

# JURNAL CITA HUKUM

*Indonesian Law Journal*



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**Jurnal**

# **CITA HUKUM**

INDONESIAN LAW JOURNAL

Welcoming contributions from scientists, scholars, professionals, and researchers in the legal disciplines to be published and disseminated after going through script selection mechanisms, reviewing sustainable partners, and rigorous editing processes.

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## **Case Study of The Supreme Court Ruling Number: 3002 K/Pdt/2015 On The Validity of Provision of Income Agreement Which Was Made Before Divorce Based On Civil Code \***

Hazar Kusmayanti,<sup>1</sup> Tri Utami Warapsari,<sup>2</sup> Linda Rachmainy<sup>3</sup>  
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### **Abstract:**

A legally created agreement applies as law to those who make it. The terms of the validity of an agreement are regulated in Article 1320 of the Civil Code (KUHPerdata). If the terms of the validity of the agreement are not fulfilled, then the legal consequences arising from such agreements can be annulled or null and void. The practice in society can be seen in The Supreme Court Ruling Number 3002 K/PDT/2015, there was married couple who are while in the period of marriage bonds, made agreements in front of the Notary and written down in Notarial Deed Number 72, which content is concerning the demand of child's living cost for a lifetime, asked by the wife to the husband when the divorce happens later. The Supreme Court Ruling Number 3002 K/PDT/2015 states that the demand of living cost agreement is invalid and can be annulled because it does not meet one of the requirements of the validity of the agreement, which is the lawful reason as regulated in Article 1320 of the Civil Code. The purpose of this study is to know the Supreme Court Ruling on the validity of the demands of living cost agreement and legal consequence of the agreement based on the Civil Code.

**Keywords:** the validity of the demands of living cost agreement, the legal consequence of the agreement

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**Studi Kasus Putusan Mahkamah Agung Nomor: 3002 K / Pdt / 2015  
Tentang Validitas Perjanjian Penghasilan yang Dibuat Sebelum Perceraian  
Berdasarkan Hukum Perdata**

**Abstrak:**

*Suatu perjanjian yang dibuat secara sah berlaku sebagai undang-undang bagi mereka yang membuatnya. Syarat-syarat sahnya suatu perjanjian diatur dalam Pasal 1320 Kitab Undang-Undang Hukum Perdata (KUHPerdata). Apabila syarat-syarat sahnya perjanjian tidak terpenuhi, maka akibat hukum yang ditimbulkan adalah perjanjian tersebut dapat dibatalkan atau batal demi hukum. Dalam praktek di masyarakat sebagaimana yang ada pada Putusan Mahkamah Agung Nomor 3002 K/PDT/2015, terdapat pasangan suami istri yang dalam masa ikatan perkawinan membuat perjanjian di hadapan Notaris dan dituangkan di dalam Akta Notaris Nomor 72, isinya menyangkut tuntutan nafkah hidup untuk anak dan dimintakan selama seumur hidup yang diajukan oleh istri kepada suami apabila kelak terjadi perceraian. Putusan Mahkamah Agung Nomor 3002 K/PDT/2015 menyatakan bahwa perjanjian tuntutan nafkah tersebut tidak sah dan dapat dibatalkan karena tidak memenuhi salah satu syarat sahnya perjanjian yaitu syarat sebab yang halal yang diatur di dalam Pasal 1320 Kitab Undang-Undang Hukum Perdata (KUHPerdata). Tujuan penelitian ini adalah untuk mengetahui putusan Mahkamah Agung tentang keabsahan perjanjian tuntutan nafkah dan akibat hukum perjanjian tersebut ditinjau dari Kitab Undang-Undang Hukum Perdata (KUHPerdata).*

**Kata Kunci:** Keabsahan Perjanjian Tuntutan Nafkah, Akibat Hukum Perjanjian

**Пример из постановления Верховного суда № 3002 К / Pdt/ 2015 о  
действительности соглашения о предоставлении дохода, заключенного до  
развода на основании Гражданского кодекса**

**Аннотация:**

*Законно созданное соглашение применяется как закон к тем, кто его делает. Условия действия договора регулируются статьей 1320 Гражданского кодекса (KUHPerdata). Если условия действия соглашения не выполнены, то юридические последствия таких соглашений могут быть аннулированы или признаны недействительными. Практику в обществе можно увидеть в Постановлении Верховного суда № 3002 К / PDT / 2015: была супружеская пара, которая находилась в период брачных уз, заключила соглашения с нотариусом и записала в нотариальном акте № 72, какое содержание касается потребности в стоимости жизни ребенка на всю жизнь, которую жена спрашивает у мужа, когда развод происходит позже. Постановление Верховного суда № 3002 К / PDT / 2015 гласит, что соглашение о стоимости жизни недействительно и может быть аннулировано, поскольку оно не соответствует одному из требований срока действия соглашения, что является законной причиной, регулируемой статьей 1320 Гражданского кодекса. Цель данного исследования состоит в том, чтобы узнать постановление Верховного суда об обоснованности требований соглашения о стоимости жизни и правовых последствиях соглашения, основанного на Гражданском кодексе.*

**Ключевые Слова:** Обоснованность Требований Договора Прожиточного Минимума, Юридические Последствия Договора



## Introduction

All provisions pertaining to marriage in Indonesia are governed by Law Number 1 Year 1974 concerning Marriage (hereinafter referred to as Marriage Law) and its implementation regulation in the form of Government Regulation No. 9 of 1975 concerning the Implementation of Law Number 1 Year 1974 Marriage (hereinafter referred to as Government Regulation Number 9 of 1975).

Marriage brings legal consequences for both husband and wife, among others, concerning the legal relationship of husband and wife itself which raises rights and obligations in marriage, husband and wife's legal relationship to property which gives rise to the ownership of the common property as well as the possession of the property), the husband and wife legal relationship to the child that raises the parent's power over the child, the husband's wife's legal relationship to the community that gives rise to the husband's right to protect his wife against a third party (Subekti, 2005: 71). In marriage bonds there can be continuous disputes and quarrels as well as other causes which sometimes lead to a situation that causes a marriage untenable, whereas peaceful efforts by both parties and families do not bring maximum results so in the end the way out that must be taken is none other than divorce.

Similar to marriages that give rise to rights and duties, divorce also brings legal consequences for both parties, marriage property, children born into the marriage, and against third parties. Article 41 of the Marriage Law states that:

"Due to the breakup of marriage due to divorce is:

- a. Both mothers and fathers still have the obligation to maintain and educate their children, solely on the basis of the child's interests when there is a dispute concerning the court's children's control of his decision;
- b. Father in charge of all the child's maintenance and education costs; when the father, in fact, can not fulfill the obligation. The court can determine that the mother shoulder the cost.
- c. The court may require the former husband to provide the cost of livelihood and/or determine an obligation for the former wife.

One of the most frequent problems caused by divorce is about a child's living. If referring to Article 41 and Article 45 of the Marriage Law, the existence of a divorce does not remove the obligations of mother and father to the maintenance and education of her children, and the father is responsible for all

necessary child-care and education costs until the child is married and independent even though the marriage of the parents broke up.

In practice in the community, there are married couples who in the marriage bond period make arrangements to demand a living to ensure the fulfillment of the child's livelihood even though the marriage relationship between the two will have been broken because of divorce. Through the agreement, both parties regulate the rights and obligations to be gained by each party after the marriage breakup due to the divorce.

In the Supreme Court Decision, Number 3002 K/PDT/2015, the couple Alimar Hutagaol and Yossy Oni Rica during the marriage ties make a treaty which concerns the demands of living for the child and is demanded the whole life by Yossy Oni Rica to Alimar Hutagaol when between both divorces occur. The agreement is set forth in the Deed of Statement made before Notary / PPAT A. Dessi Puspa Asni, SH Number 72, dated November 23, 2012 (hereinafter referred to as Deed No. 72), and declared later in the household of Alimar Hutagaol and Yossy Oni Rica divorce occurs then both parties have bound themselves in accordance with the agreement.

The marriage between Alimar Hutagaol and Yossy Oni Rica then broke up because of divorce, and against the three children of the marriage between the two were in the care of Yossy Oni Rica. In the beginning, after the divorce, Alimar Hutagaol still fulfilled the obligation to fulfill the children's livelihood in accordance with the terms of the agreement of the livelihood requirement in the Notarial Deed Number 72. The problem arises from October 2013 to March 2014, Alimar Hutagaol no longer fulfills its obligations pursuant to the contents of the agreement. Yossy Oni Rica considers Alimar Hutagaol to have committed an injury because he did not fulfill the contents of the litigation agreement, so Yossy Ony Rica filed a lawsuit against Alimar Hutagaol to Muara Enim District Court.

Muara Enim District Court of Justice has passed a verdict which in the ruling declare agreement of demands subscribed as stated in Notarial Deed Number 72 made by Alimar Hutagaol (defendant) and Yossy Oni Rica (plaintiff) before Notary is lawful, Alimar Hutagaol (defendant) who does not fulfill his/her obligations is the act of default (*wanprestasi*), and punishes Alimar Hutagaol (defendant) to pay his obligations to Yossy Oni Rica (the plaintiff).

Alimar Hutagaol (defendant) objected to the decision of Muara Enim District Court for judging Muara Enim District Court was not accurate and inappropriate in considering the violation of subjective terms and objective



terms of the agreement in the Deed Number 72. Alimar Hutagaol (defendant) subsequently appealed to the High Court Palembang. The High Court of Palembang took over the legal considerations of the Muara Enim District Court and in its verdict stated to uphold the decision of Muara Enim District Court Number 12/PDT.G/2014/PN.ME, dated 19 August 2014.

Unsatisfied with the verdict, Alimar Hutagaol (defendant/appeal) filed a cassation appeal. At the appellate level, the Supreme Court in its legal consideration states that the agreement of the allegations made by Alimar Hutagaol (defendant/appellate applicant) and Yossy Oni Rica (plaintiff/appellate/appealed cassation) must be declared legally defective in accordance with Article 1320 The Civil Code (hereinafter referred to as the Civil Code), an agreement that does not qualify because the lawful is an unauthorized and revocable agreement. The Supreme Court through Decision of Cassation Number 3002 K/PDT/2015 subsequently revoked the Decision of the Palembang High Court Number 114/ PDT/2014/PT.PLG, dated January 22, 2015, which improved the Muara Enim District Court Decision Number 14/PDT.G/2014/PN.ME, August 19, 2014.

The following article will discuss 2 (two) aspects that can be formulated as follows: 1) How the legal considerations of Supreme Court Decision Number 3002 K/PDT/2015 on the validity of the agreement of the demands made by Alimar Hutagaol as (defendant/appellant/appeal) and Yossy Oni Rica as (plaintiff/appellate/appealed cassation) in terms of the Civil Code (Civil Code)?; 2) What is the legal consideration of Supreme Court Decision Number 3002 K/PDT/2015 stating the effect of the law on the agreement of livelihood demand made by Alimar Hutagaol as (defendant/appellate applicant) and Yossy Oni Rica as the (plaintiff/appellate/appealed cassation) canceled in view of the Civil Code (Civil Code)?

## **Research Method**

The research method used is qualitative normative juridical research method. The normative juridical research method is used to examine and review secondary data relating to agreements on livelihood demands made before the divorce. The specification of this research is descriptive analytical, that analyzes the validity problem and consequence of the law of agreement of livelihood requirement made before the divorce from the Civil Code (KUHPerdata). Then the general picture is analyzed with the starting point of the legislation, the

existing theories and the opinions of experts who aim to seek and get answers from the subject matter to be discussed further.

### **Legal Consideration of Supreme Court Decision**

The law of agreement in force in Indonesia still holds on Book III of the Civil Code. Book III of the Civil Code embraces an open system, meaning the law provides an opportunity for a person to manage his or her own legal relationship. The provisions contained in Book III of the Civil Code only regulate and complete, so that in the agreement of the parties may deviate from the provisions of the treaty law in the Civil Code, except for certain articles that are forced.

The open system of Book III is reflected in Article 1338 paragraph (1) of the Civil Code which states that: "All legally-made agreements act as laws for those who make them." Article 1338 Paragraph (1) of the Civil Code contains a principle of freedom of contract and according to this Article a person is free to make or not to enter into a contract, to determine who to enter into a contract, to determine the content, the performance, the terms and the nature of the agreement.

Freedom granted in the principle of freedom of contract can not stand alone and is not absolutely applicable because of its existence has a relationship with the provisions of other treaty law contained in the Civil Code. Freedom of contract does not mean able to make free agreements, but agreements must be made in keeping with the general terms of the agreement or the specific terms of the particular agreement (Syahrani, 2006: 204).

Freedom of contract is limited by a law of force so that the parties making a treaty must comply with such compelling law, for example, Article 1320 of the Civil Code which regulates the terms of the validity of the agreement (Setiawan, 1999: 64). Article 1337 of the Civil Code also provides restrictions on the validity of the principle of freedom of contract, which does not violate the law, public order, and decency (Setiawan, 1999: 64).

In the Supreme Court Decision Number 3002 K/PDT/2015, on November 23, 2012, there is a married couple Alimar Hutagaol and Yossy Oni Rica who in the marriage bond make an agreement made before the Notary and set forth in Notarial Deed Number 72, its content concerning the demands of subsistence living for the child and is asked for a lifetime by Yossy Oni Rica to Alimar Hutagaol when the next between divorce occurs.

The marriage between Alimar Hutagaol and Yossy Oni Rica then broke up because of divorce, and against the three children of the marriage between the two were in the care of Yossy Oni Rica. In the beginning, after the divorce, Alimar Hutagaol still fulfilled the obligation to fulfill the children's livelihood as stipulated in the agreement of the demand for livelihood in Deed Number 72.

The problem arises when the month of October 2013 to March 2014, Alimar Hutagaol no longer fulfill its obligations according to the contents of the agreement. Yossy Oni Rica considers Alimar Hutagaol to have committed an injury because he did not fulfill the contents of the liability agreement which resulted in the loss of material and immaterial, so Yossy Ony Rica filed a lawsuit against Alimar Hutagaol to Muara Enim District Court.

The District Court of Muara Enim District Court has ruled with an *amar* which states that the agreement of demands made in the Notary Number 72 made by Alimar Hutagaol (defendant) and Yossy Oni Rica (plaintiff) before the Notary is lawful, the act of Alimar Hutagaol (defendant) who does not fulfill his/her obligations is the act of default (*wanprestasi*), and punishes Alimar Hutagaol (defendant) to pay his obligations to Yossy Oni Rica (the plaintiff).

In his legal considerations, the District Court of Justice Muara Enim stated in his pocket that the witness presented by the plaintiff is A. Dessi Puspa Asni as a Notary making Notarial Deed Number 72, has explained that prior to the issuance and the signing of Deed Number 72, Alimar Hutagaol (the defendant) and Yossy Oni Rica (the plaintiff) were still in a husband and wife status at the witness office to discuss the making of the deed with a record of the contents of the deed, in other words both Alimar Hutagaol (defendant) and Yossy Oni Rica (plaintiff) agree upon the making of the deed and its contents without any objection from either party, and both parties have received the one/one/copy of the statement.

The panel of judges studying the process of making and the contents of the Deed Number 72 has met the requirements as stipulated in Article 1320 of the Civil Code, in other words not in violation of the provisions of Article 1320 of the Civil Code. In addition, under the provisions of Article 1338 of the Civil Code all legally-made agreements act as laws for those who make them. A treaty cannot be withdrawn other than by agreeing to both parties, or for reasons which by law are sufficient to do so, and an agreement shall be executed in good faith.

Based on these provisions, Deed Number 72 is valid and legally binding for Alimar Hutagaol (defendant) and Yossy Oni Rica (the plaintiff). The judges concluded that Alimar Hutagaol (the defendant) had committed a default (*wanprestasi*) to Yossy Oni Rica (the plaintiff) because it fulfilled the achievement but only partially and inconsistent with the contents of a clause in Notarial Deed Number 72 that had been agreed.

Alimar Hutagaol (the defendant) objected to the Muara Enim District Court's decision to appeal to the Palembang High Court. In his comparative memory, Alimar Hutagaol (defendant/comparison) puts forward an argument which essentially states that the Muara Enim District Court is not careful and inappropriate in considering the existence of violations of subjective terms and objective terms of the agreement in the Deed Number 72. Muara Enim District Court has ignored the position of the comparison party (originally the defendant) who is in an unequal position.

The High Court of Palembang passed a verdict which in its verdict upheld the decision of Muara Enim District Court Number 14/PDT.G/2014/PN.ME, with the legal reason that the consideration and legal basis of the District Court as the basis for the decision in the case applicable law.

Not satisfied with the decision of the Palembang High Court, Alimar Hutagaol (defendant/appeal) filed a cassation appeal. In the memory of the cassation, Alimar Hutagaol (defendant/appellate/cassation appellant) puts forward the reasons that principally states that according to the law for the provision of a child's livelihood and all legal acts incurred in a special marriage for an Islamic person is a competence of a Religious Court and not a competency The District Court, *judex factie* misjudged the proof, Deed Number 72 was against the law and did not meet the requirements of the validity of the agreement.

The Supreme Court in the Decision Number 3002 K/PDT/2015 dated September 15, 2016, declared annul a High Court of Palembang Decision Number 114/PDT/2014/PT.PLG, dated January 22, 2015, which improved the Muara Enim District Court Decision Number 14/PDT.G/2014/PN.ME, dated 19 August 2014 and rejected the claim of the plaintiff/the appeal/appeal of his/her appeal.

The Supreme Court in its legal consideration states that the agreement of the allegations made by Alimar Hutagaol (defendant/appellant/appellate cassation) and Yossy Oni Rica (plaintiff/appellate/appealed cassation) must be declared legally defective because according to the provisions of Article 1320 of

the Law Covenant law that does not qualify for the lawful is an unauthorized agreement. It has been proven by the appellant (originally the defendant/defendant) that the agreement of the livelihood claim contains a provision requiring the appellant (originally the defendant/defendant) to grant 2/3 of the salary and half of the financial rights it receives to the cassation applicant (originally plaintiff/comparable) and the three marriages children between the two during a lifetime. This provision is contradictory to Article 45 paragraph (2) of the Marriage Law which determines the period of payment of maintenance and education expenses for the child and is contradictory to the legal, religious and moral boundaries as referred to in the provisions of Article 29 paragraph (2) of the Marriage Law.

Each agreement includes a liability agreement stipulated in Notarial Deed Number 72 made by Alimar Hutagaol (defendant/appellant/appellate) and Yossy Oni Rica (plaintiff/appellate/appealed cassation) shall be subject to the provisions of Book III of the Civil Code and must comply with the requirements of the Criminal Code the terms of the validity of the agreement. The terms of the validity of an agreement are based on Article 1320 of the Civil Code, namely:

### **1). Agree on those who bind themselves**

The word is the basis for the birth of a covenant. A treaty is deemed to have been born or occurred at the conclusion of an agreement between the parties to the treaty. Agreement of those who bind themselves implies that the parties who make the agreement have agreed or there is a conformity of will or mutually agree to each other's will (Setiawan, 1999: 206).

Agreement in the agreement is a manifestation of the will of the parties in the agreement on what they want to do, how to carry it out, when to do it, and who to implement. The parties to the treaty shall agree on the principal matters held in the treaty. Article 1321 of the Civil Code states that there is no lawful agreement if the agreement is given by mistake, or obtained by coercion or fraud (Muljadi & Widjaja, 2006: 95).

An oversight can occur if a person's will at the time of the covenant is influenced by a false impression, then, in this case, an oversight occurs (Setiawan, 1999: 60). Article 1322 states that oversight does not result in the cancellation of a treaty other than when the error occurs concerning the substance of the treaty and of the person with whom it intends to enter into an agreement.

According to Article 1324 of the Civil Code, coercion occurs when the act is such that it gives an impression and can cause fear to a reasonable person, that he, his people, or his wealth, are at great risk in the near future. In consideration of these matters, it should be noted the age, sex, and position of the person concerned.

Article 1328 of the Civil Code states that fraud is an excuse for the annulment of the treaty if the deception of one of the parties in such a way that the light and the real has not caused the engagement if it has not been done. Fraud is not forbidden but must be proven.

## **2). The ability to create an engagement**

Contracting Parties shall be competent to legitimate legal acts, that is, adulthood, reasonableness, and shall not be prohibited by any legislation to engage in any particular act. According to Article 1329 of the Civil Code, each person is competent to make engagements, except if the law states incompetence. Article 1330 of the Civil Code states that:

"Not good at making a deal is 1). People who are immature; 2). Those who are placed under the ability; 3). Women who have married in matters prescribed by law and in general all persons who by law are prohibited to make certain consent."

Every Indonesian legislation has differences in regulating and defining age constraints as a form of adulthood. Article 330 of the Civil Code determining immature is those who have not reached the age of 21 years, and not first have been married. In the Marriage Law concerning the age of adulthood is usually associated with Article 47 paragraph (1) and Article 50, which in essence states that children who have not reached the age of 18 years or have never been married under the control of a parent or guardian, meaning the age adults according to the Marriage Act is over 18 years old or already married (Setiawan, 1999: 60).

Article 433 of the Civil Code states that persons under the capability of every adult who is always in a state of imbecile, madness or dark eyes, mental illness or memory pain, and wasteful.

Regarding the third incompetent provision of married women in matters prescribed by law, it is no longer valid since the issuance of Supreme Court Circular Letter Number 3 of 1963 which holds no longer applicable Article 108 and Article 110 of the Civil Code regarding the authority of a wife to perform

legal acts and to appear before the Court with the permission or assistance of the husband.

Article 31 of the Marriage Law essentially states that the rights and status of a wife are equal to the rights and position of the husband in the life of the household and the association of common life in the community, and each party is entitled to a legal act.

### **3). A certain thing**

This particular thing is defined as the existence of a promised object. Article 1333 of the Civil Code states that an agreement must have a substance in the form of a good which is at least determined by its type, the quantity of the goods is not necessary, provided that the amount can then be determined or calculated. Article 1334 of the Civil Code states that the goods that are the object of the agreement are goods that already exist or goods that will be there in the future.

### **4). A lawful cause.**

Article 1335 of the Civil Code does not mention a halal cause but only states that an agreement is made on the basis of falsehood or prohibited the agreement is invalid or has no legal force.

Article 1337 of the Civil Code affirms a forbidden cause, namely: "A cause is forbidden, wherefore it is prohibited by law or when it is against morality or by public order."

It is said to be prohibited by law if the intention of the parties to the treaty clearly violates the provisions of the law, said to be contrary to morality is where the objectives of the parties to the treaty contradict the positive values that live in society, whereas what is said against public order is when the objectives of the parties to enter into agreements are contrary to matters relating to the general interest concerns of peace, tranquility, and security of the life of the community (Satrio, 1999: 31).

Agreement on the demand for livelihood as set forth in Notarial Deed Number 72 does not meet the requirements of the fourth covenant of the law because the life requirements of the child which is requested during the wife's lifetime by the husband if the divorce between the two is a prohibited provision and violates one of the legal requirements agreement, that is the lawful cause



condition as stipulated in Article 1320 of the Civil Code. The Agreement in Deed Number 72 of one of its contents states that:

- a) "First-party salary (Alimar Hutagaol) working in TAC Pertamina EP-Pilona Petro Tanjung Lontar with Worker Number 971201, or where the first party (Alimar Hutagaol) will work all his life, severance pay if he/she stops working from the current job, given to a second party (Yossy Oni Rica) of 2/3 and the rest for the first party (Alimar Hutagaol), which money for the acceptance will be arranged by the parties for the benefit of the children they have "
- b) "THR money, Jamsostek money, pension funds, and co-operative (SHU) fees and annual leave money which will be obtained wherever the first party (Alimar Hutagaol) works for life, must be divided 2 (two) between the second party (Yossy Oni Rica) and the first party (Alimar Hutagaol) for the benefit of the children they have"

Article 41 Sub-Article b of the Marriage Law states that the father responsible for all maintenance and education costs required by the child, when the father, in fact, cannot fulfill the obligation, the court may determine that the mother shall bear the cost.

Article 45 of the Marriage Law which regulates rights and obligations between parents and children, states that:

Paragraph (1): "Both parents shall maintain and educate their children in the best possible way."

Paragraph (2): "The parent's obligations referred to in paragraph (1) of this article shall apply until the child is mature, married or independent, whose obligations shall continue even if the marriage between the two parents."

Article 330 of the Civil Code determining immature is those who have not reached the age of 21 years, and not first have been married, meaning that according to the age of adult according to the Civil Code is 21 years. The Marriage Law does not explicitly govern when a child is classified as an adult. Implicitly, Article 6 Paragraph (2) of the Marriage Law stipulates the marriage requirement for a person not yet 21 years of age must obtain the consent of his parent, Article 7 paragraph (1) of the Marriage Law determines the minimum age of the child can marry a man 19 years and a woman 16 years. In addition, Article 47 paragraph (1) and Article 50 of the Marriage Law basically state that children who have not reached the age of 18 years or have not been married under the authority of a parent or guardian.

Article 1 paragraph (1) of Law Number 35 Year 2014 on Child Protection states that a child is a person who is not yet 18 years of age, including a child who is still in the womb. That is, the adult age limit according to this rule is 18 years and over.

Article 1 Sub-Article 2 of Law Number 4 the Year 1979 regarding Child Welfare states that a child is a person who has not reached the age of 21 years or is not married. Although a person is not yet 21 years old, if ever married then the person is not a child but a person who has grown (Prints, 2003: 79).

The Supreme Court issued Circular Letter Number 7 of 2012 on Legal Formulation of the Result of Plenary Meeting of the Supreme Court as the Guideline for the Implementation of Tasks for the Courts. In the Circular Letter of the Supreme Court is explained about the provisions of a person's maturity limit. The result of the Meeting of the Chamber of Commerce on 14-16 March 2012 states that adults are capable of acting in law, that is, those who have reached the age of 18 years or have married (SEMA Number 7 the Year 2012).

Agreement on the demand for livelihood in the Deed Number 72, which concerns the demands of living for the child and is requested for a wife's lifetime to her husband if there is a forbidden divorce between the two because it clearly violates the provisions of Article 45 paragraph (2) of the Marriage Law which states that parental responsibilities for all childcare and education (child care) expenses apply until the child is an adult (18 years or 21 years old), married, or independent.

Based on the analysis, the Supreme Court Decision Number 3002 K/PDT/2015 stating that the agreement in the Notarial Deed Number 72 is declared invalid, because the agreement does not meet one of the requirements of the validity of the agreement, namely the lawful halal requirements set forth in Article 1320 of the Indonesian Civil Code, as a result of the provision in the agreement of a livelihood claim that is contradictory to Article 45 paragraph (2) of the Marriage Law and Article 29 paragraph (2) of the Marriage Law has been in accordance with the provisions of the law of agreement namely Article 1335 Civil Code which states that: if made on a forbidden basis then the treaty is invalid or has no legal force."

### **Legal Consideration of Supreme Court Decision**

The agreement is a legal action so that with the conclusion of a treaty, of course, the parties have a legal relationship to exercise their rights and obligations. This

legal relationship is often referred to as engagement. The exercise of these rights and obligations constitutes one of the consequences of the law of covenant (Naja, 2009: 100).

In order that the fulfillment of the rights and obligations desired by the parties in the agreement can be reached, the agreement must meet the requirements of the validity of the agreement as stated in Article 1320 of the Civil Code, namely: 1). Agree those who bind themselves; 2). Skills to create engagement; 3). A certain thing; 4). A lawful cause.

According to Article 1338 of the Civil Code, if an agreement meets the terms of the validity of the agreement in Article 1320 of the Civil Code, the legal consequences arising from the agreement are: (Raharjo, 2009: 63)

### **1). Agreement binding as law**

Described in Article 1338 paragraph (1) of the Civil Code, that all agreements that have been made lawfully apply as laws to those who make them. This means that both parties who make the agreement are obliged to obey and implement the agreed agreement as to the law (*pacta sunt servanda principle*). Legitimate agreements have binding powers and provide legal certainty to the parties that make them and force the parties to enter into agreements.

### **2). The Agreement shall be binding on the parties**

The consequences of the law resulting from the existence of a treaty shall apply only to the parties making it as stated in Article 1340 of the Civil Code that the agreement applies only between the parties that make it, the consent cannot harm a third party, the consent cannot be of benefit to a third party other than in the case of as specified in Article 1317.

Article 1317 of the Civil Code provides that an agreement may also be held for the benefit of a third party, if a treaty made for oneself, or a gift to another person, contains such a condition. Article 1318 of the Civil Code not only regulates treaties for oneself, but also for the benefit of his heirs and for those who have the right thereof.

### **3). The agreement cannot be withdrawn unilaterally**

Agreements that have been made lawfully shall be binding on the parties. According to Article 1338 paragraph (2) of the treaty cannot be withdrawn or canceled unilaterally except by agreement between both parties and the reasons for which the law is sufficient.

#### **4). The agreement shall be executed in good faith**

The Agreement is exercised in good faith means exercising what is the right and the obligation of the parties to make such agreements as the righteous without the deceit, without disturbing and harming the other, not putting their own interests first. The principle of good faith should be exercised by observing and adhering to the norms of decency, custom, and law. The judge has the power to deviate from the contents of the agreement if it is against the sense of justice (Syahrani, 2006: 250).

Inclusion of good faith into the agreement means that the agreement must be interpreted on the basis of justice and propriety. This is because according to Article 1339 of the Civil Code, even though the binding grounds of the covenant are derived from the agreement in the covenant, but a treaty is not only binding on the things stated therein, but also binding on everything which by nature the covenant is required to be binding on the merits, or laws.

A treaty that meets the terms of the validity of the agreement under Article 1320 of the Civil Code becomes legitimate and legally binding for those who make it be carried out or exercised properly. However, if the terms of the validity of the agreement are not met, then the resulting legal consequences are that the agreement is threatened with cancellation or irrevocability following which conditions are violated (Muljadi & Widjaja, 2006: 94).

According to Subekti the cancellation or covenant negligence can be done in two ways that are, the active way that directly demanded the cancellation before the judge, or way of defense is to wait until sued in front of the judge to fulfill the agreement and new proposed reasons for the lack of agreement (Muljadi & Widjaja, 2006: 94).

Decision of the Supreme Court Number: 3002 K/PDT/2015 states that the agreement of the livelihood demand made by Alimar Hutagaol (defendant/appellate applicant) and Yossy Oni Rica (plaintiff/appeal/appeal cassation) in Notarial Deed Number 72 are invalid and can be canceled because the agreement does not meet the requirements for the lawful as regulated in Article 1320 of the Civil Code.

The agreement contains a forbidden cause because there is a provision requiring the appellant of the cassation (originally the defendant) to provide a living for the child during his lifetime. This provision is contradictory to Article 45 paragraph (2) of the Marriage Law which determines the period of payment of maintenance and education expenses for a child is valid until the child is an adult (aged 18 years or 21 years), married, or independent, legal, religious and

moral boundaries as referred to in the provisions of Article 29 paragraph (2) of the Marriage Law.

The consequences of the law if not fulfilled the terms of the validity of the agreement by Subekti are classified into two, namely: (Subekti, 2005: 17).

### **1) Can be Canceled**

The Agreement may be canceled in the event of non-compliance with the subjective requirements of Article 1320 of the Civil Code. The subjective requirement concerns the subject of the contract, which agrees to those who commit themselves and the ability to make an engagement. Article 1331 of the Indonesian Civil Code states that persons who are otherwise incapable may demand the annulment of the engagement they have performed in cases where such power is not excluded by law.

Article 1446 of the Civil Code states that all engagements made by immature children, or persons under the jurisdiction are null and void and the demands proposed by or their parties shall be declared void purely on the basis of immaturity or their ability. The word "null and void" in Article 1446 of the Civil Code can be abrogated, meaning that the treaty is by law presumed to exist until either an incompetent or an unanimously agreeable party demands a cancellation (Subekti, 2005: 20).

This provision is reinforced by Article 1449 of the Indonesian Civil Code which states contracts made by coercion, oversight, or fraud issue a claim to annul it. Article 1454 of the Civil Code states that the cancellation can be done within 5 (five) years.

As long as the inept party or the non-consenting party does not request the cancellation of the judge, the treaty that does not meet the subjective requirements shall remain in effect binding on the parties because the party is deemed to have waived its right to request a cancellation (Subekti, 2001: 160-161).

### **2). Cancel by law**

The Agreement may be null and void in the event of non-compliance with the objective requirements in Article 1320 of the Civil Code. The objective requirement concerns the object of the covenant, namely the condition of a certain thing and a lawful cause. Article 1254 of the Civil Code states that all conditions aimed at doing something impossible, something that is contrary to

decency, or something prohibited by law is null and void that the covenant relied on him is helpless.

Nullifying by law is a civil sanction against a legal act containing juridical defects. This has resulted in legal acts that have been committed not to have any legal consequences since the initial occurrence of such legal action or retroactivity or from the beginning there has never been an engagement. The purpose of the parties entering into a contract for the birth of a legal engagement is to fail, and the removal of the entire engagement because of such abandonment may abolish an agreement so that the agreement is deemed absent and never occurred. No one is the basis for demanding fulfillment of achievement because from the beginning it was considered there was never any agreement (Muhammad, 1990: 96).

The cancellation can be known if the agreement does not reach the objective of the agreement because one of the parties does not fulfill its obligations and then is put on trial and the judge declares the agreement void because it does not meet the objective requirements, so there is no basis for a lawsuit or prosecution (Widjaya, 2003: 55).

Based on the above mentioned fact, if the agreement of the livelihood demand stated in the Deed No. 72 is contradictory to Article 45 Paragraph (2) and Article 29 Paragraph (2) of the Marriage Law so that it does not meet the requirements of the validity of the agreement in the form of objective requirement for the lawful, lawful by Decision of the Supreme Court Number 3002 K/PDT/2015, then the due effect of the law shall be the agreement of the liability claim to be null and void. This is in accordance with the provisions of Article 1254 of the Civil Code which states that all conditions aimed at doing something that is not possible, something that is contrary to decency, or something that is prohibited by law is void and result that the covenant hung on him is helpless.

The existence of legal consequences null and void, since the origin has never been born a commitment, the elimination of all the engagement because of the absence caused the abolition of the agreement of the livelihood demands so that the agreement does not have binding power for the parties to be implemented or executed properly legislation.

Alimar Hutagaol (defendant/appellant/appellate applicant) cannot be said to have committed an injury because the Supreme Court Decision Number 3002 K/PDT/2015 states that the agreement of the livelihood claim as set forth in Notarial Deed Number 72 is not legally valid. Thus, no one becomes the basis

for demanding fulfillment of achievement because from the beginning the agreement was considered never existed.

## Conclusion

The Agreement under Deed No. 72 is an invalid agreement because the agreement does not meet any of the requirements of the validity of the agreement, namely the lawful causal provisions as regulated in Article 1320 of the Civil Code, this is due to the provision of the livelihood requirements for the child demanded for life by wife to a husband in the event of a divorce contrary to Article 45 paragraph (2) of the Marriage Law governing the provision of a child's livelihood only until the child is mature, married, or able to stand alone. Under the provisions of Article 1335 of the Civil Code stated that: "An agreement if made on the basis of forbidden then the agreement is invalid or has no legal force".

The consequences of the exact law of the agreement of the livelihood claim that does not meet the requirements of the validity of the agreement is an objective requirement because the lawful is that the agreement becomes null and void, as provided for in Article 1254 of the Civil Code stated that: "A condition prohibited by law is void and resulting in the covenant being hung on him powerless."

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