

Juridical Examination of Marriage Agreement Nullification in Indonesia: Implications and Procedures

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ABSTRAK

Menurut Pasal 29 Undang-Undang Perkawinan dan Pasal 152 Kitab Undang-Undang Hukum Perdata, perjanjian perkawinan harus didaftarkan di kantor catatan sipil. Bagi umat Islam, pendaftaran ini dilakukan di Kantor Urusan Agama (KUA), sementara bagi non-Muslim, pendaftarannya dilakukan di Kantor Catatan Sipil. Tujuan dari penelitian ini adalah untuk menganalisis pembatalan perjanjian perkawinan yang ditinjau dari Undang-Undang Perkawinan di Indonesia. Penelitian ini merupakan penelitian deskriptif-kualitatif, yang menganalisis pertimbangan hakim berdasarkan prinsip-prinsip hukum. Penelitian dilakukan di Kabupaten dan Kota Magelang, karena respondennya dipilih dari daerah-daerah ini. Responden terdiri dari hakim, pengacara, dan notaris. Hasil wawancara kemudian dianalisis berdasarkan prinsip-prinsip hukum normatif. Analisis data menggunakan pendekatan deskriptif kualitatif. Hasil dari penelitian ini menunjukkan bahwa perjanjian perkawinan dapat dibuat baik sebelum maupun setelah pernikahan dilakukan oleh pihak-pihak yang terlibat. Namun, ketika perjanjian dibuat sebelum upacara pernikahan, tidak ada kebutuhan untuk pembatalan perjanjian tersebut. Hal ini karena perjanjian yang dibuat oleh pihak-pihak belum efektif diberlakukan.

Kata Kunci: Batalnya Akad Nikah, Tidak Pemenuhan Nikah, Akad Nikah

ABSTRACT

In accordance with Article 29 of the Marriage Law and Article 152 of the Civil Code, marriage agreements must be registered with the marriage registrar. For Muslims, this registration is done at the Office of Religious Affairs (KUA), while for non-Muslims, it is registered at the Civil Registry Office. The purpose of this research is to analyze the legal basis for the judge's considerations in Decision No. 10/Pdt.G/2022/PN.Kbm, which nullified the marriage agreement despite the non-consummation of the marriage. This study is descriptive-qualitative research, analyzing the judge's considerations based on legal principles. The research was conducted in Magelang Regency and City, as the respondents were selected from these areas. The respondents consists of judges, lawyers, and notaries. The interview results were then analyzed based on normative legal principles. The data analysis employed a qualitative descriptive approach. The result of this research indicates that marriage agreements can be established either before or after the marriage is conducted by the parties involved. However, when the agreement is made before the marriage ceremony, there is no need for nullification of the agreement. This is because the agreement made by the parties is not yet effectively enforced.

Keywords: Marriage Agreement Nullification, Marriage Non-fulfillment, Marriage Contract

I. INTRODUCTION

Marriage agreements serve as a solution for prospective married couples to protect their wealth, acquired both before and during the marriage. The preventive action aims to anticipate conflicts before entering into marriage through the establishment of a marriage agreement. In practical terms, executing marriage agreements encounters difficulties stemming from uncertainties regarding the timing of agreement formation and the validity of marriage. These challenges are intricately tied to the protective role of marriage agreements in law, providing a loophole for parties with malicious intent to contravene marriage laws, as exemplified in Supreme Court Decision No. 1598/K/pdt/2012. This ruling asserts that a duly recorded marriage agreement retains its validity and legal enforceability, irrespective of the passage of time ([Shidqi, 2021](#)).

The Marriage Law states that before marriage, both parties, with mutual consent, may submit a written agreement to the marriage registrar. The agreement's provisions also apply to third parties as long as the third party is involved, excluding divorce settlements ([Marsidah, 2020](#)). Based on Article 29 of the Marriage Law and Article 152 of the Civil Code, marriage agreements must be registered with the marriage registrar. For Muslims, this registration is done at the Office of Religious Affairs (KUA), while for non-Muslims, it is registered at the Civil Registry Office. If the prospective spouses do not proceed with the marriage, the procedures outlined in Article 29 of the Marriage Law and Article 152 of the Civil Code are not carried out. Consequently, the marriage agreement becomes void and legally annulled.

However, this differs from Court Decision No. 10/Pdt.G/2022/PN. Kbm, which granted the plaintiff's lawsuit. This contrasts with Decision No. 449/PDT/2016/PT.BDG, stating that an unregistered marriage agreement, as regulated by Article 29 of the Marriage Law and Article 152 of the Civil Code, remains valid under Article 1338 of the Civil Code. The judge's decision contradicts the provisions of the Marriage Law and the Civil Code, suggesting that the marriage agreement should be deemed invalid and legally annulled, making the assets acquired during the marriage joint property ([Ramadhan & Hasan, 2016](#)).

Based on the above discussion, the objective of this research is to analyze the legal basis for the judge's considerations in Decision No. 10/Pdt.G/2022/PN.Kbm, which nullified the marriage agreement, even though the marriage was not consummated by the prospective spouses who entered into the marriage agreement.

II. METHOD

The method used in this research is juridical-normative. The data used in this study consist of primary and secondary data ([Soekanto, 2007](#)). Primary data obtained through interviews with respondents, including judges, notaries, and lawyers. Secondary data, gathered from literature reviews, are categorized into primary legal materials, encompassing statutory regulations and judicial decisions. Secondary legal materials, comprising scholarly books in the field of law, academic journals, and scientific articles. Subsequently, both primary and secondary data are processed and analyzed descriptively qualitatively. This involves

providing a comprehensive description of the research findings based on current legal theories and statutory regulations (*ius constitutum*).

III. RESULT AND DISCUSSION

3.1. Brief Introduction of Marriage Law in Indonesia

Stated in article 1 of Law Number 1 of 1974 defines Marriage as a spiritual and physical bond between a man and a woman as husband and wife with the purpose of forming a family based on the Almighty God.

Rosnidar Sembiring identifies five key components of marriage, which include: 1) a union encompassing both spiritual and physical aspects, 2) involving a man and a woman, 3) who assume the roles of husband and wife, 4) with the aim of establishing a joyful and enduring family unit (household), and 5) grounded in the belief in the Almighty God (Sari, 2021).

Based on Article 2, paragraph (1) of the Marriage Law, a marriage is considered valid if conducted according to the laws of each religion and belief. In paragraph (2) of the same article, it is stated that every marriage must be recorded according to the applicable regulations. Furthermore, Articles 5 and 6 of the Compilation of Islamic Law (KHI) regulate to ensure the order of marriage for the Muslim community; every marriage must be conducted in the presence of and under the supervision of the Marriage Registry Officer. Marriages conducted outside the supervision of the Marriage Registry Officer are not legally valid. According to Article 2 of Government Regulation Number 9 of 1975 on the Implementation of Law Number 1 of 1974 concerning Marriage, the institution responsible for recording marriages is the Office of Religious Affairs for those marrying under Islamic law and the Department of Population and Civil Registration for those marrying according to religions other than Islam.

3.2. Marriage Agreement within the Legal Framework in Indonesia

The field of marriage law recognizes terms such as Pre-Nuptial Agreement, Property Separation Agreement, and Marriage Agreement. All three expressions share the same meaning, signifying an agreement made within the context of marriage. A Prenuptial Agreement is a contract established before the marriage ceremony and binding both prospective spouses. Its content may encompass the division of wealth between the husband and wife, defining their respective assets and liabilities, or addressing the matter of individually owned assets to distinguish between the prospective wife's and husband's assets in the event of divorce or the death of one of the partners.

Marriage agreement is binding on both parties and takes effect upon the marriage ceremony, aligning with the regulations stipulated in Article 29, paragraphs (1) to (4) of the Marriage Law. According to these provisions, if both parties (prospective husband and wife) agree to create a written agreement authenticated by the marriage registrar either at

the time of or before the marriage ceremony, the agreement not only binds both parties but also extends to third parties (Susanti, 2018).

Marriage agreements are required to be formalized in the presence of a Notary, given their legal significance and binding nature for both parties. According to Article 147 of the Civil Code, marriage agreements must be executed through a notarial deed and completed prior to the marriage ceremony. These agreements come into effect upon marriage and cannot be established at any other juncture. This underscores the importance of drafting marriage agreements before a Notary, as this action carries legal ramifications that bind both parties. Any breach by either party may have consequences for third parties involved.

Law Number 1 of 1974 regarding marriage agreements regulates matters concerning property and debts that may arise during the course of the marriage. Article 29 states that at the time of or before the marriage ceremony, both parties, with mutual consent, may enter into a written agreement authenticated by the marriage registrar, and its content applies to third parties involved. This implies that both parties, at the time or before the marriage ceremony, may submit a written agreement authenticated by the marriage registrar with the content also applying to the relevant third party. The agreement takes effect from the time of the marriage ceremony and can only be amended if both parties wish to do so and agree to the changes, as long as it does not harm third parties.

However, Constitutional Court Decision No. 69/PUU-XIII/2015 introduces a new option for creating marriage agreements, allowing couples to do so before or after the marriage ceremony (Ahmad, 2018). This decision also specifies that marriage agreements can be amended or revoked if desired and agreed upon by both parties, as long as it does not harm third parties.

3.3. Juridical Analysis of Marriage Agreement Nullification

In relation to legal case Number 10/Pdt.G/2022/PN.Kbm., it is essentially outlined that on September 20, 2021, the Plaintiff and Defendant executed a Statement Letter expressing their mutual intention to proceed with marriage. Subsequently, based on this statement letter, the prospective spouses entered into Marriage Agreement Number 01, dated September 20, 2021, before a notary. This agreement delineated the division of assets to be independently managed by each party. However, when the Defendant was invited to carry out the arrangement that they had made together, the Defendant refused and even denied it. Based on this, the Plaintiff moved for the annulment of the marriage contract since the Defendant failed to meet his obligation, which was to unilaterally annul the marriage.

In relation to the decision of the Kebumen District Court, some respondents had the same opinion, but some differed. The respondents, two judges of the District Court of Mungkid Regency and the District Court of Magelang City, differed in their opinions on Case No. 10/Pdt.G/2022/PN. Kbm. According to the Judge of the District Court of Kabupaten Mungkid, the marriage agreement is binding on the parties because the marriage is conducted in compliance with Article 29 paragraph (3) of Law Number 1 Year 1974 Concerning Marriage. If the prospective husband and wife do not formally marry, the

marriage agreement does not apply to them, thus the legal implications are null and invalid, and there is no need to file an annulment request to the District Court.

Meanwhile, according to the Magelang City District Court Judge, if a marriage agreement is made but the prospective husband and prospective wife have not yet been legally married, the marriage agreement cannot be implemented because the official marriage has not yet occurred, so it is not binding because the marriage agreement is an accessory to marriage. However, the annulment of the marriage agreement can be filed as long as the parties' interests need it, as canceling the marriage agreement requires a District Court Decision ([Rohman, 2017](#)).

According to Sigit Priyono, S.H., M.Kn. (Advocate Magelang), if the prospective husband and wife do not marry, the marriage agreement does not have to be canceled. This is in accordance with Article 154 of the Civil Code, which states that marriage agreements and grants relating to marriage are invalid if not followed by marriage, implying that the marriage agreement is legally void if not followed by marriage by the prospective husband and wife. If a lawsuit is filed to annul a marriage agreement, the litigation becomes premature, and the judgment is deemed unsatisfactory, also known as the NO (Niet Ontvankelijke Verklaard).

This opinion is in line with that conveyed by Saji, SH, MH (Advocate Magelang), that the marriage agreement does not need to be requested for annulment to the District Court, if the prospective husband and wife who make the marriage agreement do not enter into marriage. This indicates that the marriage agreement is void on its own. A marriage agreement will take effect if it is followed by marriage, as it is a conditional contract. As a result, it is important to understand that a marriage agreement entered into before to an official marriage will take effect once the husband and wife candidates have married. Legal actions under the marriage agreement will not be carried out prior to the marriage. This has been regulated in Article 29 paragraph (3) of Law Number 1 of 1974 concerning Marriage, as well as in the Civil Code Article 154 so that if the marriage agreement is not followed by marriage, the marriage agreement becomes void. So the marriage agreement is null and void, therefore there is no need for annulment.

Three notaries in Magelang provided their opinions. The three notaries provided different responses to Case No. 10/Pdt.G/2022/PN. Kbm. Two notaries agreed with the advocates mentioned above. While one has a different opinion, according to [Sanjaya, \(2018\)](#) regarding the annulment of the marriage agreement deed; if the marriage does not take place, it must still be annulled through the District Court. It should be understood that the marriage agreement deed made before a notary is an authentic deed that has perfect evidentiary value, so if it is to be canceled, it must be in the form of an authentic deed, namely in the form of a deed of cancellation of the marriage agreement. Cancellation of the marriage agreement deed can be carried out by the parties with an agreement to cancel the contents of the marriage agreement deed through an application submitted to the District Court. The annulment of the marriage agreement is valid from the date of the annulment deed

with all its legal consequences, both before and after the annulment is made. This is intended to provide the parties with legal certainty.

Nizam Fanani, SH, M.Kn, Notary & Land Deed Official in Magelang Regency believes that a marriage arrangement established before a notary does not need to be annulled at the District Court if it is not followed by marriage. The marriage agreement is already void by itself since it is a conditional agreement, which means that the marriage agreement is only legitimate if the criteria are met, namely the marriage, because the marriage agreement is an accessory to the marriage. This opinion is in line with the opinion of Suharni, SH, Notary & Land Deed Official in Magelang that the marriage agreement itself is no longer legitimate and null and void since it fails to achieve a purpose or the agreement to carry out the marriage is not carried out. So that the marriage agreement that has been made does not need to be canceled to the district court.

Based on the results of research conducted in interviews with respondents, it can be concluded and analyzed based on legal norms, namely that a marriage agreement is an agreement that can be made at the time or before the marriage takes place or even based on the Constitutional Court Decision No.69/PUU-XIII/2015 that a marriage agreement can be made during the marriage bond. The marriage agreement is a consensual agreement between the prospective husband and wife to create a written marriage agreement which is legalized by the marriage registrar. The substance in the marriage agreement also applies to third parties as long as the third party is involved/related to the agreement they made ([Muris, 2022](#)).

According to Article 29 paragraph (3) of the Marriage Law, a marriage agreement comes into force when a marriage is officially entered into, namely a legal marriage based on statutory regulations. Article 2 of the Marriage Law stipulates that a marriage is considered valid, if it is carried out according to the laws of each religion and belief, and each marriage is recorded according to the applicable laws and regulations, meaning that it is registered with the marriage registrar ([Dwinopianti, 2017](#)).

The validity of an agreement must fulfill the subjective and objective conditions stipulated in Article 1320 of the Civil Code. An agreement, including a marriage agreement, fails to meet the subjective standards, namely the agreement and the capacity of the parties who made it, one of the parties may seek that it be cancelled. If the agreement fails to meet the objective standards, which are a specific thing and a halal causa, it is null and void. A marriage agreement that fulfills the validity requirements of the agreement binds the parties when the marriage occurs, because the marriage agreement is a conditional agreement, which means that the marriage agreement is valid if the conditions are met, namely that the marriage is carried out, because the marriage agreement is an accessory to marriage. As a result, the marriage agreement takes effect after the prerequisites are met, specifically, that the marriage is formally held and registered with the marriage registrar.

This is in accordance with Article 29 paragraph (3) of the Marriage Law, which states that the agreement (marriage agreement) becomes effective when the marriage is held. The remark "comes into force since implies that if the marriage is not held, the marriage

arrangement is invalid or "null and void". Null and void indicates that there was never an agreement or engagement in the first place. Another term to use is "void ab initio," which means "considered invalid from the start". A nullity based on the law means that the legal act in question is considered to have never occurred. The concept of null and invalid is governed by Article 1335 of the Civil Code, which states that an agreement without a cause, or established for a false or prohibited cause, has no force. The things that become an agreement can only be implemented when the prospective husband and wife have entered into marriage. According to the author's opinion, a marriage agreement made before a marriage is held and it turns out that the marriage is not held, then the marriage agreement does not need to be requested for annulment to the District Court to obtain a determination from the judge.

It should also be understood that based on the Decision of the Supreme Court of the Republic of Indonesia Number 1420 K/Sip/1978 the court does not have the authority to cancel an authentic deed made by a Notary, it can only declare that the deed no longer has legal force that binds the parties (Maria, 2020).

IV. CONCLUSION

Marriage agreement is established prior to the marriage ceremony, and the marriage itself does not occur, then there is no need to seek annulment of the marriage agreement through the court. This is in accordance with Article 29, paragraph (3) of the Marriage Law, which stipulates that "the agreement becomes valid upon the solemnization of marriage." Additionally, Article 154 of the Civil Code supports this, stating that "marriage agreements, along with grants pertaining to marriage, are invalid if not accompanied by marriage." According to these provisions, a marriage agreement holds validity only when the marriage takes place; if the marriage does not occur, the marriage agreement does not apply and is not binding on either party. Therefore, it can be inferred that the marriage agreement is rendered legally void, as it is contingent upon a specific condition—namely, the occurrence of marriage. A marriage agreement that is not followed by marriage confers no rights upon the parties involved.

Authors' Declaration

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