

Cancellation of The Marriage Agreement Dedicated After The Marriage is Conducted

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ABSTRACT

Marriage aims to form a happy, eternal, and conscious family without pressure. From a marital relationship, rights and obligations, including property, are regulated in the marriage law. For certain couples, marital property needs to be separated and a special agreement is made that regulates the separation of assets and obligations of both partners. In the case that it was found that there was a couple who made a separation agreement made after the marriage took place, there is a fact that the agreement was requested to be canceled for various reasons from the plaintiff. With these facts, the purpose of this study is to examine the legal aspects of the cancellation of the marriage agreement made after the marriage took place. This research method used a normative juridical method with a conceptual approach and legislation. The conclusion of this study is that marriage is a form of relationship between a man and a woman with the aim of forming a family, that it is undeniable that marriages are carried out between Indonesian citizens and foreigners and this is that there are legal differences that apply to men and women in mixed marriages because of differences in nationality. . In mixed marriages, there will be things regarding property that are different from marriages between Indonesian citizens and Indonesian citizens. The marriage agreement made by the couple before the marriage can be in the form of an authentic deed made before a notary as a public official, if the marriage agreement is made after the marriage it will result in null and void.

Keywords: Marriage Agreement, Notary, mixed marriage

1. INTRODUCTION

Marriage is an important event in every human's life. Marriage that occurs between a man and a woman will create physical and spiritual bonds between them, to the community and also their relationship with the assets obtained between them both before, during and after the marriage takes place. In Indonesia, the rules regarding marriage are not only influenced by local customs, but are also influenced by various religious teachings, such as Hinduism, Buddhism, Christianity and Islam. The existence of various influences in the community resulted in the occurrence of many rules governing marital problems. Differences in the way marriage is carried out as an influence of marital arrangements, have consequences on the way of life of kinship, kinship, and one's wealth in social life (Hilman Hadikusuma, Indonesian Marriage Law, According to Customary Law and Religious Law, 2003). still valid are those relating to the arrangement of property in marriage. This arrangement has undergone significant development and has become a discourse of debate in the reform of Indonesia's national law. When discussing the issue of property in marriage, basically the assets obtained during the marriage become one, become joint property. After the enactment of Law Number 1 of 1974 concerning Marriage, the marriage agreement is regulated in Article 29, which stipulates:



1. At or before the marriage takes place, both parties with mutual consent can enter into a written agreement which is legalized by the marriage registrar, after which the contents also applies to third parties as long as the third party is involved.
2. The agreement cannot be ratified if it violates the boundaries of law, religion and morality.
3. The agreement is valid since the marriage took place.

Marriage agreements made after marriage are often carried out by several couples, in practice there are legal problems, namely the Marriage Law has not regulated the legal basis for making marriage agreements made after the marriage takes place, this is found in the case of a lawsuit for the cancellation of the marriage agreement as in the South Jakarta district court decision. No. 526/PDT/G/2012/PN.Jkt.Sel, with the lawsuit that Denis Antony is against Yeane which is that the Plaintiff is an Australian Citizen, Passport Holder. That the Plaintiff and the Defendant got married in Melbourne, Australia as stated in the Certificate of Marriage dated 18 May 2002. That on 29 April 2003, the Plaintiff and the Defendant signed the Marriage Agreement as stated in the Deed Number 44 dated 29 April 2003 concerning the Copy of the Marriage Agreement Outside of each Assets Partnership, before Co-Defendant I / notary. Whereas according to the plaintiff the marriage agreement violated the Notary Position Law because it was not officially translated so that the plaintiff did not understand what the deed contained. The case is interesting to be investigated further in this legal research.

2. RESEARCH METHODS

Type of research in this legal research is normative legal research, which is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced (Peter Mahmud Marzuki, *Legal Research*, 2011). The researcher uses a normative type of research because this research is to find coherence, namely whether there are legal rules in accordance with legal norms and are there norms in the form of orders or prohibitions in accordance with legal principles, and whether someone's actions are in accordance with legal norms or legal principles (Peter Mahmud Marzuki, *Legal Research Revised Edition*, 2014) As this research is to find. In this study, the researchers used three problem approach methods, namely, the statutory approach, the conceptual approach.

The statutory approach is carried out by reviewing all laws and regulations related to the legal issues being handled. The conceptual approach departs from the views and doctrines that develop in the science of law. Studying the views and doctrines in legal science, researchers will find ideas that give birth to legal notions, legal concepts, and legal principles that are relevant to the issues at hand. In the conceptual approach, it will be possible to find the ratio of making a marriage agreement and its legal consequences for the couple. The formulation of the problem will

then be analyzed with pre-existing concepts and theories. In this study, theories and concepts are used. In this study, researchers used legal sources, including:

- a. Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in the making of legislation and judges' decisions. Primary laws that will be used in this research include ;
- b. Secondary legal materials are all publications on law that are not official documents. Publications on law include textbooks, legal dictionaries, legal journals, and commentaries on court decisions. In this study, the secondary legal materials used include books in the field of law, papers, articles, and theses.

3. RESULTS AND DISCUSSION

The Concept of Marriage

Marriage is the behavior of creatures created by God Almighty in order to always reproduce. (Imam Al Ghozali, *Revealing the Nature of Marriage*, 1995) Legal marriages make the association of men and women happen in an honorable manner according to the position of humans as honorable creatures. With a legal marriage gives clean offspring, making a healthy and good generation. Children/offspring of legal marriages always adorn family life and at the same time constitute human survival in a clean and respectful manner (Ahmad Azhar Basyir, *Islamic Marriage Law*, 2000) As a country based on Pancasila, where the first precept is Belief in One God, then Marriage has a very close relationship with religion / spirituality, but the inner / spiritual element also has an important role. Forming a happy family with close relationships with descendants, which is also the purpose of marriage, maintenance and education are the rights and obligations of parents (CST Kansil, *Introduction to Indonesian Law and Legal Administration*, 1989).

Article 26 of the Civil Code (BW) states that the law views marriage only in civil relationships. This means that BW only recognizes civil marriages, i.e. legal marriages are marriages that meet the requirements as determined by BW, so that they are independent of the regulations held by a particular religion.

Article 1 Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Supreme Godhead. Article 2 (1) Marriage is legal if it is carried out according to the law of each religion and belief. (2) Each marriage is recorded according to the prevailing laws and regulations. Marriage law as contained in the Marriage Law and the Compilation of Islamic Law adheres to the permissibility of polygamy, although it is limited to only four wives. Polygamy is marriage

between a man and several women. Islam allows polygamy, but prohibits polyandry, namely marriage between a woman and several men (Sudarsono Law, National Family, 1991). UUUP mentions the age limit for marriage as in Article 7, namely:

(1) Marriage is only permitted if the man has reached the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years.

Mixed Marriages between Indonesian Citizens and Foreign Citizens

Mixed marriages are marriages between a man and a woman, which in Indonesia are subject to different laws due to differences in nationality and one of the parties is an Indonesian citizen. Mixed marriages are regulated in the Marriage Law, namely Article 57 to Article 62. The definition of mixed marriage is contained in Article 57 of Law Number 1 of 1974 concerning Marriage. Based on the formulation of the article, the elements of mixed marriage can be described as follows:

- a. Marriage between a man and a woman This element explains that mixed marriages are monogamous marriages.
- b. that the difference in law that applies to men and women who have mixed marriages is not due to differences in religion, ethnicity, and class in Indonesia, but because of nationality
- c. One of the parties to a mixed marriage must be a foreign citizen.
- d. One of the parties is an Indonesian citizen. This element emphasizes that the male or female parties in mixed marriages must be Indonesian citizens.

Article 2 of the UUP stipulates that a marriage is valid if it is carried out according to their respective religions and beliefs, this article is only used by marriages of fellow Indonesian citizens, it is not appropriate if it is used in mixed marriages. Because marriages held abroad are not carried out based on religious law as referred to in Article 2 of the UUP, the state will apply the *lex fori* procedure of the state organizing the marriage in question. A country that has sovereignty and has a legal system that is different from other countries as its national law, and for local judges it is called *lex fori*. On the other hand, if a mixed marriage is held in Indonesia, of course, the marriage follows the existing marriage procedures in Indonesia in accordance with the UUUP. marriage, it must be followed by both internal and mixed marriages so that the marriage is valid. This is in line with the rule of *locus regit actum*, that the form of legal action is controlled by the law of the country where the act is carried out.

Article 61 (1) states that mixed marriages are recorded by an authorized registrar. Then in paragraph (2) that whoever carries out a mixed marriage without first showing the authorized registrar the certificate or decision to substitute the information referred to in Article 60 paragraph (4) of this Law shall be punished with imprisonment for a maximum of 1 (one) year.) month. From the description above, mixed marriages cause legal relations and legal consequences,

including regarding their citizenship status and also regarding the formation of property before and after mixed marriages are carried out. Based on Article 58 of the UUUP, people who have mixed marriages can obtain their citizenship from their husband or wife and can also lose their citizenship according to the methods stipulated in Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. Related to mixed marriage citizenship status according to Indonesian positive law, which refers to Law Number 12 of 2006 concerning Citizenship. This Citizenship Law adheres to the principle of equality that both men and women can lose their Indonesian citizenship due to the mixed marriage. The Citizenship Law provides an opportunity for Indonesian citizens who have mixed marriages to choose their nationality, which means that the husband can obtain the citizenship of his wife and vice versa, the wife can obtain the citizenship of her husband if the wife chooses to follow the citizenship of her husband.

A male or female Indonesian citizen who is married to a foreigner loses Indonesian citizenship if and during the year after the marriage takes place, he declares a statement to renounce his Indonesian citizenship. If a male or female Indonesian citizen who is married to a foreigner wishes to maintain his Indonesian citizenship, that is by submitting a statement letter regarding his desire to remain as an Indonesian citizen to the official or representative of the Republic of Indonesia whose territory includes the residence of the woman. This is in accordance with Article 26 paragraph (3) of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. Based on the above provisions, the Citizenship Law gives freedom to citizens to maintain their citizenship.

The Concept of Property in Mixed Marriages

After the enactment of the UUUP related to marital property, it is regulated in Chapter VII. In contrast to BW, which uses the term property in marriage. UUUP looks at marital property from the side of material objects, namely in the form of tangible objects. Meanwhile, the term assets used by BW has a broader meaning than objects because assets include objects and material rights, including receivables and other intangible material rights (Salim HS, Introduction to Written Civil Law (BW), 2002.). The UUP related to marital assets is regulated in Articles 35 to 37 of the UUP, while in BW related to marital assets it is regulated in Articles 119 to 198 which are outlined in detail and detail. Article 35 of the UUP regulates: (1) Assets acquired during marriage become joint assets. (2) Inherited assets of each husband and wife and property obtained by each as a gift or inheritance, are under the control of each as long as the parties do not specify otherwise. The provisions of the article distinguish marital property into 2 (two) types, namely joint property or what is commonly called gono gini property and innate property or original property. Joint assets are assets obtained during the marriage bond and without questioning who is registered in whose name. The acquired property will become joint property if there is no agreement regarding the

status of the property. Then regarding the joint property, the husband or wife can act with the consent of both parties. This is regulated in Article 36 paragraph (1) of the UUP "regarding joint property, husband or wife can act with the approval of both parties". Congenital assets are property belonging to each husband and wife obtained before the marriage or obtained as a gift or inheritance. Based on the provisions of Article 35 paragraph (2) of the UUP, husband and wife are entitled to fully own their respective assets as long as the parties do not specify otherwise, namely by marriage agreement. In this case, the personal property of each husband and wife is as follows:

- a. The assets brought by each into the marriage include debts that have not been paid off
- b. Assets obtained as gifts/gifts unless otherwise specified
- c. Inheritance obtained by each, unless otherwise stipulated. The arrangement of marital property in the BW has different legal provisions from the UUUP. In principle, BW only recognizes one group or class of assets in a marriage, namely the assets of the husband and wife union, while in the UUP it recognizes the separation of assets between husband and wife. The legal consequences of property in mixed marriages include ownership of immovable objects in the form of land and everything attached to the land, Law Number 5 of 1960 concerning the UUPA. Article 21 paragraph (3) of the BAL stipulates that foreign nationals are not allowed to have ownership rights to land even though the acquisition is the result of joint property, namely the mixing of assets in marriage. For this acquisition, foreigners must release their land within a period of 1 year, if after that period, the land will fall to the State.

The Concept of a Marriage Agreement

For prospective husbands and wives who wish to avoid the unanimous mixing of these assets in the marriage to be carried out, the law The law regulates the provisions regarding the deviation by making a marriage agreement. In general, a marriage agreement is made for the following reasons:

- a. If there are a number of assets that are greater in one party than the other party;
- b. Both parties each brought considerable input (aanbrenst);
- c. Each has its own business, so that if one falls (failliet), the other is not involved;
- d. For the debts they made before marriage, each of them will be responsible individually (Titik Triwulan Tutik, Introduction to Civil Law in Indonesia, 2006)

In this case it is explained in Article 139 BW that prospective husband and wife with a marriage agreement can deviate from the regulations the law concerning joint property, provided that it does not conflict with good morals or general rules, and the provisions described in the following explanation are also observed. Like BW, Law Number 1 of 1974 concerning Marriage in it also regulates marriage agreements that can be made by husband and wife which contains

arrangements regarding assets. This is regulated in Article 29 of Law Number 1 of 1974 concerning Marriage, namely at or before the marriage takes place. both parties with mutual consent can enter into a written agreement which is legalized by the Marriage Registrar.

The separation of assets in marriage today is only partially known by people or knows it, the assumption that after marriage everything is mixed into one will make couples feel comfortable and reluctant to make it. For prospective husbands and wives who avoid the mixing of assets, the law regulates the provisions regarding such deviations by making a marriage agreement, the marriage agreement can be used as an effort to prevent disputes regarding marital property in the future. Furthermore, to ensure that the marriage agreement made is correct and can bind the parties, the form of the marriage agreement according to BW must be made with a notary deed before the marriage takes place, and will be void if it is not made in this way. As this is explained in Article 147 BW which states that, "The marriage agreement must be made with a notarial deed before the marriage takes place, and will be void if it is not made in such a way." The marriage agreement must be made in an authentic deed that has strong evidentiary power. The existence of a condition that the marriage agreement must be made with a notarial deed (authentic deed) is aimed at so that the marriage agreement has perfect evidentiary power in the event of a dispute. By making a marriage agreement in a notarial deed, it will provide legal certainty regarding the rights and obligations of husband and wife on their property, considering that a marriage agreement has broad consequences and can involve large financial interests owned by a household.

If one of the two conditions is not met, then the marriage agreement is void. This results in the assumption that there is a togetherness of wealth between husband and wife in the marriage. That is, the legal consequences of the marriage bring the consequences of mixing the assets of husband and wife into one in the wealth of marital property. Both parties in making a marriage agreement must expressly state that there is no mixing of assets and must also expressly state that there is no union of property in other forms, such as a profit and loss union or a profit and loss union. According to Article 144 BW states that "the absence of joint assets does not mean that there are no joint gains and losses, unless this is expressly eliminated." Regarding the content and types of marriage agreements that can be entered into in a marriage agreement according to BW, it is divided as follows:

1. Complete (Full) Separation of Marriage Assets If before the marriage takes place, the prospective husband and wife do not make a marriage agreement, legally there is a unanimous union of assets.
2. Profit and Loss Union The marriage agreement with the profit and loss union (gemeenschap van winst en varlies) in this case does not recognize the existence of a

unanimous property union, but limits it in terms of a limited union, which is only limited to the profit and loss union.

3. Union of Income and Income A marriage agreement with a union of income (*gemeenschap van vuchten en inkomsten*) is an agreement between a pair of prospective husband and wife to unite every profit (result and income) only.

Analysis of Decision 526/PDT/G/2012/PN.Jkt.Sel

That the Plaintiff (denis) is an Australian citizen, holder of Australian Passport No.E.4016832 and KITAS No.2C11JE 6090 DKS residence permit until December 1, 2012, the defendant is YEAN. The Plaintiff and the Defendant got married in Melbourne, Australia as stated in the Certificate of Marriage dated 18 May 2002. On 29 April 2003, the Plaintiff and Defendant signed the Marriage Agreement as stated in the Deed No. 44 dated 29 April 2003 concerning a Copy of the Foreign Marriage Agreement. Each Wealth Partnership, before a notary. Whereas according to the plaintiff, the notary should have known and it was his duty to find out the Plaintiff is an Australian citizen, so the notary should have known that the Plaintiff did not understand Indonesian. Article 43 paragraphs 2 and 3 of Law Number 30 of 2004 concerning the Position of a Notary (hereinafter referred to as the "Notary Position Law") states: "In the event that the appearer does not understand the language used in the deed, the Notary is obliged to translate or explain the contents of the deed in the appropriate language. understood by the appearer" and "If the Notary is unable to translate or explain it, the deed is translated or explained by an official translator" Based on the above, Co-Defendant I as a notary is obliged to translate or explain the contents of the Pre-nuptial Agreement in a language understood by the Plaintiff or: the deed is translated or explained by a sworn translator.

Whereas in the Prenuptial Agreement there is no official translator's signature and a statement that the deed has been translated or explained by Co-Defendant I in a language understood by the Plaintiff. Thus, based on the above, Co-Defendant I has violated his obligations as a notary and the Prenuptial Agreement violated the formal requirements of a Notary Deed as regulated in Article 16 paragraph 1 d jo.43 paragraph 2 and 3 of the Notary Position Act. done by notarial deed. The peace agreement must be made in writing and so on. Agreements for which a certain formality or form is stipulated as we have seen are called formal agreements. If such an agreement does not meet the formality requirements stipulated by law, then it is null and void. Thus, based on the above matters, the Pre-nuptial Agreement as stated in the Notary Deed No. 44 dated April 29, 2003 concerning Copies of Marriage Agreements Outside Each Wealth Partnership, has been proven to have violated the formal requirements of a Notary Deed and therefore null and void. The contents of the marriage agreement that "The Appears of both parties

hereby explain that the two parties want to get married, while the consequences of the marriage they will direct are regarding their assets, the Pre-nuptial Agreement, namely the following articles:

- a. Article 1 of the Pre-nuptial Agreement states:

"Between the first party and the second party there is no partnership of assets, like a partnership of assets according to law or a partnership/mixing of profits and losses and mixing of fruits/results. brought into the marriage and obtained by inheritance, grant, testamentary grant or in any other way during the marriage, as well as assets acquired by interest or exchange.
- b. Article 4 of the Prenuptial Agreement states:

"The second party demands and maintains for himself the right to manage and the right to manage his own property, both movable and immovable property and is free to collect interest, fruit or proceeds from his wealth. , his work and from other sources without the need for assistance, approval or authorization from the first party "
- c. Article 5 of the Pre-nuptial Agreement states:

"All costs and expenses as well as all expenses for household needs and interests including expenses arising from marriage and expenses for the education of children born from this marriage are entirely borne by the first party"
- d. Based on Article 1449 of the Civil Code, an engagement made by coercion, deception or fraud, raises a demand to cancel it. Whereas based on the foregoing it has been proven that in the signing of the Pre-nuptial Agreement there was an element of misdirection by the Defendant and therefore the Pre-nuptial Agreement must be declared null and void. The Prenuptial Agreement is Illegal According to Law No. 1 of 1974 concerning Marriage and the Civil Code.
- e. Whereas based on Article 29 paragraph 1 of Law No. 1 of 1974 concerning Marriage (hereinafter referred to as "UUP") a marriage agreement can be made at or before the marriage takes place in a written agreement ratified by the marriage registrar
- f. Whereas based on Article 66 of the UUUP, for marriage and everything related to marriage based on this Law, with the enactment of this Law the provisions stipulated in the Civil Code, Christian Indonesian Marriage Ordinance, Mixed Marriage Regulations and other regulations other regulations governing marriage to the extent that it has been regulated in this Law shall be declared null and void. Thus, if it has not been regulated, the provisions of the Civil Code will still apply.
- g. Based on Article 147 of the Civil Code, every marriage agreement must be made with a notarial deed before the marriage takes place with the threat of cancellation. Thus, based on Article 29 UUUP jo. 147 of the Civil Code, the marriage agreement must be made

before or at the time the marriage takes place and is made in a notary deed and ratified by the marriage registrar. That the Dispenduk Capil does not have the authority to ratify a marriage agreement, has consciously violated Article 29 of the UUP jo. 147 of the Civil Code as can be seen in the Marriage Certificate No. 61/AI/PP/2003, Co-Defendant II has ratified the Pre-nuptial Agreement which was made after the marriage was carried out.

From these cases can be analyzed as follows:

- a. A marriage agreement is invalid if it is made after the marriage takes place because it violates Article 29 of the Marriage Law. If the agreement has been made then it has no legal force.
- b. The notary is obliged to observe when the marriage takes place and when the marriage agreement is made because the legal consequences will be null and void if it is not in accordance with the laws and regulations.
- c. Regarding legal mixed marriages carried out according to the law where the bride and groom are married, but to legalize a marriage bond, it requires recognition from the State that they are husband and wife. In this case the bride and groom have not registered their marriage.

4. CONCLUSION

Marriage is a form of relationship between a man and a woman with the aim of forming a family, that it is undeniable that marriages are carried out between Indonesian citizens and foreigners and that there are legal differences that apply to men and women in mixed marriages because of differences citizenship. In mixed marriages, there will be things regarding property that are different from marriages between Indonesian citizens and Indonesian citizens and The marriage agreement made by the couple before the marriage can be in the form of an authentic deed made before a notary as a public official, if the marriage agreement is made after the marriage it will result in null and void.

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