

Peran notaris terkait pengesahan perjanjian perkawinan pasca Putusan Mahkamah Konstitusi No. 69/PUU- XIII/2015 serta pentingnya pencatatan perjanjian perkawinan terhadap pihak ketiga (Studi Putusan Pengadilan Negeri Bogor No. 59/Pdt.G/2018/PN Bgr) = The role of notary in regards to the authorization of marriage agreements post constitutional Court Decision Number 69/PUU-XIII/2015 and the importance of marriage agreements registrations related to third parties (Case study of Bogor's Court Decision No. 59/Pdt.G/2018/Pn Bgr).

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Abstrak

Penelitian ini membahas mengenai peran notaris dalam membuat akta perjanjian perkawinan serta pentingnya pencatatan perjanjian perkawinan ke Pegawai Pencatat Perkawinan pada Kantor Catatan Sipil (KCS) dalam Putusan No. 59/Pdt.G/2018/PN Bgr agar perjanjian tersebut memiliki kekuatan mengikat terhadap pihak ketiga. Hakim dalam putusannya menyatakan bahwa SHM XXXX/Ciriung merupakan harta bersama. Padahal, jika ditinjau dari UU Perkawinan serta Putusan MK No. 69/PUU-XIII/2015, seharusnya SHM XXXX/Ciriung bukan merupakan harta bersama sehingga jika terjadi pengalihan hak dikemudian hari atas aset tersebut dibutuhkan persetujuan pasangan. Metode penelitian yang digunakan adalah evaluatif dengan pendekatan kasus (case approach). Analisis didasarkan pada ketentuan dalam UUJN terkait kewenangan Notaris serta UU Perkawinan dan Putusan MK No. 69/PUU-XIII/2015 terkait harta benda dalam perkawinan. Hasil analisa adalah bahwa perjanjian perkawinan harus dibuat dalam akta notaris diikuti pelaporan ke Catatan Sipil sesuai Surat Edaran Ditjen Kependudukan dan Pencatatan Sipil Nomor 472.2/5876. Maka dari itu, perjanjian perkawinan yang tidak dibuat dalam bentuk akta notaris dan tidak dicatatkan ke pegawai pencatat perkawinan hanya mengikat pihak yang membuatnya saja berdasarkan Pasal 1338 KUHPerdara dan tidak memiliki daya ikat terhadap pihak ketiga. Sehingga, berdasarkan hasil penelitian ini, dapat disimpulkan bahwa hakim telah keliru dalam memberi pertimbangan karena harta yang diperoleh semasa perkawinan dalam Putusan No. 59/Pdt.G/2018/PN Bgr seharusnya merupakan harta bersama.

.....This study discusses the role of a notary in making a marriage agreement deed and the importance of the ratification of a marriage agreement by the Marriage Registrar at the Civil Registry Office (CRO) in Decision No. 59/Pdt.G/2018/PN Bgr. The judges in their decision stated that SHM XXXX/Ciriung was a joint property. In fact, when viewed from the Marriage Law and the Constitutional Court's Decision No. 69/PUU-XIII/2015, SHM XXXX/Ciriung should not be a joint property so that if there is a transfer of rights in the future on the asset, the spouse's approval is required. The research method used is evaluative with a case approach. The analysis is based on the provisions in the UUJN related to the authority of the Notary and the Marriage Law as well as the Constitutional Court Decision No. 69/PUU-XIII/2015 related to property in the marriage. The result of the analysis is that the marriage agreement must be made in a notarial deed followed by reporting to the Civil Registry in accordance with the Circular Letter of the Directorate General of Population and Civil Registry Number 472.2/5876. Therefore, a marriage agreement that is not made in the form of a notarized deed and is not ratified by the marriage registrar is only binding on the party

who made it based on Article 1338 of the Civil Code and has no binding force against third parties. Thus, based on the results of this study, it can be concluded that the judge has erred in giving consideration to the property acquired during the marriage in Decision No. 59/Pdt.G/2018/PN Bgr should be common property.