

ABSTRAK

Tesis ini berjudul “Asas Publisitas Dalam Pembuatan Akta Perjanjian Perkawinan Oleh Notaris” dengan 2 (dua) pokok permasalahan yaitu : (1) *Ratio legis* kewenangan Notaris dalam pembuatan dan pengesahan perjanjian perkawinan; (2) Implementasi Putusan Mahkamah Konstitusi berdasarkan Surat Edaran Ditjen Kependudukan dan Catatan Sipil.

Penelitian ini adalah jenis penelitian hukum dengan menggunakan metode penelitian hukum normatif. Disamping itu juga penelitian ini menggunakan pendekatan perundang-perundangan (*statute approach*), pendekatan konseptual (*conceptual approach*), dan pendekatan perbandingan (*comparative approach*).

Hasil penelitian dari tesis ini menunjukkan bahwa, Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 terkait perjanjian perkawinan, bertentangan dengan tujuan asas publisitas. *Ratio legis* pemberian kewenangan terkait publisitas pada Notaris juga bertentangan dengan kewajiban Notaris untuk merahasiakan isi akta dan sumpah jabatan Notaris sebagaimana yang diatur dalam Pasal 16 ayat (1) huruf f UUJN Perubahan *Juncto* Pasal 4 ayat (2) UUJN. Keberadaan Surat Ditjen Dukcapil maupun Surat Edaran Ditjen Bimasislam tentang Pencatatan Pelaporan Perjanjian Perkawinan, surat tersebut untuk menindaklanjuti terkait adanya Putusan MK. Namun, usaha yang dilakukan untuk menafsirkan putusan MK oleh Ditjen Dukcapil tidak sesuai dengan amar putusan yang telah disebutkan oleh MK. Pada point pertama disebutkan bahwa perjanjian perkawinan dibuat dengan akta Notaris, sedangkan MK dalam amar putusannya hanya menyebutkan bahwa perjanjian perkawinan dapat dibuat secara tertulis yang berarti dapat dibuat dibawah tangan maupun dengan akta Notaris.

Kata Kunci: *Kewenangan Notaris, Perjanjian Perkawinan, Asas Publisitas.*

ABSTRACT

This thesis entitled “Publicity Principle In The Creation Of Nuptial Agreement By Notaries” with 2 (two) main issues consist of: (1) Ratio legis of the authorization of notaries in creating and validating nuptial agreements and (2) The implementation of Resolution of the Constitution Council on the basis of the circulation from the Directorate General of Demography and Civil Registry.

This research is one of the variety of the legal research using normative legal research methods. The research is also used different variety of methods relating, Statute Approach, Conceptual Approach, and Comparative Approach.

The settlement of this research conclude that; the Resolution of Constitutional Council Number 69/PUU-XIII/2015 with regard to nuptial agreements is contradictory to the purpose of the publicity principle. Ratio legis of The authorization related to the publicity of notaries is also contradictory to the obligations of notaries to maintain the confidentiality of the content of a deed and the professional oath of notaries as regulated in Article 16 paragraph (1) letter f of the Amendment to UUJN, in conjunction with Article 4 paragraph (2) of UUJN. The existence of the Letter from the Director General of the Demography and Civil Registry as well as circular letter of the Directorate General of Islamic community guidance (*Ditjen Bimasislam*) on the registration of Reporting Nuptial Agreements; such letter does not follow up in relation to the resolutions of the Constitutional Council. However, the endeavour made to interpret the resolutions of the Constitutional Council by the Director General of Demography and Civil Registry is inconsistent with the resolution already mentioned by the Constitutional Council (MK). In its first point it is stated that a nuptial agreement can be made drawn up in a notarized deed, on the other hand, the Constitutional Council, in its resolution, only mentions that a nuptial agreement may be drawn up in writing, which means that it may be executed by the parties only or be drawn up as a notarized deed.

Key words; *Authority of Notaries, Nuptial Agreements, Publicity Principle*