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MARITAL AGREEMENT IN THE ERA OF INDUSTRIAL REVOLUTION 4.0

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ABSTRACT

A marital agreement can be taken by a married couple to make various agreements in marriage, including arrangements with regards to their assets. The marital agreement will bind both the husband and wife as well as a third party as long as there is a related interest. The marital agreement made after the marriage takes place (post-marital) is most likely to cause problems if made underhanded, because this will not guarantee the protection of the third parties. Therefore, the post-marital agreement must be made in front of a notary in order to guarantee the protection of the third-party's interests.

Nowadays, we are facing the 4.0 industrial era that aims to create a sustainable national industrial development order. This is with regards to creating social justice for all Indonesian people, including preparing strategic measures in the form of policies in legal framework. In this regard, then to create justice for the parties, marital agreements made in front of a notary must be submitted (uploaded) into the website of Directorate for Civil Affairs, Directorate General of Public Law Administration of Ministry of Law and Human Rights. Hence, it is accessible by the public. Thus, should anyone object to the marital agreement material, they can make corrections or express objections and request cancellation of the marital agreement.

BACKGROUND

It is widely held that the making of marital agreements is now becoming more popular. Marriage institution has been highly personal in nature. However,

there is a tendency that nowadays both husband and wife couples want to determine the economic requirements in their marriage. The marital agreement is made based on the agreement of husband and wife in line with the principle of equality based on justice (including the theory of justice), the Theory of Justice from John Rawls found two justice principle, namely: The equal liberty, i.e. everyone has the right to individual liberty that is equal with others; and the principle of equal opportunity in the case of economic injustice in society must be regulated to protect the disadvantaged by providing equal opportunities for all people with fair conditions.

Marital agreements are made by those seeking protection of their personal property, and made before they married. The marital agreement will be valid and binding on both parties if the negotiation process and requirements are made fairly and based on mutual agreement between the parties. Marital agreement contains agreement made before or after a marriage containing consequences of assets separation in an event if a marriage ends due to divorce or death.

Marital assets arrangement can be conducted by making a marital agreement that contains the agreement that the prospective husband and wife make at the time or before the marriage is carried out. However, nowadays, there is a new provision that surprises the public as it allows marital agreement made during a marriage. This means that the marital agreement can be conducted at any time by the husband and wife in marriage as stipulated in the Decision of the Constitutional Court.

The term Industry 4.0 itself was officially born in Germany to be precise when the Hannover Fair was held on in 2011). Germany has great importance in this regard because Industry 4.0 is part of the policy plan development called the High-Tech Strategy 2020. This policy aims to keep Germany in the forefront world of manufacturing. Several other countries also participated in realizing the concept of Industry 4.0. Most of the opinions regarding potential benefits Industry 4.0 is about improving the speed of production flexibility, improving service to subscribers and increased revenue. Materialization the potential benefits will have a positive impact against the economy of a country.

The fourth industrial era or the The Industrial Revolution 4.0 period is a trend in the industrial world that integrates automation technology with cyber technology. The Industrial Revolution 4.0 is often related to analytical combination of physical and digital technology, artificial intelligence, cognitive technology, and the Internet of Things (IoT) which will ultimately create a cyber company that is interconnected and can make more informed decisions. This, certainly, can have an effect on people's lives and change the Indonesian economy.

From how the economic industry perform in Indonesia based on industrial revolution 4.0, almost all transactions are implemented online or using the internet. The fourth era of industrial revolution encouraged users to be wise in using internet services. The presence of the Industrial Revolution 4.0 in Indonesia is certainly supported by various technological conveniences in

various aspects of life.

Law, as a normative provision, has important roles and functions in the field of economy. Economic development is the backbone of national development. In its implementation, the industrial sector is the sector with the largest contribution. Therefore, since the independence of Indonesia to date, the government programs have targeted to improve industrial development with various policies. The government efforts succeeded in making significant industrial growth. In 2017 Indonesia's industrial growth was recorded at 0.91%, or the highest contributor to gross domestic product (GDP) i.e., 20.47%. The development of the national industrial sector is strongly influenced by factors originating from both within and beyond the national border. The domestic factors include the availability of 461 natural resources, capital, human resources, technology, political factors (security) and others. Meanwhile, the factors from beyond the national border include international economic cooperation, foreign capital investment, the effect of the global industrial revolution and others. The industrial development in the era of industrial revolution 4.0 focused more on the development of manufacturing industries that are more dominated by the use of digital technology and the internet. As a developing country, the Industrial Revolution 4.0 brought positive and negative impacts on the national industrial development. To anticipate the impacts, the government must prepare strategic measures in the form of policies, not only in the economic field, especially in the field of industrial development, but also in the field of law. The objective is to create a sustainable national industrial development order to create social justice for all Indonesian people. With regards to marital agreement, in the 4.0 industrial era that aims to create a sustainable national industrial development order to create social justice for all Indonesian people; the government must prepare strategic measures in the form of policy in the field of family law, especially related to marital agreement.

Marital agreements made after the marriage take place (post-marital agreement) will cause problems if made underhanded because this will not guarantee the protection of third parties. Therefore, a post-marital agreement is required to be made in front of a notary in order to guarantee the protection of interests of all parties, including the third parties. Furthermore, the researcher wants to observe how digital developments in the Industrial Revolution 4.0 can provide opportunities for well-structured and digitalized marital agreement procedures to provide protection to the parties, including the other parties.

Identification of The Problems

1. How is the arrangement of marital agreements in Indonesia?
2. How does the Industrial Revolution 4.0 affect the marital agreement procedure in Indonesia?

FINDINGS AND ANALYSIS

Marital Agreement in Indonesia

Marriage occurs due to encouragement from within every human being to be with the other man. Marriage is a culture and part of the life cycle human. This is the basis for the formation of a family. The family is a group of related, living individualstogether and work together in one unit One of legal consequences that arises from marriage is the formation of marital property.

Indonesia has regulated in unification Law of Marriage, at the time this provision comes into force, the provisions regarding marriage that existed before the law became invalid.

No.	Before 1974	After 1974
1.	Marriages are consummated based on Customary Law, Civil Code, Christian Indonesian Marriage Ordinance, and Mixed-Marriage Rules	Regulation Marriage of Law No.16/2019, are the unification and codification of marriage laws in Indonesia

Provisions in the Law on Marriage state that the assets acquired in marriage will become joint assets. Furthermore, the assets obtained before marriage will still be the property of either the husband or wife. The provision illustrates that there are several types of assets in marriage that are separate. The provisions on property separation can be excluded by making marital agreements.

The marital agreement as mentioned above is an exception to the general rules regarding marital agreements in the Law on Marriage. Marital agreement is an agreement on aspects of marriage that arise during marriage. Marriage is a loyalty or togetherness of equal individuals, hence, an agreement made in the family is a legal agreement. Marital assets are all assets acquired by a married couple in a marriage, except:

- Assets obtained from gifts;
- Assets obtained prior to marriage;
- Assets obtained by a husband or wife after the agreement on the separation of property is made;
- Assets that are not included in the agreed assets by the husband and wife.

Theoretically, a variety of marriage agreements can be made, starting from the rules listed in BW, as well as the Marriage Law. If someone makes an appointment then someone else agrees to the promise and also states a promise related to the first promise, then there is an agreement between two promises from two people who have a relationship between one another. is a source of Formal law, as long as the contract agreement is a legal contract or legal? So, the definition of a marriage agreement can be classified according to the

Marriage Law, Islamic Law Compilation and Burgelijk Wetboek

However, after the issuance of the Constitutional Court decision Number 69 / PUU-XIII / 2015 dated March 21, 2016, there was a change in connection with the making of a marriage agreement, the decision was based on the request of an Indonesian citizen who had a mixed marriage, who was married without making a marriage agreement. Over time, the couple even intended to buy a house / apartment, but due to the prevailing regulations in the context of the national land law, namely the provisions of the UUPA, the principle of nationality, which means that only Indonesian citizens can own land rights in Indonesia. Therefore, the mixed marriage couple submitted a request for a constitutional review to the Constitutional Court because they felt that they were disadvantaged by several articles in the Marriage Law.

The Constitutional Court Decision No. 69 / PUU-XIII / 2015 has an impact on the contents of the marriage agreement so that it must be distinguished. If in the marriage agreement it is determined that the validity of the marriage since the marriage takes place, while the marriage agreement is made during the marriage, then the joint assets that have occurred before the marriage agreement is made must be divided in two and determined which is the husband's share and which is the wife's share. It can be determined by the parties that prior to the marriage agreement there is a mixture of assets, whereas since the marriage agreement there has been separation of joint assets. Through Decision No. 69 / PUU-XIII / 2015, MKRI changed 3 of the 5 characteristics above, namely regarding the manufacturing period, the entry into force and the cause for its expiration. It can be said that the post-Decision No. 69 / PUU-XIII / 2015 is an agreement that is completely different from the marriage agreement regulated in the Marriage Law prior to Decision No. 69 / PUU-XIII / 2015. Simply put, a marriage agreement that was originally interpreted as a prenuptial agreement, has now become a prenuptial agreement and a postnuptial agreement.

In its interpretation of Article 29 paragraph (1) of the Marriage Law, MKRI not only added the phrase "while in the marriage bond", but also changed the word "held" to "propose" and added the phrase "or notary". Interestingly, the things discussed in the consideration of Decision No. 69 / PUU-XIII / 2015 is only about adding the phrase "while in the marriage bond". There is no explanation why the word "to hold" should be interpreted as "to propose". There is also no description explaining the reasons for the addition of the phrase "or notary". Logically, it can be understood that the word "file" and the phrase "or notary" were introduced to accommodate the marriage agreement made during the marriage bond. Whereas when the marriage has been carried out, the marriage agreement can no longer be "entered into" in the presence of a marriage registrar official; while the marriage agreement can still be "submitted" at or before the marriage takes place. This situation also gave rise to a new option, namely a notary. The granting of authority to a marriage registrar official to ratify a marriage agreement is logically intended so that the agreement concerned becomes an integral part of the entire marriage document. This means that the initial design of Article 29 paragraph (1) of the Marriage Law was to create administrative order. With the opening of a new

option, namely a notary public, this goal may not be achieved.

Provisions regarding marriage are forcing unless there is freedom for the prospective husband and wife or husband and wife as long as in the marriage bond, they are given the freedom to enter into a marriage agreement both before marriage and during the marriage which deviates from assets acquired during the marriage which are joint assets. Even though the existence of such freedom is still limited by the provision that the contents of the marriage agreement which can be related to marriage assets or other agreements may not conflict with laws that are compelling, good morals and public order. So that the contents of the marriage agreement, the notaries must be able to review it so that there are no things that harm the third party. As a comparison of the concept of a marriage agreement made during a marriage, below will be a comparison with several other countries

The change in norms certainly raises various legal aspects that must be addressed by interested parties, for example by academicians who shall change their perspective on the shift in norms. The same also applies to notaries involved in the practical activities who regularly meet the applicants wishing to make marital agreements. Equally important are the Civil Registry and the Office of Religious Affairs who act as the institution that record the marital agreements. Both must prepare a mechanism to make marital agreements after the marriage takes place. Similarly, the District Courts and the Religious Courts also have to prepare the mechanisms for the possibility of claims or lawsuit from the third parties who feel disadvantaged by the making of post-marital agreement.

Arrangements with regards to marital agreements subsequent to the decision of the Constitutional Court Number 69/PUU-XIII/2015 determine that the marital agreement can be made before, at the time, and during the marriage. There are several formats of the marital agreement model that can be a guide for notaries who will make marital agreement certificates and there is also a circular letter from the Director General of Civil Registration on the Reporting of Marital agreements.

The Impacts of Industrial Revolution 4.0 Towards Marital Agreement Procedure

Humans are required to be able to adapt more quickly to science and technology. It does not only apply for producers and consumers, but also issuers, banks and distributors.

In a country there are regulations that are obeyed by the community in a state and enforced by the state (government). The law itself is not merely a rule and principle, rather, it also includes processes and institutions in order to realize these rules in the society. In this case, the law related to any family law is not just a rule stated in the legislation but also all related elements.

With regards to the national development framework, law includes both the law and the subject of development. As an object of development, law is a

sector that must be prioritized. While as subjects of development, law must be built and developed as instruments and supporting facilities for national development efforts. The government is committed to building a manufacturing industry with global competitiveness through accelerating the implementation of the Industrial Revolution 4.0. As a basic rule of implementation, the Ministry of Industry issued a program called 'Making Indonesia 4.0'. This program is a roadmap and strategy for Indonesia to enter an integrated digital era to implement a number of strategies in entering the Industrial Era 4.0. This aims to create sustainable economic growth. (In the roadmap, there are five industries that become the focus of implementation, namely the food and beverage; textile; automotive; electronics; and chemical industries. This is because these five industries are the backbone of the economy that is expected to have a significant contribution to the national economy. Indonesia has initiated the adaptation process for Industry Era 4.0 by increasing the competence of human resources through a 'link and match' program between education and industry.

The business model revolution in the first Industrial 4.0 Era, provides solutions to the problems faced by the community, Second, in this era they are never satisfied with the results it achieves so that it seeks to continuously innovate. Third the new monopolistic model of capitalism, where the corporate business model of the company in the era It embraces the sharing economy so that it can be perceived be a solution to economic inequality. Fourth, marketing model 3.0, if marketing is on era 1.0 focused on products while in era 2.0 marketing focused on consumers Marketing 3.0 is more than that where companies see more than just consumers product users but see the consumer from its multi-dimensionality as a human being consumers will choose products that satisfy their desire to participate, creating, community and idealism.

This policy carried out by the Ministry of Industry can bring Indonesia's economy to a better level. From the policy implementation, the legislators namely the government (president) and the House of Representatives need to create a legal umbrella that regulates this new system. Efforts to harmonize government policies and regulations, legislative products and even the judiciary system with a technological revolution must be observed as a long-term development strategy. Government involvement must be measured, meaning that the government takes into account the extent to which the government may interfere in the economic sector. The government has three roles, namely as regulators, providers of the needs of the people and as entrepreneurs carried out by State-Owned Enterprises. Hence, globalization has had an influence on economic progress with increasingly sophisticated technology. There is no other way butto immediately harmonize technological progress with proper regulations. The success of a country in facing the Industrial Revolution 4.0 is highly related to the quality of human resources and ability to create regulations that are able to govern the human resources.

In the era of globalization of society Indonesia needs legal certainty about the Pre Agreement Marriage, especially the prospective husband and future wife to protect every right from each party. However Post-marital agreements will

cause problems if made underhanded because this will not guarantee the protection of third parties. Therefore, post-marital agreements need to be made in front of a notary in order to guarantee the protection of interests of the parties, including the third parties. Moreover, the researcher wants to observe how digital developments in the Industrial Revolution 4.0 can provide opportunities for well-structured and digitalized marital agreement procedures to protect the interests of the parties, including third parties.

The demands of public services that are fast, easy, efficient, free from illegal levies, and accurate are an urgent need to be addressed. Numerous 'manual' public services have been complained because they require a relatively long time, are inefficient, expensive, requires unofficial levies to accelerate, and risky of documents lost, as well as many other weaknesses in service with a manual system. Similarly, complaints are addressed to public services at the Directorate General of Public Law Administration of the Ministry of Law and Human Rights related to developments in the Industrial Era 4.0.

To take a case in point, in a registration process of a fiduciary, company or institution at the Directorate General of Public Law Administration, the process can be visually described as follows. The notary, as the registration holder, submits the application through a computer network after previously making PNB (Non-Tax State Revenue) payments to a designated bank. The notary's computer network is connected to the server at Indonesia Government. If the application submitted by the notary is correct, the notary can print the proof of registration includes a fiduciary certificate (on fiduciary registration), Decree of Ratification of Legal Entity (on registration of corporate legal entity).

In regards to online registration, there are two legal subjects, namely registrants (in this case, the notary) and the Government, while the object is a document. If the issue of online registration is reviewed from Law on Information and Electronic Transaction, the registrant (in this case, the Notary) is as a user that can be in the form of a person or business entity. While the online registering activity is called an electronic transaction. The data entered into the electronic system by the notary when performing the application is called electronic information. The connectivity between computers used by the notary to conduct the online application with computer located in the Directorate General of Public Law Administration, Ministry of Law and Human Rights, is called an electronic system network—a connection of two or more electronic systems that are closed or open. The Ministry of Law and Human Rights, in this case the Directorate General of Public Law Administration, is as the organizer of an electronic system, namely the utilization of electronic systems by state administrators, people, business entities and or the public. Principles of this publication aims to provide legal protection for parties who make the agreement and order parties all three that are in agreement the marriage saw and object to the agreement.

Similarly, that is what is expected in the process of uploading draft for marital agreement. To create justice for the parties, the making of marital agreements in front of a notary must be submitted (uploaded) into the Directorate for Civil

Affairs of the Directorate General of Public Law Administration, Ministry of Law and Human Rights, hence, it is accessible by the public. Therefore, should anyone object the material of the marital agreement, they can make corrections or express objections and request cancellation of the marital agreement.

CONCLUSION

1. Arrangements with regards to marital agreements in Indonesia subsequent to the decision of the Constitutional Court Number. 69/PUU-XIII/2015 determine that the marital agreement can be made before, at the time, and during the marriage takes place. There are several formats of marital agreement model that can be a guideline for notaries who will make marital agreement certificates.

2. The Industrial Revolution 4.0 is expected to have an impact to marital agreements to create justice for the parties. Hence, the making of marital agreements made in front of a notary must be submitted (uploaded) into the Directorate for Civil Affairs of the Directorate General of Public Law Administration, Ministry of Law and Human Rights. Therefore, it accessible by the public, hence, those who object to the marital agreement material can make corrections or express objections and request cancellation of the marital agreement.

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