



Legal Consequences of Change or Revocation of Marriage Agreement: Analysis of Marriage Law in Indonesia



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Abstract

The marriage agreement is an agreement agreed upon by the prospective husband and wife before or at the time of marriage to determine the legal consequences of marriage on their property—provisions of the act. Article 148 of the Civil Code stipulates that a deed of amendment or revocation of a Marriage Agreement can only be made with an authentic deed. The deed can only be done by a notary who is a public official who is authorized to do an original deed. The legislation has not been regulated in detail how the procedure for making a deed of amendment or revocation of a Marriage Agreement can occur. Problems can arise when making the act results in losses for the third parties involved. This article encourages the notary to carefully push the deed of amendment or revocation of the Marriage Agreement so that the notary can protect the interests of the third parties involved and to avoid all claims and lawsuits that third parties may file if someone is harmed because of the deed made by a notary is detrimental to a third party, the act will be null and void.

1. Introduction

A marriage agreement is an agreement agreed upon by the prospective husband and wife before or at the time of marriage to determine the legal consequences of marriage on their property (Levinger & Breedlove, 1966). O'Leary & Williams (2006) state that marriage agreements can provide

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restrictions for married couples to avoid a property conflict. The marriage agreement can be made before or during the marriage bond. Under certain circumstances, it is also possible for a husband and wife to make changes and even revoke the marriage agreement they have made during their actions. The contents of the amendment to the marriage agreement are also following the applicable legal provisions (Cf. Abdunayimova, 2020).

The arrangement regarding the Marriage Agreement was initially regulated in the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage (Alfa, 2020). Still, after the decision of the Constitutional Court, the arrangement was adjusted to the provisions in the Decision of the Constitutional Court. Marriage agreements made during the initial marriage were not regulated in the Marriage Law. Still, with the Constitutional Court's Decision, the Marriage Agreement can be made after the wedding takes place even though this is not following the provisions of Article 186 of the Civil Code (KUHP), which determines the procedure for making Post-marriage marriage agreements (specifically regarding the separation of assets) must first obtain a court order (Lindsey & Butt, 2018; Adnyana, 2021).

Then specifically regarding the amendment and revocation of the marriage agreement, the Marriage Law only stipulates that during the marriage, the marriage agreement cannot be changed if there is no agreement from both parties, parties to make changes, and such changes may not harm third parties, while based on the Constitutional Court's Decision, the provisions in the Marriage Law no longer have binding legal force as long as it is not interpreted as "During the marriage, the marriage agreement may involve marital property or other contracts. It cannot be changed or revoked unless there is an agreement to change or withdraw from both parties, and the change or revocation does not harm a third party. The Constitutional Court's decision provides an opportunity to make changes to the Marriage Agreement and revoke it on the same condition that it must not harm a third party (Bedner & Van Huis, 2010).

Procurement of Marriage Agreements cannot be carried out merely verbally but must be made in writing. Furthermore, it is necessary to obtain approval from the marriage registrar so that its contents can apply to third parties as long as the third party is related. The Marriage Law does not specify clearly and unequivocally how the written form of the Marriage Agreement will be, so it can be interpreted that the Marriage Agreement can be made in writing under the hand or made in writing with an authentic deed or which can also be called a notarial deed. If you look at the nature of the Marriage Agreement, the agreement is long-term and will only end if the marriage also ends due to death or divorce. Therefore, a notarial deed can be done because it can guarantee that both parties do not easily change the contents of the Marriage Agreement, or at least it is not as easy as making changes to the Marriage Agreement made under the hand.

The regulation in the Civil Code also stipulates that with the threat of cancellation, the Marriage Agreement must be made in writing with a notary deed; therefore, making a Marriage Agreement with a notary deed will provide a better sense of security and legal certainty because apart from specified in the Civil Code as well as a notarial deed is an authentic deed that has perfect proof power of what is contained in the original act. The discussion in this article is carried out to find out the legal consequences of changing or revoking a marriage agreement that harms third parties.

2. Materials and Methods

The type of research is normative legal research by examining positive norms in applicable laws and regulations related to the legal consequences of changing or revoking marriage agreements that are detrimental to third parties (Cf. Cristiani, 2016; Dewi, 2021; Sastrini, 2021).

3. Results and Discussions

The legal consequences of changing or revoking a marriage agreement harm third parties (analysis of marriage law in Indonesia).

A notary is a public official who can and is authorized to make a Marriage Agreement and make a deed of amendment and revocation of the Marriage Agreement (Closen, 1997). Acts made by a notary will have an authentic nature because their manufacture is regulated in Article 1868 of the Civil Code, which reads, "An authentic deed is a deed in the form determined by law, made by or before public officials who have the power to do so at the place where the deed was made".

Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the position of a Notary, Article 15 paragraph (1) stipulates that a notary has the authority to do authentic deeds regarding all acts, agreements, and stipulations required by laws and regulations, the invitation (Renggong, 2014; Utomo et al., 2019). Because the Marriage Law stipulates that the Marriage Agreement must be made in writing and the form according to the Civil Code, it must be in the form of an authentic deed. It is stated that the laws and regulations indirectly require that a notary make the marriage agreement. Then, the Law on Notary Positions further stipulates that a notary is also authorized to make all acts, agreements and stipulations which is desired by the interested party to be stated in an authentic deed, in this case, related to the doing of the Marriage Agreement, if there are parties who have made an original Marriage Agreement then that party has the will to make a change or revocation of the Marriage Agreement that has been made then the intention must be stated in the form of the same deed, namely in the form of an authentic act that a notary can only make because the Civil Code can't make changes to an exact Marriage Agreement by using modifications to the Marriage Agreement made under the hand (Brickell & Platt, 2015).

Under certain conditions, the parties who have made the Marriage Agreement can also make changes or revocations to the Marriage Agreement they have made (Cohen, 1987). If the Marriage Agreement is authentic, then the amendment or cancellation must also be made in the form of an original deed by a notary. In this situation, the notary is encouraged to be more careful to express the parties' wishes in the act of amendment or revocation of the Marriage Agreement because these actions allow for things that are detrimental to third parties. After all, the change or cancellation of the marriage agreement is only according to the wishes of both parties without going through the mechanism for filing a lawsuit in court as before regulated in the Civil Code.

Tutik (2021) states that the steps that a notary can take to ensure that the parties guarantee that in terms of their will in making changes or revocation of the Marriage Agreement will not have a detrimental impact on the third parties involved, these steps are a reflection of the implementation of the notary's obligation to act carefully, not taking sides and safeguarding the interests of related parties as stipulated in Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions.

The deed of amendment and revocation of the Marriage Agreement is generally part of the agreement deed. For the agreement deed to be valid, it must also fulfil 4 (four) conditions specified in Article 1320 of the Civil Code. These conditions are:

- a. There is an agreement between the parties who bind themselves.
- b. The parties are capable of agreeing.
- c. There is a sure thing.
- d. There are legitimate reasons.

The first and second conditions above are subjective, and if one of the two conditions is not met, then the agreement can be cancelled, but if the third and fourth conditions, which are objective conditions of one or both, are not fulfilled, then the contract will be null and void.

Couples who wish to make changes or revocation of the Marriage Agreement must have fulfilled the subjective requirements for doing the related deed. Apart from that, the contents of the Deed of Amendment or Revocation of the Marriage Agreement must also meet the objective conditions of the agreement in the form of certain things. If what is made is a deed of amendment to the Marriage Agreement, the act must describe the changes to be made, while when making a deed of revocation of the Marriage Agreement, the thing that must be explained is the statement that the parties have agreed to revoke the Marriage Agreement that has been made so that the marriage agreement deed is declared invalid. In addition, the objective requirements in the form of a legal cause must also be considered in making a deed of amendment or revocation of a Marriage Agreement because a legal cause means that the agreement must meet 4 (four) requirements that can be found in the Civil Code as follows:

- a. Article 1335 of the Civil Code reads, "an agreement without cause, or which has been made for a false or forbidden cause, has no power."
- b. Article 1336 of the Civil Code reads, "if a cause is not stated, but a lawful cause, or if there is a reason other than what is stated, the agreement is nevertheless valid."
- c. Article 1337 of the Civil Code reads, "a cause is prohibited, if it is prohibited by law, or contrary to good decency or public order."

Reflecting on the Marriage Law, one of the lawful reasons that must be fulfilled in the deed of amendment or revocation of the Marriage Agreement is that the change or cancellation does not harm a third party because if it is proven to be detrimental to a third party, then the deed that has been made will be null and void. After all, it does not meet the objective conditions of the agreement. Losses from third parties can take various forms, such as losses by bank creditors, namely the Bank due to being involved in the case that assets that are the object of amendment or revocation of the Marriage Agreement are objects of credit guarantees or losses from third parties in other legal matters which may be challenging to anticipate. Therefore, it is crucial for a notary if he knows that there is a third party involved. His approval must be requested in connection with making a deed of amendment or revocation of the Marriage Agreement.

The husband and wife as the appearers in the making of the deed of amendment or revocation of the Marriage Agreement must provide factual information. If the information given is false, it results in an agreement not fulfilling subjective requirements because of a defect of will. The deficiency of choice referred to in the deal is the presence of an element of heresy, coercion or fraud at the birth of the agreement so that the will to agree is not pure because the contract was given by mistake. Suppose the husband and wife submit false information in the deed. In that case, the injured party, especially the third party related to the Marriage Agreement, can file a lawsuit to the court to demand compensation or even be prosecuted for committing a crime.

Acts of making and falsifying letters, using or asking others to use fake notes, requesting to include false information like in an authentic deed, and accepting gifts or promises to mobilize them to do or not do something related to their position can be subject to criminal sanctions if proven guilty. The Marriage Law stipulates that a third party will be directly bound in the Marriage Agreement and its amendment or revocation if the marriage registrar has ratified it. This can create a sense of injustice because the change or cancellation results in a loss to the third party. It is still binding.

Therefore, according to Alwesius, regarding making such a Marriage Agreement, the notary cannot immediately provide his services to the couple because the notary must also have certainty that the Marriage Agreement made does not harm third parties. As long as there is no detailed procedure, it is better if the notary is serving the request for making such a marriage agreement deed

first asks the parties to announce their will in a newspaper published in the city where they are domiciled, which has a wide circulation and is placed on an accessible page legible.

The notary as an official who does a deed with perfect evidentiary power must carry out his responsibilities properly to avoid the legal consequences of losses suffered by third parties because if the notary is careless and does not follow the procedures for doing a good deed, the deed he made can be null and void, especially relating to by creating an act of amendment and revocation of the Marriage Agreement will be null and void if it is detrimental to a third party.

In addition, if there is negligence on the part of the notary, for example, the notary does not check the identity of the appearers, does not ensure the validity of the principal Marriage Agreement deed, does not ask for an inventory list of assets and does not describe statements from the appearers that they guarantee that the legal actions carried out will not harm third parties, then, of course, the aggrieved parties, especially third parties, can sue civilly or criminally sue the notary to be asked for compensation and accountability because it is as stipulated in Article 1366 of the Civil Code.

The provisions of Article 1366 of the Civil Code states that "Everyone is responsible not only for losses caused by his actions but also for losses caused by negligence or carelessness." Notaries who are negligent and not careful or not careful can also be subject to sanctions in accordance with the applicable provisions of Law of the Republic of Indonesia Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Positions or Notary Code of Ethics in the form of written warnings, dismissal temporary, honourable discharge or dishonourable discharge.

4. Conclusion

Notaries have a fundamental responsibility in making a deed of amendment or revocation of the Marriage Agreement. As a general official doing an authentic act, the notary is obligated to ensure that the deed of amendment or cancellation of the Marriage Agreement he has made has been made based on the requirements and application procedures because if not, the act may be downgraded to private action or may even be null and void. The act of amendment or revocation of the Marriage Agreement must be made carefully to ensure that its creation will not cause harm to other parties, especially third parties related to the main Marriage Agreement. Suppose there is a loss caused by false information given by the appearers who want the deed to be done. In that case, the party who feels aggrieved can sue the appearers, whereas if the notary's negligence causes the loss in doing the deed, the injured party can sue or sue the notary. In addition, based on the Law on Notary Positions, a notary who does not carry out his duties carefully can be given sanctions in the form of a written warning, temporary dismissal, honourable discharge or dishonourable discharge.

Recommendations

As long as the procedure for making a deed of amendment or revocation of a Marriage Agreement has not been regulated in detail in the laws and regulations, the notary must as far as possible carry out his responsibilities in doing the deed by following the provisions that at least regulate the legal action because it should be for the making of a Marriage Agreement. as long as an act of amendment or revocation accompanies the marriage made referring to the decision of the Constitutional Court, it must still apply for a decision to the court to instruct the Civil Registry Office or the Office of Religious Affairs to register or register so that the consequences The law of the act of making the deed can provide legal certainty for third parties and provide security guarantees to the notary as the maker of the deed.

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