



ANALYSIS OF THE LEGAL BASIS OF MARRIAGE AGREEMENTS AND THEIR IMPLICATIONS FOR THE POSITION OF INHERITANCE PROPERTY

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ABSTRACT

This study explores the legal foundation of marriage agreements in Indonesia, specifically examining Law Number 1 of 1974 on Marriage and Constitutional Court Decision No. 69/PUU-XIII/2015. The primary focus of this research is to understand how marriage agreements impact the distribution of inheritance and their implications in resolving inheritance disputes. Meanwhile, Constitutional Court Decision No. 69/PUU-XIII/2015 expands the scope for creating and modifying marriage agreements during the marriage, providing additional flexibility that was previously unavailable. The methodology employed in this research is a normative juridical approach. A literature review method is used to gather relevant data and information from various legal sources. The primary legal materials used in this research include the Civil Code, Law Number 1 of 1974 on Marriage, and Constitutional Court Decision No. 69/PUU-XIII/2015. Additionally, secondary legal sources such as academic literature, legal journals, textbooks, and scientific articles are also utilized to enrich understanding and provide a broader theoretical context and perspective in the analysis. The findings indicate that a valid marriage agreement provides legal protection and certainty in the distribution of inheritance, while agreements not in accordance with positive law are at risk of being rejected in inheritance disputes.

1. Introduction

Marriage provides the legal foundation for the relationship between spouses and the children born from this union.¹ In the context of inheritance law, children born from a lawful marriage are recognized as having the right to inherit property from their parents. Article 832 of the Civil Code (KUHPerdata) asserts that the inheritors are the surviving spouse and blood relatives, whether born from a lawful marriage

¹ Sharon Sassler and Daniel T. Lichter., Cohabitation and marriage: Complexity and diversity in union-formation patterns, *Journal of Marriage and Family*, Vol.82, no.1, 2020, page.56.

or children born out of wedlock.² This inheritance right encompasses all children, without distinguishing between those born from a lawful marriage or otherwise. Indonesian law guarantees that a child's right to a share of their parents' inheritance remains protected, regardless of their parents' marital status.³ This affirmation provides justice and legal certainty for all descendants, whether born from legally recognized marriages or outside of marriage.⁴

Marriage is sometimes accompanied by a prenuptial agreement, which is made before the marriage contract to regulate the rights and obligations of the spouses during the marriage.⁵ Such agreements are often drafted for various reasons, including a woman's desire to continue working as a career woman, concerns about potential insolvency by one of the partners, or the need to separate each party's assets.⁶ Additionally, prenuptial agreements also address legal differences that apply to both parties.⁷ One provision in prenuptial agreements typically concerns the management of property. Generally, these agreements stipulate that property acquired during the marriage becomes communal property. The prenuptial agreement may also specify how this property will be divided if one spouse passes away. The heirs will inherit a portion of this communal property according to the agreement made. Thus, prenuptial agreements provide legal certainty for spouses in managing their assets.⁸

According to Article 29, paragraph (1) of Law Number 1 of 1974 on Marriage, spouses can create a written prenuptial agreement, which must be ratified by the marriage registrar at the time of or before the marriage takes place. This agreement is also applicable to third parties involved.⁹ However, this provision has

² Fitriyan Ferdi Nastopa, Legal Protection for Heirs of Land Deeds Which Only Use the Name of Their First Child in the Perspective of Islamic Inheritance Law and Civil Law, *International Significance of Notary*, Vol.4, no.1, 2023, page.17.

³ Rilda Murniati, Pembaharuan Hukum Perjanjian Perkawinan Dan Akibat Hukumnya Terhadap Harta Dalam Perkawinan, *Jatiswara*, Vol.33, no.3, 2018, page. 73; See to, Lidya Fawwaz Rohmanna, Adesoji Kolawole Adebayo, and Syamsul Alam., Perspective on Inheritance Rights in Other Wives, *Golden Ratio of Law and Social Policy Review*, Vol.3, no.1, 2023, page.29.

⁴ Ibnu Elmi AS. Pelu and Ahmad Dakhoir., Marital property within the marriage law a debate on legal position and actual applications, *Al-Jāmi 'ah: Journal of Islamic Studies*, Vol.59, no.2, 2021, page.310.

⁵ Isis Gaddis, Rahul Lahoti, and Hema Swaminathan., Women's legal rights and gender gaps in property ownership in developing countries, *Population and Development Review*, Vol.48, no.2, 2022, page.337.

⁶ Haerunnisa Yunus, Rusli Rusli, and Abidin Abidin., The concept of a marriage agreement in the compilation of Islamic law, *International Journal of Contemporary Islamic Law and Society*, Vol.2, no.2, 2020, page.35.

⁷ Fakhrial Arief Firmansa, Isdian Anggraeny, and Yelita Putri Pramithasari., Legal review of selling land of inheritance without approval of all heirs, *Legality: Jurnal Ilmiah Hukum* Vol.28, no.1, 2020, page.112.

⁸ Theresa Nutz, Anika Nelles, and Philipp M. Lersch., Who opts out? The customisation of marriage in the German matrimonial property regime, *European Journal of Population*, Vol.38, no.3, 2022, page.357. See to, Tri Siska Marni, Silfia Hanani, and Nofiard Nofiard., Modernisation of Islamic Family Law in Indonesia (Analysis of Counter Legal Draft-Compilation of Islamic Law in Inheritance Law), *GIC Proceeding*, Vol.1, 2023, page. 321.

⁹ Reka Desrina Wati, The Marriage Agreement in Article 29 of Law Number 1 of 1974 is Reviewed According to Islamic Law, *Al Hurriyah: Jurnal Hukum Islam*, Vol.7, no.2, 2022, page. 120. See to, Achmad Moelyono, Riza Yudha Patria, and Fitri Setiyani Dwiarti., Marriage Dispensation Policy in Children Protection: Evaluation of Article 7 Paragraph (2) Of Law Number 16 Of 2019

been amended following Constitutional Court Decision No. 69/PUU-XIII/2015. Through this decision, the Constitutional Court expanded the rights of couples to create marriage agreements, not only before or at the time of marriage but also during the course of the marriage.¹⁰ The agreement must be made in the form of a notarial deed and ratified by the marriage registrar. This decision provides greater flexibility for spouses to manage their assets and other rights according to changing conditions during the marriage. Furthermore, the agreement remains applicable to third parties involved, offering more comprehensive legal protection to all parties involved in the legal relationship governed by the agreement.¹¹

When creating a prenuptial agreement, there are several important considerations. First, the contents of the agreement must be mutually agreed upon by both parties and must comply with the provisions set out in the Marriage Law. The prenuptial agreement must not conflict with Indonesian positive law, as any violation could result in the agreement losing its legal force and being inadmissible as evidence in court if a dispute arises.¹² Problems often arise when one spouse dies, and the inheritance from the marriage becomes a source of conflict among the heirs. This usually occurs because the parties involved, whether heirs or legatees, do not fully understand how to create a valid and legally compliant prenuptial agreement. This lack of understanding can lead to one party feeling aggrieved and deciding to file a lawsuit to claim their rights as an heir.¹³ Therefore, the issues raised in this research are how Law Number 1 of 1974 on Marriage and Constitutional Court Decision No. 69/PUU-XIII/2015 can serve as a strong legal basis for creating prenuptial agreements. The study will also examine the position of inheritance in the context of prenuptial agreements and the legal consequences arising from such agreements when made in accordance with the prevailing regulations.

2. Research Methods

The methodology employed in this research is a normative juridical approach, which is a legal research method focused on the normative analysis of legislation and applicable legal norms. This approach aims to understand, examine, and interpret the legal rules governing marriage agreements and inheritance rights, as well as how these rules are applied in practice. In this study, the library research

Concerning Amendments to Law Number 1 Of 1974 Concerning Marriage, *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial*, Vol.10, no.01, 2022, page.80.

¹⁰ Habib Adjie, Understanding the Marriage Agreement Post Decision of The Constitutional Court of The Republic of Indonesia Number 69/PUU-XIII/2015." *Journal of Positive Psychology and Wellbeing*, Vol. 6, no. 1, 2022, page. 2481; See to, Najichah Najichah, Reconstruction of Islamic Family Law in Indonesia Through Constitutional Court Decisions, *Walisongo Law Review (Walrev)*, Vol.4, no.2, 2022, page.226.

¹¹ Honggo Hartono, Roles of Notary in Drawing Up Marriage Agreement After Constitutional Court Decision Number 69/PUU-XIII/2015, *Prophetic Law Review*, Vol.2, no.2, 2020, page. 89.

¹² Anugrah Reskiani, Dian Furqani Tenrilawa, Aminuddin Aminuddin, and Rahman Subha., Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence, *JURIS (Jurnal Ilmiah Syariah)*, Vol.21, no.1, 2022, page.45.

¹³ Fakhrizal Arief Firmansa, Isdian Anggraeny, and Yelita Putri Pramithasari., Legal review of selling land of inheritance without approval of all heirs, *Legality: Jurnal Ilmiah Hukum*, Vol.28, no.1, 2020, page.117; See to, Halimah Basri, Andi Miswar, Hamka Hasan, Mustaqim Pabbajah, and Subehan Khalik., Inheritance Rights of Women in Makassar Society: A study of living Qur'an and its implications for Islamic Law." *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, Vol.6, no.2, 2022 page.545.

method is used to collect relevant data and information from various legal sources. Primary legal sources, such as laws related to marriage and inheritance, relevant jurisprudence or court decisions, and other official documents, are the main focus of data collection. The primary legal materials used in this research include the Civil Code, Law Number 1 of 1974 on Marriage, and Constitutional Court Decision No. 69/PUU-XIII/2015. Additionally, secondary legal sources, such as academic literature, legal journals, textbooks, and scientific articles, are also used to enrich understanding and provide a broader theoretical context and perspective in the analysis. The analysis method used is descriptive qualitative analysis, which aims to provide a detailed and in-depth overview of the researched topic.

3. Results and Discussion

3.1. Legal Basis for Marriage Agreements: Law Number 1 of 1974 and Constitutional Court Decision No. 69/PUU-XIII/2015

Article 29, paragraph (1) of Law Number 1 of 1974 on Marriage regulates prenuptial agreements by stipulating that both parties intending to marry may create a written agreement, which must be ratified by the marriage registrar at the time of or before the marriage takes place.¹⁴ This provision provides a legal foundation for spouses to clearly define their rights and obligations as well as the management of assets during the marriage. A prenuptial agreement made in accordance with Article 29, paragraph (1) holds legal force and binds third parties involved in the agreement.¹⁵ Consequently, the provisions regarding asset division, rights, and obligations specified in the prenuptial agreement must be adhered to by all parties involved in the legal relationship governed by the agreement. This provision aims to offer legal certainty and protection for the rights of the parties involved in the marriage, and to prevent future conflicts by providing clear rules regarding the rights and obligations of the spouses.¹⁶

However, the prenuptial agreement must comply with applicable positive law and must not contradict other legal provisions. If the agreement violates positive law, it will lose its legal force and cannot be used as a basis in court if disputes arise in the future. According to Asman¹⁷ argue that non-compliance with positive law can lead to the court rejecting or not accepting the prenuptial agreement, making the

¹⁴ Imam Tabroni, Hisam Ahyani, and Dian Permana., Philosophical Review of Materialism and Idealism Limits of Wedding Age in Indonesia; Study of Article 7 Paragraph (1) of Law 16 of 2019 Jo. Law 1 of 1974 Concerning Marriage, *Muttaqien; Indonesian Journal of Multidisciplinary Islamic Studies*, Vol.2, no.1, 2021, page.12.

¹⁵ Hisam Ahyani, Muharir Muharir, and Dian Permana., Philosophical Review of Materialism And Idealism Married Age Limits In Indonesia (Study Of Article 7 Paragraph (1) Of Law 16 Of 2019 In Conjunction With Law 1 Of 1974 Concerning Marriage), *Al-IHKAM: Jurnal Hukum Keluarga Islam Fakultas Syariah UIN Mataram*, Vol.12, no.2, 2020, page.112; See to, Moch. Muhibbin and Irwan Triadi., The Constitutional Court's Decision on the Amendment of Law No. 1/1974 on Marriage, *Yuris: Journal of Court and Justice*, Vol.4, no.5, 2023, page.34.

¹⁶ Haerunnisa Yunus, Rusli Rusli, and Abidin Abidin., The concept of a marriage agreement in the compilation of Islamic law, *International Journal of Contemporary Islamic Law and Society*, Vol.2, no.2, 2020, page.35; See to, Moch. Muhibbin and Irwan Triadi., The Constitutional Court's Decision on the Amendment of Law No. 1/1974 on Marriage, *Yuris: Journal of Court and Justice*, Vol.4, no.5, 2023, page.30.

¹⁷ Asman Asman, Marilang Marilang, and Kurniati Kurniati., Existence of Marriage Agreements in Islam Development Studies in the Community of Malay Border Indonesia-Malaysia, *Jurnal Ilmiah Al-Syir'ah*, Vol.19, no.1, 2021, page.19.

rights outlined in the agreement unenforceable.¹⁸ Therefore, it is crucial for couples creating a prenuptial agreement to ensure that the agreement complies with all applicable legal provisions to provide effective legal protection and prevent future disputes.¹⁹

Constitutional Court Decision No. 69/PUU-XIII/2015 has significant implications for the implementation and modification of prenuptial agreements.²⁰ This decision altered the provisions in Article 29, paragraph (1) of Law Number 1 of 1974 on Marriage, which originally limited the creation of prenuptial agreements to before or at the time of marriage.²¹ With this ruling, spouses are now allowed to create prenuptial agreements in the form of a notarial deed, ratified by the marriage registrar, both before and during the marriage. This change provides greater flexibility for couples to adjust their prenuptial agreements according to evolving needs and situations throughout the marriage.²²

The main implication of this ruling is that couples are no longer bound by the terms set at the beginning of the marriage and can make modifications to the prenuptial agreement that are more relevant to their current circumstances.²³ This helps to avoid potential conflicts in the future and provides a stronger legal basis for regulating each party's rights and obligations.²⁴ Furthermore, the Constitutional Court's decision strengthens the legal position of prenuptial agreements by affirming that agreements made in accordance with these rules remain binding on involved third parties. This ensures that the rights and obligations outlined in the prenuptial agreement are more widely respected, offering more comprehensive legal protection for couples and associated third parties.²⁵

¹⁸ Budi Prasetyo, Edy Sanjaya, and Indira Hastuti., Marriage Law Perspective Against Underage Marriage, *International Journal of Educational Research & Social Sciences*, Vol.3, no.1, 2022, page.519.

¹⁹ Edy Setyawan, Muhammad Chairul Huda, Afif Muamar, Didi Sukardi, and Muhammad Feby Ridho Pangestu., Legal Age for Marriage: SDGs and Masalah Perspectives in Legal Policy Change in Indonesia, *Al-Manahij: Jurnal Kajian Hukum Islam*, Vol.9, 2023, page.183-198.

²⁰ Diah Andari, Kurniawan Kurniawan, and Any Suryani Hamzah., Legal Consequences of Making and Changing Marriage Agreements Made After Marriage. *Path of Science*, Vol.9, no.11 2023, page.5011.

²¹ Yulia Hesti, Procedure for Registration of Marriage Agreements After the Marriage Is Done, *Progressive Law Review*, Vol.4, no.01, 2022, page.37; See to, Diah Andari, Kurniawan Kurniawan, and Any Suryani Hamzah., Legal Consequences of Making and Changing Marriage Agreements Made After Marriage, *Path of Science*, Vol.9, no.11, 2023, page.5012

²² Elizabeth Alfa, Application of the Constitutional Court of the Republic of Indonesia Concerning the Married Agreement Made by Notary to the Land Ownership in the Land in Batam City (Study Research in Notary Office in Batam City), *International Journal of Advances in Social Science and Humanities*, Vol.10, 2020, page.45.

²³ Nurul Miqat, Anwar Borahima, Farida Patittingi, and Hasbir Paserangi., Marriage Agreements Post Decision of Constitutional Court No 69 Puu/Xiii/2015 Human Rights Perspective, *JL Pol'y & Globalization*, Vol.94, 2020, page.75; See to, Yenny Ika Putri Hardiyani Wati Gunarto and Anis Masdurohatusun., Reconstruction of the Law on Legality of Post-Marriage Agreements Based on Justice Values, *Sch Int J Law Crime Justice*, Vol.6, no.5, 2023, page.320.

²⁴ Fitra Deni and Upik Mutiara., Children's Inheritance Rights to Mixed Marriage What Is Not Recorded in Perspective International Civil Law, *Indonesian Journal of Law and Policy Studies*, Vol.2, no.2, 2021, page.160.

²⁵ Muhammad Havez, Rebulina Rebulina, Siti Azizah, Amran Hakim, and Bayu Al Hamid., The Constitutional Court Verdict Contribution towards International Civil Law Development in Indonesia, *JASSP*, Vol.2, no.2, 2022, page.88; See to, Elviana Sagala, Anis Masdurohatusun, and

Before the Constitutional Court Decision No. 69/PUU-XIII/2015, Article 29, paragraph (1) of Law Number 1 of 1974 on Marriage only allowed prenuptial agreements to be made at or before the time of marriage, and such agreements had to be ratified by the marriage registrar. This provision limited couples' flexibility in creating or modifying prenuptial agreements over time. As a result, if changes in needs or circumstances occurred during the marriage, couples did not have the option to formally update their agreements in accordance with the latest conditions.²⁶ With the Constitutional Court Decision No. 69/PUU-XIII/2015, there has been a significant change in legal practice regarding prenuptial agreements. This decision expands the authority of spouses to create prenuptial agreements both before marriage and during the marriage. The agreements must be made in the form of a notarial deed and ratified by the marriage registrar.²⁷ This change provides greater flexibility for couples to adjust or modify their prenuptial agreements according to evolving conditions and needs throughout the marriage.²⁸

The impact of this change is an increased legal certainty and protection for couples who wish to update their asset arrangements and rights during the marriage.²⁹ Prenuptial agreements made in accordance with the new provisions can include terms that are more relevant and suited to current situations, reducing potential conflicts in the future.³⁰ Additionally, valid and legally compliant agreements continue to bind third parties, strengthening the legal position of couples in regulating their rights and obligations. This change thus provides improved ease and legal protection for married couples.³¹

Habib Adjie., Reconstruction of Implementation of Marriage Agreements Post Decision of the Constitutional Court, *JL Pol'y & Globalization*, Vol.132, 2023, page.81.

²⁶ Elizabeth Alfa., Application of the Constitutional Court of the Republic of Indonesia Concerning the Married Agreement Made by Notary to the Land Ownership in the Land in Batam City (Study Research in Notary Office in Batam City), *International Journal of Advances in Social Science and Humanities*, Vol.10, 2020 page.45; See to, Heniyatun Heniyatun, Puji Sulistyaningsih, and Bambang Tjatur Iswanto., Juridical Examination of Marriage Agreement Nullification in Indonesia: Implications and Procedures, *Borobudur Law Review*, Vol.5, no.2, 2023, page.91.

²⁷ Muhammad Havez, Rehulina Rehulina, Siti Azizah, Amran Hakim, and Bayu Al Hamid., The Constitutional Court Verdict Contribution towards International Civil Law Development in Indonesia, *JASSP*, Vol.2, no.2, 2022, page.88.

²⁸ Tryan Zaki Aulia Yanis and Muhtadi Muhtadi., The Constitutional Court's Assessment of The Relationship between Religion and The State in The Context of Marriage Law, *Analisis: Jurnal Studi Keislaman*, Vol.23, no.2, 2023, page.253.

²⁹ Diah Andari, Kurniawan Kurniawan, and Any Suryani Hamzah., Legal Consequences of Making and Changing Marriage Agreements Made After Marriage, *Path of Science*, Vol.9, no.11, 2023, page.5013.

³⁰ Asman Asman, Marilang Marilang, and Kurniati Kurniati., Existence of Marriage Agreements in Islam Development Studies in the Community of Malay Border Indonesia-Malaysia, *Jurnal Ilmiah Al-Syir'ah*, Vol.19, no.1, 2021, page.120; See to, Habib Adjie., Understanding the Marriage Agreement Post Decision of The Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015, *Journal of Positive Psychology and Wellbeing*, Vol.6, no.1, 2022, page.2478

³¹ Fitriyan Ferdi Nastopa., Legal Protection for Heirs of Land Deeds Which Only Use the Name of Their First Child in the Perspective of Islamic Inheritance Law and Civil Law, *International Significance of Notary*, Vol.4, no.1, 2023, page.14.

3.2. The Position of Inherited Property in Marriage Agreements

The division of inheritance based on prenuptial agreements and applicable inheritance law involves two main aspects: the provisions outlined in the prenuptial agreement and the inheritance laws established by statute. According to Zainurohmah,³² a prenuptial agreement allows spouses to specifically arrange how assets will be managed and divided during the marriage and after the death of one spouse. In the prenuptial agreement, the couple can specify the division of joint assets, the separation of personal assets, and the respective inheritance rights in the event of death.³³ This agreement must be made in the form of a notarial deed and ratified by the marriage registrar to be legally valid. If the prenuptial agreement does not include provisions regarding the division of inheritance or violates applicable legal provisions, then the prevailing inheritance law will apply.³⁴

Inheritance law in Indonesia is regulated by the Civil Code (KUHPerdata) and, in conjunction with Law No. 1 of 1974 on Marriage, sets the fundamental rules for the distribution of inheritance.³⁵ Under inheritance law, inheritance is divided according to lineage, with the surviving spouse and children as primary heirs. If the prenuptial agreement specifies the division of inheritance, such provisions will be enforced, provided they do not conflict with the prevailing positive law.³⁶ If there is no prenuptial agreement or if the agreement is inadequate, inheritance distribution follows the applicable inheritance law, which typically involves fair distribution among all heirs. Inheritance law aims to ensure that the rights of all heirs, including the surviving spouse and children, are protected and considered fairly. Therefore, it is important to ensure that the prenuptial agreement complies with applicable inheritance laws to be effectively and legally applied in the inheritance distribution process.³⁷

A prenuptial agreement has a significant impact on inheritance rights and the division of assets if one spouse dies. According to Idris et al,³⁸ a prenuptial

³² Zainurohmah Zainurohmah, Marcelia Puspa Andini, and Anisa Vira Damayanti., Discourse on Post-Divorce Distribution of Joint Assets in the Perspective of Islamic Law in Indonesia, *Contemporary Issues on Interfaith Law and Society*, Vol.2, no.1, 2023, page.78.

³³ Ah Kholish Hayatuddin Desti Widiyani., Socio-Juridical Analysis on Polygamy Requirements in the Compilation of Islamic Law (KHI), *Al-'Adalah*, Vol.19, no.1, 2022, page.199.

³⁴ Lidya Fawwaz Rohmanna, Adesoji Kolawole Adebayo, and Syamsul Alam., Perspective on Inheritance Rights in Other Wives, *Golden Ratio of Law and Social Policy Review*, Vol.3, no.1, 2023, page.29; See to, Mohd Norhusairi Mat Hussin, Raihanah Abdullah, Nahid Ferdousi, and Wirdati Mohd Radzi., The Legal Recognition of a Wife's Rights of Harta Sepencharian in Malaysia, *Asian Women*, Vol.39, no.1, 2023, page.24.

³⁵ Bertrand Silverius Sitohang, Sahata Manalu, Mancur Sinaga, and Niswan Harefa., The Validity of Marriage Through Constitutional Court Decision Number 69/Puu-XIII/2015 Reviewed from Law Number 1 Of 1974, *Jurnal Pendidikan Tambusai*, Vol.7, no.3, 2023, page.20640.

³⁶ Moh Hafid., The Concept of Istihsan Abu Hanifah in Indonesian Islamic Family Law (Review of Marriage Registration as an Accumulative Condition), *Legal Brief*, Vol.11, no.2, 2022, page.589.

³⁷ M.S. Sait., *Our marriage, your property?: Renegotiating Islamic matrimonial property regimes*, Routledge, 2016, page.252; See to, Prahasti Suyaman and Temmy Fitriah Alfiany., Polemics of Interfaith Marriage Reviewed from the Perspectives of Marriage Law and the Compilations of Islamic Law, *KnE Social Sciences*, Vol.13, 2022, page.539.

³⁸ Idris Idris, Raya Lestari, and Zetria Erma., The problems of siri marriage for couples who have not married according to the law in marriage legal perspective, *Legal Brief*, Vol.11, no.6, 2023, page.3528.

agreement, prepared and ratified in accordance with legal provisions, allows spouses to specifically arrange how the assets acquired during the marriage will be managed and divided. The provisions in this agreement can include various aspects, such as the separation of personal and joint assets, as well as the division of inheritance if one spouse passes away. If the prenuptial agreement stipulates the division of assets after the death of one spouse, such provisions will apply, provided they do not conflict with positive law.³⁹ The prenuptial agreement can specify that certain inheritance assets will be allocated to a third party or to specifically designated heirs. By having such an agreement, couples can ensure that their assets are distributed according to their wishes, reducing potential disputes among heirs and providing legal certainty regarding inheritance rights.⁴⁰

However, if the prenuptial agreement is inadequate or does not comply with positive law, as stipulated in the Civil Code (KUHPerdata), Law No. 1 of 1974 on Marriage, and the Constitutional Court Decision No. 69/PUU-XIII/2015, the surviving spouse and children are entitled to a share of the inheritance.⁴¹ In cases where there is no prenuptial agreement or it does not provide clear guidelines, inheritance law provisions will be applied to fairly distribute the inheritance among all heirs. Therefore, it is crucial for couples to ensure that their prenuptial agreement complies with the law and clearly regulates the division of inheritance. This will ensure that inheritance rights and asset distribution are handled according to their wishes and within the framework of applicable law, avoiding conflicts and ensuring the protection of the rights of all involved parties.⁴²

3.3. Legal Consequences of Marriage Agreements in Inheritance Disputes

A valid prenuptial agreement, in accordance with legal provisions, holds legal force and can regulate the division of inheritance resulting from the marriage. However, to ensure its validity and acceptance in inheritance disputes, the prenuptial agreement must be drafted and ratified in accordance with applicable laws and not conflict with positive Indonesian law.⁴³ Constitutional Court Decision No. 69/PUU-XIII/2015 expands the scope of prenuptial agreements by allowing changes or new prenuptial agreements to be made during the marriage, not just before or at the time of marriage.⁴⁴ This decision provides additional flexibility for couples to adjust their agreements to evolving situations and needs. In the context

³⁹ Duman Bahrami-Rad., Keeping it in the family: Female inheritance, inmarriage, and the status of women, *Journal of Development Economics*, Vol.153, 2021, page.102714; See to, Mirsa Astuti and Ida Nadirah., Giving Stepping Gifts in Marriage According to Customary Law and Islamic Law, *DE LEGA LATA: Jurnal Ilmu Hukum*, Vol.8, no.2, 2023, page.200.

⁴⁰ Jørgen Pedersen, and Steinar Bøyum., Inheritance and the Family, *Journal of Applied Philosophy*, Vol.37, no.2, 2020, page.300.

⁴¹ Yulia Hesti., Procedure for registration of marriage agreements after the marriage is done, *Progressive Law Review*, Vol.4, no.01, 2022, page.37.

⁴² Mariana Mariana and Benny Djaja., Matrimonial Agreement and Validation in Court, *Edunity Kajian Ilmu Sosial dan Pendidikan*, Vol.2, no.12, 2023, page.1518.

⁴³ Lasmaria Manullang and Amad Sudiro., Legal Consequences of Making a Deed of Marriage Agreement by a Notary Who Has Not Been Registered, *Jurnal USM Law Review*, Vol.6, no.3, 2023, page.1175.

⁴⁴ Kunti Tri Pertiwi, Salim HS, and Aris Munandar., The Role and Authority of Notaries in the Making of a Marriage Agreement in Positive Law in Indonesia, *JL Pol'y & Globalization* Vol.98, 2020, page.68.

of inheritance disputes, prenuptial agreements that are modified or updated in compliance with this Constitutional Court ruling will have legal force and remain applicable to third parties involved.⁴⁵

In resolving inheritance disputes, a valid prenuptial agreement will be the primary reference in determining the division of inheritance.⁴⁶ If there is no prenuptial agreement or if it is inadequate, the division of assets will follow the inheritance law provisions set out in the Civil Code (KUHPerdata). Therefore, a valid and legally compliant prenuptial agreement provides legal certainty and protection for the couple and heirs, minimizes the potential for disputes, and ensures that inheritance rights are managed according to the agreed terms.⁴⁷ Conversely, an agreement that is not legally compliant or conflicts with positive law risks being rejected in court proceedings and cannot be used as a basis for resolving disputes.⁴⁸

Efforts to resolve inheritance disputes and protect the rights of aggrieved parties involve several important steps that can be taken to resolve conflicts and ensure that all parties' rights are protected. Before involving the court, the first step in resolving inheritance disputes often involves mediation or negotiation between the parties in dispute.⁴⁹ Mediation is conducted by a neutral third party to help the parties reach a peaceful agreement. This process can reduce conflict and costs, and result in more flexible solutions that are acceptable to all parties. If mediation or negotiation fails, the inheritance dispute can be taken to court for resolution. In such cases, the court will assess the prenuptial agreement, applicable inheritance laws, and related documents to make a fair decision. The court will decide on the division of inheritance based on the prevailing laws and available evidence.⁵⁰

Aggrieved parties in inheritance disputes can utilize the services of inheritance experts and legal representatives to assist them in the legal process. Experienced lawyers in inheritance law can provide legal advice, represent clients in court, and assist in drafting necessary documents and agreements.⁵¹ Inheritance experts can also be employed to assess the value of the inheritance and provide expert

⁴⁵ Akrimni Nur Zakiyyah and Sri Endah Wahyuningsih., Notary Role in Making of a Marriage Agreement for A Husband & Wife Couple in Divorce, *Sultan Agung Notary Law Review*, Vol.3, no.4, 2021, page.1346.

⁴⁶ Jumriyani Jumriyani, Rusdin Alauddin, and H. I. Baharuddin., Analysis of Legal Urgency of Premarriage Agreements Related to Gono Gini's Assets in Ternate Religious Court, *Legal Brief*, Vol.11, no.4, 2022, page.2529.

⁴⁷ Lego Karjoko, Abdul Kadir Jaelani, Hilaire Tegan, Henning Glaser, and Muhammad Jihadul Hayat., Islamic Court's Approach to Land Dispute in Inheritance Cases, *AHKAM: Jurnal Ilmu Syariah*, Vol.21, no.2, 2021, page 542.

⁴⁸ Sonia Bhalotra, Rachel Brulé, and Sanchari Roy., Women's inheritance rights reform and the preference for sons in India, *Journal of Development Economics*, Vol.146, 2020, page.102275.

⁴⁹ Qazi Attaullah and Lutf Ullah Saqib., Women's Right to Inheritance in Shari'ah: Flaws lie in the Society and Judicial System of Pakistan, not in Law on the Subject (A Realistic Jurisprudential Approach), *Journal of Islamic and Religious Studies*, Vol.5, no.1, 2020, page.12.

⁵⁰ Mohamad Abdun Nasir., Religion, law, and identity: contending authorities on interfaith marriage in Lombok, Indonesia, *Islam and Christian-Muslim Relations*, Vol.31, no.2, 2020, page.141; See to; M. Noor Harisudin and Muhammad Choriri., On the legal sanction against marriage registration violation in Southeast Asia countries: A Jasser Auda's Maqasid Al-Shariah perspective, *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, Vol.5, no.1, 2021, page.4799.

⁵¹ Yohanes S. Lon and Fransiska Widyawati., Customary law before religion and state laws regarding marriage In Manggarai, Eastern Indonesia, *Jurnal Cita Hukum*, Vol.9, no.1, 2021, page.100.

opinions on fair division. To protect the rights of aggrieved parties, the legal system provides several protective mechanisms, such as the right to appeal court decisions if deemed unfair, or the right to file a lawsuit if there are violations of the prenuptial agreement or inheritance law provisions.⁵² Additionally, if there are indications of fraud or forgery in the prenuptial agreement or inheritance documents, the aggrieved party can seek legal protection and request the court to annul or amend the invalid agreement. Through these measures, the process of resolving inheritance disputes can be carried out in a more structured and fair manner, providing legal protection for all parties involved and ensuring their rights are respected.⁵³

4. Conclusion

The findings of this research indicate that Law No. 1 of 1974 on Marriage provides a legal basis for couples to create prenuptial agreements that regulate rights and obligations during marriage and the division of assets in the event of one partner's death. Article 29, paragraph (1) of this law stipulates those prenuptial agreements must be made at the time of or before the marriage and be authenticated by a marriage registrar. This agreement provides legal certainty regarding the management of assets and the rights of each party. The Constitutional Court Decision No. 69/PUU-XIII/2015 amended this provision by offering additional flexibility, allowing prenuptial agreements to be created or modified during the marriage, not just before or at the time of marriage. This change facilitates couples in adjusting their agreements according to evolving needs over time and enhances legal protection for the couple and involved third parties.

A valid prenuptial agreement has legal force in regulating the division of inheritance assets if one partner passes away. The terms of the prenuptial agreement can specifically outline how the inheritance will be divided, in accordance with applicable laws. If no prenuptial agreement exists or if the agreement is inadequate, then the inheritance laws set out in the Civil Code (KUHPerdata) will be applied. Inheritance law provides basic rules regarding the division of assets among legitimate heirs, such as the surviving spouse and children. A valid prenuptial agreement can prevent and resolve inheritance disputes by providing clear rules regarding each party's rights and obligations. If a prenuptial agreement conflicts with positive law or is invalid, it cannot be used as a basis for dispute resolution. In cases of inheritance disputes, aggrieved parties can use legal mechanisms such as mediation, court proceedings, and legal representation to ensure their rights are protected and conflicts are resolved fairly.

This research highlights those prenuptial agreements provide greater control for couples in managing their rights and obligations as well as the division of

⁵² I. Made Arya Dwisana and M. G. S. K. Resen., Pembuktian Harta Bersama dalam Perceraian Perkawinan Campuran tanpa Perjanjian Kawin di Indonesia, *Acta Comitas: Jurnal Hukum Kenotariatan*, Vol.6, no.3, 2021, page.567; See to, Sara Hutapea, Silvia Veronika, and Fatah Akbaryanto., Analisis Yuridis Kedudukan Anak dalam Perkawinan Siri Ditinjau dari Undang Undang Nomor 1 Tahun 1974 tentang Perkawinan, *Aufklarung: Jurnal Pendidikan, Sosial Dan Humaniora*, Vol.2, no.4, 2022, page.359.

⁵³ Adzkia Dzikro Romadhon and Adibah Bahori., Inter-religious Marriage in Indonesia: Pros and Cons in the Administrative and Constitutional Law, *Indonesian State Law Review (ISLRev)*, Vol.6, no.2, 2023, page.137.

inheritance assets. With the flexibility provided by Constitutional Court Decision No. 69/PUU-XIII/2015, couples can update their prenuptial agreements over time, ensuring that asset management remains relevant to current conditions. The implications of this research emphasize the importance of adhering to positive law in the creation of prenuptial agreements to ensure their validity and effective legal protection. Courts and legal representatives need to consider the terms of prenuptial agreements when resolving inheritance disputes and ensure that decisions are consistent with applicable laws. Additionally, the legal system should update and adjust regulations related to prenuptial agreements and inheritance law to reflect social changes and community needs. Constitutional Court Decision No. 69/PUU-XIII/2015 represents a positive step in providing additional flexibility and protection, but its application must be supported by effective understanding and implementation in legal practice.

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