PROPHETIC LAW REVIEW
Volume 2, Issue 2, December 2020

ROLES OF NOTARY IN DRAWING UP MARRIAGE AGREEMENT AFTER CONSTITUTIONAL COURT DECISION NUMBER 69/PUU-XIII/2015

Honggo Hartono[1]

Citation Guide:
Honggo Hartono, '**ROLES OF NOTARY IN DRAWING UP ARRIAGE AGREEMENT AFTER CONSTITUTIONAL COURT DECISION NUMBER 69/PUU-XIII/2015**' [2020] 2 (2) Prophetic Law Review 4.

Received:
18 February 2020
Accepted:
18 November 2020
Published:
28 December 2020

DOI:
10.20885/PLR.vol2.iss2.art4

Abstract

The objective of this study was to determine how Notary can play a role in creating a better legal certainty in relation to drawing up a marriage agreement after the issuance of Constitutional Court Decision Number 69/PUU-XIII/2015 on October 27, 2016. This was a normative study using a case approach as well as a statute approach and a conceptual approach. The results showed that after the issuance of Constitutional Court Decision Number 69/PUU-XIII/2015 on October 27, 2016, marriage agreements shall no longer be regarded as something which is materialistic, selfish, unethical, or not in accordance with the Eastern culture among today's society. The Constitutional Court Decision has indirectly demonstrated another function and changed the general opinion of marriage agreements which, so far, are considered to only contain or only focus on issues related to the arrangement of property in marriage. There is actually a principle difference between the Law of Marriage and the Civil Code of the Republic of Indonesia, particularly after the issuance of Constitutional Court Decision. The law no longer requires Notarial Deed for a marriage agreement. However, the law requires the agreement to be written, and it can be made any time as long as the marriage is still ongoing, and the agreement can contain matters other than property in marriage, such as citizenship issues. In order to create a better legal certainty, justice and expediency, the marriage agreement should be drawn up in the presence of a Notary.

Keywords: *Notary, Prenuptial agreement, Legal certainty.*

[1] Public Notary in East Java Province. Email: honggoha@gmail.com

A. Introduction

There have been many definitions by experts regarding marriage agreement, including:

a. Marriage agreement is an agreement made between a man and a woman before marriage/pre-marriage, drawn up in the presence of a Notary;[2]
b. a marriage agreement *(huwelijks* or *huwelijkse voorwaarden)* is an agreement made by bride and groom before the marriage takes place, to regulate any effects of the marriage concerning property;[3]

Article 114 and Article 115 paragraph (1) of the new Civil Code in the Netherlands do not mention a definition of Marriage Agreement, but only state that, Marriage Agreement can be drawn up either by prospective spouse before marriage or by a spouse when the marriage already takes place and it must be drawn up with a Notarial Deed, on the threat of nullity.[4] Hamaker, as cited by Herlien Budiono, defines marriage agreement *(huwelijkse voorwaarden)* as, *"(...)* any agreement by prospective spouse related to a legal marriage that will take place, regardless of the content of the agreement*."*[5]

Based on the abovementioned definitions, it can be concluded that marriage agreement is an agreement made by prospective husband and wife before the marriage takes place which aims to regulate the consequences of the marriage between them. As an agreement, the marriage agreement would be subject to the provisions, including the definition of an agreement, which specifically regulate marriage-related issues.

Prior to the issuance of Law Number 1 of 1974 concerning Marriage, a marriage agreement had to be written in the presence of a Notary before the marriage took place.[6] This is different compared to what is regulated in the Indonesian Law of Marriage which states that, even though a marriage agreement must be written, it does not have to be in the presence of a Notary; it can be drawn up either before the marriage takes place or at the

[2] Mulyoto, *Perjanjian: Tehnik Cara Membuat Dan Hukum Perjanjian Yang Harus Dikuasai* (First Published, Cakrawala Media 2012) 64.

[3] R Soetojo Prawirohamidjojo and Marthalena Pohan, *Hukum Orang Dan Keluarga: Personen En Familie-Recht* (Cetakan keempat, Pusat Penerbitan dan Percetakan Unair 2008) 74.

[4] Art. 114 Huwelijkse voorwaarden kunnen zowel door aanstaande echtgenoten vóór het sluiten van het huwelijk als door echtgenoten tijdens het huwelijk worden gemaakt. Art. 115 – 1 Huwelijkse voorwaarden moeten op straffe van nietigheid bij notariële akte woorden aangegaan. RJQ Klomp and Chantal Mak, *Burgerlijk Wetboek 2012/2013* (Ars Aequi Libri 2012) 36.

[5] Budiono, *Demikian Akta Ini : Tanya Jawab Mengenai Pembuatan Akta Notaris Di Dalam Praktik* (PT Citra Aditya Bakti 2018) 80.

[6] Indonesian Civil Code Article 147 (1). On the threat of nullity, any marriage agreement must be drawn up by notarial deed before the agreement takes place. (2). The agreement comes into force from the moment the marriage takes place; it shall not be determined another time. R Subekti, *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)* (R Tjitrosudibio tr, 35th edn, Pradnya Paramita 2004) 35.

time of the marriage.[7] Another difference is, according to the Indonesian Civil Code, the marriage agreement could not be modified throughout the marriage, while according to the Indonesian Law of Marriage, the marriage agreement can be modified any time based on an agreement between the husband and wife – in fact, many experts used to disagree with this provision. According to the Indonesian Civil Code, marriage is liberal, i.e. marriage is a mere agreement[8], while according to the Indonesian Law of Marriage, marriage is something different[9], i.e. it prioritizes religious-spiritual aspect as the one which distinguishes it from the definition of marriage based on secular perspective.

Even though there are a number of different definitions between the Indonesian Civil Code and the Indonesian Law of Marriage, in drawing up a marriage agreement, a Notary still adheres to the 3 (three) main forms and contents of a marriage agreement as stated in the Indonesian Civil Code, namely (1). Marriage Agreement with Community of Profit and Loss[10]; (2) Marriage Agreement with Community Income;[11] and (3) Marriage Agreement with no Community of Property.[12] Actually there has been a principle difference, in which the Indonesian Law of Marriage is more oriented to the spiritual-religious aspects, as well as pluralism in regulating family law, including marriage law. For example, property that has been owned by each party before a marriage takes place remains the property of the person concerned, similarly properties to be obtained during the marriage

[7] Indonesian Civil Code Article Article 29 paragraph (1): At or before a marriage takes place, on behalf of a collective agreement the two parties can enter into a written agreement which is legalized by the marriage registrar, after which the contents also apply to a third party as long as the third party is involved. *Ibid* 546-547.

[8] Indonesian Civil Code Article 28, *"Asas perkawinan menghendaki adanya kebebasan kata sepakat antara kedua calon suami-istri."*

[9] Law No. 1 of 1974 on Marriage Article 1 "Marriage is a physical and mental bond between a man and woman as a husband and wife intended to create a happy and eternal family (household) based on the Almighty God.

[10] Marriage agreement with community of Profit and Loss is that all profits (each increase in assets resulting from the results of the wealth and income of each) and all losses (each decrease in assets resulting from expenses that exceed income) will be shared or carried equally, provided that the assets which have been owned or obtained remain the property of each of them.

[11] Marriage agreement with Community Income is generally similar to the marriage agreement with Community of Profit and Loss, except that if there is a loss only the husband will bear it, while the wife will not.

[12] Marriage agreement with no Community of Property means that between husband and wife there is no joint ownership of assets in the marriage; both the assets that have been owned and those that are to be obtained by each spouse will remain separate under the ownership of each spouse. However, it should be noted, that based on the provisions of Article 144 of Indonesian Civil Code and generally accepted teachings, that even though there is a marriage agreement with no Community of Property, it does not mean that there is no Community of Profit and Loss, so the absence of Community of Profit and Loss must also be stated in the Agreement.

by gifts, inheritance, or grants are also the properties of the respective parties, and law concerning joint property settlement after a marriage is terminated due to divorce.

Marriage agreement which is made by the parties (husband-wife) in the presence of a Notary, in general, starts from an issue related to property in marriage. This can be clearly seen in Article 1 of each deed of marriage agreement in the presence of a Notary, and the contents are usually only copied from other existing deeds of marriage agreement.[13]

Constitutional Court Decision Number 69/PUU-XIII/2015 issued on October 27, 2016 as mentioned above has actually changed the map of the marriage agreement that had previously existed. For examples, the decision allows marriage agreement to cover citizenship-related issues; it was strictly regulated that marriage agreement could only be drawn up before or when the marriage took place, but the decision allows the agreement to be drawn up any time throughout the marriage.[14] Such decision was based on a petition by Ike Farida, who had intermarried with a foreigner, making her lose her rights to land. By the presence of a marriage agreement, it was believed that Ike Farida would not have to renounce her citizenship, thus allowing her to have her rights to land.[15]

The role of a Notary seems to be increasingly important in drawing up a marriage agreement after the issuance of the abovementioned Constitutional Court Decision. A marriage agreement previously could be written without the presence of a public official (Notary), but the decision requires a marriage agreement to be completed with a Notarial Deed, as mentioned in Article 3 of Government Regulation Number 103 of 2015 concerning the Ownership of Residence or Dwelling by Foreigners domiciled in Indonesia, which states that a marriage agreement between a husband and wife is drawn up with a Notarial Deed.[16] Similarly, the Letter of the Director General of Population and Civil Registration issued on May 19, 2017 Number 472.2/5876/Dukcapil, and Letter of the

[13] Marriage agreements in Indonesia regulate property in marriage and the property already owned by a married couple. See: Dyah Ochtorina Susanti, 'Perjanjan Kawin Sebagai Bentuk Perlindungan Hukum Bagi Pasangan Suami Istri (Perspektif Maqashid Syariah)' (2018) 1 Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam 2-5.

[14] *Ibid.*

[15] NAYARA Advocacy, 'Keberlakuan Putusan MK tentang Perjanjian Kawin Terhadap Perkawinan WNI'(*hukumonline.com/klinik*)<https://www.hukumonline.com/klinik/detail/ulasan/lt5847e8ddabfea/keberlakuan-putusan-mk-tentang-perjanjian-kawin-terhadap-perkawinan-wni/> accessed 15 January 2020.

[16] Budiono., *Op. Cit.,* 84-85.

Ministry of Religious Affairs of the Republic of Indonesia issued on September 28, 2017 Number B.2674/DJ.III.KW.00/9/2017 also mention "with Notarial Deed". [17]

According to the interpretation of the Law of Marriage after the issuance of the Constitutional Court Decision, a marriage agreement does not have to be in the form of a notarial deed, but most importantly it has to be written. This means that the Notarial Deed is not a requirement, thus the agreement can also be made under hand because the most important thing is the legalization as well as the aspect of publicity which binds the third party related. Even so, it should be noted that agreements, in this case a marriage agreement, should have complete evidentiary strength, and for that reason, it is necessary to involve public official, i.e., a Notary, in the drawing up of the agreement. In addition, a Notary is considered to have more knowledge about legal aspect and good moral. Most importantly, a Notary is prohibited from taking sides.

As elaborated above, in the practice of their profession, Notaries, particularly in drawing up Deeds of Marriage Agreement, mostly refer to the existing Deeds of Marriage Agreement as an example. The contents of these deeds are based on the colonial Civil Code, which is generally considered to be liberal and focus on property in marriage. With the differences in the principles and provisions of marriage between the Indonesian Civil Code and the Indonesian Law of Marriage after the issuance of the Constitutional Court Decision as mentioned above, it is necessary to conduct a review regarding the forms and contents of marriage agreement which has existed and applicable in society, as well as the roles of Notary in drawing up the agreement, in order to create legal certainty, justice, and expediency.

B. Problem Formulation

How is the role of a Notary in drawing up ideal contents of a marriage agreement, particularly after the issuance of Constitutional Court Decision Number 69/PUU-XIII/2015 on October 27, 2016, in order to create complete evidentiary strength, legal certainty, justice and expediency and to not harm other parties, in order to be in accordance with the ideology of the Indonesian nation, namely Pancasila.

C. Methodology

Each expert has different methods or ways of classifying legal research.[18] This study was conducted to determine the reason or rationale for issuing Constitutional Court

[17] *Ibid.*

Decision No. 69/PUU-XIII/2015 on October 27, 2016 in order to be used in the practice of drawing up a marriage agreement, particularly by a Notary, to be correlated with various related laws, both existing and non-existing laws, including the law of notarial affairs.

This was a normative research which mainly focused on analyzing a Constitutional Court Decision. This study used a case approach, aimed to determine the *ratio decidendi* for the decision. To support the case analysis, legislation was also needed through a statute approach. In addition, the theory/doctrine/principle to analyze the decision was also needed, so a conceptual approach was also used. Further, since the decision covered both pre and past-nuptial agreement (i.e., that a marriage agreement can be drawn up before, during or throughout the marriage), comparing with the systems applicable in other countries was relevant and important so a comparative approach was used. This way, the analysis was more comprehensive.

The legal materials used covered primary legal materials in the form of laws; secondary legal materials in the form of literature related to positive law which included articles in journals or legal magazines, papers and textbooks; and tertiary legal materials in the form of dictionaries and encyclopedias.

Based on an analysis of both primary and secondary data, followed by an analysis using the abovementioned approaches, if not dialectical, "trying to see the similarity between theory and practice with the contradiction between *das Sein* and *das Sollen* between what is and what should be. Dialectical thinking is concrete thinking, integral thinking, and comprehensive thinking. Dialectical thinking is to see reality as something which is not static, but dynamic; dialectical thinking is to see an event related to a person".[19] Afterwards, conclusions were drawn in relation to what and how a marriage agreement should be drawn up.

D. Discussion and Result

However, the author has long believed that such opinion, i.e., that a marriage agreement has to be drawn up before or at the time the marriage takes place and that the

[18] Bagir Manan, 'Metode Penelitian Hukum Lintas Disiplin' [2012] *Majalah Hukum Varia Peradilan Tahun XXVII No.315*, 5.

[19] A Gunawan Setiardja, *Dialektika Hukum Dan Moral Dalam Pembangunan Masyarakat Indonesia* (Cet 1, Kanisius ; Gunung Mulia 1990) 113.

agreement cannot be drawn up any time throughout the marriage, is unfair and harms justice.[20]

The author has an opinion that, in fact, we can make an extensive or sociological interpretation[21] using Article 29 Paragraph (4) of the Law of Marriage which states that, as long as the marriage takes place, the agreement (marriage agreement) cannot be modified, unless there is an agreement (or based on the agreement of the parties) to modify and the modification does not harm the third party.

Based on the abovementioned provision, it can actually be interpreted that it is not true that marriage agreement cannot be modified, but it is important to focus more on the legal consequences resulting from the modification of the marriage agreement, especially for the third parties. This way, modifying marriage agreement should not be seen only from the perspective of the husband-wife, but also pay attention to the interests of the third parties affected by the modification of the marriage agreement.

There are many concrete things and the results of contemplation done by the author which also support the opinion that a marriage agreement manages the absence of community of property of the marriage between a husband and wife and the opinion that a marriage agreement can be drawn up any time deemed to be necessary by the husband and wife as long as agreed by the two parties and not harming others, including:

a. In an ongoing marriage without a marriage agreement, it turns out that the husband - or conversely the wife - is a spendthrift, who has huge debts, so debt collectors often come to their house to collect debts from the husband or the wife who may never know or even enjoy these debts. It may be assumed that, between the husband and wife, there is a community of property, thus what is owned by the wife or the husband, 1/2 (half) of it is owned by the other spouse.[22]

[20] Compare: Agus Hernoko and others, 'Nuptial Agreement in Indonesia: A New Change in Indonesian Marriage Law', *Proceedings of the International Conference on Law, Governance and Globalization 2017 (ICLGG 2017)* (Atlantis Press 2018) <http://www.atlantis-press.com/php/paper-details.php?id=25902321> accessed 15 January 2020.

[21] Extensive interpretation is interpretation that goes beyond the limit set by grammatical interpretations, for example the word "sell" which is interpreted as not merely selling but also "all kinds of intermediation". On the other hand, sociological or teleological interpretation is to apply a law that is outdated but still applicable to today's needs. See: M Sudikno Mertokusumo and A Pitlo, *Bab-bab tentang penemuan hukum* (Citra Aditya Bakti : Konsorsium Ilmu Hukum, Departemen Pendidikan dan Kebudayaan : The Asia Foundation 1993) 15, 20.

[22] Compare; in terms of the socio-cultural aspect, a marriage agreement is usually drawn up if there is a greater amount of wealth on one of the parties; it is also to avoid any possibility of bankruptcy or involvement of one of the parties with existing and future debts, especially if the parties or one of them has had a family, children and property. The fact that a marriage agreement is drawn up has legal, psychological, sociological and cultural consequences for the parties as well as for the third parties. Yulies Tiena Masriani, 'Perjanjian Perkawinan Dalam Pandangan Hukum Islam' (2013) 2 Serat Acitya (Jurnal Ilmiah) 128.

b. When a divorce occurs, even though it is never expected by either the husband or the wife, then the issue of community of property in marriage often takes a lot of time, energy, and money [23]; and
c. Another example is the disappearance of Malaysia Airlines Flight MH-370 on March 8, 2014, from Kuala Lumpur International Airport to Beijing Capital International Airport. If there was a husband or wife who became a passenger on the flight, then the spouse at home required a certain amount of money and therefore had to sell their house, then s/he had to obtain the consent of the spouse (the husband or wife who was on the flight) prior to selling it. However, it was impossible to do it, while the notice of death was not available. A possible solution was to use *afwezigheid* as stipulated in Article 463 of the Indonesian Civil Code and so on, which required a complicated procedure, one of which was to wait for at least 5 (five) years since the presence was unknown.

This seems to have sufficiently shown how unfair it is if the marriage agreement is *letterlejk,* which is interpreted to be drawn up before or at the time the marriage takes place, or it cannot be drawn up anytime deemed necessary. Things will be different if the husband or wife can make or have a marriage agreement any time. Fortunately, such debate or concern has now ended because Constitutional Court Decision Number 69/PUU-XIII/2015 had been issued.

The Constitutional Court through its Decision Number 69/PUU-XIII/2015 issued on October 27, 2016, has decided that a marriage agreement shall be drawn up at the time or before the marriage takes place. This, however, is contrary to the 1945 State Constitution of the Republic of Indonesia. The Constitutional Court has positioned itself as "the last defense for law enforcement"[24], which is able to provide justice. This decision also allows

[23] These costs include the costs and fees for Lawyer to file a suit for divorce. In a divorce issue, we actually talk about not only the divorce, but also other problems that follow, including the issues related to the position of children and property in marriage, but oftentimes the lawyer deals with only the divorce issue, while other issues especially regarding joint property in marriage are settled separately.

Damanhuri, as cited by Diyah Octhorina Susanti, divides 2 (two) benefits of a marriage agreement, namely: 1) Benefits for the personal life of each spouse, in the form of having freedom of contract, upholding justice, improving the quality of work, and improving the country's economic level; 2) Benefits for resolving marriage cases at the court, in the form of time savings, where the parties involved in the case are bound by a marriage agreement, so there is no need for evidence, either related to joint property or related to any relevant issues. It is enough to refer to the marriage agreement that has been drawn up. Another benefit is that it can be cost saving. This is because in any conflicts which raise in a household that is bound in a marriage agreement, for example related to property obtained during the marriage, do not have to be brought up in court, because both parties have fully accepted the contents of the marriage agreement. If both parties wish that joint property be included in the verdict at the same time as the divorce case, then the result will be in the form of conciliation, thus not requiring examination stages required when resolving conflicts of marriage not bound in a marriage agreement. The explanation above shows. Susanti *Op. Cit*.

[24] Sunaryati Hartono, was the first person who used this term in her book. Sunaryati Hartono, *Bhinneka Tunggal Ika Sebagai Asas Hukum Bagi Pembangunan Hukum Nasional* (Cet 1, Citra Aditya Bakti 2006) 3.

for other matters in addition to property in marriage to be included in a marriage agreement, for example citizenship-related issues.

Previously, it is always interesting to discuss the possibility to include citizenship-related issues in a marriage agreement. This regards Article 26 paragraph (1) of Law Number 12 of 2006 concerning Indonesian Citizenship which states, ″A female citizen with an Indonesian citizenship who is intermarried with a male foreigner will lose her Indonesian citizenship if according to the law of the country of origin of her husband, the citizenship of the wife should follow the citizenship of the husband as a result of a marriage*”.*[25]

However, long before the issuance of the Constitutional Court Decision, Bagir Manan has actually expressed his opinion about citizenship in an Intermarriage which, the author believes, is good to be followed and applied, with regard to Article 26 paragraph (1) of Law No. 12 of 2006 concerning Indonesian Citizenship. Bagir Manan said that it is difficult to know the law applicable in the country of origin of the husband and it is impossible for Indonesian officials to know the Citizenship Law applicable in each country of origin. Therefore, in order to not encounter such difficult situations, it should be that, *first,* an Indonesian female citizen who has intermarried with a foreigner will lose her citizenship unless she declares to remain as an Indonesian citizen no latest than 1 year, for example, provided that it does not make her have dual citizenship, *second,* an Indonesian female citizen who has intermarried with a foreigner will remain an Indonesian citizen, unless the woman declares to renounce her citizenship provided that she will not be stateless.[26]

The author agrees with the second option based on the reason that it is unfair if things related to someone's rights or things that harm someone could occur automatically, or due to the law. Such things must be approved or chosen by the relevant parties themselves. In relation to a marriage agreement, the author supports the option to draw up an agreement between the two parties, namely the husband and wife (or the prospective husband and wife), one of whom has a foreign citizenship, to retain his/her citizenship. Similarly, Constitutional Court Decision Number 69/PUU-XIII/2015 has indicated,

[25] Law No. 12 of 2006 on the Republic of Indonesian Citizenship.

[26] Bagir Manan, *Hukum Kewarganegaraan Indonesia Dalam UU No. 12 Tahun 2006* (Cet 1, FH UII Press 2009) 133.

indirectly, that a marriage agreement in which one of the parties retains his citizenship is allowed.[27]

Sulikah Kualaria stated that drawing up a marriage agreement in a registered marriage will be able to minimize disputes when the marriage ends in divorce because the marriage agreement could provide legal protection, especially for the party who is richer and for the one who is less, by elaborating some provisions that might be encountered in a marriage.[28] This opinion is slightly different compared to an opinion of Peter T. Leeson that a marriage agreement is used by the richer party to protect him/herself from her/his spouse who is less rich when there is a suit of divorce; in fact, a marriage agreement may also reduce divorce rate.[29]

Young mentioned that, "Prenups come into play in divorces, of course, but that's not all. Besides establishing how assets are divided when a married couple splits up, prenuptial agreements also can determine who gets what when one spouse dies"[30], so the marriage agreement manages property in marriage not only when the marriage ends in divorce, but also when the marriage is terminated due to death. This is almost similar to the definition of marriage agreement given in the Balck Law Dictionary, that marriage (prenuptial) agreement is *"*An agreement made before marriage usually to resolve issues of support and property division if the marriage ends in divorce or by the death of a spouse."[31]

In addition to the fact that marriage agreement has various functions, there are also a number of countries that do not recognize and reject the existence of marriage agreement, and therefore when there are disputes between divorcing parties, the court ignores or rejects the existence of the marriage agreement, not allowing the agreement to be

[27] Regarding citizenship, it actually still raises other legal issues, one of the most frequently found issues is regarding property related to immovable property, land. For example, in the agrarian law, it is stated that within 1 (one) year after a person loses his/her citizenship, s/he is obliged to renounce the right to the land, regarding Custody, for example, when is the 1 (one) year started to be counted, is it since the death of the decedent, or is it since the Legal Heir Certificate is drawn up or is it since the inheritance is known. It is truly unfair, if a child who has lived abroad for a long time and has become a foreign citizen, must lose her/his rights because s/he is not aware of such inheritance or regulations, and her/his parents' (decedent) will might not be like that.

[28] Sulikah Kualaria, 'Perjanjian Perkawinan Sebagai Sarana Perlindungan Hukum Bagi Para Pihak Dalam Perkawinan' (2015) Jurnal Hukum 2-5.

[29] Peter T Leeson and Joshua Pierson, 'Prenups' (2016) 45 The Journal of Legal Studies 367.

[30] Cheryl L Young, 'Is a Prenup a Must for Most Couples?' *Wall Street Journal* (2 March 2015) <https://www.wsj.com/articles/is-a-prenuptial-agreement-a-must-for-most-couples-1425271056> accessed 16 January 2020.

[31] Henry Campbell Black and Bryan A Garner, *Black's Law Dictionary* (7. ed, West Group 1999) 1200.

executed. One of the main reasons of this is that it is against the public interests, as seen in the African community, who consider marriage agreement to contradict the existing culture.[32] In fact, many courts upholding the common law system that initially refused the idea of marriage agreement, through a law established by the Parliaments, had finally recognized the agreements since 1998 because they were deemed to have significant interests.[33]

Considering the differences between the Indonesian Law of Marriage and the Indonesian Civil Code, marriage agreements in Indonesia can contain various matters, such as provisions regarding property owned before marriage if the marriage ends due to death, provisions if there is no child born from the marriage, provisions if the child born from the marriage is mentally retarded, provisions if there is a child born outside of the legal marriage, provisions regarding citizenship in intermarriage, and so on.

According to Article 1 paragraph (1) of the Law of the Republic of Indonesia Number 30 of 2004[34] as amended by Law of the Republic of Indonesia Number 2 of 2014 concerning Position of Notary[35], "Notary is a public official who is authorized to make authentic deeds and has the authority as referred to in this Law or based on other laws." The word "authentic" refers to Article 1868 of the Indonesian Civil Code which also underpins the Notary profession.

Authentic deed drawn up by or before a Notary has 3 (three) types of evidentiary strength, namely (1). Physical evidentiary strength *(uitwendige bewijsracht);* (2). formal evidentiary strength *(formele bewijskracht);* and (3). material evidentiary strength *(materiele bewijskracht)*[36], so an agreement drawn up by or before a Notary has a complete evidentiary strength.[37] However, being complete does not mean "perfect" because if the phrase "perfect evidentiary strength" is used, it is as if the Deed cannot be appealed; in fact, that is not the case because it can be proven otherwise, by means of other legitimate evidence *(tegen bewijs)*.[38]

[32] SC Ifemeje, 'A Case for Global Enforceable Prenuptial Agreements' (2010) 1 Nnamdi Azikiwe University Journal of International Law and Jurisprudence 151.

[33] *Ibid.*

[34] Law No. 30 of 2004 on Notary 30.

[35] Law No. 2 of 2014 on Amendment of Law No. 30 of 2004 on Notary 2.

[36] See: GHS Lumban Tobing, *Peraturan Jabatan Notaris* (2nd edn, Erlangga 1983) 48-49.

[37] Setiawan, *Aneka masalah hukum dan hukum acara perdata* (Alumni 1992) 403.

[38] Also see: I Ketut Tjukup and others, 'Akta Notaris (Akta Otentik) Sebagai Alat Bukti Dalam Peristiwa Hukum Perdata' (2016) Acta Comitas <https://ojs.unud.ac.id/index.php/ActaComitas/article/view/24902> accessed 18 January 2020.

As has been understood regarding the existence of various types of evidence[39], and the required two pieces of evidence[40] as well as the judge's opinions in judicial decision making, then authentic evidence or a Notarial Deed which has complete evidentiary strength should have an exception, that with 1 (one) piece of evidence, namely the authentic deed, in accordance with the abovementioned theory of evidentiary strength, is sufficient to prove the existence of a right, and therefore the judge should be bound and should not demand for other evidence, as long as it is not denied by other parties.

It is clear why marriage agreement should be made with an authentic deed in the presence of a Notary, i.e. because the marriage agreement will be used as evidence, including against the third parties, in which bringing evidence is not an easy matter and it may result in losses. Evidence becomes a decisive thing. For example, in a case that is brought up in a court, when someone is unable to prove the existence of a thing (right), he will have to lose the right,[41] and the marriage agreement made before a Notary has complete evidentiary strength.

According to Tan Tong Kie, "A notary is usually considered an official from whom a person can get reliable advice. Everything that s/he writes and determines is correct, s/he makes a powerful document in a legal process".[42] Therefore, a Notary has to have a good ability, be flawless, not neglect nobility and dignity, and understand whether the deed he has drawn up is in accordance with the law. In fact, to understand the law, it is not enough just to read the written text, but it also requires theoretical even philosophical skills to be able to read, understand, and apply it in order to create legal certainty, expediency and justice.[43]

Regarding justice, the kinds of justice to be realized may be debatable because there are various terminologies which refer to justice such as: just, legal, lawful, impartial,

[39] Indonesian Civil Code Article 1866.

[40] The example of evidence is "letter" and "witness". For witness, it is necessary to pay attention to the provisions that regulate that one witness is not a witness according to the law *(unus testis nullus testis)* – Indonesian Civil Prcedure Law (HIR) Article 169.

[41] More detailed evidentiary function, and in particular in cases of default or unlawful acts, which usually serve as the basis of almost every lawsuit filed in court, can be seen at: Marthalena Pohan, *Tanggung Gugat Advocaat, Dokter Dan Notaris* (Jakarta Bina Ilmu 1985) 17.

[42] Thong Kie Tan, *Studi Notariat, Beberapa Mata Pelajaran: Dan, Serba-Serbi Praktek Notaris* (First Published, Ichtiar Baru van Hoeve 2007) viii.

[43] "Practitioners with a knowledge of legal theory will be able to construct arguments, and counter opposing arguments, with more confidence, and with a greater likelihood of success, thank would otherwisw be the case". Thomas Ian McLeod, *Legal Theory* as cited in Sudikno Mertokusumo, *Teori Hukum* (Cahaya Atma Pustaka 2014) 10.

equal, fair, equitable, and righteous.[44] The author also agrees with Agus Yudha Hernoko, who focused more on fairness[45], where he used the principle of proportionality as a manifestation of justice in an agreement, i.e. regulating rights and obligations in accordance with the proportion or share.[46] This is crucial for all the parties who will make an agreement.

From the point of view of a Notary, the author tends to use the meaning of justice as "A just person is not someone who does not make mistakes, but someone who, although may make mistakes, does not want to do so; he is not someone who refrains from taking trivial things, but someone who easily refuses to take valuable things even though he can take and have them without any risks of losses; no, he is not even someone who pays attention to all these requirements, but rather someone who has a genuine character and willingness to be just instead of willingness to seem just".[47]

According to Herlien Budiono, over time there is a shift in authority, the extent of work and responsibilities of a Notary (Position of Notary), namely, not only to draw up an Authentic Deed but also to provide education regarding the rights and obligations of the parties (or those who have interests) about the existence of compulsory and supplementary regulations.[48]

Regarding the agreement, it has been well understood by Bachelor of Law that in order for an agreement to be valid, subjective elements, namely mutual acceptance[49] and adult age[50], as well as objective elements, namely certain objects and prima causa, have to

[44] See: The Liang Gie, *Teori-Teori Keadilan : Sumbangan Bahan Untuk Pemahaman Pancasila* (Super 1979) 26.

[45] Kamilia Khairul Anuar also uses the word "fairness" of justice, for the welfare of children born from a marriage, the same roles between husband and wife, and also builds the concept of fairness intended for needs, compensation and division. Kamilia Khairul Anuar, 'Procedural Fairness in Prenuptial Agreements: Inconsistent and Inadequate' (2017) Oxford University Undergraduate Law Journal 45.

[46] Agus Yudho Hernoko, 'Asas Proporsionalitas Dalam Kontrak Bisnis, Upaya Mewujudkan Hubungan Bisnis Dalam Perspektif Kontrak Yang Berkeadilan' (2010) 29 Jurnal Hukum Bisnis 5-18.

[47] "He is just man, not the one who does not wrong, but he who, when he may do wrong, is unwilling to do so; not the one who refrains from taking little things, but he who is strong to refuse to take the great things, although he might seize and possess them without risk of harm; no, not even the one who observe all these requirements, but he who has a sincere and genuine character and wishes to be, and not to seem, just." Liang Gie (n 44).

[48] Herlien Budiono, 'Mengapa Perusahaan Wajib Melaksanakan Tanggung Jawab Sosial Terhadap Lingkungan Dilema Perusahaan Diantara Negara, Masyarakat Dan Pasar)' (2009) 6 Jurnal Legislasi Indonesia 35.

[49] An agreement is prohibited if it is based on an error, coercion or compulsion, and abuse of circumstances *(misbruik van omstendigheden).*

[50] It becomes interesting again, because the current legal adult, according to Law No. 16 of 2019 on the Amendment of Law No. 1 of 1974 on Marriage, can be interpreted after turning 19 (nineteen) years old, while the Law concerning Position of Notary states that legal adult is attained after turning 18 (eighteen) years old.

be met. If the subjective elements are not met, then it can be requested for the agreement to be void. Meanwhile, if the objective elements are not fulfilled, then the agreement is void by law although the cancellation oftentimes still has to be submitted to the court.

In addition to the validity of the agreement, it has also been understood that everyone is allowed to make an agreement as long as it is not against the law, public order and morals. Besides, the agreement cannot be in the form of spoken agreements but written ones. This is based on Article 1338 of the Indonesian Civil Code or commonly known as *Pacta Sunt Servanda.*

The core meaning of "not against the law" is that we must know and be able to understand which provisions of the law are mandatory *(dwingend recht),* which means that these provisions cannot be deviated, and which provisions of the law are supplementary *(aanvulend* or *regelend recht),* which means that these provisions can be deviated.[51] How can we know that a provision is mandatory or compulsory? It sometimes is easy to determine such thing, for example by seeing if the law has stated the word 'prohibit' or 'prohibited', 'may not happen', 'not allowed', 'has no legal force', or 'on the threat of nullity'. Nonetheless, it sometimes is not easy to differentiate it, thus we have to use general criteria such as public interests or decency.[52]

Philosophically, decency usually comes together with morality, as mentioned by Durkheim that, *"What is called as morality or decency is really a mere bond of society. Why is something called bad? Because the society forbids it. Why is something considered good? Because the society wants it.*[53] Similarly, Herlien Budiono also said that this definition would not be found in the literature, even if the law did not explain it. It is said to be contrary to good morality if a thing or provision violates or is contrary to the norms of decency which are applicable in a society, or it may be said to be contrary to the customs of a society.[54] In addition, it is said to be contrary to the public order if an act violates or is contrary to the basic (fundamental) principles of the social order.[55]

There are also other important things that a Notary should consider in making an Agreement, including not taking sides, not drawing up an Agreement Deed that

[51] Herlien Budiono, *Kumpulan Tulisan Hukum Perdata Di Bidang Kenotariatan : Buku Kedua* (PT Citra Aditya Bakti 2012) 125–128.

[52] *Ibid.*

[53] Setiardja., *Op. Cit.,* 55.

[54] Herlien Budiono, *Kumpulan tulisan hukum perdata di bidang kenotariatan : Buku Pertama* (Citra Aditya Bakti 2012) 379.

[55] *Ibid.*

contradicts the Deed that has been drawn up previously, not making a fake Deed especially for cases that are against the law, being honest and accurate, using Indonesian language, and drawing up Agreement Deed as detailed as possible, and so on.[56]

Discussing marriage means discussing relationships in a family, and this is important for some reasons. One of which is that it is related to the relationship between children and parents, inheritance law, guardianship and custody[57], and so forth.

In addition, according to the definition of marriage agreement as explained above and according to what has been known in general, the definition of marriage agreement applied in our country should be more comprehensive compared to those in other countries, especially in liberal countries which see marriage as a mere agreement.[58]

Similar to law, drawing up an agreement must be based on a philosophical basis, namely justice, expediency and legal certainty.[59] Drawing up a marriage agreement may start from a premise, (before entering into the articles in the marriage agreement), which contains the Principles of Marriage[60], for examples:

1. That the marriage is a physical and spiritual bond between the first party and the second party as the husband and wife to start a happy and eternal family (household) based on the Almighty God.
2. That the parties will respect and support the religions and or beliefs of each other.
3. That the first party (husband or prospective husband) is obliged and therefore would be responsible for registering this marriage agreement to the authorized marriage registration office.
4. That the parties are committed and therefore would make efforts to create a marital monogamy.

Regarding the provisions of a marriage agreement, it is best to include ones which may be beneficial in the beginning of the marriage life and at a time in the future. In

[56] See: Mulyoto, *Op. Cit.,* 15-29.

[57] Ali Afandi, *Hukum waris, hukum keluarga, hukum pembuktian* (4th edn, Rineka Cipta 2000) 93.

[58] David B. Saxe details the terms of how marriage agreement has legal force, namely (1) that the parties must be represented or accompanied by a lawyer; (2) there is financial transparency; and (3) made at fair times and conditions. David B Saxe, 'Making Prenuptial Agreements "Bulletproof"' *New York Law Journal* (18 April 2017) <https://www.law.com/newyorklawjournal/almID/1202783957503/making-prenuptial-agreements-bulletproof/> accessed 17 January 2020.

[59] *Cf:* kepastian hukum, keadilan, dan kemanfaatan, merupakan *legal policy* yang bersifat permanen. Moh. Mahfud M. D, *Politik hukum di Indonesia* (8th edn, Rajawali Pers 2018) 47. See also: Hukum adalah alat untuk menegakkan keadilan dan menciptakan kesejahteraan sosial. Andre Ata Ujan, *Filsafat Hukum : Membangun Hukum Membela Keadilan* (5th edn, Kanisius 2015) 13 and *"La loi sans l'équite est un corps sans ame, d'autant que'elle ne touche que les choses générales et l'équite tant que 'elles cincomstances particulières."* Setiardja, *Op. Cit.,* 113.

[60] Law of Marriage regulates marriage concerning the following topics, including: Basis of Marriage, Conditions of Marriage, Prevention of Marriage, Nullity of Marriage, Marriage Agreement, Rights and Obligations of Husband and Wife, Property in Marriage, Termination of Marriage and the Consequences, Position of Children, Rights and Obligations between Parents and Children, Custody, Other Provisions, Transitional Provisions, and Closing Provisions.

addition to regulating properties in marriage, the marriage agreement can also contain other provisions such as citizenship, when the marriage ends by the death of a spouse, and others, such as:

1. That the parties agree to retain their respective citizenships, unless for one reason or another, at a time in the future, each of them wants another citizenship[61];
2. That between the husband and wife, there will be neither community of property nor community of profit and loss. This needs to be emphasized, considering that Article 144 of the Indonesian Civil Code mentions that "The absence of a community of property does not necessarily mean the absence of community of profit and loss, unless this is explicitly stated. Community of profit and loss is regulated in Part 2 of this chapter".
3. As a result of divorce, something which is never expected but has the likelihood to occur in a marriage, and based on a philosophical principle, it can be described: "that basically the parties do not want a divorce, but if for one reason or another, a divorce has to occur, then it has to be noted: (1). That the parties agree that the divorce must be processed in Indonesia according to the procedure/laws applicable in Indonesia; (2). That properties acquired during and throughout the marriage become joint properties which must be divided according to the legal provisions that bring the most benefits for the Second Party (Wife); and (3). That the right to custody and maintenance of children born from the marriage of the parties is given to the Second Party (Wife),[62] can also be added.
4. If one of the parties files a suit of divorce, then if desired by the other party, the party filing for a divorce must provide legal advisors appointed by the defendant, and the costs and fees are entirely borne by the party filing the lawsuit.
5. Regarding the properties in marriage or obtained before the marriage, according to the general teaching, it is necessary for prospective husband and wife to make a list of their respective properties, signed by all the parties and attached to the Original Deed of the marriage agreement drawn up in the presence of a Notary. This also regards the fact that Article 35 of the Law of Marriage could have multi-interpretations because if the marriage ends (in a divorce), the joint properties are regulated according to their respective laws,[63] especially if the husband and wife have been married previously.
6. If there are children born outside of their legal marriage, then this is contrary to the Law of Marriage which requires each marriage to be registered. However, for the sake of justice for the children, if this case is encountered, then after the blood relations can be proven, the inheritance rights for the child is 1/3 (one third) of the part that he could have received if he was a legal child. All other claims have no legal force.

[61] For example, it can be seen in the marriage agreement that was notarized/legalized by Notary Helmy Panuh in Jakarta, on October 30, 1998, and probably some other agreements which were made under hand, without the interference of Notary as a public official, and the existence of such agreement has also been recognized by the court, meaning that the agreement is binding, in A. Damanhuri H. R, *Segi-Segi Hukum Perjanjian Perkawinan Harta Bersama* (First Publish, Mandar Maju 2007) 66.

[62] *Ibid* 68.

[63] For example: in interfaith marriages, when there is a divorce, questions about which law to be used will raise

7. If one of them passes away first, then the properties which have been owned, and properties which are to be obtained by gift, grant, or inheritance by the party who passes away will first become the property of the heirs equally.

Eventually, it is also necessary to note, based on the opinions of Herlien Budino and other experts, that it is good for a Notary to copy an example of a Deed, for example copying a deed of marriage agreement from the existing deeds of marriage agreement. It is to be copied and stated in the deed of marriage agreement drawn up by the parties (husband and wife) in his presence. Nonetheless, as stated by Herlien Budino, a Notary "... cannot rely solely on examples of deeds without knowing the legal basis and the reasons of mentioning certain phrases, sentences, and terms in the deed",[64] because he must be held accountable for what he has done.

E. Conclusion

A marriage agreement has a very crucial function in marriage, either for an ongoing marriage or when the marriage is terminated due to divorce or death. The marriage agreement should be made in the form of an Authentic Deed, which has evidentiary strength, allowing for a more efficient, time saving, and cost saving trial process in case there is a problem or conflict which is brought up in court. In addition, a judge should not need any other evidence because the Authentic Deed is binding.

A marriage agreement, regarding joint property which is usually completely separated when the marriage takes place, should also mention the position of property which has already been owned and property to be obtained by gift, grant, or inheritance when the marriage is terminated due to divorce and the position of all properties when the marriage is terminated due to death. In addition, it can also contain other matters, such as citizenship-related issues.

In drawing up a Deed of Marriage Agreement, a Notary should first include the principles of marriage in accordance with the Law of Marriage. For examples, a marriage is a physical and spiritual bond between the First Party and the Second Party as husband and wife to start a happy and eternal family (household) based on the Almighty God, that the parties are committed to creating a marital monogamy, and that the parties will respect and support the religion and/or beliefs of each other. With this, the parties are expected to be psychologically and morally bound.

[64] Herlien Budiono, *Dasar Teknik Pembuatan Akta Notaris* (Citra Aditya Bakti 2013) 2.

Regarding a marriage agreement which is drawn up after the marriage has taken place, it is necessary to include a provision that the marriage agreement is not retroactive and will come into force after it is registered on an marriage certificate by an authorized marriage registration office. It is also recommended that the Law of Marriage be amended, particularly the provisions of Article 35 and Article 37, that the Marriage Agreement can also contain other things apart from property in marriage as long as it does not violate the law. In addition, regarding the consequences of a marriage which is terminated due to death, the parties should be able to determine the law to be used for the division of inheritance.

References

Indonesian Legislation

Law No. 1 of 1974 on Marriage
Law No. 2 of 2014 on Amendment of Law No. 30 of 2004 on Notary
Law No. 5 of 1960 on the basic Principles of Agrarian Law
Law No. 12 of 2006 on the Republic of Indonesian Citizenship
Law No. 16 of 2019 on the Amendment of Law No. 1 of 1974 on Marriage
Law No. 30 of 2004 on Notary

Indonesian Court Decision

Ike Farida (2016) Constitutional Court Decision No. 69/PUU-XIII/2015
Endang Wasrinah et al (2018) Constitutional Court Decision No. 22/PUU-XV/2017

Books

A. Damanhuri H. R, *Segi-Segi Hukum Perjanjian Perkawinan Harta Bersama* (First Publish, Mandar Maju 2007).
Afandi, A, *Hukum waris, hukum keluarga, hukum pembuktian* (4th edn, Rineka Cipta 2000).
Andasasmita, Komar, *Notaris I* (Bandung: Sumur Bandung, 1981)
Ata, Ujan A, *Filsafat Hukum : Membangun Hukum Membela Keadilan* (5th edn, Kanisius 2015).
Black, HC and Garner BA, *Black's Law Dictionary* (7. ed, West Group 1999).
Budiono, *Demikian Akta Ini : Tanya Jawab Mengenai Pembuatan Akta Notaris Di Dalam Praktik* (PT Citra Aditya Bakti 2018).
Budiono H, *Kumpulan Tulisan Hukum Perdata Di Bidang Kenotariatan : Buku Kedua* (PT Citra Aditya Bakti 2012).
——, *Kumpulan tulisan hukum perdata di bidang kenotariatan : Buku Pertama* (Citra Aditya Bakti 2012).
——, *Dasar Teknik Pembuatan Akta Notaris* (Citra Aditya Bakti 2013).
Hartono, S, *Bhinneka Tunggal Ika Sebagai Asas Hukum Bagi Pembangunan Hukum Nasional* (First Published, Citra Aditya Bakti 2006).
Klomp, RJQ and Mak C, *Burgerlijk Wetboek 2012/2013* (Ars Aequi Libri 2012).
Liang, Gie T, *Teori-Teori Keadilan : Sumbangan Bahan Untuk Pemahaman Pancasila* (Super 1979).

Manan, B, *Hukum Kewarganegaraan Indonesia Dalam UU No. 12 Tahun 2006* (Cet 1, FH UII Press 2009).
Mertokusumo, MS and Pitlo A, *Bab-bab tentang penemuan hukum* (Citra Aditya Bakti : Konsorsium Ilmu Hukum, Departemen Pendidikan dan Kebudayaan : The Asia Foundation 1993).
Mertokusumo, S, *Teori Hukum* (Cahaya Atma Pustaka 2014).
Moh. Mahfud M. D, *Politik hukum di Indonesia* (8th edn, Rajawali Pers 2018).
Mulyoto, *Perjanjian: Tehnik Cara Membuat Dan Hukum Perjanjian Yang Harus Dikuasai* (first published, Cakrawala Media 2012).
Pohan M, *Tanggung Gugat Advocaat, Dokter Dan Notaris* (Jakarta Bina Ilmu 1985).
Prawirohamidjojo, RS and Pohan M, *Hukum Orang Dan Keluarga: Personen En Familie-Recht* (Cetakan keempat, Pusat Penerbitan dan Percetakan Unair 2008).
Setiardja, AG, *Dialektika Hukum Dan Moral Dalam Pembangunan Masyarakat Indonesia* (Cet 1, Kanisius ; Gunung Mulia 1990).
Setiawan, *Aneka masalah hukum dan hukum acara perdata* (Alumni 1992).
Subekti, R, *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wetboek)* (R Tjitrosudibio tr, 35th edn, Pradnya Paramita 2004).
Tan, TK, *Studi Notariat, Beberapa Mata Pelajaran: Dan, Serba-Serbi Praktek Notaris* (Cet 1, Ichtiar Baru van Hoeve 2007).
Tobing, GHSL, *Peraturan Jabatan Notaris* (2nd edn, Erlangga 1983).

Journal

Anuar KK, 'Procedural Fairness in Prenuptial Agreements: Inconsistent and Inadequate' (2017) 2017 Oxford University Undergraduate Law Journal.
Budiono H, 'Mengapa Perusahaan Wajib Melaksanakan Tanggung Jawab Sosial Terhadap Lingkungan Dilema Perusahaan Diantara Negara, Masyarakat Dan Pasar)' (2009) 6 Jurnal Legislasi Indonesia.
Hernoko AY, 'Asas Proporsionalitas Dalam Kontrak Bisnis, Upaya Mewujudkan Hubungan Bisnis Dalam Perspektif Kontrak Yang Berkeadilan' (2010) 29 Jurnal Huum Bisnis.
Ifemeje SC, 'A Case for Global Enforceable Prenuptial Agreements' (2010) 1 Nnamdi Azikiwe University Journal of International Law and Jurisprudence.
Kualaria S, 'Perjanjian Perkawinan Sebagai Sarana Perlindungan Hukum Bagi Para Pihak Dalam Perkawinan' (2015) Jurnal Hukum.
Leeson PT and Pierson J, 'Prenups' (2016) 45 The Journal of Legal Studies.
Masriani YT, 'Perjanjian Perkawinan Dalam Pandangan Hukum Islam' (2013) 2 Serat Acitya (Jurnal Ilmiah).
Susanti DO, 'Perjanjan Kawin Sebagai Bentuk Perlindungan Hukum Bagi Pasangan Suami Istri (Perspektif Maqashid Syariah)' (2018) 1 Ulul Albab: Jurnal Studi dan Penelitian Hukum Islam.

Online Journal

Hernoko A and others, 'Nuptial Agreement in Indonesia: A New Change in Indonesian Marriage Law', *Proceedings of the International Conference on Law, Governance and Globalization 2017 (ICLGG 2017)* (Atlantis Press 2018) <http://www.atlantis-press.com/php/paper-details.php?id=25902321> accessed 15 January 2020.
NAYARA Advocacy, 'Keberlakuan Putusan MK tentang Perjanjian Kawin Terhadap Perkawinan WNI' (*hukumonline.com/klinik*) <https://www.hukumonline.com/klinik/detail/ulasan/lt5847e8ddabfea/keberlakuan-

putusan-mk-tentang-perjanjian-kawin-terhadap-perkawinan-wni/> accessed 15 January 2020.

Saxe DB, 'Making Prenuptial Agreements "Bulletproof"' *New York Law Journal* (18 April 2017) <https://www.law.com/newyorklawjournal/almID/1202783957503/making-prenuptial-agreements-bulletproof/> accessed 17 January 2020.

Tjukup IK and others, 'Akta Notaris (Akta Otentik) Sebagai Alat Bukti Dalam Peristiwa Hukum Perdata' (2016) Acta Comitas <https://ojs.unud.ac.id/index.php/ActaComitas/article/view/24902> accessed 18 January 2020.

Newspaper

Young CL, 'Is a Prenup a Must for Most Couples?' *Wall Street Journal* (2 March 2015) <https://www.wsj.com/articles/is-a-prenuptial-agreement-a-must-for-most-couples-1425271056> accessed 16 January 2020.

Magazine

Manan B, 'Metode Penelitian Hukum Lintas Disiplin' (2012) *Majalah Hukum Varia Peradilan Tahun XXVII No.315.*