



# The Existence of Marriage Agreement Registration In Legal Protection Perspective

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## Article

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## Abstract

*Failure to comply with the registration of the marriage agreement causes the agreement to be null and void because it does not fulfill one of the conditions for a valid agreement according to Article 1320 of the Civil Code and is contrary to Article 29 paragraph (1) of Law no. Therefore, this research will write about the role of registration of marriage agreements in ensuring legal certainty and protection of the rights of the parties concerned and the legal consequences of non-compliance in registering marriage agreements. The type of research used is a normative juridical method, namely research guided by positive legal regulations in accordance with the laws and regulations applicable in society. In resolving a legal issue, the author uses two approaches, namely the Statute Approach which is carried out by examining all statutory regulations relating to the legal issue to be studied, and the Conceptual Approach which carries out the interpretation. principles, laws and legal concepts according to the legal issue being studied. The legal materials used are primary legal materials and secondary legal materials using the library research method of collecting legal materials (Library Research) with research analysis using deductive methods. The result is registration of a marriage agreement has permanent legal force, thereby providing optimal protection for both parties from potential disputes in the future. Failure to comply with the obligation to register a marriage agreement, even though it has been made in the form of an authentic deed by a notary, has the implication that the agreement is null and void. It is hoped that in the future the government can increase outreach and education as well as simplify the procedures for registering marriage agreements.*

**Keywords:** *Marriage Agreements; Register; Legal Protection.*



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## I. INTRODUCTION

In essence, marriage is a legal construction that creates rights and obligations for the parties involved. This marital relationship then gives rise to legal consequences that regulate aspects such as the relationship between husband and wife, management of joint property, and distribution of income during the marriage.<sup>1</sup> In the Indonesian legal system, marriage agreements are regulated to provide legal protection for married couples, especially with regard to the division of assets, both assets acquired before and during the marriage. This is explicitly regulated in Article 29 of Law no. 1 of 1974 concerning Marriage which provides flexibility for husband and wife to make agreements regarding property through a marriage agreement.

A marriage agreement should ideally be made in the form of an authentic deed before a notary, then registered and ratified by a marriage registrar. This step aims to ensure that the agreement immediately binds the parties involved as well as third parties related to the agreement. According to Article 1 point 1 of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the "Marriage Law"), marriage is defined as: "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a family (household) happy and eternal based on the Almighty Godhead."

The substance in Article 1 number 1 of the Marriage Law emphasizes that marriage aims to form an eternal and happy family based on belief in the Almighty God. This shows that marriage is not just a civil relationship, but also involves religious law. Marriage is a form of living together between a man and a woman who must fulfill a number of requirements. If analyzed further, marriage is an agreement that is binding physically and mentally, and is based on the values of faith. Provisions regarding marriage are regulated in Book I of the Civil Code, which discusses family law. Family law includes all the rules governing legal relationships within blood families and families formed through marriage. In the concept of marriage, there are several important elements as follows:<sup>2</sup>

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<sup>1</sup> Muhammad Akbar Aulia Ramadhan, et.al, "Perjanjian Perkawinan Terhadap Harta Yang Diperoleh Selama Perkawinan Pasca Perceraian", *Repertorium: Jurnal Ilmu Kenotariatan* 6, No. 2, (2017): 157-158.

<sup>2</sup> Delia astrid Zahara & Antarin Prasanthi Sigit, "Implikasi Yuridis Perjanjian Perkawinan yang Didaftarkan Pada Saat proses Perceraian", *UNES Law Review* 6, No. 2, (2023): 4872.



1. Inner and outer ties

Marriage involves an external and internal relationship that cannot be separated. Birth bond refers to the formal legal relationship between a husband and wife to live together as a couple. Meanwhile, inner ties are emotional relationships that are informal and can only be felt by the couple.

2. The principle of monogamy

In marriage, a man should only marry one woman, and vice versa. This principle of monogamy is regulated in Article 26 of the Civil Code.

3. Relationship based on legal marriage

Men and women can only be considered husband and wife if their relationship is based on a legally valid marriage.

4. The goal of building a happy and eternal family

Marriage is expected to be a bond that lasts forever, with the aim of building a harmonious and eternal family.

5. Based on the belief in the Almighty God

In contrast to the previous approach which only assessed marriage from a civil aspect, the Marriage Law recognizes marriage as a relationship that also has a spiritual basis. This reflects the first principle of Pancasila, namely Belief in One Almighty God, so that marriage does not only involve external aspects but also essential spiritual aspects.

Marriage agreements provide various benefits to married couples and can even affect third parties. One of the main benefits is that it serves as a guide in dealing with conflicts that may occur in the future. If the conflict ends in divorce, the marriage agreement can be used as a reference to determine the rights and obligations of each party.<sup>3</sup> Legal developments in Indonesia have shown that it is not enough just to make a marriage agreement, but it must also be registered so that it has legal force both for the rights of the husband and wife and third parties. In this context, Constitutional Court Decision Number 69/PUU-XIII/2015 confirms that a marriage agreement must be made in writing and ratified by a Marriage Registrar Officer.<sup>4</sup> Registration of a

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<sup>3</sup> John Kenedi, "Penyelesaian Sengketa Harta Bersama dengan Harta Bawaan Ketika Terjadi Perceraian," *Manhaj: Jurnal Penelitian dan Pengabdian Masyarakat* 3, No.1, (2018) : 94.

<sup>4</sup> Damian Agata Yuvens, "Analisis Kritis terhadap Perjanjian Perkawinan dalam Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015", *Jurnal Konstitusi* 14, No. 4, (2018) : 7.



marriage agreement is an important element in providing legal certainty not only for the parties involved, but also for third parties who may be involved in transactions related to the couple's assets.

Non-compliance with the registration of a marriage agreement can have significant legal consequences. One of them is causing the agreement to be null and void because it does not fulfill one of the conditions for a valid agreement according to Article 1320 of the Civil Code, namely that it does not comply with a particular subject matter or a halal cause. This means that in this case the non-compliance is contrary to Article 29 paragraph (1) of Law no. 1 of 1974 concerning Marriage and Constitutional Court Decision Number 69/PUU-XIII/2015. Therefore, this research aims to understand that registration of marriage agreements plays an important role in providing legal certainty and legal protection and the legal consequences of non-compliance with registration of marriage agreements plays an important role in providing legal certainty and legal protection as well as legal consequences of non-compliance with registration of agreements. marriage.

## **II. METHODOLOGY**

This part should provide a statement about the research methodology. It includes the approaches used in the research and how the author obtained the data. This methodology should give an idea to the reader through the techniques used. Research methods are based on theories or perspectives that underlie research and indirectly have implications for research methods. The type of research used is a normative juridical method, namely research guided by positive legal regulations in accordance with the laws and regulations applicable in society. In resolving a legal issue, the author uses two approaches, namely the Statute Approach which is carried out by examining all statutory regulations relating to the legal issue to be studied, and the Conceptual Approach which carries out the interpretation. principles, laws and legal concepts according to the legal issue being studied. The legal materials used are primary legal materials and secondary legal materials using the library research method of collecting legal materials (Library Research) with research analysis using deductive methods.



### **III. REGISTRATION OF MARRIAGE AGREEMENTS TO GUARANTEE LEGAL CERTAINTY AND PROTECTION OF THE RIGHTS OF THE PARTIES**

A marriage agreement is an agreement made by a husband and wife to regulate the implications of marriage for their assets, both before and during the marriage.<sup>5</sup> The purpose of making a marriage agreement after the marriage has taken place is to benefit the husband and wife and other parties related to the marital assets. This agreement aims to regulate provisions regarding mixed marital assets, debts that existed before the agreement was made, as well as other matters that have the potential to give rise to legal consequences. Further research is needed to evaluate the legal impact of this marriage agreement, along with the legal consequences that arise in marriage.<sup>6</sup> The purpose of making a marriage agreement after the marriage has taken place is to benefit the husband and wife and other parties related to the marital assets. This agreement aims to regulate provisions regarding mixed marital assets, debts that existed before the agreement was made, as well as other matters that have the potential to give rise to legal consequences. Further research is needed to evaluate the legal impact of this marriage agreement, along with the legal consequences that arise in marriage.

The contents of a marriage agreement are not only limited to aspects of property and money, but can include other important aspects such as career choices for both parties, rules regarding cases of domestic violence, and so on. In general, a marriage agreement is made in order to:<sup>7</sup>

1. One party has greater wealth;
2. One party brings substantial assets into the marriage;
3. One of the parties has their own business, and if the business goes bankrupt, they can causes losses to other parties who are not involved in the business;
4. One party has debts before the marriage, so that in In the marriage, the parties are obliged to be responsible for debts and receivables each.

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<sup>5</sup> Soetojo Prawirohamidjojo, *Pluralisme dalam Perundang-undangan Perkawinan di Indonesia*, (Surabaya: Airlangga University Press, 1988), p. 4.

<sup>6</sup> Aldilla Gemiyu Pawitasari "Perjanjian Perkawinan Sebagai Instrumen Perlindungan Hukum Dalam Perkawinan Poligami Di Indonesia", *LEX Renaissance* 4, No. 2, (2019) : 340.

<sup>7</sup> John Kenedi, "Penyelesaian Sengketa Harta Bersama dengan Harta Bawaan Ketika Terjadi Perceraian", *Manhaj: Jurnal Penelitian dan Pengabdian Masyarakat* 3. No.1, 2(018) : 95.



Constitutional Court Decision No. 69/PUU-XIII/2015 considers the purpose of a marriage agreement as follows:<sup>8</sup>

1. Separate the assets of husband and wife to prevent mixing of assets. Thus, if a divorce occurs, the assets of each party will remain separate and there will be no further disputes regarding the division of joint assets.
2. Each party is responsible for its own debts.
3. If one party decides to sell the property, the consent of the spouse is no longer required.

A marriage agreement is basically an attempt to deviate from the provisions of rules and laws, especially those relating to property. Article 35 Law no. 1 of 1974 concerning Marriage explains that the property of each party and property acquired during the marriage is considered marital property. The legal consequences for couples who are legally married can affect their assets and so on. Marriage agreements are created to protect the relationship and reputation of prospective spouses and to prevent accusations that one party is trying to control the assets of the other party. When husband and wife reach an agreement, this can help maintain peace in their household during the marriage and prevent misunderstandings or arguments regarding shared assets.<sup>9</sup>

A marriage agreement can be made in the form of a private deed or an authentic deed made before a notary. An authentic deed, according to Article 1868 of the Civil Code, is "a deed made in a form determined by law by or in the presence of an authorized public official in the place where the deed is made." The public official referred to in this article is a notary, as explained in Article 1 point 1 of Law no. 2 of 2014 concerning the Position of Notaries, which states that "Notaries are public officials who have the authority to make authentic deeds and have other authorities as regulated in the UUJN or other statutory regulations.

Constitutional Court Decision Number 69/PUU-XIII/2015 essentially stipulates that a marriage agreement must be made in writing and ratified by a marriage registrar, therefore ratification is an important element that must be fulfilled by the

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<sup>8</sup> Amanda Charissa, "Peran Notaris Terkait Pengesahan Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi No. 69/PUU-XIII/2015 Serta Pentingnya Pencatatan Perjanjian Perkawinan Terhadap Pihak Ketiga (Analisa Putusan No. 59/Pdt.G/2018/PN Bgr)", *Indonesian Notary* 4, No. 2, (2022) : 1154.

<sup>9</sup> Werdiningsih, "Asas Publisitas Perjanjian Perkawinan (Post Nuptial Agreement): konsep kepastian dan perlindungan hukum bagi pihak ketiga", *Jurnal Ilmu Kenotariatan* 4, No. 1, (2023) : 52.



parties.<sup>10</sup> Article 29 paragraph (1) Law no. 1 of 1974 concerning Marriage states that by mutual agreement, both parties can make an official agreement that is ratified by a marriage registrar at or before the wedding. The provisions of this agreement will also apply to third parties as long as the third party is involved.

Based on the provisions of Article 29 paragraph (1) of Law no. 1 of 1974 concerning Marriage in conjunction with Constitutional Court Decision Number 69/PUU-XIII/2015, the parties authorized to ratify marriage agreements are notaries and Marriage Registrar Employees. Constitutional Court Decision Number 69/PUU-XIII/2015 brought changes by giving notaries the authority to ratify marriage agreements. However, the attestation carried out by a notary is different from the attestation carried out by a Marriage Registrar. Ratification by a notary means that the marriage agreement is made privately by the parties first, then handed over to the notary to be ratified. After the agreement is ratified by a notary, the agreement must be registered and recorded by a Marriage Registrar.<sup>11</sup>

The marriage agreement must be ratified by a marriage registration officer at a designated institution to fulfill publicity requirements because the marriage agreement actually includes public aspects relating to third parties. This attestation is important because it makes the marriage agreement known to third parties and binds them in any legal action they may take. The marriage agreement, which will ultimately be included in the marriage certificate, is the only thing that is notarized by the marriage registrar.<sup>12</sup>

According to Jan M. Otto, legal certainty must provide clear, consistent, and easily accessible, applied consistently by government agencies, accepted by the majority of citizens, are tried by independent judges, and judicial decisions can be implemented concretely. The theory of legal certainty has two meanings: first, rules in nature general makes individuals know what actions they can or cannot do; second,

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<sup>10</sup> Damian Agata Yuvens, op.cit, p. 7.

<sup>11</sup> Fira Adhisa Rivanda & Gemala Dewi, "Akibat Hukum Akta Perjanjian Perkawinan Yang Tidak Dicatatkan Dalam Perkawinan Campuran", *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum dan Keadilan* 13, No.1, (2022) : 86-87.

<sup>12</sup> Mambaul Ngadimah, et.al., "Formulasi Perjanjian Perkawinan Pasca Putusan MK No. 69/PUU-XIII/2015, Kodifikasi 11, No. 1, (2017): 4.





legal security for individuals from government arbitrariness. Legal certainty too means there is consistency in the judge's decisions for similar cases.<sup>13</sup>

Based on the explanation above, it can be concluded that registration of a marriage agreement is important to ensure legal certainty and protection of the rights of the parties. This registration can be carried out at the Population and Civil Registration Service office or at the district court. Talking about legal certainty, according to Utrecht, legal certainty has two meanings: first, it refers to the existence of general rules that inform the public what they can and cannot do. Second, it provides legal protection against arbitrary government actions because the public knows what the State can do to them when these general rules exist.<sup>14</sup> Therefore, a marriage agreement can be officially recognized in the eyes of the law and can be enforced against third parties after it is registered.

This creates legal certainty for the assets and rights and obligations of husband and wife which are protected through marriage. Likewise, registration of a marriage agreement protects husband and wife from disputes or especially claims from outside parties, especially claims related to inherited assets and financial transactions. Therefore, registration of a marriage agreement is very important to ensure adequate legal protection for the parties.

#### **IV. LEGAL CONSEQUENCES OF NON-COMPLIANCE IN REGISTRATION OF MARRIAGE AGREEMENTS**

Marriage agreements are first regulated by the Civil Code. Article 147 of the Civil Code states that a marriage agreement must be made in a notarial deed before the marriage and will be null and void if it is not made. The agreement will take effect at the time of marriage. Based on this article, a marriage agreement can only be made with a notarial deed and before the marriage takes place.<sup>15</sup> Article 1320 of the Civil Code outlines the requirements for the validity of a marriage agreement which is

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<sup>13</sup> Sausan Raihana Siregar, et.al., "Perlindungan Hukum Bagi Pihak ketiga Terhadap Akta Perjanjian Perkawinan yang Dibuat Selama Dalam Ikatan Perkawinan (Studi Akta Perjanjian Perkawinan Nomor 76Tertanggal 21 Juli 2022), *Jurnal Ilmu social dan Humaniora* 2, No. 10, (2024): 113.

<sup>14</sup> Riduan Syahrani, *Rangkuman Intisari Ilmu Hukum*, (Bandung: Citra Aditya, 1999), p. 23.

<sup>15</sup> Eva Dwinopianti. "Implikasi dan Akibat Hukum Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 terhadap Pembuatan Akta Perjanjian Perkawinan Setelah Kawin yang Dibuat di Hadapan Notaris". *Lex Renaissance* 2, No.1, ( 2017) : 17.





necessary because basically a marriage agreement is a legal act which is part of contract law. In order for a marriage agreement to have valid legal force, it must fulfill the conditions for the validity of the agreement in accordance with the provisions of Article 1320 of the Civil Code which regulates that for agreements to be valid:

1. The agreement of those who bind themselves;
2. Ability to create an agreement;
3. A particular subject matter;
4. A prohibited cause.

In order for a marriage agreement to be considered valid, it must meet the requirements for a valid agreement in accordance with the provisions of Article 1320 of the Civil Code. Article 29 paragraph (1) Law no. 1 of 1974 concerning Marriage states that by mutual agreement, both parties can make an official agreement that is ratified by a marriage registrar at or before the wedding. The provisions of this agreement will also apply to third parties as long as the third party is involved. Regulations regarding marriage agreements in Indonesia have developed over time, until in 2016 with the Constitutional Court Decision Number 69/PUU-XIII/2015, it was determined that marriage agreements must be made in writing and ratified by marriage registrar employees, therefore This validation is an important element that must be fulfilled by the parties.<sup>16</sup> This decision shows that even though the deed is made by a notary, the marriage agreement must also be registered with a marriage registrar.

A marriage agreement is an important legal instrument in regulating and protecting the rights of husband and wife in various aspects of marriage, including the division of assets and debt responsibilities. In practice, registration of a valid marriage agreement is very necessary to give legal force to the agreement. Failure to comply with the obligation to register a marriage agreement can give rise to various significant legal consequences, both for husband and wife and for third parties related to marital assets and debts. These legal consequences need to be studied and understood to prevent conflicts and imbalances in the arrangement of assets and debts in marriage.<sup>17</sup>

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<sup>16</sup> Damian Agata Yuvens, op.cit, p. 7.

<sup>17</sup> Fira Adhisa Rivanda & Gemala Dewi, "Akibat Hukum Akta Perjanjian Perkawinan Yang Tidak Dicatatkan Dalam Perkawinan Campuran", *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan* 13, No. 1, (2022) : 86. 81-90



Registration of marriage agreements is regulated in Article 29 and Article 30 of Law Number 1 of 1974 concerning Marriage (Marriage Law). Article 29 states that a marriage agreement must be registered at the Marriage Registry Office so that it has valid legal force, while Article 30 regulates that a marriage agreement that is not registered does not apply to third parties. Failure to comply with this registration obligation eliminates the legal force of the marriage agreement, making it difficult for third parties to accept or recognize it, such as creditors, parties related to property, or other parties who rely on the agreement. As a result, parties, especially husband and wife, may not receive proper protection, and legal uncertainty arises in dividing assets and handling debts.<sup>18</sup> For example, in the event of a divorce, non-compliance with the registration of the marriage agreement can cause assets that should be separate to become joint assets. This means that the assets must be divided fairly and equally, even though the couple may have agreed that the assets should be separated based on an unregistered marriage agreement. This non-compliance creates a discrepancy between the wishes of the parties and the applicable legal facts.

Third parties, such as creditors or parties related to property, can also be affected by non-compliance in registering a marriage agreement. According to Article 30 of the Marriage Law, unregistered marriage agreements are not valid for third parties. This means that if the marriage agreement is not registered, the third party referring to the agreement does not have a strong legal basis to claim their rights.<sup>19</sup> For example, a third party who provides a loan to a husband or wife based on an unregistered separate property agreement cannot make a claim based on the agreement. Creditors will not be able to claim the assets that are the object of the agreement for debt payment, because the agreement is considered legally invalid. This can be detrimental to third parties who hope to obtain guarantees or protection from the agreement.

Failure to comply with the registration of the marriage agreement also affects the division of joint and separate assets in marriage. According to Article 37 of the Marriage Law, property acquired during marriage is joint property, while property

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<sup>18</sup> *Ibid*, P. 88.

<sup>19</sup> Filma Tamengkel, "Dampak Yuridis Perjanjian Pra Nikah (Prenuptial Agreement) Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan", *Lex Privatum* 3, No. 1, (2015) : 203. 199-210



acquired before marriage or through inheritance or gifts is considered separate property.<sup>20</sup> Non-compliance with the registration of the marriage agreement also affects the debt obligations regulated in Article 49 of the Marriage Law. This article stipulates that husband and wife are jointly and severally responsible for debts acquired during marriage, unless there is a valid marriage agreement. Non-compliance with the registration of marriage agreements can also trigger legal conflicts and disputes. As previously explained, a discrepancy between the wishes of the parties and legal provisions can create injustice in the distribution of assets, handling of debts, and recognition of thirdparty rights.

For example, if a husband and wife do not agree on the appropriate division of assets in accordance with an unregistered agreement, they may have to face a long and time-consuming legal process to determine the fair division of assets. This of course will complicate the divorce process and trigger an imbalance in dispute resolution.

If the marriage agreement is not registered, then the agreement has no legal force regarding debts, so each party remains responsible for their respective debts. This has the potential to create an imbalance, especially if one party has more debt than the other party. As a result, the party who should not be responsible for the debt may be forced to pay the debt which should be the responsibility of the other party. The marriage agreement is not registered, then there is no legal division of separate assets and all assets are considered joint assets. This can lead to an imbalance in the distribution of assets that is not in accordance with the wishes of the parties who have agreed on the distribution. In practice, this imbalance can trigger conflicts and legal disputes, especially if one party feels disadvantaged due to non-compliance with the registration of the marriage agreement.<sup>21</sup>

Failure to comply with the registration of the marriage agreement can have implications in the divorce process, especially regarding the division of joint assets and debt responsibilities. According to Article 37 of the Marriage Law, assets acquired

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<sup>20</sup> Nadhira Zahra Farida, Et.Al., "Akibat Hukum Perceraian Terhadap Harta Bersama Pada Pasangan Tanpa Perjanjian Perkawinan Dan Istri Yang Menjalankan Kewajiban Suami Dalam Mencari Nafkah Berdasarkan Perspektif Hukum Perkawinan Dan Kompilasi Hukum Islam" *Jurnal Hukum, Politik dan Ilmu Sosial* 3, No.4, (2024): 168. 155-173

<sup>21</sup> Ricky Dwiyanji, Et.Al., "Status Hukum Harta Bersama Akibat Putusnya Perkawinan Karena Perceraian", *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 6, No. 2, (2017): 175. 170-179



during marriage are considered joint assets, and in the event of divorce, these assets must be divided equally. If the marriage agreement is not registered, then the husband and wife cannot rely on the agreement to separate their assets. Therefore, all property is considered community property, even though the parties may have agreed to divide the property under separate agreements. This imbalance can cause injustice in the distribution of assets and trigger long legal disputes.<sup>22</sup> Debt responsibility is also an important issue in divorce. Article 49 of the Marriage Law stipulates that husband and wife are jointly and severally responsible for debts acquired during marriage. Ignorance or discrepancy in registering a marriage agreement can cause debts that should be the responsibility of one party to be charged to both parties. This can harm one of the parties who is not involved in the debt.

Non-compliance in registering a marriage agreement can also affect the protection of the rights of children and related third parties. In the event that there are children from the marriage, an imbalance in the distribution of assets and debts can affect their interests. Children may not be guaranteed certain inheritances or assets that should be provided based on a valid marriage agreement.<sup>23</sup> Third parties, such as creditors or other parties related to separate property agreements, also face the risk of losing their rights. For example, if an unregistered marriage agreement involves property that is used as collateral, then third parties may not be able to assert their rights to the property, thereby harming their interests.

Non-compliance in registering marriage agreements creates complexity in the legal process, which requires further law enforcement efforts. The government and related institutions need to increase outreach about the importance of registering marriage agreements and provide clear sanctions or legal action for couples who violate these provisions.<sup>24</sup> The court also needs to provide legal protection for parties affected by legal imbalances in the registration of marriage agreements. One solution that can be taken is to provide recognition of the marriage agreement which, even though it has not been registered, can be proven through other documents that are

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<sup>22</sup> *Ibid*, p. 176.

<sup>23</sup> Bernadus Nagara, "Pembagian Harta Gono-Gini Atau Harta Bersama Setelah Perceraian Menurut Undang-Undang Nomor 1 Tahun 1974" *Lex Crimen* 5, No. 7, (2016) : 55.

<sup>24</sup> Erna Wahyuningsih & Putu Samawati, *Hukum Perkawinan Indonesia*, (Palembang: Pt. Rambang Palembang, 2006), P. 127.



valid and meet the formality requirements. This is important to create legal certainty and prevent imbalances in the distribution of assets and debt responsibilities.<sup>25</sup>

Based on the explanation above, it shows that even though the deed is made by a notary, non-compliance in not registering the marriage agreement with a marriage registrar can cause the marriage agreement to be null and void. This happened because the non-compliance was not in accordance with one of the legal conditions for an agreement in Article 1320 of the Civil Code, namely that it conflicted with a certain subject matter or a lawful cause. This means that non-compliance is contrary to the provisions of Article 29 paragraph (1) of Law no. 1 of 1974 concerning Marriage and Constitutional Court Decision Number 69/PUU-XIII/2015. This confirms that registration is an essential requirement for the legal validity of the marriage agreement deed.

## V. CONCLUSION

The existence of a registered marriage agreement provides legal certainty and protects the rights of husband and wife. Without registration, the agreement does not apply to third parties, so creditors and other related parties cannot claim their rights. Therefore, registering a marriage agreement is very important to create legality, legal protection, and prevent disputes arising regarding the division of assets and debts in marriage. Ignorance or inappropriateness in registering a marriage agreement has significant legal consequences for husbands, wives and third parties, such as creditors. Marriage agreements are regulated by the Civil Code and Law Number 1 of 1974 concerning Marriage, which requires registration at the Office of Religious Affairs (KUA) to have legal force. Article 29 and Article 30 of the Marriage Law state that unregistered marriage agreements do not apply to third parties, so that creditors cannot claim assets that should be guaranteed by the agreement.

This mismatch in registration can cause assets that should be separated to become joint assets, resulting in an unfair division between husband and wife, especially in the divorce process. In addition, debt responsibility can be a problem, because Article 49 of the Marriage Law states that husband and wife are jointly

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<sup>25</sup> Melia, et.al., "Pembagian Harta Bersama Setelah Perceraian (Studiterhadap Putusan Mahkamah Agung nomor 597k/Ag/2016)", Jurnal Ius Kajian Hukum Dan Keadilan 7, No. 3, (2017): 510.



responsible for debts acquired during marriage, unless there is a valid agreement. Unregistered agreements provide no protection to either party, meaning debts that would otherwise be the responsibility of one party may be divided unfairly. Third parties, such as creditors, also lose their rights to assets secured by unregistered agreements. Unregistered agreements also affect the protection of the rights of children and other third parties, who should receive rights to separate assets.

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### C. Statutory Regulations

Civil Code

Law No. 1 Of 1974 Concerning Marriage

Law No. 2 Of 2014 Concerning The Position Of Notaries

Constitutional Court Decision No. 69/Puu-Xiii/2015 Considers The Purpose Of A Marriage Agreement

