

KAJIAN PEMBUATAN PERJANJIAN KAWIN OLEH NOTARIS DI DAERAH ISTIMEWA YOGYAKARTA PASCA PUTUSAN MAHKAMAH KONSTITUSI NOMOR 69/ PUU-XIII/2015

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INTISARI

Tesis ini bertujuan untuk mengetahui Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 terkait pembuatan perjanjian kawin ditinjau dari kepastian hukum, keadilan dan kemanfaatan, serta mengetahui pendapat hukum notaris di Daerah Istimewa Yogyakarta terkait pembuatan perjanjian kawin pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 ditinjau dari kepastian hukum, keadilan dan kemanfaatan.

Penelitian ini merupakan penelitian hukum normatif yang menggunakan data primer dan data sekunder. Penelitian hukum ini dilakukan dengan memilih bahan pustaka atau data sekunder sebagai penelitian hukum yang utama dan didukung dengan data primer. Data sekunder diperoleh dengan jalan penelitian kepustakaan dimana mengkaji dari bahan hukum primer, bahan hukum sekunder, dan bahan hukum tersier. Data primer diperoleh dengan cara penelitian lapangan, dengan mewawancarai responden dan narasumber. Data yang sudah terkumpul baik data Sekunder maupun data Primer dianalisis dengan metode Kualitatif, dan disajikan secara deskriptif.

Berdasarkan penelitian dapat ditarik kesimpulan sebagai berikut, yaitu Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 dianggap belum sepenuhnya mencerminkan kepastian hukum karena masih tidak sesuai dengan peraturan-peraturan yang ada baik secara vertikal maupun horizontal. Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 juga dianggap belum sepenuhnya mencerminkan keadilan, karena masih dimungkinkan akan merugikan pihak ketiga, dan Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 juga dianggap belum sepenuhnya mencerminkan kemanfaatan, karena masih terdapat keraguan dari beberapa notaris dalam pembuatan perjanjian kawin pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015. Terdapat pendapat notaris di Daerah Istimewa Yogyakarta yang setuju dan tidak setuju terhadap Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015.

Kata kunci: Perjanjian Kawin, Notaris, Hukum Perkawinan.

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A STUDY ON THE CREATION OF MARRIAGE AGREEMENT BY NOTARIES IN SPECIAL REGION OF YOGYAKARTA AFTER CONSTITUTIONAL COURT DECISION NO. 69/PUU-XIII/2015

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ABSTRACT

This study attempts to investigate the Constitutional Court Decision No. 69/PUU-XIII/2015 in terms of its legal assurance, fairness and benefits regarding the creation of Marriage Agreement as well as to explore legal views of notaries in Special Region of Yogyakarta on the Decision of the Constitutional Court in terms of its legal assurance, fairness and benefits.

This study is a normative legal research with the make use of primary and secondary data. This legal study is carried out by selecting relevant literatures - secondary data - as the main legal research and supported by primary data. Secondary data were gathered through a library research by reviewing primary, secondary, and tertiary law materials. Primary data were collected from a field research by interviewing respondents and resource persons. Data that have been gathered - secondary and primary data - were analysed by utilising Qualitative method, and presented descriptively.

Based on this study, it concludes that the Constitutional Court Decision No. 69/PUU-XIII/2015 is considered not fully reflects on the legal assurance in the sense that it is not appropriate with the existing regulations either vertically or horizontally; the Decision of the Constitutional Court No. 69/ PUU-XIII /2015 is also deemed not to entirely represents justice, this is because there are possibilities to harm third parties; and the Decision of the Constitutional Court No. 69/PUU-XIII/2015 is further regarded not totally provides the benefits in light of the fact that several notaries were found in doubt in drawing up the Marriage Agreement after the Constitutional Court Decision No. 69/PUU-XIII/2015. Moreover, it was also found that some notaries in Special Region of Yogyakarta were in agreement with the Decision of the Constitutional Court No. 69/PUU-XIII/2015 whereas some of the notaries rejected the Decision.

Keywords: Marriage Agreement, Notary, Marriage Law.

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