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Changes in the Marriage Agreement in Mixed Marriages in a Positive Indonesian Legal Perspective

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Abstract

Many cases may occur in some areas, where changes to the marriage agreement are made after the marriage takes place and the deed of amendment to the marriage agreement has been made by a notary. In view of Article 147 of the Civil Code which states that the Marriage Agreement is threatened with cancellation if it is not made by a Notary. The marriage agreement between the two prospective husband and wife is made, either in writing or in deed, either under the hand or in an authentic form made by an authorized public official. However, to provide maximum and binding protection for the parties concerned, the marriage agreement should be made in the form of an authentic deed. The purpose of this paper is to analyze the notary's responsibility for changes to the marriage agreement after the marriage and the legal consequences of changing the marriage agreement in mixed marriages for the husband and wife concerned and for third parties. The research method used in this research is descriptive analytical, with a normative juridical approach. This research was conducted by means of library research and field research with data collection techniques through documentation studies and interviews as well as data analysis methods used in this study using qualitative juridical analysis. Based on the results of research and discussion, the following conclusions can be drawn: First, if the notary commits an unlawful act in the amendment of the marriage agreement which causes harm to a third party, the notary must be held accountable for his actions by being subject to civil sanctions in the form of reimbursement of costs or compensation to the party who violated the law. harmed; Second, the legal consequences of changing the marriage agreement which have been ratified by the Marriage/Marriage Registrar and made in a Notary deed, will bind and apply as law for the parties and third parties with an interest in the amendment to the marriage agreement.

Keywords*: Agreement; Marriage; Indonesian Law.*

A. Introduction

Marriage is one of the important things in human life, both individually and in groups. Through marriage which is carried out according to the legal rules governing marriage or according to the laws of their respective religions so that a marriage can be said to be valid, the association of men and women occurs respectfully according to the position of humans as honorable creatures.

Marriage is the beginning of the process of realizing a form of human life. Therefore, marriage is not just the fulfillment of biological needs, but more than that. With the existence of marriage, it is hoped that the purpose of marriage can be achieved as regulated in the law or the rule of law and also in accordance with the teachings of the religion adopted.

Regarding marriage, it is regulated in Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage (abbreviated as Marriage Law). Prior to the existence of the Marriage Law in Indonesia, various marriage laws were applied to various groups of citizens and various regions. Therefore, to overcome pluralism in the field of marriage law, a law that regulates marriage is formed

nationally, which applies to all Indonesian citizens. This is confirmed in Article 66 of the Marriage Law which states:

> "For marriage and everything related to marriage based on this Law, with the entry into force of this Law the provisions stipulated in the Civil Code (Burgerlijk Wetboek), Indonesian Christian Marriage Ordinance (Huwelijks Ordonnantie Christen Indonesiers) S. 1933 Number 74), Mixed Marriage Regulations (Regeling op de gemengde Huwelijken S. 1898 No. 158), and other regulations governing marriage to the extent regulated in this Law, are declared null and void".

One of the important aspects of marriage which is regulated in the Marriage Law is the marriage agreement. A marriage agreement is a written agreement made before the marriage takes place. There are many assumptions that make a marriage agreement for prospective husband and wife who want to get married seems very unromantic, distrustful, materialistic, contrary to Eastern customs and also selfish, because it seems like protecting personal assets. Marriage agreements are also considered as western culture. Whereas this marriage agreement should be used as a means to prevent disputes regarding marital property between husband and wife.

In its development, the marriage agreement is interpreted not only to regulate mere property, but more broadly to include other matters, such as regarding duties and responsibilities in the household. The freedom of the parties in determining the substance of the marriage agreement can sometimes be said to be too high excessive. Furthermore, many also associate the substance of the marriage agreement with divorce. Violations or disputes regarding the marriage agreement are usually also used as an excuse by one of the aggrieved parties to file for divorce.

As described above, this marriage agreement in practice causes many problems. This is due to the regulation of the marriage agreement in Article 29 of the Marriage Law only. This can be interpreted that the prospective husband and wife are given the broadest freedom to determine the substance of the marriage agreement.

The emergence of regulations initiated by Indonesian scholars contained in Presidential Instruction Number 1 of 1991 issued on June 10, 1991, which in substance instructs the Minister of Religion to disseminate the Compilation of Islamic Law, adds to the complexity of the regulation of marriage law in Indonesia. The arrangement of marriage agreements in the Compilation of Islamic Law is very different from Law Number: 1 of 1974 and BW. This results in inconsistencies in the arrangement of the marriage agreement and its implementation.

Many people and legal practitioners in making this marriage agreement still adopt the provisions in the Civil Code or those in the Compilation of Islamic Law, due to the limitations of the regulation of the Marriage Law. When compared to the three regulations, even more so when it comes to marriage, they are contradictory to each other. The Marriage Law, which is a legal entity for the entire territory of Indonesia and applies to all citizens, carries the spirit of unification to deal with problems that occur within the scope of marriage law, so to enforce and re-adopt the previous provisions, including BW, one must be extra careful. heart.

The law allows both prospective married couples to make a marriage agreement or marriage agreement, which generally only concerns the arrangement of marital property, which is intended to anticipate problems that may arise when the marriage ends. A marriage agreement as an agreement regarding husband and wife property is possible to be made and held as long as it does not deviate from the principles or patterns established by law.

In the life of a family or household, apart from the issue of rights and obligations as husband and wife, the issue of property is also one of the factors that can potentially lead to various kinds of conflicts in a marriage, and can even eliminate the harmony between husband and wife in the life of a family. . To avoid this, a marriage agreement is made between the prospective husband and wife before getting married.

An agreement is defined as a legal relationship regarding assets between two parties, in which one party promises or is deemed to have promised to do something or not to do something, while the other party has the right to demand the implementation of that promise. Marriage agreements must still be made based on general conditions that apply to the validity of an agreement. An agreement to be able to fulfill the legal requirements of an agreement as stipulated in Article 1320 of the Civil Code.

The prospective groom and prospective bride can enter into a marriage agreement at or before the marriage takes place. The agreement is notarial or under the hand. The agreement is valid since the marriage took place and is attached to the marriage certificate and is an inseparable part of the marriage certificate.

A marriage agreement may not be made after the marriage takes place if before or at the time of the marriage there has been no marriage agreement. The agreement made after the marriage takes place is only a marriage agreement which is a change from the existing agreement, it can be concluded from Article 29 paragraph (1) and paragraph (4) of the Marriage Law which states:

> "(1) The marriage agreement is made at or before the marriage takes place.
> (4) The agreement cannot be changed, unless there is agreement from both parties and it does not harm a third party".

Many cases may occur in some areas, where changes to the marriage agreement are made after the marriage takes place and the deed of amendment to the marriage agreement has been made by a notary. In view of Article 147 of the Civil Code which states that the Marriage Agreement is threatened with cancellation if it is not made by a Notary. The marriage agreement between the two prospective husband and wife is made, either in writing or in deed, either under the hand or in an authentic form made by an authorized public official. However, to provide maximum and binding protection for the parties concerned, the marriage agreement should be made in the form of an authentic deed. An authentic deed is a deed made by a public official who is authorized to do so, such as a notarial deed made by a notary, which is strong evidence.

B. Methods

The research specification used is descriptive analysis. The aim is to make a systematic, factual and accurate description of the picture or painting regarding the

facts, characteristics and relationships of the investigated phenomena, which are related to changes in marriage agreements in mixed marriages in the perspective of Indonesian positive law.

The approach method used is a normative juridical approach. It can also be said that normative legal research is legal research conducted by examining library materials. In addition, to examine legal principles, it is carried out with legal norms which are the benchmarks for behaving or doing appropriate actions, in connection with changes to marriage agreements in mixed marriages according to the perspective of Indonesian positive law.

This research was conducted in 2 (two) stages, namely library research and field research. Library research, namely collecting secondary data consisting of: Primary legal materials are materials that have binding legal force, including basic norms or rules, basic regulations, laws and regulations, uncodified materials, jurisprudence, treaties, legal materials a relic from the Dutch era. Secondary legal materials, namely materials that provide an explanation of primary legal materials, such as draft laws, research results, works from legal circles, and so on; and tertiary legal materials, namely legal materials that provide instructions and explanations of primary legal materials and secondary legal materials, for example dictionaries, encyclopedias and so on. Field research is primary data research obtained directly from the community which is needed to support secondary data. The technique used to collect this data is in 2 (two) ways, namely Document study, namely conducting research on documents in the form of books, literature and laws and regulations, which are closely related to changes in marriage agreements in mixed marriages according to the perspective of positive Indonesian law, and interviews, namely hold questions and answers to obtain supporting data directly from the relevant agencies.

The data obtained will be analyzed using qualitative normative methods. Normative, because this research is based on existing laws and regulations, as positive legal norms and the results of field research conducted. Furthermore, a qualitative analysis was carried out, namely the data obtained were arranged systematically for further qualitative analysis without using mathematical formulas.

C. Results and Discussion

1. Notary's Responsibilities for Amendments to the Marriage Agreement After the Mixed Marriage takes place

The institution of marriage is very important for human life, the nation and the state, and the state should provide a proper protection for the safety of the marriage. The law governing marriage nationally applies to all Indonesian citizens, namely the Marriage Law. Currently, many Indonesian citizens are carrying out mixed marriages with foreigners, in line with the era of globalization and with the increasingly rapid flow of information from outside to inside, this situation is one of the causes of many Indonesians marrying foreigners. According to Article 57 of the Law, it is stated that mixed marriages are marriages between two people who in Indonesia are subject to different laws, due to differences in citizenship and one party is a foreign citizen and the other is an Indonesian citizen.

Based on Article 57 of the Marriage Law, the elements of mixed marriage can be described as follows: Marriage between a man and a woman; In Indonesia subject to

different laws; Due to differences in nationality; One of the parties is an Indonesian citizen.

Mixed marriages can be held outside Indonesia (abroad) and can also be held in Indonesia. If it is held abroad, the marriage is valid if the marriage is according to the applicable state law according to the country where the marriage was held and for Indonesian citizens it does not violate the provisions (Article 56 of the Marriage Law). If held in Indonesia, mixed marriages are carried out according to the provisions of Article 59 Paragraph (2) of the Marriage Law. Regarding the conditions for carrying out a marriage, the material and formal marriage requirements must be fulfilled according to the law of each party as stipulated in Article 60 Paragraph (1) to Paragraph (4) of the Marriage Law.

In the dynamics of life that occurs in society, there are many problems that occur between husband or wife, especially in carrying out marital life, then the marriage agreement can be used as a solution to protect each other's property. As an illustration, a prospective husband and wife who entered into a mixed marriage did not enter into a marriage agreement, it turns out that while navigating the ark of their married life, the husband's behavior often makes mistakes that can harm his wife and joint property, for example, the husband likes to gamble, gets drunk so often spending money from joint property, it will certainly harm the wife and joint property during the marriage or vice versa the wife is too extravagant in using the joint property so that it will certainly harm the husband who has worked hard to collect the property.

Marriage agreement is a preventive action taken by prospective husband and wife to anticipate conflicts before marriage. The arrangement of marriage agreements in the Marriage Law seems less comprehensive, giving rise to multiple interpretations, especially with regard to the substance of a marriage agreement. This resulted in the parties referring to other provisions that were in effect before the Marriage Law through a legal loophole, namely Article 66 of the Marriage Law which stipulates that for marriage and everything related to marriage based on this law, with the enactment of this Law, this law, the provisions regulated in BW (Burgerlijk Wetboek), HOCI (Huwelijks Ordonantie Christen Indonesiers), GHR (Regeling op de Gemengde Huwelijken) and other regulations governing marriage to the extent regulated in this Law are declared invalid.

Formally, a marriage agreement is an agreement made by a prospective husband and wife to regulate the consequences of their marriage on their assets. The Marriage Agreement was made with the intention of limiting or even completely eliminating the union or mixing of assets according to the law (wettelijke gemeenschap van goederen). In addition, to limit the husband's authority over the assets of the unit of assets as stipulated in Article 124 paragraph (2) in conjunction with Article 140 paragraph (3) of the Civil Code, so that the husband without the help of his wife may not perform actions that can release movable property. and does not move from the union brought by the wife in the marriage or obtained by the wife during the marriage and recorded in the name of the wife.

A marriage agreement can be said and has legal force if it fulfills the following elements: By mutual consent to enter into a marriage agreement; Husband and Wife Are Able to Make Agreements; Clear Agreement Object; Not Contrary to Religious Law and Morality; Declared in writing and ratified by the Marriage Registration Officer.

The marriage agreement regulated in Article 29 of the Marriage Law does not only regulate matters of property and the consequences of marriage, it also includes the rights and obligations that must be fulfilled by both parties as long as the agreement does not conflict with legal, religious and moral boundaries.

In Article 29 of the Marriage Law, it does not specifically mention the things that can be agreed upon, except only an affirmation that the agreement cannot be ratified if it violates the boundaries of law and morality. This means, reflecting the principle of freedom of contract as stated in Article 1338 paragraph (1) of the Civil Code, where the parties are free to determine the content of the marriage agreement they want with restrictions that they must not violate the law, decency and propriety that applies in society. Article 139 BW stipulates that in a marriage agreement, both husband and wife candidates may deviate from the provisions stipulated in the togetherness of assets, provided that the deviations do not conflict with decency and public order (openbare order).

According to Martiman Prodjohamidjodjo, that the marriage agreement in Article 29 of the Marriage Law is narrower than the agreement in general because it is based on approval only and on actions that are not against the law, do not include engagements or agreements that are sourced from the law. Although there is no clear definition of a marriage agreement, it can be concluded that there is a legal relationship regarding assets between the two parties, where one party promises or is deemed to have promised to do something, while the other party has the right to demand the implementation of the agreement.

The marriage agreement is made in writing with the consent of both parties. This has legal consequences, which means that the parties have bound themselves to the agreement and may not violate the agreement, as stated in Article 1313 of the Civil Code. The parties must comply with this agreement as stipulated in the Civil Code. As an agreement, if one of the parties commits a violation (broken promise) a lawsuit can be filed either for divorce or for compensation.

A marriage agreement is basically a legal act that is included in contract law, therefore the conditions for its validity must refer to Article 1320 BW. The reasons that can be used as the basis for a more detailed marriage agreement are as follows:

a. There is negligence and ignorance, that in Law Number 1 of 1974 concerning Marriage there are provisions governing the Marriage Agreement before the marriage takes place.

b. There are risks that may arise from joint assets.

The petitioners are concerned about the risk to their joint property in marriage, because the work of the petitioners has consequences and responsibilities on personal property, so that each property obtained can remain the personal property of the petitioners.

c. There is an individual attitude

This individual attitude in the life of Indonesian society is increasingly fertile, due to the influence of the environment and human civilization which is increasingly liberal and imitating western life which is ultimately carried away by a husband and wife couple to make a Marriage Agreement. "That Islamic Law (Al Quran and Al Hadith) does not recognize the institution of the Marriage Agreement. The Marriage Covenant Institution is known for its environmental influences and imitating liberal western life."

d. There is a desire to continue to have a certificate with ownership rights to the land.
In the Basic Agrarian Law and its Implementing Regulations it is stated that only Indonesian citizens can have a certificate with land ownership rights and if the person concerned, after obtaining a certificate of ownership rights then marries an ex-patriate (not an Indonesian citizen), then within 1 year after marriage, then he must relinquish his ownership rights to the land to other legal subjects who are entitled.

Based on Article 139 of the Civil Code, the existence of a marriage agreement is an exception to the provisions of Article 119 of the Civil Code, namely when a marriage takes place, legally, a unanimous union between the husband's wealth and the wife's wealth or in other words is limited to regulating. The main purpose of holding a marriage agreement is to regulate between husband and wife what will happen regarding the assets they carry and or what they will get respectively.

Article 139 of the Civil Code contains a principle that the prospective husband and wife are free to determine the contents of the marriage agreement they make. However, this freedom is limited by several prohibitions that must be considered by the prospective husband and wife who will make a marriage agreement. The substance of the marriage agreement is submitted to the prospective partner who will marry on the condition that its contents do not conflict with public order, morality, law and religion.

A legal marriage will have legal consequences, including those related to property in the marriage. Arrangements regarding property in marriage are further regulated in Article 35 of the Marriage Law which regulates the scope of marital property including: Property acquired during the marriage becomes joint property; Inherited 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 the parties do not determine otherwise.

In the Civil Code, there are several prohibitions regarding the contents of the marriage agreement, namely: The agreement must not conflict with decency or public order (Article 139); The agreement must not deviate from the power granted by the Civil Code to the husband as the head of the household, for example, it cannot be promised that the wife will have her own place of residence (Article 140 paragraph (1); In the agreement husband and wife may not relinquish their right to inherit the inheritance of their children (Article 141); In the agreement it may not be specified that in the case of a mixture of assets, if the joint property is terminated, the husband or wife will pay a share of the debt that exceeds the balance and mutual benefit (Article 142); In the agreement, in general, it may not be simply appointed to the regulations in force in a foreign country (Article 143).

Denial of the unification of husband and wife's property obtained during the marriage can be done by making a marriage agreement which regulates the separation of assets. Article 29 paragraph (1) of the Marriage Law stipulates that at or before the marriage takes place, both parties with mutual consent may enter into a written agreement ratified by the marriage registrar, after which the contents shall also apply to third parties as long as the third party is involved. After the issuance of the Constitutional Court Decision No. 69/PUU-XIII/2015 there was a fundamental change in the terms of the time the marriage agreement was made. A marriage agreement can be made after the marriage takes place so that it can have different legal consequences. The Petitioner submits a request for constitutional review to the Constitutional Court

against Article 21 paragraph (1), and paragraph (3), Article 36 paragraph (1) of the LoGA, Article 29 paragraph (1), paragraph (3), paragraph (4) , paragraph and Article 35 paragraph (1) of the Marriage Law. In relation to the application, the Court in its decision granted the applicant's application in part, namely Article 29 paragraph (1), paragraph (3), paragraph (4) of the Marriage Law.

The Panel of Constitutional Justices is of the opinion that the phrase "at or before the marriage takes place" in Article 29 paragraph (1), the phrase "... since the marriage takes place" in Article 29 paragraph (3), and the phrase "during the marriage takes place" in Article 29 paragraph (4) Law Number 1 of 1974 limits the freedom of 2 (two) individuals to make or when to enter into an "agreement", thus contradicting Article 28 E paragraph (2) of the 1945 Constitution as argued by the applicant. Thus, the phrase "at or before the marriage takes place" in Article 29 paragraph (4) of Law Number 1 of 1974 is conditionally contradictory to the 1945 Constitution as long as it is not interpreted, including during the marriage bond.8 The Constitutional Court's decision which granted the Petitioner's request the legal effect is null and void and does not have binding legal force on a legal norm requested by the Petitioner, therefore in this case Article 29 paragraphs (1), (3), and (4) of Law Number 1 of 1974 concerning Marriage based on The Constitutional Court's ruling above is conditionally unconstitutional, so that such a decision creates a new legal situation (dekclaratoir constitutif).9 The new situation created because of the Constitutional Court's decision is that a marriage agreement can not only be made before marriage and at the time of the marriage, but an agreement Marriage can also be made after the marriage takes place.

Marriage agreements made after the marriage takes place can be made without having to be subject to a court order since the Constitutional Court Decision No. 69/PUU-XIII/2015. The existence of the Constitutional Court Decision No. 69/PUU-XIII/2015 changes the provisions of Article 29 paragraph (1) of the Marriage Law to At the time, before it takes place, or during the marriage bond, both parties with mutual consent can submit a written agreement which is legalized by the marriage registrar or notary. , after which the contents also apply to third parties as long as the third party is involved.

Regarding the change of agreement with reference to Article 29 paragraph (4) of the Marriage Law in conjunction with the Constitutional Court Decision Number 69/PUU-XIII/2015 that as long as the marriage takes place, the marriage agreement can 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.

Habib Adjie is of the opinion that when a Notary is asked to make a marriage agreement which refers to the Decision of the Constitutional Court Number 69/PUU-XIII/2015, then there are 2 (two) things that the Notary must pay attention to, namely: Request an inventory list of assets obtained during the marriage bond which will be included in the deed; The existence or making a statement that the assets have never been transacted in any way and form, for and to anyone.

Regarding the Constitutional Court Decision Number 69/PUU-XIII/2015, in this case the Constitutional Court Decision does not order anything regarding the registration of the registration. Therefore, Habib Adjie provides a solution regarding

this matter, namely that after the marriage agreement is made which refers to the decision of the Constitutional Court, then a request for an stipulation can be submitted to the court in order to instruct the Civil Registry Office or the Office of Religious Affairs to register it or register it, so that the legal consequences The marriage agreement can provide legal certainty for third parties.

Basically, the law provides a burden of accountability or responsibility for the actions he has committed, however, this does not mean that every loss to third parties is entirely the responsibility or responsibility of the notary. The law itself provides boundaries and signs of graceful accountability and responsibility of a notary, so that not all losses are the responsibility and responsibility of a notary. This is what is known in legal science as a form of legal protection against a notary as a public official in charge of providing public services.

According to Article 147 of the Civil Code (BW) that the marriage agreement must be made before the marriage takes place and the agreement must be made before a notary, if it is not made before a notary, then the agreement is void. These conditions are intended for the following purposes: The marriage agreement is stated in the form of an authentic deed which has strong evidentiary power; Provide legal certainty regarding the rights and obligations of husband and wife on their property, considering that the marriage agreement has broad consequences. To make a marriage agreement, it takes someone who really masters the law of marital property and can formulate all the conditions carefully. This relates to the provision that the form of marital property must remain throughout the marriage. An error in formulating the conditions in the marriage agreement cannot be corrected again throughout the marriage.

Based on the substance of Article 147 of the Civil Code above, it is clear that the Marriage Agreement is made before or shortly before the marriage takes place, in other words the Marriage Agreement cannot be made after the marriage takes place. This provision is an elaboration of the principles contained in the Civil Code, namely that during the marriage, including if the marriage is reconnected after being interrupted due to divorce, the form of marital property must remain unchanged. This is intended for the protection of third parties (creditors) so that they are not faced with changing situations, which can harm themselves (in the sense of guaranteeing the debtor's assets for creditor's receivables).

Article 54 of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of a Notary (hereinafter abbreviated as UUJN) regulates the rights of a notary, that a notary is not allowed to provide grosse, copies or quotations, nor is he allowed to show or notify the contents of the deed, apart from people who have a direct interest in the deed, such as the heirs or people who obtain/receive their rights, unless stipulated otherwise by the laws and regulations and receive an honorarium for legal services provided in accordance with their authority and etc.

According to Robert B. Seidman's theory of the working system of law, when a notary carries out his/her duties in the notary field, the position of a notary is as a law enforcer, while when a notary is held accountable, the position of a notary who is subject to the law is faced with the application of sanctions.

Limitations of notary responsibilities can be requested as long as they are still authorized to carry out their duties as a notary or mistakes made in carrying out their

duties as a notary and sanctions that can be imposed on a notary who is authorized to carry out his position as a notary.

The notary's responsibility is born from the obligations and authorities given to him, these obligations and authorities are legally and bound to take effect from the time the notary takes his oath of office as a notary. It is the oath that has been uttered that should control all the actions of the notary in carrying out his position. Regarding the issue of official accountability, according to Kranenburg and Vegtig, there are 2 (two) underlying theories, namely the theory of fautes personalles and the theory of fautes de services. In the case that the author raises if it is associated with the 2 (two) theories, then in this case the theory of fautes de services is used, namely the theory which states that losses to third parties are borne by the agency of the official concerned. According to this theory, the responsibility is assigned to the position. In its application, the resulting loss is also adjusted whether the error committed is a serious error or a minor error, where the severity and severity of an error have implications for the responsibility that must be borne.

The notary as the spearhead of the birth of the marriage agreement is necessary and obliged to take several anticipatory steps, namely: Ask the parties (husband and wife) to make a detailed statement regarding the list of assets and their status, for example whether they are being guaranteed by a third party; A statement is made by the parties explaining to release the notary from all legal consequences for the making of this Marriage Agreement; Checking the status of property (especially certificates) that are the object of the marriage agreement whether it is guaranteed to a third party; Obtaining approval from the third party involved, for example in the case that the property which is the object of the marriage agreement is a guarantee for the Bank's credit.

Based on the decision of the Constitutional Court, a marriage agreement can or may be made, provided that the Notary must really ensure the following: The parties have indeed entered into a marriage bond in accordance with applicable regulations. The Marriage Deed is included in the premise of the Marriage Agreement Deed to be made; The decision of the Constitutional Court is also included in the Premisa of the Deed; It is determined that the separation of assets is effective from the date the deed is ratified/registered in the civil registry; Therefore, for the Marriage Agreement, it is necessary to ask for Additional Registration by the Civil Registry; Organizations (INI and IPPAT) need to encourage the Civil Registry to reach an understanding on the task of the registration; In order to avoid third party losses, it should be notified/announced to third parties such as banks and creditors (including in newspapers/in the State Gazette).

2. Legal Consequences of Amendment to the Marriage Agreement in a Mixed Marriage for the Husband and Wife Involved or Against Third Parties

In the Civil Code, it has been explicitly determined that after the marriage takes place, the marriage agreement in any way cannot be changed as stipulated in Article 149 of the Civil Code. This means that according to the provisions contained in the Civil Code, the husband and wife who make the Marriage Agreement are not allowed or prohibited to make changes to the contents of the Marriage Agreement after the marriage takes place. If the parties to the Marriage Agreement wish to make changes to the contents of their Marriage Agreement, then all the desired changes must be made

before the marriage takes place and these changes must be stated in the form of a deed and it is not allowed to include the changes in any other form.

The provisions of Article 149 of the Civil Code are different from the Marriage Law, where in Article 29 paragraph (4) of the Marriage Law it is stated that the marriage agreement cannot be changed unless there is agreement from both parties and does not harm a third party. This means that the Marriage Law still provides opportunities for married couples as parties to the Marriage Agreement to make changes to the contents of the Marriage Agreement made even after the marriage takes place. Changes made by the parties can be made if previously agreed upon and the changes that will be made later will not harm the third parties involved in the Marriage Agreement. If the changes made bring harm to the parties or third parties, then the Marriage Agreement can be declared null and void by law.In principle, the substance of the marriage agreement is limited to the position of marital property, even though the husband or wife does not explicitly regulate matters outside of marital property, religious norms, propriety, custom and the law also binds the parties who make it. However, with a note, that third parties are also bound by a marriage agreement made by husband and wife only regarding property. Other matters outside the arrangement regarding marital property, third parties are not bound by all the consequences it causes. A third party may also file for the cancellation of the marriage agreement, for all or part of the clause that is detrimental to the third party.

The form of the marriage agreement is not clearly defined. This can be interpreted, can be made with an authentic deed or simply under the hand. However, what needs attention is that even though the marriage agreement is made in one of the above forms, the marriage agreement must be approved by the Marriage Registrar as one of the legal requirements.

The legal consequences of marriage agreements that do not get approval from the Marriage Registrar are null and void (nieteg van rechtwege), the marriage agreement does not have legally binding force, so the principle of the position of property in marriage applies (Article 35 of the Marriage Law). Thus, it means that there is a "separation of assets" or the togetherness of property is only limited to joint assets, namely assets obtained during the marriage that do not come from gifts/grants or inheritance. The principle of the position of marital property is very different from the position of property according to the Civil Code.

Based on the Constitutional Court Decision No. 69/PUU-XIII/2015 the validity of a marriage agreement made after the marriage takes place begins to take effect from the time the marriage takes place, unless otherwise specified in the Marriage Agreement, so that if the marriage agreement made after the marriage is not specified regarding its entry into force, the legal consequences of the agreement come into force as of the marriage took place. The Constitutional Court in its decision also continues to pay attention to the consequences that may arise for third parties due to a marriage agreement made after the marriage takes place, so that in its decision it is stated that Article 29 paragraph (4) of the Marriage Law is contrary to the 1945 Constitution of the Republic of Indonesia. as long as it is not interpreted "as long as the marriage takes place, the marriage agreement can 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 it, and the change or revocation does not harm a third party.

Based on the provisions of Article 29 paragraph (4) of the Marriage Law after the Decision of the Constitutional Court no. 69/PUU-XIII/2015, husband and wife can determine for themselves the contents of the marriage agreement they will make, because a marriage agreement can contain marital property or other agreements, as long as it does not burden or harm one of the parties, which according to Asser-De Boer , the provision is null and void. Therefore, there are several things that need to be considered, including: Make an inventory of all assets and debts of husband and wife and which assets are agreed upon in their marriage agreement which is then signed by the parties and attached to the minutes; If one day a dispute arises regarding things that have not been or have not been agreed upon in the agreement, it will be the joint responsibility of husband and wife, and may not harm a third party; It is possible to include provisions for the entry into force of the marriage agreement with conditional provisions as well as the stipulation of time or terms (termijn); The marriage agreement only applies to the law of the state of Indonesia, and may not use the laws of a foreign country for the choice of law; May not reduce all rights based on the power of the husband and the power of parents, as well as the rights granted by law to the husband and wife who live the longest; They may not relinquish the rights granted by law to them on the inheritance of their blood family in the downward line, nor may they regulate the inheritance; Husband and wife may not appoint each other as each other's heirs or promise what must be included in each other's wills.

Marriage agreements and amendments to marriage agreements are determined and made on the basis of the consent of both parties, in this case what is meant is that the approval of the making of the marriage agreement is made based on free consent. So the agreement between the parties who make the marriage agreement is an agreement that is free and there is no coercion from any party, there is also no fraud and also an error as specified in Article 1321 of the Civil Code).

The principle of irreversibility of this marriage agreement relates to the marital property system chosen by husband and wife at the time of the marriage which awakens in essence to the concern that during marriage the husband can force his wife to make changes that his wife does not want.

In essence, the prohibition on changing the marriage agreement is to protect the interests of third parties, namely to prevent losses from the possibility of abuse by husband and wife, which is intentionally done to avoid responsibility. However, based on the principle of lex specialis derogat lex generalis, what is used as the legal basis for changing the marriage agreement is Article 29 paragraph (4) of the Marriage Law that changes in the marriage agreement after marriage is allowed as long as it does not harm both parties or third parties.

According to Soetojo Prawirohamidjojo, after the marriage, the prospective husband and wife can still change the marriage agreement they made. However, the changes must be made with a notarial deed. Meanwhile, people who previously participated as parties in realizing the marriage agreement must be included again. If people don't like it, then no change can be made.

If an agreement is not categorized as a commercial contract, then it can be said that the agreement has no legal consequences and therefore the parties who make it are not bound (not to be legally bound). Domestic contracts are more directed at personal relationships (the subject matter) rather than legal relationships between the

parties who make them. The most important thing is that the marriage agreement cannot be categorized as a commercial contract. Therefore, if in the implementation of the marriage agreement there is a violation committed by one of the parties, then the party who feels aggrieved cannot file a lawsuit on the basis of default. Article 1267 of the Civil Code is also no longer relevant to be applied in disputes over marriage agreements. Sanctions against husbands or wives who do not carry out their obligations are only in the form of moral sanctions.

Taking into account the description above, it can be explained that changing the marriage agreement is still allowed if the marriage agreement is made by notarial deed, with an agreement between husband, wife and third parties in order to provide protection to third parties. If the marriage agreement is changed without presenting a third party and it is made with the intention of harming the third party, the third party is not bound by the change in the marriage agreement and if there is a loss, it can be said that the change in the marriage agreement was made in bad faith.

The Amended Marriage Agreement Deed is declared null and void because if it is associated with the legal terms of the agreement, namely Article 1320 of the Civil Code, the amended marriage agreement deed can be identified as follows:a. Based on an agreement or agreement, where the parties to the agreement have a free will, namely against the parties there is no element of coercion, fraud or oversight in entering into an agreement. In this case, the husband and wife agree to change the marriage agreement. b. The parties must be legally competent to enter into an agreement. To make an agreement, the parties who enter into a competent agreement have the authority or the right to take legal action as regulated in the applicable legislation. In this case the husband and wife are capable according to the law. c. The agreement made must clearly promise about a certain thing. In this case, the marriage agreement contains the assets and the profit and loss union. d. The things that are agreed upon by the parties must be about something that is lawful and must not conflict with the law, public order and morality. In this case the amended marriage agreement is contrary to public order and morality, namely the marriage agreement which previously contained the responsibility for family interests to be borne by the husband and wife but the amended marriage agreement contained the responsibility for family interests to be borne only by the husband, so this change violated order. public and decency. If it does not meet the objective requirements, the marriage agreement is declared null and void.

There are several things that must be considered and done to protect third parties in changes to marriage agreements made after the marriage, namely:
a. Marriage agreements must be made before a Notary. Making a marriage agreement before a Notary is important to ensure certainty, order and legal protection. This relates to the need for written evidence that is authentic regarding circumstances, events, or legal actions held through certain positions. Notary is a certain position that carries out the profession in legal services to the community. A marriage agreement made by a Notary with the precautionary principle of a Notary and with a good deed formulation and education provided to the parties, the contents of the marriage agreement can protect all parties, including third parties. According to Habib Adjie, the precautionary principle that must be carried out by a notary before making a marriage agreement is: Listen and understand the will of the parties regarding the contents of the marriage agreement; Asking things if it is necessary to ask, such as identity and

complete documents, when the marriage takes place, and asking the parties to make an inventory of all assets and their status (whether they are credit guarantees or not); Educate the parties about the risks that may occur in the making of this marriage agreement, so that the parties have good intentions in making this agreement; As self-protection from the criminalization of the Notary, the Notary can make or ask the parties to make a statement that everything submitted by the parties is true; Ask the parties to make an announcement in the mass media, that will make a marriage agreement.

b. The marriage agreement is made in good faith by the parties

The good faith of the parties in making an agreement is a very important thing, especially the relationship with third parties, because only the husband and wife will know if they have an agreement with a third party that is not known by the Notary who will make a marriage agreement during the husband's marriage. the wife. Good faith is the basis for carrying out contracts/agreements. The parties in making and implementing the agreement must pay attention to the principle of good faith, namely in carrying out the agreement must heed the norms of compliance and decency. About the performer The principle of good faith which is closely related to propriety is also explained in Article 1339 of the Civil Code which states that an agreement is not only binding on things that are expressly stated in an agreement, but is also binding on everything which according to the nature of the agreement is required by propriety, custom. and laws.

c. The marriage agreement must be registered with the marriage registrar

The ratification of a marriage agreement is a very important matter and should not be missed by a husband and wife who make a marriage agreement, so that legal protection for third parties is fulfilled and to fulfill the principle of Publicity, as regulated in Article 29 paragraph (1) of the Civil Code in conjunction with Article 3 of the Law. -Invite Marriage.

According to Satjipto Rahardjo, this theory of justice cannot be found directly through a formal logical process. Justice is obtained through institutions, as is the case in this case, seeking justice through the district court. Amendment to a marriage agreement is only possible after obtaining prior approval from the district court, in which the amendment to the marriage agreement in the form of a notarial deed is submitted to the district court. If the previous deed is not canceled first in the District Court so that the judge declares that the deed of amendment to the marriage agreement is the same as the deed of marriage agreement made after the marriage takes place, so that based on Article 29 paragraph (1) of the Marriage Law, that the marriage agreement made after the marriage can be annulled.

In the Decision of the Constitutional Court Number 69/PUU-XIII/2015 which amends Article 29 paragraph (1) of the Marriage Law, it is stated that the making of a marriage agreement can be made before or after the marriage takes place and the agreement is legalized by a marriage registrar or ratified by a notary, because a notary who makes the Marriage Agreement Deed and its amendments, the Notary is indispensable in changing the marriage agreement. If the change in the marriage agreement is made with a notary deed, then the change in the marriage agreement will not harm the parties concerned because the notary has obligations as stated in the notary position law, namely Article 16 paragraph (1) letter a states that when carrying

out his position a notary must act honestly, impartially and protect the interests of the parties.

For Notaries, it is not easy to accept the making of a marriage agreement deed or a marriage agreement amendment deed that does not harm third parties. However, the Notary can anticipate so that third parties are not harmed by the existence of a marriage agreement or a change in the marriage agreement, namely the Notary can question and ensure regarding the assets and status of the assets whether the assets are used as collateral to third parties, if it is known the Notary can seek approval from the parties. Third, the assets that are used as collateral are agreed upon in the marriage agreement.

What needs to be considered is how the changes to the marriage agreement will affect third parties. The act of a husband and wife changing a marriage agreement that is detrimental to a third party and a third party has the right to claim compensation if their act of changing the marriage agreement fulfills the elements of an unlawful act as stipulated in Article 1365 of the Civil Code.

D. Conclusion

Based on the results of research and discussion, the following conclusions can be drawn: First, if the notary commits an unlawful act in the amendment of the marriage agreement which causes harm to a third party, the notary must be held accountable for his actions by being subject to civil sanctions in the form of reimbursement of costs or compensation to the party who violated the law. harmed; Second, the legal consequences of changing the marriage agreement which have been ratified by the Marriage/Marriage Registrar and made in a Notary deed, will bind and apply as law for the parties and third parties with an interest in the amendment to the marriage agreement. The author recommends to Notaries that when making changes to the marriage agreement for married couples, first provide education about the consequences that will be received by the husband and wife in the future, if they do not provide honest information about the things that will be agreed. , as well as formulating the deed as well as possible in order to create a marriage agreement deed that does not harm all parties and third parties. A husband and wife who will make a marriage agreement during the period of marriage, should actually take a good inventory of their assets and their debts, and should not include assets and debts obtained before the amendment to the marriage agreement is made into the agreement. so that it remains a shared responsibility and minimizes unwanted things such as harming third parties.

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