Legality of Notary Deed Concerning the Joint Treasure

R. Febrina Andarina Zaharnika, S.H., M.H[1]

[1]Doctoral Student In law Pascasarjana Universitas Islam Bandung (UNISBA)

Abstract

In Indonesia, especially the rules regarding marriage are not only influenced by local customs, but also influenced by various religious teachings, such as Hinduism, Buddhism, Christianity and Islam. The existence of various influences in the community resulted in the occurrence of many rules governing marital problems. The difference in the procedure of marriages as the influence of marriage arrangements, has consequences on the way of life of family, kinship, and wealth of a person in social life. The legality of a notary deed cannot be released with the power of proof. The purpose of the audience comes before a notary and asks to pour it in an authentic deed either to be made by a notary or by the complainant so that the legal actions taken get legal certainty. Marriage agreements are made by notarial deed (notary / authentic), not under hand. Whereas if referring to Article 29 paragraph (1) of the Marriage Law, it gives the freedom to make marriage agreements, that marriage agreements can be made with a notary deed, under hand, or under hand with the legalization of a notary.The principle of marriage is to form a family or household that is peaceful, peaceful and eternal for ever. In married life, life is not always harmonious and happy, often there is a dispute in marriage which results in divorce. Against consideration the Panel of Judges has the view of the term "The Binding Force Of Precedent or The Persuassive Of Precedent". After assessing the judge takes a conclusion that in advance the case is related to the statements of the witnesses and is related to the results (Internal Audit), then the panel of judges makes it a matter of consideration in taking a conclusion, the conclusion states that the defendant has made a mistake in the event of default / breach of contract against the notarial deed which is authentic and legally valid authentic evidence.

Keywords: *Legality of Notary Deed, Agreement on Marriage, Marriage, Judge Consideration, Joint Assets.*[205]

[205]R.Febrina Andarina Zaharnika, *Legality Of Notary Deed Concerning The Joint Treasure, Legal Codification*, Universitas Islam Kuantan Singingi (UNIKS), Vol. 1 No 1 (2019), http://ejournal.uniks.ac.id/, Pekanbaru, 2019,p.39-65.

I. INTRODUCTION

In a married life, not every person lives harmoniously and happily, because both parties do not understand between their rights and obligations as husband and wife as described in Law No. 1 of 1974 concerning Marriage, so that disputes often occur. which resulted in divorce. The breakup of marriage due to divorce or divorce is actually a last alternative step, as an emergency door taken, if the ark of household life can no longer be maintained and the integrity and continuity. The breakdown of marital relations between husband and wife does not mean that all matters are interrupted, but there are legal consequences that must be considered by the two divorced parties. According to Indonesian legislation, the provision of assets has been stipulated in the Marriage Law Number 1 of 1974 concerning Marriage.[206]

Based on Law No. 1 of 1974 concerning marriage, in Article 35 paragraph (1) and (2) of the Marriage Law, it is explained that assets in marriage are divided into 2 (two) types, namely: joint assets and property.[207] So to give a sense of justice for those who control the joint assets in the marriage, it is necessary to make a marriage agreement (Prenuptial Agreement) as outlined in a notary deed. Basically, a deed is a letter as a proof that is given a signature that contains an event that forms the basis of a right or engagement, which was made from the beginning intentionally to prove. Even the deed can have formal functions (Formalities Causa), which means that the complete or perfect (not for legitimate) a legal act must be made in the form of a deed. Therefore, a marriage agreement (Prenuptial Agreement), ratified in a notary deed functioning as evidence that is given a signature contains an event that forms the basis of a right or an agreement made intentionally for verification (formalality causal). As the word of Allah SWT in QS. Al-Isra ':[208]

وَلَا تَقْرَبُوا۟ مَالَ ٱلْيَتِيمِ إِلَّا بِٱلَّتِى هِىَ أَحْسَنُ حَتَّىٰ يَبْلُغَ أَشُدَّهُۥ ۚ وَأَوْفُوا۟
بِٱلْعَهْدِ ۖ إِنَّ ٱلْعَهْدَ كَانَ مَسْـُٔولًا ﴿٣٤﴾

Meaning :"*And do not approach the property of the orphan, except in a way that is better (beneficial) until he grows up and fulfills the promise; in fact the promise must be held accountable* "(Surat al-Isra (17): 34). Keeping that covenant according to the Qur'an is something that is ordered, according to the word of God at the end of the verse ". (Surah Al-Isra '[17]: 34.

[206]Hilman Hadikusuma, *Indonesian Marriage LawAccording to the Law of Customary Law Religion Law*, Mandar Maju, Bandung, 2003, p.2.

[207]Erdhyan Paramita and Irnawan Darori, *Legal Effects of Marriage Agreements Not Ratified By Marriage Recording Staff,* Repertorium Journal, Volume Iv No. July 2 - December 2017, Faculty of Law, Sebelas Maret University Surakarta, 2017.

[208]Al-Qur'an and Translation, *Ministry of Religion RI*, 2002 Edition, Pt. Karya Toha Putra, Semarang, 1989, in QS. Al-Isra' [17]: 34.

Based on article 1 number 1 of Law No. 30 of 2004 concerning Notary Position states that a notary is a public official who has the authority to make authentic deeds and his authority regarding deeds, agreements, and provisions required by legislation and desired by those concerned.[209] To get a legal certainty and legality, legality and legal protection, an agreement made by the parties should be made in the form of an authentic deed. Basically an engagement can lead to reciprocal relationships always have an active side that gives rise to the right for someone to sue for their achievements while the passive side creates a burden of obligation for other parties to carry out their achievements. Then it can be ascertained that default can occur if the parties do not carry out what has been agreed upon at all, late in carrying out what was agreed upon, carried out but not as agreed.

Based on the provisions above, the validity of a marriage agreement, is the marriage agreement must be registered and legalized by the employee of the marriage registration, this is in accordance with the provisions stipulated in Article 29 paragraph (1), Law No. 1 of 1974 concerning Marriage, which reads: "At the time or before the marriage takes place both parties with mutual agreement can enter a written agreement legalized by the employee of the marriage registration, after which the contents also apply to third parties as long as the third party is caught".Marriage agreements as an agreement regarding husband and wife's property are possible to be made and held as long as they do not deviate from the principles or patterns stipulated by law.

The agreement on marriage (prenuptial agreement) itself is born of western culture. So that in Indonesia which still upholds eastern customs, the community considers this agreement to be a sensitive issue and is considered unusual, rude, materialistic, selfish, unethical, not in accordance with Islamic customs and easternism. To avoid problems regarding the assets of both the gono-gini property and shared assets, many couples who before the marriage had thought about the possibility of this happening and the prospective husband and wife agreed to make a Pre-marriage agreement called a marriage agreement (prenuptial agreement) Regarding the property in marriage is regulated in Article 35 of Law No. 1 of 1974 concerning Marriage which states that:[210]

(1) Property acquired during marriage becomes a joint asset.

(2) The inheritance of each husband and wife and the property acquired each as a gift or inheritance, is under the control of each as long as the parties do not determine otherwise.

The contents of the article above show that the marriages brought into marriage can also be referred to as their own property and the assets acquired after the marriage are shared assets, which can also be called assets. In formal terms, the marriage agreement is an agreement made by the future husband and wife to regulate the consequences of their

[209] Martiman Prodjohamidjojo, *Indonesian Marriage Law*, Indonesia Legal Center Publishing, Jakarta, 2007, p.8
[210] Law No. 1 of 1974 concerning Marriage, Article 35 Paragraph (1).

marriage to their assets. The marriage agreement is made with the intention of: To limit or completely eliminate the union / mix of assets according to the law (Wettelijke Gemeenschap Van Goederen) and limit the husband's authority over goods belonging to the property. So that the husband without the help of the wife may not take actions which release movable and immovable property from that union which is brought by the wife in marriage or that is obtained by the wife throughout the marriage and recorded in the name of the wife. In order to separate assets or make a mix of income or mixtures of income, someone who wants to marry can enter into a marriage agreement (*Huwelijke Voorwaarden*).[211]

The marriage agreement is a means to protect the property of the bride. Through this agreement the parties can determine their respective assets. So that from the beginning there was a separation of property in marriage or joint assets, but it was regulated by way of distribution if there was a divorce. This is due to the existence of a marriage agreement so that in itself the marriage does not have shared assets and there are personal assets of each husband or wife. Based on the analysis of notary deed No.12 which was made based on an agreement between the Plaintiff and the Defendant it was stated "All assets that exist during marriage are handed over to the first Party (Mr. Tek Sun) both the plots of the Plaintiff's business during marriage in the form of fixed goods which are 155 M2 above there is a building of shop houses and 1 parcel of Agricultural land covering an area of 4144 M2 which has since been obtained by the Plaintiff. Then the agreement was made in accordance with the provisions of Article 1320 of the Civil Code and Article 1338 of the Civil Code, paragraph 1 and 3: "Valid as Law for Plaintiffs and Defendants and must be carried out on the basis of goodwill of both parties".

De facto, on the legality of notary deed No.12 concerning joint assets, it can be ascertained the previous district court's decision, on divorce cases No.68 / PDT / 2009 / PN.Pbr Jo. Case No.62 / Pdt.G / 2015 / PN.Pbr has a permanent legal force, but until when the lawsuit is filed by the Defendant (Mrs. Yanny Waty / Second Party / Mr. Tek Sun's wife) there is absolutely no good faith in carrying out all contents "The deed of agreement between the defendant and the plaintiff as stated in the agreement in the notary deed so that the Panel of Judges stated that the defendant had broken the promise of" Default ". Cases are decided after the divorce has a permanent and binding legal force. So that the Defendant / Second Party's (Mrs. Yenny Waty's) actions are actions "Keep promises" (Default) according to article 1238 of the Civil Code. The act of forgiveness (Default) carried out by Ms. Yenny Waty was in the form of no fulfillment of good faith carried out starting from "fulfillment of all marriage assets handed over to the Plaintiff / first party (Mr. Tek Sun), in the form of: land and house building a shop located on the road of Rajawali, Kedung Sari Village, Sukajadi Subdistrict, Pekanbaru City, Certificate of Ownership Rights No.492 dated June 20, 2005 on behalf of Plaintiff, Agricultural Land covering an area of 4144 M2 located on Bintang Ujung Street,

[211] Yunanto, *Marriage Property Regulation with Agreement on Marriage*, Rineka Cipta, Semarang, 1993, p. 14.

Bagan Jawa Village, Bangko District, Rokan Hilir Regency, Certificate of Hak Pakai No . 01 dated January 18, 2007 on behalf of the Plaintiff, all gold jewelry obtained in the marriage has been divided according to the agreement as outlined in the Notarial Deed which has permanent legal force and child custody.

With the existence of this marriage agreement, the distribution of husband and wife's property is clear in the eyes of the law. So that it does not require a judge's decision to resolve the problem of the assets acquired during the marriage. Based on Law No. 1 of 1974 concerning marriage Article 36 paragraph (1) which states that joint property of husband and wife (assets acquired after marriage, or better known as joint assets or property), so that approval from friends is needed in the form of marriage written (notaril / under hand with the legalization of Notary). Article 36 paragraph 2 of the Marriage Law states that the property (assets held before the marriage is held may be transferred without the consent of the married friend). Then it shows the authenticity of the authentic deed, then three layers of proof have been fulfilled. Namely, proof between the parties that they have explained what was written in the deed, that the incident did indeed occur, and proof that it was true that on that date the person concerned had appeared to the competent authority.

Then the role of the legality of authentic deeds is a legal document and can be used as perfect evidence at the time of the trial. And the validity of the authentic deed submitted by the plaintiff in the form of other proof documents can weaken or prove the truthfulness of the claims in the trial. The marriage agreement (Prenuptial Agreement) in limiting the union of joint property according to the law (Wettelijke Gemeenschap Van Goederen), namely, making marriage agreements (Huwelijke Voorwaarden) which applies when marriage is completed in front of civil registry employees and applies to third parties since registration in front of a local district court.

II. Identification Of Problems

How is the General Review of the Legality of the Notary Deed concerning The Joint Treasure?

III. RESEARCH OBJECTIVES

To find out the General Review of the Legality of the Notary Deed concerning The Joint Treasure and To find out the strength of proof of legality of notary deed concerning the joint treasure.

IV. RESEARCH METHODS

1. Type of normative legal research, and the nature of this research is analytical descriptive, namely the elaboration of data and information obtained based on the theoretical and practical methods which are then analyzed, the nature of this research is

normative data obtained from the literature in the form of books, legal norms and regulations legislation (*Statue Approach*) and Example by Case Approach studies contained in civil decisions No.68 / Pdt / G / 2009 / PN.Pbr Jo. case No.62 / Pdt.G / 2015 / PN.Pbr and Notary Deed No.12 concerning joint assets.

2. Data and Data Sources

Due to the nature of normative research, legal material is used:

a. Primary law material

Primary legal material is the main material used in this study, namely the regulation relating to Civil Case Decision No.68 / PDT / G / 2009 Jo. Case No.62 / Pdt.G / 2015 / PN.Pbr. in the Legality of Notary Deed No.12 concerning Joint Property and Legislation.

b. Secondary Legal Materials

Secondary legal material is a legal material that has a function to add or strengthen and provide an explanation of primary legal material. The secondary legal materials in this study are book books and opinions of experts in various literature.

c. Tertiary Legal Materials

Tertiary legal materials are materials that give instructions or explanations, such as the large Indonesian dictionary, scientific articles.

3. Drawing conclusions

After the data is collected, the data is processed and analyzed by describing and then comparing between the data with the provisions of legislation or the opinions of legal experts, based on the nature and type of data related to the main problem of this research. Furthermore, the discussion is carried out by providing interpretation by linking to legal theories in the form of expert opinions and applicable laws and regulations, then from the discussion the author draws conclusions from general matters to specific matters.

V. DISCUSSION RESULT

4.1 General Overview of the Legality of the Notary Deed

Based on the rules governing Waarmerking or Legalization can be found in Engel Brecht in 1960, namely ordinance Stbl.1867-29 entitled: Bepalingen nopens de bewjskrscht van onderhandse geschriftenvan indonesiers of met hen gelijkgestelde personnels (Provisions regarding strength as proof of letter- letters under the hands made by indigenous legal

groups or people who are likened to them,[212] while De Bruyn Mgz, put forward two terms Verklaring Van visum and "legalization" With Verklaring Van Visum De Bruyn interpreted waarmerken and he explained that the purpose of Verklaring Van Visum was no other gives a fixed date (the notary uses Date Certain words), namely the statement that the notary has seen (Gezein) the deed under the hand that day, of course said De Bruyn the date given was nothing but the date when the notary saw it not from the date he liked or asked to ask for, because of Verklaring Van This visum only gives a definite date, so the signature stated on the letter under the hand is uncertain it can still be denied by the person or his heir, but the date cannot be denied.[213]

Deed as evidence provided with a signature containing the event that forms the basis of a right or engagement, which was made from the beginning deliberately for the basis of proof. Referring to Law No. 30 of 2004 concerning Notary Position regarding the form and function of notary deed and the function of notary deed specifically stipulated in the Act of Notary position.[214] So that the deed is an official letter made intentionally from the beginning to prove it in the future, i.e. if there is a dispute and then it becomes a case in court it is submitted evidence of a legal act or agreement. This is in accordance with the opinion of Subekti, which states that, a deed is a writing that is deliberately made to be used as evidence if there is an event and is signed.

Authentic deeds made by or in the presence of a notary are expected to be able to guarantee certainty, order and legal protection. So authentic deeds have a function as evidence, especially in court, namely evidence of a legal act or agreement. The agreement itself is valid if it has met the legal requirements.[215]

Authentic deeds made by or in the presence of a notary are expected to be able to guarantee certainty, order and legal protection. So authentic deeds have a function as evidence, especially in court, namely evidence of a legal act or agreement. The agreement itself is valid if it has met the requirements regarding the validity of the agreement. In general, what is adopted on each authentic deed as well as the notary deed has 3 (three) evidentiary powers, namely:[216]

1) The strength of outward proof (Uitwendige Bewijs Kracht), namely the authentic ability of an authentic deed is the ability of the deed itself to prove its validity as an authentic deed;

[212]De Bruyn Mgz was quoted back Thong Kie Tan, *What Is the Practice of Notary*, New Edition, Icthiat new van hoeve, 2000, p. 238.
[213] Ibid.,hlm. 241.
[214]Muhammad Adam, *Notariat Science*, Sinar Baru, Bandung, 1985, p. 250.
[215]Daeng Naja, *Deed Making Technique*, Yustisia Library, Yogyakarta, 2012. p. 23.
[216]Herlien Budiono, *Collection of Civil Law Posts in Notary Affairs*, Citra Aditya Bakti, Bandung, 2007, p. 87.

2) The power of formal proof (Formale Bewijskracht), which is a notary deed must provide certainty that an event or fact in the deed is actually carried out by a notary or explained by the parties facing when the document is stated in accordance with the specified procedure in proof of deed;

3) Strength of material proof (Materiele Bewijs Kracht), which is a certainty about the material of a deed, because what is mentioned in the deed is a valid proof of the parties making the deed. If it turns out that the information of the viewers is incorrect, then it is the responsibility of the parties themselves.

Basically the notary deed has the power of proof before the court which is the most powerful compared to other proofs. So that it can be said the function of this notary deed is as evidence for the parties that have made the agreement as outlined in the notary deed. While the notary is a qualified lawyer who is recognized by the court and court officials both in the office as a notary and a lawyer and as a notary he enjoys special rights. The notary position is essentially a public notary assigned by the general authority to serve the needs of the community for authentic evidence that provides certainty of civil law relations, so as long as authentic evidence is still required by the state legal system, the existence of a notary will still be needed in the community.[217] A notary is obliged to keep everything entrusted to him and may not submit copies of deeds to unauthorized people. In law, the Land Deed Making Officer (PPAT) and the notary are "General Officials" who are given authority.

Make certain "Authentic Deeds". In the case of a notary making a deed regarding the agreement made by the parties that bind themselves in the agreement. That it should be a notary deed is a form of agreement that is stated in an article and binds both parties to the engagement. The essence of a notary as a public official is only to record in writing and authentically the legal actions of the parties concerned. The notary is not in it, those who carry out legal acts are the parties concerned and who are bound by and by the contents of the agreement. Therefore, the notary deed or authentic deed does not guarantee that the parties "speak the truth" but guaranteed by the authentic deed are the parties "correct" as contained in their agreement deed. The validity of the position of a notary as a public official also comes from Article 1868 of the Civil Code which states that:

"An authentic deed is a deed which in the form of a prescribed law is made by or in front of a general official in power for that place where the deed is made".

Then this is strengthened, by the provisions of Article 1870 of the Civil Code regulating that authentic deeds provide certainty between the parties and their heirs or people who get their rights, a perfect proof of what is contained in it. The power of perfect proof is the power of proof in the evidence that causes the value of proof on the evidence that causes

[217] G. H. Lumban Tobing, *Notary Position Regulations (Reglement Notary)*, Erlangga, Jakarta, 1999, p. 31

the proof value in the evidence to be sufficient on itself. Thus, authentic deeds made by or before a notary are expected to be able to guarantee certainty, order and legal protection. The authentic deed which is a legal product of this notary is divided into 2 (two) types of deeds, namely Relaas Acte and Partij Acte. These two deeds are authentic deeds, but have differences, namely:[218]

1) Relaas Acte or minutes are deeds made based on the request of the parties, related to recording and writing down everything witnessed, heard and experienced directly by a notary public, related to everything that is conveyed and carried out by the parties;

2) Partij Acte or party deed is a deed made before a notary based on the wishes of the parties stated and delivered and explained by the parties concerned themselves;

As can be applied in a marriage agreement, if in the civil law law, Article 147 clearly states that the marriage agreement must be made with a notary deed before the marriage takes place and will be canceled if it is not made as such, it is different from Law No. . 1 of 1974 concerning Marriage, states that article 29 paragraph (1): At the time or before the marriage takes place, the two parties with mutual agreement can enter a written agreement legalized by the marriage registrar employee, after which the contents apply to third parties as long as the third party is caught . Therefore, since the time of the marriage, according to the law there will be total joint assets between husband and wife, so far there are no other provisions in the marriage agreement.

Persepketif customary law states, with the existence of customs that Boedel inheritance, especially those that are joint property (gono-gini) remains to finance the daily needs of a husband or wife who is still alive when the other party dies. So as for the intent and purpose of the prospective husband and wife to make promises of marriage is to exclude the entry into force of the absolute union of marital assets, to deviate from the provisions of the management of marriage assets or to fulfill the wishes of third parties as heirs or donors. In making the marriage agreement, it must be considered Article 147 of the Civil Code which stipulates the marriage agreement must be held before the marriage in the form of a notary deed, if not then the marriage agreement is canceled.[219]

Besides the things mentioned above, the law also regulates marriage agreements in the form of: In determining the contents of the marriage agreement, it is necessary to pay attention to the provisions of Article 144 of the Civil Code, that is, if a prospective husband and wife requires absolute separation of property, the provisions of the marriage

[218] Habib Adjie, *Cancellation and Cancelation of Notary Deed*, second print, Refika Aditama, Bandung, 2013, p.45.

[219] Padwo Wahjono, *Legal Development in Indonesia,* Ind Hill Co., Jakarta, 1989, Compare Philipus M. Hadjhon, Legal Protection for the People in Indonesia, A Study of Its Principles, Implementation by Courts in the General Justice Environment and Establishment of Judicial State Administration , Bina Ilmu, Surabaya, 1972, p. 59.

agreement which states that "expressly excludes the possibility of a profit and loss union". If not, then the agreement takes place with a profit and loss union. The joint assets, during the marriage, should not be abolished or changed with an agreement between husband and wife ". The marriage agreement was held, there was legal certainty about what they had agreed to do in a legal act against what was agreed upon.

According to Article 147 of the Civil Code, the marriage agreement must be made with a notary deed held before the marriage and valid from the time the marriage is carried out at no other time. This is different from Law No. 1 of 1974 concerning Marriage which does not require a marriage agreement to be made a Notary Deed. As a result of marriage law, according to the Civil Code the rights and obligations can be seen in two (2) things, namely:[220]

1) The consequences arising from a husband and wife relationship are:

a. The obligation of husband and wife to be faithful, helpful, helpful and if they are violated can cause a bedside table to separate, and can file a divorce;

b. Husband and wife must live together in the sense that the husband must accept the wife, the wife does not have to come to the husband's place if the situation is not possible, the husband must fulfill his wife's needs.

2) The consequences arising from the husband's power in marital relations include:

a. The husband is the head of the household, the wife must obey the husband so that the wife is incompetent unless there is permission from the husband;

b. Husbands are in charge of taking care of: shared assets, most of the wife's wealth, determining the place of residence, determining the issues concerning the power of parents. Wives are considered incompetent, cannot manage their own wealth;

c. Husband is obliged to give his wife everything that is needed or provide a living according to her ability and position.

Based on the book, Encyclopedia of Woman & Islamic Cultures (The Marriage of Context Practices), in the opinion, Suad Joseph: "The marriage context of her right to divorce herself from her husband as long as her husband expresses grants her this right". (Suad Joseph, 2006: 252).[221]

4.1.2 Overview of the understanding of shared assets

[220]Djaja Meliala, *Development of Civil Law on People and Family Law*, Aulia Nuansa, Bandung, 2006, p. 25.
[221]Suad Joseph, *Encyclopedia Of Woman & Islamic Cultures (The Marriage Of Contarct Practices)*, Brill, Leiden Boston, Belanda, 2006, p.252.

In essence the marriage assets obtained after the divorce, then the joint assets in marriage (*wealth gono-gini*) are generally divided equally between husband and wife. This is based on the provisions of Article 128 of the Civil Code which states that, "After the dissolution of unity, the property of the unit is divided between the husband and wife, or between their respective heirs, regardless of which party the items are obtained ".

A common treasure (wealth gono-gini) is wealth acquired by both husband and wife since the marriage. This is as explained in Article 35 paragraph (1) Law No.1 Year 1974 concerning Marriage. To sue for property, this can be done through deliberation or through a court. For those who are Muslim, joint property claims can be submitted to the Religious Courts together with the divorce lawsuit or can also be filed separately after the divorce decision. Regarding the inclusion of gono-gini property claims or joint assets in a lawsuit / divorce application, it is closely related to the needs of the party who submitted the application or the divorce suit. Because if the couple agrees to divorce, but there is no agreement regarding the distribution of property, then in court it will hamper the divorce process.

So, if you want to prioritize divorce decisions, you should leave the lawsuit beforehand, it is better to submit it after the divorce has been terminated. There are a number of issues that arise after divorce, but the property of Gono-gini is still controlled by one of the parties. Then the joint assets are assets acquired during a marriage outside of inheritance or gifts, meaning that the assets obtained from their business or individually during the marriage bond period. If before the marriage is held the prospective husband and wife do not make a marriage agreement (regarding the limitation or elimination of the marriage property union), then in the marriage there will be a unity of marriage property. This means that withthe marriage takes place, then automatically for the sake of law the property of the husband and wife becomes the property of the husband and wife concerned, without the need for surrender or other legal actions.[222]

The legal consequences caused by the union of marital assets are that legal actions on unity are only valid if carried out jointly by husband and wife, because the owner of the object is the two husband and wife together. According to Article 119 of the Civil Code, the land without going through any legal action becomes a unity property, so that it belongs to the husband and wife.

Based on legal considerations in jurisprudence, the Supreme Court of the Republic of Indonesia No.2191 K / Pdt / 2000 dated March 14, 2001 regarding the quality of proof of photocopies of the Letter used as evidence at the trial vide the decision of the Supreme Court Number 701 K / Sip / 1974 contains the rule that "Tool photocopy evidence that is not matched with the original letter at the trial cannot be accepted as a valid evidence ”.

[222]Ahmad Rofiq, *Islamic Law in Indonesia*, Raja Grafindo Persada, Jakarta, 1995, pp. 200.

Regarding the Legality of Notary Deed No.12 concerning the distribution and separation of joint assets can be proven in court. Consideration of the general knowledge of certainty in the joys and sorrows of fostering a household, interrelated relations with witness testimony of both parties, although imperfect and with propriety and fairness, the Supreme Court considers that the object of dispute of movable goods should be suspected as a result of reasonable labor and determined as a joint asset which must be divided into two. The ultimate goal of justice seekers is that all of their rights that are harmed by other parties can be restored through a judge's decision. This can be achieved if the judge's decision can be implemented. A judge's decision will have no meaning if it cannot be executed. Therefore the judge's ruling has executive power, namely the power to carry out what was determined in this decision by force by state instruments. As for those who give executive power to the judge's decision is the head or title of the decision in the form of "for the sake of justice and based on the supreme divinity".[223]

So the author's assumption, the decision of a judge who has obtained legal force can still be carried out voluntarily by the defeated party, but the problem is now, it often happens that the defeated parties do not want to implement the decision voluntarily so court assistance must be needed to carry out the contents of the decision by force. This is usually done by the winning party by submitting a request for execution to the Chief Justice so that the decision is carried out by force. Even with decisions that contain the provisions of "Uitvoerbaar Bij Vooraad" or immediate decisions that can be executed even though the decision has not yet obtained permanent legal force, in practice the implementation of decisions made in advance has brought a lot of difficulties, especially in the authority of judges with limited conditions. On the other hand the implementation of the decision will also cause uncertainty because the potential for the possibility of the decision will be canceled at the appeal or cassation level. So that the judges in making decisions must immediately be based on the values of the object of execution.

Based on Article 29 of the Republic of Indonesia's Law No. 1 of 1974 concerning Marriage, it does not specify the things that can be agreed upon, except only stating that the agreement cannot be ratified if it violates the boundaries of law and decency. So the marriage assets obtained after the divorce, then the joint assets in marriage (wealth gono-gini) are generally divided equally between husband and wife. This is based on the provisions of Article 128 of the Civil Code which states that, "After the dissolution of unity, the property of the unit is divided between the husband and wife, or between their respective heirs, regardless of which party the items are obtained ".

In perspective, the Chinese indigenous people (before they applied the Civil Code on 1 May 1919) were in principle the same as the legal provisions according to Islam, namely each husband and wife owned their own assets.[224] The law of marital property determines, the

[223]Retnowulan Sutantio, *Civil Procedure Law in Theory and Practice*, Mandar Maju, Bandung, 2009.p.89.
[224] Law No. 1 of 1974 concerning Marriage, Article 29.

inheritance (belongings) of the husband or wife belongs to each husband or wife who carries, while the assets obtained jointly during the marriage (the property of gono gini) become joint assets (joint property). The importance of establishing joint assets in a marriage is to control and share, control of shared assets in the case of marriage is still ongoing, the distribution of shared assets is carried out when a marriage is broken. Law No. 1 of 1974 concerning Marriage, article 37 says: *"if marriage breaking up due to divorce of joint assets is regulated according to their respective laws, "what is meant by their respective laws confirmed in the explanation of article 37 is" religious law, customary law and other laws*.[225]

Likewise, the agreement must not reduce the rights reserved for the husband as the head of the union of husband and wife, but this does not reduce the authority of the wife to require her to manage personal assets, both movable and immovable property. besides enjoying personal income freely ". To the District Court Judges, that if a child maintenance dispute occurs, the judge's consideration is whether or not a husband / plaintiff is able to provide maintenance costs for his child. If it turns out in reality the husband cannot fulfill these obligations as determined by Article 41 letter b of Law No. 1 of 1974 concerning Marriage, the Court can determine that the mother / wife can take part in this obligation.

VI. CONCLUSIONS AND SUGGESTIONS

A. CONCLUSION

Legality of Notary Deed No.12 concerning joint assets is an act of agreement for the separation and distribution of joint assets is an authentic deed because it is made before the authorized public official, namely a notary. The legality of authentic deeds is a legal document and can be used as perfect evidence at the time of the trial. And the validity of the authentic deed submitted by the plaintiff in the form of other proof documents can weaken or prove the truthfulness of the claims in the trial. Regarding proof of notarial deed in case decision No.68 / PDT / G / 2009 / PN.Pbr Jo. case No.62 / Pdt.G / 2015 / PN.Pbr can prove that the implementation of the deed of separation and distribution of property as stated in notary deed No.12 can prove that the defendant did not fulfill a number of agreed achievements with no regard to legal compliance and do not have good faith in fulfilling the agreement so as to cause an act of default / injury to the notary deed No. 12 concerning the separation and distribution of joint assets.

B. SUGGESTIONS

So the author's observation in the legality of notary deed No. 12 concerning joint assets, there are several suggestions, namely:

[225]Law No. 1 of 1974 concerning Marriage, Article 37.

1. In the legality of notary deed No. 12 regarding the distribution and separation of shared assets should be obtained in obtaining joint assets before the marriage agreement before the marriage is carried out in order to obtain justice for the acquisition of personal assets so as not to cause disputes in the future during divorce and does not cause unity of personal assets with shared assets. So that the notary who makes the deed gives advice to the parties who want to bind themselves in an agreement (deed) about the legality of an agreement both the agreement title, the content of the agreement, and the reasonableness of the deed if it is not fulfilled by the parties to cause default / breach of contract on the notary deed. So that the Ex Officio judge's process of verifying the court immediately knew the application of the law in the value of proof.

2. It is recommended to consider the panel of judges in deciding a case so that the judge is more careful in constricting a problem regarding the mixing of assets together with inheritance, so that in deciding a case based on justice. For the panel of judges should first before deciding the case see in terms of proof of the facts of the trial and the provisions that govern, therefore in order not to cause harm to one party. The parties facing the notary should always help the notary public to state the truth of the values in accordance with the parties' good intention towards the judge's decision not to deny the rights of those who were declared defeated in the care of this child. Then the obligations and responsibilities of the father / plaintiff against the child remain cared for by the husband / plaintiff, and the mother / wife as the winning party may not prevent the father from connecting with his child.

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[∂]Lecturer at the Law Faculty of the Constitutional Law of UNISBA (Taman Sari Street No. 20 Bandung)efikyusdi@gmail.com