

# Nuptial Agreement Following the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015

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## ABSTRACT

The most common form of nuptial agreement contains only the arrangement between a husband and a wife with regards to their marriage properties. In essence, however, a nuptial agreement could accommodate every terms agreed upon by the husband and wife concerned, without limitation to strictly matters of marriage properties, insofar as said terms are not against the laws, religious norms, and proper customs. There exists several distinctions on the legal provisions concerning nuptial agreement in the Indonesian Civil Code (ICC) and the Law of the Republic of Indonesia Number 1 Year 1974 concerning Marriage (hereinafter referred to as "Marriage Law"). Furthermore, issuance of the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015 as announced on October 27<sup>th</sup> 2016 has since altered the provisions concerning nuptial agreement in the Marriage Law significantly. The distinctions prominent of these three sources of legal provisions on nuptial agreement will be elaborated here.

**Keywords:** *Marriage Law, legal provisions on nuptial agreement, nuptial agreement, marriage properties,*

*Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015*

## 1. INTRODUCTION

Marriage is a sacred agreement between a man and a woman to establish a family. The term 'agreement' conveys the element of intention and willpower very much at the heart of a marriage, meanwhile the word 'sacred' indicates the religious value inherent in a marriage. Marriage holds a significant role in human reproduction and kinship. Moreover, its significance extends to civil relations with any third party, for whom the access to the knowledge concerning the status of certain marriage properties is essential.

"A man is a wolf to another man" (*homo homini lupus*), thus said Thomas Hobbes in his work entitled *Leviathan*. Hobbes argued that human beings incline to wage war against each other since we all possess an innate self-interested nature. Therefore, it is quintessential that an overarching rules of behavior shall be set in place to keep the shared living arrangement in order which could be duly enforced by means of some sanctions, which we then called the "law". [1] Laws are created to protect human interests within the larger society in various human aspects in order to achieve justice and legal certainty; such is also the purpose of having laws concerning marital affairs in Indonesia.

The legal provisions on marriage is contained in the First Book of the ICC on matters of "Persons", as well as the Marriage Law, which is then followed by the Government Regulation of the Republic of Indonesia Number 9 Year

1975 concerning The Enforcement of Law Number 1 Year 1974 concerning Marriage (hereinafter referred to as "GR 9/1975").

Pursuant to Article 66 of the Marriage Law, with the enactment of the Marriage Law, other provisions pertaining to marital affairs including what has been regulated in the ICC and other legal sources shall no longer be deemed valid insofar as the updated Marriage Law has covered. [2] The ICC provisions that remain prevalent are only those which has yet to be (adequately) regulated in the Marriage Law.

It shall be noted that pursuant to Article 49 of the GR 9/1975, the Marriage Law has come into force since October 1<sup>st</sup> 1975. [3] However, in the current practice, legal scholars and practitioners have yet to place adequate attention on the positive legal provisions on marriage since they hold almost reverential view on the rather outdated provisions contained in the ICC. Legal scholars and practitioners shall conduct more comprehensive analysis, compilations, resume, and data collection/record keeping on the prevailing ICC provisions as well as those which have been rendered null. Furthermore, it is no less important to have the newer provisions truly applied within both academic and practical realms in an integrated manner.

The ICC itself does not define marriage in a certain manner. However, Article 26 of the ICC provides that:

*The Law considers marriage only referring to its civil relations.*

Based on such definition, it could be interpreted that marriage could only be assessed from its juridical aspect since emphasis has been placed only within the context of its civil relations.

Meanwhile, Article 1 of the Marriage Law does provide a certain definition of what consists a marriage i.e.:

*Marriage is a physical and spiritual bond between a man and a woman as husband and wife intended to establish a happy and eternal family (household) in reverence to the one and only God.*

Such definition implies the existence of religious, social, biological, and juridical elements inherent in a marriage. The believe in the One and Only God underlies an assumed religious aspect of marriage. Marriage also entails a social aspect involving a physical and spiritual bond between a man and a woman, as well as the biological aspect along with the intention to establish a happy and eternal family (household). Lastly, marriage has a legal aspect to it in that its very occurrence is considered a legal action which has certain legal consequences as regulated in Indonesian laws.

There are various legal consequences that might arise following the solemnization of a marriage, among others with regards to marriage properties, the respective rights and obligations of husband and wife, as well as legal relations with their children and descendants. One that will be discussed in greater focus hereinafter is the legal consequences of marriage pertaining to marriage properties.

Arrangement of marriage properties is regulated under Articles 119-138 of the ICC *juncto* Articles 35-37 of the Marriage Law. The core principle underlying marriage properties arrangement as regulated in the ICC differs from one in the Marriage Law. The ICC stipulates that marriage properties consist of wholly joint properties, which means that a complete diffusion of the husband and wife's respective assets shall occur by law at the offset of a marriage, including any gains, losses, as well as all debts acquired prior to or during the course of marriage. Wholly joint properties arrangement will be automatically assumed to have occurred by law where no different arrangement is explicitly stipulated in a nuptial agreement or otherwise explicitly stipulated by the deceased (in case of inheritance) or a grantor. The husband will be assumed to hold an authority endowed by law to manage the wholly joint properties, for which management he is accountable to his wife. Therefore, the wife has no authority to carry out any legal actions with regards the wholly joint properties, while it remains that the husband shall observe to include the wife's consent in carrying out any legal actions upon any article of the wholly joint properties. [4]

The development into the current state where many wives contribute equally in the total work force proportion has brought about increasing fight for female emancipation. Things have undergone significant changes compared to the past days when in most families only the husbands were working, while the wives mostly resorted to the management of households. This greatly affects various aspects of marital affairs, but most importantly with regards to marriage properties. Therefore, the Marriage

Law has also been updated to accommodate these recent development.

The Marriage Law regulates that marriage properties shall be classified into 2 (two) distinct categories, namely inherited or personal properties, and joint or marriage properties. The first includes all properties contributed into the marriage from the husband and wife respectively, which have been acquired prior to the nuptial, as well as the properties said husband and wife obtained individually as gifts, grants, or inheritance, both prior to or following the nuptial. That said, inherited or personal properties remain under the respective authority of either the husband or wife to whom they belong, which consequently allows them each to retain the full rights to carry out certain legal actions with regards to their respective properties without any spousal consent. Meanwhile the latter includes all other properties obtained by said husband and wife within the course of marriage, which are not a part of their respective inherited or personal properties. With regards to certain articles of their joint properties, either the husband or the wife could carry out certain legal actions only by spousal consent, without which no such actions could be legally concluded.

Legal scholars and practitioners shall be especially attentive to the distinctions apparent in the provisions on marriage properties as regulated in the ICC and the Marriage Law respectively. As has been previously pointed out, the current provisions on marriage properties shall adhere to the provisions contained in the positive Marriage Law since all provisions regulating marital affairs which have been covered in the Marriage Law, including those contained in the ICC and other regulations, had been effectively nullified along with the enactment of the Marriage Law. The ICC provisions that remain prevalent are only those which has yet to be (adequately) regulated in the Marriage Law.

Issuance of the Letter of Inheritance is one of the most common legal actions conducted by notary officials in their professional practice and is directly implicated with the different available arrangements concerning marriage properties. The nuptial date of the inheritor and the longest-living spouse shall be of a most important concern for a notary in drawing a Letter of Inheritance. Where the nuptial took place before the Marriage Law came into force, distribution of inherited properties shall be carried out by observing the ICC provisions. In such case, the wholly joint properties are divided into 2 (two) parts i.e., ½ part is of the deceased, and the other ½ belongs to the longest-living spouse. However, where the nuptial is carried out following the enactment of the Marriage Law, the distribution of inheritance shall then be carried out in adherence to the Marriage Law. In this case, a list shall be made detailing the inherited or personal properties of both the deceased's and the longest-living spouse respectively, in addition to the details of their common or marriage properties. The inheritance bundle of the deceased's that is to be distributed consists of his/her inherited or personal properties, in addition to ½ part of his/her common or marriage properties.

Most couples nowadays enter into a nuptial agreement mainly to manage their properties despite the fact that a nuptial agreement in essence could also cover other terms agreed upon by the husband and wife without limitations to matters concerning marriage properties, insofar as said terms are not in opposition to the prevailing laws, religious norms, and proper customs. There actually exists 8 (eight) general types of nuptial agreement, namely the Nuptial Agreement on Marriage Arrangements sans Joint Properties, Nuptial Agreement on Joint Profits and Losses, Nuptial Agreement on Joint Gains and Income, Nuptial Agreement on Conditional Marriage Arrangements sans Joint Properties, Amendment of Nuptial Agreement, Nuptial Agreement on Separation of Marriage Properties, Nuptial Agreement on the Reinstatement of Joint Properties Arrangement, as well as Nuptial Agreement on the Separation of Bed and Board. However, it remains that the most common form of nuptial agreement made contains only the arrangement of properties within a marriage.

There are certain distinctions on the provisions concerning nuptial agreement in the ICC and the Marriage Law. Following the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015 as announced on October 27<sup>th</sup> 2016, the provision on nuptial agreement in the Marriage Law has since been modified. These will be further elaborated in order to identify the general differences. Despite such changes, it shall be observed that the rights of a husband as the head of family as well as his obligations to provide for the family, particularly matters of subsistence of his wife and children, shall not be eliminated following the entry into a nuptial agreement pursuant to Article 140 of the ICC.

## **2. ICC AND THE MARRIAGE LAW**

In accordance with Articles 147-149 of the ICC, nuptial agreements shall be made by observing and without violating the limits on proper customs and public order, prior to the nuptial and in the form of a notarial deed, as would be similarly required for its amendment. The concept of nuptial agreement in the ICC refers to prenuptial agreement, which assumes its legal forces upon a husband and wife following the nuptial. Its validity towards any third party commences since its registration in the public register kept by the District Court in the region where the marriage is officiated, as regulated in Article 152 of the ICC. Therefore, prior to such registration, the agreement could not have been deemed as externally binding towards any third party. The ICC regulates further that following the marriage, no alteration to the prenuptial agreement could be accommodated.

Moving on to the Marriage Law, Article 29 requires that nuptial agreement be made without violating legal and religious norms, as well as proper customs. Adopting

similar concept with the ICC's prenuptial version, the couple is obligated to have it made in a written form on or prior to the nuptial, which should then be registered and validated by the Marriage Registration Official at the Civil Registrar. Nuptial agreement commences to assume force upon the husband and wife following the nuptial. Its binding force upon any relevant third party is assumed only following its registration and validation by the Marriage Registration Official at the Civil Registrar. Therefore, in similar fashion to the ICC, nuptial agreement could not have been deemed as externally binding towards any third party prior to such registration and validation. The Marriage Law also stipulates that following the nuptial, no alteration of the nuptial agreement is allowed unless, in contrast with the ICC, such is otherwise mutually consented by both parties and will not afflict harm towards any relevant third party.

It can be concluded from the above explanations that there are several differences to note on the provisions concerning nuptial agreement between the ICC and the Marriage Law, as follows:

1. The ICC:  
The limitations in the drafting of a nuptial agreement are proper customs and public order.  
Marriage Law:  
The limitations in the drafting of a nuptial agreement are the laws, religious norms, and proper customs.
2. The ICC:  
Nuptial agreement shall be made in the form of a notarial deed.  
Marriage Law:  
Nuptial agreement is not required to be made in a notarial deed insofar as it is made in writing.
3. The ICC:  
Nuptial agreement commences to assume force towards any relevant third party following its registration in the public register at the District Court covering the jurisdiction where the nuptial took place.  
Marriage Law:  
Nuptial agreement assumes its legal forces upon any relevant third parties following its registration and validation by the Marriage Registration Official at the Civil Registrar.
4. The ICC:  
Nuptial agreement shall be made prior to the nuptial.  
Marriage Law:  
Nuptial agreement could be made on or prior to the nuptial.
5. The ICC:  
Following the nuptial, a nuptial agreement shall in no way be amended.  
Marriage Law:  
Following the nuptial, a nuptial agreement shall not be altered, except where both parties consent to such

alteration which shall do no harm towards any relevant third party.

The above differences aside, there is also a similarity between both to note i.e., the validity of the nuptial agreement upon both parties commences following the nuptial and the officiation of marriage.

It shall be noted at all times that with the enactment of the Marriage Law, the ICC provisions are no longer valid unless has not been sufficiently regulated in the Marriage Law. Furthermore, the Marriage Law has since then undergone modifications on provisions concerning nuptial agreement following the issuance the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015.

### **3. DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF INDONESIA NUMBER 69/PUU-XIII/2015**

Mrs. Ike Farida, a woman of Indonesian nationality married to a foreign national i.e., a Japanese man, was the petitioner for material review in the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015. The case concerns a mixed marriage, where 2 (two) people both residing in Indonesia were subjects to different laws due to their different nationalities i.e., one is an Indonesian national and the other is a foreign national. Their marriage have been registered and validated at the Religious Affairs Office of East Jakarta and the Civil Registrar of the Special Capital Region of Jakarta. The petitioner had never drawn a nuptial agreement, neither had she given up her status as Indonesian national, and it happened that she resided in Indonesia.

The rights of an Indonesian national bound in marriage to a foreign national without a nuptial agreement to the Right of Ownership and the Right of Building Use was the subject matter in question, which is petitioned for legal material review against the State Constitution of the Republic of Indonesia Year 1945. The petitioner argued that she has been deprived of her constitutional rights i.e., the rights to reside and enjoy a good living environment through ownership or savings meant for her perusal as well as her descendants' in view of securing their future well-being, among others by means of purchasing land plot and/or building which shall serve as a place to reside, to seek protection, as well as a form of future savings. [5]

More specifically, she petitioned for a material constitutional review against the following:

1. Law Number 5 Year 1960 concerning Basic Agrarian Law (hereinafter referred to as "BAL")
  - a. Article 21 point (1):  
*Only Indonesian nationals are entitled to the Right of Ownership.*
  - b. Article 21 point (3):  
*A foreign national who following the enactment of this Law obtained the Right of of Ownership as part of his inheritance without the means of*

*any will, or through a diffusion of properties ownership due to marriage, as well as an Indonesian national holding a Right of of Ownership who following the enactment of this Law losses his nationality, shall surrender his entitlements [over land and/or building locating in Indonesia] within 1 (one) year following the acquisition of such rights or nationality losses thereof. Should the timeframe lapses with no surrender of the Right of Ownership, said rights shall then be void by law and the land ownership falls on the State, on the condition that all other rights over the land pertaining to other parties shall continue to proceed.*

- c. Article 36 point (1):  
*Those entitled to the Right to Building Uses are:*
  - 1) *Indonesian nationals;*
  - 2) *Legal entities which are established according to Indonesian laws and are domiciled in Indonesia.*

#### 2. The Marriage Law

- a. Article 29 point (1):  
*On or prior to the nuptial, both parties could by mutual consent draw a written agreement, which shall then be validated by the Marriage Registration Official and which contents shall thereof be considered binding towards any relevant third party.*
- b. Article 29 point (3):  
*Said Agreement shall come into force at the offset of the marriage.*
- c. Article 29 point (4):  
*During the course of marriage, said agreement is not subject to alteration unless both parties consent to such alteration which shall inflict no harm towards any relevant third party.*
- d. Article 35 point (1):  
*All properties acquired during the course of marriage shall be considered common properties.*

In 2012, taken into account that the petitioner's husband is a foreign national and that the couple was subject to no nuptial agreement indicating assets separation, the apartment unit located in Jakarta purchased by the petitioner had yet to be handed over despite the completed payment of the full price. The property developer then proceeded to unilaterally dissolve the Agreement to Sell and Purchase. Through their official letters, the property developer in essence conveyed:

- Whereas pursuant to Article 36 point (1) of the BAL and Article 35 point (1) of the Marriage Law, a woman bound in marriage to a foreigner is prohibited to purchase certain land or building with a 'right to building use' title. Therefore, the property developer decided against entering into a Contract to Sell and Purchase, or a Sale and

Purchase Agreement for that matter, with the petitioners, since such action would violate Article 36 point (1) of the BAL.

- Whereas pursuant to Article 35 of the Marriage Law, any properties acquired during the marriage shall be considered joint properties. In the light of the above, we could conclude that where a husband or a wife during the course of their marriage purchase an immovable goods, in this case specifically an apartment unit, said unit shall be considered a joint property of both the husband and the wife. In the case of a mixed marriage (between an Indonesian national and a foreign national) carried out without drawing any nuptial agreement indicating asset separation, the purchase of said unit by either an Indonesian husband or wife will consequently, by law, makes the unit a common property of his/her spouse holding foreign nationality.

In 2014, the property developer proceeded to request a stipulation as then issued in the Stipulation of the District Court of East Jakarta Number 04/CONS/2014/PN.JKT.Tim, which decided to:

*Command the bailiff/secretary of the District Court of East Jakarta... to make a monetary offer... by means of consignment fund as a payment compensation to the petitioner as the result of purchase order cancellation due to the unfulfilled objective requirements constituting an agreement as stipulated in Article 1320 of the ICC i.e., the violation of Article 36 point (1) of the BAL.*

Mrs. Ike Farida then petitioned for a review on the rights-limiting marriage provisions, which then was decided through the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015, as follows:

1. Article 29 point (1) of the Marriage Law, amended to:  
*On or prior to the nuptial, or during the course of marriage, both parties are entitled to petition to enter into a written agreement which shall then be validated by the Marriage Registration Official or a notary, which contents shall thereafter be considered as binding towards any relevant third party.*
2. Article 29 point (3) of the Marriage Law, amended into:  
*Such agreement shall commence following the nuptial, unless otherwise stipulated in the nuptial agreement.*
3. Article 29 point (4) of the Marriage Law, amended into:  
*During the course of marriage, a nuptial agreement could cover matters concerning marriage properties or other provisions, and is not subject to alteration or cancellation unless such is otherwise mutually agreed upon by both parties*

*and will not afflict harm towards any relevant third party.*

Therefore, the petition for material review by the petitioner is partially granted by the Constitutional Court i.e., Article 29 points (1), (3), and (4) of the Marriage Law. While the remaining petition against Article 35 point (1) of the Marriage Law as well as Article 21 points (1) and (3), and Article 36 point (1) of the BAL is rejected, having been considered in alignment and therefore consistent with the State Constitution of the Republic of Indonesia Year 1945. From the above elaboration, it can be summarized that the Marriage Law regulating on nuptial agreement has undergone alteration through the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015 on the following points:

#### *1. Time of Commencement of Nuptial Agreement*

Prior to the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015, nuptial agreement could only be entered into on or prior to the nuptial. The Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015 altered the provision to allow a nuptial agreement to be made on, prior to, or following the nuptial during the course of marriage based on mutual consent.

#### *2. Validity of Nuptial Agreement*

Prior to the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015, a nuptial agreement shall assume forces upon the husband and wife following the nuptial. The Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015 stipulated the same, *unless* it is otherwise stipulated in the nuptial agreement.

Therefore, insofar as no determination is made by the husband and wife with regards to the exact time of commencement of the nuptial agreement, it will be deemed as coming into effect following the nuptial. However, should the time of commencement is explicitly determined therein, then it will come into effect as has been consensually determined by the husband and wife concerned.

The least risky form of nuptial agreement is where the couple determined that it shall take effect when it is drawn, thus being non-retroactive in nature. This will render legal effect strictly upon the properties acquired following the entry into said nuptial agreement. More risks could potentially surface where the nuptial agreement is set to assume force since the nuptial date onwards due to the fact that a calculation will need to be made concerning all properties acquired from the offset of the marriage and a court stipulation to determine the ownership of each properties shall be requested.

It shall be noted that the legal binding force of such agreement upon the husband and wife does not automatically leverage to binding force upon any third parties. Whenever a nuptial agreement is drawn, it only commences to bind any relevant third party following its official registration and validation by the Marriage Registration Official at the Civil Registrar.

### 3. *Contents of A Nuptial Agreement*

Prior to the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015, there has been no regulation as to whether the contents of a nuptial agreement shall only cover matters pertaining to marriage properties or otherwise. With the issuance of the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015, the provision is modified to accommodate both arrangements on matters concerning marriage properties as well as any other arrangements.

### 4. *Revocation of Nuptial Agreement*

Prior to the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015, there was no provision to allow the cancellation of a nuptial agreement, only that it could be duly modified. The Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015 stipulated the same, unless otherwise mutually agreed upon by both parties and insofar as the alteration or cancellation will not inflict harm towards any third party.

Since the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015 was announced, the Directorate General of Citizenship and Civil Registration has issued Circular Letter Number 472.2/5876/Dukcapil dated May 19<sup>th</sup> 2017 and the Directorate General of Islamic Community Guidance followed suit by issuing Circular Letter Number B.2674/DJ.III/KW.00/9/2017 dated September 28<sup>th</sup> 2017 concerning Registration of Nuptial Agreement.

In essence, both Circular Letters provide guidance of the manners in which a nuptial agreement for both Moslems and non-Moslems shall be registered. It is worth noting that neither the Marriage Law nor the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015 requires that a nuptial agreement be made in a notarial deed. However, the abovementioned Circular Letters have both explicitly require that a nuptial agreement be made in a notarial deed to fulfill the formal requirement. [8]

The above implies the significance of the role of notary as a public official. This modern era increasingly view as outdated any agreement made based solely on mutual trust as was common in earlier days. Most agreements entered into by the members of the public nowadays are often drawn by a notary to ensure their civil validity. Notary officials aid the society in preventing the potential of future legal disputes through the authentic deeds made before them, which is deemed as the strongest and most perfect evidence to be presented before the court. The power inherent in an authentic deed is absolute (*volledig bewijskracht*) and binding (*bindende bewijskracht*). Therefore, notary officials hold significant role in aiding the achievement of legal certainty in the society. [9]

Once a nuptial agreement has been drawn in the form of a notarial deed, it shall be registered as side annotations on the marriage register as well as the in Marriage Certificate in order to be lawfully binding towards any third party. Marriages for the non-Moslems are registered by the Marriage Registration Official at the Technical

Implementation Unit (Implementation Department) of the Civil Registrar, while the Moslems are to register marriages at the sub-district level Religious Affairs Office. Pursuant to Article 56 point (1) of Law Number 23 Year 2006 concerning Citizenship Administrasion (hereinafter referred to as "Citizenship Administrasion Law"), the registration of marriage properties separation is technically categorized as 'other significant event' which shall be duly carried out by a Civil Registration Official upon the request of the petitioners. In order for a nuptial agreement to be deemed legally binding towards any third party, it shall be registered as side annotations on the marriage register as well as the Marriage Certificate as means for publication. Where the nuptial agreement is made sometime during the course of marriage, said Official could carry out such registration strictly following the issuance of a District Court Stipulation with a final and binding legal force upon the request of the petitioners. Where a retroactive nuptial agreement is concerned, the determination of properties distribution between the husband and wife respectively shall also be requested to be incorporated in the District Court Stipulation.

The entry into a nuptial agreement during the span of a marriage shall be publicly announced in a daily newspaper to reveal whether such action will inflict harm upon any third party, who in proving a claim of loss is therefore entitled to submit an objection against said agreement.

There are 3 (three) types of nuptial agreement currently prevalent, namely the Nuptial Agreement on Marriage Arrangements sans Joint Properties, the Nuptial Agreement on Joint Profits and Losses, as well as the Nuptial Agreement on Joint Gains and Income. These 3 (three) types are similar in essence to those constructed prior to or on the nuptial. However, some additional details shall be incorporated in the deed i.e., 1) the remarks that the parties had already been married for some time by the time of entry into said nuptial agreement, 2) a statement that such agreement is made based on the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015, 3) a detailed list on all properties acquired within the marriage up to the entry into the nuptial agreement (which is made and duly signed by the parties and the original is to be attached to the minute (the signed original) of the notarial deed, 4) the remarks issued by the parties stating that no other properties exist beyond what have been listed, and lastly, 5) the remarks issued by both parties guaranteeing that up to the signing of the deed, their marriage properties have not been transferred or traded to another party. The remaining contents of the deed are decidedly similar to the version made prior to or on during the nuptial.

Below are several District Court Stipulations granting the application of nuptial agreements made during the term of a marriage:

#### 1. *Retroactive Nuptial Agreement*

A retroactive nuptial agreement is made during the course marriage which results to the separation of all marriage properties acquired since the offset of the marriage, both before and after the nuptial agreement is entered into.

Several Court Stipulations deciding on retroactive nuptial agreement are as follows:

- a. Stipulation of the District Court of Tangerang Number 269/PEN.PDT.P/2015/PN.TNG;
- b. Stipulation of the District Court South Jakarta Number 555/PDT.P/2016/PN.JKT.SEL;
- c. Stipulation of the District Court Malang Number 599/PDT.P/2017/PN.MLG;
- d. Stipulation of the District Court of Brebes Number 129/PDT.P/2018/PN.BBS.

#### 2. *Non-Retroactive Nuptial Agreement*

A non-retroactive nuptial agreement is made during the course of marriage, however, in contrast to the retroactive version, the separation of marriage properties is deemed to be valid only since the date the nuptial agreement is entered into, therefore separation is only applicable to the marriage properties to be obtained following the commencement of nuptial agreement. There will be no separation for the marriage properties acquired prior to the entry date of the nuptial agreement. Several court stipulations confirming the validity of non-retroactive nuptial agreements are as follows:

- a. Stipulation of the District Court of Tangerang Number 381/PDT.P/2015/PN.TNG;
- b. Stipulation of the District Court South Jakarta Number 520/PDT.P/2016/PN.JKT.SEL;
- c. Stipulation of the District Court South Jakarta Number 25/PDT.P/2017/PN.JKT.SEL.

#### 4. CONCLUSION

In the light of the above, it can be concluded that in order to gain comprehensive understanding on the body of positive law concerning nuptial agreement, one shall observe the Marriage Law *juncto* GR 9/1975 *juncto* Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015 *juncto* Circular Letter of the Directorate General of Citizenship and Civil Registration Number 472.2/5876/Dukcapil *juncto* Circular Letter of the Directorate General of Islamic Community Guidance Number B.2674/DJ.III/KW.00/9/2017 *juncto* Citizenship Administration Law.

Legal scholars and practitioners shall not hold a much too reverential view on the ICC provisions on marriage, which could cause inadequate attention to the actual positive law. Legal scholars and practitioners shall conduct more comprehensive analysis, compilations, resume, and data collection/record keeping on the prevalent ICC provisions as well as those which have been declared invalid, including but not limited to the Marriage Law as has been elaborated above. Furthermore, it is quintessential to have them truly applied within both academic and practical endeavors in an integrated manner, since the distinctions among the prevailing regulations would render significant legal effect, among others on the arrangement of properties between a husband and wife.

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#### REFERENCES

- [1] Mertokusumo, Sudikno, *Mengenal Hukum Suatu Pengantar*, Liberty, 1985.
- [2] Indonesia, Marriage Law, UU No. 1 Year 1974, LN No. 1 Year 1974, TLN No. 3019.
- [3] Indonesia, Government Regulation of the Republic of Indonesia Number 9 Year 1975 concerning The Enforcement of Law Number 1 Year 1974 concerning Marriage, GR No. 9 Year 1975, LN No. 12 Year 1975, TLN No. 3050.
- [4] Kitab Undang-Undang Hukum Perdata [Burgerlijk Wetboek], Translated by R. Subekti dan R. Tjitrosudibio, Pradnya Paramita, 1999.
- [5] Decision of the Constitutional Court of the Republic of Indonesia. Decision Number: 69/PUU-XIII/2015.
- [6] Indonesia, Directorate General of Citizenship and Civil Registration. Circular Letter concerning Registration of Nuptial Agreement, Circular Letter of the Directorate General of Citizenship and Civil Registration Number 472.2/5876/Dukcapil Year 2017.
- [7] Indonesia, Directorate General of Islamic Community Guidance. Circular Letter concerning Registration of Nuptial Agreement, Circular Letter of the Directorate General of Islamic Community Guidance Number B.2674/DJ.III/KW.00/9/2017 Year 2017.
- [8] Harris, Freddy, Helena, Leny, *Notaris Indonesia*, PT Lintas Cetak Djaja, 2017.
- [9] Sulihandari, Hartanti, Rifiani, Nisya, *Prinsip-Prinsip Dasar Profesi Notaris*, Dunia Cerdas, 2013.
- [10] Lumban Tobing, G.H.S, *Peraturan Jabatan Notaris*, Erlangga, 1982.
- [11] Indonesia, Notary Profession Law, UU No. 2 Year 2014, LN No. 3 Year 2014, TLN No. 5491.
- [12] Indonesia, Notary Profession Law, UU No. 30 Year 2004, LN No. 117 Year 2004, TLN No. 4432.
- [13] Indonesia, Basic Agrarian Law, UU No. 5 Year 1960, LN No.104 Year 1960, TLN No. 2043.

[14] Stipulation of the District Court of Tangerang  
Number: 269/PEN.PDT.P/2015/PN.TNG.

[15] Stipulation of the District Court of Tangerang  
Number: 381/PDT.P/2015/PN.TNG.

[16] Stipulation of the District Court of South Jakarta  
Number: 555/PDT.P/2016/PN.JKT.SEL.

[17] Stipulation of the District Court of South Jakarta  
Number: 520/PDT.P/2016/PN.JKT.SEL.

[18] Stipulation of the District Court of South Jakarta  
Number: 25/PDT.P/2017/PN.JKT.SEL.

[19] Stipulation of the District Court of Malang  
Number: 599/PDT.P/2017/PN.MLG.

[20] Stipulation of the District Court of Brebes  
Number: 129/PDT.P/2018/PN.BBS.