

**KEPASTIAN HUKUM BERLAKUNYA *POST-NUPTIAL AGREEMENT*
PADA PERKAWINAN CAMPURAN (STUDI KASUS PENETAPAN
PENGADILAN AGAMA JAKARTA BARAT
NO.073/PDT.P/2017/PA.JB)**

Megarini Adila Putri Lubis

Abstrak

Perjanjian perkawinan pada perkawinan campuran dilakukan untuk memberikan kepastian hukum terhadap kedudukan harta kekayaan antara suami dan isteri yang didapatkan selama masa perkawinan. Setelah dikeluarkan Putusan MK Nomor 69/PUU-XIII/2015, perjanjian perkawinan dapat dilakukan pada saat setelah dilangsungkan perkawinan. Putusan MK Nomor 69/PUU-XIII/2015 memberikan tafsir konstitusional pada Pasal 29 Ayat (3) bahwa perjanjian perkawinan tersebut mulai berlaku sejak perkawinan dilangsungkan, kecuali ditentukan lain dalam perjanjian perkawinan. Pada Penetapan No. 073/PDT.P/2017/PA.JB, Hakim dalam pertimbangannya berpendapat berbeda, bahwa perjanjian perkawinan setelah perkawinan mulai berlaku hanya setelah adanya penetapan ini. Sehingga, dalam hal ini terdapat inkonsistensi hukum pada penafsiran hukum Hakim dan Putusan MK No.69/PUU-XIII/2015. Tujuan dari penelitian ini untuk mengetahui pengaturan perjanjian menurut hukum di Indonesia dan mengetahui kepastian hukum mulai berlakunya *post-nuptial agreement* (Studi Kasus Penetapan No. 073/PDT.P/2017/PA.JB). Penelitian ini menggunakan metode penelitian yuridis normatif, dengan menggunakan pendekatan Undang–Undang dan pendekatan kasus serta dilakukan dengan studi kepustakaan. Hasil dari penelitian ini adalah Pertama, perjanjian perkawinan diatur berdasarkan hukum positif di Indonesia terdiri dari Pasal 139-154 KUHPerdara, Pasal 29 UUP, Pasal 42-52 KHI, serta Putusan MK Nomor 69/PUU-XIII/2015. Kedua, ditemukan tidak adanya kepastian hukum pada Penetapan No. 073/PDT.P/2017/PA.JB karena perbedaan penafsiran Hakim dan yang diatur pada Putusan MK mengenai mulai berlakunya perjanjian perkawinan.

Kata Kunci: Perjanjian Perkawinan; Perkawinan Campuran; Pemisahan Harta

**LEGAL CERTAINTY OF VALIDITY OF THE POST-NUPTIAL
AGREEMENT IN MIXED MARRIAGE (CASE STUDY OF
DETERMINATION PENGADILAN AGAMA
JAKARTA BARAT NO. 073/PDT.P/2017/PA.JB)**

Megarini Adila Putri Lubis

Abstract

Marriage agreements in mixed marriages are done to provide legal certainty for husband and wife related to ownership of assets raised by the couple during marriage period. After the Constitutional Court Decision Number 69/PUU-XIII/2015 is issued, the marriage agreement can be made at time after the marriage is held. The Constitutional Court Decision Number 69/PUU-XIII/2015 provides a constitutional interpretation in Article 29 Paragraph (3) that the marriage agreement takes effect from the time the marriage takes place, except in case other things are stipulated in the marriage agreement. On the Stipulation No. 073/PDT.P/2017/PA.JB, Judge with his consideration has a different opinion that the marriage agreement after marriage comes into effect only after this stipulation is made. In this case there is a legal inconsistency in the legal interpretation of the Judges and the Constitutional Court Decision No.69 / PUU-XIII / 2015. The aims of this study are to determine the arrangement of agreements regarding to law in Indonesia and to perceive the legal certainty of the entry into force of the post-nuptial agreement (Case Study of Determination No. 073/PDT.P/ 2017/PA.JB). This study used a juridical normative research method with the Law approach and the case approach. It was carried out by literature study. This study resulted in the findings that, first, the marriage agreement is regulated based on positive law in Indonesia, consisting of Articles 139-154 of the Civil Code, Article 29 UUP, Articles 42-52 KHI, and the Constitutional Court Decision Number 69/ PUU-XIII/2015. Second, it was suggested that there was no legal certainty in Stipulation No. 073/PDT.P/2017/PA.JB due to differences in the interpretation of the Judges and those stipulated in the Constitutional Court Decision regarding the entry into force of the marriage agreement.

Keywords: *Marriage Agreement; Mixed Marriage; Assets Ownership*