**Legal Implication of Marriage Prenuptial Agreement**

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| ***Article Info*** |  | ***Abstract*** |
| *Received: 6th June 2023**Accepted: 26th September 2023**Published: 29th September 2023****Keywords:****Joint Assets; Legal Implication; Marriage Agreement.****Corresponding Author:****Padma D. Liman, E-mail:* *padmalimansh@gmail.com****DOI:****10.24843/JMHU.2023.v12.i03.p05* |  | *The purpose of this research will be to see the effectiveness of the decision of the Constitutional Court Number 69/PUU-XIII/2015 dated 27 October 2016 and whether it can solve the problem of regulating marital property in mixed marriages. Meanwhile, the specific target that is expected is whether the arrangements in this marriage agreement can really protect the interests of Indonesian citizen couples in mixed marriages. On the other hand, this study will try to examine what other agreements can be included in the marriage agreement. The type of research used is normative research which is oriented towards legal materials and documents that are relevant to this research. Normative legal research is legal research conducted by examining literature or secondary sources. The research results show that A marriage contract that is retroactively valid should still provide guarantees for legal certainty, but due to differences in views and opinions of the judges handling the case, this results in a discrete decision. A marriage agreement that does not regulate marital assets can be one of the triggers for disputes between husband and wife which can be used as a reason for divorce, whereas if the contents of the marriage agreement regulate marital assets, it can be used to facilitate the distribution of marital assets in the divorce cases.*  |

1. **Introduction**

Initially, marriage arrangements in Indonesia varied greatly due to the different ways of life of various tribes and groups of the Indonesian people. This diversity is then felt the need for a national standard setting regarding marriage. so that it can apply generally to all groups of Indonesian society. For this reason, legal unification in marital issue was build by creating laws that apply to all Indonesian citizens, namely Law Number 1 of 1974 concerning Marriage, which was promulgated on January 2, 1974. Based on the closing provisions of this Law, namely Article 67 paragraph 1 stipulates that this Law shall come into effect on the date of promulgation, which further effective implementation will be regulated by a Government Regulation. Therefore, this Law came into effect on January 2, 1974, the effective implementation of which was on October 1, 1975, in accordance with the entry into force of Government Regulation Number 9 of 1975 concerning the implementation of Law Number 1 of 1974 concerning marriage. The enactment of this Law does not automatically result in the end of all the various provisions concerning marriage because Article 66 of the Marriage Law stipulates that:

 “For marriage and all related to marriage based on this law, with the coming into force of this law the provisions stipulated in the Civil Code (*Burgerlijk Wetboek*), the Indonesian Christian Marriage Ordinance (*Huwelijks Ordonnantie Christen Indonesiers S .1933 No. 74*), Mixed Marriage Regulations (*Regeling op de gemengde Huwelijken S. 1898 No. 158*), and other regulations governing marriage insofar as they have been regulated in this Law, are declared no longer valid.”

One of the provisions regulated in Law Number 1 of 1974 is regarding the consequences of marriage. The occurrence of marriage results in 3 (three) things, namely:

1. to couples who are married;
2. to the offspring in the marriage;
3. against joint assets or joint assets in the marriage.

Arrangements for the consequences of marriage for couples who are married are regulated in Article 30 to Article 34 of Law Number 1 of 1974 in conjunction with Law Number 16 of 2019 (hereinafter referred to as the Marriage Law). In these provisions, among others, it is stipulated that:

1. Husband and wife bear a noble obligation to uphold the household which is the basis of the foundation of society.
2. The rights and position of husband and wife are balanced in household life and social life together in society and each party has the right to take legal action.
3. The husband is the head of the family and the wife is the housewife;
4. Husband and wife must have a fixed place of residence determined by them together;
5. The husband is obliged to protect his wife and provide everything necessary for household life according to his ability.
6. The wife is obliged to manage household affairs as well as possible.
7. If the husband or wife neglects their respective obligations, they can submit a lawsuit to the Court.

Arrangements[[1]](#footnote-1) for joint assets or marital assets in the Civil Code or Burgerlijk Wetboek (hereinafter referred to as BW) are very different from those regulated in the Marriage Law. In Article 119 BW it is stipulated that from the time the marriage takes place, by law a unanimous union between the assets of the husband and wife applies as long as the marriage agreement does not stipulate otherwise. During marriage, this union may not be abolished or changed by any agreement between husband and wife. Meanwhile, on January 2, 1974, Law No. 1 of 1974 concerning marriage was issued which regulates the consequences of marriage on marital property in Article 35 and Article 36. Article 35 stipulates that:

1. Property acquired during marriage becomes joint property.
2. Inheritance of each husband and wife and assets obtained by each as a gift or inheritance are under the control of each as long as the parties do not specify otherwise.

Furthermore, Article 36 stipulates that:

1. Regarding joint property, the husband or wife can act upon the agreement of both parties.
2. Regarding their respective assets, husband and wife have the full right to take legal action regarding their property.

The provisions of Articles 35 and 36 of the Marriage Law can be waived by making a marriage agreement between the candidate or husband and wife before the marriage takes place or when the marriage takes place, as regulated in Article 29 of the Marriage Law as follows:

PRENUPTIAL AGREEMENT

Article 29

1. At the time or before the marriage takes place, the two parties with mutual consent can enter into a written agreement which is legalized by the marriage registrar, after which the contents also apply to third parties as long as the third party is involved.
2. The agreement cannot be legalized if it violates the boundaries of law, religion and decency.
3. The agreement starts from the time the marriage takes place.

As long as the marriage lasts, the agreement cannot be changed, except if both parties have an agreement to change and the changes do not harm third parties.

What is meant by "agreement" in this article does not include taklik – divorce. Prenuptial agreement arrangements are different from other agreements, because in a marriage agreement the parties' freedom of contract is limited. This restriction appears in:

1. The party that becomes the subject of the marriage agreement must be a man and a woman who have the status of prospective husband and wife or husband and wife;
2. Subjects in the marriage agreement, if they are underage, cannot be represented by their guardians or parents but in making the marriage agreement they are assisted by their parents or guardians.
3. The form of the marriage agreement must be written, not oral.
4. The contents of the agreement are limited only to the arrangement of joint property in their marriage. Even though the Marriage Law is not as strict as the BW, it regulates what things can be agreed upon and which cannot be agreed upon, but based on Article 66 of the Marriage Law, the provisions in this BW still apply to the Marriage Law.

The purpose of making[[2]](#footnote-2) a prenuptial agreement is solely to regulate the consequences of marriage on the property or joint assets of husband and wife so that it deviates from the provisions stipulated in Articles 35 and 36 of the Marriage Law. The cause of deviations was due to several things, among others :

* 1. to protect assets obtained from one party that is easily spent by the other party;
	2. to protect family inheritance that has been passed down from generation to generation;
	3. each party must be responsible for the legal actions taken.
	4. To prevent the mixing of family company assets of each party.

When there is no agreement on the marriage of husband and wife, their marital assets automatically become joint property. This situation will be a problem for married couples who are Indonesian citizens and foreign nationals. Spouses of Indonesian citizens and foreign nationals cannot buy or own property in the form of immovable property, namely land with the status of ownership rights or building use rights because land with such status cannot be owned by foreign[[3]](#footnote-3) citizens. This is regulated in Article 21 paragraph 1 of Law Number 5 of 1960 concerning Basic Agrarian Regulations, that only Indonesian citizens can have property rights and Article 36 paragraph 1 letter a in the same law regulates that those who can have building or property use rights are only for Indonesian citizens. Furthermore, it is also stipulated that if a foreigner owns land with the status of ownership rights or building use rights, then within a year of obtaining said rights, the foreigner is obliged to relinquish his rights. If a year has passed, the foreigner does not relinquish his rights, the rights will be erased because the law and the land fall into the hands of the state. This means that the provisions of Article 32 of the Marriage Law which stipulate that stipulates that a husband and wife must have a fixed place of residence determined together and Article 34 paragraph (1) that the husband's obligation to protect his wife by providing everything necessary for household life according to his ability cannot be fulfilled because a husband and wife with different nationalities may not be able to own a house on land with the status of ownership rights or building use rights.

Arrangement of marital assets in Article 35 of this Law is considered to be detrimental to their interests because they cannot provide for household life in the future and are not protected for their own future and those of the children born in their marriage, so Mrs. Ike Farida, an Indonesian citizen whose husband is a Japanese citizen, has filed a request for a judicial review of the terms of the marriage agreement, which can overrule Articles 35 and 36 of the Marriage Law. As for what is regulated in Article 29 of the Marriage Law:

* 1. At the time or before the marriage takes place, the two parties with mutual consent can enter into a written agreement ratified by the marriage registrar, after which the contents also apply to third parties as long as the third party is involved.
	2. The agreement cannot be legalized if it violates the boundaries of law, religion and decency.
	3. The agreement starts from the time the marriage takes place.
	4. As long as the marriage lasts, the agreement cannot be changed, except if both parties have an agreement to change and the changes do not harm third parties.

On October 27, 2016, the Constitutional Court issued a decision Number 69/PUU-XIII/2015, which is related to the application for judicial review filed by Ike Farida against the provisions of the marriage agreement regulated in Article 29 of the Marriage Law. The decision of the Constitutional Court, Number 69/PUU-XIII/2015 decided that:

* 1. At the time, before it is held or during the marriage bond, both parties with mutual consent can submit a written agreement that is ratified by a marriage registrar or notary, after which the contents also apply to third parties insofar as the third party is involved.
	2. The agreement cannot be legalized if it violates the boundaries of law, religion, and decency.
	3. The agreement comes into effect from the time the marriage takes place unless otherwise specified in the marriage agreement.
	4. As long as the marriage is in progress, the marriage agreement can be related to marital assets or other agreements, and cannot be changed or revoked, except if both parties have an agreement to change or revoke, and the change or revocation does not harm a third party.

The decision of the Constitutional Court is still being questioned, regarding :

1. Marriage agreement made in writing, is it under the hand or does it have to be with a notarial deed?
2. In the Marriage Law and Constitutional Court Decisions, the regulation is not clear. Whereas based on Article 147 BW it expressly stipulates that the marriage agreement must be made in a notarial deed when the marriage has not yet taken place and takes effect only from the time the marriage takes place so that if the marriage is not carried out then the marriage agreement will not take effect either.
3. Whether the marriage agreement is sufficiently legalized does not need to be recorded so that it applies to third parties.

According to the Letter of the Director General of Islamic Society No. B.2674/DJ.III/KW.00/9/2017 dated 28 September 2017 A marriage agreement ratified by a notary can be recorded by the Marriage Registrar (PPN) in the marriage certificate, for Muslim married couples, while for married couples non-Muslim husband and wife, a marriage agreement drawn up by a notary public, can be recorded by the Civil Registry Officer in the marriage certificate.

Article 152 BW, stipulates that the marriage agreement will not apply to third parties before it is registered at the District Court in the jurisdiction where the marriage is held, or if the marriage is held abroad, then it is at the registry office where the marriage certificate is registered.

1. What will be promised in the marriage agreement is limited so that everything that is prohibited in BW cannot be agreed upon. While the arrangements in BW limit matters that can be agreed upon and which cannot be agreed upon.
2. It does not limit the number of times changes to the marriage agreement can be made and also does not regulate the process for making such changes.

According to Article 148 BW, changes to the marriage agreement can only be made before the marriage takes place and this change must be with a notarial deed and in the same form as witnessed by those who used to be the witnesses at the start of the drafting. In addition to unanswered questions in the Constitutional Court decision Number 69/PUU-XIII/2015, there are still problems that require clarity and firmness in making a marriage agreement. These problems include:

* 1. Does this retroactively valid marriage agreement guarantee legal certainty?
	2. Can a prenuptial agreement that does not only regulate marital assets be misused for the benefit of the husband or wife?
	3. How to protect the interests of third parties against marriage agreements made after marriage?
	4. How to protect the interests of third parties against changing or repealing the marriage agreement while the marriage is still in progress?

Problem Questions:

1. Could the retroactive prenuptial agreement guarantee the legal certainty?
2. Could a prenuptial agreement that does not only regulate marital assets be misused for the benefit of the husband or wife?

The specific objective of this study is to find out whether the decision of the Constitutional Court Number 69/PUU-XIII/2015 dated 27 October 2016 has provided legal protection for Indonesian citizen couples, particularly regarding legal protection in the form of ownership of marital property immovable property in the form of land the status of property rights or building use rights. This marital property is very important for husband and wife because it can be used as a place to live for them and their descendants and can also be used as an investment to support the welfare of the couple and their family in the future.

The purpose of this research is to :

1. Finding a mapping of the importance of the marriage agreement, especially in mixed marriages
2. Analyze the effectiveness of the marriage agreement.
3. Analyze the things that must or need to be corrected in making a marriage agreement.
4. Find a standard model of marriage agreement.

**2. Research Method**

The type of research used is normative research which is oriented towards legal materials and documents that are relevant to this research. Normative legal research is legal research conducted by examining[[4]](#footnote-4) literature or secondary sources.

1. **Results and Discussion**

**3.1. Retroactive Prenuptial Agreement**

The legal basis for arranging marriage agreements is found in several provisions, among others:

1. BW also known as the Civil Code;
2. Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning marriage. (Article 29)
3. Compilation of Islamic Law (Article 45 to Article 52)
4. Constitutional Court Decision Number 69/PUU-XIII/2015 dated 27 October 2016.

Not all prenuptial agreement arrangements in BW are valid anymore, because based on Article 66 of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning marriage stipulates that everything related to marriage is based on this Law, then by the enactment of this Law the provisions stipulated in the Civil Code (Burgerlijk Wetboek) insofar as it has been stipulated in this law, it is declared no longer valid. Since the Marriage Law only regulates marriage agreements in one article, namely Article 29, which regulates when the marriage agreement is made and when it takes effect, the form of the marriage agreement must be in writing, which is legalized by a marriage registrar or a notary. The contents of the agreement apply to the third party involved, the conditions for legalizing the marriage agreement and the marriage agreement cannot be changed or revoked without the consent of the parties and do not detrimental the third party. The regulator in this article is still very inadequate because the provisions in this article are not clear and unclear about what matters can and cannot be regulated in a marriage agreement. Nor does it regulate the forms of marriage agreements. Therefore, based on Article 66 of the Marriage Law mentioned above, the BW provisions apply which regulate all matters that have not been regulated in the Marriage Law.

Since the entry into force of the Constitutional Court Decision: Number 69/PUU-XIII/2015 dated 27 October 2016 which allows the registration of a marriage agreement to be carried out before marriage or while in a marriage bond and the marriage agreement is valid from the time the marriage takes place unless otherwise specified in the Marriage Agreement, causing the marriage agreement to retroactive. This also includes delays, negligence or ignorance of the husband and wife that the marriage agreement must be registered before or simultaneously at the time of marriage. This is because the marriage law only regulates marriage agreements ratified by marriage registrars or notaries who do not strictly regulate the registration of marriage agreements. In contrast to BW, Article 152 expressly stipulates that the marriage agreement will not apply to third parties before it is registered at the District Court in the jurisdiction where the marriage is held or if the marriage is held abroad, it is at the clerk's office where the marriage certificate is registered. An unregistered marriage agreement does not result in the marriage agreement being void but does not apply to third parties. Whereas in the Marriage Law, even though it does not regulate the registration of a marriage agreement, if it is not registered, it is not clear whether the marriage agreement only applies to married couples or not. The marriage agreement was made before the marriage took place, but was not registered due to the negligence of the husband and wife or because the couple did not know that the marriage agreement had to be registered, then by submitting an application for registration of the marriage agreement in the district court, which was generally accepted and the judge ordered the dukcapil to register the marriage agreement being applied for, as in several court decisions.

A new marriage agreement is made after the marriage takes place, generally, the judge will decide it as an agreement that is null and void by law. whereas when compared with the provisions stipulated in Article 152 BW does not recognize the existence of null and void agreements, but the marriage agreement will not apply to third parties before being registered at the District Court in the jurisdiction where the marriage is held or if the marriage is held abroad then it is in the clerk's office where the marriage certificate is registered.

BW arrangements regarding matters that can be agreed upon and which cannot be agreed upon in the marriage agreement are clearly regulated. Matters that can be agreed upon in a marriage agreement are regulated in Article 140, namely:

1. Even though there is a union of assets according to law but without the consent of the wife, the husband may not transfer or guarantee immovable objects belonging to the wife
2. The wife has the right to manage her own movable and immovable property
3. The wife has the right to enjoy herself freely with her personal income

Meanwhile, Articles 144 and 145 regulate the abolition of union assets. Furthermore, it also regulates matters that cannot be agreed upon in a marriage agreement, namely:

1. It is not permissible to reduce all rights based on the husband's power as husband and on the power of parents; (Article 140)
2. May not reduce the rights granted by law to the one who lives the longest between husband and wife. (Article 140)
3. That one of the parties must pay a debt that is larger than the share received from the union's assets (Article 142);
4. That their marriage is subject to a foreign legal system, whether that was in force in Indonesia (during the colonial period) or not (art. 143);
5. to escape from the inheritance of someone who is still alive, or to transfer the rights that will be obtained for such an inheritance in the future. (Ps. 1063 BW)

Making a marriage agreement can be done before the marriage takes place or while in a marriage bond. The marriage agreement takes effect from the time the marriage takes place or depends on what was agreed in the marriage agreement. If the marriage agreement is made during the marriage period, then of course there are 3 (three) types of marital assets:

1. marital property whose owners are husband and wife and
2. marital property whose owner is the husband
3. marital property whose owner is the wife

Such conditions require extra scrutiny when the husband or wife will distribute or transfer ownership of their assets. Based on Article 139 BW, the purpose of making a marriage agreement is to give the right to the prospective husband and wife to prepare several deviations from the statutory regulations regarding the union of assets, as long as the agreement does not violate good ordinances or general order. Arrangements for marriage agreements in BW are limited in terms of things that can be agreed upon and things that cannot be agreed upon. Even the forms of marriage[[5]](#footnote-5) are given with the provision that the prospective husband and wife are given the freedom to determine whether to follow the form of the marriage agreement or to use only the same portion and the others are determined by themselves.

Limitations on the contents of marriage agreements are not strictly regulated in the Marriage Law but are only stipulated in Article 29 paragraph 2 that the agreement cannot be legalized if it violates the boundaries of law, religion and decency. Likewise, the decision of the Constitutional Court Number 69/PUU-XIII/2015[[6]](#footnote-6) dated 27 October 2016, only stipulates that during the marriage, the marriage agreement can be related to marital assets or other agreements without explaining what is meant by other agreements. Based on this unclear provision, the arrangement regarding the contents of the marriage agreement according to BW is still in effect. The arrangement of the contents of the marriage agreement in BW is still in line with what is regulated in the Compilation of Islamic Law, namely regarding the position of assets in marriage. According to Article 47 of the Compilation of Islamic Law (KHI), the contents of the marriage agreement are regarding the position of assets in marriage, namely:

1. the mixing of personal assets and the separation of each other's assets as long as this does not conflict with Islam.
2. determine the authority of each to enter into mortgage agreements on personal assets and joint assets or sharia assets.

Meanwhile, according to Article 52 KHI, for marriages with second, third and fourth wives, an agreement may be made regarding the place of residence, shift time and household expenses for the wife he will marry. Furthermore, Article 48 KHI stipulates that even though the marriage agreement stipulates the separation of joint assets or shared assets, it must include provisions that the husband is still obliged to meet household needs. If this obligation is not stated, it is still considered included. Specifically for marriages with second, third and fourth wives, Article 52 KHI stipulates that an agreement may be made regarding the place of residence, shift time and household expenses for the wife he is going to marry. Based on Article 51 of the Compilation of Islamic Law, violation of the marriage agreement entitles the wife to request an annulment of the marriage or submit it as a reason for a divorce suit to the Religious Courts. Setting reasons for divorce due to violation of the marriage agreement is very different from setting reasons for divorce in the marriage law. In the Marriage Law, there is no reason for divorce due to violation of the marriage agreement, because the marriage agreement is actually used for the distribution of marital assets in the event of a divorce.

As a result of the arrangement regarding the content or material of the marriage agreement that is not clear in the Marriage Law, there are many marriage agreements whose material or contents do not regulate marital assets. For example, the marriage agreement in the decision of the Religious Court number 793/Pdt.G/2016/PA.Smn stipulates that the husband promises not to smoke and promises to go to the mosque diligently. Likewise in the District Court Decision Number 1499/Pdt.G/2021/PA.Bpp dated 4 November 2021, the material of the marriage agreement is that you cannot have social media application accounts such as Facebook, Instagram and are only allowed to have social media accounts, namely WhatsApp. However, there are also those that regulate marital assets but still violate the provisions of Article 140 BW, as in Article 6 of the marriage agreement in the District Court decision No. 56/Pdt.G/2020/PN Jmr dated 8 December 2020 stipulates that "when the marriage is terminated, the wife or husband or heirs only have the right to the goods brought by them into the marriage or those obtained during the marriage, thus also for the goods that are replaced, while the remaining goods belong to the husband or his heirs. It is clear that the material of this marriage agreement violates the provisions in Article 140 BW so that the judge's consideration in this decision considers that the marriage agreement will be set aside and what applies is inheritance law if the marriage is dissolved due to death. Likewise, there is a case decision Number 804/Pk/Pdt/2009 where the marriage agreement has regulated the separation of marital assets, but when one of the parties dies, the longest living partner is not given inheritance rights on the grounds that there is a marriage agreement that regulates the separation of marital assets.

Based on the case examples above, it appears that legal certainty due to the retroactive effect of the marriage agreement, should still exist, however, due to differences in the views or opinions of the judges handling the case, a disparate decision is produced. This means that the regulation already exists, only the implementation is not quite right so that it cannot be assumed that there is no legal certainty.[[7]](#footnote-7)

**3.2. Material of the Prenuptial Agreement which does not regulate Marital Assets**

In Article 29 paragraph 4 of the Marriage Law, it is stipulated that during the marriage the agreement cannot be changed, unless both parties agree to change and the change does not harm the third party. Meanwhile, based on the decision of the Constitutional Court Number 69/PUU-XIII/2015 dated 27 October 2016 it decided that Article 29 Paragraph 4 of the Marriage Law must be read as follows:As long as the marriage is in progress, the marriage agreement can be related to marital assets or other agreements, it cannot be changed or revoked, except if both parties have an agreement to change or revoke, and the change or revocation does not harm a third party.

Then in the elucidation of Article 29 paragraph 4, it is stated that what is meant by "agreement" in this article does not include tak'lik -divorce. Based on Article 1 letter e of the Compilation of Islamic Law (KHI), the definition of taklil-divorce is defined as:the agreement made by the prospective groom after the marriage contract is included in the Marriage Certificate in the form of a promise of divorce depending on certain conditions that may occur in the future;

Furthermore, in Article 45 KHI, it is stipulated that the two prospective bride and groom can enter into a marriage agreement in the form of:

1. Taklik divorce and

2. Other agreements that do not conflict with Islamic law.

Article 46 KHI also stipulates that:

* 1. The contents of the taklik divorce must not conflict with Islamic law.
	2. If the circumstances implied in the taklik divorce actually occur later, divorce does not automatically fall. In order for divorce to really fall, the wife must submit the matter to the Religious court.
	3. The taklik divorce agreement is not one that must be held at every marriage, but once the taklik divorce has been agreed upon it cannot be revoked.

According to R. Sooetojo Prawirohamidjojo, taklik divorce is a conditions or promise that is mutually agreed upon and becomes the wishes of the parties who are getting married which are pronounced in the ijab kabul and before witnesses in the marriage contract.[[8]](#footnote-8) Conditions or promises in the marriage contract are permissible, for example, that the wife will not be married, the husband will not divorce, the condition for providing a house within one month after the marriage contract, the condition that the bride is still a girl, the condition that the wife will not demand alimony. If the terms or promises made in the consent form of the marriage contract are violated or not fulfilled, then the party who is harmed or the terms or promises are violated has the right to choose between holding a marriage or facilitating the marriage through the procedure.

Based on the description of the meaning of taklik - divorce, it appears that there is a confusion of the meaning of the marriage agreement regulated in Articles 47 to 52 KHI with the arrangement of taklik - divorce. Article 47 KHI stipulates that a marriage agreement can be made at the time of marriage or before marriage, this arrangement is the same as Article 29 paragraph 1 of the Marriage Law. The point is that in the arrangement of marriage agreements the material is regarding marital assets except for the second, third and fourth marriages. Because of the confusion over the meaning of this marriage agreement, in general, in the decision of the religious court, the marriage agreement regulates matters outside the marital property, in which case the disputing parties want a divorce because one of the parties is deemed to have violated the marriage agreement. What is considered a marriage agreement is sometimes in oral form. Meanwhile, in the case of a district court's decision, the marriage agreement is generally in accordance with what is regulated in Article 29 of the Marriage Law, which concerns the arrangement of marital assets. There are even marriage agreements that are declared null and void because the marriage agreement is made or will be registered by the husband and wife when their marriage is already in progress, for example the decision of the district court number 526/PDT/G/2012/PN.Jkt.Sel dated 24 April 2013 , District Court decision number 325/Pdt.P/2015/ PN.Jkt.Sel dated 16 September 2015.

Based on several court decisions analyzed, it appears that in religious courts, divorce decisions are mostly caused by parties who do not keep the marriage agreement, which is actually more appropriate if it is considered a violation of taklik–talak. However, because only the husband can impose divorce, if the wife wants to file for divorce, it will be done through the religious court. Whereas in the district court's decision, generally the material of the marriage agreement already regulates marital assets, however there are families who want to cancel the marriage agreement because it is considered that the marital property should belong to the family of the spouse who died first, for example in the district court decision number 543/Pdt. G/2021 PN Smg dated January 4, 2022. In this case, the parents-in-law sued their son-in-law who had made a certificate of inheritance, without involving the existence of a marriage agreement that had been made between his son and the son-in-law who was being sued. Finally, even though the father-in-law and son-in-law had made peace, according to the judge, the reconciliation could not be carried out, so he decided that the lawsuit was unacceptable.

**4. Conclusion**

A marriage contract that is retroactively valid should still provide guarantees for legal certainty, but due to differences in views and opinions of the judges handling the case, this results in a discrete decision. A marriage agreement that does not regulate marital assets can be one of the triggers for disputes between husband and wife which can be used as a reason for divorce, whereas if the contents of the marriage agreement regulate marital assets, it can be used to facilitate the distribution of marital assets in the divorce cases. In order to prevent a disparate decision from occurring resulting in inconsistent legal certainty, socialization regarding the marriage agreement should be held so that there is a common understanding.

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