

PROPERTY SEPARATION AGREEMENT MADE AFTER A MIXED MARRIAGE AS AN EFFORT TO MAINTAIN OWNERSHIP RIGHTS TO IMMOVABLE OBJECTS

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ABSTRACT

This investigate points to analyze the legitimate results of legal officials who take part in adulterating archives to form bona fide deeds. The investigate strategy is regulating. The source of legitimate materials utilized is auxiliary legal materials. The approach utilized may be a statutory approach, the Respectful Code, Laws Number 16 of 2019 amendments to Law Number 1 of 1974 concerning Marriage. The comes about of this inquire about are the criticalness of a marriage assention to isolated resources between spouse and spouse that were gotten amid the marriage and made some time recently the marriage took put, some time recently a Public accountant, particularly for relational unions of Remote Citizens (WNA) and Indonesian Citizens (WNI). Along With the Sacred Court Choice Number 69/PUU-XIII/2015, marriage understandings can be made either some time recently the marriage takes put or amid the marriage. The second result is that the ownership of non-indigenous property by indigenous peoples is their right to use the house and the right to use it, and the duration of each right is determined by law. Indian nationals who have entered into a joint partnership are eligible for arrival status. , it is true to show the division of common property, especially through the agreement of the division of property.

Keywords: Mixed marriage, Ownership Status, Foreign Citizen

INTRODUCTION

Progressively modern innovation is presently verification that improvement is fast through communication instruments. Right now, numerous of our individuals are wedding remote nationals (WNA). In truth, one of the foremost trending presentation forms with outside citizens through innovation is through social networks³, such as through Facebook, Twitter, etc. which can effortlessly interface communication between one nation and another, as well as other presentation channels with individuals. -individuals overseas. These days, numerous Indonesians, hereinafter alluded to as Indonesian citizens, choose to wed outsiders, hereinafter alluded to as nonnatives. The right to marry for Indonesian citizens is regulated in the 1945 Constitution of the Republic of Indonesia Article 28 B paragraph 1 that every person has the right to form a family and continue their offspring through a legal marriage. The marriage involved in it is not bound by color, race or ethnicity. This includes the legal acceptance of marriage with strangers... A marriage between an Indonesian citizen (WNI) and a foreign citizen (WNA) could be a blended marriage.. If a marriage is between two Indonesian citizens of different religions, it is not considered a mixed marriage, but rather an interfaith marriage (Irma Devita, 2014: 155).

The definition of marriage under Article 1 of the Marriage Act No. 1 of 1974 (UUP) allows for a supernatural and physical relationship between a man and a woman who are partners and cohabitants in the sense of creating a happy and eternal family (familia). According to the beliefs of the Almighty God, it is considered that mixed marriage according to Article 57 of the UUP can be married between two people in Indonesia, without a collection of citizenship and a class action application since one of the parties is Indonesian. citizen You can get it. .. A marriage solemnized exterior Indonesia between an Indonesian citizen (WNI) and a outside citizen (WNA) is substantial on the off chance that it is carried out concurring to the laws in constrain within the nation where the marriage takes put. Indeed in spite of the fact that it is allowed by law, of course there are a few drawbacks to this blended marriage. Apart from cultural differences, they are also related to property. Most people who get married generally do not think about the impact of their marriage on their assets, because they only look at and focus more on family law. Bearing in intellect that proprietorship of property/immovable objects that are allowed for outsiders is restricted to arrive with the status of Right to Utilize or Right to Rent, be that as it may, this could be avoided on the off chance that in a blended marriage the parties, in this case the Indonesian citizen and the outsider, make a prenuptial understanding with respect to partition. assets first before the marriage takes place, this is to protect the rights of Indonesian citizens. Based on the explanation above, the author will study further regarding property separation agreements made after mixed marriages as an effort to maintain ownership rights to immovable objects.

FORMULATION OF THE PROBLEM

1. What is the urgency of the post-marital property separation agreement between Indonesian citizens and foreigners?
2. What is the ownership status of immovable objects regarding marriages between Indonesian citizens and foreigners?

RESEARCH METHODS

The sort of investigate utilized in this inquire about is doctrinal with a standardizing approach. The approach utilized could be a statutory approach, specifically the Structure of the Republic of Indonesia of 1945 and Law Number 16 of 2019 concerning Alterations to Law Number 1 of 1974 concerning Marriage. The legal materials utilized are auxiliary lawful materials within the frame of enactment, diaries, books and articles, the information investigation strategy utilized is subjective and the comes about of the examination are displayed in a expressive way, from which answers to issues will be gotten and conclusions can be drawn on the answers to these issues.

DISCUSSION

The direness of the assention on the division of conjugal resources between Indonesian citizens and nonnatives

A marriage contract is an agreement approved by the Marriage Decision Center about the location of resources in the marriage that the couple agrees for themselves and for third parties that cannot be restricted during the marriage. This implies that legitimately making a marriage understanding in Indonesia can as it were be made some time recently the marriage takes put (Umar, 2017: 88). Regulations related to making marriage agreements regarding the separation of assets made after the marriage has taken place are not regulated in various statutory provisions governing marriage, however, in accordance with developments occurring in modern society, it is very possible to make marriage agreements regarding the separation of assets made after the marriage has taken place, namely based on the District Court Determination. Based on arrangements that apply generally, the Area Court is denied from dismissing each case and/or request submitted by the open, as intended in Article 22 AB (Algemene Bepalingen Van Wetgeving voor Indonesie) which states that "When a judge refuses to resolve a case with the reason that the relevant statutory regulations do not mention it, are unclear, or incomplete, then he can be prosecuted for refusing to prosecute."

Lawfully, issues with respect to marriage understandings are directed in Law Number 1 of 1974 concerning Marriage, contained in Article 29. The article defines:

- (1) At or some time recently the marriage takes put, both parties, by common assention, can enter into a composed assention confirmed by the marriage recorder, after which the substance moreover apply to third parties as long as the third party is included. The agreement cannot be ratified if it violates the limits of law, religion and morality.
- (2) The understanding comes into impact from the time the marriage takes put.
- (3) As long as the marriage keeps going, the understanding cannot be changed, unless both parties concur to alter it and the alter does not hurt a third party.

There are differences in making marriage agreements in the Civil Code and the Marriage Law, Article 147 of the Civil Code reads

"A marriage agreement must be made with a notarial deed before the marriage takes place, and will be invalid if it is not made like that. The agreement will come into force at the time the marriage takes place, no other time may be specified."

It is also confirmed in article 148 of the Civil Code which reads:

"Changes in this matter, which should be made before the marriage takes place, cannot be made other than by deed, in the same form as the deed of agreement previously made. Moreover, no changes are valid if it is held without the presence and permission of the people who have attended and agreed to the marriage agreement."

This means that as long as the marriage continues in any way, the marriage agreement cannot be changed.

Therefore, there are differences between the provisions for making marriage agreements between the Civil Code and the Marriage Law, namely:

1. According to the Stamp Act, consent to marriage must be given through a notarized deed. Of course, this is an insult to the fact that the understanding of marriage in the Marriage Act is not achieved by a notarial application, but by the agreed terms. This indicates that the choice can be made by the parties who express the understanding of marriage through real work or through practice. hands down.
2. According to the Gracious Code, a marriage understanding cannot be changed in any way, but agreeing to the Marriage Law, the guideline is that a marriage assention cannot be changed, but can be prohibited on the off chance that the parties have already guaranteed that it can be changed. Once the request for a determination of the facts under Article 29 of the Marriage Act No. 1 of 1974 was granted, the judge granted the plaintiff's request under Article 29 of the Marriage Act as follows:..
 - (1) At any time during or after the marriage, the parties may adopt a decision by mutual agreement, approved by the marriage clerk or court officer, which may be applied to other third parties. This includes third parties.
 - (2) The understanding cannot be approved on the off chance that it abuses the boundaries of law, religion and ethical quality.
 - (3) The assention comes into drive from the time the marriage takes put, unless something else indicated within the marriage understanding.
 - (4) As long as the marriage is in advance, the marriage assention may concern conjugal property or other assentions, cannot be changed or disavowed, unless both parties concur to alter or deny it, and the alter or disavowal does not hurt a third party.

In the Civil Code and UUP there are no regulations regarding the making of a marriage agreement regarding the separation of assets after the marriage takes place. However, in the Civil Code it is possible for parties to enter into agreements that are not regulated at all in the Civil Code (Burgelijk Wetboek/BW), the Commercial Code (Wetboek van Koopgandel/WvK) or other laws. These agreements can apply in BW as in book III Titles I-IV (Villa Satya Gama, 2019: 10). Marriage agreements should not only be made privately, but should be made notarially, where the marriage agreement is made before a Notary and registered at a marriage registrar, namely the Religious Affairs Office (KUA) for Muslims and the Civil Registry Office (Capil) for non-Muslims. (Article 29 of the Marriage Law). If it is not ratified by the relevant marriage registrar, then legally, the marriage taking place is considered a marriage of mixed assets (Villa, *ibid*).

It is additionally diverse from the marriage understanding after the Protected Court's choice. It can be summarized as takes after:

1. Previously, the marriage understanding contained in Article 29 of the Marriage Law seem as it were be made some time recently the marriage took put or at the time the marriage took put, with the Protected Court Choice Number 69/PUU-XIII/2015, the marriage assention may well be made either some time recently the marriage took put or amid the marriage. marriage bond. This Sacred Court choice gives great news for spouse and spouse couples who have entered into a marriage but have not however made a marriage understanding. With this option, cohabitants and married people have the opportunity to properly approve the marriage. This is an amazing story about interracial

- couples. You can enter SHM in the name of an Indonesian citizen connected to an intangible asset...
2. Previously, marriage understandings may as it were be approved by marriage recorder representatives, but after Sacred Court Choice Number 69/PUU-XIII/2015 marriage assentions can be confirmed by marriage enlistment center workers or Legal officials. One extra party who has the specialist to confirm a marriage understanding may be a legal official. In Article 1 of Law Number 2 of 2014 concerning the Position of Public accountants as an Revision to Law Number 30 of 20114 concerning the Position of Legal officials, which peruses (hereinafter referred to as UUJN) "A public accountant may be an open official who has the specialist to create bona fide deeds and has other specialists as expressed in alluded to in this Law or based on other Laws.
 3. Already, marriage understandings came into affect from the time the marriage took put, but after the Ensured Court Choice Number 69/PUU-XIII/2015, marriage assentions came into affect from the time the marriage took put, unless something else shown inside the marriage understanding. Which implies that the marriage understanding can not as it were be substantial at the time of marriage, it can be decided something else in agreement with the understanding within the marriage understanding (Andy Hatanto, 2012: 17).

Ownership status of immovable objects upon marriage between an Indonesian citizen and a foreigner

Not signing a pre-nuptial separation agreement does not result in land rights in the form of land ownership, right of exploitation (HGU), right of use of the house (HGB) and right to own a house. up. HGB land. However, they can become holders of usage rights. Alluding to the arrangements contained in Article 3 Section (1) PP 103/2015, the State has given security for ensured rights which guarantees that Indonesian citizens who marry pariahs can have the same rights as Indonesian citizens in common, but the rights to reach are not joint assets from blended social unions, typically regularly illustrated by the nearness of an understanding for the division of assets between Indonesian citizens and nonnatives made by notarial deed. This article stipulates a special requirement in order to guarantee equality of rights for Indonesian citizens in mixed marriages regarding ownership of land, namely their obligation to prove the existence of separation of joint assets through a property separation agreement. However, this obligation to prove creates various problems regarding the position of the property separation agreement because it is not explicitly regulated in PP 103/2015.

Utilize rights are controlled in Article 41-Article 43 of the UUPA. Utilization rights are the proper to utilize and/or collect the continues from arrive controlled straightforwardly by the State or arrive having a place to another individual, which gives authority and commitments indicated within the choice to allow it by the official authorized to allow it or in an understanding with the arrive proprietor, which isn't a rental assention. or arrive administration assention, as long because it does not strife with the soul and arrangements of this law. The proper to utilize can be held by a remote citizen (WNA), so there are no issues indeed in the event that the accomplice still has the status of a remote citizen (WNA). Based on Article 45 of Government Direction no. 40 of 1996, utilize rights can be allowed on arrive with the status of State arrive, arrive with administration rights and arrive with proprietorship rights. The term of use rights is 25 (twenty five) years and can be extended for a period of 20 (twenty) years (Ahmadika Safira Edithafitri, 2015: 81). According to Winanto Wiryomartani in the online Legal Clinic article, married couples who marry without a marriage agreement, and this takes place before the 1 (one) year period is registered, land rights may still be transferred to a third party. If it turns out that the marriage has passed 1 (one) year, the provisions on Property Rights and Building Use Rights (HGB) in the UUPA apply.

As the provisions contained in article 21 paragraph (3) UUPA state that:

"Outsiders who, after the sanctioning of this law, get property rights due to legacy without time/combination of resources due to marriage, as well as Indonesian citizens who have property rights and after the sanctioning of this law lose their citizenship, are obliged to give up these rights inside 1 a long time since the correct was obtained/loss of citizenship. "If after this period of time has passed, the property rights are not released, then these rights are extinguished by law and the land falls to the State provided that the rights of other parties encumbering it continue."

Based on the provisions of Article 21 paragraph (1) UUPA, it states that only Indonesian citizens can have ownership rights to land. With respect to the legitimacy and lawfulness of property rights, two standards are known, the primary is the rule of "Nemo furthermore juris transfere potest quam ipse habet", meaning that no one can exchange or provide something to another individual that surpasses his or her rights or what he or she possesses. Second, the principle of "Nemo sibi ipse causam possessionis mutare potest", meaning that no one changes for himself or his own interests the purpose of using the object. These two principles confirm the strength of ownership rights over land, namely the broad authority of the owner to carry out actions on land with the status of ownership rights, the power of the ownership rights holder to always be able to defend his property rights from interference from other parties, and all the privileges of ownership rights. the value of legality and halalness guaranteed by these two principles, then to guarantee the legal policy regarding restrictions on ownership of land rights as stipulated in the UUPA articles, only Indonesian citizens can have ownership rights to land.. It is possible for Indonesian citizens in mixed marriages to own land with ownership status provided that the mixed marriage couple has a marriage agreement, which regulates the separation of assets between husband and wife. With a marriage agreement regarding the separation of assets, there will be no mixing of assets so that the assets owned by the husband and wife belong to each other.

CONCLUSION

1. In the Gracious Code and UUP there are no directions with respect to the making of a marriage assention with respect to the partition of resources after the marriage takes put. The marriage understanding will direct the arrangements and assentions with respect to individual property, acquired resources, obligations and other resources between spouse and spouse. In Indonesian law, marriage assentions are controlled in Articles 139-185 of the Gracious Code. With the Protected Court Choice Number 69/PUU-XIII/2015, marriage assentions can be made either some time recently the marriage takes put or amid the

marriage.

2. The arrangements of Article 21 passage (1) UUPA, states that as it were Indonesian citizens can have possession rights to arrive. With respect to the legitimacy and legitimateness of property rights, two standards are known, the primary is the guideline of "Nemo furthermore juris transfere potest quam ipse habet", meaning that no one can exchange or grant something to another individual that surpasses his or her rights or what he or she claims. So that nonnatives can possess rights to mobile objects by implies of Right to Utilize and Right to Utilize Building concurring to the time decided by law.

BIBLIOGRAPHY

Irma Devita Purnamasari 2014. Smart, Easy and Wise Tips for Understanding Inheritance Law Issues. Bandung: Mizan Pustaka.

Ahmadika Safira Edithafitri. Status of ownership of immovable objects in mixed marriages in Indonesia, *Lex Privatum*, (Vol.III/No. 1/Jan-Mar/2015)

Umar Haris Sanjaya. 2017. Aunur Rahim Faqih, Islamic Marriage Law in Indonesia. Yogyakarta: GAMA MEDIA Yogyakarta.

Villa Gama. 2019. The legal force of proof of the property separation agreement made after a mixed marriage in order to maintain ownership rights to property. Malang: Brawijaya.

J.Andy Hartanto.2012.Matrimonial Property Law According to "Burgerlijk Wetboek" and the Marriage Law.Yogayakarta; Laksbang Graphics.

Shanti Rachmadsyah, Land Ownership Status for Foreigners Who Have Become Indonesian Citizens, accessed from m.hukumonline.com/klinik/detail/lt4c357b4ca7a7/land-ownership-status-for-foreigners-who-have-become-WNI, on January 10 2024, 19.40 WIB.

Law Number 1 of 1974 concerning Marriage

The 1945 Constitution of the Republic of Indonesia

Government Regulation Number 103/2015

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