

Tinjauan Yuridis Penerapan Asas Publisitas Terhadap Perubahan Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 = Juridicial Review The Application of The Principle of Publicity related to The Change of Marriage Agreement after The Constitutional Court Decision Number 69/PUU-XIII/2015

Hamdi Haykal Miswar, author

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Abstrak

Pada tanggal 27 Oktober 2016, MK RI telah mengeluarkan putusan nomor 69/PUU-XIII/2015 yang merubah bunyi Pasal 29 ayat (1), (3), dan (4) UU Perkawinan. Namun, sampai saat ini belum ada ketentuan yang mengatur tentang pelaksanaan perjanjian perkawinan pasca Putusan MK tersebut sehingga menimbulkan permasalahan. Salah satu permasalahan yang muncul ke permukaan adalah tentang penerapan asas publisitas terhadap perubahan perjanjian perkawinan pasca Putusan MK. Penelitian skripsi ini mengungkap tentang bagaimana pengaturan perubahan perjanjian perkawinan dan bagaimana penerapan asas publisitas terhadap perubahan perjanjian perkawinan pasca putusan MK tersebut. Untuk itu, digunakan metode penelitian hukum yuridis normatif dengan fokus kajian pada bahan hukum primer, sekunder, dan tersier. Untuk memperkuat bahan hukum tersebut dilakukan wawancara dengan beberapa narasumber terkait. Berdasarkan hasil kajian yang dilakukan, perubahan pasal 29 ayat (1) UU Perkawinan pasca Putusan MK ini membawa pengaruh kepada pengaturan perubahan perjanjian perkawinan, sedangkan prosedur dan tata cara pelaksanaannya belum diatur sehingga dapat menimbulkan kerugian terhadap pihak ketiga. Selain itu, mengenai penerapan asas publisitas terhadap perubahan perjanjian perkawinan di dalam pasal 29 ayat (1) pasca Putusan MK hanya ditentukan untuk disahkan oleh pegawai pencatat perkawinan atau notaris sebelum berlaku kepada pihak ketiga sehingga asas publisitasnya belum terpenuhi karena dengan pengesahan tidak berarti telah diumumkan, sehingga pihak ketiga dapat dirugikan. Atas dasar itu, penulis merekomendasikan agar segera dilakukan revisi khususnya pasal 29 ayat (1), (3), dan (4) UU Perkawinan diikuti dengan penambahan penjelasan dalam PP terkait prosedur dan tata cara perubahan perjanjian perkawinan supaya memberikan dasar hukum yang kuat bagi notaris dalam melaksanakan Putusan MK tersebut.

<hr><i>On October 27, 2016, the Constitutional Court of the Republic of Indonesia issued a decision number 69 / PUU-XIII / 2015 which changed the sound of article 29 paragraph (1), (3), and (4) of Marriage Law. However, until now there is no provision that regulates the implementation of marriage after the Constitutional Court's decision so that cause problems. One of the problems that arise is about the application of the principle of publicity to the change of marriage agreement after the Constitutional Court Decision. This thesis research reveals how the arrangement of change of marriage agreement and how the application of publicity principle to change of marriage agreement after the Constitutional Court decision. For that, the researcher use the juridical normative methods focusing the analysis on the the primary, secondary, and tertiary legal materials. To strengthen the legal material is done with several relevant sources. Based on the results of the review, the amendment of Article 29 paragraph (1) of the Marriage Law after the Constitutional Court's Decision has had an effect on the arrangement of amendments to the marriage agreement, while the procedures and procedures for implementation are not yet reliable for third

parties. In addition, concerning the application of the principle of publicity to the amendment of the marriage agreement in article 29 paragraph (1) after the Constitutional Court Decision is only determined to be approved by the marriage or notary before applying to a third party so that the publicity principle has not been fulfilled because with no validation has been announced, third parties can be harmed. On that basis, the author suggest to promptly revise in particular Article 29 paragraphs (1), (3), and (4) of the Marriage Law with additional explanation in the Implementing regulation relating to the procedures and procedures for amending the marriage agreement which provide a firm legal basis for the notary in carry out the Constitutional Court Decision.</i>