

**THE JURIDICAL REVIEW ON MARRIAGE AGREEMENT  
AFTER CONSTITUTIONAL COURT DECISION NO. 69/PUU-  
XIII/2015**

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**ABSTRACT**

This research aims to determine the basic consideration of Constitutional Court judge to make marriage agreement after marriage post the Constitutional Court Decision No. 69/PUU-XIII/2015. This research is normative juridical research and studied by the approach of legislation which means that a problem will be seen from its legal aspect and by reviewing the legislation and then relating it to the problem discussed. Normative legal research method is a method used in legal research conducted by examining library materials. The result of the research shows that the Basis consideration of Constitutional Court judge to make marriage agreement after marriage post the Constitutional Court Decision No. 69/PUU-XIII/2015 namely: The existence of freedom of contract contained in 1338 Civil Code based on the agreement and good faith of both parties husband and wife; this is reinforced by Article 28E Paragraph (2) of the 1945 Constitution, everyone is entitled to freedom of belief, expressing thoughts and attitudes, according to his conscience; The purpose of marriage under Article 1 of Law No. 1 of 1974 on Marriage, Marriage is a physical and spiritual bond between a man and a woman as husband and wife having the purpose of establishing a happy and lasting family founded on the belief in God Almighty and the property in marriage according to Article 35 Paragraph (1) Law No. 1 of 1974 mentioned that the property acquired during the marriage became a joint property.

**Keywords:** Basic Consideration of Judge, Marriage Agreement, Constitutional Court.

**1. INTRODUCTION**

Humans are creatures of God Almighty who always need others to meet their needs. So, humans are called social beings. In accordance with its nature, humans live in pairs between man and woman. The life relationship is tied up in a marriage. Marriage is a relationship between a man and a woman as a

husband and a wife based on laws, religious law or customary law that apply. The law only recognizes the "Civil Marriage" a marriage held in front of the civil registry employee.<sup>1</sup>

The definition of marriage is regulated in Article 1 Law No. 1 of 1974 on marriage (hereinafter referred to as Marriage Law), which defines that marriage is a physical and spiritual bond between a man and a woman as a husband and a wife, having the purpose of establishing a happy and lasting family founded on the Belief in God Almighty. Marriage is lawful if the marriage follows the law of each religion and belief.

That is the family life or household. In addition to the issue of rights and obligations as a husband and a wife, the issue of property is also one of the factors that lead to various disputes or suspense in a marriage, even can eliminate the harmony between a husband and a wife in the family life. In order to avoid this, a marriage agreement is an agreement made by a husband and wife, before they marry. The object of the marriage agreement is marital property; this matter to prevent problems in the future than the Marriage Law which regulates the permissibility of existence of marriage agreement.

The intent and purpose to make marriage agreement is to regulate the legal consequences of their marriage that concern on their property during marriage.<sup>2</sup>

The basis of the "marriage agreement" is the same as the "agreement" in general, i.e. both parties are granted freedom (in accordance with the legal principle of "freedom of contract") provided that it is not contrary with the

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1 Salim, HS., 2011, *Pengantar Hukum Perdata Tertulis (BW)*, Jakarta, Sinar Grafika, p. 61

2 Fitriyani, *"Perjanjian Perkawinan yang Dibuat Setelah Perkawinan dan Akibat Hukumnya Ditinjau dari Kitab Undang-Undang Hukum Perdata"*, p. 2

law, decency, or does not violate public order. It is in line with Article 28E Paragraph (2) of the 1945 Constitution which regulates that "Every person shall have the right to freedom of belief, to express his thoughts and attitudes, in accordance with his conscience."

The following is a judicial verdict of Constitutional Court Decision No.69/PUU-XIII/2015 related to Article 29 of the Marriage Law of 1974:<sup>3</sup>

1. Article 29 Paragraph (1) of Law No. 1 of 1974 on Marriage (State Gazette of the Republic of Indonesia of 1974 No. 1, Supplement to the State Gazette of the Republic of Indonesia No. 3019) is contradictory to the 1945 Constitution of the Republic of Indonesia as long as it is not interpreted "At the time or before the marriage takes place, or during the marriage bond, both parties on mutual consent may propose a written agreement authorized by the marriage registry officer or notary, after which the contents also apply to the third party;"
2. Article 29 Paragraph (1) of Law No. 1 of 1974 on Marriage (State Gazette of the Republic of Indonesia of 1974 No. 1, Supplement to the State Gazette of the Republic of Indonesia No. 3019) does not have binding legal force as long as it is not interpreted "At the time or before the marriage takes place, or during the marriage bond, both parties on mutual consent may propose a written agreement authorized by the marriage registry officer or notary, after which the contents also apply to the third party;"
3. Article 29 Paragraph (3) of Law No. 1 of 1974 on Marriage (State Gazette of the Republic of Indonesia of 1974 No. 1, Supplement to

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<sup>3</sup> Constitutional Court Decision No. 69/PUU-XIII/2015, p. 156

- the State Gazette of the Republic of Indonesia No. 3019) is contradictory to the 1945 Constitution of the Republic of Indonesia as long as it is not interpreted “The agreement shall come into force since the marriage took place, unless otherwise specified in the marriage agreement;”
4. Article 29 Paragraph (3) of Law No. 1 of 1974 on Marriage (State Gazette of the Republic of Indonesia of 1974 No. 1, Supplement to the State Gazette of the Republic of Indonesia No. 3019) does not have binding legal force as long as it is not interpreted “The agreement shall come into force since the marriage took place, unless otherwise specified in the marriage agreement;”
  5. Article 29 Paragraph (4) of Law No. 1 of 1974 on Marriage (State Gazette of the Republic of Indonesia of 1974 No. 1, Supplement to the State Gazette of the Republic of Indonesia No. 3019) is contradictory to the 1945 Constitution of the Republic of Indonesia as long as it is not interpreted “During the marriage takes place, the marriage agreement about marriage property or other agreement cannot be changed or revoked, unless both parties consent to change or revoke, and change or revoke it does not harm third parties;”
  6. Article 29 Paragraph (4) of Law No. 1 of 1974 on Marriage (State Gazette of the Republic of Indonesia of 1974 No. 1, Supplement to the State Gazette of the Republic of Indonesia No. 3019) does not have binding legal force as long as it is not interpreted “During the marriage takes place, the marriage agreement about marriage property or other agreement cannot be changed or revoked, unless

both parties consent to change or revoke, and change or revoke it does not harm third parties;”

The intent of the above judicial verdict of Constitutional Court Decision is in Article 29 Paragraph (1) of the Marriage Law which has been declared contrary to the 1945 Constitution and has no binding legal force. “as long as it is not interpreted” means not contradict and remain binding if interpreted “At the time or before the marriage takes place, or during the marriage bond, both parties on mutual consent may propose a written agreement authorized by the marriage registry officer or notary, after which the contents also apply to the third party.”

## **2. RESEARCH METHOD**

### **2.1. Type of Research**

Research is a process, which is a series of steps that are done in a planned and systematic way to obtain problem-solving or answer to a particular question.<sup>4</sup> The type of research used in this thesis is the type of normative juridical research which means a problem will be seen from the legal aspects and by reviewing legislation and then associating it with the issues discussed.

### **2.2. Type of Approach**

The writer uses a statute approach in this study. It is appropriate that the researcher uses the rule of law as the basis for analysis.<sup>5</sup> By using the method of law approach, researchers need to understand the hierarchy and the principles of the legislation.

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<sup>4</sup> Beni Ahmad, 2008, *Metode Penelitian Hukum*, Bandung, CV. Pustaka Setia, p.

<sup>5</sup> Mukti FajarND, Yulianto Achmad, 2015, *Dualisme Penelitian Hukum*, Yogyakarta, Pensil Komunika, p. 153

### 2.3. Type of Data

To find out the sources of legal research, it is used the term legal materials or types of data used in the study and divided into two, types of primary and secondary data. The primary data type or primary legal materials consist of legislation, official records or minutes of the legislation and the decisions of the judges.

Types of data used are secondary data. Source of research data obtained through intermediary media or indirectly in the form of books, records, existing evidence, or archives both published and unpublished in general. In other words, researchers did data collection by visiting the library, study centers, and by reading archives or many books related to his research.

### 2.4. Technique of Collecting Data

Data were collected through library research. Because the researcher used the legislation approach, firstly, the most important data were the legislation, regulation, and academic works. Second, the researcher also collected the Constitutional Court Decision which has permanent legal force.<sup>6</sup>

### 2.5. Data Analysis

In order to obtain conformity in normative legal research, then qualitative analysis was used.<sup>7</sup> This research uses qualitative analysis. This research refers to the legal norms contained in legislation and judicial decisions and norms and developing in society.

## 3. DISCUSSION

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<sup>6</sup> Peter Mahmud Marzuki, 2005, *Penelitian Hukum*, Jakarta, Kencana Prenada Media Group, p. 237

<sup>7</sup> Salim HS dan Erlis Septiana Nurbani, 2016, *Penerapan Teori Hukum pada Penelitian Tesis dan Disertasi*, Jakarta, PT. Raja Grafindo Persada, p. 19

**3.1. The Judge consideration of Constitutional Court to make a marriage agreement after the Constitutional Court Decision No. 69/PUU-XIII/2015**

The Case Position of Constitutional Court Decision No. 69/PUU-XIII/2015 is: in accordance with case No. 69/PUU-XIII/2015 which filed a Judicial Review to the Constitutional Court received by the Constitutional Court on June 24<sup>th</sup>, 2015. The marriage is legally registered at the Office of Religious Affairs (KUA) in the District of Makassar, East Jakarta Municipality No. 3948/VIII/1995, on August 22<sup>th</sup>, 1995, and was also registered at the DKI Jakarta Provincial Civil Registration Office as referred to in the Sign of the Marriage Report No. 36/KHS/AI/1849/1995/1999 dated May 24<sup>th</sup>, 1999. The reasons for filing a Judicial Review made the case. Some of the issues in the case filed as follows:

1. There is a rejection from the developer regarding the purchase of Flats, as stated in a letter from the developer No. 267/S/LNC/X/2014/IP dated October 8<sup>th</sup>, 2014 in No. 4 as follows: "That in accordance with Article 36 Paragraph (1) of the BAL and Article 35 Paragraph (1) of the Marriage Law, a woman who is married to a foreign Citizen is prohibited from buying land and/or buildings with a Building Use Rights status. Therefore, the developer decides not to enter into a Sale and Purchase Agreement (PPJB) or a Sale and Purchase Deed (AJB) with the applicant because it will violate Article 36 Paragraph (1) of the BAL."

The Letter of developer No. Ref. 214/LGL/CG-EPH/IX/2012 dated

September 17<sup>th</sup>, 2012 No. 4 which states:

"That based on Article 35 of the Marriage Law which regulates that property obtained during marriage become joint property."

Based on the above provisions, it can be concluded that if a husband or wife buys immovable property (in this case apartment/apartment) at the marriage level, the apartment will become a joint property/*gono* of the husband/wife in question. This also applies to other mixed marriages (marriage between Indonesian citizens and foreigners) that takes place without making a separate marriage agreement, so that for the sake of the law the apartment purchased by an Indonesian husband/wife becomes the property of the foreign wife/husband as well."

2. Likewise, the feeling of discrimination by the developer, the applicant with the rejection of purchase from the developer who then reinforced by the East Jakarta District Court with Determination No. 04/CONS/2014/PN.JKT.Tim November 12<sup>th</sup>, 2014 at the verdict reads:

"Ordered the Registrar/Secretary of the East Jakarta District Court...

to offer money... to: the applicant, having his address at...

hereinafter referred to as Respondent *Consignatie*. As a deposit/*consignatie* for payment to the Respondent due to the cancellation of the Order Letter as a result of the non-fulfillment of the objective legal requirements of an agreement as stipulated in Article 1320 of the Civil Code, namely violation of Article 36 Paragraph (1) of Law No. 5 of 1960 on BAL"

Based on the above, the Applicant felt that her constitutional rights were not fulfilled, namely as guaranteed in Article 28 D Paragraph (1), Article 27 Paragraph (1), Article 28E Paragraph (1) Article 28H Paragraph (1) and Paragraph (4) of the 1945 Constitution. Likewise, it is in accordance with Article 51 Paragraph (1) letter a of Constitutional Law, namely:  
 "(1) the applicant is a party that considers that the rights and / or authorities are harmed by the enactment of a law, namely:  
 a. Individual Indonesian citizens."

Based on the above, the applicant applies for a judicial review. The petition (petitum) is as follows:

1. Grant the request of the applicant entirely;
2. Stating the phrase "Indonesian citizen" in Article 21 Paragraph (1) and Article 36 Paragraph (1) of the BAL as long as it is not interpreted as "Indonesian citizens without exception in all marital status; both Indonesian citizens who are not married, Indonesian citizens who are married to fellow Indonesian citizens and Indonesian citizens who are married to foreign nationals" are contrary to the 1945 Constitution;
3. Stating the phrase "Indonesian citizen" in Article 21 Paragraph (1) and Article 36 Paragraph (1) of the BAL do not have binding legal force;
4. Stating the phrase "since obtained rights" in Article 21 Paragraph (3) of the BAL as long as it is not interpreted as "since ownership of the right to switch" is contrary to the 1945 Constitution;
5. Stating the phrase "since obtained rights" does not have binding legal force;

6. Stating the phrase "at the time or before the marriage was held" in Article 29 Paragraph (1) of the Marriage Law is contrary to the 1945 Constitution;
  7. Stating the phrase "at the time or before the marriage was held" in Article 29 Paragraph (1) of the Marriage Law does not have binding legal force;
  8. Stating that Article 29 Paragraph (3) of the Marriage Law is contrary to the 1945 Constitution;
  9. Stating Article 29 Paragraph (3) of the Marriage Law does not have binding legal force;
  10. Stating the phrase "during marriage" in Article 29 Paragraph (4) of the Marriage Law is contrary to the 1945 Constitution;
  11. Stating the phrase "during marriage" in Article 29 Paragraph (4) of the Marriage Law does not have binding legal force;
  12. Declaring the phrase "joint property" in Article 35 Paragraph (1) of the Marriage Law insofar as it is not interpreted as "joint property except property in the form of Property Rights and Use Rights. Buildings owned by Indonesian citizens who marry foreign citizens" are contrary to the 1945 Constitution;
  13. Stating the phrase "joint property" in Article 35 Paragraph (1) of the Marriage Law does not have binding legal force;
- Examination was done on Article 29 Paragraph (1), Paragraph (3), and Paragraph (4) and Article 35 Paragraph (1) of Marriage Law. Whereas in his petition, the Petitioner also filed a judicial review of the Marriage Law, in particular, Article 29 Paragraph (1), Paragraph (3), and Paragraph (4) stating:
- (1) At the time or before the marriage takes place both parties through mutual consent may file a written agreement authorized by the

marriage registry officer, after which the contents also apply to the third party.

(3) The agreement entered into force since the marriage took place.

(4) During the marriage take place such agreements cannot be changed unless both parties' consent to change and the change does not harm third parties.

In addition, the applicant also filed a review of Article 35 Paragraph (1) of Marriage Law which states:

(1) The property acquired during the marriage becomes a common property.

which against Article 28D Paragraph (1), Article 27 Paragraph (1), Article 28E Paragraph (1), and Article 28H Paragraph (1) and Paragraph (4) of the 1945 Constitution.

The phrase "at the time or before the marriage takes place" in Article 29 Paragraph (1), the phrase "... since marriage takes place" in Article 29 Paragraph (3), and the phrase "during marriage takes place" in Article 29 Paragraph (4) Law No. 1 of 1974 limits the freedom of 2 (two) individuals to carry out the "agreement," so that it is contradictory to Article 28E Paragraph (2) of the 1945 Constitution.<sup>8</sup> Thus, the phrase "on or before marriage is performed" in Article 29 Paragraph (1) and the phrase "during marriage" in Article 29 Paragraph (4) of Law no. 1 of

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<sup>8</sup> Constitutional Court Decision No.69/PUU-XIII/2015, *Op. Cit*, p. 154

1974 is contradictory to the Constitution of 1945 on a conditional basis so long as it is not understood including also during the marriage bond.<sup>9</sup>

The right and position of the wife are equal to the rights and position of the husband, both in the life of the household and in the community, so that everything in the family can be discussed and decided jointly between husband and wife. Agreements or agreements made by such deliberations may be made by husbands and wives, as defined in Article 29 Paragraph (1) of Law No. 1 of 1974, at the time or before the marriage took place. Both parties (a man and woman) by mutual consent may enter into a written agreement authorized by the marriage or notary public. The treaty cannot be ratified when it violates legal, religious and moral boundaries and the terms of the agreement.

That is the life of a family or household, in addition to the issue of rights and duties as husband and wife, the issue of property is also one of the factors that can lead to various disputes or tensions in a marriage, even can eliminate the harmony between husband and wife in a family life. In order to avoid this, a marriage contract is made between the husband and wife, before marriage.

In its interpretation of Article 29 Paragraph (1) of the Marriage Law, the Constitutional Court did not only add the phrase "as long as in marriage bonds," but also changed the word "entered" into "filed" and added the phrase "or notary."<sup>10</sup> In consideration of Decision No. 69/ PUU-

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<sup>9</sup> *Ibid*

<sup>10</sup> Damian Agata Yuvens, "Critical Analysis on Marital Agreement in the Decision of Constitutional Court Number 69/PUU-XIII/2015" *Jurnal Konstitusi*, Vol. 14. No. 4, December 2017, p. 807

XIII/2015, it is just about adding the phrase "as long as in marriage bond." No explanation of the word "hold" should be interpreted as "filed." There are no descriptions explaining the reason for adding "notary" phrases.

Logically, it can be understood that the word "filed" and the phrase "or notary" are introduced to accommodate marriage agreements made during marriage bonds. That when the marriage is in place, the marriage contract can no longer be "held" in the presence of the marriage registry officer; while marriage agreements can still be "filed" at the time or before the marriage takes place. This situation also raises a new option, namely notary.<sup>11</sup>

Furthermore, the Constitutional Court provides an interpretation of Article 29 Paragraph (3) of the Marriage Law and adds the phrase "unless otherwise provided in the Marriage Agreement." There is no consideration specifically given by the Constitutional Court regarding the addition of this phrase. However, this phrase, no doubt, is needed to accommodate the additional phrase "as long as in marriage bonds" added in Article 29 paragraph (1) of the Marriage Law.<sup>12</sup> The thing to note is that these additional exceptions also apply to marriage agreements made at or before the marriage take place.

Against Article 29 Paragraph (4) of the Marriage Law, there are two phrases added by the Constitutional Court, which "may concern the property of marriage or other agreements" and "or withdraw/revoke." Consideration given by the Constitutional Court in connection with

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<sup>11</sup> Damian Agata Yuvens, *Op. Cit*, p. 808

<sup>12</sup> *Ibid*

Article 29 Paragraph (4) of Marriage Law is only "... the phrase 'during marriage takes place' in Article 29 paragraph (4) of Marriage Law is contradictory to the 1945 Constitution on condition not interpreted during the marriage bond. "The addition of the phrase" concerning marriage property "is certainly meant that those who read this interpretation are aware that a marriage agreement can be made to regulate the separation of property in marriage, which is the main issue in the petition.<sup>13</sup>

The Consideration of the Constitutional Court against Article 29 Paragraph (1), Paragraph (3), and Paragraph (4) and Article 35 Paragraph (1) of Marriage Law as follows:

The reason that is generally used as the basis for the agreement after marriage is the absence of negligence and ignorance that in Marriage Law there is a provision that regulates the Marriage Agreement before the marriage takes place. According to Article 29 of Marriage Law, the Marriage Agreement may be made at or before the marriage takes place. Another reason is the risk that may arise from a joint property in marriage because the husband and wife's work have consequences and responsibilities on personal property, so that each acquired property may remain private property.<sup>14</sup>

### **3.2. The differences on making a marriage agreement before and after the Constitutional Court Decision**

The purpose of the Marriage Agreement before the Constitutional Court Decision No. 69/PUU-XIII/2015 are:<sup>15</sup>

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<sup>13</sup> *Ibid*

<sup>14</sup> Constitutional Court Decision No. 69/PUU-XIII/2015, *Op. Cit*, p. 153

<sup>15</sup> *Ibid*

1. Separating wealth between husband and wife so that their property is not mixed. Therefore, if one day they got divorce, the property of each party is protected; there is no seizure of joint property or *Gonogini*;
2. Separating the responsibilities on whatever debt each party makes in their marriage; each will be responsible for their own debt;
3. If one party wants to sell their property, he/she does not need to ask permission from his/her partner (husband/wife); and
4. With their proposed credit facility, one no longer has to ask permission from their spouse (husband/wife) in terms of pledge assets registered in the name of one of them.

As a result of the Law of Marriage Agreement made after marriage which is based on Constitutional Court Decision No. 69/PUU-XIII/2015 are:

- a. A Marriage Agreement may be made before, at the time, and after the marriage takes place.
- b. Marriage agreement making during the marriage should not harm a third party. For that, there must be an ordinance to be taken before the marriage agreement is made to allow third parties who wish to object to the making of the Marriage Agreement.
- c. The Marriage Agreement made during the marriage shall enter into force upon the marriage of the marriage, but the parties may decide in the Marriage Agreement upon entry into force of the relevant Marriage Agreement.

- d. The Marriage Agreement in the Decision of the Constitutional Court may be amended and revoked if there is an agreement between the two parties by issuing it in a Deed of Agreement.

**3.3. The Basis of Consideration of Constitutional Court Judge to make a marriage agreement after marriage post the Constitutional Court Decision No. 69/PUU-XIII/2015**

The Constitutional Court considers that with the stipulation of Article 29 Paragraph (1) of Marriage Law that is contradictory to the 1945 Constitution, the provision of Article 35 Paragraph (1) of Marriage Law shall be understood in relation to Article 29 Paragraph (1) of Marriage Law referred to. In other words, there is no question of unconstitutionality of Article 35 paragraph (1) of Marriage Law. It is only for those who make the marriage agreement, to the joint property as referred to in Article 35 paragraph (1) of Marriage Law, the provisions on marriage agreement as referred to in Article 29 paragraph (1) of Marriage Law mentioned in the verdict. Therefore, the Petitioners' argument concerning the unconstitutionality of Article 35 Paragraph (1) of Marriage Law is unreasonable according to the law.

Considering, based on all the above considerations, according to the Court, the petition insofar as Article 29 paragraph (1), paragraph (3) and (4) of Marriage Law is reasonable under the law for its part, while regarding Article 35 paragraph (1) Marriage Law is unreasonable under the law.

In its legal considerations, the Constitutional Court argues that there is a need to accommodate parties who wish to enter into a marriage

agreement during the marriage. The prohibition against this as contained in Article 29 Paragraph (1) of the Marriage Law constitutes a limitation on freedom of contract. The same logic is applied by the Constitutional Court to the examination of the phrase "during the marriage" in Article 29 Paragraph (4) of the Marriage Law, and therefore, the phrase according to the Constitutional Court shall be interpreted as long as in marriage bonds.

It is these exclusions that provide opportunities or safeguards that the property or other existing before the marriage agreement is made is not included in the marriage agreement. So, the marriage agreement is in force by agreement of both parties. As mentioned in Article 35 of Marriage Law, property in a marriage is distinguished between luggage and common property. Following the Ruling of the Constitutional Court, the legal consequences of making the marriage contract after mating joint property of the status of the inherent (closely related) to the time of entry into force of the agreement and binding on third parties.

The contents set forth in the marriage agreement depend on the agreement of the prospective husband and wife, provided that it is not contrary to the law, religion, and propriety or decency. As to the form and content of the marriage agreement, both parties are granted the most freedom or freedom in accordance with the principle of freedom of contract.

Thus, married couples who do not have a marriage agreement before the marriage takes place can make a marriage agreement at the

time of marriage. So, there is no longer any reason for the negligence or ignorance of married couples in accordance with the provisions in Marriage Law concerning Marriage Agreement.<sup>16</sup> In addition, with marriage agreements that can be made at the time of the marriage; it can minimize the risk that may arise from joint property in marriage because the work of husband and wife have consequences and responsibility on personal property, so that each acquired property can remain a private property and this is only known after the agreement is held.

Therefore, the basic of judge consideration in the Constitutional Court in making marriage agreements after the marriage was carried out based on the principle of freedom of contract contained in the Civil Code based on agreement and good faith of both husband and wife, as stated in Article 1338 of the Civil Law. This is done by carrying out the substance of the contract based on trust and good faith and by paying attention to the attitude and behavior of the husband and wife. The Civil Code and the Marriage Law itself are legal because they contain legal principles to protect human interests. In order for human interests to be protected, the law must be known by everyone.

This is reinforced by Article 28E Paragraph (2) of the 1945 Constitution which regulates that every person has the right to freedom of belief, expressing thoughts and attitudes, in accordance with his conscience, including pouring it into a statement and agreement which is

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<sup>16</sup> Oly Viana Agustine, *Op. Cit*, p. 60

stated in accordance with his thoughts and conscience. It can be concluded that everyone has the right to make an Agreement with anyone, at any time, with any content as long as it is carried out in good faith and does not contrary with the Law, decency, or public order. However, Article 29 Paragraph (1) of the Marriage Law, limits the freedom of two individuals to do or when to make an agreement because someone in the end, cannot make a marriage agreement if it is done at the time or before the marriage takes place.

The purpose of marriage is based on Article 1 of Law No. 1 of 1974 Marriage that is a physical and spiritual bond between a man and a woman as a husband and a wife, having the purpose of establishing a happy and lasting family founded on the Belief in God Almighty; husband and wife must help each other and complement each other in developing his/her personality and help achieve prosperity. So, Article 29 Paragraph (1) limits the right of husband and wife who are still or are bound in marriage to make a marriage agreement.

Likewise, the property obtained during the marriage as referred to in Article 35 Paragraph (1) of Marriage Law is the property obtained during marriage which will become joint property, and based on Article 29 paragraph (4), joint property cannot be carried out because there is no marriage agreement. It is about the property which is one of the factors that can cause a variety of disputes or tensions in a marriage, or even can eliminate harmony between husband and wife in the life of a family.

The purpose of the marriage agreement made after marriage is known that the marriage agreement made by the husband and wife aims to regulate the consequences of his marriage to the property.

#### **4. CONCLUSION AND SUGGESTION**

##### **4.1. Conclusion**

The basis of Constitutional Court Judge's consideration to make a marriage agreement after the Constitutional Court Decision No. 69/PUU-XIII/2015 are:

1. There is freedom of husband and wife in making marriage agreements after marriage in managing a joint property in accordance with Article 1338 of the Civil Law;
2. To achieve marital goals, a husband and a wife must help and complement each other, develop their personality and help to achieve prosperity. This is in accordance with Article 1 of the Marriage Law that the purpose of marriage is to form a happy and eternal family or household based on the God Almighty; and
3. In the managing of joint property, the property obtained by the husband and wife during marriage become joint property. Included in it is that one party manages his/her own property, so that the property of each party is protected. It is because property is one of the factors that can cause a variety of disputes or tensions in a marriage, and even can eliminate harmony between husband and wife in the life of a family.

##### **4.2. Suggestion**

The Constitutional Court Decision No. 69/PUU-XIII/2015 still requires a clearer arrangement regarding the making of marriage agreements after marriage to avoid confusion and controversy from

various circles regarding the making of marriage agreements after marriage. There should be an amendment regarding Article 29 of the Marriage Law.

The need for socialization for husband and wife who make marriage agreements after marriage by submitting a separate property application or filing a lawsuit. In the case between husband and wife, there is no conflict related to his desire to separate property after marriage then one party applies to the Religious Court for those who are Muslim and the District Court for those who are non-Muslims. In the event of a conflict, one of the parties submits a Muslim suit to the Religious Court and the non-Muslim to the District Court.

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