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THE NOTARY ROLE AND RESPONSIBILITY IN MAKING THE DEED OF MIXED MARRIAGE

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ABSTRACT

Globalization have push marriage to be perform not only between Indonesian citizens but also may be done with foreigners. As it is known, through marriage could pooling the assets between the spouses which leads to the matter of ownership in the property whereas Indonesians cannot own land and buildings in Indonesia. Therefore, notary has a role in making authentic deed under the form of mixed marriage or also known as mixed marriage agreement. The purpose of this study is to examine and analyze the roles and responsibilities of a notary in making mixed marriage deeds. This study uses a normative legal research method with a statutory approach, presenting cases in the form of decisions, and analysis. The results shows that there are problems related to the making of a mixed marriage deed made by a notary. These problems are in the form of a notary who does not provide legal counseling on the deed that the clients want to make (Indonesian citizens and citizens of a foreign country), does not translate or explain the deed if it appeared not understandable, and does not write it down at the end of the deed that a translation or explanation has been carried out because the present does not understand the language used written in the deed. In addition, with these problems, the strength of proof and the legal consequences of the act made by the notary are affected. Therefore, notaries in carrying out their positions must be guided by Notary Department Law.

Keywords : *notary responsibilities; mixed marriage deed, the power of evidence*

INTRODUCTION

Marriage is an inner and outer bound between a husband and wife in means to form a family.[1] The definition of marriage mentions under article 1 of the act number 1 year of 1974 concerning marriage. Beside regulated under the act, marriage also listed under the constitution of Republic of Indonesia number 1945 particularly under article 28B which stated that everyone has the rights to form a family as well as to forward his descendants by forming the marriage.[2] Through the marriage regulation under the act therefore a marriage is not a personal business however also delivered legal connection between man and women to form

[1]Santoso. (2016). "Hakekat Perkawinan Menurut Undang-Undang Perkawinan, Hukum Islam dan Hukum Adat." *Yudisia,* 7(2): 413. doi: 10.21043/yudisia.v7i2.2162.
[2]Elfirda Ade Putri. (2021)."Telaah Kritis Pasal 7 Undang-Undang No. 16 Tahun 2019 Tentang Perkawinan." *Jurnal Hukum Sasana* 7(2): 231. doi: 10.31599/sasana.v7i2.805.

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a family.[3] In this matter, one of the legal relation is the marital property. What it means as a marital property are jointed property and inherited property. Joint property is assets acquired during marriage. Meanwhile, inherited assets are assets acquired by the husband and wife, both as gifts and inheritance, in which each husband and wife control each other if nothing is specified otherwise.[4] Therefore, with the existence of 2 (two) classifications regarding assets after marriage, the legal obligations of each husband and wife are also different.

The globalization has brought Marriage can not only be perform between fellow Indonesian Citizens (hereinafter referred to as Indonesian Citizens). However, marriages can also be carried out with people of different nationality or known as Foreign Citizens (hereinafter referred to as Foreigners). Marriages conducted between Indonesian citizens and foreigners are called mixed marriages.[5] The continuation of the mixed marriage results in joint assets or a mixture of assets obtained after the marriage. Therefore, several legal consequences also born, one of which was regarding the ownership of land rights, namely property rights, business use rights and building use rights. According to Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA), foreigners may not have property rights, business use rights or building use rights. Thus, if an Indonesian citizen enters a marriage with foreigner, then after marriage the Indonesian citizen cannot obtain ownership rights, business use rights or building use rights because the assets are part of the joint assets with the foreigner.[6] Therefore, there are several things that can be done so that Indonesian citizens can still have land rights, namely ownership rights, business use rights and building use rights, one of which is through prenuptial agreements or marriage agreements with the contents that regulate the separation of assets between Indonesian citizens and foreigners. The marriage agreement can be made at the time, before, or during the marriage. Arrangements regarding this matter are regulated in Article 29 of the Marriage Law jo. Constitutional Court Decision Number 69/PUU-XIII/2015.[7] As is known, the agreement is the result of the existence of an agreement. This agreement is then used as a guideline or law for those who make it in accordance with the provisions of Article 1338 of the Civil Code (hereinafter referred to as the Civil Code). The terms of the validity of the agreement are regulated in Article 1320 of the Civil Code which consists of 4 (four) conditions. First, the agreement of the parties that binds himself. Second, the ability of the parties to bind themselves in an agreement. Third, there is a certain subject matter. Fourth, for reasons that are not prohibited.[8] With the fulfillment of these four conditions, even though the agreement was made verbally or under the hand, an agreement was legally binding on the parties. However, if in the future there is a dispute related to the agreement, the private agreement does not have perfect evidentiary power. Although an underhand agreement is a type of written evidence in the form of a letter, as Sudikno Mertokusumo argues, the letter in question is something that consists of signs that can be read and expresses an idea where the idea can be used as evidence. In this case, one of the written pieces of evidence that has

[3]Tengku Erwinsyahbana. (2012).“Sistem Hukum Perkawinan Pada Negara Hukum Berdasarkan Pancasila.” *Jurnal Ilmu Hukum* 3(1):7. doi: 10.30652/jih.v2i02.1143.

[4]Herni Widanarti. (2019). “Tinjauan Yuridis Akibat Perkawinan Campuran Terhadap Anak.” *Diponegoro Private Law Review* 4(1):164.

[5]Atika Sandra Dewi dan Isdiana Syafitri. (2022).“Analisis Perkawinan Campuran dan Akibat Hukumnya.” *Jurnal Institusi Politeknik Ganesha Medan* 5(1):179.

[6]Puti Ayu Cassandra. (2020). “Status Harta Kawin Dari Perkawinan Campuran Di Luar Negeri Yang Belum Dicatatkan Di Indonesia (Studi Putusan Pengadilan Tinggi Daerah Khusus Ibukota Jakarta Nomor 613/Pdt/2017/PT.DKI).” *Jurnal Notary Indonesia* 2(1):705.

[7]Ni Nyoman Maha Prami Saraswati Dewi dan I Nyoman Darmadha. (2018).“Pengaturan Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015.” *Jurnal Ilmu Hukum* 4(3):2.

[8]Hanafi Arief. (2015). “Implementasi Yuridis Perjanjian Kawin Dalam Sistem Hukum Positif Di Indonesia.” *Jurnal Hukum dan Pemikiran* 15(2):145. doi: 10.18592/syariah.v15i2.551.

the strongest evidence is the Deed. The deed in question is an authentic deed.[9] An authentic deed according to Article 1868 of the Civil Code is a deed where the form is determined by law and made in the presence of a public official in charge at the place where the deed was made. In this case, the public employees referred to in making authentic deeds are notaries, police, and judges.[10] If it relates to the making of a marriage agreement for the separation of assets between Indonesian citizens and foreigners, the notary has the authority to make the marriage agreement so that the deed has perfect evidentiary power. However, even though the mixed marriage agreement was drawn up by a notary and has perfect evidentiary power, it does not mean that the notarial deed is free from disputes. One of them is what happened in the case in Decision Number 1308/Pdt.G/2019/PN Dps. The nature of the case began when Paul Vincent Mckendrick (Plaintiff) who is an Australian citizen married Rahana Wulantika (Defendant I). Before the marriage took place, the Plaintiff and Defendant I intended to make a Marriage Agreement. This is because Defendant I explained to the Plaintiff that the reason for making a marriage agreement was so that the Plaintiff could buy and own land and buildings in Indonesia. Thus, the Plaintiff agreed to enter into a marriage agreement contained in the Deed of Marriage Agreement Number 4 made on July 5, 2016 before Notary Rahana Wulantika (Defendant II). After the marriage agreement was drawn up, the Plaintiff and Defendant I married on 8 August 2016 in Tasmania, Australia and reported the marriage to the Population and Civil Registry Service on 23rd January 2017. In connection with the marriage agreement being made and Defendant I's explanation stating that the Plaintiff can own land in Indonesia, the Plaintiff borrowed money from National Australia Bank Limited in Australia in the amount of ±AU$ 240,000,- (approximately two hundred and forty thousand Australian dollars) to purchase land and buildings in Bali on behalf of the Plaintiff. However, when he wanted to buy the land and building, the Plaintiff found out that he, as a foreigner, could not have rights over the land. Therefore, the land and building in the form of a residential house were registered in the name of the spouse, namely Defendant I who is an Indonesian citizen. On October 8, 2018, the marriage between the Plaintiff and Defendant I was declared dissolved due to divorce. After the divorce between the Plaintiff and Defendant I, and after the Deed of Marriage Agreement Number 4, dated 5 July 2016 was translated into English, the Plaintiff only understood and realized that the articles in the Deed of Marriage Agreement which meant contained contradictions, namely:

Article 1, which reads:

> "Between husband and wife there will be no partnership of property with any name or designation, whether partnership of property according to law or profit and loss partnership or profit and income partnership".

Article 2, which reads:

> "All property of any nature brought by the parties to the marriage, or acquired during the marriage due to purchases, inheritance, grants, and/or in any other way remains the property of the parties who brought and/or obtained it."

Article 3 paragraph (2), which reads:

> "Immovable property, which can and cannot be proven by proof of ownership or other documents by one of the parties after the marriage has taken place, shall be considered as the property of each of the parties for ½ (half) an equal portion".

Article 4, which reads:

[9]H. Enju Juanda. (2016). "Kekuatan Alat Bukti Dalam Perkara Perdata Menurut Hukum Positif Indonesia." *Jurnal Ilmiah Galuhi Justisi* 4(1):29. doi: 10.25157/jigj.v4i1.409.

[10]Agus Toni Purnayasa. "Akibat Hukum Terdegradasinya Akta Notaris yang Tidak Memenuhi Syarat Pembuatan Akta Autentik." *Jurnal Acta Comitas Hukum Kenotariatan* 3(3):397-398. doi: 10.24843/AC.2018.v03.i03.p01.

1. "wealth and debts of the parties that occurred before or after the marriage took place, remain the rights or obligations of each."
2. "The first party can manage and defend their rights, both in the act of management and in the act of ownership to manage, control their own property, both movable and immovable, and enjoy freely from their income."

In connection with the articles that have been described above, it has shown that there is a contradiction between the articles themselves. Where, Articles 1, 2, and 4 expressly state that there are separate assets, while Article 3 paragraph (2) is inversely proportional to these articles which state that there are 2 (two) equal shares of assets. In fact, as is well known, the article is still the contents of the Marriage Agreement whose meaning, or intent differs from one to another. Therefore, this condition results in legal uncertainty in a marriage agreement. Thus, the purpose of the marriage agreement made by the Plaintiff and Defendant I was not achieved.

Besides that, with the difference in meaning between Article 3 paragraph (2) and Article 4, it results in the practice where the residence is only controlled and enjoyed by Defendant I because Defendant I rents out the residence and benefits from the rental of the residence. Meanwhile, on the other hand, the Plaintiff must bear the payment of the debt to National Australia Bank Limited which he used to buy the house and the Plaintiff must pay a house insurance premium of Rp. 8,000,000. - (eight million rupiah) per year.

Regarding the problems described above, it can be stated that the problem stems from the Plaintiff's misunderstanding and lack of understanding regarding the language used in the Marriage Agreement Deed (hereinafter referred to as the Mixed Marriage Deed) made by Defendant II. Where next, the contents of the Marriage Agreement also have contents that contradict one another. So that the essence of a marriage agreement is not achieved.

Based on these problems, a study was made with the title of Roles and Responsibilities of a Notary in Making a Mixed Marriage Deed with 2 (two) formulations of the problem, namely (1) what are the arrangements regarding the roles and responsibilities of a notary in making a mixed marriage certificate? (2) how is the strength of proof and the legal consequences of a mixed marriage certificate in which the contents of the articles contradict each other? The purpose of writing this article is to examine the arrangements regarding the roles and responsibilities of a notary in drafting a mixed marriage certificate and to analyze the strength of evidence and the legal consequences of a mixed marriage certificate where the contents of the articles contradict each other.

METHODS

This research uses a type of normative legal research[11] by conducting a review of Law Number 30 of 2004 concerning the Position of Notary jo. Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (hereinafter referred to as UUJN) which regulates the roles and responsibilities of a notary. In addition, a review is also carried out on the Civil Code if the contents of the agreement which has become an authentic deed contradict each other. The type of approach used is a statutory approach and a case approach in the form of a decision.[12] The legal materials used are primary legal materials, namely the relevant laws and regulations (UUJN and the Civil Code). Secondary

[11]Depri Liber Sonata. "Metode Penelitian Hukum Normatif dan Empiris: Karakteristik Khas Dari Metode Meneliti Hukum." *Fiat Justisia Jurnal Ilmu Hukum* 8(1):24. doi: 10.25041/fiatjustisia.v8no1.283

[12]Kornelius Benuf dan Muhamad Azhar. "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer." *Gema Keadilan* 7(1):25. doi: 10.14710/gk.2020.7504.

legal materials, namely, books that discuss notaries and agreements, scientific publications in the form of articles and journals, as well as tertiary legal materials via the internet. The analytical method used is a qualitative method because this research is descriptive in nature and uses analysis to solve research problems.

ANALYSIS AND DISCUSSION

Arrangements regarding the Roles and Responsibilities of a Notary in Making a Mixed Marriage Deed

Marriage Deed is a deed made by a notary regarding the rights and obligations of husband and wife for the wealth they own.[13] In this regard, a notary is a public official who has the authority to draw up a mixed marriage certificate as an authentic deed for both foreigners and Indonesian citizens.[14] Notaries in carrying out their positions also have obligations and responsibilities regulated in UUJN and the Notary Code of Ethics.

In the process of making a Mixed Marriage Deed, the roles and responsibilities of a notary are the same as making an ordinary Marriage Deed. Where the notary according to Article 15 paragraph (1) UUJN, has the authority to make authentic deeds and the making of authentic deeds cannot be separated from the will of the interested parties to be stated in an authentic deed. Then in Article 15 paragraph (2) letter e UUJN states that a notary has the authority to provide legal counseling in connection with making a deed. Even though one of the parties bound to the agreement is a foreigner, it does not mean that the deed is made in a foreign language. Where according to Article 43 UUJN, the deed is made in Indonesian. Where if the appeared does not understand the language used in the deed, the notary is obliged to translate or explain the contents of the deed into a language that is understood by the appeared. However, if the notary cannot translate or explain it, the notary may ask an official translator to translate or explain the deed. In addition, the notary can also make a deed in another language that is understood by the notary and witnesses if the interested parties are willing to do so. Even so, the notary is still obliged to translate the deed made under other language into Indonesian. If it is related to the making of mixed marriage certificates, then language is the basis for making a certificate. Where each party bound in an agreement must equalize their will in making the deed. If one of the parties does not understand the language in the deed, then the deed can cause misunderstandings or discrepancies. Therefore, by understanding the deed is the most important thing in making a deed.

In Decision Number 1308/Pdt.G/2019/PN Dps, Defendant II as a notary stated that translating the contents of the deed is an option as stated in Article 43 paragraph (4) UUJN which reads "Deeds can be made in other languages understood by the Notary and witnesses if the interested parties so desire as long as the law does not stipulate otherwise".[15] However, Article 43 paragraph (2) reads that "In the event that the appearer does not understand the language used in the deed, the Notary is obliged to translate or explain the contents of the deed in a language understood by the appearer".

[13]Farida Novita Sari dan Umar Ma'ruf."Perlindungan Hukum Terhadap Harta Dalam Akta Perjanjian Kawin Yang Dibuat Oleh Notaris Bagi Warga Negara Indonesia yang Beragama Islam." *Jurnal Akta* 4(2):269. doi: 10.30659/akta.v4i2.1796.

[14]Rahmad Hendra."Tanggungjawab Notaris Terhadap Akta Otentik Yang Penghadapnya Mempergunakan Identitas Palsu Di Kota Pekanbaru." *Jurnal Ilmu Hukum* 3(1):3. doi: 10.30652/jih.v3i01.1029.

[15]Arya Bagus Khrisna Budi Santoso Putra dan I Made Dedy Priyanto. (2020). "Tanggung Jawab Notaris Dalam Pembuatan Akta Otentik Dengan Bahasa Asing." *Jurnal Acta Comitas Hukum Kenotariatan* 5(3):528. doi: 10.24843/AC.2020.v05.i03.p08.

If Article 43 paragraph (4) is reviewed, it can be interpreted as a Notary having the option to make the deed in another language that is understood by the Notary and the witness if the interested party so wishes. In that article, it does not explain that there was a misunderstanding on the part of the parties to the deed. Thus, this article states the desire (not obligatory) of the parties to the deed to make the deed in another language. Meanwhile, in Article 43 paragraph (2), confirms that there are appearers who do not understand the language used in the deed, the Notary is obliged to translate or explain the contents of the deed. Thus, it can be said that if one of the appearers does not understand, then translation or explaining the contents of the deed is mandatory or essential so that it is not a desire of the appearers. Translation or explanation of the contents of the deed must also be carried out by a notary by making a deed in a language that is understood by the notary, witnesses and interested parties because the explanation of a deed cannot be only part or part but must cover the entire contents of the deed. Thus, the notary is obliged to translate the mixed marriage certificate because one of the parties is a foreign citizen. This is also because the mixed marriage certificate is a deed that aims to divide the assets of the parties which is a deed whose provisions differ from the mixed marriage certificate made for between Indonesian citizens. By making a translated mixed marriage certificate, the notary has minimized the marriage certificate so that it will not be in dispute later and the notary has carried out his obligations in accordance with UUJN.

The notary also has the responsibility according to Article 16 paragraph (1) letter l UUJN to read the deed before the appearer, at least 2 (two) witnesses and signed at the same time by the appearer, witness and Notary. Although according to Article 16 paragraph (7) UUJN this is not obligatory if the appearer has read it himself, knows and understands its contents, if this is stated in the cover of the deed and on each page of the Deed Minuta initialed by the appearer, witness and Notary. If it relates to the translation of the contents of the deed, this must be stated explicitly at the end of the deed (Article 44 paragraph (4) UUJN. For example, in Decision Number 1308/Pdt.G/2019/PN Dps, the notary must provide information at the end of the deed, namely "that the deed was translated orally and explained to the Appearance considering that the Appellant, namely the Plaintiff does not understand Indonesian". Meanwhile, if it is translated or explained in writing, at the end of the deed it is stated that "translation of the contents of the deed in writing is what it is like in English". If this is not done, then according to Article 84 UUJN, a deed only has the power of proof as a private deed or a deed becomes null and void and can be a reason for the party who suffers a loss to demand reimbursement of costs, compensation, and interest from the Notary.

Legal counseling in relation with making deeds to foreigners and Indonesian citizens must also be carried out by a notary. If viewed from the Decision Number 1308/Pdt.G/2019/PN Dps where the Plaintiff as a foreigner is willing to make a marriage agreement with the aim of being able to own land and buildings in Indonesia, the Notary must explain to the parties that even though a marriage agreement was made between Defendant I as WNI and also the plaintiff as a foreigner, the plaintiff still cannot have property rights, usufructuary rights or building use rights. Meanwhile, Defendant I as an Indonesian citizen said that after the marriage agreement was made, he could obtain property rights, usufructuary rights and building use rights because his assets had been separated from the plaintiff who was a foreigner. [16] Apart from that, the notary can also provide a solution for the plaintiff where even though foreigners cannot have ownership rights, building use rights, and business use rights, foreigners can still obtain ownership rights to flats in land areas with usufructuary rights over state land or management

[16]Puti, *ibid*., p. 705.

rights. single unit house with usage rights over land usage rights over state land, management rights over state land or usage rights over property rights controlled through agreements.[17]

Through the translation or explanation of the deed, reading, translation or explanation and signing which is expressly stated at the end of the deed and carrying out legal counseling by a notary, the deed made by a notary can achieve legal certainty. According to the general explanation of the UUJN it is stated that the purpose of having an authentic deed is to obtain legal certainty which clearly determines rights and obligations and with the hope that it can avoid disputes in the future. This is because an authentic deed is the strongest and most complete written evidence. Thus, if a notary carries out their roles and responsibilities based on UUJN, it is hoped that the deed made by the notary can guarantee legal certainty and minimize the occurrence of disputes and not harm third parties. [18]

The Strength of Evidence and the Legal Consequences of a Mixed Marriage Certificate, where the contents are contradicted with each other.

An authentic deed is a deed that has perfect evidentiary power for the parties to the deed and for the person who gets the rights from what is written in the deed. As a deed that has perfect evidentiary power, an authentic deed is binding, which means the truth of the matters regulated in the deed.[19] Under Decision Number 1308/Pdt.G/2019/PN Dps, it is known that the Plaintiff is suing the validity of a Marriage Agreement Deed drawn up by a Notary. This is because in its contents there are articles with contents that are contradictory and do not reflect the purpose of making the deed. Where the marriage agreement made by the Plaintiff before the marriage should aim to regulate the consequences of the marriage on their assets or to carry out a prenuptial agreement with the intention of separating the inherited assets and the assets obtained after the marriage.[20] However, in this case, the contents of the marriage agreement made by a notary contained contradictions in Articles 1, 2 and 4 with Article 3 paragraph (2). Where the articles read as follows:

Article 1, which reads:

"Between husband and wife there is no partnership of property with any name or designation, whether partnership of property according to law or profit and loss partnership or profit and income partnership".

Article 2, which reads:

"All property of any nature brought by the parties in the marriage, or acquired during the marriage due to purchases, inheritance, grants, and/or in any way remains the property of the party who brought and/or obtained it".

Article 3 paragraph (2), which reads:

"Immovable property, which can and cannot be proven by proof of ownership or other documents by one of the parties after the marriage has taken place, shall be considered as the property of the parties, each for ½ (half) an equal portion".

Article 4, which reads:

1. "wealth and debts of the parties that occurred before or after the marriage took place, remain the rights or obligations of each".

[17]I Komang Andi Darmawan, A.A Sagung Laksmi Dewi, and I PT GD Seputra. (2020)."Proses Permohonan Hak Pakai Atas Tanah Milik Pribadi Oleh Warga Negara Asing." *Jurnal Preferensi Hukum* 1(1):53.

[18]I Komang Andi Darmawan, A.A Sagung Laksmi Dewi, and I PT GD Seputra. (2020)."Proses Permohonan Hak Pakai Atas Tanah Milik Pribadi Oleh Warga Negara Asing." *Jurnal Preferensi Hukum* 1(1):53.

[19]Dedy Pramono. (2015). "Kekuatan Pembuktian Akta Yang Dibuat Oleh Notaris Selaku Pejabat Umum Menurut Hukum Acara Perdata di Indonesia." *Lex Jurnalica* 12(3):251.

[20]Rahmadika Sefira Edlynafitri. (2015). "Pemisahan Harta Melalui Perjanjian Kawin dan Akibat Hukumnya Terhadap Pihak Ketiga." *Lex Privatum* 3(1):114.

2. "The first party can manage and defend their rights, both in the act of management and in the act of ownership to manage, control their own property, both movable and immovable, and enjoy freely from their income".

Among these articles, there is contradiction between Articles 1, 2 and 4 which explicitly state the existence of separate assets. However, Article 3 paragraph (2) is inversely proportional to these articles which state that assets are divided into 2 (two) equal parts.

As is known, an authentic deed aims to convey the will of the parties and is also a perfect proof power. Even though the contents of these articles contradict each other and do not reach the essence of the agreement, the deed still has perfect evidentiary power like other deeds made by a notary. This is because the nature of an authentic deed must still be recognized by the judge as a true deed if no other party can prove otherwise.[21] Therefore, in this case, the Plaintiff must prove the contradictions contained in the deed. In addition, according to Article 1320 of the Civil Code, there are 4 (four) conditions for the validity of an agreement. First, agree those who bind themselves. Second, the ability to make an engagement. Third, a certain thing. Fourth, a lawful cause. The first and second conditions are subjective requirements, which means that if they are not met, one of the parties can request cancellation of the ongoing agreement through a court decision. If it has not been canceled by the judge, the agreement is still considered valid and binding on both parties. Meanwhile, the third and fourth conditions are objective conditions where if they are not fulfilled then the agreement is considered null and void and never existed. In this case, the first condition of the terms of the validity of the agreement has been violated, namely the subjective condition. Where the first condition requires an agreement from the parties who bind themselves. The first condition means that there are 3 (three) elements. First, there are parties. Second, agreed. Third, there is an agreed upon agreement. In this case, the first element has been fulfilled. However, for an agreement, this depends on the third element regarding the agreed agreement. The agreement agreed between the parties is a marriage agreement made before the marriage takes place, namely for the separation of assets. However, with the content of the articles contradicting each other, one of the parties, namely the Plaintiff, disagreed. Therefore, the marriage agreement deed can be canceled.

In addition to the strength of legal evidence from a deed whose contents contradict the article, the deed can also cause several legal consequences. Because, with the formation of a deed, it automatically gives birth to rights and obligations that must be carried out by the parties to the deed or what is often referred to as the principle of pacta sunt servanda (Article 1338 paragraph (1) of the Civil Code). [22] The legal consequence in question is that it can result in losses and injustice for parties to the agreement as well as for third parties. This is evidenced by the case in Decision Number 1308/Pdt.G/2019/PN Dps where the contents of the Mixed Marriage Deed Article 3 paragraph (2) state ownership of immovable property which can and cannot be proven by proof of ownership for ½ (half) of the big same. Meanwhile, Article 4 paragraph (1) regulates the wealth and debts of the parties that occurred before and after becoming the rights and obligations of each. As is known, for Article 3 paragraph (2) immovable property purchased with the Plaintiff's money is land and buildings. However, with the UUPA setting in place where the Plaintiff as a foreigner cannot own land and buildings in Indonesia, the name of the building is in the name of Defendant I (Indonesian citizen) as the wife of the Plaintiff. In addition, Article 3 paragraph (2) regarding land and buildings in the form of property rights also does not apply to the Plaintiff because an agreement made cannot conflict

[21]Oemar Moechtar. (2017). *Dasar-Dasar Teknik Pembuatan Akta*. Surabaya: University Press, p. 14.
[22]Salim. (2019). *Hukum Kontrak Teori & Penyusunan Kontrak*. Jakarta: Sinar Grafika, p.10.

with the law.[23] Therefore, proof of ownership of the building cannot be divided into ½ (half) equal parts. Meanwhile, according to Article 4 paragraph (1) the mixed marriage certificate states that the debts and assets of the parties are the obligations of each. The provisions of Article 4 paragraph (1) are of course detrimental to the Plaintiff in its implementation. In Article 3 paragraph (2) the mixed marriage certificate states that the ownership of immovable property for ½ equal parts constitutes wealth. Meanwhile, the assets referred to in Article 4 paragraph (1) are the rights and obligations of each. Besides wealth, debt is also the rights and obligations of each. Even though the debt of ±AU$ 240,000 borrowed by the Plaintiff was used to purchase land and buildings in Bali. Thus, it can be said that the contents of the article that are not in accordance with what is desired can result in legal consequences in the form of injustice and losses for parties bound by the agreement. This is because the debt owned by the Plaintiff is a debt that aims to buy land and buildings occupied by Defendant I as part of the marital property. However, for its use after the marriage broke up between the Plaintiff and Defendant I it was only enjoyed by Defendant I alone. Meanwhile, Defendant I had to pay the debt from the purchase of the land and building itself because the mixed marriage certificate was detrimental to the Plaintiff.

CONCLUSION

Based on the description above, it can be concluded that a notary has 4 (four) roles and responsibilities in making a mixed marriage certificate. First, ensure that the parties understand the deed made and the wishes of the parties in the deed are realized. Second, the notary is obliged to translate or explain the deed if the appearer does not understand the language used. If the notary cannot translate or explain, he can ask for an official translator. Third, the notary must expressly state at the end of the deed that a translation or explanation has been carried out because the appearer does not understand the language written in the deed. In addition, it is also written at the end of the deed that the translation of the contents of the deed in writing is what it looks like in English. Fourth, the notary is required to conduct legal counseling regarding the making of mixed marriage certificates such as the weaknesses and strengths of making the certificate for both Indonesian citizens and foreigners. In addition, with the evidentiary power of a mixed marriage certificate where the contents of the articles contradict each other, the strength of the deed is still perfect and correct like other authentic deeds drawn up by an authorized notary. The strength of proof of the deed can be degraded or canceled if there are parties who can prove otherwise regarding the truth of the deed. Meanwhile, regarding the legal consequences of a mixed marriage certificate whose contents contradict each other, it can result in losses and injustice for parties to the agreement as well as for third parties. In accordance with the conclusions mentioned above, it can be suggested for notaries in preparing mixed marriage certificates to provide legal counseling to appearers regarding the advantages and disadvantages of the certificate they want to make. In addition, the notary is also required to translate or explain the contents of the deed by making a new deed in a language that the appearer understands if the appearer does not understand Indonesian.

[23]Niru Anita Sinaga. (2019). "Implementasi Hak dan Kewajiban Para Pihak Dalam Hukum Perjanjian." *Jurnal Ilmiah Hukum Dirgantara* 10(1):2. doi: 10.35968/jh.v10i1.400.

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