

The Strength of Proof of An Unregistered Nuptials Treaty

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Abstract

The Nuptials treaty must be registered, in order to meet the publicity principle of the Nuptials treaty, so that third parties (outside the husband or wife) know and are subject to the rules in the Nuptials treaty that has been made by the couple. If not registered, then the Nuptials treaty is only binding / valid for the parties who make it, namely the husband and wife concerned. This is in accordance with Clauses 1313, 1314 and 1340 Civil Code. The nature or type of research conducted by the author is normative legal research. Normative legal research is legal research whose object is positive law as a system of norms. A system of norms refers to the principles, norms, and rules of legislation, court decisions, agreements, and doctrines (teachings). In normative legal research, the law being studied is described as "silent" law (law in the books). The authentic deed has infallible evidentiary force, as stated in Clause 1870 Civil Code. In terms of strength of proof, a Nuptials treaty made in the form of a notarial deed has perfect strength of proof regarding the content and existence of the treaty as Clause 1870 Civil Code, so that it can be used as valid evidence in court, that the parties have agreed to enter into the treaty and sign it before a notary. However, although the Nuptials treaty deed drawn up and signed before a Notary has a valid and strong evidentiary force between the parties who make it, the Nuptials treaty that is not registered does not have binding force against third parties because of the non-fulfillment of the principle of publicity, so that third parties can be considered unaware of the existence of the Nuptials treaty. In the event of a dispute involving a third party, the Nuptials treaty that is not registered does not have the force of proof against it.

Keywords: Proof, Nuptials Treaty, Treaty.

INTRODUCTION

As a social being, it is human nature to live side by side with fellow human beings and pass on offspring. That's why people do Nuptials. According KBBI the term Nuptials comes from the word "mating" which can be interpreted into several meanings, namely: (1) forming a family with the opposite sex; married or Nuptials; Nuptials; (2) having sex; androgynous (for animals); (3) copulating and (4) Nuptials. The word "Nuptials" means "to marry". Synonym of Nuptials, according to KBBI is "Nuptials". In KBBI, the word "Nuptials" is interpreted as an treaty between a man and a woman to marry a wife (officially). The purpose of Nuptials is to form a family and carry on offspring. Through Nuptials, the lineage of a family from generation to generation will be preserved, as the definition of Nuptials in Clause 1 of the Nuptials Law, namely "The spiritual and physical unification that occurs between a man and a woman as husband and wife with the aim of establishing a happy and enduring family or household based on the Supreme Being."

Nuptials is a legal act because Nuptials involves treaty and actions that are regulated by laws and regulations and cause legal consequences for the parties who bind themselves in Nuptials. Nuptials in Indonesia is regulated in Act Number 1 Year 1974 concerning Nuptials (hereinafter referred as UUP). This law is generally applicable, in the sense that it applies to all Indonesian citizens, including Muslims and non-Muslims.

In the view Civil Code, Nuptials contains the same outward or mere civil aspects as other civil contracts that do not contain religious aspects. Therefore, the validity of Nuptials in Western civil law is based on the existence of a Nuptials certificate as proof that the Nuptials has been recorded, and even a new religious ceremony can be carried out if the Nuptials has been carried out in the presence of an employee of the Nuptials registrar as mandated in Clause 81 Civil Code,

which states that “no religious ceremony may be carried out, before both parties to their religious officials prove that the Nuptials before the civil registry employee has taken place.” (Rachmadi Usman, 2019)

Along with the development of the times, more and more people are beginning to realize the importance of the law for self-protection. One form of legal protection that is increasingly realized by the people of Indonesia is the Nuptials treaty. Nuptials treaties in Indonesia are not very popular because there are still many Indonesians who think that entering into an treaty regarding property between married couples is inappropriate or feel that it is a form of lack of trust in the couple and can even offend. Although the awareness of the Indonesian people about the importance of Nuptials treaties is still relatively low, but with the development of information technology today began to increase with the understanding of the protection of rights and obligations after Nuptials.

This is due to the large number of divorce cases that often result in losses to one of the parties, especially related to marital property. A Nuptials treaty is an treaty concluded by a married couple in accordance with the provisions of the law regarding their Nuptials, the content of this treaty may regulate on any subject. Regarding the Nuptials treaty stipulated in Clause 29 of the Nuptials Law, which is a written treaty made by the prospective bride and groom at the time or before the Nuptials takes place which is authorized by the Nuptials registrar employee. Clause 139 Civil Code states that prospective spouses may enter into a Nuptials treaty that deviates from the laws and regulations regarding joint property as long as it does not conflict with good morals or with general order.

The Nuptials Act Clause 35 regulates the property in Nuptials. The provision provides that the goods received during Nuptial shall be joint property. However, the inheritance of each spouse and the joint property received by each spouse as a gift or inheritance shall remain under their respective management unless otherwise agreed by the parties. This means that without a Nuptials treaty, the property acquired by both husband and wife during Nuptials will immediately become joint property by law.

When viewed from Clause 139 Civil Code, the Nuptials treaty is only limited to the consequences of Nuptials on property alone. However, according to Muchsin, this Nuptials treaty is not limited to financial or property matters, but also accommodates other issues that are important to be agreed upon, such as domestic crimes, career treaties despite being married, and others. (Muchsin, 2008) the function of making a Nuptials treaty is as follows: 1) to protect property legally, both congenital property of each party or joint property. 2) An treaty specifying the rights and responsibilities of husband and wife over the future of the family, including the children's education, business matters, residence, and other matters, provided that they do not conflict with the law and morality; 3) protect family members from the threat of domestic violence. (Moch. Isnaeni, 2016)

Basically, everyone has the right to determine whatever the contents of the Nuptials treaty are as long as it does not conflict with public decency and order. According to Clause 29 Verse (1) of the Nuptials Law, the Nuptials treaty is made in the form of a written treaty at the time or before the Nuptials is held which is then ratified by the Nuptials registrar employee.

Based on this, it can be noted that if the Nuptials treaty wants to be binding also for third parties, it must be legalized by the Nuptials registry employee. The Nuptials treaty must be registered, in order to meet the publicity principle of the Nuptials treaty, so that third parties (outside the husband or wife) know and are subject to the rules in the Nuptials treaty that has been made by the couple. If not registered, then the Nuptials treaty is only binding / valid for the parties who make it, namely the husband and wife concerned. This is in accordance with Indonesia Civil Code Clauses 1313, 1314 and 1340.

Research by Farida Novita Sari and Umar Ma'ruf (2017) indicates that a marriage contract should be drawn up based on the agreement of the parties and set out in an authentic deed drawn up by a notary, rather than a private deed that is subsequently legalised; this is because, when a

marriage contract is drawn up via an authentic deed, it possesses full legal force, permanent, and binding on both parties. Furthermore, research conducted by Nicholas Waisaka Aditio and Mia Hadiati (2024) states that all matters concerning marriage that have been expressly regulated in the law and its implementing regulations constitute binding provisions and must be applied to members of the public. The legal consequences of divorce regarding joint property are regulated in Article 37 of Law No. 1 of 1974 on Marriage. In the judgment used by the author as research material, namely Judgment No. 1718/Pdt.G/2021/PA. Btm, it was established that, based on Supreme Court jurisprudence No. 3405/K/PDT/2012, a marriage contract that is not registered has no legal force. The author's objective in conducting this research is to ascertain the legal consequences of an unregistered marriage contract.

Research was also conducted by Gita Ramadhanti et al. (2023). Essentially, a prenuptial agreement is drawn up to separate the marital property between husband and wife. Furthermore, a prenuptial agreement is also drawn up to protect personal assets and to facilitate the management of marital property. In its drafting, a marriage contract must be set out in a notarial deed in written form, witnessed by the parties and witnesses. Following the issuance of the marriage contract deed, the marriage contract must be registered with the marriage registrar at the KUA or KCS to achieve full legal effect. The registration of a marriage contract is an implementation of the principle of publicity contained in Article 29(1) of the Marriage Act. However, in practice, it is found that many parties do not register their marriage contract deeds with the marriage registrar.

RESEARCH METHODS

The nature or type of research conducted by the author is normative legal research. Normative legal research is legal research whose object is positive law as a system of norms. A system of norms refers to the principles, norms, and rules of legislation, court decisions, agreements, and doctrines (teachings). In normative legal research, the law being studied is described as "silent" law (law in the books). (I Ketut Oka Setiawan & Tetti Samosir, 2023) This approach is often referred to as the juridical-normative approach. This approach is basically carried out by examining legislation related to the issues at hand. This research approach prioritises legislation as the basic reference in conducting legal research.

The data used in this study was obtained through literature research. Literature research is a method used by researchers to obtain data from libraries. The data obtained from library research is secondary data, namely literature, documents, and legal materials related to this study, whether primary, secondary, or tertiary. In normative legal research, the library research method plays an important role.

RESULTS AND DISCUSSION

The Nuptials treaty is regulated in the Civil Code and The Nuptials Law which is a lex specialist Civil Code. Clause 29 Verse (1) of the Nuptials Law states that the Nuptials treaty is made in writing at the time or before the Nuptials is held and endorsed by the Nuptials registrar employee, after which the contents also apply to third parties as long as the third party is involved.

Although there is no definition of Nuptials treaty clearly formulated in the legislation, but R. Subekti provides a definition that "a Nuptials treaty is an treaty concerning the property of spouses during their Nuptials that deviates from the principles or patterns established by law." (R. Subekti, 2005) although the Nuptials treaty can regulate other things outside the marital property, as the opinion of Rosnidar Sembiring, quoting Hamaker's opinion stating that "the Nuptials treaty is any treaty that is carried out in accordance with the provisions of the law between prospective spouses regarding their Nuptials, it is not questionable what the contents

are” (Rosnindar, 2016) but in general the Nuptials treaty is made by the parties because both intend to make deviations from the provisions of the law regarding marital property.

In the Civil Code known several forms of arrangement of marital property in the Nuptials treaty as follows:

1. Break up the property altogether

This form of Nuptials treaty is regulated in Indonesia Civil Code Clause 144. Under the treaty, each husband and wife remain the owners of the property they bring into the Nuptials and in addition, as any form of togetherness or union they have excluded, the results they obtain throughout the Nuptials, whether in the form of business results or results that come out of their personal property, remain the personal property of each of the spouses concerned. Thus, in this treaty there are only two groups of property in Nuptials, namely the husband's personal property and the wife's personal property.

2. Profit and Loss Association

This form of Nuptials treaty is regulated in Clause 155 Civil Code. If an treaty is made in this form, all gains made and losses suffered throughout the Nuptials become part of each and the husband and wife are free to regulate whether such gains and losses will be enjoyed and borne jointly in an equal proportion, i.e., one to one. In order to prevent any difficulties in proof in the future, unregistered objects must be clearly detailed in the Nuptials treaty in question or in a report signed by the husband and wife before a notary who must be attached to the Nuptials treaty.

3. Federal revenue and revenue

This form of Nuptials treaty is regulated in Clause 164 Civil Code. In this form of Nuptials treaty between husband and wife there will be only a combination of income and income, and there is no comprehensive combination of joint property, as well as a combination of gains and losses.

From the definition of Nuptials treaty proposed by R. Subekti, it is known that the Nuptials treaty regulates the property of husband and wife in Nuptials where in the treaty, the spouses can express their will to the marital property, namely whether: 1) they will agree to unite their property; 2) they do the unification of property only limited; or 3) they decide not to do the unification of property at all in their Nuptials.

In Clause 29 Verse (1) of the Nuptials Act there is the phrase “authorized by the Registrar of Nuptials, after which the contents apply also to third parties involved.” This sentence means that in order for the Nuptials treaty to be valid for the parties, including the third party involved, it is required that it must be legalized by the Nuptials registrar employee. The ratification of the Nuptials treaty by the Nuptials registrar employee aims to meet the principle of publicity of the Nuptials treaty. The principle of publicity means being obliged to make information known to the public so that the public, anyone can know it. In order to be said to have met the principle of publicity, an information is accessible to everyone, and not personal. Ratification of the Nuptials treaty is done by registering the Nuptials treaty to the Office of Religious Affairs (KUA) of the local district for Muslim couples or the local Department of Population and civil registration for couples of religions other than Islam.

The principle of publicity of the Nuptials treaty must be fulfilled with the intention that third parties outside the married couple who make the Nuptials treaty are aware of and subject to the rules in the Nuptials treaty. If it is not registered then the Nuptials treaty is only binding or valid for the married couple who made it. What is meant by a third party involved in the Nuptials treaty is a third party outside the married couple who can be affected by the Nuptials treaty.

The third party is usually the creditor in which the husband or wife has a debt to him. The making of a Nuptials treaty is related to this creditor because the repayment of this debt is related to the assets owned by the husband and wife.³⁰ other third parties who may also be affected by the Nuptials treaty are the parties to the child if the Nuptials treaty provides for the

custody of the child, even if they are not parties to the treaty itself. In addition, it can also be third parties who have a legal relationship with the spouses, for example, siblings or close relatives may be affected by the Nuptials treaty regarding the division of property or other rights.

After the issuance of the PMK No. 69/PUUXIII / 2015, now the Nuptials treaty is no longer only interpreted as an treaty made before Nuptials or at the time of Nuptials, but can also be made after the Nuptials took place. In addition, there is also a change in the authority of ratification of the Nuptials treaty which was originally only carried out by employees of the Nuptials registrar, now it can also be done by a notary. Upon the decision of the Constitutional Court, thus Clause 29 Verse (1), Verse (3), and Verse (4) Nuptials Law is contrary to the State Constitution and has no binding legal force as long as it is not interpreted as stated in the decision of the Constitutional Court.

Previously, according to Clause 29 (1) Nuptials Act, after the parties make a Nuptials treaty, the treaty is registered and recorded by the Nuptials registrar employee at the Population and Civil Registration Office. The Nuptials treaty is attached to the Nuptials certificate and is an integral part of it. Meanwhile, the PMK No. 69/PUU-XIII/2015 added the phrase "... or notary" which makes it can be interpreted that the Nuptials treaty can also be registered with a notary public after which the contents of the treaty are valid and binding on related third partiest.

If referring to the authority of the Notary as mentioned in Clause 15 Verse (2) Act Number 2 Year 2014 concerning amendments to Act Number 30 Year 2004 concerning the position of Notary, the Notary is authorized to register the Nuptials treaty through the process of *waarmerking* or legalization of the Nuptials treaty. The problem is that, prior to the issuance of PMK No. 69/PUU-XIII/2015, the authority of a notary to certify a Nuptials treaty or register a Nuptials treaty and make it binding on a third party has never been regulated in any legislation.

The function of registration of a Nuptials treaty is to bind third parties. However, in accordance with UUJN Clause 16 Verse (1) letter f, the Notaries are entitled to preserve the confidency Acte drawn up including all related information required to prepare the Acte in accordance with their oath/pledge of office, unless otherwise specified by law. The purpose of registration of the Nuptials treaty is to fulfill the principle of publicity of the Nuptials treaty. If the notary must keep the deed made secret, then the principle of publicity cannot be fulfilled. In other words, a Nuptials treaty drawn up in the presence of a notary is not enough to bind a third party if it is not registered. The authentic deed has the power of perfect proof, as stated in Clause 1870 Civil Code, which means that if the evidence of the authentic deed submitted meets the formal and material requirements and there is no legally valid evidence to the contrary, then no other evidence is needed to prove the truth of the contents of the deed. As a means of proof and consideration of the judge in the trial, the Nuptials treaty must be an authentic deed made before a notary.

The Nuptials treaty made before a notary public which is then registered at the civil registry office will have strong evidentiary force if in the future unwanted things happen. (Anwar Rachman, et.all, 2020) in the opinion of Martiman Prodjohamidjojo: "the Nuptials treaty ratified by the Nuptials registrar employee of the civil registry office is an integral part of the Nuptials certificate, and the treaty is attached to the Nuptials certificate. So based on this opinion, it is concluded that if the Nuptials treaty ratified by the Nuptials registrar employee of the civil registry office is an integral part of the Nuptials certificate, and the treaty is so important that it is attached to the Nuptials certificate register book, then it is appropriate if the Nuptials treaty is included in the Nuptials certificate excerpt. So, to fill the existing legal void, the government needs to issue a rule that regulates that the Nuptials treaty must be included in the Nuptials certificate excerpt." (Nadia Valentina, et.all, 2021)

In terms of strength of proof, a Nuptials treaty made in the form of a notarial deed has perfect strength of proof regarding the content and existence of the treaty as Clause 1870 Civil Code, so that it can be used as valid evidence in court, that the parties have agreed to enter into

the treaty and sign it before a notary. In terms of formality, the powers of proof include the identity of the parties, their will and consent to the content of the treaty, as well as the date and place where the treaty was made. Meanwhile, in material terms, the contents of the deed are considered correct and binding on the parties who signed it as long as there is no evidence to the contrary.

However, although the Nuptials treaty deed drawn up and signed before a Notary has a valid and strong evidentiary force between the parties who make it, the Nuptials treaty that is not registered does not have binding force against third parties because of the non-fulfillment of the principle of publicity, so that third parties can be considered unaware of the existence of the Nuptials treaty. In the event of a dispute involving a third party, the Nuptials treaty that is not registered does not have the force of proof against it.

In accordance with the provisions of Clause 29 Verse (1) Nuptials Act, which states that marriage agreements are legalised by marriage registrars, after which its contents also apply to third parties involved, the ratification of a marriage contract aims to fulfil the principle of publicity, namely to bind third parties outside the married couple who made it so that these third parties are aware of and subject to the contents of the marriage contract. Failure to fulfil the principle of publicity results in the marriage contract only binding/applying to the married couple who made it. The marriage contract remains valid, but does not have binding force on third parties. In the above case, the separation of property should remain valid, because the parties involved in the separation of property agreement are only the husband and wife, not involving third parties.

Nuptial Treaty involving a third party may explicitly mention or imply the involvement of a third party in the agreement. Marriage agreements involving third parties usually regulate joint ownership of assets with third parties, child custody in the event of divorce, debts with creditors, and business partners. Arrangements regarding the separation of property are not included in marriage agreements involving third parties. This is because the separation of marital property does not concern the interests of parties other than the husband and wife. The only parties affected by a marriage agreement with provisions for the separation of property are the husband and wife who enter into it.

The third-level court decision (first level, appeal level, and review level) stated that the marriage agreement made between the Plaintiff and Defendant I before Eko Handoko Wijaya, S.H., a Notary in Malang, is invalid because it violates and contradicts the provisions of Article 29 paragraph (1) of the Marriage Law, which states that a marriage agreement is legalised by a marriage registrar, is incorrect and does not comply with the provisions Clause 29 Verse (1) Nuptial Act. This is because legalisation of a marriage contract is not a requirement for the validity of the marriage contract itself, but rather serves to fulfil the principle of publicity so that third parties involved in the marriage contract are aware of and subject to the contract. A marriage contract that is not registered remains valid and binding on the husband and wife who made it, as long as the marriage contract meets the requirements for a valid contract as stipulated in Clause 1320 Civil Code.

The provisions of a marriage contract essentially require the parties who have entered into a marriage contract by way of a notarial deed to have it registered by a marriage registrar. Registration is required to render a marriage contract legally valid and binding on third parties. If the parties fail to register the marriage contract, the terms of the contract remain binding on the parties. However, third parties other than the husband and wife will not be deemed to have automatic knowledge of the existence of the marriage contract. As long as a marriage contract is not registered, a third party will always be deemed to have acted in good faith due to their lack of knowledge regarding the separation of property. The registration of a marriage contract may be carried out at the Civil Registry Office and the Religious Affairs Office in accordance with the law to which the parties are subject. Meanwhile, registration currently carried out at the

District Court takes the form of a request for registration by the KUA or KCS if a marriage contract was drawn up in the past but has not yet been registered. The District Court will issue an order to the KUA or KCS to register the marriage contract of the parties who have been late in registering it. The choice of where to register the marriage agreement is based on the place or area where the marriage took place.

CONCLUSION

The authentic Acte has infallible evidentiary force, as stated in Clause 1870 Civil Code. In terms of strength of proof, a Nuptials treaty created as notarial Acte has perfect strength of proof regarding the content and existence of the treaty as Clause 1870 Civil Code, so that it can be used as valid evidence in court, that the parties have agreed to enter into the treaty and sign it before a notary. However, although the Nuptials treaty deed drawn up and signed before a Notary has a valid and strong evidentiary force between the parties who make it, the Nuptials treaty that is not registered does not have binding force against third parties because of the non-fulfillment of the principle of publicity, so that third parties can be considered unaware of the existence of the Nuptials treaty. In the event of a dispute involving a third party, the Nuptials treaty that is not registered does not have the force of proof against it.

As long as a marriage contract is not registered, a third party will always be deemed to have acted in good faith due to their lack of knowledge regarding the separation of property. The registration of a marriage contract may be carried out at the Civil Registry Office and the Religious Affairs Office in accordance with the law to which the parties are subject. Meanwhile, registration currently carried out at the District Court takes the form of a request for registration by the KUA or KCS if a marriage contract was drawn up in the past but has not yet been registered. The District Court will issue an order to the KUA or KCS to register the marriage contract of the parties who have been late in registering it. The choice of where to register the marriage agreement is based on the place or area where the marriage took place.

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