

PROBLEMATICS OF THE STATUS OF THE MARRIAGE AGREEMENT BEFORE AND AFTER THE DECISION OF THE CONSTITUTIONAL COURT NUMBER 69/PUU-XIII/2015

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Abstract

Marriage agreements made by the prospective bride and groom are usually carried out by the prospective bride and groom a few days before the marriage consent is carried out or the marriage process is legal according to their respective religions and beliefs, made in writing, can be under the hand or authentically. Now, after the Constitutional Court's Decision Number 69/PUU-XIII/2015 dated March 21, 2016, the marriage agreement may be made after marriage is carried out in the sense of having the status as husband and wife. It is an interesting study to investigate the implications of the Constitutional Court's decision and the legal consequences on property status and third parties who feel aggrieved by the existence of the Marriage Agreement. This study uses empirical research using the statute approach and the conceptual approach. The data used is secondary data in the form of primary, secondary and tertiary legal materials. The results showed that the implications of the Constitutional Court's decision on the making of a marriage agreement after marriage made before a Notary changed the legal mechanism for making a marriage agreement which can now be made during the marriage bond by a Notary without having to be preceded by a judge's determination, but Notaries are worried because they have a direct risk and responsibility in making the marriage agreement deed because there is no legal reason for taking refuge based on a Judge's Determination. The legal consequence of making a marriage agreement deed after marriage before the Constitutional Court's decision is a change in the status of husband and wife assets and binding on both parties as well as against third parties. Then after the Constitutional Court's decision, the legal consequences of making a marriage agreement after marriage on the status of inherently joint (closely related) assets must first be made a calculation of the previously mixed assets and the assets to be separated in the marriage bond which will be set forth in the marriage agreement, so that the marriage agreement is made when it is made in the form of an authentic deed, it becomes valid and binding on third parties.

Keywords: *Marriage Agreement, Constitutional Court Decision, Authentic Deed*

A. BACKGROUND

Marriage is a legal act in which the parties who can do so have been determined by law and will cause a legal consequence for the parties. Such legal actions will give birth to rights and obligations for husbands and wives who have promised to bind themselves physically and mentally to each other and therefore will have legal consequences for both parties. A legal marriage according to law is a legal act, so that the consequences for every legal action will have legal consequences not only for both husband and wife but also for other parties with whom one of the parties or both (husband and wife) are will enter into legal relations in the future. Thus the marriage is one of the legal actions in society, namely social events that are given consequences by law. After the enactment of Law Number 1 of 1974 concerning Marriage as a legal unification in the field of marriage which adheres to the principle of separation of assets as stipulated in the provisions of Article 35 paragraph (1) it is stated that property acquired during marriage becomes joint property and in paragraph (2) further states that the assets of each husband and wife, and the assets each receives as a gift or inheritance are under the control of each as long as 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 is a difference, where in the Civil Code it regulates that the wealth of husband and wife brought into marriage is mixed into joint assets, namely joint assets between them, while in the Law Number 1 of 1974 concerning Marriage, marital assets brought into marriage (innate assets) remain the property of each and what is mixed into one is only assets obtained from and/or during the marriage (assets *gono gini*). But apart from that, there are similarities between these regulations, namely, both of these regulations provide an opportunity for married couples to decide to determine otherwise regarding assets both obtained before and/or after the marriage takes place, this is a deviation that is justified by law which is determined in a limited manner. through the making of a marriage contract. The marriage agreement or often referred to as the prenuptial agreement is known in the Civil Code and Law Number 1 of 1974 concerning Marriage which is an agreement made by a pair of prospective husband and wife before a notary stating that they have agreed to make a separation of their respective assets in their future marriage, then after the agreement is made all assets both obtained before and during the marriage Later marriage is a right and remains the property of each of them, as well as debts from each of these parties which remain the rights and responsibilities of each party who has these debts. This is in accordance with the provisions in the Civil Code in Article 139 which states that "by entering into a marriage agreement, the two husband and wife candidates are entitled to prepare several deviations from the statutory regulations regarding the association of assets, as long as the agreement does not violate good morals or good order." in general and as long as all the provisions below are observed. This means that the marriage agreement is an agreement regarding the arrangement of husband and wife's property obtained both before and during their marriage, which is a deviation justified by law from the principle or pattern established by law. Regarding the terms of the marriage agreement, it is regulated in Article 29 of Law Number 1 of 1974 concerning Marriage which in essence states that a marriage agreement must be made with a notarial deed, as well as with a written agreement ratified by the Marriage Registrar, before the marriage takes place or at the time the marriage takes place. and the Marriage Agreement comes into force since the marriage took place, and cannot be changed, unless both parties have an agreement to change and the changes do not harm third parties. If the registration of the agreement at the Registrar's Office at the District Court has not yet been carried out and has not been recorded in the Civil Registry Marriage Certificate, then the third parties may assume that the husband and wife are married in a mixture of assets. Marriage agreements made before marriage at this time are no longer something that is taboo for Indonesian people, moreover notaries are used to making marriage agreement deeds. the legal consequences of a legal action can be accounted for by each party that does it so that it does not involve assets 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 stipulated in both Article 147 of the Civil Code and the Marriage Law in Article 29 it states that the marriage agreement is carried out at or before the marriage takes place, but phenomena that occur in society that the marriage agreement was executed after the marriage took place based on a court order, such as the East Jakarta District Court Decree Number 207/Pdt/P/2005/PN.Jkt.Tim., and East Jakarta District Court Decree Number 459/Pdt/P/2007 /PN. Jkt. Tim. Based on the provisions of Article 186 of the Civil Code above that legally, a marriage agreement made after the marriage is carried out is considered valid according to law if it has received a court order in advance, with predetermined reasons. This creates a legal uncertainty, because based on Article 147 of the Civil Code and the Marriage Law in Article 29 it explicitly states that a marriage agreement can be executed at or before the marriage takes place. On October 27, 2016 the Constitutional Court (MK) through its decision Number 69/PUU-XIII/2015 gave a constitutional interpretation of Article 29 paragraphs (1), (3) and (4) of Law Number 1 of 1974 concerning Marriage at the request of Mrs. . Ike Farida the core of which states that as long as the marriage agreement is not interpreted as being able to be entered into "while within the marital bond ", then such Article according to the Court does not have binding legal force (conditional unconstitutional). This means that based on the Constitutional Court's Decision on Article 29 paragraphs (1), (3), and (4) the Court applies extensive interpretations resulting in the formulation of norms in Article 29 paragraphs (1), (3), and (4) on the implementation of the marriage agreement now it is not limited to being carried out only at the time or before the marriage takes place, but also while in a marriage bond the marriage agreement can be carried out by the husband and wife with mutual consent. Thus, in this case, the Constitutional Court prioritizes the application of progressive law to meet legal needs for phenomena that occur in society against the risks that might arise from joint assets in marriage, both due to the husband's work and wife who has consequences and responsibilities up to personal property, as well as due to legal consequences of Article 21 paragraphs (1) and (3) of the UUPA. Marriage agreements after marriage were previously not known or regulated in Law Number 1 of 1974 concerning Marriage, but after the Constitutional Court's decision on Article 29 paragraphs (1), (3) and (4) according to the Court it must also be interpreted that it can also be carried out when the marriage bond is in progress if there is mutual consent between husband and wife,

this will become a legal problem when the Constitutional Court Decision is faced with the provisions of Article 186 of the Civil Code which regulates the process of making a Deed of Marriage Agreement after marriage (separation of assets) which must first obtain a court order. Based on the above background, it is important to study further the legal implications of the Constitutional Court's Decision which affects the legal system of marriage agreements as regulated in Law Number 1 of 1974 concerning Marriage, where after the Constitutional Court's Decision experienced meaningful changes to Article 29 paragraph (1), (3), and (4) which according to the Court must be interpreted as being able to be carried out when the marriage bond has taken place if there is mutual consent between husband and wife, this will have implications for the making of the Marriage Agreement Deed while in the marriage bond and the legal consequences of the marriage agreement on the status of assets that have become joint property as well as on third parties, this is what the author is concerned about so it is interesting to explore and study.

B. MARRIAGE AGREEMENT BEFORE MARRIAGE

Discussion of the literature review in this study need to be included because of the research literature review seek an analysis of a data to draw a conclusion. Data which there is no adopted whole, but will adjustments and no close possibility exists reduction data, changes to a predetermined concept with another concept which more accurate and appropriate, or throw away views theoretical or findings of other researchers who are believed to be less relevant and replaced with view theoretical other which more relevant.

A number of reference journal which used in study this among others is Political Law Agreement Marriage Post Decision / Constitutional Court Number 69/PUU-XIII/2015 In Creating Marital Harmony.¹ Decision The Constitutional Court Number 69/PUU-XIII/2015 provides politics new law, where the original marriage agreement was only can be made by prospective husbands and prospective wives before marriage (prenuptial agreement), now could made by husband wife after marriage going on. Court Constitution giveconstitutional interpretation in which the making of a marriage agreement can tailored to the legal needs of each partner. Before exists decision MK, Indonesian Citizens (Indonesian Citizens) which marry with foreigners (Foreign Citizens) cannot own a house with ownership rights or building use rights because it collided with the rules of the marriage agreement and joint property. The provisions of the a quo norm make every Indonesian citizen who is married toforeigners During no there is agreement separation treasure no can have a status home ownership rights or building usage rights . The research method used in this research is normative juridical by collecting the decisions of the Constitutional Court and analyzing them with theory for get answer from problem, namely about when could he made agreement marriage. ConclusionWhat can be drawn from this research is that expanding when marriage agreements can be made can minimize them conflict in marriage and able to create harmony related to property rights for Indonesian citizens who are married to foreigners. So that Indonesian citizens which marry with foreigners and no have an agreement marriage, could make it on moment marriage has took place.

C. MARRIAGE AGREEMENT POST COURT DECISION CONSTITUTION

Formulation of the Marriage Agreement after the Constitutional Court Decision No. 69/PUU-XIII/2015, ². This study uses legal research methods normative and aims to describe the formulation Agreement Marriage Post Decision MK No. 69/PUUXIII/2015 in terms of Islamic Law and Legislation in Indonesia. Study this use type study References with the nature of analytic descriptive research and a juridical approach normative. Collection data primary conducted with technique documentation and data analysis techniques from inductive to deductive. Results research shows that:

- (1) The concept of a marriage agreement in Islamic Law is a strong agreement (*mitsaqan ghalidzan*), whereas in UU in Indonesia, marriage agreement could form *taklik* divorce and agreement which other.,
- (2) Existence agreement marriage post decision MK No. 69/PUU-XIII/2015 is step progressive, that is in framework protect human rights and constitutional rights of citizens country.
- (3) There is a legal formulation in the marriage agreement post decision MK in line with theory *masalah murlah* because is a legal effort to keep up with the times, with condition base its formation Fulfill three thing i.e. benefit characteristic general, essential and no contrary with *nash syar'i* or legislation which apply.

Implications and Legal Consequences of Constitutional Court Decisions Number 69/PUU-XIII/2015 to Making Deed Agreement Marriage After Marry which Made in Before the Notary,³ Study this use research methods law normative and aim for knowing implication Constitutional Court Decision Number 69/PUUXII/2015 and its consequences law on the making of marriage agreements after the Constitutional Court's decision to status treasure and party third which feel harmed on the agreement. The results of the research show that the implication Constitutional Court Decision Number 69/PUU-XIII/2015 against the making of the marriage agreement deed after the marriage is made in front of Notary Public change mechanism law making agreement marriage which now could made During bond marriage going on by Notary Public without must in go ahead withcompetent court decision.

As for legal consequences making deed agreement marriage after Marry before Decision MK that is happening change to status treasure husband-wife and binding on both parties as well as on third parties. Then, after the Constitutional Court's

¹Oly Viana Agustine, Political Law of Marriage Agreements After the Court's Decision Constitution Number 69/PUU-XIII/2015 In Create Harmony Marriage. Journal Rechtsvinding Volume 6, Number 1, April 2017.

²Mambaul Listen et al, formulation Agreement Marriage Post Decision MK No.69/PUU-XIII/2015, journal IAIN Ponorogo.

³Eva Dwinopianti, Implications and Legal Consequences of Constitutional Court Decision Number 69/PUU-XIII/2015 regarding the Making of the Deed of Marriage Agreement After Marriage which Made in front Notary Public, Journal Lex Renaissance No. 1 VOL. 2 JANUARY 2017: 16 – 34.

decision, the legal consequences of making a marriage agreement after marriage are inherent in the status of joint property (closely related) to the time the agreement comes into force. the and bind to third party. Analysis Critical to Agreement Marriage in Decision Court Constitution Number 69/PUU-XIII/2015,⁴ Study To do testing to a number of UUPA provisions No. 5 of 1960 and UUP No. 1 1974 which aims to ensure the right to land and retail HGB and HM for Indonesian citizens who are married to foreigners.

Study this use normative legal research methods . Based on a study of Constitutional Court decision Number 69/PUU-XIII/2015 the researcher concludes that the marriage agreement can be made while in the marriage bond or before marriage took place. However thereby, there is a problem real in Consideration Law which arranged, namely fallacy, lack of judgment and absence impact analysis. On the other hand, the assessment is carried out separately by the Constitutional Court against the object that tested causes no debate comprehensive about issue tree which tested. regardless _ deficiency the, not could also denied that Decision No. 69/PUU-XIII/2015 give alternative Street go out.

Analysis About Agreement Marriage reviewed From Decision Court Constitution Number 69/PUU-XIII/2015.⁵ In research which use method study law normative this concluded that Agreement marriage is written consent agreement made by the prospective husband and wife pair is carried out at the time or before the marriage takes place which is legalized by employee recorder marriage, so content agreement The marriage is binding on both parties (future husband and wife) as well as third parties throughout the party all three are stuck. Regarding the contents of the agreement The marriage is free but does not violate boundaries of law, religion and decency as well which has been regulated in Law Number 1 Year 1974 about Marriage which also include that the marriage agreement cannot be changed however if both parties agree to change and the change is not detrimental to third parties then can changes were made. Agreement marriage enforced since marriage took place. In another that, conclusion which other mention that Constitutional Court Decision Number 69/PUU-XIII/2015 Concerning testing Constitution Number 1 Year 1974 about Marriage mention in Chapter 29 Paragraph (1), Paragraph (3) and Paragraph (4) is unconstitutional. So this is very inappropriate which mandated by Constitution Base Year 1945 especially exists restrictions or even remove rights constitutional Indonesian citizens who carry out mixed marriages with retain their citizenship in terms of ownership Right of Ownership/Utilization Right of Building on land in Indonesia. With exists Decision Court Constitution Number 69/PUU-XIII/2015 bring norm new about agreement marriage i.e. increasing the time limit for making a marriage agreement extensive and regarding the contents are also expanded and can even be done change or revocation as long as both parties (husband wife) agreed and no harmful party third, agreement marriage could also confirmed by Notary Public.

D. Marriage Agreement Before and After the Constitutional Court Decision Number 69/Puu-Xiii/2015

Implementation of Constitutional Court Decision Number 69/PUU-XIII/2015 on the Making of the Deed of Marriage Agreement After Marriage Marriage agreements in Indonesia are not something that is popular and considered a must. Although so, there is appreciation which must owed to the government as the former of the a quo law, continue to accommodate needs related to the marriage agreement. In On the one hand, eastern custom itself does not really consider it related with this. The making of a marriage agreement is actually alleged to be form of materialistic properties. But on the other hand the inclusion of the agreement Marriage is a government effort to accommodate needs Public and development law later day.⁶

Effort the naturally will Keep going experience change adapted to changes in society. P origin about agreement marriage new Becomes chapter third which experience change. While the other articles are still considered relevant conditions of today's society, even at the level of reality apply on the contrary. Regulation about agreement marriage which aim for ensure freedom every inhabitant country for To do agreement with anybody it turns out still raises a number of loss. Especially for Indonesian citizens who are married to foreigners without one agreement marriage, so will lost right for have building and soil with status HBG. By because that, Court Constitution give leniency specifically time making agreement marriage. So that the parties can still make a marriage agreement though already exists in bond marriage.

The progressive steps taken by the Constitutional Court are in line with draft *Maqashidu Shari'ah (hifdhu mall)* that is protection to treasure object. In religion Islam, though believed that everything in the world belongs to Allah SWT, but humans have rights to take advantage of all the wealth that exists in the world. Then Islam too recognize individual property rights, as long as it is within the corridors of Islamic law.⁷ The incident that experienced by ike Farida as

⁴Damian Agata Yuvens, Critical Analysis of the Marriage Agreement in Decisions Court Constitution Number 69/PUU-XIII/2015, Journal Constitution, Volume 14, Number 4, December 2017

⁵Ejinia Elisa Kambey, Analysis of the Marriage Agreement in View of the Decision Constitutional Court Number 69/PUU-XIII/20151, Ejinia Elisa Kambey, Journal Lex Private Vol. V/No. 9/Nov/2017.

⁶Syaifulahi Maslul, Decision of the Constitutional Court Number 69/Puu-Xiii/2015 Viewed from Fulfillment Rights Fundamental Man And Principles Formation Agreement, Journal Court IAIM NU Metro, Vol. 1, No. 2, December 2016, 409-424

⁷QS Women: 29-32, which means as following:

- (29) Hi people which believe, don't you each other eat treasure your neighbor with wrong way, except with the way of commerce which is valid with mutual consent between you. and do not kill yourselves. Verily Allah is Most High Caring to you.
- (30) And whoever does this by violating rights and being persecuted, then we will be will enter it to in hell. which thereby that is easy for God
- (31) If you stay away sins big in Among sins which prohibited you do it, we will erase your mistakes (your small sins) and we put in you to the place glorious (Paradise).

Indonesian citizens which marry with foreigners without To do agreement marriage from facet constitutional proven cause losses due to loss of property ownership rights. This matter certainly not in accordance with the goals of *Maqashidu Syari'ah*, especially *hifdhu mall* or protection to ownership property.

Agreement marriage on chapter 35 Year 1974 about marriage Specific arrange about Treasure together which aim for give certainty law which fair for all party, especially for married couples. This article is strengthened by a decision Court Constitution Number 69/PUU-XIII/2015 where inside it Explain the steps that can be taken by husband and wife before make a marriage agreement.

This is in accordance with the theory of legal protection, namely legal protection as a protection of dignity, as well as recognition of human rights owned by the subject law based on the legal provisions of arbitrariness.⁸ In terms of Constitutional Court decision Number 69/PUU-XIII/2015, human rights are protected is right Inhabitant Country Indonesia which marry with Inhabitant Foreign Country. The Indonesian citizen will lose the asset ownership rights in his country alone, except make a agreement marriage before marriage did . However without agreement marriage so right the will is lost. There is leniency in regulation agreement This marriage will certainly greatly benefit Indonesian citizens who are married with foreigners, specifically for they which no make agreement marriage before marry.

But no matter how good the design and purpose of the issue is the decision of the Constitutional Court Number 69/PUU-XIII/2015, only will Becomes a discourse just without there is Support from institution country as well as other institutions related to the making of the agreement deed marriage. Because one side, nature decision Court Constitution finals, and tie in fact no followed gift penalty to institutions that do not implement the results of the decision. it becomes joint evaluation for all legal observers in Indonesia in particular, at least to minimize no effectiveness of several decisions issued by the Constitutional Court. An analysis must also be carried out related to the problems and constraints and challenges experienced by institutions which related with agreement marriage. So that destination issued decision Court Constitution this truly achieved in a manner whole.

Implementation Decision Court Constitution Number 69/PUU-XIII/2015 on Making the Deed of Agreement Marriage After Marry on Notary Public. Notary in the provisions of Article 1 *Instructie voor De Notarissen* in Indonesia states that a notary is a public official who must know all applicable laws, which are summoned and appointed to make deeds and contracts, with the intention to give him conditions and approval, determine and confirms the date, saves the original or minutes and issues the *grosse*, as well copy which legal and Correct.⁹

Notary is a public official who is the only authorized to make authentic deeds regarding all deeds, agreements and stipulations required by a general regulation or by an interested person desired to be stated in an authentic deed, guaranteeing certainty the date, keep the deed and give *grosse*, copy and the quote, all throughout making deed that by something regulation general no also assigned or excluded to official or person other.¹⁰

Notary is the only official authorized to make deeds authentic about deed, agreement, and determination. So decision Court Constitution Number 69/PUU-XIII/2015 has appropriate. Agreement marriage given position as deed authentic like deed other. Where previously agreement marriage only made in front of Service Population and Civil Registration by being given a special form provided by the party related. And the strength of the agreement is limited to the arrangement agreement between the two parties, namely husband and wife. By changing the rules made, then the deed of agreement made by the notary has the force of law and can be used as a statement of a deed law and used as means of proof.

But in fact in the realm of implementation there are still many to be found constraints experienced by a notary, especially in terms of making a deed agreement marriage where one of them is the problem of legalization deed issued by a notary by the Department of Population and Civil Registration as well as KUA. Before the deed is legalized and declared accepted by the two related institutions, then the deed issued by a notary is deemed not authentic as a deed under the hand and not binding on third parties. Even though it is clearly written in Article 1 of the Notary Office Law that the notary is the only one who has that general authority, does not participate on official other. Even if there is official other which involved, so authority no exceed from on making or authentic, and limited to making a certificate of recognition of children out of wedlock,¹¹ news about negligence official storage mortgage,¹² news program about offer payment cash and consignment,¹³ deed protest money order and check,¹⁴ deed notescivil, not included inside it deed agreement marriage. Legalization of marriage agreement deed by the Department of Population and Civil Registration and the KUA are logically intended so that all parties involved bound by this agreement to form an integral part of the entire document marriage. If this is done, it will create Indonesian society which orderly administration , however one side, with exists authority legalization owned by the Department of Population and Civil Registry as if notaries become subordinate (subordinate) of other institutions. Though Notary in carrying out his position must be independent (autonomous), no take sides anybody (impartial), no depends to anybody (independent), which means in operate Duty position no could meddling

(32) And do not be jealous of what Allah has bestowed upon some you more than some others. (because) for men there is part of on what they earn, and for women (even) there is a share of what is they try, and please to God part from his gift. Indeed God Maha know everything.

⁸Philip M. Hadjon, Protection Law For People Indonesia, (Surabaya: Build Knowledge, 1987) , p. 1

⁹Habib Adji, Law Notary Public Indonesia Interpretation thematic To UU No 30. Year 2004 About Position Notary Public, Refika Aditama, London, 2008, p. 20

¹⁰ Ibid

¹¹(Chapter 281 KUH Civil)

¹²Chapter 1227 KUH Civil

¹³Chapter 1405 and Chapter 1406 KUH Civil

¹⁴Chapter 143 and Chapter 218 KUH Trade

by parties which pick it up or by parties other.

If in the end the marriage agreement deed is rejected by Service Population and Notes Civil or KUA, so deed the deemed to have never existed or never been created. Thus the deed a notary that is null and void by law results in damages to the party that is in the deed. To the aggrieved party can do lawsuit in a manner civil to Notary Public.

Authentic deed including the deed of marriage agreement according to Article 1868 of the Indonesian Civil Code (hereinafter referred to as Civil Code) is a deed in the form determined by laws, made by or before public officials who power for that in the place where the deed was made. It is giving definition that Notary Public because Constitution given authority create tool proof which absolute, in definition that what which the in deed authentic it's on the main thing is considered correct.

While the basis of evidence is in the form of statements from the parties, researching proof which shown, listen desire party which face, and make the statement as the basis for making deed of marriage agreement. Of all the deed, the notary explained or give in his capacity as a public official testimony from everything that was seen, witnessed and experienced by the parties other. Meanwhile, on the other hand, the notary does not have executorial rights to prove the information provided. Even though the deed of agreement This is not only binding on the husband and wife, but also legal consequences on third party.

This is the basis for a notary to apply principle caution with reject client which will make deed agreement marriage. Well agreement which conducted in early marriage and during the marriage bond. What's more that related with separation treasure together for couple which is at in bond marriage. In the case of a notary provide legal counseling to achieve high legal awareness, so that members of the public are aware right and his obligations. Notaries sometimes ask second couple the for return remember destination main he did marriage. That marriage not just an agreement an agreement but a *mitsaqon gholido*. A bond that is much stronger than just an agreement contractual. If second split party still permanent want to make deed agreement marriage, so often recommended to seek Notary Public other.

The steps taken by the notary do not violate code ethics profession notary. Beside Secrete deed agreement marriage, give consultation in field law also is the job for Notary. Based on the Decision on the principle of freedom of contract and enforcement moral and ethical principles law. Notary is a public official who is the only authorized to make authentic deeds regarding all deeds, agreements and stipulations required by a general regulation or by an interested person desired to be stated in an authentic deed, guaranteeing certainty the date, keep the deed and keep *grosse*, copy and quote, all during the making of the deed was also not assigned or excluded to official or person other.

In accordance with the mandate set by the Constitutional Court Number 69/PUU-XIII/2015 that the responsibility for making the deed of agreement marriage is at the notary. No longer carried out by the Population Service and Civil Registry or KUA. So the notary as a public official who has the sole authority as the maker of the marriage agreement deed, should provide services to people in need his services with the best in accordance with capacity position. Every profession has a code of ethics which is a norm applied and received by whole member. para holder profession have two obligation that is must for operate profession in a manner responsible and obligation for not violate rights person other.

The rights referred to here is right client to get deed marriage agreement, as well as the rights of third parties not to get loss. By because that, in making or agreement marriage, will be more selective and thorough in making the deed of agreement marriage. There are also notaries who are not willing to include the distribution of assets while in the marriage bond in the marriage agreement deed. However outside the case of distribution of assets, especially in parenting agreements children, household expenses, and other private matters are included in the deed agreement.

Based on the notary's moral and ethical values, the development the position of a notary is a service to the public (clients) independently and no take sides in field notary which its development internalized as a calling in life is rooted in the spirit of dedication to fellow a man by interest general as well as rooted in respect for dignity man on generally and dignity Notary Public on specifically.

However, with regard to the distribution of assets after a pair husband and wife living together for many years would certainly be a lot constraint in determination his treasure. Except if deal distribution treasure agreed for started after deed agreement marriage, so will made ingredient consideration by Notary Public if _ it is desirable that the division of assets be retroactive, then the notary will also refuse it. With reason that Notary Public no have right executive, so no can determine the legal ownership of the price on both sides. The precautionary principle be careful also preferred by notaries. In accordance with the applicable constitution that a notary cannot be subject to sanctions for giving a deed as long as the deed written is in accordance with the description and evidence brought by the client. The notary's task is only to formulate the wishes of the parties in the form of a notarial deed as long as it is in accordance with rule law which apply and no could implemented a deed the notary is not a notary's fault. As long as it can be proven that the notarial deed not the result of a notary conspiracy with the appears with the intent and destination for harmful para facing or party other , n however rule this in fact no enough for made base also by a notary in making a deed of marriage agreement. Because of him evaluate Thing it is vulnerable occur dispute. Except if agreement it already get decision which *inkracht* from party Court. So he stated that there was no reason to reject any agreement deed marriage.

Authentic deed has perfect and binding power . Perfect namely that with one authentic certificate of evidence it is enough for disconnect case, because that already enough for tool proof. Because made by or before an official, the official who made this deed has been sworn in. Deed made by or before officials must be trusted and have strength law tie During no proven on the contrary.

That verdict which issued by Court The constitution aims to solve problems , especially problems for perpetrator marriage mix , n however sadly decision the raises new problems for other institutions, especially for Notary Public. Because after the decision appears, the notary is given full authority to make a deed of marriage agreement either when marriage begins even while in bondage marriage. annihilation procedure through table green the more burdensome process accountability

Notary Public to content in deed agreement marriage.

Party Notary Public on in fact appreciative to step which conducted by the Constitutional Court because with this decision, hence the right to obtain ownership of the house and land for the spouse husband wife especially for perpetrator marriage mixture can fulfilled. Likewise with married couples who have not made an agreement marriage moment Marry and felt there is which need for made agreement can be fulfilled. However, implementation still faces many problems. especially for notaries who are given a large mandate with the decision exists.

The facilities provided by the Constitutional Court especially for party which will make deed agreement marriage, in fact raises polemic for party executor. Thing this is caused because in decision the, automatic tie two element official. Official professional which same very not the domain of the executive, judicial, or legislative. And official domain public that is executive. Second element official the must To do adjustment to decision a institution judicial.

E. CONCLUSION

Implementation of Constitutional Court Decision Number 69/PUU-XIII/2015 related with a number of institution country other. Between other as following: In accordance with the *maqasidu sharia* theory, namely *hifdzul maal Jasser Auda* that in the Constitutional Court Decision Number 69/PUU- XIII/2015 aims to protect assets. At the executive level has been implemented. Thing this be marked with issued issued Letter Director General Civil Registry Number: 472.2/ 5876/ Dukcapildated 19 May 2017 regarding the Recording of Agreement Reporting Marriage and the Ministry of Religion which was followed up with Letter of the Director General of Islamic Community Binmas Number: B.2674/DJ.III/KW.00/9/2017 dated 28 September 2017 regarding Recording Agreement Marriage. As decision with nature constitutional conditional, existence Letter Circular the already capable prove that decision Court Constitution has implemented in regulatory form. Whereas for Notary Public, status as institution profession and public officials outside the government, then there is no regulation special which issued as follow carry on from Decision Court Constitution Number 69/PUU- XIII/2015. However every notary performs their respective interpretations of the decision the, and implemented so far interpretation individual each. As far as still sticking to ethics and norm notary profession.

In the theory of procedural law in the Supreme Court of the Constitution it is stated that the Constitutional Court's decision is final and binding. No longer interpretation carried out by other state institutions. However in level implementation found many constraint. Thing this because there is ambiguity in the Circular Letter issued good Civil Registry nor Ministry Religion. Term registration in a Circular Letter and legalization of the Constitutional Court's decision understood differently by the Office of Population and Records Civil, Office Affairs Religion, as well as Notary Public.

According to the theory of authority means rights and obligations. Constitutional Court Decision Number 69/PUU-XIII/2015 implicated to change authority registration of the marriage agreement. Previously rights and obligations recording deed agreement marriage owned by Service Population and Notes Civil, and Office Affairs Religion switch on Notary Public. Notary Public also right for pouring agreement in the form of a deed, without having to go through trial. While the Department of Population and Civil Registry and Office Affairs Religion only have right legalization deed agreement marriage. Another implication is the marriage agreement Previously it could only be done before the marriage began, changed Becomes before and During bond marriage.

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