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REVIEW OF JOINT ASSETS DUE TO DIVORCE IN MIXED MARRIAGE WITHOUT A MARRIAGE AGREEMENT

Rizky Ramadhany Wihardjo[1], Tiurma Mangihut Pitta Allagan[2]

[1]University of Indonesia
JL. Salemba Raya IV, RW.5, Kenari, Jakarta Pusat, DKI Jakarta 10430, Indonesia.
Telp./Fax: +62-21-31909008 Email: rizkywihardjo@gmail.com

[2]University of Indonesia
JL. Salemba Raya IV, RW.5, Kenari, Jakarta Pusat, DKI Jakarta 10430, Indonesia.
Telp./Fax: +62-21-31909008 Email: pittaallagan2@gmail.com

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Abstract

Married couples who do mixed marriages often did not pay attention to the legal consequences of such act, especially to joint property. In order to protect themselves personally and so that in the future the legal consequences of a legal act can be accounted for by each party so that it does not involve their assets, the couple who is in a mixed marriage should make a marriage agreement. The Marriage Agreement prior to the Constitutional Court Decision Number 69/PUU-XIII/2015, in accordance with Article 29 paragraph (1) of the Marriage Law can only be made at or before the marriage takes place. The author conducted a research on the case with a normative juridical research type and the nature of the research was descriptive-analytic. Based on the results of the study, the author concludes that the legal implications of the cancellation of the Marriage Agreement cause as from the beginning there was never an agreement. Therefore, in such mixed marriages, there are joint assets that must be divided between husband and wife after the marriage ends due to divorce, namely 50% (fifty percent) or half of the joint property, respectively.

Keywords: *Joint Property; Marriage Agreement; Mixed Marriage*

INTRODUCTION

Marriage agreement should be made before the marriage takes place. This is because prior to the Constitutional Court Decision Number 69/PUU-XIII/2015, in accordance with Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as the "Marriage Law"): "At or before the marriage takes place, both parties with mutual consent can enter into a written agreement ratified by the marriage registrar, after which the contents also apply to third parties as long as the third party is involved"[1]. So that the Marriage Agreement made after the marriage is carried out before the ratification of the Constitutional Court Decision, the Marriage Agreement

is invalid and not in accordance with the provisions of the Marriage Law.

Marriage agreements are now starting to become common for prospective husband and wife couples who will marry or by married couples. The community no longer hesitates to make a Marriage Agreement in order to protect themselves and their assets and to reduce the occurrence of disputes between certain parties, and also to prevent the transfer of property rights between husband and wife which is not allowed by law, so that in the future each party can be held accountable for the legal consequences of a legal act that it does so that it does not involve the assets obtained by each party.

Marriage agreements are also becoming common for married couples who have mixed marriages. This is because Indonesian citizens (hereinafter referred to as "WNI") who are married to a foreign citizen (hereinafter referred to as "WNA"), after marriage, are not allowed to have land rights in the form of property rights as stated in Article 21 paragraph (3) Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as "Agrarian Law"): "Foreigners who after this Law comes into force obtain property rights due to inheritance without a will or mixing of assets due to marriage, as well as Indonesian citizens who have property rights and after the enactment of this Law loses their citizenship, are obliged to relinquish that right within a period of one year. since the acquisition of the right or the loss of citizenship. If after that period of time the property rights are released, then the rights are nullified by law and the land falls to the State, provided that the rights of other parties that burden it continue.

Based on the provisions of Article 35 paragraph (1) of the Marriage Law which: "Wealth acquired during marriage becomes joint property". This means that if there is a mixture of assets obtained after the marriage, both parties will become the owners of the joint property.

Article 21 paragraph (3) of the Agrarian Law above is related to Article 35 Paragraph (1) of the Marriage Law, where marriage causes the mixing of assets between husband and wife. Therefore, an Indonesian citizen who marries a foreigner, after marrying a foreigner, can no longer obtain property rights, because it will become part of the joint property he owns so that if he still wants to have ownership rights to the land after marrying a foreigner, he must first make a marriage agreement to separate assets which can be

called a Marriage Agreement outside the Property Guild.

Marriage agreements can be made before, during, or during the marriage bond. This is as regulated in Article 29 paragraph (1) of the Marriage Law jo. Constitutional Court Decision Number 69/PUU-XIII/2015 jo. Circular from the Director General of Population and Civil Registry dated 19 May 2017 Number: 472.2/5876/DUKCAPIL.

Couples who have mixed marriages often have their marriages outside Indonesia. Regarding marriage outside Indonesia, it is regulated in Article 56 of the Marriage Law and Article 37 of the Law of the Republic of Indonesia Number 23 of 2006 concerning Population Administration (hereinafter referred to as "Administrative Law").

Article 56 of the Marriage Law states:

(1) A marriage that takes place outside Indonesia between two Indonesian citizens or an Indonesian citizen and a foreign national is valid if it is carried out according to the law in force in the country where the marriage is being held and for Indonesian citizens it does not violate the provisions of this Law.
(2) Within 1 (one) year after the husband and wife return to the territory of Indonesia, their marriage certificate must be registered at the Marriage Registration Office of their domicile".

Furthermore, Article 37 of the Adminduk Law stipulates that:

(1) Marriages conducted outside the territory of Indonesia must be registered with the competent authority in the local country and reported to the Representative of the Republic of Indonesia;
(2) If the local state as referred to in paragraph (1) does not maintain marriage registration for foreigners, the marriage registration is carried out at the local Representative of the Republic of Indonesia;
(3) The representative of the Republic of Indonesia as referred to in paragraph (2) shall record the marriage event in the Marriage Certificate Register and issue a

Marriage Certificate Quotation;

(4) The registration of the marriage as referred to in paragraphs (1) and (2) shall be reported by the person concerned to the Implementing Agency at his place of residence no later than 30 (thirty) days after the person concerned returns to Indonesia".

Marriage is also called marriage which comes from the word marriage which means 'aqad or contract. In Indonesia, it is called a marriage contract (marriage agreement) or marriage. As an agreement or contract, the parties related to the agreement or contract promise to build a happy household and birth by giving birth to children and grandchildren after them.[1]

A marriage that begins with mutual love and affection between both husband and wife will always be expected to run well, eternally and eternally based on God Almighty. This is also in accordance with the purpose of marriage itself based on the Marriage Law, that: Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on principles governed by God Almighty.[2]

Article 1 of the Marriage Law defines marriage as an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on God Almighty.[3]

Based on this understanding, there are 5 (five) elements in marriage, namely:

a. Inner and outer bond
b. Between a man and a woman
c. As husband and wife
d. Creating a happy and eternal family (household)
e. Based on the faith in God Almighty

The Marriage Law is the legal umbrella for all regulations regarding marriage in Indonesia. Prior to the existence of the Marriage Law, concerning Marriage, it was regulated, among others:

1) The Civil Code (hereinafter referred to as "KUHPer"), especially in book I concerning people;
2) Mixed Marriage Regulations (Regeling op de Gemengde

[1] Rifyal Ka'bah, "*Permasalahan Perkawinan*", Varia Peradilan Tahun XXI/No. 243, (Febuari, 2006), hlm. 13.

[2] M.Yahya Harahap, *Pembahasan Hukum Perkawinan Nasional Berdasarkan Undang- undang Nomor 1 Tahun 1974*, Peraturan Pemerintah Nomor 9 Tahun 1974, Cet.I (Medan,.Zahir Trading Co, 1975), hlm.1.

[3] Indonesia, *Undang-Undang Perkawinan*, No. 1 Tahun 1974, Ps. 1.

Huwelijken Reglement Staatsblad 1898 Number 158);

3) The Indonesian Christian Marriage Ordinance or HOCI (Huwelijk Ordonantie Christen Indonesiers, Staatblad 1993 Number 74) which regulates marriage for Christians.

After the enactment of the Marriage Law, Article 66 of the Marriage Law states:

> For marriage and everything related to marriage based on this Law, with the enactment of this Law the provisions stipulated in the Civil Code (Burgerlijk Wetboek), Christian Marriage Ordinance (Huwelijke Ordonantic Christen Indonesiers, S. 1993 No. 74), Mixed Marriage Regulations (Regeling op de Gemengde Huwelijke Reglement S. 1898 No. 158), and other regulations governing marriage to the extent that it has been regulated in the Law. This law is declared invalid.

In the Marriage Law, there are two types of marriage conditions, namely:[4]

a. Material requirements, material requirements are conditions attached to the parties who enter into a marriage (also referred to as subjective conditions), which can be categorized into general material conditions and special material requirements.
   1) General Material Requirements, among others:
      a) There is the approval of the two prospective brides (Article 6 paragraph 1);
      b) Permission from both parents or guardians for the prospective bride and groom who is not yet 21 years old (Article 6 paragraph 2);
      c) The age of the prospective groom is 19 years old and the prospective bride is 16 years old, unless there is a dispensa-

[4] Wahyono Darmabrata dan Surini Ahlan Sjarif, *Hukum Perkawinan dan Keluarga di Indonesia*, (Jakarta: Badan Penerbit FHUI, 2015), hlm 25.

tion from the court (Article 7);

2) Special Material Requirements, which means the conditions regarding a person's self that must be met in order to be able to enter into a marriage, but only apply to certain marriages, the special material requirements consist of:
   a) Marriage permit, which is regulated in Article 6 of the Marriage Law.
   b) Certain prohibitions for marriage, as stated in Article 8 of the Marriage Law.

b. Formal requirements, namely requirements related to procedures or procedures for carrying out marriages according to religion and law (also called objective requirements), formal requirements consist of:
   1) Notification of marriage.
   2) Publication of marriage.
   3) Prospective husband and wife must show a birth certificate
   4) Deed containing permission to enter into marriage from those who must give permission or deed containing a decision from the court.
   5) If the marriage is for the second time, it must show a divorce certificate, a death certificate or in this case show a power of attorney certified by the marriage registrar.
   6) Evidence that the marriage announcement has taken place without prevention.
   7) Dispensation for marriage, in case dispensation is required.

According to Article 57 of the Marriage Law "What is meant by mixed marriage in this Law is marriage between two people who in Indonesia are subject to different laws, due to differences in citizenship and one of the parties is an Indonesian citizen."[5]

Mixed Marriage According to Law no. 1 of 1974 concerning Marriage Article 2 paragraph (1) of the Marriage Law states: "Marriage is legal if it is carried out according to the laws of each religion and

[5] Indonesia, *Undang-Undang Perkawinan*, Ps. 57.

belief". The article stipulates that the state recognizes a marriage if the law of their religion and belief recognizes it. This is an embodiment of the Pancasila philosophy by emphasizing the validity of marriage in terms of Law (State Law) and Religious Law. Whereas in the GHR and the Civil Code, marriage is only seen from the aspect of civil law.[6]

Article 56 paragraph (1) of the Marriage Law stipulates that marriages held outside Indonesia between two Indonesian citizens or Indonesian citizens and foreigners are valid if they are carried out according to the law in force in the country where the marriage is taking place and for Indonesian citizens it does not violate the provisions of this Law, namely: Marriage Law. So it can be said that in Law Number 1 of 1974, mixed marriages are marriages carried out by Indonesian citizens with foreigners in the absence of differences in religion or belief between the prospective husband and wife.

Referring to the contents of Article 2 paragraph (2) and Article 56 paragraph (2) of the Marriage Law, marriages carried out outside the territory of Indonesia must be registered at the competent authority in the local country and reported to the representative of the Republic of Indonesia in the country where the marriage takes place. If the local country does not organize marriages for foreigners, the registration is carried out at the local Indonesian Embassy (KBRI) which then records the marriage event in the Marriage Certificate register book and issues a Marriage Certificate. A husband and wife must register a marriage that has been carried out abroad to the local Civil Registry Office no later than 30 (thirty) days after the person concerned returns to Indonesia as described in Article 37 paragraph (4) of the Adminduk Law, namely:[7] "The marriage registration as referred to in paragraph (1) and paragraph (2) is reported by the person concerned to the Implementing Agency at his place of residence no later than 30 (thirty) days after the person concerned returns to Indonesia."

Prior to the provisions of Article 37 paragraph (4) of the Administrative Law, the obligation to register marriages was regulated in Article 56 paragraph (2) of the Marriage Law: "Within 1 (one) year after the husband and wife return to the territory of Indonesia, their marriage cer-

[6] Sudargo Gautama, *Segi-segi Hukum Peraturan Perkawinan Campuran*, hlm. 286.

[7] Indonesia, *Undang-Undang Administrasi Kependudukan Nomor 23 Tahun 2006 sebagaimana telah diubah dengan Undang-Undang Nomor 24 tahun 2013 tentang Perubahan atas Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan*, Ps. 37.

tificate must be registered in their domicile Marriage Registry."[8]

Distribution of Joint Assets Before and After the Marriage Agreement

The Marriage Agreement as stated in the Civil Code as well as in the Marriage Law is an agreement regarding the property of husband and wife during their marriage, which deviates from the principle or pattern established by the Act. Referring to Article 29 of the Marriage Law before the Constitutional Court Decision Number 69/PUU-XIII/2015, which states:

(1) At the time or before the marriage takes place, both parties with mutual consent may enter into a written agreement ratified by the marriage registrar, after which the contents also apply to third parties as long as the third party is involved.
(2) The agreement cannot be ratified if it violates the law, religion and sense of decency.
(3) The agreement takes effect from the moment the marriage is legalized
(4) The agreement takes effect from the moment the marriage is legalized

In addition, according to Article 73 of Presidential Regulation Number 25 of 2008 concerning Requirements and Procedures for Population Registration and Civil Registration, marriage agreements must also be reported to the Population and Civil Registry Office in Indonesia within 1 (one) year. This marriage agreement must be made with a notarial deed, besides that it can be made with a written agreement that is legalized by the Marriage Registrar, before the marriage takes place and comes into force since the marriage is legalized.

After the ratification of the Constitutional Court Decision 69/PUU-XIII/2015 the impact of the changes in the provisions in Article 29 paragraphs (1), (3), and (4) of the Marriage Law, became as follows:

(1) At the time, prior to holding or during the marriage bond, both parties with mutual consent may submit a written agreement which is legalized by the marriage registrar or notary, after which the contents also apply to third parties as long as the third party is involved. The agreement comes into force from the

[8] Indonesia, *Undang-Undang Perkawinan*, No. 1 Tahun 1974, Ps. 56 ayat (2).

moment the marriage is legalized, unless otherwise specified in the Marriage Agreement.

(2) As long as the marriage takes place, the marriage agreement can be regarding marital property or other agreements that cannot be changed or revoked, unless from both parties there is an agreement to change or revoke, and the change or revocation does not harm a third party.

The impact of the Constitutional Court's Decision therefore changes the norms for making a Marriage Agreement a Marriage Agreement with respect to when a Marriage Agreement is made, namely:

1. By allowing the making of a Marriage Agreement at the time, before it takes place, or during the marriage bond, it means that a marriage agreement can be made at any time, namely before marriage according to the law of each religion and belief, before the registration of the marriage by the Marriage Registrar or during the marriage.
2. The marriage agreement is valid from the time the marriage takes place, unless otherwise specified in the marriage agreement. The validity of the marriage agreement since the marriage agreement was made throughout the marriage period will not affect the marital property that has occurred before the marriage agreement is made.
3. As long as the marriage takes place with the approval of both parties (husband and wife) it is allowed to change or revoke the marriage agreement which can affect marital property or other agreements, as long as the changes and revocations do not harm third parties.

The Marriage Agreement must be registered and ratified. Prior to the Constitutional Court Decision Number 69/PUU-XIII/2015, the ratification of the Marriage Agreement was carried out at the time of registration of the marriage. If it is not recorded at that time, it cannot be validated. Late ratification of the Marriage Agreement can be done by requesting a District Court determination for those who are not Muslim, while for Moslems they can request a Religious Court stipulation, so that the marriage registrar can ratify the Marriage Agreement which is late to be ratified.

After the Constitutional Court Decision Number 69/PUU-XIII/2015, the ratification of the Marriage Agreement can be done at any time, not necessarily at the time of registration of the marriage.

In connection with whether or not the marriage agreement has been recorded by the marriage registrar, the marriage agreement does not apply to third parties but only applies to the parties who make it, namely only between the husband and wife, in accordance with the principle of Pacta sund servanda. This is as stated in the Supreme Court Decision Number 585 k/ Pdt/ 2012: "The recording of marriage agreements with marriage registrar employees is only related to administrative matters and proof of the existence of a marriage agreement for third parties, while for both parties the principle of Pacta sund Servanda applies."

The entry into force of the Marriage Agreement since the Marriage Agreement made throughout the marriage period will not affect the marital property that has occurred before the marriage agreement is made.

As long as the marriage takes place with the consent of both parties (husband and wife) it is allowed to change or revoke the marriage agreement regarding marital property or other agreements, as long as the changes and revocations do not harm third parties.

When a marriage agreement is made after the marriage without determining its validity, the legal consequences of the agreement come into force from the time the marriage takes place, which is followed by the status of the Joint Assets being separated if both parties wished to in the agreement, without having to obtain a court ruling regarding the separation of assets. Because the content of the agreement made by the parties is an agreement on the separation of assets which in the principle of freedom of contract, the parties are given the freedom to determine the content of the content, if in this case the parties have determined that the assets that previously had the status of Joint Assets became the property of each party, then it can be legally justified, so that even such assets obtained by husband and wife during the marriage take place either before or after the marriage agreement is made into the property of each husband and wife.

Basically, the Marriage Agreement cannot be changed or revoked unilaterally during the marriage period or during the marriage. However, the Marriage Agreement can be changed or revoked on the basis of the mutual desire of the parties,

namely the husband and wife together. Thus, unilateral changes to the Marriage Agreement are not allowed, but it is possible to change bilaterally. This is in accordance with the provisions of Article 29 paragraph (4) of the Marriage Law which states: "As long as the marriage lasts the agreement cannot be changed, unless from both parties there is an agreement to change and the change does not harm a third party."

As with the Agreement in general, there are several reasons to cancel the Marriage Agreement. The reasons can be grouped into 5 (five) categories, including:

a. Non-fulfillment of the requirements stipulated by law for the type of formal agreement, which results in the agreement being null and void;
b. Non-fulfillment of the legal conditions of the agreement, which results in:

Agreement null and void

If the agreement is null and void, it means that from the beginning an agreement has never been born, and thus there has never been an engagement. The following are reasons that cause an agreement to be null and void:

a) Canceled by law because the formal requirements are not met;
b) Canceled by law because the objective conditions for the validity of the agreement are not fulfilled;
c) Canceled by law because it was made by a person who is not authorized to carry out legal actions;
d) Canceled by law because there are null conditions that are met.

1) Agreements that can be canceled;

The agreement can be canceled if the agreement does not meet the subjective element for the validity of an agreement as stipulated in Article 1320 of the Civil Code, namely:

The agreement of the parties, and the ability of the parties to take legal actions. Article 1330 of the Civil Code states that “Incompetent to make agreements are: (1) minors;

(2) those who are put under custody."

c. Fulfillment of the void conditions in the type of conditional agreement;

d. Cancellation by a third party on the basis of actio pauliana;

e. Cancellation by a specially authorized party.

With the cancellation of the Marriage Agreement, the Marriage Agreement is null and void, meaning that it is considered from the start that an agreement has never been born, so that there has never been an engagement, so that a union of marital property is created between husband and wife from the Mixed Marriage, while the inherited property will remain under the control of each party who brought it into the marriage.

In accordance with the provisions of Article 35 Paragraph (1) of the Marriage Law that property acquired during the marriage becomes Joint Assets, then with the cancellation of the Marriage Agreement all property acquired during the marriage is Joint Assets. So that each party is entitled to half a share or 50% (fifty percent) of the Joint Assets.

In formal juridical terms, it can be understood that the definition of Joint Assets according to Article 35 Paragraph (1) of the Marriage Law is husband and wife's property obtained during marriage. It is not determined who gets the property, as long as the property is obtained during the marriage, it is a joint property. So that in this case the Plaintiff's original Appeal, Denis Anthony Michael Keet, still gets his share after the divorce, which is half or 50% (fifty percent) of the Joint Assets. So, in this case the author agrees with the consideration and decision of the judge.

Distribution of Joint Assets Due to Divorce

A marriage that is done legally will have legal consequences, including legal consequences in the field of Property Law. With the Marriage Agreement, it will minimize the possibility of conflicts regarding assets between husband and wife, both those obtained before the marriage and after the marriage takes place.

The effect of marriage on property is clearly regulated by Law Number 1 of 1974 which is regulated in Articles 35, 36. Article 35 provides an explanation of what is meant by joint property and inherited property. The use of joint property in marriage must be with the consent of the husband and wife where husband and wife have full rights to joint property together

with a balanced position. As for innate property, husband and wife have the full right of their own to manage the property. This is as regulated in Article 36 of Law Number 1 of 1974. In mixed marriages, it is recommended to the prospective husband and wife to make a marriage agreement for separation of assets or called a marriage agreement outside the property partnership before getting married. This is intended so that the husband and/or wife who are Indonesian citizens can still own land in the territory of Indonesia (with the status of Hak Milik, Hak Guna Usaha or Hak Guna Bangunan) or own shares in a company that is established according to the law in Indonesia where the shares must be owned. Indonesian citizen or Indonesian legal entity. For mixed marriages the consequences are the same as for marriages in general. However, for immovable objects, namely land in the form of property rights, cannot be owned by a husband or wife who is a foreigner. This is in accordance with the provisions of Article 21 paragraph (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles.

The main condition for the validity of a marriage agreement is the time when the marriage agreement is made. 1) Prior to the ratification of the Constitutional Court Decision Number 69/PUU-XIII/2015 Prior to the Constitutional Court Decision Number 69/PUU-XIII/2015, the Marriage Agreement was regulated in Article 29 of the Marriage Law:

(1) At the time or before the marriage takes place, both parties with mutual consent may enter into a written agreement ratified by the marriage registrar, after which the contents also apply to third parties as long as the third party is involved.

(2) The agreement cannot be ratified if it violates the boundaries of law, religion and morality.

(3) The agreement takes effect from the time the marriage takes place.

(4) As long as the marriage lasts, the agreement cannot be changed, unless from both parties there is an agreement to change and the change does not harm a third party.

The decision of the Constitutional Court Number 69/PUU XIII/2015, amend-

ing the provisions of Article 29 paragraphs (1), (3) and (4) of the Marriage Law which must be interpreted as follows:

(1) At the time, prior to holding or during the marriage bond, both parties with mutual consent may submit a written agreement which is legalized by the marriage registrar or notary, after which the contents also apply to third parties as long as the third party is involved.

(2) The agreement takes effect from the time the marriage takes place, unless otherwise specified in the Marriage Agreement.

(3) As long as the marriage takes place, the marriage agreement can be regarding marital property or other agreements that cannot be changed or revoked, unless from both parties there is an agreement to change or revoke, and the change or revocation does not harm a third party.

The impact of the Constitutional Court's decision has changed the norms for the entry into force of the Marriage Agreement with respect to when the Marriage Agreement is made, namely:[9]

By allowing the making of a Marriage Agreement at the time, before it takes place, or while in the marriage bond, it means that a marriage agreement can be made at any time, namely before marriage according to the law of each religion and belief, before the registration of the marriage by the Marriage Registrar or during the marriage.

When the marriage agreement takes effect, it is since the marriage took place, unless otherwise stipulated in the marriage agreement. The validity of the marriage agreement since the marriage agreement was made throughout the marriage period will not affect the marital property that has occurred before the marriage agreement is made.

It is permissible as long as the marriage takes place with the approval of both parties (husband and wife) to change or revoke the marriage agreement which can affect marital property or other agreements, as long as the changes and revocations do not harm third parties.

When a marriage agreement is made after the marriage without determining its validity, the legal consequences of the

[9] Herlen Budiono, *Demikianlah Akta Ini*, (PT Citra Aditya Bakti, 2018), hlm. 84.

agreement come into force from the time the marriage takes place, which is followed by the status of the Joint Assets being separated if both parties wished to in the agreement, without having to obtain a court ruling regarding the separation of assets. Because the content of the agreement made by the parties is an agreement on the separation of assets which in the principle of freedom of contract, the parties are given the freedom to determine the content of the content, if in this case the parties have determined that the assets that previously had the status of Joint Assets became the property of each party, then it can be legally justified, so that even such assets obtained by husband and wife during the marriage take place either before or after the marriage agreement is made into the property of each husband and wife.

Linguistically, Joint Assets are 2 (two) words consisting of the words treasure and joint. According to the Big Indonesian Dictionary, "Wealth can mean goods (money and so on) that become wealth and can mean valuable tangible and intangible wealth. Joint assets mean assets that are used (used) together.[10]

According to terminology, joint property is property that is obtained together with husband and wife during marriage. In Java, joint property is called gono gini, in Sunda it is called guna kaya, in Bugis it is called claw, or bali reso, in Banjar it is called taboo property, and so on.[11]

Joint assets are assets acquired as long as the marriage lasts from the time the marriage takes place until the marriage ends due to divorce, death or court decisions.[12] Although in each area the community recognizes joint property with different terms, the essence is the same. This similarity lies in the property of husband and wife which is attributed to joint property.

Regarding joint property, it is regulated in Article 35 paragraph (1) of the Marriage Law, which states: "Property acquired during marriage becomes joint property." In formal juridical terms, the definition of joint property according to Article 35 paragraph (1) of the Marriage Law is the property of a husband and wife obtained during marriage. It is not determined who gets the property, as long as

[10] Pusat Pembinaan dan Pengembangan Bahasa Departemen Pendidikan dan Kebudayaan, Kamus Besar Bahasa Indonesia, edisi kedua, Jakarta, Balai Pustaka, 1995, cet. Ke VII, hlm. 342.

[11] Andi Hamzah, *Kamus Hukum*, (Jakarta, Ghalia, 1986), hlm.232.

[12] Wahjono Darmabrata dan Surini Ahlan Syarif, *Hukum Perkawinan dan Keluarga di Indonesia*, (Jakarta: Universitas Indonesia, 2004), hlm. 96.

the property is obtained during the marriage, it is a joint property.

Joint assets include:

a. Assets acquired throughout the marriage;
b. Assets acquired as a gift, gift or inheritance if not so determined:
c. Debts that arise during the marriage take place except those which are the personal property of each husband and wife.

According to Article 35 paragraph (1) of the Marriage Law, joint assets of husband and wife only include assets obtained by husband and wife during the marriage, so that joint property includes the work and income of the husband, the work and income of the wife.[13]

According to Article 35 paragraph (1) of the Marriage Law, joint assets of husband and wife only include assets obtained by husband and wife during the marriage, so that joint property includes the work and income of the husband, the work and income of the wife.

Meanwhile, after the enactment of the Marriage Law, the property in marriage is regulated in Article 35 paragraph (1) and (2) of the Marriage Law. What is different is which part of the property becomes joint property. In the Civil Code, all property of husband and wife becomes joint property. In the Marriage Law, joint property is property acquired during the marriage, while property acquired before marriage becomes the innate property of each husband and wife. Inherited assets and property obtained by each as a gift or inheritance are under the control of each as long as the parties do not specify otherwise.

In this case, if before the marriage a Marriage Agreement has been made which essentially separates all the inherited and acquired assets between the husband and wife, then when the divorce occurs, each husband and wife only get the assets registered in their names.

CONCLUSION

The position of marital property before and after the marriage agreement is registered is that at the time before the marriage agreement was registered, the marriage agreement remained binding on the parties who made it, namely the husband and wife who made the marriage agreement in accordance with the principle of *pacta sund servanda*, so that if husband and wife The law requires that the assets with the status of Joint Assets be-

[13] J.Satrio, *Hukum Harta Perkawinan*, (Bandung: Citra Aditya Bakti, 1993), hlm. 66.

come the property of each party, then it is legally allowed, so that the assets obtained by the husband and wife during the marriage take place either before or after the marriage agreement is made into the property of each husband and wife. While the registered Marriage Agreement will also bind third parties.

In the marriage agreement, which is null and void, which means that from the beginning, an agreement has never been born, so there has never been an engagement. Therefore, in a mixed marriage, there are joint assets that must be divided between husband and wife after the marriage ends due to divorce, namely each party gets 50% (fifty percent) or half of the joint property.

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