



Juridical analysis of marriage agreements that are not registered at the civil registration office (study of supreme court decision number 598/PDT/2016)

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Abstract

Government Regulation of the Republic of Indonesia Number 54 of 2007 Concerning Implementation of Child Adoption and Compilation of Islamic Law, where these rules really protect the implementation of child adoption before the law. However, in fact in its practice there are still adoptions that do not follow the rule of law. This research is intended to provide an explanation of how the implementation of child adoption is viewed from Islamic law and customary law in Bener Meriah Regency, how legal protection for child adoption is viewed from Islamic law and customary law in Bener Meriah Regency and what the legal implications are for the adoption of children who are adopted through a court decision and those who are adopted without going through a court (custom). The results of the study show that the implementation of child adoption carried out by the community is still not in accordance with the implementation procedures both according to Islamic law and according to local customary law. In terms of legal protection, both children and adoptive parents do not have clear legal protection because there is no determination of the application for adoption and does not involve Village apparatus in accordance with the rule of law. The legal implication of adoption through a court or syar'iyah court is that the rights of adopted children are protected and have clear legal force before the law. If it is done outside the court, the child will not get guaranteed rights before the law.

Keywords: Marriage agreement, civil registration, judge's consideration

Introduction

Marriage is a permanent relationship between two people who are legally recognized by the community concerned based on the applicable marriage regulations. According to Article 1 of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage, marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Godhead. Almighty. Regarding the Marriage Agreement regulated in Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage it is stated in Article 29 which reads:

1. At the time or before the marriage takes place, both parties, by mutual agreement, can enter into a written agreement that is legalized by the marriage registration officer, after which the contents also apply 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 decency;
3. The marriage is valid since the marriage took place;
4. As long as the marriage lasts, the agreement cannot be changed unless both parties agree to change and the change does not harm the third party.

The legal consequences caused by marriage are very important, not only in terms of family relations, but also in terms of wealth. Law of wealth (wealth) in the systematics of civil law according to jurisprudence in the second book. The law of wealth regulates legal relations that can be valued in money. If we talk about someone's wealth, what is meant is the sum of all the rights and obligations of that person, valued in money.

In line with the notary's authority regarding making deeds, especially the marriage agreement deed as it turns out in article 15 of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary, it is explained that the authority that exists in a notary can be understood in two ways, namely:

1. The notary in his position of duty formulates the wishes/actions of the parties into an authentic deed, taking into account the applicable legal rules
2. Notary deed as an authentic deed has perfect evidentiary power, so it does not need to be proven or supplemented with other evidence. If, for example, there is a party stating that the deed is not true, then it is the party who claims it is not true that is obliged to prove his statement in accordance with applicable law.

Article 15 paragraph (1) of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 Concerning the Office of a Notary Public, that a notary has the authority to make authentic deeds, as long as the making of these deeds is not assigned or excluded to officials or other people. Granting authority to officials or other agencies, such as the Civil Registry Office, does not mean giving qualifications as a public official but only carrying out the function of a general official when making deeds determined by the rules of law and their position remains in their position as civil servants. In Article 15 paragraph (2) letter a of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 Concerning the Position of Notary, a Notary in his position, authorized to validate the signature and determine the certainty of the date of the letter under the hand, by registering it in a special book. This

provision constitutes the legalization of a private deed made by an individual or by the parties on sufficiently stamped paper by way of registration in a special book provided by a Notary. The point of this legalization is, the parties make the letter, bring it to the Notary, then sign it before the Notary, then record it in the legalization book. The date at the time of signing before the Notary, as the date of the legal action, which gave birth to rights and obligations between the parties. self-made by individuals, or by the parties, on sufficiently stamped paper, by way of registration in a special book, provided by a Notary. The point of this legalization is, the parties make the letter, bring it to the Notary, then sign it before the Notary, then record it in the legalization book. The date at the time of signing before the Notary, as the date of the legal action, which gave birth to rights and obligations between the parties. self-made by individuals, or by the parties, on sufficiently stamped paper, by way of registration in a special book, provided by a Notary. The point of this legalization is, the parties make the letter, bring it to the Notary, then sign it before the Notary, then record it in the legalization book. The date at the time of signing before the Notary, as the date when the legal action took place, which gave birth to rights and obligations between the parties.

The notary can also read/explain the contents of the letter or only certify the signature and confirm the date. The point remains that the parties must sign their signatures before the Notary, and then the signatures are ratified by him. The notary determines the certainty of the date, as the date when the private agreement was signed between the parties. The notary then writes the legalization editorial on the letter. Ratification of signatures and determination of date certainty, recorded in the legalization book. The notary who witnesses and certifies the signature, determines the certainty of the date, as an official authorized by law to explain/confirm/ensure that it is correct on the date as written in the legalization book, the parties made an agreement under the hand and before him to sign the letter. The editorial written on the legalization sheet is limited to the notary's responsibility.

Regarding the authority of a Notary to make a deed, in this regard that an agreement must be in the form of a notarial deed as required in the form of a notarial deed so that it can be recorded as a dukcapil, a notarial deed has perfect evidentiary power and is binding on the parties.

The marriage agreement must be drawn up with a notarial deed, as well as with a written agreement ratified by the Civil Registry Supervisor (Marriage Registration), before the marriage takes place and it takes effect from the time the marriage takes place. The material regulated in the agreement depends on the parties of the prospective husband and wife, as long as it does not conflict with the law, statute, religion, and decency or decency. This marriage agreement applies as a law for those who make it, also applies to third parties as long as these third parties are involved.

In order for the marriage agreement to have legal force, it is better to make it before a notary, because the notary has the authority to make authentic deeds, talking about the relationship with authentic deeds and the authority of a notary as a public official who has the authority to make authentic deeds, can be further seen in the Law. Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 Concerning the Office of a Notary Public,

namely the preamble point b states that to guarantee legal certainty, order and legal protection, authentic written evidence is needed concerning circumstances, events or legal actions that have been organized through certain positions. This shows that notaries have a legal basis that strengthens their profession.

The marriage agreement made and signed before Notary Eko Handoko as co-defendant contradicts and violates Article 29 paragraph (1) Law Number 16 of 2019 regarding changes to Law Number 1 of 1974 concerning Marriage, because it is not registered at the Population and Civil Registration Office of Tuban Regency or has never been registered at the Registrar's Office of the Tuban District Court and has legal defects both formal and material, the deed of marriage agreement must be declared null and void with all legal consequences by the Tuban District Court.

The public will think that a marriage agreement made without being ratified by a Marriage Registration Officer is invalid, so that the marriage agreement must be legalized first. This raises a problem, namely regarding the validity of the marriage agreement, even though the marriage agreement has been made before a notary, it is not legalized by the marriage registration officer. The validity of a marriage agreement is very important because to find out the legal consequences for the parties including third parties, namely about the strength of the marriage agreement that has been made whether it has legal force for the parties involved.

Whereas based on Article 29 paragraph (1) Law Number 16 of 2019 regarding changes to Law Number 1 of 1974 concerning Marriage, Marriage agreements can apply to third parties after the written marriage agreement is ratified by the marriage registration officer (Civil Registration Office). If the marriage agreement has never been registered at the district court clerk's office and recorded in the civil registry at the time the marriage took place, then the marriage agreement has never been legalized, therefore a third party cannot accept the transfer of rights from one of the parties (only husband or wife). Because the marriage agreement only applies to husband and wife internally related to the management of each other's assets while the marriage lasts. Whereas because all the joint assets (assets acquired during the marriage of the plaintiff and Defendant 1) have been controlled by Defendant 1,

The description of the case above shows that the marriage agreement was not legalized by the Civil Registry Office so that one of the parties or so became reneged and could not receive the distribution of joint assets because Defendant 1 already controlled all of the joint assets (assets acquired during the marriage of the plaintiff and Defendant 1). Therefore, third parties cannot accept the transfer of rights from one of the parties (only husband or wife). This is what the author pays attention to so it is interesting to explore and study.

Based on the background description above, the research problem can be formulated as follows:

1. Is a marriage agreement valid that is not registered at the civil registry office?
2. What are the considerations of the Supreme Court Judge (Supreme Court) in the Supreme Court decision Number 598/PDT/2016?
3. What are the legal consequences of a marriage agreement not being registered at the civil registry office?

Research methods

The research method used by the researcher is Normative Juridical, which focuses on the use of secondary data or written legal norms and reviews related doctrines on the principles of jurisprudence. The research was carried out by analyzing the laws and regulations related to marriage law in Indonesia. The approach method used is the Conceptual approach and the Case Approach. Sources of legal materials in this study are primary legal materials, secondary legal materials.

Results and Discussion

1. Legitimate Marriage Agreement Deed Not Registered at the Civil Registry Office

Before examining further the validity of marriage agreements that are not recorded in the civil registration office, the first thing that needs to be known is the arrangement of marriage agreements regulated in marriage law in Indonesia, namely "Law No. 1 of 1974 which has now been amended by Law No. -Law Number 16 of 2019 concerning Marriage (Marriage Law). In the Marriage Law it is explained that the conditions regarding the individual are the conditions that must be fulfilled by the individual who will enter into a marriage agreement. Therefore, the conditions for being able to enter into a marriage also apply as a condition for making a marriage agreement. According to the Marriage Law 1974 "a man who has not reached the age of 19 years, a woman who has not reached the age of 16 years is not allowed to tie herself in marriage. That means before they reach that age they cannot even make a marriage agreement." However, the 2019 Marriage Law has changed some of the contents of the 1974 Marriage Law, especially Article 7 regarding the minimum age for marriage which previously stipulated that "the minimum age for marriage for men is at least 19 years and for women at least 16 years, becomes the minimum age for marriage for men and women is 19, so that with this change in provision there is an equal minimum age limit for those who wish to marry for both men and women. Even so, it is still possible to marry from the age of less than 19 years under certain conditions with a dispensation from the court." That means before they reach that age they cannot even make a marriage agreement." However, the 2019 Marriage Law has changed some of the contents of the 1974 Marriage Law, especially Article 7 regarding the minimum age for marriage which previously stipulated that "the minimum age for marriage for men is at least 19 years and for women at least 16 years, becomes the minimum age for marriage for men and women is 19, so that with this change in provision there is an equal minimum age limit for those who wish to marry for both men and women. Even so, it is still possible to marry from the age of less than 19 years under certain conditions with a

dispensation from the court." especially Article 7 regarding the minimum age for marriage which previously regulated that "the minimum age for marriage for men is at least 19 years and for women is at least 16 years, the marriage age for men and women is at least 19, so that with the amendment of this provision there is an equal minimum age limit for those who wish to marry for both men and women. Even so, it is still possible to marry from the age of less than 19 years under certain conditions with a dispensation from the court." especially Article 7 regarding the minimum age for marriage which previously regulated that "the minimum age for marriage for men is at least 19 years and for women is at least 16 years, the marriage age for men and women is at least 19, so that with the amendment of this provision there is an equal minimum age limit for those who wish to marry for both men and women. Even so, it is still possible to marry from the age of less than 19 years under certain conditions with a dispensation from the court."

The marriage agreement according to Law Number 1 of 1974 is regulated in Chapter V, Article 29, namely:

1. At the time or before the marriage takes place, both parties with mutual agreement can enter into a written agreement that is legalized by the Marriage Registrar, after which the contents also apply 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 decency;
3. The agreement comes into force since the marriage took place;
4. As long as the marriage lasts, the agreement cannot be changed, except if both parties have an agreement to change and the changes do not harm third parties.

The meaning in Article 29 is intended for nothing other than the purpose of making the marriage agreement, is similar in meaning to Article 139 of the Civil Code, namely the approval of the separation of assets in marriage. Then the view of prenuptial agreements legally and religiously is that making a marriage agreement is permissible as long as it does not conflict with law, religion and decency, moral values and customs. This has been regulated in accordance with Article 29 paragraph 1 of Law Number 1 of 1974 concerning Marriage, namely: "At the time or before the marriage takes place, both parties by mutual agreement can submit a written agreement which is legalized by the marriage registrar employee after which the contents also apply to the third party involved."

Based on the provisions of "Article 29 Constitution Marriage and the Constitutional Court Decision mentioned above, it appears that for a marriage agreement to be valid, the agreement must be registered to ask for legalization from the marriage registrar. Meanwhile, if it is not registered, it will automatically have its own consequences or legal consequences. Legal consequences if the marriage agreement is not registered, namely the legal consequences for those who make it from Article 29 paragraph (1) Constitution In marriage, it can be seen that the marriage agreement regulated in the Marriage Law must be in written form. With the provision that requires a written marriage agreement, the marriage agreement made has strong evidence, because it is made in writing. "Meanwhile, for the principle of validity, based on the provisions of Article 1338 of the Civil Code which states that: "all agreements made in accordance with the law apply as laws for those who make

them. "“This agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. Agreement must be executed in good faith. Based on the description of the two articles above, for a marriage agreement if it is not registered, it still applies to both parties who made the marriage agreement, namely the husband and/or wife, because in the marriage law there is not a single article which states that the marriage agreement will only take effect if it has been registered or ratified. In accordance with the principle of the birth of the agreement, namely the principle of consensualism which states that the agreement was born from the moment an agreement was reached between the parties, then by itself the marriage agreement binds the parties who make it when both agree on the marriage agreement made, whether registered or not. So whether registered or not, the marriage agreement that has been made has legal consequences that remain binding for the husband and wife who agree to make it. In other words, both parties remain bound by the agreement contained in the marriage agreement.

2. Considerations of the Supreme Court Judge (Supreme Court) in the Supreme Court Decision Number 598/PDT/2016

a. Content Consideration

Considering, that regarding the reasons for the review, the Supreme Court is of the opinion: That this reason can be justified because after carefully examining the review memory and review responses related to *Judex Juris* considerations, there has been an oversight or obvious mistake in the *Judex Juris* decision which annulled the decision *Judex Facti* for the following reasons:

- Whereas the *Judex Juris* interpretation of the provisions of Article 29 paragraph (1) of Law Number 1 Year 1974 concerning Marriage, that the marriage agreement made before a Notary has met the formal requirements is too broad an interpretation that has changed the meaning of Article 29 paragraph (1) of the Law Law Number 1 of 1974. Article 29 paragraph (1) of Law Number 1 of 1974 basically states that a written agreement is legalized by a marriage registrar, (not by a Notary). Therefore the application of the Article must be in accordance with the grammar of the Article and may not be interpreted differently.
- Whereas the provisions of Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage are imperative and public in nature which must be obeyed.

Considering, that based on the above considerations without considering other reasons for review according to the Supreme Court there are sufficient reasons to grant the request for review filed by the Petitioner for Review Dr. HARDI SOETANTO and annulled the Decision of the Supreme Court Number 503 K/PDT/2015 dated 22 June 2015 which annulled the Decision of the High Court of Surabaya Number 124/PDT/2014/PT SBY., dated 17 April 2014 and the Supreme Court will try this case again with a verdict as will be stated below.

Considering, that because the Respondent for Judicial Review was on the losing side, he was sentenced to pay court costs at all levels of justice.

Observing the LawLaw Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 concerning the Supreme Court as amended and supplemented by Law

Number 5 of 2004 and the second amendment by Law Number 3 of 2009 and other relevant laws and regulations.

3. Legal Consequences of a Marriage Agreement Deed Not Registered at the Civil Registry Office

A marriage agreement is an agreement made by two individuals who are about to marry or are already married to regulate various legal and financial aspects of their marital relationship. This agreement is often referred to as a "prenuptial agreement" or "prenup" in English. The marriage agreement contains provisions governing the rights and obligations of the husband and wife during the marriage, such as the distribution of assets, financial responsibility, inheritance arrangements, and asset management. The aim is to protect the interests of both parties and provide clarity in matters relating to finances, property, and legal rights related to marriage.

Article 29 of the Marriage Law stipulates that "a marriage agreement can be made without violating the boundaries of law, religion and decency which must be stated in a written agreement at the time or before the marriage takes place which is recorded and ratified by the marriage registrar at the civil registry office." ". "Thus, before it is recorded and legalized by the marriage registrar at the civil registry office, the marriage agreement is not yet binding on third parties. After the marriage has taken place, no changes to the marriage agreement may be made, unless both parties have an agreement to change and the changes do not harm the third parties involved.

A deed of marriage agreement is a legal document made by a couple who are about to get married to regulate their rights and obligations during marriage and in the event of divorce or death of one of the spouses. To make it legally valid, the marriage agreement deed must be registered at the civil registry office where the marriage took place. If the deed of the marriage agreement is not registered at the civil registration office, then the deed has no legal force. This means that the couple will not be bound by the provisions stipulated in the marriage agreement in the event of a dispute or divorce.

However, if a couple wants to claim the rights stipulated in the marriage agreement deed that are not registered, they can still file a lawsuit in court to prove that the agreement is valid and must be enforced. However, it can be a difficult and expensive process. Therefore, it is important for couples who make a marriage agreement deed to immediately register it at the civil registration office so that the agreement has legal force and can be applied if needed in the future.

The consequences of not ratifying a marriage agreement with a third party are the same as not recording a marriage agreement, according to Henry Lee A Wang in his dissertation, if the husband or wife can prove that the undeclared provisions were known to the third party before or at the time they enter into a legal relationship with their husband and or wife, these provisions apply to third parties who know. Third parties can find out that there are provisions because the marriage agreement certificate has been shown by the husband or wife to the third party.

Basically, if a marriage agreement is not recorded at the civil registration office, then the legal consequences are in its binding force. If it is not registered, it means it has not been ratified. This means that the marriage agreement is not binding on third parties. In order to be able to bind a third

party, it needs to be legalized to the civil registry office. In contrast to the legal consequences for a husband and wife who make a marriage agreement if it is not registered, for third parties if the marriage agreement is not legalized or registered with the marriage registrar, the marriage agreement itself does not have binding force against third parties. This is in accordance with the provisions contained in Article 29 paragraph (1) UThe Marriage Law states that: at the time or before the marriage takes place, the two parties to the collective agreement may enter into a written agreement which is legalized by the marriage registrar, after which the contents also apply to third parties as long as the third party is involved.

Conclusion

The validity of the marriage agreement deed that is not registered with the civil registration office in the marriage agreement which basically only regulates assets made in the period before and during the marriage. Marriage agreements that have been made before a notary must be registered at the civil registration office, to fulfill the requirements of the marriage agreement in question. If it is not registered, then the marriage agreement is only binding or applies to the parties who make it, namely the husband and wife concerned. Judge's consideration without considering other reasons for review according to the Supreme Court there are sufficient reasons to grant the request for review filed by the Petitioner for Review Dr. HARDI SOETANTO and annulled the Decision of the Supreme Court Number 503 K/PDT/2015 dated 22 June 2015 which annulled the Decision of the High Court of Surabaya Number 124/PDT/2014/PT SBY, dated 17 April 2014 and the Supreme Court will try this case again with a verdict as will be stated below. Because the Respondent for Judicial Review was on the losing side, he was sentenced to pay court costs at all levels of justice. Taking into account Law Number 48 of 2009 concerning Judicial Power, Law Number 14 of 1985 concerning the Supreme Court as amended and supplemented by Law Number 5 of 2004 and the second amendment by Law Number 3 of 2009 and other relevant laws and regulations. The legal consequence of a marriage agreement deed that is not registered at the civil registration office based on the requirements that must be met in order for a marriage agreement to have binding force on third parties is by registering the marriage agreement made at the civil registration office. Legal consequences if the marriage agreement is not registered at the civil registration office for husband and wife it still has legal consequences for both parties, because the agreement is still binding on both parties, while for third parties,

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