



Analysis of constitutional court decision no. 69/PUU-XIII/2015

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Abstract

Mixed marriages that affect property in marriage, one example is experienced by Ike Farida who is legally married to a Japanese citizen in Indonesia. The problem is that Ike Farida cannot buy a flat because Ike's husband's status is a Foreign Citizen and Ike does not have a marriage agreement with her husband. Therefore, Ike Farida applied for judicial review with the test of Article 21 paragraph (1), paragraph (3) and Article 36 paragraph (1) of the Basic Agrarian Law; Article 29 paragraph (1), paragraph (3), paragraph (4) and Article 35 paragraph (1) of the Marriage Law which are considered contrary to the 1945 Constitution. The purpose of the title of this study, namely to examine the legal protection of Indonesian citizens who are married to foreign citizens, the implementation of marriage agreements after the constitutional court decision number 69 / PUU-XIII / 2015 based on Positive Law and to examine the implications of the Constitutional Court Decision Number 69 / PUU-XIII / 2015 on the Making of Marriage Agreement Deeds After Marriage. Legal protection for Indonesian citizens who are married to foreign citizens in terms of property and property based on the Constitutional Court Decision Number 69 / PUU-XIII / 2015, Indonesian citizens who are married to foreigners can make a marriage agreement at any time either before, during, or during the marriage bond so that the right of Indonesian citizens to own land with any rights status is no longer hindered due to the union of property with foreign marriage partners that occurs due to marriage. The legal consequence of making a marriage agreement deed after marriage after marriage after the Constitutional Court Decision Number 69 / PUU-XIII / 2015 on the status of joint property and third parties is the making of a marriage agreement after marriage to the status of ordinary common property inherently (closely related) to the time of the entry into force of the agreement. the legal effect of the status of the common property is the making of a marriage agreement after the marriage which begins to occur since the marriage is entered into law followed by the status of the joint property becomes separate if desired by both parties to the agreement, as well as to the property to be acquired in the future remains the property of each party, without having to obtain a court determination regarding the separation of property. Implications of the Constitutional Court Decision No. 69/PUU-XIII/2015 on the making of marriage agreement deeds after marriage made before a Notary change the legal mechanism for making marriage agreements that can now be made during the marriage bond by a Notary without having to be preceded by the determination of the competent court.

Keywords: legal protection, mixed marriage, marriage agreement

Introduction

A. Background

In accordance with his nature, man has the instinct to maintain his generation or offspring. Of course, in this case, the most appropriate way to make it happen is to have a marriage. Marriage is the behavior of creatures Basically people doing marriage is aimed at forming a happy and eternal family on the basis of loving-kindness and to obtain legal offspring by following the provisions that have been regulated by law.

The important value of marriage for humans is that the association between men and women occurs honorably according to the position of humans as social beings. Domestic associations are fostered in an atmosphere of peace, tranquility and mutual love between husband and wife. Based on Article 1 of Law Number 1 of 1974 concerning Marriage, the purpose of the marriage is to form a happy and eternal family, for that the husband and wife need to help each other complement each other, so that each can develop his personality, help and achieve spiritual and material well-being.

After the enactment of Law Number 1 of 1974 concerning Marriage as a legal unification in the field of marriage that adheres to the principle of separation of property as regulated in the provisions of Article 35 paragraph (1) it is stated that the property obtained during marriage becomes joint property and in paragraph (2) further states that the property of each husband and wife, and the property obtained by each as a gift or inheritance is under the control of each as long as it is not specified otherwise. It can be seen that among the provisions regulated by Law Number 1 of 1974 concerning Marriage with the Civil Code there are differences, where in the Civil Code it regulates the wealth of the husband and wife brought into the marriage mixed into united property, namely joint property between them, while in Law Number 1 of 1974 concerning Marriage the marital property brought into

the marriage (inherited property) remains the property of each and which is mixed being one is simply property acquired from and/or during the marriage (gono gini property).

The unification of the national family law regarding marriage is regulated in Law Number 1 of 1974 concerning Marriage. These laws are materially derived from customary law, Islamic law, and western law. One of the things stipulated in this law is the Marriage Agreement, which is in Article 29 which consists of 4 paragraphs. Marriage agreements originate from western law, while in Indonesia, which still upholds the custom of intimacy, people consider this agreement to be an unusually sensitive issue and is considered unusual, rude, materialistic, as well as selfish, and unethical.

The marriage agreement is actually useful for reference if one day there is a conflict that ends in divorce, although all married couples certainly do not expect a divorce to occur. In general, marriage agreements are made whenever:

1. There is a greater amount of wealth on one of the parties than the other.
2. Both parties each carry a considerable income (inberg).
3. Each has its own business, if one falls into bankruptcy the other is not caught.
4. For their debts made before mating, each of them will be liable individually.

The application of regulations on marriage agreements has not been very visible in Indonesia, because Indonesian people still consider marriage agreements to be very taboo. In western countries, about marriage agreements is considered familiar. The background to the making of this marriage agreement is to deviate from the provisions of the statutory law, which provides that the personal wealth of each husband and wife is basically mixed into a unified whole. Another reason that is the background for the holding of a marriage agreement is that if between the spouses of the future husband and wife there is a striking difference in social status, or has balanced personal property or the gift giver does not want something gifted to one of the husbands and wives to change hands to the other party, or each husband and wife is subject to different laws as is the case in mixed marriages. With the establishment of a marriage agreement, there is legal certainty of what they promised to do a legal act against what was promised.

Along with economic advances, the bustling of trade traffic, development advances, technological and information advances, the increasing level of education and public knowledge about marriage law, especially the Marriage Property Law (regarding marriage agreements) and the existence of individualist processes in social life in Indonesia, the desire of married couples who carry out mixed marriages has begun to emerge who are then only aware of making agreements mating after the mating takes place. The marriage agreement according to the marriage law concerns not only the union of property but also others. The existence of freedom in determining the content of the marriage agreement does not mean that the marriage agreement can be made arbitrarily or can be made under the hands alone. For a marriage agreement to be considered valid, it must comply with Article 29 of the Marriage Law.

Specifically, the marriage agreement is regulated in Article 29 paragraph (1), paragraph (2), paragraph (3), and paragraph (4) of the marriage law of 1974 which states that a marriage agreement can be said to be valid if it does not violate the boundaries of law, religion and decency and has been ratified by the clerk of the marriage registrar. However, after the issuance of the Constitutional Court decision Number 69 / PUU-XIII / 2015 concerning the marriage agreement which resulted in expanding the meaning of the marriage agreement itself. The marriage agreement made before the marriage at this time is no longer a taboo for the people of Indonesia, especially since notaries are used to making the marriage agreement deed, the implementation of this is solely to protect the property obtained by each party, so that in the future against the legal consequences of a legal act can be held accountable by each party who does it so that it does not involve property acquired by each party.

However, the interesting thing about this marriage agreement is in terms of the implementation of the marriage agreement, where based on the provisions regulated both in the marriage law in Article 29 states that the marriage agreement is carried out at the time or before the marriage is carried out, but the phenomenon that occurs in the community that the existence of a marriage agreement is carried out after the marriage takes place based on a court determination.

With regard to research problems, namely the consideration of the decision of the Constitutional Court, the subject to which it is considered is the provisions of Article 29 paragraph (1) of Law Number 1 of 1974 limiting the time for making a marriage agreement, which can only be done "at the time" or "before" the marriage is carried out. This provision limits the right of husbands and wives who are still or are currently bound by marriage, including Indonesian citizens (WNI) who are married to foreign nationals (WNA), to make marriage agreements. Thus, the rights of Indonesian citizens, whether married to fellow Indonesian citizens or married to foreign nationals, are not hindered from entering into a marriage agreement at or before or during the marriage.

The Court in its decision number 69/PUU-XIII/2015 gave a constitutional interpretation of Article 29 paragraphs (1), (3), (4) of Law No. 1 of 1974 concerning Marriage related to marriage agreements. The Court extended the meaning of a marriage agreement whose creation was tailored to the legal needs of each spouse. In its ruling, the Constitutional Court declared Article 29 subsection (1) of the marriage law to be declared conditionally unconstitutional as long as it is not interpreted "At the time, before it takes place or while in the marriage bond both parties by mutual consent may apply for a written agreement ratified by the clerk of the registrar of marriages or notaries, after which the contents apply also to the third party as long as the third party is implicated". Article 29 paragraph (3) of the marriage law is declared conditionally unconstitutional as long as it is

not interpreted that the Agreement enters into force from the moment the marriage takes place, unless otherwise specified in the Marriage Agreement. Meanwhile, Article 29 paragraph (4) of the UUP is unconstitutional as long as it is not interpreted "As long as the marriage lasts, the marriage agreement may be regarding marital property or other agreements, it cannot be changed or revoked, unless from both parties there is an agreement to change or revoke, and the change or revocation does not harm the third party.

Mixed marriages that affect property in marriage, one example is experienced by Ike Farida who is legally married to a Japanese citizen in Indonesia. The problem is that Ike Farida cannot buy a flat because Ike's husband's status is a Foreign Citizen and Ike does not have a marriage agreement with her husband. Therefore, Ike Farida applied for judicial review with the test of Article 21 paragraph (1), paragraph (3) and Article 36 paragraph (1) of the Basic Agrarian Law; Article 29 paragraph (1), paragraph (3), paragraph (4) and Article 35 paragraph (1) of the Marriage Law which are considered contrary to the 1945 Constitution. The Judicial Review finally granted Ike Farida's application conditionally, namely the material test of Article 29 paragraphs (1), (3), (4) of Law No. 1 of 1974 related to marriage agreements. Constitutional Court Decision No.69/PUU-XIII/2015, which relates to the Marriage Agreement, namely the making of a marriage agreement that previously a marriage agreement could only be made before or at the time of marriage only now the marriage agreement can also be made by the husband and wife throughout their marriage.

The Court affirmed that the principle of nationality is contained in Article 1, Article 2, Article 9, Article 20 paragraph (1), Article 21 paragraph (2), Article 30 paragraph (1), Article 31 paragraph (1) and Article 46 paragraph (1) uupa. Article 9 of the UUPA, for example, affirms only Indonesian citizens who have the right to own land in Indonesia, while foreign nationals (WNA) or foreign business entities can only have land rights, such as right of use. From the case of Ike Farida, it is legally affirmed that anyone who is married to a foreigner as long as they do not have a property separation agreement will never be able to own a house with HM or HGB status. Even if there is an Intermarried Indonesian citizen who has a property separation agreement, he still cannot buy a house because there is an obligation to release this right within a year. In Article 21 paragraphs (1) and (3), Article 36 paragraph (1) of the UUPA related to the requirements for ownership of Property Rights and HGB which can only be owned by Indonesian citizens and Article 29 paragraph (1), paragraph (3) and paragraph (4) and Article 35 paragraph (1) of the Marriage Law related to marriage agreements and joint property. The reason is, Indonesian citizens who are married to foreigners cannot have a house with HM or HGB status because they are hit by the rules of the Marriage Agreement and Joint Property.

The case of Mrs. Ike Faridah began when Mrs. Ike Faridah had the desire to buy and own a flat located in Jakarta, and with all her efforts for a dozen years Mrs. Ike Faridah saved money, finally on May 26, 2012 Mrs. Ike Faridah bought a flat. However, after Mrs. Ike Faridah paid in full for the flats, the flats were not scattered. Even then the purchase agreement was unilaterally cancelled by the developer on the grounds that Mrs. Ike Faridah's husband was a foreign citizen and Mrs. Ike Faridah and her husband did not have a marriage agreement. The reason for this development refers to Article 36 paragraph (1) of the UUPA and article 35 paragraph (1) of the marriage law, a woman who is married to a foreign national is prohibited from purchasing land and or buildings with the status of Building Use Rights. Therefore, the developer decided not to enter into a sale and purchase binding agreement or sale and purchase deed with Mrs. Ike Faridah because it was considered a violation of Article 36 paragraph (1) of the UUPA.

After the Constitutional Court's decision to marry Indonesian citizens with foreigners (mixed marriages) if the marriage agreement is made after marriage / while in the marriage bond, then regarding the status of property obtained during the marriage bond the status of joint property becomes separate if desired by both parties in the agreement and the property to be obtained in the future remains the property of each party. For ownership of immovable objects, Indonesian citizens in mixed marriages can have Property Rights, Building Use Rights (HGB) because there is a marriage agreement made after marriage regarding the separation of property. For foreigners perpetrators of mixed marriages, they can have a house for residence or housing with the Right of Use for residential houses and units of flats.

Based on the aforementioned background, it is important to further examine the legal implications of the Constitutional Court Decision which affects the legal system of marriage agreements that have been regulated in Law Number 1 of 1974 concerning Marriage, where after the Constitutional Court Decision has undergone meaningful changes to Article 29 paragraphs (1), (3), and (4) which according to the Constitutional Court must be interpreted to be also possible during the bond marriage if there is a mutual agreement between husband and wife, this will have implications for the making of the Marriage Agreement Deed while in the marriage bond by the notary and the legal consequences of the marriage agreement on the status of property that has become common property and on third parties, this is what the author's concern is so that it is interesting to explore and study.

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

1. How is the legal protection of Indonesian citizens who are married to foreign nationals in terms of property and property based on the Constitutional Court Decision Number 69/PUU-XIII/2015?
2. What are the legal consequences for the Implementation of marriage agreements after the Constitutional Court Decision Number 69/PUU-XIII/2015 based on Positive Law?
3. What are the implications of the Constitutional Court Decision No. 69/PUU-XIII/2015 on the Making of Marriage Agreement Deeds After Marriage?

B. Research Methods

Research methods used normatively with empirical approaches (normative-empirical) with the approach methods used are the invitation-guide approach (statue approach), and conceptual approach (conceptual approach). The sources of legal materials in the research are primary legal materials, secondary legal materials.

C. Results and Discussion

Legal protection of Indonesian Citizens who are married to Foreign Nationals in terms of property and property based on the Constitutional Court Decision Number 69/PUU-XIII/2015

The common property between husband and wife can only be divided if the marriage relationship has been broken. That marital relationship can be severed due to death, divorce, and also a court ruling. Law No. 1 of 1974 in article 37 says: "when a marriage breaks up due to divorce, the common property is regulated according to their respective laws". In the explanation of the article, it is said that what is meant by "their respective laws" is religious law, customary law and other laws. If the explanation of article 37 of law no. 1 of 1974 is connected with the provisions of articles 96 and 97 of the KHI, the application of Islamic law in the matter of the division of common property in both dead divorces and life divorces has received positive certainty. For in the dead divorce article 96 verse 1 asserts "half of the common property becomes a couple who live longer". The death status of one of the parties, both husband and wife must be clear in advance so that the determination on the division of common property becomes clear. If one of the two is missing then there must be a provision on his legal death through the Religious Court. This is stipulated in KHI article 96 paragraph 2, "the division of joint property for a husband or wife whose wife or husband is missing shall be suspended until the certainty of his intrinsic death or legal death on the basis of the decision of the Religious Court". Likewise, in a living divorce, article 97 of the KHI asserts "the widow or widower of a living divorce is each entitled to one-second of the common property so long as it is not otherwise specified in the marriage agreement. That is, in the case of a living divorce, if there is no marriage agreement then the division of his joint property is pursued on the basis of the provisions in it, that is, each is entitled to one-second of the common property.

Such opinions and applications have also been a fixed jurisprudence in customary law. Since the time of the second world war, legal provisions have been maintained that give equal rights and positions between husbands and wives to common property when their marriage breaks out. Take, for example, the judgment of the Supreme Court dated December 9, 1959 No.424K/STP/1959, in this judgment affirmed: "according to the jurisprudence of the Supreme Court in the event of a divorce this jute-gini goods must be divided between husband and wife with each getting half the share". The problem of applying the division of common property in a living divorce, does not cause much of a problem, because the division can be carried out in cash and directly between husband and wife, each getting half a share. It is different in the division of common property in the state of dead divorce. In this problem, various problems can arise that require their own application.

With the issuance of the Constitutional Court Decision Number 69 / PUU-XIII / 2015, the Positive law regarding marriage agreements can be made while in marriage ties, Changes in norms in Article 29 paragraph (1) of Law No.1 of 1974 are very helpful and beneficial for Indonesian citizens both who are married to Foreign Citizens (WNA) and Indonesian citizens who are married to Indonesian citizens. Indonesian citizens who are married to foreign citizens after the issuance of the Constitutional Court decision No.69 / PUU-XIII / 2015, Indonesian citizens who are married to foreigners can make a marriage agreement at any time either before, during, or during the marriage bond so that the right of Indonesian citizens to own land with any rights status is no longer hindered due to the union of property with foreign marriage partners that occurs due to marriage. If an Indonesian citizen has already married a foreigner but did not previously make a marriage agreement, then the marriage agreement can be made during the marriage bond period. The benefits of a marriage agreement are not only felt by Indonesian citizens who are married to foreigners, but can also be used by all parties, including Indonesian citizens who are married to Indonesian citizens. For example, a husband who works as a businessman with a marriage agreement, every time he commits a legal act, it is no longer required to obtain the consent of the wife as his marriage partner.

A marriage agreement containing an absolute separation clause of property in a marriage can be a solution as long as it is agreed upon by both parties. Another change after the issuance of The Constitutional Court Decision No.69 / PUUXIII / 2015, namely the Constitutional Court gave rise to an alternative to ratification of the marriage agreement which was previously ratified by the marriage registrar employee, but through this Constitutional Court Decision the marriage agreement can also be ratified by a Notary. Agreements are usually made in the interests of legal protection of each other's estate, husband or wife, although the law does not provide for the purpose of the marriage agreement and what can be promised, everything is left to both parties. Legal protection of property in a marriage agreement is valid when the marriage is held which aims to protect the property of the bride and groom, where the parties can determine their respective inherited property. Whether from the beginning there is a separation of property in the marriage or is there a common property but it is regulated the way it is divided in the event of a divorce. The estate of each husband and wife and the property acquired by each as a gift or inheritance, are under the control of each as long as the parties do not specify otherwise. Although the law does not expressly specify what the purpose is, and the content of the marriage agreement, then as a general officer, the Notary in carrying out his duties and authorities in making the deed of agreement may formulate laws on the principles, principles, forms and content of the marriage agreement in question.

Legal consequences for the Implementation of marriage agreements after the constitutional court decision Number 69/PUU-XIII/2015 based on Positive Law

In the "Constitutional Court Decision Number 69/PUU-XII/2015" it was filed by Mrs. Ike Farida, an Indonesian Citizen (WNI) who is married to a Japanese citizen (WNA). During the marriage, Mrs. Ike Farida wanted to buy assets in the form of apartments, but because at the time of marriage she did not make a marriage agreement, the developer could not sell the apartment unit because of the provisions that apply in the context of the land law, namely the provisions in the Basic Agrarian Law (UUPA) which adheres to the principle of nationality. The principle of nationality means that only Indonesian citizens can have rights to Indonesian land. In accordance with the provisions of "Article 36 Paragraph (1) and Article 35 Paragraph (1) of the UUP", an Indonesian woman who is married to a foreign national cannot have the property rights to purchase land and or buildings without a prior marriage agreement.

Based on "Article 51 paragraph (1) of the Constitutional Court Law" and the Court's decision regarding legal standing and associated with losses suffered by the Applicant, according to the Court:

The legal effect on the status of property that was once joint property into their respective property can be carried out if the party who wants their property to be separated has already been determined by the District Court. This is stated in the Decision of the Constitutional Court No. 69/PUU-XII/2015 contained in the consideration that "to carry out the separation of common property, an injunction from the District Court is required". After the issuance of the Constitutional Court decision Number 69 / PUU-XIII / 2015 dated March 21, 2016 there were changes related to the making of a marriage agreement, the decision was on the application of an Indonesian citizen who performed a mixed marriage, who carried out the marriage without making a marriage agreement. Over time, the couple also intended to buy houses/flats, but because of the regulations that apply in the context of national land law, namely the provisions in the UUPA, the principle of nationality is adopted, which means that only Indonesian citizens can have land rights in Indonesia. Therefore, the mixed marriage couple then submitted an application for constitutional review (constitutional testing) to the Constitutional Court because they felt aggrieved by the existence of Article 21 paragraph (1), and paragraph (3), Article 36 paragraph (1) uupa, Article 29 paragraph (1), paragraph (3), paragraph (4), paragraph and Article 35 paragraph (1) of the Marriage Law.

the provisions that exist today only regulate marriage agreements made before or at the time the marriage is carried out, when in reality there is a phenomenon of husband and wife who for some reason only feel the need to make a marriage agreement while in the marital bond. So far, in accordance with Article 29 of Law Number 1 of 1974, such an agreement must be held before the marriage takes place and must be placed in a Notarial deed. This Marriage Agreement enters into force between husband and wife from the moment the marriage takes place. The content stipulated in the marriage agreement depends on the agreement of the parties to the future husband and wife, as long as it does not conflict with the Law, religion, and propriety or decency, as for the form and content of the marriage agreement, both parties are granted the widest freedom or freedom (in accordance with the law "freedom of contract").

If you look at the Constitutional Court Decision Number 69/PUU-XIII/2015 which in its amar states that "The agreement enters into force from the moment the marriage takes place, unless otherwise specified in the Marriage Agreement". It is then clear that the marriage agreement made so long as the marriage is also valid from the time the marriage is terminated, unless otherwise specified in the marriage agreement in question. Article 29 paragraph (3) of Law Number 1 of 1974 Marriage which reads "The marriage agreement enters into force from the moment the marriage is terminated." according to the Constitutional Court it must be interpreted that it reads "The marriage agreement enters into force from the moment the marriage takes place, unless otherwise specified in the Marriage Agreement." If it is not interpreted as interpreted by the Constitutional Court, then such articles are declared to be contrary to the 1945 Constitution.

Implications of the Constitutional Court Decision Number 69/PUU-XIII/2015 on the Making of Marriage Agreement Deeds After Marriage

The implications of the Constitutional Court Decision Number 69 / PUU-XIII / 2015 on the making of marriage agreement deeds after marriage made before notaries change the legal mechanism for making marriage agreements that can now be made during the marriage bond by a Notary without having to be preceded by the determination of the competent court. Because initially the provisions of the Articles in the Marriage Law although they only regulated the marriage agreement that could be made at or before the marriage took place, but the phenomenon that occurred in the community could be found a marriage agreement made at the time of the marriage which for some reason between the husband and wife had just made a marriage agreement, which must be preceded by submitting an application to the competent court so that obtain an injunction from the judge, after which the Notary can make a deed of marriage agreement after marriage based on the determination of the court. With the release of the "Constitutional Court Decision No. 69/PUU-XIII/2015", it must be carried out because the decision of the Constitutional Court is final and binding where the decision applies without any appeal and is erga omnes which means that the Constitutional Court Decision applies to all Indonesian citizens, not only limited to the applicant who filed it. After the issuance of the "Constitutional Court Decision Number 69/PUU-XIII/2015" on October 27, 2016, in order to implement the decision, a Circular Letter of the Director General of Population and Civil Registration was issued – Ministry of Home Affairs of the Republic of Indonesia No. 472.2/5857/DUKCAPIL for those of religions other than Islam and Circular Letter of the Director General of

Islamic Community Guidance – Ministry of Religious Affairs of the Republic of Indonesia Number B.2674/DJ. III/KW.00/9/2017 for those who are Muslims, which basically regulates the technical recording and reporting of Marriage Agreements made before, during, and during marriage ties.

Conclusion

The purpose of the title of this study, namely to examine the legal protection of Indonesian citizens who are married to foreign citizens, the implementation of marriage agreements after the constitutional court decision number 69 / PUU-XIII / 2015 based on Positive Law and to examine the implications of the Constitutional Court Decision Number 69 / PUU-XIII / 2015 on the Making of Marriage Agreement Deeds After Marriage. Legal protection for Indonesian citizens who are married to foreign citizens in terms of property and property based on the Constitutional Court Decision Number 69 / PUU-XIII / 2015, Indonesian citizens who are married to foreigners can make a marriage agreement at any time either before, during, or during the marriage bond so that the right of Indonesian citizens to own land with any rights status is no longer hindered due to the union of property with foreign marriage partners that occurs due to marriage. The legal consequence of making a marriage agreement deed after marriage after marriage after the Constitutional Court Decision Number 69 / PUU-XIII / 2015 on the status of joint property and third parties is the making of a marriage agreement after marriage to the status of ordinary common property inherently (closely related) to the time of the entry into force of the agreement. the legal effect of the status of the common property is the making of a marriage agreement after the marriage which begins to occur since the marriage is entered into law followed by the status of the joint property becomes separate if desired by both parties to the agreement, as well as to the property to be acquired in the future remains the property of each party, without having to obtain a court determination regarding the separation of property. Implications of the Constitutional Court Decision No. 69/PUU-XIII/2015 on the making of marriage agreement deeds after marriage made before a Notary change the legal mechanism for making marriage agreements that can now be made during the marriage bond by a Notary without having to be preceded by the determination of the competent court.

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