dispute. The court can refer to the documents without any excessive or biased interpretation, so that the decision taken is more based on applicable law, so that it does not cause problems when considered by the court.

## CONCLUSION

Legal certainty in marriage agreements that are not registered by a notary after the Constitutional Court Decision Number 69/PUU-XIII/2015 states that a notary has the authority to ratify a marriage agreement. However, agreements that are only ratified by a notary without being registered with the Office of Religious Affairs or the Population and Civil Registry Service do not fulfill the principle of publicity, which requires important documents to be accessible to third parties. Without registration, this agreement does not have binding legal force for third parties, potentially causing legal uncertainty and disputes in the future. The principle of publicity aims to protect the interests of third parties by ensuring that they can know the rights and obligations stipulated in the agreement. Although a notary has an obligation to keep the contents of the deed confidential, registration at the Office of Religious Affairs or the Population and Civil Registry Service guarantees that information related to the agreement can be accessed by interested parties. Thus, registration of a marriage agreement provides legal certainty for all parties and protects existing rights in accordance with legal provisions.

Unregistered marriage agreements have the potential to cause disputes in terms of division of assets in the event of divorce or other legal conflicts. In the case of Decision Number 449/Pdt.G/2016/PT. Bdg, the court decided that registered agreements have stronger legal force and can be used as a basis for resolving disputes. Registered agreements provide legal certainty because they are legally recognized by legal institutions, reducing the possibility of different interpretations regarding the rights and obligations of each party. With registration, this agreement is officially recognized and recorded so that the court can use the document as a proper reference, avoiding potential doubts or conflicts regarding the validity of the agreement. Registration also provides legal protection and prevents disputes, regulates rights and obligations more clearly and ensures that the legal process is more structured and fair.

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