The Attitude of The Notary Public Towards The Request For The Cancelation of The Prenuptial Agreement Deed as A Result of The Marriage Annulment and The Consequences For Third Parties

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Abstract
The existence of an annulment of marriage raises the question on how the attitude of the Notary Public towards the request for the cancelation of the prenuptial agreement deed as a result of the marriage annulment and the consequences for third parties. This study aims to provide an understanding to the reader about how the regulation and consequences of marriage annulment on the prenuptial agreement deed in Indonesia. Based on the study that has been done, it can be concluded that the cancelation of the existing prenuptial agreement deed should be done through an application to the Court, not with a notarial deed of cancelation, so that if the cancelation is problematic or detrimental to a third party in the future, the third party cannot file a civil lawsuit or criminal charge against a Notary Public. The existence of an agreement made with a third party is still valid based on the making of the agreement itself, which is assumed to have fulfilled the requirements stipulated in the Civil Code, laws and regulations, and does not violate the law also the prenuptial agreement deed which remained valid when it became the basis for making the agreement with a third party. Therefore, the agreement remains valid and must be implemented so that third parties with good intentions are not harmed. Regarding who should be responsible later, by all means, is who makes the agreement with the third party.

I. Introduction

The legal action is carried out by a pair of people who want to live together to form a family should fulfil the provisions stipulated in the laws and regulations regarding marriage. This is due to the achievement of orderly

administration and an agreement between those who are married to comply with the applicable legal regulations regarding the rights and obligations of each party, both during and after living together.[1]

Marriage according to the Marriage Law is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on Belief in the One Almighty God.[2] Marriage in order to be legal must be recognized as legal by laws and regulations and this happens if the marriage is carried out according to the provisions of laws and regulations,[3] so that it is necessary to have regulations that will determine what requirements must be met in order to carry out the marriage in addition to regulations regarding the continuation and termination of the marriage.[4] The requirements for entering a marriage in Indonesia are generally regulated in the Marriage Law and specifically regulated according to the religious laws and beliefs of the parties.

The Marriage Law gives rights to parties who wish to enter into a marriage to enter into a legal act in the form of making a prenuptial agreement.[5] The Marriage Law does not define what is meant by a prenuptial agreement. Wahyono Darmabrata stated that the prenuptial agreement is an agreement held to promise regarding matters relating to the management of assets[6] and aims to regulate the rights and obligations of the husband and wife on each other's assets that are brought into the marriage.[7] Previously, marriage agreements (prenuptial

[1] Wirjono Prodjodikoro, *Hukum Perkawinan di Indonesia* (Bandung: Sumur Bandung, 1981), hlm. 7-8.

[2] Indonesia, *Undang-Undang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*, UU No. 16 Tahun 2019, LN No. 186 Tahun 2019, TLN No. 6401, Ps. 1.

[3] Wahyono Darmabrata, *et. al.*, *eds.*, *Hukum Perkawinan Perdata Jilid 1: Syarat Sahnya Perkawinan, Hak dan Kewajiban Suami Isteri, Harta Benda Perkawinan*, cet. 2 (Jakarta: Rizkita, 2009), hlm. 55.

[4] Zulfa Djoko Basuki, *Hukum Perkawinan di Indonesia* (Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2010), hlm. 3.

[5] Indonesia, *Undang-Undang Perubahan Atas Undang-Undang Nomor 1*, Ps. 29 ayat (1).

[6] Darmabrata, *Hukum Perkawinan*, hlm. 171.

[7] *Ibid*., hlm. 161.

agreement) could only be made at the time or before the marriage took place.[8] However, with PMK Number 69/PUU-XIII/2015, the parties while in the marriage bond with mutual consent can make a marriage agreement.[9] After the issuance of Circular Letter of the Director General of Population and Civil Registration Number 472.2/5876/Population and Civil Registration and Circular Letter of the Director General of BMI Number B.2674/DJ.III/KW.00/9/2017, marriage agreement in practice must be made with a Notary Deed (Partij Deed) as a condition for recording agreement reporting marriage so that the marriage agreement applies to third parties

In addition to making a marriage agreement, the parties also have the right to take other legal actions in the form of terminating the marriage. In the case of terminating a marriage, the parties are not free to determine the conditions for termination themselves, but are also bound by legal regulations regarding that matter.[10] One of the ways to break the continuity of a marriage is to file an annulment of the marriage. In this case the marriage has taken place, but there are parties who propose that the marriage be annulled.[11] The marriage can be cancelled if the parties do not meet the requirements to enter into a marriage.[12] The conditions for entering into a marriage that should be met are only known by certain parties after the marriage takes place. With this situation, the marriage cancellation can be submitted to the Court.[13] The annulment of the marriage results as if there had never been a marriage between the parties whose marriage

[8] Indonesia, *Undang-Undang Perubahan Atas Undang-Undang Nomor 1*, Ps. 29 ayat (1).
[9] Mahkamah Konstitusi Republik Indonesia, Putusan No. 69/PUU-XIII/2015, hlm. 156.
[10] Prodjodikoro, *Hukum Perkawinan*, hlm. 8.
[11] Moch. Isnaeni, *ed.*, *Hukum Perkawinan Indonesia*, cet. 1 (Bandung: Refika Aditama, 2016), hlm. 70.
[12] Indonesia, *Undang-Undang Perubahan Atas Undang-Undang Nomor 1*, Ps. 22.
[13] Isnaeni, *Hukum Perkawinan*, hlm. 71.

was annulled,[14] except for the matters as regulated in Article 28 of the Marriage Law.

With the annulment of the marriage, it raises questions about how the Notary's attitude is towards the parties who want to cancel the deed of the marriage agreement as a result of the marriage annulment. In this regard, the question then arises regarding what the consequences of the cancellation of the marriage agreement deed as a result of the cancellation of the marriage are against third parties. Starting from this problem, the author is interested in discussing and conducting an analysis related to the notary's attitude towards the request to make a deed of cancellation of the marriage agreement as a result of the cancellation of the marriage and the consequences for third parties.

Formulation of the problem

Based on the problems described in the background above, the main issues to be discussed in this study include the following:

1. What is the attitude of the Notary towards the parties who wish to cancel the deed of marriage agreement as a result of the cancellation of the marriage?
2. What are the consequences of the cancellation of the marriage agreement deed as a result of the cancellation of the marriage to a third party?

Research purposes

The purpose of this research is divided into general objectives and specific objectives as follows:

1. General Objectives

[14] Wahyono Darmabrata dan Surini Ahlan Sjarif, *Hukum Perkawinan dan Keluarga di Indonesia*, ed. 1, cet. 1 (Jakarta: Rizkita, 2002), hlm. 47.

This research is intended to provide readers with an understanding of how marriage arrangements and the consequences of annulment of marriage agreements in Indonesia are regulated.

2. Specific Objectives

Based on the main issues above, the specific purposes of this study include the following:

a. To know and understand the attitude of the Notary towards the parties who wish to annul the marriage agreement deed as a result of the cancellation of the marriage, what kind of actions should the Notary take in response to this.
b. To know and understand the consequences of the cancellation of the marriage agreement deed as a result of the cancellation of the marriage to a third party.

Theoretical Review

A. The Overview of Marriage Law According to Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage

The Marriage Law determines the requirements for a valid marriage which consist of material requirements and formal requirements, namely requirements that concern the prospective husband and wife personally and conditions related to formalities or procedures that must be followed by the prospective husband and wife, both before and during the marriage.[15]

Through this marriage rights and obligations will arise as a result of the marriage. By nature, the husband is obliged to protect his wife and

[15] Akhmad Budi Cahyono dan Surini Ahlan Sjarif, *Mengenal Hukum Perdata*, ed. 1, cet. 1 (Jakarta: Gitama Jaya, 2008), hlm. 47.

meet all the needs of family life according to his ability, while the wife manages household affairs. With respect to joint assets, both husband and wife can act with the agreement of both parties, while with respect to private assets, each is fully entitled to the assets.[16]

Regarding the breakup of the marriage, it is not only due to death, but also due to other reasons in the form of divorce or a court decision as stipulated in Article 38 of the Marriage Law. The Marriage Law does not determine the reason for the dissolution of a marriage because of a court decision. Even so, it seems to be understood that what is meant by this provision is the dissolution of a marriage in the event of an annulment of a marriage.

B. The Overview of Marriage Agreements and Annulment of Marriages in Indonesia

Regarding to the marriage agreement in Indonesia, the majority of scholars interpret the marriage agreement as an agreement that regulates the consequences of marriage on the position of assets of the prospective husband and wife. The most common marriage agreements are of three types, including:

1. The Marriage Agreement outside the Property Partnership (Completely Separation of Assets)

   Marriage agreements outside the partnership of property are the most frequently made marriage agreements in practice. All property is separate without exception, meaning that there is no joint assets between the parties, but only private assets. All assets of each party

[16] K. Wantjik Saleh, *Hukum Perkawinan Indonesia*, cet. 7 (Jakarta: Ghalia Indonesia, 1982), hlm. 35.

must be clearly detailed. Debt is also the responsibility of each party who owes.

2. The Profit and Loss Partnership Marriage Agreement

   The profit and loss partnership marriage agreement is regulated in Article 155 to Article 165 of the Civil Code (hereinafter referred to as the "Indonesian Civil Code"). In this marriage agreement between the parties divided into two types of property, namely personal assets and joint assets. Personal assets are under the control of each party, while joint assets are under joint control. The thing that needs to be considered is that all profits and losses from personal assets and joint assets must be divided in half between the parties. For example, is if the husband has personal assets in the form of a house which is then rented out to other people, the profits from the rent are divided in half between the parties, even though the house is the husband's personal property. Likewise, if there is a loss, it must be shared fairly between the parties. This also applies to the wife's personal assets.

3. The Yield and Income Partnership Marriage Agreement

   The partnership marriage agreement of results and income is regulated in Article 164 of the Indonesian Civil Code. Basically, this marriage agreement is almost the same as a profit and loss partnership marriage agreement. In this marriage agreement between the parties divided into two types of property, namely personal assets and joint assets. Personal assets are under the control of each party, while joint assets are under joint control. The difference is only the results and income are divided between the parties.[17]

[17] Benny Djaja, *ed*., *Perjanjian Kawin Sebelum, Saat, dan Sepanjang Perkawinan*, ed. 1, cet. 1 (Depok: Rajawali Pers, 2020), hlm. 29-30.

PMK Number 69/PUU-XIII/2015 opens the possibility of the validity of the marriage agreement against parties other than since the marriage took place, if it is specified in the marriage agreement.[18] With PMK Number 69/PUU-XIII/2015, the Director General of Population and Civil Registration issued Circulation Letter Number 472.2/5876/Population and Civil Registration concerning the Recording of Reporting of Marriage Agreements for non-Muslims and Circulation Letter of Director General of BMI Number B.2674/DJ.III/KW.00/9 /2017 concerning the Recording of Marriage Agreements for those who are Muslim which determines that after the marriage agreement is made with a Notary Deed, the marriage agreement is reported to the Civil Registration Officer at the Implementing Agency or Technical Implementation Unit (Indonesian abbreviation is UPT) of the Implementing Agency or reported to the Head of the District Religious Affairs Office as an Employee Marriage Registrar so that the marriage agreement applies to third parties. Thus, the marriage agreement in practice must be made with a Notary Deed (Partij Deed) as a condition for recording the reporting of the marriage agreement.

Regarding the annulment of a marriage in Indonesia, an annulment of a marriage occurs if it begins with the submission of an application for an annulment of a marriage to the court and a court decision is issued stating that the marriage is annulled.[19] The parties who can apply for an annulment of a marriage are regulated in Articles 23 to 27 of the Marriage Law, including: (1) The families in the direct line of descent from the husband or wife; (2) Husband or wife; (3) The officials authorized only as long as the marriage has not been decided; (4) The appointed officials as regulated in Article 16 paragraph (2) of the Marriage Law and everyone

[18] Mahkamah Konstitusi Republik Indonesia, Putusan No. 69/PUU-XIII/2015, hlm. 156.
[19] Darmabrata dan Sjarif, *Hukum Perkawinan*, hlm. 42.

who has a direct legal interest in said marriage, but only after the marriage is dissolved; (5) Someone who is still bound by marriage with one of the parties; or (6) prosecutor.

The reasons for the annulment of a marriage regulated in the Marriage Law include:

1. Failure to fulfill the requirements for a valid marriage (Article 22).
2. One of the parties is still bound by marital ties with another person (Article 24). If the husband remarries with another woman without the consent of the wife or wives, then the wife or wives can apply for the annulment of the husband's new marriage with another woman because it does not comply with the provisions of Article 5 of the Marriage Law.
3. The marriage is held in the presence of unauthorized marriage registrars, illegitimate guardians or without the presence of two witnesses (Article 26 paragraph (1)).
4. The marriage was carried out under the threat of violating the law (Article 27 paragraph (1)).
5. At the time of the marriage, misunderstanding occurred about the husband or wife (Article 27 paragraph (2)).

The applications for annulment of marriage are filed by parties who can submit them to the Religious Court for parties who are Muslim and submitted to the District Court for parties who are non-Muslim in the jurisdiction where the marriage took place or at the residence of the husband and wife, husband or wife.[20]

The cancellation of a marriage begins after a court decision has permanent legal force and is valid since the marriage took place.[21] The

[20] Indonesia, *Undang-Undang Perubahan Atas Undang-Undang Nomor 1*, Ps. 25 jo 63.
[21] *Ibid*., Ps. 28 ayat (1).

cancellation of the marriage results as if there had never been a marriage between the parties whose marriage was annulled, [22] however, the cancellation of a marriage does not apply retroactively to the distribution of joint assets if the husband and wife accidentally enter into a marriage in violation of the law, so that even if the marriage is annulled, there will still be a distribution of joint assets between the parties. However, if the marriage is annulled because there is still a previous marriage, then there is no distribution of joint assets in the annulled marriage.[23] In this case, joint assets are considered to have never existed in the annulled marriage.[24] The cancellation of marriage also does not apply retroactively to third parties with good intentions, so that all civil acts or engagements made by the parties before the marriage was cancelled remain valid and must be carried out so that third parties with good intentions are not harmed.[25]

3. Research Method

This study uses a form of juridical-normative research, namely research conducted on written positive law. In this study, theoretical matters will be examined and interpreted based on statutory regulations, then used to find out how the legal position of marriage agreements is regarding the annulment of marriages in Indonesia and the consequences arising according to statutory regulations and judicial practice.

This study uses interviews as data collection tool used to find primary data and document study as data collection tool used to find secondary data. The

[22] Darmabrata dan Sjarif, *Hukum Perkawinan*, hlm. 47.
[23] Indonesia, *Undang-Undang Perubahan Atas Undang-Undang Nomor 1*, Ps. 28 ayat (2) huruf b.
[24] Abdulkadir Muhammad, *Hukum Perdata Indonesia*, cet. V (Bandung: Citra Aditya Bakti, 2014), hlm. 112.
[25] Zaeni Asyhadie, *et al.*, *ed.*, *Hukum Keluarga Menurut Hukum Positif di Indonesia*, ed. 1, cet. 1 (Depok: Rajawali Pers, 2020), hlm. 149.

author will conduct interviews with legal practitioners to obtain data related to marriage agreements and marriage annulments. This research looked for secondary data at the National Library, Center for Documentation and Legal Reference at the Faculty of Law, University of Indonesia, and related official websites.

The secondary data that the author uses consists of:[26]

1. Primary legal materials, namely legal materials that are binding and consist of various regulations (Indonesian Civil Code, Law on Notary Position, Marriage Law, Circular of the Director General of the Directorate General of Islamic Community Guidance Number B.2674/DJ.III/KW.00/9/2017 dated 28 September 2017 concerning Registration of Marriage Agreements for those who are Muslim, and Circular Letter of the Director General of Population and Civil Registration of the Directorate General of Population and Civil Registration Number 472.2/5876/ Population and Civil Registration dated 19 May 2017 concerning Registration of Reporting of Marriage Agreements for non-Muslims) and Court decisions (Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015).
2. Secondary legal materials, namely materials that provide explanations regarding primary legal materials, such as various books, journal articles, the internet, and scientific papers.
3. Tertiary legal materials, namely materials that provide instructions and explanations of primary legal materials and secondary legal materials. The tertiary legal material used is a legal dictionary to obtain definitions of terms relevant to the research topic.

[26] Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: UI-Press, 2015), hlm. 52.

3. Results and Discussion

A. The Mechanism of Cancellation of The Marriage Agreement Deed

Marriage agreements in practice must be made with a Notary Deed as a condition for recording the marriage agreement reporting. Regarding the mechanism for canceling the marriage agreement made with this Notary Deed, there are different views as follows.

The first view says that the parties jointly and agree to come to the Notary to cancel the contents of the deed in question and to make a deed of cancellation of the deed, where the deed that was canceled is no longer binding between the parties and they must bear all as a result of the cancellation. The cancellation in this way is in accordance with PMA Number 1420 K/Sip/1978 dated 1 May 1979 which states that the Court cannot cancel a Notary Deed, but it can only declare a Notary Deed as having no legal force. Only the parties can cancel it.[27]

If the parties have agreed to cancel it with a Notary Deed, then of course the parties are not prohibited from canceling the deed before the same Notary when making it. The cancellation of the Notary Deed must be made to the contents of the deed because the contents of the deed are the will of the parties themselves.[28] When there are parties who ask to cancel the deed in front of a notary, the contents of the deed regarding the reason for the cancellation must be proven by the parties themselves because they themselves know it and must prove it if a third party feels aggrieved..[29] Here there is no obligation for the Notary to materially

[27] Habib Adjie, *ed*., *Kebatalan dan Pembatalan Akta Notaris*, cet. 4 (Bandung: Refika Aditama, 2017), hlm. 84.
[28] Habib Adjie, *Q&A: Problematika dan Solusi Terpilih tentang Hukum Kenotariatan Indonesia*, cet. 1 (Bandung: PT Citra Aditya Bakti, 2020), hlm. 127.
[29] *Ibid*., hlm. 127-128.

investigate matters raised by the parties.[30] The obligations and duties of a Notary remain in the realm of formal evidence only, while material accountability for statements/confessions and letters/documents shown to the Notary is the full responsibility of the parties.[31]

In making the deed of the cancellation, the Notary must be careful because there is a possibility that the deed of cancellation is a form of avoiding other legal responsibilities if the parties are not in good faith, for example there are obligations to third parties that must be carried out by the parties and the deed will be used as a reason for does not undertake this responsibility.[32] To overcome this, it is necessary to provide legal counseling to the parties, where in essence the Notary explains that the obligations of the parties to third parties must still be carried out so that third parties with good intentions are not harmed. Here the Notary asks the parties to make a statement legalized by the Notary stating that the parties are responsible for all legal consequences of the canceled deed and if problems arise in the future, the parties will release the Notary and the witnesses.

A different view was expressed by Dr. Winanto Wiryomartani, S.H., M.Hum. as Deputy Chairperson of MPPN, Notary Emeritus, and Academics. He argued that based on his observations of existing practices, for the cancellation of a marriage agreement deed that has been in progress, it is better if the cancellation is done not with a notarized deed of cancellation. This is because to anticipate parties who have taken legal actions with third parties such as signing credit agreements, buying and selling land, and other legal actions where if a problem occurs, the Notary

[30] Habib Adjie, *ed.*, *Sanksi Perdata dan Administratif terhadap Notaris sebagai Pejabat Publik*, cet. 2 (Bandung: PT Refika Aditama, 2009), hlm. 75.
[31] Adjie, *Q&A: Problematika…*, hlm. 46.
[32] *Ibid*., hlm. 128.

will be withdrawn as a party in both civil lawsuits and criminal charges. Then he suggested that the cancellation of the marriage agreement be carried out through an application to the Court. It can be concluded that here it is enough for the parties to cancel it by submitting an application to the Court, without canceling it through a Notary again for the safety of the Notary concerned.

If at a later date the parties notify the Notary that their marriage agreement deed has been canceled by a Court decision, then the action taken by the Notary in response to this matter is that the Notary requests proof of the stipulation of the cancellation of the marriage agreement deed from the Court. The next step is for the Notary to make a note using a pencil at the end of the deed and minutes of the deed that the deed has been declared unenforceable by a Court order by giving a statement of the date and number of the stipulation. If in the case of an annulment of a marriage and in the petition for an annulment of a marriage the party submitting the marriage agreement has been requested to be annulled, the date and number of the decision for annulment of the marriage shall also be written at the end of the minuta deed.[33]

Responding to these two views, it should be remembered that a Notary as a public official who carries out his position in providing legal services to the public as well as an individual citizen who holds a position, must always be careful of the risks that may arise. One of the risks that may arise is legal risk related to the implementation of the Notary's position. Legal risk is a potential event or uncertain event that is not expected to occur in the future, which arises as a result or consequence of exercising the position of a Notary. These legal risks include the risk of becoming a

[33] Wawancara dengan Bapak Dr. Winanto Wiryomartani, S.H., M.Hum., Wakil Ketua MPPN, Emeritus Notaris, dan Pengajar Fakultas Hukum Universitas Indonesia, tanggal 17 Februari 2022.

defendant or co-defendant in a civil lawsuit and/or the risk of becoming a suspect, defendant or even a convict in a criminal charge.[34]

If the two views above are examined further, the researcher agrees with the views of Dr. Winanto Wiryomartani, S.H., M.Hum, who suggested that the cancellation of an ongoing marriage agreement should be made through an application to the court, not with a notarized deed of cancellation. This is because the Court is an "agency" whose position is higher than a Notary who is a "public official", so that if the cancellation is problematic or detrimental to a third party in the future, the third party cannot file a civil lawsuit or criminal charge against the Notary. If the cancellation is notarized, it is feared that it will lead to criminalization of the Notary, where the Notary's actions in carrying out his position were not initially considered a criminal act, but were later classified as a criminal act by the community, in this case especially by a third party. In order to prevent the criminalization of the notary, it is important for the notary to understand and be aware of the decisions he chooses to implement so as not to have an impact on society (especially third parties). Notaries need to understand and realize that the Notary Deed was originally intended for the interests of the parties, but if a conflict arises it can expand into the interests of third parties. These understanding and awareness are important so as not to have an impact on the Notary himself, both material and immaterial. Thus, PMA Number 1420 K/Sip/1978 is no longer relevant to developments in existing practices, particularly regarding the cancellation of marriage agreements that have been in progress.

[34] Bachrudin, *Hukum Kenotariatan: Perlindungan Hukum dan Jaminan Bagi Notaris Sebagai Pejabat Umum dan Warga Negara*, cet. 1 (Yogyakarta: Thema Publishing, 2021), hlm. 161.

Even though the position of the Notary Deed has been canceled, the minutes of the deed must still be in the protocol of the Notary concerned and the Notary still has the authority to issue copies at the request of the interested parties or heirs. The provision of a copy is carried out by a Notary because the Notary Deed is an act of the parties, so they are entitled to a copy of the Notary Deed and the Notary is obliged to make and provide a copy of it.[35] Here, it is better for the Notary to provide an explanation in advance to those who ask for the copy because the contents of the canceled deed are no longer binding for the parties. It is better if the person concerned first makes a statement that will be responsible for all the legal consequences of the deed that has been canceled. After the statement letter is made, then the Notary may provide a copy of it.[36]

B. The Consequences of The Cancellation of Marriage Agreement Deed as a Result of Marriage Annulment to The Third Parties

The marriage annulment which results in the cancellation of the marriage agreement between the parties may not be detrimental to third parties, so that does not mean that cancelling the marriage agreement also cancels the agreement previously made with the third parties. Third parties may not bear the consequences of the cancellation of the marriage between the parties. The existence of agreements made with third parties are still valid.

The making of the marriage agreement deed is assumed to have fulfilled the requirements set out in the Indonesian Civil Code, statutory regulations, and does not violate the law, as well as the making of

[35] Adjie, *Kebatalan dan*…, hlm. 87-88.
[36] Adjie, *Q&A: Problematika*…, hlm. 122.

agreements with third parties. However, the problem is the marriage, where the marriage is later annulled between the parties resulting in the deed of marriage agreement being no longer valid between the parties as husband and wife. However, for the parties who have made agreements with third parties and based on the marriage agreement deed, the marriage agreement deed remains valid when it becomes the basis for making an agreement with a third party, so the agreement with a third party remains valid and must be implemented so that a third party with good intentions not harmed. Related to who should be responsible later, of course, is who made the agreement with the third party.[37]

4. Conclusion

The cancellation of a marriage agreement deed that has been in progress should be made through an application to the Court, not with a notarized deed of cancellation, so that if the cancellation causes problems or harms a third party in the future, the third party cannot file a civil lawsuit or criminal charge against the Notary. If the cancellation is notarized, it is feared that it will lead to criminalization of the Notary, where the Notary's actions in carrying out his position were not initially considered a criminal act, but were later classified as a criminal act by the community, in this case especially by a third party. Thus, PMA Number 1420 K/Sip/1978 is no longer relevant to developments in existing practices, particularly regarding the cancellation of marriage agreements that have been in progress.

If at a later date the parties notify the Notary that their marriage agreement deed has been canceled by a Court decision, then the action taken by the

[37] Wawancara dengan Ibu Fully Handayani Ridwan, S.H., M.Kn., Notaris, dan Pengajar Fakultas Hukum Universitas Indonesia, tanggal 24 Desember 2020.

Notary in response to this matter is that the Notary requests proof of the stipulation of the cancellation of the marriage agreement deed from the Court. The next step is for the Notary to make a note using a pencil at the end of the deed and minutes of the deed that the deed has been declared unenforceable by a Court order by giving a statement of the date and number of the stipulation. If in the case of an annulment of a marriage and in the petition for an annulment of a marriage, the party submitting the request for the cancellation of the marriage agreement has been requested, then the date and number of the decision to annul the marriage is also written at the end of the minuta deed.

5. The existence of an agreement made with a third party is still valid based on the conclusion of an agreement with a third party which is assumed to have fulfilled the requirements set out in the Indonesian Civil Code, laws and regulations, and does not violate the law and the deed of a marriage agreement which remains valid when it becomes the basis for making an agreement with third parties, so that the agreement remains valid and must be implemented so that third parties in good faith are not harmed. Related to who should be responsible later, of course, is who made the agreement with the third party.

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