

# Analysis Of the Legal Impact Before and After the Making of a Post Marriage Agreement on Joint Property (Case Study of Marriage Agreement Deed Dated February 8, 2021 Number 25)

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**Abstract.** The Sacred Court is one of the state establishments that has autonomous legal ability to complete courts to implement regulation and equity in force in the Republic of Indonesia. In view of the choice of the Protected Court Number 69/PUU-XIII/2015, the Constitutional Court somewhat permitted the solicitation regarding legitimate review of Article 29 area (1), Article 29 entry (3) and Article 29 section (4) of Law Number 1 of 1974 concerning Marriage. The itemizing of the issue is according to the accompanying: 1) Can a marriage understanding be made after the marriage occurs and 2) What is the spot of the two resources and responsibilities that are together moved by. The examination technique utilized is normalizing guideline with particular assessment. Wellsprings of legal materials used are as fundamental and helper genuine materials. The justification behind this study is to take a gander at even more significantly the impact of seeking after a marriage course of action after the marriage occurs on the assets and commitments had as well as obtained by the social occasions during the marriage considering positive guideline that exists and applies in Indonesia. The result shows: 1) Making a marriage arrangement currently isn't expected to be made before marriage, it very well may be made after marriage that. Then, at that point, the two resources and obligations possessed by the mate can be isolated and turned into the freedoms and commitments of each party. 2) That the place of joint property after the marriage understanding is confirmed, and with the presence of a positive lawful guideline which implies it isn't retroactive, Therefore the partition of the two resources and obligations will produce results after a court choice.

**Keywords:** Joint Assets and Debt; Marriage Agreement; Post-Marriage

## 1 Introduction

At the time of the creation of man, God had planned to create a man and a woman. Then God made marriage for the created humans. Marriage is an institution created by God Almighty. Because of this for some religions, marriage is a sacred activity that should not be toyed with. Indonesia recognizes marriage by law and custom. The meaning of marriage is an inside and external relationship between a man and a lady as a wedded couple who have a practically identical objective, explicitly to move toward an imperishable and cheerful family or family settled on the One Godhead. The marriage security for Indonesian occupants will be viewed as huge, in the event that the marriage security is done by the laws of their various religions and

convictions and the marriage is kept by the rules and rules in force in the space of the Unitary Condition of the Republic of Indonesia.

A man and a woman may marry if they have reached the age of 19 for the man and 16 years for the woman. When a man reaches the age of 19, he can take legal actions such as opening an account, buying motorized vehicles such as motorbikes or cars, buying immovable objects such as land and buildings. These goods are the price for the person who has rights to the goods. Assets that had been owned before the marriage took place, the property became inherited property, while the assets obtained after the marriage took place, the property became joint property. Joint resources are resources where a couple have similar privileges over the property.

Nonetheless, if the two of them would rather not make the property into joint property, then, at that point, the two players can settle on a marriage arrangement. A marriage understanding is an arrangement made by the two players, in particular the lucky man and the lady of the hour who will be hitched, in which the understanding fills the concurred terms and hosts been settled upon by the gatherings, for instance, property in union with the privileges and commitments as a couple.

Marriage Agreements are generally made before the couple carries out the marriage, both religiously also, to the populace and common library office. This is overseen in Article 29 Paragraph (1) of Law Number 1 of 1974 concerning Marriage. After the Marriage Agreement is made, the Marriage Agreement ought to be enrolled with the close by District Court to become significant. In the marriage course of action, generally speaking, the couple will seek after a comprehension that the property to be procured after the marriage happens will be their specific opportunities. With everything taken into account, to take a genuine action on the asset, such as exchanging, leasing or getting, it needn't bother with the support of the friend. In any case, the courses of action of Article 29 segment (1) of the Marriage Law have been changed taking into account the Decision of the Constitutional Court Number 69/PUU-XIII/2015 to:

"At the time, prior to holding or during the marriage bond, both parties with mutual consent can enter into a written agreement ratified by the marriage registrar or notary, after which the contents also apply to third parties as long as the third party is involved."

Because of the above arrangements, many wedded couples apply for a Marriage Agreement after marriage. In this manner the makers are enthused about driving assessment on " Analysis of The Legal Impact Before and After the Making of a Post Marriage Agreement on Joint Property. The assessment questions are: 1. Can joint assets and commitments that for the most part be guaranteed be secluded in a marriage game plan made after marriage? 2. How is what is happening with joint property after the marriage plan was endorsed after the decision of the Constitutional Court Number 69/PUU-XIII/2015?

## **2 General Understanding of Congenital Assets, Joint Assets, and Marriage Agreements**

### **Innate Treasure**

Congenital assets are regulated in Article 35 Paragraph (2) of Law Number 1 of 1974 concerning Marriage, namely: "Innate property of each husband and wife and property obtained by each as a gift or inheritance, are under the control of each as long as the parties do not specify otherwise." In view of Article 35 Paragraph (2) of Law Number 1 of 1974 concerning Marriage as referenced above, it tends to be presumed that acquired resources are all property claimed and got by each party, whether got in light of presents, legacy, gives or bought before marriage, is completely possessed and constrained by each party. In this manner, each has the full right to

do lawful activities viewing their resources like trading, leasing and getting and filling in as security to outsiders.

If the owner of the property dies, then the property is not a gono-gini property (property got by a couple during marriage bond) and the circulation of freedoms to the property will be similarly partitioned by all main beneficiaries who are the main successors to the top of the line, specifically the longest-living mate and their kids.

### **Shared Property**

Joint assets are regulated in Article 35 Paragraph (1) of Law Number 1 of 1974 concerning Marriage, namely: "Wealth acquired during the marriage becomes joint property." Based on Article 35 Paragraph (1) of Law Number 1 of 1974 concerning Marriage as mentioned above, it can be concluded that joint property is all property owned and obtained by each party, whether obtained based on gifts, inheritance, grants or purchased during the marriage bond, fully become and controlled by both parties together. Therefore, to carry out legal actions regarding their assets such as buying and selling, renting and borrowing and being used as collateral to third parties, they must obtain the approval of their partner.

If the owner of the property dies, then the property will become a gono-gini property (property obtained by husband and wife during marriage bond) and the distribution of rights to the property will be divided in half to his spouse and the other half will be divided equally among all heirs who are the heirs of the first class, namely the longest living spouse and their children.

### **Marriage Agreement Regulations Prior to the Constitutional Court Decision No. 69/PUU-XIII/2015.**

Marriage Agreements or normally suggested as Marriage Agreements are generally made at or before the marriage occurs. This is controlled in Article 29 of Law Number 1 of 1974 concerning Marriage, to be explicit:

- a. At or before the marriage occurs, the two players with shared consent could introduce a created understanding affirmed by the marriage enrollment focus, after which the things will similarly apply to the pariah being referred to.
- b. The marriage can't be endorsed accepting it mishandles the constraints of guideline, religion and significant quality.
- c. The comprehension is convincing from the time the marriage occurs.
- d. Anyway, lengthy the marriage occurs, the comprehension can't be changed, with the exception of if from the two players there is an agree to change and the change doesn't hurt a pariah.

Considering Article 29 Paragraph (1) above, it very well may be seen that the Marriage Agreement should be made with shared assent and recorded as a printed variant and before the marriage happens. The guideline limit of the Marriage Agreement made by the two players is to detach the assets moved by each with the objective that they don't become property obtained during the marriage not to become joint.

### **3 Marriage Agreement After the Decision of the Constitutional Court No. 69/PUU-XIII/2015**

By and by, after the decision of the Constitutional Court Number 69/PUU-XIII/2015, Article 29 of Law Number 1 of 1974 concerning Marriage went through changes and this affected the

norms regarding the Marriage Agreement, which in the Constitutional Court's Decision changed Article 29 of the Law. - Law Number 1 of 1974 concerning Marriage becomes:

- a. By then, at that point, or before it ends up actually working or while in the marriage bond, the two players with shared assent can present a framed cognizance which is endorsed by the marriage recorder or legitimate power, after which the things in addition apply as long as the untouchable is involved.
- b. The marriage can't be upheld expecting it batters the restrictions of rule, religion and moral quality.
- c. The course of action comes into force from the time the marriage occurs, with the exception of if overall around displayed in the Marriage Agreement.
- d. During the marriage, the marriage understanding can be concerning private property or different strategies, it can't be changed or revoked, except for if from the two players there is a consent to change or deny it, and the change or disavowal doesn't hurt an aloof.

Taking into account article 29 Paragraph (1) which has been changed by the Constitutional Court Decision Number 69/PUU-XIII/2015 above, it might be seen that the Marriage Agreement can be made ahead of time or during the marriage bond. Consequently, after the decision of the Constitutional Court, now a couple can pick a Marriage Agreement as long as both are in a marriage bond and together agree to go with a Marriage Agreement.

#### **4 Analysis and Discussion**

Shared assets and debts that are already owned can be separated in a marriage understanding made after marriage. Based on a Deed of Marriage Agreement dated February 8, 2021 Number 25 drawn up before Nany Angkasa, S.H. as a Notary in the City of Kota Administrasi Barat. In Article 1 it can be concluded that all assets and innate debts owned by husband and wife will remain their respective rights and obligations. In addition, what can be noted is that this deed was made on February 8, 2021 and the date of marriage has been included in the deed. Based on the deed, the prospective husband and wife will marry on February 27, 2021, therefore, their decision to make a Marriage Agreement on February 8, 2021 is correct.

However, the parties should not be afraid and in a hurry to make the Marriage Agreement on February 8, 2021, since there is as of now a Constitutional Court Decision Number 69/PUU-XIII/2015 dated October 27, 2016. Considering the decision of the Constitutional Court, there is no prohibition for the social occasions to seek after the Marriage Agreement later on.

Basically, according to the decision, the parties can pursue a Marriage Agreement whose items consent to isolate the two resources and obligations as long as it is expressed in the marriage arrangement deed and made before a public accountant. In the process for obligation partition, a letter of understanding between the gatherings and the lender is required and a court request with respect to the detachment of the obligation is required. The appointed authority for this situation should be condemning of what the expectation and motivation behind the marriage arrangement made by the couple is. Try not to let the marriage arrangement made by the couple have a secret goal, specifically to save their different resources from the obligation they have from banks. This is extremely hazardous since, supposing that the appointed authority is careless, for this situation the bank will be incredibly hurt.

If all of these have been fulfilled and there has been a court ruling with permanent legal force, the marriage agreement deed can be used and registered with the population and civil registry office. Therefore, both the assets and debts obligations got by the couple during the marriage from that time on can also be ascertained to be the absolute rights of each party. This

is important because the law in Indonesia adheres to positive law, where the separation of assets will take effect when it has received a decision from the court.

Position of Shared Assets and Debt After the Marriage Agreement was Legalized After the Decision of the Constitutional Court Number 69/PUU-XIII/2015. Preceding the Constitutional Court Decision Number 69/PUU-XIII/2015, the spot of joint assets and commitments couldn't be segregated, considering the way that according to Article 29 of Law Number 1 of 1974 concerning Marriage, it was taboo to go with a marriage understanding assuming a husband and mate were by then in a marriage bond. The article obliges the couple to choose a marriage understanding before getting hitched. Hence, the division of joint resources and obligations got after marriage can't be completed in the event that the couple don't go with a marriage understanding.

With the Constitutional Court Decision Number 69/PUU-XIII/2015, it gives space to a couple to coordinate the spot of joint assets and commitments after the marriage game plan transforms into the property of each party. This should be possible the same length as it is expressed that the two resources and obligations got after the marriage occur are referenced in the marriage arrangement, then both the resources and obligations have a place with that individual. Albeit the choice gives space, it should be noticed that Indonesia perceives the standard of positive regulation.

This influences the date of division of both joint resources and obligations. The date alluded to for this situation is the date of the marriage understanding deed. In view of the consequences of meetings with Mrs. Nany Angkasa, SH, as a public accountant in the managerial city of West Jakarta and furthermore the hypothesis of legitimate assurance in regards to positive regulation, the resources and obligations claimed by a couple under the steady gaze of a court choice remaining parts the freedoms and commitments of the husband and spouse.

## **5 Closing**

### **Conclusion**

In light of the consequences of exploration and examination that has been done by the creator of the lawful impact before and after making a post-marriage marriage agreement on joint property, it can be concluded from the results of this study that:

- a. It isn't obligatory to pursue a marriage arrangement presently prior to getting hitched, yet can be made after marriage. With the goal that the two resources and obligations possessed by the mate can be isolated and turned into the freedoms and commitments of each party.
- b. Whereas the position of joint property after the marriage agreement is ratified and with the existence of a positive legal principle which means it is not retroactive, the separation of both assets and debts will take effect after a court ruling.

### **Suggestion**

Based on research conducted by the author, there are several suggestions that can help improve the company's performance results in the future, namely:

- a. For the gatherings who need to pursue a Marriage Agreement, there is compelling reason need to rush in settling on the Marriage Agreement. This is on the grounds that the marriage understanding can be made before a public accountant after the marriage happens as long as both agree and agree on what is regulated in the marriage agreement.
- b. With the provision that the law does not apply retroactively, parties who wish to make a marriage agreement must pay attention to the effective date of the separation of assets (cutoff date). This is because both assets and debts owned before the date of termination are joint rights and obligations.

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