

Legal Certainty of Marriage Agreement Concerning Immovable Property in Mixed Marriages in The Perspective of The Constitutional Court Decision Number: 69/PUU-XII/2015

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ABSTRACT

This research is a normative legal research that examines the legal certainty of marriage agreements regarding immovable property in mixed marriages in the perspective of the Constitutional Court decision number: 69/PUU-XII/2015, the focus of the study in this research is regarding the legal protection of property does not move the parties in mixed marriages in the perspective of the decision of the Constitutional Court number: 69/PUU-XII/2015. This is the focus of research because of the marriage agreement after the Constitutional Court decision number: 69/PUU-XII/2015, which until now there is still no legal uncertainty regarding immovable property in mixed marriages. Related to this juridical phenomenon, the theories that will be used in this study are the theory of legal certainty, the theory of legal protection and the theory of justice, using statutory approaches, interpretation approaches, comparative approaches, and conceptual approaches, after analysis it is found that, in Mixed marriages in order to provide legal protection for the immovable property of the parties, there must be a marriage agreement in the marriage. For a marriage agreement made after the marriage has taken place, it must be determined that the agreement is valid from the time the marriage takes place or a list of assets owned during the marriage takes place, provided that the assets registered in the names of each husband and wife belong to the individual husband and/or wife.

Keywords: Mixed marriage, Marriage, Property.

INTRODUCTION.

Humans as social beings, have needs and abilities and habits to communicate and interact with each other, thus humans have the instinct to always want to live together and interact with each other. (Annisa Istrianty and Erwan Priambada, 2015) Humans in fulfilling their life needs cannot be separated from the association between fellow human beings in the surrounding environment. From the interactions and/or associations carried out by these humans, it can form a community group. Human nature cannot be separated from the social environment in the group described by Aristotle who has the view that “humans are zoon politicon, namely that humans as social beings always try to live in groups and in society.” (Muhamad Sadi Is, 2017)

Apart from being referred to as social beings, humans are also creatures created by God who have many needs in their lives and to fulfill their needs appropriately to live life as perfect humans, both individually and as a group in society, therefore humans will always be motivated to meet his life needs. One of the basic

human needs is physiological needs, to fulfill these needs a human can channel them through marriage. (Tengku Erwinsyahbana, 2012) Marriage is a very important thing in the reality of human life, from a marriage can form a household. In a household there are two people of different sexes who need each other. The purpose of a marriage is to form a family. The family is the smallest unit in the structure of a country. (Catur Yuniato, 2020).

The State of Indonesia is a rule of law, in which all actions committed by the community have legal rules. All actions carried out by humans can lead to legal actions that give rise to their rights and obligations. In the study of law, legal acts themselves are divided into two, namely unilateral legal acts and two-party legal acts and in this case marriage is one of the legal actions passed by humans, marriage itself is included in the category of two-party legal acts. (Hanafi Arief, 141-145) If a man and a woman have married, it is obligatory for the husband and wife to fulfill these rights and obligations in running their household. (Arifah S. Mapekke and Akhmad Khisni, 2017) Marriage is an important life cycle for humans.

Marriage events, like other legal events, cannot be separated from three interrelated legal elements, but all three have unequal legal consequences or consequences, namely material law, where material law becomes the substance of the provisions of the law itself, which means that every marriage must be carried out in accordance with applicable legal and statutory provisions, formal law, formal law which forms the basis of a procedural rule of an action. (Mardalena Hanifah, 2019)

Talking about regulations, marriage itself has regulations in its implementation, which govern all matters related to marriage. Prior to the entry into force of the Law on marriage in Indonesia, regulations regarding marriage existed where regulations regarding marriage were classified into several groups, namely, for people of the Muslim faith, religious law that had been rewritten in customary law applied, for native Indonesians it applied customary law, for Christians the *Huwelijks Ordonantie* Christian Indonesia applies, for foreign easterners and Indonesian citizens of Chinese descent the provisions of the Indonesian Criminal Code apply, with slight changes for other foreign easterners their customary law applies and for foreigners - Europeans and Indonesian citizens of European descent and those who are equated with them apply the provisions in the Civil Code. (Trusto Subekti, 2010)

After the enactment of Law Number 1 of 1974 concerning Marriage there is no longer any classification of people in marriage regulations in Indonesia and legal unification has been implemented for Indonesian Citizens and it is stated that to guarantee legal certainty of marriage, marriages that took place before Law Number 1 of 1974 concerning Marriage enacted, which was carried out according to the previous legal regulations was legal. (Trusto Subekti, 2010).

The State of Indonesia is known as a country with various tribes, cultures, races, groups and religions, where in carrying out its activities a person must interact with the people around him. Seeing the current developments, it is possible that if there is social interaction in the community, both between Indonesian citizens and Indonesian citizens or between Indonesian citizens and foreign citizens, it is from this interaction that a relationship can be established between one person and another. The relationship that occurs can be in the form of a relationship between a man and a woman who are mutually attracted to each other. It is possible if there is a mixed marriage between a man and a woman who has a different nationality. (Miftakul Bil Ibad, 2019)

An increasingly advanced world like today can facilitate social interaction both within a regional and international scope. With all the conveniences that exist in the environment of people's lives, in the country of Indonesia at this time mixed marriages are no longer a rare thing, the development of mixed marriages in Indonesia is increasing. Based on a survey conducted by the Mixed Couple Club, the pathways that bring couples with different nationalities into marriage are acquaintances through the internet, former business/work friends, acquaintances while on vacation, former school/college friends and pen pals.

(Nurianto and ahmad Fata'al Chuzaubu, 2019) Legal mixed marriages between Indonesian citizens and foreign nationals can have legal consequences, namely the legal relationship between husband and wife, property in marriage and legal relationship between children and parents. Mixed marriages can cause legal problems because they involve 2 different legal systems. (Herni Widanarti, 2018) Often Indonesian citizens who marry foreign nationals retain their citizenship status so that they can still obtain their rights in Indonesia, such as rights to land tenure in Indonesian territory.

Indonesian citizens who enter into mixed marriages, in order to maintain their rights, before entering into a marriage must make a marriage agreement first. The marriage agreement is an agreement made by the two prospective bride and groom at the time or before the marriage takes place, where both parties promise to obey what has been agreed as stated in the marriage agreement deed made before the authorized official and registered with the marriage registrar. (Asman, 2020) Arrangements regarding marriage agreements in Indonesia are regulated in the Civil Code and the Marriage Law, in statutory regulations marriage agreements must be made before the marriage is carried out. However, there are still many people who do not know this. For people who marry fellow Indonesian citizens, this does not really have an impact, but if Indonesian citizens do mixed marriages, this will greatly impact the rights they have. If there is no marriage agreement in the marriage agreement, the assets acquired during the marriage will become joint property.

The rights that can be owned by foreign nationals in Indonesia are the right to buy and sell movable/immovable objects such as land (use rights for a certain time, rental rights for buildings, ownership rights to flats and residential or residential houses). Indonesian citizens who enter into mixed marriages without a marriage agreement can only have the rights as stated above.

As a country with an eastern culture that has a way of thinking and a spirit of life that is based on communal life, nature and the environment, marriage agreements are indeed seen as something that is not uncommon to do. A marriage agreement in Indonesia will only be made when one of the bride and groom has more nominal assets than the other bride. The making of this marriage agreement was carried out to anticipate the occurrence of disputes over overlapping assets in joint assets. (Agus Purnomo and Lutfiana Dwi Mayasar, 2021)

Based on the Decision of the Constitutional Court Number 69/PUU-XII/2015, in 2015 an Indonesian citizen who entered into a mixed marriage, submitted an application to be able to make changes to the regulations regarding marriage agreements. This was requested because the applicant felt that his rights as an Indonesian citizen had been lost, because when the applicant wanted to buy a property with funds from a bank through a Home Ownership Credit, because the person concerned in his marriage did not make a marriage agreement, his credit application was not approved by the reason that for filing the credit concerned must have a marriage agreement. While the person concerned at that time could not make a marriage agreement, because the marriage had already been carried out, according to the regulations that existed at that time, a marriage agreement could not be made if the marriage had already taken place. Based on this request, the Constitutional Court issued a decision allowing the making of a marriage contract before marriage, at the time of marriage or during the marriage.

The decision of the Supreme Court of the Constitution regarding the permissibility of making a marriage agreement while the marriage is in progress raises several legal issues, because in that decision there is nothing that states that a marriage agreement made during a marriage takes place on the status of property that was owned before the agreement was made. In the Decision of the Constitutional Court Number: 69/PUU-XII/2015, there is no mention of marital assets, if the arrangement regarding marital assets still refers to the regulations contained in Law Number 1 of 1974 concerning Marriage and marriage agreements which was made after the marriage took place is valid since the marriage was carried out, whether the agreement can apply to something that has happened, where an agreement should not be retroactive or valid backwards because this is contrary to the principle of non-retroactivity. Meanwhile, if a marriage agreement

made after the marriage took place has taken effect since the agreement was made, what about property that existed before the agreement was made, bearing in mind that if an Indonesian citizen marries a foreign national who is also known as a mixed marriage, the citizen Indonesians who practice mixed marriages cannot own immovable property with the status of ownership rights and building use rights.

Decision of the Constitutional Court Number: 69/PUU-XII/2015 is also one of the preventive measures to prevent problems that might occur when a husband and wife divorce. However, no matter how good the design and purpose of issuing the decision is, it will only become a discourse without the support of state institutions or other institutions related to the making of marriage agreements, because on the one hand, the nature of the Constitutional Court Decision is final and not binding in reality. followed by the imposition of sanctions against institutions that do not implement the results of the decision. (Agus Purnomo and Lutfiana Dwi Mayasari, 2021).

Based on the description above, there are 2 (two) legal issues in this study, including:

1. What is the arrangement regarding marriage agreements in mixed marriages in the perspective of the Constitutional Court decision Number: 69/PUU-XII/2015?
2. How is the legal protection of the immovable property of the parties in the marriage agreement in mixed marriages in the perspective of the Constitutional Court Decision Number: 69/PUU-XII/2015?

Furthermore, regarding the research objectives, namely:

- To analyze and understand the arrangements regarding marriage agreements in mixed marriages in the perspective of the Constitutional Court decision Number: 69/PUU-XII/2015.
- To analyze and understand how is the legal protection of immovable property of the parties in the marriage agreement in mixed marriages in the perspective of the Constitutional Court Decision Number: 69/PUU-XII/2015.

The benefits of this research include:

- Theoretically, this research is expected to be useful as information material, references and additions in the literature for the development of knowledge in the field of law, especially the legal certainty of marriage agreements regarding immovable property in mixed marriages in the perspective of the decision of the constitutional court number: 69/PUU-XII/2015 .
- Practically, this research is expected to be a reference and a source of consideration for notaries in making marriage agreement deeds in mixed marriages.

RESEARCH METHODS

This research uses normative legal research or library research. Normative legal research or library research is research that examines document studies, namely by using various legal materials, including statutory regulations, court decisions, legal theory, and can be in the form of opinions of scholars. In this study, law is often conceptualized as what is written in laws and regulations (law in book) or law is conceptualized as a rule or norm which is a benchmark for people's behavior towards what is considered appropriate. (Jonaedi Efendi and Johnny Ibrahim, 2018)

After all legal materials such as primary legal materials, secondary legal materials and tertiary legal materials have been collected, then an analysis of these legal materials is carried out in a qualitative descriptive way.

(Irwansyah, 2021) This means that an analysis is carried out using descriptions of words in the form of

sentences which are outlined descriptively so that a conclusion is obtained that is precise, correct, logical and scientific in accordance with the formulation of the problem made.

RESULTS AND DISCUSSION

• Arrangement of Marriage Agreements in Perspective of Constitutional Court Decision Number: 69/PUU-XII/2015.

Marriage agreements that previously could only be made before or at the time the marriage took place can now be made during the marriage, as stipulated in the Constitutional Court Decision Number: 69/PUU-XII/2015, in which in the decision there was a change in the making of the marriage agreement.

The Constitutional Court Decision Number: 69/PUU-XII/2015 was issued by the Constitutional Court with the consideration that the rights of Indonesian citizens were lost because they could not own land in the territory of the Republic of Indonesia with the status of Property Rights and/or Building Use Rights, this was due to there are marriages between mixed Indonesian citizens and foreign nationals, in which case if there is no marriage agreement in the marriage then the assets in the marriage are joint property, as regulated in Article 35, Law Number 1 of 1974 concerning Marriage. In this decision the applicant as an Indonesian citizen demands that the same constitutional rights be guaranteed as other Indonesian citizens where the constitutional rights of Indonesian citizens are regulated in Article 28D paragraph (1), Article 27 paragraph (1), Article 28E paragraph (1), Article 28H paragraph (1) and paragraph (4), Article 28I paragraph (2) and paragraph (4) of the 1945 Constitution of the Republic of Indonesia.

Discussing the marriage agreement in marriage cannot be separated from the concept of joint property in marriage. Joint property in marriage is property owned by husband and wife in which the right to the property is the same between husband and wife. However, if in the marriage there is an agreement on the separation of property, then each husband and wife are fully entitled to the property they own.

After the decision of the Constitutional Court Number: 69/PUU-XII/2015, there was a change in the arrangement regarding the marriage contract where previously the marriage agreement could only be made before or at the time the marriage took place, after the constitutional court's decision the marriage agreement could be made before, at at or during the marriage. In the Constitutional Court decision, a husband and wife who wish to make a marriage agreement in the middle of their marriage, the agreement can be made by the husband and wife as long as the agreement does not conflict with laws and regulations, religion and decency and does not cause harm to third parties.

The marriage agreement referred to is made by the husband and wife with the aim of separating the assets in the marriage, in which the agreement can be valid since the marriage took place or since the agreement was made. One of the reasons for the judge to issue this decision is to guarantee the rights of Indonesian citizens who enter into mixed marriages who still wish to have property rights or building use rights in the Territory of the Republic of Indonesia.

Based on the doctrine of division and separation of assets in marriage cannot be carried out on the basis of mutual agreement because there is no reason to do so in relation to joint ownership. Bonded joint ownership can only be compiled in the Compilation of Islamic Law because one of the husbands or wives dies or a divorce occurs.

Marriage agreements made after the decision of the Constitutional Court Number: 69/PUU-XII/2015, can be made with several provisions including: (Sonny Devi Judiasih, et al, 2018)

For marriage agreements that are declared valid since the marriage took place, it is best to make a list of

assets that were owned before the marriage agreement was made, which was signed by the husband and wife and attached to the minuta;

If the inclusion of objects is not included in the minutes, then the addition of objects that are beyond the knowledge of the parties concerned can be proven in another way. If in the future a dispute arises regarding the ownership of the object which cannot be proven, it will be deemed to be the property of the respective parties for an equal share. Such assumption shall not be detrimental to the creditors of the spouses;

There is a possibility that in the marriage agreement it is agreed that the marriage agreement will be enforced with conditional conditions, either with conditions to suspend or with conditions to cancel, as well as with a stipulation of time or terms. Terms of deferring depend on events that are still to come and that are still not certain to occur, the engagement cannot be executed before the event has not occurred. Conditions void if fulfilled terminate the agreement and bring everything back to the state of everything, as if there had never been an agreement. The stipulation of time does not suspend the engagement, but only suspends its implementation and provides assurance to the third party that the performance will definitely be carried out at the time promised. For example, a marriage agreement applies when a child is born;

The marriage agreement may not indicate the enactment of foreign legislation as a choice of law;

It is not permissible to reduce all rights based on the power of the husband and the power of the parents, as well as the rights granted by law to the husband and wife who live the longest;

Joint property that is being used as collateral at a financial institution must be excluded from the agreement, in other words, assets that are being used as collateral for credit must remain joint property that cannot be transferred or changed to other types of assets or to become private property. This is intended as a form of legal protection for third parties so that certainty of payment and fulfillment of obligations from husband and wife as debtors will be guaranteed;

The marriage agreement made after the marriage took place has been valid since the agreement was made, so the marriage agreement is not retroactive;

A marriage agreement made during a marriage takes place needs to be made in a model/form/format of the agreement that takes into account the norms, ethics and good faith of the parties so that justice and legal certainty are realized for the parties concerned;

It must be noted the marriage period allowed to make a marriage agreement.

Based on the explanation above, more attention must be paid to the marriage agreement made during the marriage, because the agreement can have consequences for the parties making the agreement and third parties who are bound by the parties to the agreement, which can result in problems in the future.

Marriage agreements made during marriages are still problematic for public officials who have the authority to make these agreements, especially for notaries, this is because there are no clear and firm rules in the regulation of the implementation of marriage agreements made during the marriage period for notaries.

- **Legal Protection of Immovable Property of the Parties in the Marriage Agreement in Mixed Marriages in the Perspective of the Constitutional Court Decision Number: 69/PUU-XII/2015**

Marriage law is a legal system which includes several fields or categories of law, including matters regarding the validity of marriage, marriages of more than one person, position of children, rights and obligations of husband and wife, marriage decisions and their legal consequences, and marital assets. Joint property is a part of the marriage legal system which is quite complex because in addition to dealing with

discussions of legal relations between people, joint property also talks about the acquisition of assets, maintenance, use, transfer, and the share of each husband and wife after a divorce.

The legal conception of joint property in the marriage law system in Indonesia was born from the idea that in a husband and wife relationship which is dynamic and complementary in nature, it has the potential to produce valuable assets that can be utilized jointly by husband and wife as well as for their children. The roles of husband and wife are equally important and support each other. Therefore, even if, for example, in a husband and wife relationship, the husband is fully responsible for providing for the family and the wife plays a full role as a housewife, both of them still have the same share in the existence or acquisition of material assets during marriage. (Natsir Asnawi, M, 2020).

Marriage by law is seen as an “association” (*echtvereniging*). The husband is determined to be the head or caretaker. Husbands take care of their joint assets besides being entitled to take care of the wife’s wealth, determine the place of residence together, exercise parental authority and then provide assistance (*bistand*) to the wife in terms of carrying out legal actions. The latter relates to provisions in European Civil Code, that a married woman is not capable of acting independently within the law. The power of a husband in marriage is called “*maritale macht*” (from the French *mari* = husband). (Subekti, 2008).

The management of the wife’s wealth must be carried out by the husband as well as possible (“*afe een goed huisvader*”) and the wife can be held accountable for this management. The husband’s wealth for this becomes a guarantee, if he is punished to compensate for the deficiencies or decline in the wife’s wealth that occurred because of his mistake. There are no clear restrictions on the husband’s power in managing his wife’s wealth, but there is an article which states that the husband is not allowed to sell or pawn immovable objects belonging to the wife without the wife’s permission (Article 105). paragraph 5 of the Civil Code). Even so, currently, in the opinion of most legal experts, selling or pawning goods that move without the wife’s permission is also not permissible if it goes beyond the definition of “taking care of” (“*beheren*”). (Subekti, 2008).

Property in mixed marriages in Indonesia is regulated in the Criminal Code and Law Number 1 of 1974 concerning Marriage, which applies the same rules regarding property in marriage to marriages between Indonesian citizens and Indonesian citizens. This provision applies if an Indonesian citizen who enters into a mixed marriage does not relinquish his citizenship status, but if his citizenship status is relinquished, then the legal rules in his marriage apply to the law of the partner’s country.

In mixed marriages, the marriage agreement is very important, because if there is no marriage agreement, Indonesian citizens who enter into mixed marriages cannot have land rights with property rights and/or building use rights. Because if there is no marriage agreement in the marriage then the assets obtained during the marriage will become joint property, whereas based on the provisions in Article 21 of Law Number 5 of 1960 concerning Basic Agrarian Principles foreign citizens are not allowed to have land rights with the status of property rights and/or building use rights, Indonesian citizens residing in the territory of the Republic of Indonesia can only obtain usufructuary rights over land. Therefore, the marriage agreement is very important for mixed marriage couples.

The purpose of making a marriage agreement in mixed marriages is so that Indonesian citizens can own property/rights on land with the status of property rights or other rights. The marriage agreement in mixed marriages is made by separating assets and/or debts between husband and wife, there is no unity of property in the marriage.

Based on the provisions of the Constitutional Court Decision Number 69/PUU-XIII/2015 it can be concluded that: A marriage agreement can be made after marriage between husband and wife during the marriage takes place, provided that the husband and wife are still in a marital bond, live in harmony, have

children, and have a marriage certificate. Therefore the Decision of the Constitutional Court Number 69/PUU-XIII/2015 facilitates the opportunity for husbands and wives who do not have a marriage agreement in their marriage, so that they can conclude a marriage agreement. Then with the Constitutional Court Decision Number 69/PUU-XIII/2015 making a marriage agreement is allowed after the marriage has taken place, as long as the agreement does not conflict with legal, religious or moral principles and does not harm third parties. (Ni Kadek Ani et al, 2021).

Previously, marriage agreements could only be made before or at the time the marriage took place, now they can be made during the marriage. After the decision of the Constitutional Court Number: 69/PUU-XII/2015, the arrangement regarding the marriage agreement has changed, where previously the marriage agreement could only be made before or at the time the marriage took place with the issuance of the Constitutional Court decision Number: 69/PUU-XII/2015 Marriage agreements can be made during the marriage. The marriage agreement made after the marriage has taken place must be made clear and in detail, this is done to avoid unclear problems and unwanted things in the event of a divorce in the marriage. (Budi Sunarso, 2022) In the marriage agreement made after the meganai marriage took place, the validity of the agreement can be agreed upon by the parties as stated in the Decision of the Constitutional Court Number: 69/PUU-XII/2015, that the agreement made after the marriage takes place is valid from the wedding since the marriage took place, unless otherwise specified in the agreement. The phrase “unless otherwise stipulated in the agreement” in the decision can lead to multiple interpretations, the provisions regarding the validity period of the agreement must be strictly and clearly regulated. If the marriage agreement made after the marriage took effect since the agreement was made, it will raise questions regarding the assets that were owned before the agreement was made, whether the property obtained before the agreement was made remains joint property? If so, then the decision of the Constitutional Court Number: 69 /PUU-XII/2015 regarding regulations on marriage agreement arrangements cannot provide legal protection and justice for Indonesian citizens who enter into mixed marriages.

Regarding assets in marriage based on the provisions in Article 35, Law Number 1 of 1974 concerning marriage, assets in marriage are divided into 2, namely congenital assets and joint assets. The property in question is the property owned by the husband or wife before the marriage took place. While joint property is property owned by husband and wife after the marriage takes place.

In mixed marriages, arrangements regarding marital property are the same as those between Indonesian citizens and Indonesian citizens. In mixed marriages, if they do not have a marriage agreement, Indonesian citizens who enter into mixed marriages cannot have property rights and/or building use rights over land in the territory of the Republic of Indonesia because if there is no marriage agreement, the assets in the marriage become joint property. Whereas based on the provisions in Article 21 of Law Number 5 of 1960 concerning Basic Agrarian Regulations, which stipulates that if a foreign national has rights to land with the status of property rights obtained due to marriage with an Indonesian citizen, then within 1 year must relinquish the rights to the land, if within 1 year after obtaining the ownership rights to the land and the rights are not relinquished, the ownership rights to the land will become the rights of the state.

However, if there is a marriage agreement in their marriage, Indonesian citizens who enter into mixed marriages can have rights to land with the status of property rights and or building use rights, because there is no wealth union in the marriage. Thus, with the existence of a marriage agreement in mixed marriages, there will be legal protection for immovable property of Indonesian citizens who enter into mixed marriages.

Based on the description above, in making a marriage agreement by husband and wife after the marriage has taken place, justice for the related parties must be considered. Based on the theory of justice by John Rawls there are two principles of justice, namely: First, everyone must have equal rights to the most extensive scheme of basic freedoms that is compatible with similar schemes of freedom for other people. Second, social and economic inequalities must be regulated so that they are both (a) reasonably expected to benefit

everyone, and (b) attached to positions and offices open to all. In the case of making a marriage agreement by a husband and wife, the marriage agreement must be regulated and/or determined fairly regarding the rights and obligations of the husband and wife.

Law enforcement does not only aim to guarantee legal certainty, but also must be able to provide justice and legal benefits for the community. When associated with Article 28D, the 1945 Constitution of the Republic of Indonesia, that everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law. Thus if there is legal protection from the state for the community, it will be able to realize justice and benefits for the community. As stated by Philipus M. Harjon that legal protection is divided into two types, namely preventive and repressive legal protection. Preventive legal protection is a protection that aims to prevent disputes from occurring. Meanwhile, repressive protection is legal protection that aims to resolve disputes.

After the issuance of the Constitutional Court Decision Number: 69/PUU-XII/2015, which stipulates that a marriage agreement by a husband and wife before, during or during the marriage can provide legal protection for property not in mixed marriages in a preventive manner. Preventive legal protection in marriage agreements in mixed marriages for the immovable property of the parties, namely by having a marriage agreement in their marriage, if there is a divorce there will be no problems between husband and wife related to immovable property owned during marriage, because the marriage agreement has determined the rights and obligations of each husband and wife, and with changes in the marriage agreement arrangements can provide special legal protection for Indonesian citizens for property that has been owned during their marriage. The marriage agreement can also be a guideline for husband and wife to limit rights and obligations as well as the implementation of rights and obligations that must be fulfilled by the parties in accordance with the contents of the agreement made.

CONCLUSION

Following are the conclusions that can be drawn after paying attention to the description in the Research Results and Discussion sub sub:

Arrangements regarding the making of marriage agreements were originally contained in the Criminal Code and Law Number 1 of 1974 concerning Marriage, which based on the provisions in the Civil Code and Law Number 1 of 1974 concerning Marriage, a marriage agreement can be made by the prospective husband and wife before the marriage takes place as stated in Article 139 of the Civil Code and Article 29 paragraph of Law Number 1 of 1974 concerning Marriage. Over time the arrangements regarding the marriage agreement underwent changes as contained in the Constitutional Court Decision Number: 69/PUU-XII/2015, which changed the provisions for the time of making the marriage agreement has changed, in which the marriage agreement can be made by the husband and wife during the marriage and is valid since the marriage took place or at the time the agreement was made.

The making of a marriage agreement within the marriage bond by the husband and wife before, during or during the marriage can provide legal protection for the assets in the marriage in a preventive manner. Preventive legal protection in marriage agreements in mixed marriages for the immovable property of the parties, namely by having a marriage agreement in their marriage, if there is a divorce there will be no problems between husband and wife related to immovable property owned during marriage, because In the marriage agreement it has been determined regarding the rights and obligations of each husband and wife, and with changes in the arrangement of the marriage agreement it can provide special legal protection for Indonesian citizens for property that has been owned during their marriage.

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