

## CHAPTER I

### INTRODUCTION

#### A. Background of Research

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. And also based on Article 2 of Presidential Instruction No. 1 of 1991, in the Compilation of Islamic Law (hereinafter referred to as KHI) in Book 1 on Marriage Law, which states that marriage is a very strong agreement or *mitsaaqan gholidhan* to obey God's command, and when we perform it, it is categorized as a worship. Marriage is lawful if the marriage follows the law of each religion and belief.

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

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.

Formally, a marriage agreement is an agreement made by a husband and a wife to regulate the consequences of marriage against their property. 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 law, decency, or does not violate public order. It is in line with Article 28 E 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>

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

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

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 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.”

It means that based on the Constitutional Court Decision, marriage agreement can also be made "during the marriage bond" which in common people's language Marriage Agreement after the Constitutional Court Decision may be submitted or made to subsequently endorsed by the Marriage Registry Officer.

Based on the background of research, the writer is interested in conducting a research under the title ‘The Juridical Review on Marriage Agreement after the Constitutional Court Decision No. 69/PUU-XIII/2015.’

## **B. Research Problem**

Based on the background of the problems above, the research problem is What is the basis of Constitutional Court Judge's consideration to make a marriage agreement after marriage after the Constitutional Court Decision No. 69/PUU-XIII/2015?

### **C. Objective of Research**

Based on the research problems mentioned above, the objectives to be achieved from this research are:

1. The Objective Purpose

To identify the basis of Constitutional Court Judge consideration to make a marriage agreement after the Constitutional Court Decision No.69/PUU-XIII/2015.

2. The Subjective Purpose

To obtain data in order to compile the thesis as one of the requirements to obtain the degree of Bachelor of Law at the Faculty of Law Universitas Muhammadiyah Yogyakarta.

### **D. Benefits of the Research**

The benefits of the research are expected as follows:

1. Theoretically

Theoretically, this research can be used as study materials toward the development of jurisprudence related to the Marriage Agreement after the Constitutional Court Decision No.69/PUU-XIII/2015.

2. Practically

The results of this study are expected to contribute to the parties involved in the cases, especially for those who will rearrange their property at the time the marriage has taken place.