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Legality of Notary Deeds Concerning the Joint Treasure

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In Indonesia, the rules regarding marriage are not only influenced by local customs, but also influenced by various religious teachings, such as Hinduism, Buddhism, Christianity, and Islam. The existence of various influences in the community has resulted in the formulation of many rules governing marital problems. The difference in the procedure of marriages and the influence of marriage arrangements have consequences for the family, kinship, and wealth of a person. The legality of a notary deed cannot be released with the power of proof. The purpose of this is so that when an audience comes before a notary and asks to them to pen an authentic deed, either made by a notary or by the complainant, these legal actions have legal certainty. Marriage agreements are made by notarial deed (notary/authentic) and are not under hand. Whereas, Article 29 paragraph (1) of the Marriage Law gives the freedom for marriage agreements to be made with a notary deed, under hand, or under hand with the legalisation of a notary. The principle of marriage is to form a family or household that is peaceful and eternal; however, married life is not always harmonious and happy, and there are often there disputes in marriage that result in divorce. In their considerations, a Panel of Judges might use the term "The Binding Force of Precedent or The Persuasive of Precedent". If, after an assessment, a judge makes a conclusion in advance that the case is related to the statements of the witnesses and to the results (Internal Audit), then the panel of judges will make a conclusion stating that the defendant has made a mistake in the form of a default/breach of contract against the notarial deed, which is authentic and legally valid evidence.

Key words: *Legality of Notary Deed, Agreement on Marriage, Marriage, Judge Consideration, Joint Assets.*

Introduction

In married life, not every person lives harmoniously and happily, because both husband and wife do not necessarily understand their rights and obligations as husband and wife, as described in Law No. 1 of 1974 about Marriage, so disputes often occur, which lead to divorce. The breakup of a marriage due to divorce is actually a last, alternative step, an emergency door taken if the integrity and continuity of household life can no longer be maintained. The breakdown of marital relations between husband and wife does not mean that all matters are interrupted, but there are legal consequences that must be considered by both parties. In Indonesian legislation, the provision of assets has been stipulated in the Marriage Law Number 1 of 1974 concerning Marriage (Hilman, 2003).

Based on Law No. 1 of 1974 concerning Marriage, in Article 35 paragraph (1) and (2) of the Marriage Law, it is explained that assets in marriage are divided into 2 (two) types: joint assets and property (Erdhyan and Irnawan, 2017). So, to give a sense of justice to those who control the joint assets in a marriage, it is necessary to make a marriage agreement (Prenuptial Agreement), as outlined in a notary deed. Basically, a deed is a letter of proof that is given a signature, that forms the basis of a right or engagement, and that was intentionally made from the beginning to serve as proof. The deed can have formal functions (Formalities Causa), which means that a complete or perfect (not for legitimate) legal act must be made in the form of a deed. Therefore, a marriage agreement (Prenuptial Agreement) that is ratified in a notary deed and is given a signature can function as evidence and contains an event that forms the basis of a right or an agreement made intentionally for verification (formalality causal). As the word of Allah SWT in QS. Al-Isra ': (Al-Qur'an and Translation, 1989)

وَلَا تَقْرَبُوا۟ مَالَ ٱلْيَتِيمِ إِلَّا بِٱلَّتِى هِىَ أَحْسَنُ حَتَّىٰ يَبْلُغَ أَشُدَّهُۥ ۚ وَأَوْفُوا۟
بِٱلْعَهْدِ ۖ إِنَّ ٱلْعَهْدَ كَانَ مَسْـُٔولًا ﴿٣٤﴾

Meaning: "*And do not approach the property of the orphan, except in a way that is better (beneficial) until he grows up and fulfills the promise; in fact, the promise must be held accountable*." (Surat al-Isra (17): 34). Keeping that covenant, according to the Qur'an, is something that is ordered, according to the word of God, at the end of the verse. (Surah Al-Isra '[17]: 34.

Article 1 number 1 of Law No. 30 of 2004 concerning Notary Position states that a notary is a public official who has the authority to make authentic deeds, and his authority regarding deeds, agreements, and provisions are required by legislation and desired by those concerned (Martiman, 2007). To attain legal certainty, legality, and legal protection, an agreement made by the parties should be made in the form of an authentic deed. An engagement can lead to

reciprocal relationships that always have an active side, which gives rise to the right for someone to sue for their achievements, and a passive side, which creates a burden of obligation for other parties to carry out their achievements. Default can occur if the parties do not carry out what has been agreed upon by all, are late in carrying out what was agreed upon, or do carry out what was agreed upon but not in the manner agreed upon.

According to the provisions above, a marriage agreement must be registered and legalised by the employee of the marriage registration. This is in accordance with the provisions stipulated in Article 29 paragraph (1), Law No. 1 of 1974 concerning Marriage, which reads: "At the time or before the marriage takes place, both parties with mutual agreement can enter a written agreement legalised by the employee of the marriage registration, after which the contents also apply to third parties, as long as the third party is caught." Marriage agreements, as an agreement regarding the husband's and wife's property, are able to be made and held as long as they do not deviate from the principles or patterns stipulated by law.

The agreement on marriage (prenuptial agreement) itself is born of western culture. In Indonesia, which still upholds eastern customs, the community considers this agreement to be a sensitive issue and it is often considered unusual, rude, materialistic, selfish, unethical, or inappropriate to Islamic customs and easternism. To avoid problems regarding both gono-gini property and shared assets, many couples have agreed to make a pre-marriage agreement, called a marriage agreement (prenuptial agreement). Regarding property, Article 35 of Law No. 1 of 1974 concerning Marriage states that (Law No. 1 of 1974):

(1) Property acquired during marriage becomes a joint asset.
(2) The inheritance of each husband and wife and the property acquired from each as a gift or inheritance is under the control of each, as long as the parties do not determine otherwise.

The contents of the article above shows that property brought into marriages can also be referred to as each party's own property, and the assets acquired after the marriage are shared assets, which can also be called assets. In formal terms, the marriage agreement is an agreement made by the future husband and wife to regulate the consequences of their marriage to their assets. The marriage agreement is made with the intention to limit or completely eliminate the union/mix of assets according to the law (Wettelijke Gemeenschap Van Goederen) and limit the husband's authority over goods belonging to the property. This is so that without the help of the wife, the husband may not take actions that release from the union movable and immovable property that is brought by the wife into the marriage, obtained by the wife throughout the marriage, or recorded under the name of the wife. In order to separate assets or make a mix of income or mixtures of income, someone who wishes to marry can enter into a marriage agreement (*Huwelijke Voorwaarden*) (Yunanto, 1993).

The marriage agreement protects the property of the bride. Through this agreement, the parties can determine their respective assets so that from the beginning, there is a separation of property or joint assets, which will regulated by way of distribution in the even of a divorce. This is due to the existence of a marriage agreements so that in itself, the marriage does not have shared assets; instead, there are only personal assets of husband and wife. Based on the analysis of notary deed No.12, which was made based on an agreement between the Plaintiff and the Defendant, it was stated, "All assets that exist during marriage are handed over to the first Party (Mr. Tek Sun): both the plots of the Plaintiff's business during marriage in the form of fixed goods, which are 155m^2, above which there is a building of shop houses, and 1 parcel of Agricultural land covering an area of 4144m^2, which has since been obtained by the Plaintiff. Then the agreement was made in accordance with the provisions of Article 1320 of the Civil Code and Article 1338 of the Civil Code, paragraphs 1 and 3: "Valid as Law for Plaintiffs and Defendants and must be carried out on the basis of goodwill of both parties."

De facto, on the legality of notary deed No.12 concerning Joint Assets, can be ascertained through previous district court decisions on divorce case No.68/PDT/2009/PN.Pbr Jo. Case No.62/Pdt.G/2015/PN.Pbr has a permanent legal force, but until the lawsuit is filed by the Defendant (Mrs. Yanny Waty/ Second Party/Mr. Tek Sun's wife) there is absolutely no good faith in carrying out all contents. "The deed of agreement between the defendant and the plaintiff, as stated in the agreement in the notary deed, so the Panel of Judges stated that the defendant had broken the promise of Default." Cases are decided after the divorce has a permanent and binding legal force, so the Defendant/Second Party's (Mrs. Yenny Waty's) actions "keep promises" (Default), according to article 1238 of the Civil Code. The act of forgiveness (Default) carried out by Ms. Yenny Waty was in the form of non-fulfillment of good faith, starting from, "Fulfillment of all marriage assets handed over to the Plaintiff/first party (Mr. Tek Sun), in the form of: land and house building, a shop, located on the road of Rajawali, Kedung Sari Village, Sukajadi Subdistrict, Pekanbaru City; Certificate of Ownership Rights No.492 dated June 20, 2005 on behalf of Plaintiff; Agricultural Land covering an area of 4144m^2, located on Bintang Ujung Street, Bagan Jawa Village, Bangko District, Rokan Hilir Regency; Certificate of Hak Pakai No. 01, dated January 18, 2007. On behalf of the Plaintiff, all gold jewelry obtained in the marriage has been divided according to the agreement, as outlined in the Notarial Deed which has permanent legal force, and child custody."

With the existence of this marriage agreement, the distribution of husband and wife's property is clear from the perspective of the law, so it does not require a judge's decision to resolve the problem of the assets acquired during the marriage. Law No. 1 of 1974 concerning Marriage, Article 36 paragraph (1) states that for joint property of husband and

wife (assets acquired after marriage, better known as joint assets or property), approval from friends is needed in the form of a written marriage agreement (notaril/under hand with the legalization of Notary). Article 36, paragraph 2 of the Marriage Law states that the property (assets held before the marriage) may be transferred without the consent of the married friend. Then it shows the authenticity of the authentic deed, then three layers of proof have been fulfilled. Namely, proof between the parties has explained what was written in the deed, that the incident did indeed occur, and that it was true that on that date, the person concerned had appeared to the competent authority.

The legality of authentic deeds as a legal document can be used as perfect evidence at the time of a trial, and the validity of the authentic deeds submitted by the plaintiff, in the form of other proof documents, can weaken or prove the truthfulness of the claims in the trial. The marriage agreement (Prenuptial Agreement) limits the union of joint property according to the law (Wettelijke Gemeenschap Van Goederen). Marriage agreements (Huwelijke Voorwaarden) apply when marriage is completed in front of civil registry employees and apply to third parties when registered in front of a local district court.

Identification of Problems

From the background description above, the problem of this paper can be identified:

How does the General Review of the Legality of a Notary Deed of Joint Assets in the prospective study apply to the case decision No.68/Pdt/G/2009/PN.Pbr Jo., case No.62/Pdt.G/2015/PN.Pbr, and Notary Deed No.12?

Research Objectives

To find out the General Review of the Legality of the Notary Deed concerning The Joint Treasure; and
To find out the strength of proof of legality of the notary deed concerning the joint treasure decision of Case No.68/Pdt/G/2009/PN.Pbr Jo. and Case No.62/Pdt.G/2015/PN.Pbr.

Research Methods

The type of reasearch used was normative legal research, and the nature of this research was analytical descriptive, which involved the analysis of the data and information obtained through theoretical and practical methods. This research used normative data obtained from literature, in the form of books, legal norms, and regulations legislation (*Statue Approach*), as well as case studies of civil decisions No.68/Pdt/G/2009/PN.Pbr Jo. and No.62/Pdt.G/ 2015/PN.Pbr and Notary Deed No.12, concerning joint assets.

Data and Data Sources

Due to the nature of normative research, legal material was used:

a. Primary law material
Primary legal material was the main material used in this study, which were regulations relating to Civil Case Decision No.68 / PDT / G / 2009 Jo. and Case No.62 / Pdt.G / 2015 / PN.Pbr. in the Legality of Notary Deed No.12 concerning Joint Property and Legislation.

b. Secondary Legal Materials
Secondary legal material were legal materials that added to, strengthened, or provided an explanation of primary legal material. The secondary legal materials in this study were books and opinions of experts in various literatures.

c. Tertiary Legal Materials
Tertiary legal materials were materials that give instructions or explanations, such as the large Indonesian dictionary and scientific articles.

Making conclusions: After the data was collected, the data was processed and analysed by describing and then comparing the data to the provisions of legislation or the opinions of legal experts. Furthermore, the discussion was done by providing interpretations that linked the data to legal theories in the form of expert opinions and applicable laws and regulations. The author then made conclusions on both general and specific matters.

Discussion Result
General Overview of the Legality of the Notary Deed

The rules governing Waarmerking or Legalization can be found in Engel Brecht in 1960, namely ordinance Stbl.1867-29 entitled 'Bepalingen nopens de bewjskrscht van onderhandse geschriftenvan indonesiers of met hen gelijkgestelde personnels' (Provisions regarding strength as proof of letter- letters under the hands made by indigenous legal groups or people who are likened to them). De Bruyn Mgz (De Bruyn, 2000) put forward two terms: "Verklaring Van Visum" and "legalization". With Verklaring Van Visum, De Bruyn interpreted waarmerken and explained that the purpose of Verklaring Van Visum was because no other gives a fixed date (the notary uses Date Certain words), namely the statement that the notary has seen (Gezein) the deed under the hand that day. Of course, De Bruyn goes on to say that the date given was nothing but the date when the notary saw it, not the date it was desired or asked for. Because Verklaring Van This visum only gives a definite

date, although the signature stated on the letter under the hand is uncertain and can still be denied by the person or his heir, the date cannot be denied (De Bruyn, 2000).

Deed can be used as evidence, provided they have a signature, contain the event that forms the basis of a right or engagement, and are made from the beginning deliberately as a basis of proof. In Law No. 30 of 2004 concerning Notary Position, the form and function of a notary deed are specifically stipulated in the Act of Notary position (Muhammad, 1985). So that the deed is an official letter made intentionally from the beginning to prove it in the future, i.e. if there is a dispute that becomes a case in court, it is submitted as evidence of a legal act or agreement. This is in accordance with the opinion of Subekti, who states that a deed is a writing that is deliberately made to be used as evidence, if there is an event and it is signed.

Authentic deeds made by or in the presence of a notary are expected to guarantee certainty, order, and legal protection. So, authentic deeds can function as evidence, especially in court, namely as evidence of a legal act or agreement. The agreement itself is valid if it has met the legal requirements (Daeng, 2012).

In general, what is adopted on an authentic deed, including a notary deed, has 3 (three) evidentiary powers, namely (Herlien, 2007):

1) The strength of outward proof (Uitwendige Bewijs Kracht), namely the ability of an authentic deed is the ability of the deed itself to prove its validity as an authentic deed;
2) The power of formal proof (Formale Bewijskracht), which is a notary deed must provide certainty that an event or fact in the deed has actually been carried out by a notary or explained by the parties when the document is presented, in accordance with the specified procedure in proof of deed;
3) Strength of material proof (Materiele Bewijs Kracht), which is a certainty about the material of a deed, because what is mentioned in the deed is valid proof of the parties' making the deed. If it turns out that the information of the viewers is incorrect, then it is the responsibility of the parties themselves.

Basically, the notary deed has the power of proof before the court, which is the most powerful of all proofs. It can be said the function of a notary deed is as evidence for the parties that have made the agreement, as outlined in the notary deed. Becuase the notary is a qualified lawyer who is recognised by the court and court officials, both as a notary and a lawyer, he enjoys special rights. The notary position is essentially a general authority who serves the needs of the community through authentic evidence that provides certainty in civil law relations. So, as long as authentic evidence is still required by the state legal system, the existence of a notary will still be needed in the community (Lumban Tobing, 1999). A notary is obliged to keep everything entrusted to him and may not submit copies of deeds to

unauthorised people. In law, the Land Deed Making Officer (PPAT) and the notary are "General Officials" who are given authority to make certain "Authentic Deeds".
In the case of a notary making a deed regarding the agreement made by the parties that bind themselves in the agreement. It should be noted that a notary deed is a form of agreement that binds both parties to an engagement. The essence of a notary as a public official is only to record in writing and authenticate the legal actions of the parties concerned. The notary is not directly involved in the agreement; those who carry out the legal acts are the parties who are bound by the contents of an agreement. Therefore, the notary deed or authentic deed does not guarantee that the parties "speak the truth"; rather, it guarantees that the parties, as detailed in their agreement deed, are "correct". The validity of the position of a notary as a public official also comes from Article 1868 of the Civil Code, which states that:

"An authentic deed is a deed, in the form of a prescribed law, that is made by or in front of a general official in power for that place where the deed is made."

This is strengthened by the provisions of Article 1870 of the Civil Code, which states that authentic deeds provide certainty between the parties, their heirs, or the people who inherit their rights; they are a perfect proof of what is contained in it. The power of perfect proof causes the evidence to be sufficient, in and of itself. Thus, authentic deeds made by or before a notary are expected to guarantee certainty, order, and legal protection. The authentic deed, which is a legal product of a notary, is divided into 2 (two) types of deeds, namely Relaas Acte and Partij Acte. These two are both authentic deeds, but have differences, namely (Habib, 2013):

1) Relaas Acte, or minutes, are deeds made based on the request of the parties that record and write down everything witnessed, heard, and experienced directly by a notary public, as well as everything that is conveyed and carried out by the parties;
2) Partij Acte, or party deed, is a deed made before a notary based on the stated, delivered, and explained wishes of the parties concerning themselves;

In civil law, Article 147 clearly states that the marriage agreement must be made with a notary deed before the marriage takes place, and it will be canceled if it is not made as such. This is different from Law No.1 of 1974 concerning Marriage, which states, in article 29 paragraph (1): At the time or before the marriage takes place, the two parties with mutual agreement can enter a written agreement legalised by the marriage registrar employee, after which the contents apply to third parties, as long as the third party is caught. Therefore, according to the law, from the time of marriage, there will be joint assets between husband and wife, so long as there are no other provisions in the marriage agreement.

Customary law states that Boedel inheritance, especially those that are joint property (*gono-gini*), must be left to finance the daily needs of a living husband or wife in the event that the other has died. So, the intent of making promises of marriage may be to prevent the absolute union of marital assets, to deviate from the provisions of the management of marriage assets, or to fulfill the wishes of third parties, as heirs or donors. In making a marriage agreement, Article 147 of the Civil Code must be considered, which stipulates that the marriage agreement must be held, in the form of a notary deed, before the marriage; if not, then the marriage agreement is canceled (Padwo, 1989).

Besides the things mentioned above, the law also regulates marriage agreements in other ways. In determining the contents of the marriage agreement, it is necessary to pay attention to the provisions of Article 144 of the Civil Code. For example, if a prospective husband and wife requires absolute separation of property, then the provisions of the marriage agreement must state that it "expressly excludes the possibility of a profit and loss union". If not, then the agreement takes place with a profit and loss union. During the marriage, the joint assets should not be abolished or changed from the agreement between husband and wife. As long as marriage agreement is held, there is legal certainty about what a husband and wife have agreed to do in response to a legal act.

According to Article 147 of the Civil Code, the marriage agreement must be made with a notary deed that is held before the marriage and valid from the time the marriage is carried out. This is different from Law No. 1 of 1974 concerning Marriage, which does not require a marriage agreement to be made in a Notary Deed. According to the Civil Code, the rights and obligations of marriage can be categorised as follows (Djaja, 2006):

1) The consequences arising from a husband and wife relationship are:
a. The obligation of husband and wife is to be faithful and helpful, and if they are violated, they can cause a bedside table to separate and can file a divorce;
b. Husband and wife must live together in the sense that the husband must accept the wife. The wife does not have to come to the husband's place if the situation is not possible. The husband must fulfill his wife's needs.

2) The consequences arising from the husband's power in marital relations include:
a. The husband is the head of the household. The wife must obey the husband, such that the wife is incompetent unless she has permission from the husband;
b. Husbands are in charge of taking care of: shared assets, most of the wife's wealth, determining the place of residence, determining the issues concerning the power of parents. Wives are considered incompetent and cannot manage their own wealth;
c. The husband is obliged to give his wife everything that is needed and provide a living according to her ability and position.

Based on the book 'Encyclopedia of Woman & Islamic Cultures' (The Marriage of Context Practices), the opinion of Suad Joseph is as follows: "The marriage context of her right to divorce herself from her husband, as long as her husband expressly grants her this right". (Suad Joseph, 2006: 252) (Suad, 2006).

Overview of the understanding of shared assets

In essence, after the divorce, the joint assets in marriage (*wealth of gono-gini*) are generally divided equally between husband and wife. This is based on the provisions of Article 128 of the Civil Code, which states that, "After the dissolution of unity, the property of the unit is divided between the husband and wife, or between their respective heirs, regardless of which party obtained the items."

A common treasure (*wealth of gono-gini*) is wealth acquired by both husband and wife since the marriage. This is as explained in Article 35 paragraph (1) of Law No.1 of Year 1974 concerning Marriage. Sueing for property can be done through deliberation or through a court. For those who are Muslim, joint property claims can be submitted to the Religious Courts, together with the divorce lawsuit, or can also be filed separately after the divorce decision. The gono-gini property claims or joint asset claims in a lawsuit/divorce application are closely related to the needs of the party who submitted the application or the divorce suit. If the couple agrees to divorce, but there is no agreement regarding the distribution of property, then this will hamper the divorce process in court.

So, if you want to prioritize divorce decisions, you should leave the lawsuit beforehand; it is better to submit it after the divorce has been terminated. There are a number of issues that arise after divorce, but the property of gono-gini is still controlled by one of the parties. Joint assets are assets acquired during a marriage, outside of inheritance or gifts, meaning assets obtained from business or individually during the marriage bond period. If, before the marriage is held, the prospective husband and wife do not make a marriage agreement (regarding the limitation or elimination of the marriage property union), then there will be a unity of marriage property. This means that when the marriage takes place, in the eyes of the law, the property of the husband and wife automatically becomes shared, without the need for surrender or other legal actions (Ahmad, 1995).

The legal consequences caused by the union of marital assets are that legal actions against unity are only valid if carried out jointly by husband and wife, because the ownership of such assets is shared. According to Article 119 of the Civil Code, land, without going through any legal action, becomes a unity property, meaning it belongs to both the husband and wife.

Based on legal considerations in jurisprudence by the Supreme Court of the Republic of Indonesia No.2191 K / Pdt / 2000 dated March 14, 2001 regarding the quality of proof of photocopies of a letter used as evidence, the decision of the Supreme Court Number 701 K/Sip/1974 was that, "Tool photocopy evidence that is not matched with the original letter at the trial cannot be accepted as valid evidence."

The Legality of Notary Deed No.12 concerning the distribution and separation of joint assets can be proven in court. Considering the general knowledge and certainty regarding the joys and sorrows of fostering a household, the interrelated relations and witness testimony of both parties, although imperfect and with propriety and fairness, the Supreme Court has decided that the object of a dispute of movable goods should be suspected as a result of reasonable labor and determined as a joint asset, which must therefore be divided into two. The ultimate goal of justice seekers is to restore, through a judge's decision, all rights that are harmed by other parties. This can be achieved if the judge's decision can be implemented. A judge's decision will have no meaning if it cannot be executed. Therefore, the judge's ruling has executive power, namely the power to carry out what was determined in the decision by the force of state instruments. Executive power is given to the judge's decision "for the sake of justice and based on the supreme divinity" (Retnowulan, 2009).

The author's assumption is that the decision of a judge who has obtained legal force can still be carried out voluntarily by the defeated party; however, the problem is that the defeated parties often do not want to implement the decision voluntarily, so court assistance must be provided to carry out the contents of the decision by force. This is usually done by the winning party through their submission of a request for execution to the Chief Justice. Even with decisions that contain the provisions of "Uitvoerbaar Bij Vooraad" or immediate decisions, which can be executed despite not yet having permanent legal force, in practice, the implementation of decisions made in advance has caused a lot of difficulties, especially in the authority of judges with limited conditions. On the other hand, the implementation of the decision will also cause uncertainty because of the potential for the decision to be canceled at the appeal or cassation level. So, the judges, in making decisions, must be based on the immediate values of the object of execution.

Article 29 of the Republic of Indonesia's Law No. 1 of 1974 concerning Marriage does not specify the things that can be agreed upon; it only states that the agreement cannot be ratified if it violates the boundaries of law and decency. So the marriage assets obtained after the divorce, the joint assets in marriage (wealth gono-gini), are generally divided equally between husband and wife. This is based on the provisions of Article 128 of the Civil Code, which states that, "After the dissolution of unity, the property of the unit is divided between the husband and wife, or between their respective heirs, regardless of which party obtained the items."

In retrospect, the Chinese indigenous people (before they applied the Civil Code on 1 May 1919) followed, in principle, the same legal provisions as those according to Islam, namely each husband and wife owned their own assets (Law No. 1 of 1974). The law of marital property determines that the inheritance (belongings) of the husband or wife belongs to the husband or wife who carries it, while the assets obtained jointly during the marriage (the property of gono gini) become joint assets (joint property). The importance of establishing joint assets in a marriage is to control and share assets as long as the marriage is still ongoing. The distribution of shared assets is carried out when a marriage is broken. Law No. 1 of 1974 concerning Marriage, article 37 says: *"If marriage breaks up due to divorce, joint assets are regulated according to their respective laws."* What is meant by "their respective laws" is confirmed in the explanation of article 37: "Religious law, customary law, and other laws." *(Law No. 1 of 1974)*.

Likewise, the agreement must not reduce the rights reserved for the husband as the head of the union of husband and wife, but this does not reduce the authority of the wife to manage her personal property, both movable and immovable, besides enjoying personal income freely. To the District Court Judges, if a child maintenance dispute occurs, the judge's consideration is whether or not a husband/plaintiff is able to provide maintenance costs for his child. If it turns out that, in reality, the husband cannot fulfill these obligations, as determined by Article 41 letter b of Law No. 1 of 1974 concerning Marriage, the Court can determine that the mother/wife can take part in this obligation.

Closing Conclusions And Suggestions

Conclusion

Legality of Notary Deed No.12 concerning joint assets is an act of agreement for the separation and distribution of joint assets. It is an authentic deed, because it is made before an authorised public official, namely a notary. Authentic deeds are legal documents and can be used as perfect evidence during a trial. The validity of an authentic deed submitted by the plaintiff in the form of other proof documents can weaken or prove the truthfulness of the claims in the trial. Regarding the proof of notarial deed in the case decision No.68/PDT/G/ 2009/PN.Pbr Jo. and case No.62/Pdt.G/2015/PN.Pbr, the implementation of the deed of separation and distribution of property, as stated in notary deed No.12, proved that the defendant did not fulfill a number of agreed achievements, had no regard for legal compliance, and did not have good faith in fulfilling the agreement, resulting in an act of default/injury to the notary deed No. 12 concerning the separation and distribution of joint assets.

Suggestions

Based on the author's observations of the legality of notary deed No. 12 concerning joint assets, there are several suggestions:

In the legality of notary deed No. 12 regarding the distribution and separation of shared assets should be obtained in obtaining joint assets before the marriage agreement before the marriage is carried out in order to obtain justice for the acquisition of personal assets so as not to cause disputes in the future during divorce and does not cause unity of personal assets with shared assets. The notary who makes the deed should advise to the parties who want to bind themselves in an agreement (deed) about the legality of the agreement, including the agreement title, the content of the agreement, the reasonableness of the deed, and what hapens if it is not fulfilled by the parties or a default/breach of contract occurs. This is so that in the Ex Officio judge's process of verification, the court immediately knows the application of the law and the value of proof.

It is recommended to consider the panel of judges in deciding a case. This is so that the judge is more careful in constricting a problem regarding the mixing of assets together with inheritance, and so that the case is based on justice. The panel of judges should, before deciding the case, the proof and facts of the trial and the provisions that govern it, so as to prevent harm being cause to one party. The parties facing the notary should always help the notary to state the truth of the values in accordance with the parties' good intention. The judge's decision should not deny the rights of those who are declared defeated in the care of a child. This is so that the obligations and responsibilities of the father/plaintiff against the child remain cared for by the husband/plaintiff, and the mother/wife, as the winning party, may not prevent the father from connecting with his child.

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