

## **Law Concept related to Limitation Freedom of Contract Marriage Agreement in Indonesia**

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### **Abstract**

*In this thesis, the author analyzes the legal obscurity of the limitations on the contents of Marriage Agreement, which of course has an impact on legal certainty itself, especially regarding the parties' freedom of contract. This is because there is no further explanation regarding the words law, religion and morality in Article 29 paragraph 2 of the Marriage Law, so that if they are defined generally, according to the opinion of experts, they certainly have different meanings. The different meanings of several experts have an impact on the public's lack of understanding regarding these boundaries. Based on this obscurity, the author formulates a problem formulations, what is the ideal concept of setting limits on freedom of contract marriage agreement in Indonesia?. The research method used in writing this thesis uses conceptual approach, statute approach and comparative approach by making a comparison with California. Using this method, it can be concluded that Regulations related to marriage agreements need to be amended regarding the regulation of limitations on the contents of marriage agreements, because there have been cases due to the extensive limitations on the contents of marriage agreements in Indonesia which have created uncertainty regarding marriage agreements. There are several concepts for changes in the regulation of marriage agreements in Indonesia, namely the existence of special regulations, the distinction between prenuptial agreements and marriage agreements, and the creation of details related to limitations.*

**Keywords:** *Legal Certainty, Marriage Agreement, Freedom of Contract.*

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## **INTRODUCTION**

The In everyday life, humans cannot live alone, of course, they need interaction with other humans. This interaction is also a way for humans to help themselves meet their needs. This causes humans to have the desire to continue their offspring which is done through marriage. Marriage has also been recognized for its existence in Indonesia, in the provisions of the Constitution of the Republic of Indonesia Year 1945 Article 28B paragraph (1) which states that "Everyone has the right to form a family and continue offspring through legal marriage". The sound of the article is also emphasized in the regulation of Law Number 1 of 1974 concerning Marriage which was amended into Law Number 16 of 2019 concerning Marriage (hereinafter referred to as the Marriage Law). With the existence of this law, there is a legal amalgamation in marriage regulation in Indonesia, where the existing marriage regulations in Indonesia have a very close relationship with religious or spiritual elements.

As stated in Article 1 of the Marriage Law, namely, marriage is an inner birth bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the One True Godhead. The inner birth bond referred to in the Article means that marriage cannot be viewed as a covenant in general or a purely civil agreement, but in marriage must be viewed as more. (Sanjaya, 2017) The relationship in marriage is not only about man and other humans but also about the relationship with God. At the time of marriage, both husband and wife will have mixed marital assets. In a marriage bond, an agreement between husband and wife can be made regarding joint property. This agreement is different from agreements in general, which are known as marital agreements. A marital

agreement is an agreement regarding the property of husband and wife during their marriage that deviates from the principles or patterns established by the marital agreement law, which is confirmed in Article 139 of the Civil Code and reaffirmed in Article 29 of Law Number 1 of 1974 Concerning Marriage. The provisions of Article 29 paragraph 2 of the Marriage Law explain the freedom related to the contents of the agreement as long as it does not violate the boundaries of law, religion, and morality. This is a form of freedom of contract contained in the Marriage Law. There is no explanation regarding law, religion and morality as meant in the Marriage Law. It is necessary to look again at the definition according to several experts who can provide different definitions. The existence of various definitions of the legal and moral boundaries in question provides evidence that there is a blurred meaning related to these boundaries among experts. The restrictions regulated in the Marriage Law only provide general restrictions and are not detailed. This gives rise to a misunderstanding among people who still think that a marital agreement can contain all the rules in the form of the day-to-day rights and obligations of a husband and wife apart from the purpose of establishing regulations related to marital agreements as in Article 139 of the Civil Code and Article 29 of the Marriage Law

This is demonstrated by the decision Number 526/PDT/G/2012/PN.Jkt.Sel annulled the marital agreement because it was deemed to violate the law, which was included in the judge's consideration. After all, the marital agreement had been made based on the defendant's bad ethics without providing a prior explanation to the plaintiff who cannot speak Indonesian when the agreement is made. Apart from that, the decision Number 0172/Pdt.G/2018/PA.Tgrs which ultimately makes the marital agreement unclear means that a court decision is still needed to help separate joint assets. The limitations contained in the Marriage Law give rise to a wrong perception because there are incomplete clear boundaries regarding legal, religious, and moral boundaries. So far, in Indonesia, there is still no specific law that regulates marital agreements including the rules for their implementation. Regulations relating to marital agreements in Indonesia are contained in the Marriage Law, Civil Code, and the Compilation of Islamic Law.

California has more complex regulations regarding marital agreements including rules regarding the limitations of marital agreements. Marital agreements in California are divided into 2 (two) types, namely Marital Agreement and Premarital Agreement. The existing marital agreement regulations in California take the form of a special law that regulates marital agreements, namely the Uniform Premarital and Marital Agreements Act (hereinafter referred to as UPMA). A comparison between the limitations regarding the contents of marital agreements in Indonesia and California has quite striking differences, in Indonesia the restrictions made are still related to marital assets, but in California, the regulations relating to limitations on the contents of marital agreements are made more detailed, namely with limitations relating to matters such as related matters outside of marital assets.

This also affects the freedom of contract for the parties in drafting a marriage agreement. Freedom of contract here means freedom to choose and make contracts, freedom to make and not make contracts, freedom of parties to determine their content and promises, and freedom to choose the subject of the agreement. (Cahyono, 2024) The freedom to make a marriage covenant is indeed restricted, not without cause but because the marriage covenant is not only binding for husband and wife but also for third parties. Different limitations in marriage agreements in Indonesia and California certainly have an impact on the freedom of the parties in drafting the contents of the agreement. Restrictions on freedom of contract are limited only as stipulated in Article 1338 of the Civil Code, i.e. All consents made by the law apply as law to those who make them. Based on this background, the author prepared this thesis with the title Limitations of Freedom of Contract in Making Marital Agreements in Law Number 1 of 1974

concerning Marriage. The writing of this thesis is focused on the regulation of marital agreements in Indonesia, namely through Law Number 1 of 1974 concerning Marriage and also the Civil Code. The different result from the previous research is, in previous research, it only focused on comparing the existing regulations in Indonesia and the United States, whereas in this research, researchers found that there was legal ambiguity in Article 29 Paragraph 2 of the Marriage Law, precisely in the phrases law, religion and morality which ultimately created a new legal concept related to marriage, especially regarding restrictions related to marriage agreements by comparing existing regulations in the United States.

## RESEARCH METHODS

This research is normative juridical research. With objects covering legal principles, legal systematics, legal synchronization, legal history, and legal comparison. By using a several methods legal research approach, which is *Conceptual Approach* used to analyze legal materials so that the meaning contained in legal terms can be known. This is done as an effort to obtain new meanings contained in the terms studied, or to test these legal terms in theory and practice. Then *Statue approach*, which is an approach that involves examining relevant laws by considering the legal problems faced. Supported by a *Comparative Approach*, namely an approach used to compare the laws of one country with the laws of other countries. The author compares the norms applied in Indonesia and California, because he sees that there are quite significant differences and can be a guideline for developing regulations related to the limitations of the contents of marriage agreements in Indonesia. Equipped with primary, secondary, and tertiary legal material sources, with legal material analysis techniques, systematic interpretation, grammatical interpretation, and also comparative interpretation. The legal materials used in this writing are Indonesia Civil Code, Law Number 1 of 1974 concerning Marriage (amended into Law Number 16 of 2019 concerning Marriage), and *Uniform Premarital And Marital Agreements Act*.

## RESULT AND DISCUSSION

### 1. The Ideal Concept of Setting Limits on Freedom of Contract Marriage Agreement in Indonesia

#### (A) Analysis of Freedom of Contract Based on the Limitations of Marriage Agreement Regulations in Indonesia

Indonesia recognizes the principle of freedom of contract which is a universally applicable treaty principle. (Jamilah, 2020) This principle gives the parties the freedom to make or not to make agreements, as well as the freedom to determine the content of the agreement themselves. (Amalia, 2016) The principle of freedom of contract is a principle that gives freedom to the parties to:

1. Make or not make an agreement
2. Agree with anyone
3. Determine the content of the agreement, its performance, and terms and
4. freedom to determine agreements, their execution, and terms including the freedom to accept or deviate from legal provisions that are optional (aanvullen, optional)
5. Determine the form of the agreement (written or oral) (Syahputra, 2012)

The existence of freedom of contract does not mean that the parties can perform the contract agreement freely without any restrictions. Limitations in an agreement will make the

agreement valid under the provisions of Article 1320 of the Civil Code which states For valid consent to take place, four conditions are required;

1. the agreement of those who bind him;
2. the ability to make an engagement;
3. a specific question point;
4. a cause that is not forbidden

The existence of freedom of contract does not mean that the implementation of freedom of contract is without limits. Of course, to protect citizens, the state often limits freedom of contract as outlined in laws and regulations. According to Nieuwenhuis, restrictions on freedom of contract are not only about content but also about its form. The existence of formal contracts and real contracts is a restriction on the principle of freedom of form. A marriage agreement is one of the contracts by making it in the form of a notarial deed is a condition of validity (*geldigheids vereiste*), so that the emergence of contractual attachment is when the marriage agreement has been stated in the form of a notarial deed. (Zamroni, 2019) As with making a marriage agreement, in the Civil Code some limitations regulate the content of the marriage agreement. These limitations are stated in Article 29 paragraph 2 as discussed in the first discussion. In addition to these restrictions, so far marriage agreements in Indonesia are still limited to the regulation of marital property. Property in the marriage period will generally merge into one between the husband and wife called joint property.

The marriage agreement in Indonesia is indeed made so that there is a separation of joint property. There are 3 (three) types of marriage agreements known in Indonesia, namely

1. The marriage agreement separates the property of each husband or wife. This separation of property is separated from the property of each husband and wife obtained before the marriage relationship. So directly, property such as grants, inheritances, and so on remain in the control of each husband or wife. Regarding property acquired after the existence of a marital relationship, it remains the joint property of the two who are jointly owned
2. Marriage agreement, separation of profit and loss. This separation includes separation if there is a benefit after the marriage relationship between husband or wife, then the profit will be divided equally between both. Meanwhile, if there is a loss after the existence of a marital relationship, then the loss becomes the responsibility of each husband or wife;
3. A marital agreement is a round or complete separation of property. This separation of property means that all property in marriage, both property that existed before the existence of the marital relationship and property that arises during the existence of the marital relationship becomes the right of each husband and wife. With the making of this unanimous marriage agreement for separation of property, between the two can do a legal act of their own from their property without the need for the consent of the husband/wife.(Sopiyan, 2023)

These three types, it show that the marriage agreement in Indonesia is indeed limited to joint property in marriage. When referring to the principle of freedom of contract with the limitations in Article 29 paragraph 2 of the Marriage Law, indeed the limitations related to making marriage agreements become very broad. On the other hand, the material content of the marriage agreement itself is still within the scope of the division of property. Thus, the parties who want to make a marriage agreement (prospective husband/wife or husband/wife) can make a marriage agreement that can be added material other content outside of property.

In accordance with R. Sardjono's opinion that as long as it is not regulated in statutory regulations, and is not interpreted otherwise, it is better to interpret that the marriage agreement should only cover rights relating to rights and obligations in the field of property law. According to Nurnazly Soetarno, a marriage agreement can only agree on matters relating to

rights and obligations in the field of property law and this concerns property which is the personal property of the husband and wife brought into the marriage.(Sujanah, 2021)

### **(B) Analysis of Freedom of Contract Based on the Limitations of Matrimonial Agreement Rules in California**

Not only in Indonesia, California also knows the concept of freedom of contract. Freedom of contract is indeed important in a treaty because a person obtains freedom through rights that are given legally binding restrictions in the form of obligations.(Pohan, 2021) The principle of freedom of contract is not clearly written in certain regulations. The principle of freedom of contract can be assessed implicitly in Sections 1636 and 1565 of *the California Civil Code of 2009*. A contract should be understandable by the parties who are free with whom the contract is made, also free to determine the content of the contract, and free to determine the object of the contract. Of course, as in Indonesia, apart from the freedom of contest, there are also general restrictions that must be met by each party to be a condition for the validity of an agreement.

This is stated in Section 1550 of *the California Civil Code 2009* which states:

*It is essential to the existence of a contract that there should be:*

1. *Parties capable of contracting;*
2. *Their consent;*
3. *A lawful object; and,*
4. *A sufficient cause or consideration.*

This article is very similar to the provisions of Article 1320 of the Civil Code which contains the legal terms of the agreement, so it can be judged that basically the making of an agreement or contract in each country has similar legal conditions even though it uses different terms. Of course, in California, arrangements related to marriage agreements have their own rules and restrictions like in Indonesia. Marriage agreements in California are included in a special law called the *Uniform Premarital And Marital Agreements Act* (hereinafter referred to as UPMA). These limitations are related to matters that cannot be included in the marriage agreement, some of these restrictions determine the content of the marriage agreement even including the implementation of the marriage agreement which turns out in UPMA Article 9 concerning *enforcement*. In the sound of Article 9, there are several technical implementations related to things that can be done by the parties. In letter e there is a spousal support clause or means spousal support, related to which California will not apply any provision in the marriage agreement relating to spousal support, this means if the party against whom enforcement of the spousal support provision is not sought is represented by independent counsel at the time the agreement contains the provision it is signed, or if the provision regarding spousal support has been signed is unreasonable at the time enforcement.(Carter, 2019)

Apart from that, Article 10 of the UPMA regarding Unenforcable terms explains several points such as custodial responsibility, affects a child's right to support, purports to modify the grounds for a court-decreed separation or marital dissolution, penalizes a party for initiating a legal proceeding leading to a court-decreed separation, regarding child custody as intended in the law, that child custody is related to physical or legal custody, parenting time, access, visitation, or other custody rights or obligations in relation to a child. Arrangements regarding child custody in the marriage agreement are not binding on the court. Which states:

- a) *In this section, "custodial responsibility" means physical or legal custody, parenting time, access, visitation, or other custodial right or duty with respect to a child.*
- b) *A term in a premarital agreement or marital agreement is not enforceable to the extent that it:*
  - (1) *adversely affects a child's right to support;*

- (2) *limits or restricts a remedy available to a victim of domestic violence under law of this state other than this [act];*
  - (3) *purports to modify the grounds for a court-decreed separation or marital dissolution available under law of this state other than this [act]; or*
  - (4) *penalizes a party for initiating a legal proceeding leading to a court-decreed separation or marital dissolution.*
- c) *A term in a premarital agreement or marital agreement which defines the rights or duties of the parties regarding custodial responsibility is not binding on the court.*

In essence, although there are regulations regarding child custody that can be included in a prenuptial agreement or marriage agreement. This implies that the inclusion of clauses in the provisions of Article 10 may not be included in the marriage agreement. Apart from that, the article also explains that there are several circumstances which will make the prenuptial agreement or marriage agreement unenforceable.

Article 10 implies that a prenuptial agreement or marriage agreement must not harm one party or another party, in this case a child. This is proven by the clause that these provisions will not be binding in court, so that if a marriage ends, in this case a divorce and a prenuptial agreement or marriage agreement turns out to cause losses to the other party, then the decision from the court is binding, not the marriage agreement. Of course, this provision has explained implicitly what things cannot be included as clauses in a marriage agreement, because they are not binding on the parties.

In essence, California's limitation of freedom of contract on marriage agreements provides clarity or detail related to what provisions can and cannot be the content of a marriage agreement. In California, the marriage agreement has been clearly regulated into a law that is complete and easy to understand by ordinary people. This certainly makes it easier for the parties later to determine the content of their marriage agreement as well. Although it has many limitations on the content of the provisions and actions that can be taken by the parties, it is what ultimately can save the parties from injustice and from misperceptions of the function and benefits of the marriage agreement itself.

### **(C) The concept of ideal arrangement is related to the limitation of freedom of contract marriage agreement in Indonesia**

Marriage agreements in law not only regulate property issues and the consequences of marriage but also include rights and obligations that must be fulfilled by both parties. Until now, the boundary regulations in marriage agreements in Indonesia are still the same as agreements in general. As the results and discussion above indicate that a marriage agreement cannot be separated from agreements in general, apart from those specifically regulated in the Marriage Law. In general, the conditions for the validity of an agreement relate to two things, namely the subject and the object. Regarding the subject, the agreement provides conditions for the person making the agreement, namely that they must be competent or able to carry out legal actions and agree (consensus) as the basis for the agreement which must be reached on the basis of freedom to determine their will, which indeed influences the freedom to contract.

It is clear that marriage agreements are included in the family law environment which is subject to the provisions in book I of the Civil Code. Marriage agreements have different characteristics from agreements in general, as regulated in book III of the Civil Code. However, the basic principles of Book III of the Civil Code also apply to marriage agreements. The validity of a marriage agreement is also subject to the legal conditions for an agreement in Article 1320 of the Civil Code.

In the Marriage Law Article 29 paragraph 2 there is no definite explanation of the meaning of these restrictions. If you look at the restrictive provisions of marriage agreements in California, they are regulated in detail regarding what matters are prohibited from being included

as clauses in marriage agreements, such as marriage agreements not implementing provisions relating to spousal support, custody responsibilities, negative impact on rights. child support, limiting efforts to recover for victims of domestic violence, changing the grounds for divorce and punishing one of the parties for initiating the divorce process. Therefore, looking at the limitations that exist in California has provided legal certainty regarding the limitations of marriage agreements, because they have a clear meaning regarding what provisions are prohibited from being included in marriage agreements.

The wide boundaries of marriage agreements in Indonesia will cause many perspectives among people who consider that they can make marriage agreements with content as freely as possible as long as they do not violate the provisions of article 29 paragraph 2 of the Marriage Law. This is addressed to decision Number 0172/Pdt.G/2018/PA.Tgrs. in the marriage agreement several clauses are outside property. The agreement contains:

1. The husband is obliged to give 70% of his income to the wife;
2. The movable and immovable property acquired during the marriage is halved;
3. Child custody is entirely handed over to the Wife

In the first clause it is stated that the husband is obliged to give 70% of his income to the wife. This clause has no clear basis for whether it is given as a subsistence or not because when a wife sues for divorce from her husband, she is entitled to mut'ah and iddah as long as it is not proven to be nusyuz. In determining the bread, it must be considered by the judge by taking into account justice and propriety and looking for the reality of how much the husband's economic ability is and what the basic needs of life are for the wife and children. Based on this, because the clause does not have a strong foundation, namely determination based on the Panel of Judges, the point is contrary to the law.

The second clause states that movable and immovable property acquired during marriage is divided in half. In this clause, the marriage agreement does regulate the separation of joint property, both the separation of property unanimously, as well as the separation of profit and loss, so that here even though both husband and wife get a property whether movable or immovable, the property is still joint property and the parties want a direct separation fairly which is divided into 2 (two) regardless of who gets the property.

In the third clause, states that the custody of the child falls into the hands of the wife. Basically, child custody when parents divorce is explained in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection in several articles such as Article 14 Paragraphs 1 and 2. Although a child is under the care of his mother, it does not mean that his mother can limit the child's relationship with his father. Divorce, does not change the position of children and their parents in the care and education of children because it is for the interests and needs of children after divorce.

The existence of deficiencies in an arrangement in a law will certainly affect the certainty of the implementation of the law. Legal certainty becomes a legal instrument of a country that contains clarity, does not cause multiple interpretations, does not cause contradictions, and can be implemented, which can guarantee the rights and obligations of every citizen in accordance with the contents of existing provisions.(Rowa, 2021) Some laws and regulations in force in Indonesia are no longer relevant and require change because a dynamic law cannot be static.([hukumonline.com](http://hukumonline.com), 2022)

Looking at this case, it shows that the boundaries of the contents of the marriage agreement are so broad that the parties assume that everything they want can be included in the agreement. In fact, because there are no definite boundaries related to the marriage agreement itself, this ultimately leads to errors in making the marriage agreement, so that the marriage agreement cannot be implemented properly. Of course, this is not desired by the parties because of their lack of understanding regarding the limitations of the marriage agreement.

In California, there are no regulations regarding the contents of marriage agreements related to religion, but there are regulations regarding restrictions related to law and morality. There are at least 4 provisions that have not been regulated in regulations in Indonesia, such as not including child custody rights contained in Article 10 part a of the UPMA, because child custody in Indonesia itself should be determined through a court decision which has been explained in the provisions of Article 41 of the Law. A marriage which states that as a result of a divorce, either the mother or the father remains obliged to care for and educate the child, if there is a dispute regarding control of the child, the Court makes a decision. Looking at the provisions of this article, when a child custody clause is included in a marriage agreement, this clause cannot be used. The next article, namely Article 10 part b (1) of the UPMA has a negative impact on children's rights to support, Article 10 part b (3) of the UPMA changes the basis for dissolution of marriage, and Article 10 part b (4) of the UPMA punishes the party who files for divorce. These three articles should not be included in the marriage agreement clause because it is feared that it will not provide justice in the future for the parties even though they have agreed to the agreement.

The existence of ambiguity in a regulation in a law will of course affect the certainty of the implementation of the law. Legal certainty is a country's legal instrument that contains clarity, does not give rise to multiple interpretations, does not give rise to contradictions, and can be implemented, which is able to guarantee the rights and obligations of every citizen in accordance with the contents of existing provisions. Some of the laws and regulations in force in Indonesia are no longer relevant and require changes because laws and regulations are dynamic, they cannot be static. (hukumonline.com, 2022)

Therefore, in regulations related to marriage agreements, changes need to be made, especially related to setting limits on the content of marriage agreements, because there have been cases due to the wide limits of the content of marriage agreements in Indonesia which create uncertainty from the marriage agreement itself. In this case, Indonesia can emulate existing regulations in California, namely by adding some details related to the limitations of the content of the marriage agreement. The hope is that the case will not happen again in the future which in the end does not provide definite protection for the parties.

In order to achieve legal certainty in the regulations regarding the contents of marriage agreements in Indonesia, there are several concepts that can be implemented in the future to avoid undesirable things. In forming a concept of statutory regulations, of course it must also be in accordance with everything to support the formation of legal certainty. Referring to this and the analysis of the discussion above, several things need to be improved and developed in the concept of marriage agreement regulations in Indonesia, which can be helped by comparing the marriage agreement regulations applied in California to facilitate the preparation of what things can be included as content material in marriage agreement regulations. Several things can be developed such as:

1. There are special regulations made regarding marriage agreements

In Indonesia, regulations related to marriage agreements are still a concern in marriage law, the Civil Code and in the Compilation of Islamic Law. There is still no special law formed to float all regulations related to marriage agreements that can be intended for the entire community. Therefore, it is necessary to establish a new law specifically regulating marriage agreements that can provide legal certainty for all levels of society.

2. There are differentiators related to prenuptial agreements and marriage agreements

So far, in Indonesia the known marriage agreement is only in the form of 1 (one) type, namely the marriage agreement. The establishment of a marriage agreement in Indonesia is indeed

divided into 2 (two) times, namely the marriage agreement can be made at the time before the marriage occurs or when the marriage takes place. In California which uses 2 (two) forms of marriage agreements, namely prenuptial agreements (prenuptial agreement or premarital agreement) and marriage agreements (nuptial agreement or marital agreement). This determines the effect of the marriage agreement on third parties, because a marriage agreement that has been validly made will be valid and binding on the parties who made it since the signing of the agreement and will also apply to third parties as long as their interests are involved in the marriage agreement made after ratification by the marriage registrar employee as a manifestation of the principle of publicity, In this case the third party has an interest in the state of marital property in a family. There needs to be a distinction between the agreement before the marriage takes place and when the marriage takes place as in the arrangement in California because, when the marriage agreement is made before the marriage takes place, the relationship with third parties is more guaranteed and also protects third parties to avoid unwanted losses.

3. Details are made related to provisions that are prohibited and allowed to enter as clauses in the marriage agreement

The existence of details related to provisions that are prohibited and allowed to enter as clauses in the marriage agreement, is necessary to regulate related to the related restrictions of the content of the marriage agreement. Looking through the discussion above, it can be ascertained that so far the regulations related to the limitations of marriage agreements in Indonesia are still incomplete and detailed. Of course, the shortcomings in the limitation regulations have an adverse impact on the parties. as in decision 0172/Pdt.G/2018/PA. Tgrs, which due to the lack of knowledge of the parties in including the contents of their marriage agreement, eventually confused the preparation of the marriage agreement, resulting in the unprotected rights of the parties which should have been avoided if the marriage agreement had been made as well as possible and benefited from making the agreement.

In the decision, the parties included clauses related to the division of property which only explained that all assets were divided 2 (two) equally which ultimately caused injustice because one party had the idea that the division was divided by 2 (two), namely the amount of property obtained was not related to the value of the property obtained. In addition, the marriage agreement also includes the custody of children who fall into the hands of the wife even though the custody of children under the age of 12 years does fall to the mother after that the child can choose to be taken care of by the father or with his mother. When the process of making a marriage agreement is carried out, there is a possibility that one of the spouses is considered capable of obtaining custody of the child. But over time until the husband and wife divorce, there is no guarantee that the couple is still capable of getting custody of the child.

The best form of agreement currently is one that only focuses on property ownership between husband and wife which according to Indonesian law does not violate the provisions of Article 29 Paragraph 2 of the Marriage Law. If someone makes an agreement outside of the property provisions, there are still no further regulations regarding what things can be promised outside of property in a marriage agreement and this is the aim of this research to find the right concept for regulations related to making a marriage agreement. If an amendment is made, it would be better to include a clause regarding clear limitations regarding legal, religious and moral boundaries such as not having a negative impact on the child's right to support, limiting or restricting the remedies available to victims of domestic violence under the laws of this state

other than this act, punishing one party for initiating legal proceedings leading to separation or dissolution of marriage as determined by the court.

## CONCLUSION

1. The existence of freedom of contract does not mean that parties can enter into contractual agreements freely without any restrictions. Article 29 paragraph 2 of the Marriage Law regulates the limitations related to making marriage agreements to be very broad. On the other hand, the material content of the marriage agreement itself is still within the scope of property division.
2. California also recognizes the concept of freedom of contract. The regulations regarding limitations on freedom of contract in marriage agreements in California provide clarity or detail regarding what provisions may and may not be included in the contents of a marriage agreement.
3. The regulations relating to marriage agreements need to be amended in relation to regulating the boundaries of the contents of marriage agreements, because there have been cases due to the wide limitations of the contents of marriage agreements in Indonesia which have given rise to uncertainty in marriage agreements. There are several concepts for changes in the regulation of marriage agreements in Indonesia, namely the existence of special regulations, the distinction between prenuptial agreements and marriage agreements, and the creation of details related to limitations.

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