

## CHAPTER II

### LITERATURE REVIEW

#### A. The Overview about Marriage

##### 1. The Definition of Marriage

Marriage is a very important legal action against humans with its various legal consequences. The law regulates this marriage problem in detail. In Indonesia, marriage is regulated in Law No. 1 of 1974 on Marriage and other implementing regulations of the Marriage, which applies to all Indonesian people, regardless of religion, area, origin, and others.<sup>4</sup> This is based on Article 1 of Law No.1 of 1974 on marriage; it can be interpreted that marriage is the same as the engagement, that is the existence of two parties that bind each other.<sup>5</sup> As in the provisions of the articles contained in the Civil Code, does not provide understanding of marriage.

According to Article 2 of KHI, marriage is a very strong agreement or *miitsaaqan gholiidhan* to obey God's command and perform worship. Marriage is an agreement between the bridegroom on the one party and the guardian of the bride on the other party; the agreement occurs with a consent (marriage contract), which is performed by the guardian of wife candidate

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<sup>4</sup> Munir Fuady, 2014, *Konsep Hukum Perdata*, Jakarta, PT RajaGrafindo Persada, p.

<sup>5</sup> Ahmad Miru dan Sakka Pati, 2008, *Hukum Perikatan: Penjelasan Makna Pasal 1233 Sampai Pasal 1456 BW*, Jakarta, PT RajaGrafindo Persada, p. 63

and followed by the prospective husband and accompanied by at least two witnesses.

The legal aspect of marriage is an agreement that contains three characteristics, namely: (1) marriage cannot be performed without voluntary from both parties; (2) both parties (men and women) binding the mutual agreement have the right to decide based on the provisions of the laws; and (3) the marriage agreement is to regulate legal boundaries on the rights and obligations of each party.<sup>6</sup>

Based on some definition on marriage, it can be concluded that what is meant by marriage is an inner bond between a man and a woman to creating a family in a very long time; while what is meant by marriage law is the law that regulates the terms and the manner in which the marriage takes place, along with the legal consequences for the parties to the marriage.<sup>7</sup>

## 2. The Principles of Marriage

The principles of marriage law in Indonesia are as follows:<sup>8</sup>

- a. The purpose of marriage is to form a happy and eternal family;
- b. Marriage is conducted according to the religion and belief of each party.

Thus, marriage is illegal under State law if the marriage is against the religion and belief of each of the persons who will perform a marriage;

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<sup>6</sup> Ronald Saija, Roger F.X.V. Letsoin, 2016, *Buku Ajar Hukum Perdata*, Yogyakarta, Pendidikan Deepublish, p. 12

<sup>7</sup> P.N.H. Simanjuntak, 2014, *Hukum Perdata Indonesia*, Jakarta, Kencana, p. 34

<sup>8</sup> Munir Fuady, *Loc.Cit*

- c. Monogamy principle. It means, by law in Indonesia, a husband is only allowed to marry a wife only, so a husband should not have more than one wife at the same time. The exception of the principle is regulated by law when certain conditions are met, including the consent of the wife, and shall be in accordance with the religion;
- d. To be allowed to marry, the law requires the maturity of the soul and the physical of the parties. Therefore, the law allows for marriage after the perspective both of parties is categorized, is already as an adult which is 19 years old for men, and 16 years old for women;
- e. The difficulties to do divorce because the law considers that the purpose of marriage is not to divorce, but to form a happy and eternal family;
- f. Emancipation principles apply between a husband and a wife so that the position of a wife and a husband is balanced both in the household and in society; and
- g. Marriage is not complicated. Therefore, the involvement of the courts in the divorce process is just to ensure the implementation of legal certainty and justice for the husband and the wife. And the requirement of age or adult age to marry is also not to complicate the marriage, but only to ensure that marriage can guarantee happiness and eternity.

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- a. The purpose of marriage is to form a happy and eternal family.

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<sup>9</sup> Munir Fuady, *Loc.Cit*

- b. Marriage is done according to religion and belief respectively. Thus, marriage is illegal under State law if the marriage is invalid if reviewed according to the religion and belief of each of the married persons.
- c. In principle, the principle of monogamy applies. That is, by law in Indonesia, a husband is only allowed to marry a wife only, so a husband should not have more than one wife at the same time. The exception to the entry into force of this monogamy principle is provided by law provided that it fulfills certain conditions, including the terms of the consent of an existing wife, and shall be in accordance with the religion adopted.
- d. To be allowed to marry, the law requires the maturity of the soul and body of the prospective bride. Therefore, the law allows for marriage after the prospective groom becomes an adult, i.e. already 19 years old for men, and 16 years for women.
- e. Divorce is complicated because the law considers that the purpose of marriage is not to divorce, but to form a happy and eternal family.
- f. Applies the principle of emancipation between a husband and a wife, so that the position of the wife and the husband is balanced both in the household and in society.
- g. Marriage is not complicated. Therefore, the involvement of the courts in the divorce process is just to ensure the implementation of legal certainty and justice for the husband and the wife. And the requirement of age or

adult age to marry is also not to complicate the marriage, but only to ensure that the marriage can guarantee happiness and eternity.

### 3. Pillars (Rukun) and Requirements of Marriage

A marriage is said to be valid if it meets the requirements set by the law. What is meant by the terms of marriage is all matters concerning marriage which must be fulfilled based on the laws and regulations before or at the time of the marriage.

The marriage agreement is different from the requirement of marriage. The Agreement is a term that indicates an agreement between two or more parties. In classical Jurisprudence, the term is not found specifically and in detail in relation to the chapter of the marriage agreement, but that there are a *rukun* and requirement of marriage. The marriage agreement includes the modern term that appears in marriage rules in Indonesia.<sup>10</sup>

Marriage is lawful if done according to the law of each religion and belief. Based on Article 2 on Marriage Law, every marriage needs to be registered based on laws and regulations. In addition, there are two requirements of marriage as stipulated in the provisions of Article 6 until 12 on Marriage Law, namely:<sup>11</sup>

The requirements of marriage are divided into two:

1. The material requirement / internal requirement (subjective requirements), namely the requirements concerning persons who

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<sup>10</sup> Moh. Faizur Rohman, "*Implikasi Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 Tentang Perjanjian Perkawinan Terhadap Tujuan Perkawinan*". Vol. 7, No. 1, April 2017, p. 8

<sup>11</sup> Ronald Saija, Roger F.X.V. Letsoin, *Op.cit.*, p.14

want to marry, especially regarding the approval, permission, and authorization to grant permission. It is regulated in Articles 6 until Article 11 on Marriage Law, namely:

- a) There is an agreement (free will) of the two candidates which is stipulated in the provisions of Article 6 Paragraph (1);
- b) For a person who has not reached the age of 21 years old, they must obtain a permit from both parents or representatives stipulated in the provisions of Article 6 paragraph (2);
- c) Marriage may only be permitted if a man has achieved the age of 19 years old and a woman aged 16 years old which is set forth in the provisions of Article 7 paragraph (1);
- d) Marriage is prohibited between two persons who:
  - 1) have blood relation in a straight line up or down which is provided in Article 8 section (a);
  - 2) are related to blood in the lateral lineage of two siblings between a person with his or her parents (uncle and aunt), between a person with his or her grandmothers or grandfather which is set out in the provisions of Article 8 section (b);

- 3) are related to *semenda* that is between a person with his/her in-laws, mother/father stepchild, son/daughter-in-law, stepmother or stepfather set out in the provisions of Article 6 section (c);
  - 4) are related to the breastfeeding that is between a person with a parent of feeding, a nursing child, a relative, aunts, an uncle in accordance with the provisions of Article 6 section (d);
  - 5) are related with the wife or a brother or nephew of the wife's aunt, a husband, and a wife is more than one subject to the provisions of Article 8 (c); and
  - 6) Has a relationship which is prohibited by the religion or other applicable law, governed by the provisions of Article 8 section (f);
- e) Not divorced for a second time with the same husband or wife, who is to be married as regulated under Article 10; and
- f) For a widow, the waiting period shall be regulated in the provisions of Article 11 of Law No. 1 of 1974 concerning Marriage jo. Article 39 of Presidential Regulation No. 9 of 1975.

2. The formal requirement/ External (objective requirement), that is requirements which are related to marriage ceremonies / in relation

to the procedure of continuing a marriage, that are regulated in the provisions of Article 12 of Law No. 1 of 1974 on Marriage jo. Article 3 of Government Regulation No. 9 of 1975. The formal requirements are as follows:

- a. Notification by the two prospective parties or their representatives to the marriage registry officer (Articles 3 to 5 Government Regulation No. 9 of 1975);
- b. The identification on material requirements by the appointing officer who receives the notice (Article 6 to 7 Government Regulation No. 9 of 1975);
- c. The announcement by the Registrar Officer on notice board of the Civil Registry Office for 10 working days (Article 8 to 9 Government Regulation No. 9 of 1975); and
- d. Marriage ceremony by authorized officials (Article 10 to 11 Government Regulation No. 9 of 1975).

If a marriage does not fulfill the material and formal requirements which is "Absolute," then the marriage may be "null and void". A marriage is said to be "null and void" which means that the marriage is considered absent or marriage has been deemed as invalid.

Marriages that do not meet material and formal requirements will cause the "cancelable" marriages. The word "can" mean "can be canceled" and "cannot be canceled". Then a marriage should fulfill the requirements set forth in the law so that the marriage becomes lawful.



#### **4. The Purpose of Marriage**

The purpose of marriage is to establish a happy and lasting family based on God. It means that the marriage: (1) lasts a lifetime, (2) divorce requires strict conditions and is the last resort, and (3) the husband and wife help to develop themselves.<sup>12</sup>

A family is said to be happy when it has fulfilled the basic needs, namely physical and spiritual needs. It includes physical needs such as boards, clothing, food, health, and education. It also includes spiritual needs, for example, the existence of a child who comes from their flesh blood.

#### **5. The Legal Consequences of Marriage**

Marriages conducted lawfully would cause legal consequences set out in the Marriage Act. In the law related to marriage, there are three consequences of marriage:

- a. There is a husband-wife relationship
- b. The relationship between Parent and the child
- c. Property problems

The legal relationship is the rights and obligations between a husband and a wife since the marriage. Rights and obligations of a husband and a wife are set forth in Article 30 until Article 34 on Marriage Law. The rights and obligations of husband and wife according to Marriage Law, namely:

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<sup>12</sup> Salim HS, *Op.cit.*, p. 62

- a. Husband and wife have the obligation to uphold the household to be the basis of the social order (Article 30 of Law No. 1 of 1974)
- b. The right and position of the wife is equal to the rights and position of the husband in the life of the household and the social life of the society (Article 31 Paragraph (1) of Law No. 1 of 1974)
- c. Husband and wife shall have the right to do a legal action (Article 31 Paragraph (2) Law No. 1 of 1974)
- d. Husband and wife must have a permanent residence (Article 32 Paragraph (1) Law No. of 1974)
- e. Husband and wife must love each other, respect, faithful and give one's inner help to others (Article 33 of Law No. 1 of 1974)
- f. Husband is obliged to protect their wife and provide all household purposes in accordance with their abilities (Article 34 Paragraph (1) of Law No. 1 of 1974)
- g. The wife is obliged to manage the household affairs as well as possible (Article 34 Paragraph (2) of Law No. 1 of 1974).

## **B. The Overview about Marriage Agreement**

### **1. Definition of Marriage Agreement**

The Marriage Agreement or the prenuptial agreement in the Civil Code, as well as the Marriage Law, constitute an agreement on the property of married persons during their marriage, which deviates from the principle or pattern established by the Act. The Marriage Agreement on the joint property is an agreement made by a prospective bride in writing and is

authorized by a Marriage Officer in order to unite and/or separate the personal property of each party during the marriage.<sup>13</sup>

An agreement is said to be valid if the agreement has qualified its legitimate agreements, namely an agreement, skill, a certain thing and a cause that lawful as defined in Article 1320 of Civil Code.<sup>14</sup> The marriage agreement is an example of a formal agreement, that is an agreement which not only requires a consensus but also requires casting the agreement into a certain form of agreement or accompanied by certain formalities, in addition to being eligible for general agreement and also to be contained in the authentic deed.<sup>15</sup>

In general, a married agreement was made:<sup>16</sup>

- a. Whenever there is a greater wealth on one side of the other party;
- b. Both sides carry considerable input (inbreng);
- c. Each has its own business, so if one of the other bankrupt falls is not caught;
- d. For their debts made before marriage, each will be solely responsible.

The marriage agreement is regulated in Article 29 Law no. 1 of 1974, which states that the meaning of "marriage agreement" is "excluding *ta'lik talak*." *Ta'lik talak* (divorce hanging) as it is well known is the promise of

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<sup>13</sup> H.A. Damanhuri H.R., 2012, *Segi-segi Hukum Perjanjian Perkawinan Harta Bersama*, Cetakan Kedua, Bandung, CV Mandar Maju, p. 11

<sup>14</sup> Komang Padma Patmala Adi - Suatra Putrawan, "Akibat Hukum terhadap Perjanjian Perkawinan yang Dibuat Setelah Perkawinan Berlangsung". (Paper Bagian Hukum Perdata Fakultas Hukum Universitas Udayana)

<sup>15</sup> Zakiyah, 2011, *Hukum Perjanjian Teori dan Perkembangannya*, Yogyakarta, Pustaka Felicha, p. 5

<sup>16</sup> Rosnidar Sembiring, 2016, *Hukum Keluarga: Harta-harta Benda Dalam Perkawinan*, Jakarta, Rajawali Pers, p. 73

husband to wife on shortly after the marriage ceremony took place and commonly carried by people of Islam in Indonesia.

A marriage agreement shall also apply by a third party, containing any matters deemed important by parties not governed by law or even to matters deviating from the provisions of the law to the extent permitted by law, religion and decency, such as the agreement on the position of the child or property during the marriage or after the marriage breakup.<sup>17</sup>

The object of the marriage agreement "*other ta'lik talak*" can be found from the formulation of the provision in Article 35 of the Law on Marriage, which determines that:

- (1) The property acquired during marriage becomes a common property;
- (2) The property of each husband and wife and the property acquired respectively as a gift or inheritance shall be under their respective control as long as the parties do not specify otherwise;

Thus, property in marriage under Article 35 of Marriage Law is an object of a marriage agreement (other than *ta'lik talak*), which consists of (i) joint property as defined in Article 35 Paragraph (1); (ii) the property or property of each husband and wife shall be under the control of each husband and wife as defined in Article 35 Paragraph (2); (iii) each property as a gift, testament, grant, or inheritance received by a husband or wife at the time of marriage takes place and is under the control of each husband and wife as defined in Article 35 Paragraph (2);

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<sup>17</sup> Munir Faudy, *Op.cit*, p. 18

Legal actions that can be performed by a husband and/or wife of the three kinds of property in marriage by Marriage Law are specified in Article 36 that:

- (1) Regarding joint property, the husband or wife may act upon the agreement of both parties;
- (2) Regarding their respective possessions, husbands and wives shall have the full right to engage in legal acts concerning their property;

The legal consequences of a marriage agreement are as follows:<sup>18</sup>

- a. Applicable to the provisions of the contract law in general, except for matters of a special nature in the marriage agreement.
- b. Binding both parties (husband and wife)
- c. Binding third parties
- d. Although it may be made before marriage, the binding because of the marriage agreement shall come into force from the time the marriage takes place.
- e. Such a marriage agreement cannot be altered during marriage unless by agreement of both parties and by not harming a third party.

Every marriage agreement must be made by notarial deed before the marriage ceremony, and the agreement entered into force since the marriage took place (Article 147 of Civil Law). This marriage agreement shall enter into force for a third party from the day of its registration with the local Magistrate's District Court, where the marriage has been made (Article 152

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<sup>18</sup> *Ibid*

of the Civil Law). After the marriage takes place, the marriage agreement in any way shall not be altered (Article 149 of the Civil Law).<sup>19</sup> Thus, this marriage agreement can be made with an authentic deed and can also be made with a deed under the hand.

## 2. The Requirement of Marriage Agreement

The requirement of the marriage agreement under the Marriage Law is regulated in Article 29 of Law No. 1 of 1974. At the time of making this marriage agreement in Law No. 1 of 1974 is implicitly determined before or during the marriage took place. This marriage agreement is valid since marriage takes place, as well as against a third party.<sup>20</sup> However, the marriage agreement may be changed during the marriage under conditions on the basis of agreement between husband and wife and shall not harm a third party. The marriage agreement must be approved by the marriage registry official as one of the conditions for the validity of a marriage agreement.

The terms of the Marriage Agreement include:<sup>21</sup>

- a. Created by mutual agreement;
- b. Made in written form;
- c. Authorized by the Employee of Marriage;
- d. Should not be against the law, religion, and morals.

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<sup>19</sup> P.N.H. Simanjuntak, *Op.cit*, p. 38

<sup>20</sup> Libertus Jehani, 2008, *Perkawinan Apa Risiko Hukumnya*, Jakarta, Forum Sahabat, p. 29

<sup>21</sup> Martiman Prodjohamidjojo, 2011, *Hukum Perkawinan Dalam Tanya Jawab*, Cetakan Keenam, Edisi Revisi, Jakarta, Indonesia Legal Center Publishing, p. 22

### 3. The Purpose of the Marriage Agreement

The law does not regulate the purpose of the marriage agreement and any matters that can be agreed upon. All that is left to the parties who make the agreement. A marriage agreement takes effect from the moment the marriage takes place. Regarding the possibility of the amendment of the contents of the marriage agreement, it is regulated in the Civil Code.

In it is said that change is not possible even though based on an agreement during the marriage. Meanwhile, in the Marriage Law, changes to the contents of the marriage agreement are possible provided they do not harm a third party. The marriage agreement must be made in writing and is authorized by the marriage registrar. Its contents should not be contrary to public order, morality, law, and religion.<sup>22</sup>

The purpose of the marriage agreement is;<sup>23</sup>

- a. The validity of the marriage
- b. To prevent a hasty act, because of the consequences of the marriage for a lifetime;
- c. Legal certainty;
- d. Legal evidence; and
- e. Prevent legal smuggling.

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<sup>22</sup> Darda Syahrizal, 2011, *Kasus-kasus Hukum Perdata di Indonesia*, Yogyakarta, Pustaka Grhatama, p. 44

<sup>23</sup> Salim HS, *Op.cit*, p. 72

In addition to these two provisions, the marriage agreement is also regulated in articles 45 to 51 of Presidential Instruction No. 1 of 1991. The matters governed by such provisions are as follows:

1. A marriage agreement may be made on or before the marriage takes place;
2. The form of the marriage agreement is in the form of *ta'lik talak* and other agreements that are not contrary to Islamic law. Usually, this forms another agreement which is in writing and is approved by the Registrar of Marriage Officer on the positions of marital property;
3. The contents of the marriage agreement include the mixing of personal property, including all property, whether brought by each party in marriage or obtained by each during the marriage; separation of properties. This separation should not eliminate the obligation of the husband to fulfill the needs of the household; and
4. The authority of each party to carry out the burden of a hypnotic or mortgage on the private property and common property or Syarikat property.

### **C. The Review of Constitutional Court Decision No. 69/PUU-XIII/2015**

After the issuance of the Constitutional Court Decision No.69/ PUU-XIII/2015 the amendment is made related to the making of the marriage agreement, and the existence of the verdict on which married couples are married without making a marriage agreement first.



The existence of the Constitutional Court Decision that the marriage agreement made refers to the Constitutional Court No.69/PUU-XIII/2015 which is where the Marriage Agreement applies to marriages that have been done before the Constitutional Court Decision and marriage after the Constitutional Court Decision which can be made by those who are desirable their husband the wife.

The Applicant filed a judicial review of Article 21 Paragraph (1), Paragraph (3), and Article 36 Paragraph (1) BAL; Article 29 Paragraph (1), Paragraph (3), Paragraph (4) and Article 35 Paragraph (1) of the Marriage Law against the 1945 Constitution. The substance of the articles of 2 (two) a quo to be review is related to the right of Indonesian citizens who are married to foreign citizens who do not have a marriage agreement to own property and building rights.<sup>24</sup>

The judicial review of both Act is made after the applicant pays one unit of home stacking. After the applicant pays home stacking it is not submitted. Even purchase agreement is canceled unilaterally by the developer, that the reason applicant's husband is a foreign citizen, and the applicant does not have a marriage agreement.<sup>25</sup> The developers stated that pursuant to Article 36 Paragraph (1) BAL and Article 35 Paragraph (1) on Marriage law, is a woman who was married to foreign citizens and are prohibited to buying land or building with status building rights. The developer should not to do a sales

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<sup>24</sup> Constitutional Court Decision Number 69/PUU-XIII/2015, p. 3

<sup>25</sup> *Ibid*

and purchase agreement (PPJB) or the Deed of sale and purchase (AJB) with the applicant, for it would violate Article 36 Paragraph (1) of BAL.

The Consideration of developers refers to Article 35 of Law No. 1 of 1974 on Marriage which regulates as follows: The property acquired during marriage becomes joint property. Under these provisions, the developers concluded that if a husband or wife to buy immovable (in this case home stacking/apartments) throughout the marriage then the apartment will become joint property/*Gono Gini* couple concerned. Including if the marriage is a mixed marriage (marriage between an Indonesian citizen and a foreigner) which is held without making separate marriage agreement of property, then by law the apartment purchased by a WNI husband/wife by itself belongs to the wife/husband of the foreigners as well.<sup>26</sup> In addition to the articles mentioned above, there are Article 21 Paragraph (1), Paragraph (3) BAL and Article 29 Paragraph (1), Paragraph (3) and (4) on Marriage Law.

Based on the Constitutional Court Decision No. 69/PUU-XIII/2015 the applicant loses his right to own a house with building rights and feels that it is necessary to amend the following rules:<sup>27</sup>

1. Article 21 Paragraph (1), Paragraph (3) and Article 36 Paragraph (1) of the BAL are contradictory to the 1945 Constitution namely Article 28H Paragraph (4), Article 26 Paragraph (1), Article 33 Paragraph (3), 28D

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<sup>26</sup> Constitutional Court Decision No.69/PUU-XIII/2015, *Op. Cit.*, p. 6

<sup>27</sup> Sriono, “*Analisis Putusan Mahkamah Konstitusi Tentang Perjanjian Kawin yang Dapat Dilakukan Selama Perkawinan Berlangsung*”. Jurnal Ilmiah “Advokasi” Vol. 05. No. 01 March 2017, p. 98.

Paragraph 1), Article 27 paragraph (1), Article 28I paragraph (2), 28E paragraph (1);

2. Article 29 paragraph (1), paragraph (3), paragraph (4) and Article 35 paragraph (1) Paragraph (3), Article 28G Paragraph (1), Article 28H Paragraph (4) and Paragraph (5), Article 28I Paragraph (2), Article 28D Paragraph (1);

The Petitioners argue that as Indonesian citizens, constitutional rights are impaired by the enactment of Article 21 Paragraph (1) and Paragraph (3), Article 36 Paragraph (1) BAL and Article 29 Paragraph (1), Paragraph (3), and Paragraph (4), as well as Article 35 Paragraph (1) of the Marriage Law, for reasons which are principally as follows:<sup>28</sup>

1. That the applicants are very hurt, discriminated against their rights, suffer both psychologically and morally, deprived of their basic rights due to the coming into effect of Article 21 Paragraph (1) and Paragraph (3) and Article 36 Paragraph (1) of BAL and Article 29 Paragraph (1), Paragraph (3), and Paragraph (4) and Article 35 Paragraph (1) of Marriage Law; the same suffering is also felt by all family members of the Petitioners. The Petitioner's Constitutional Right to reside and obtain a good living environment has been deprived forever. Everyone would want to have/stock up for themselves and their children for the future. One of them by buying land and buildings, other than as a

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<sup>28</sup> Constitutional Court Decision No. 69/PUU-XIII/2015, *Op. Cit.*, p. 141

residence, shelter, as well as savings/stock in the future (old age);

2. That the Applicant is abiding citizens and uphold the law, pay taxes and all other obligations that must be met as Indonesian citizens without exception, as well as other Indonesian citizens. However, for all his obedience to the state in carrying out its obligations so far, the Applicant is treated in a discriminatory manner by the state, simply because the Applicant marries a foreign national. That the existence of these articles not only has robbed the justice and human rights of the Applicant, but also deprives the human rights of all Indonesian citizens who are married to foreign nationals;
3. That the applicant is an Indonesian citizen faithful, sworn "was born in Indonesia, and death was also in Indonesia, uphold and defend the homeland of Indonesia." However, with the coming into effect of the above-mentioned Articles, the Applicant is distinguished from his rights with other Indonesian citizens;
4. That the law and the facts based on the description above, the loss of the Applicant do to the enactment of Article 21 Paragraph (1), Paragraph (3) and Article 36 Paragraph (1) BAL; and Article 29 Paragraph (1), Paragraph (3), Paragraph (4), and Article 35 Paragraph (1) of Marriage Law are specific, real, and real (actual), and have occurred and felt by the Applicant. It also has a causal and causal relationship with the applicant (causal verband).

Finally, the Constitutional Court granted conditional interpretation of Article 29 Paragraph (1), Paragraph (3) and Paragraph (4) of Law No. 1 of 1974 on Marriage. It can be concluded that the making of the marriage agreement can be adapted to the legal needs of each partner.<sup>29</sup> The decision is not only bringing benefits for mixed couples as couple's citizen wife and her husband were foreigners, but also bring benefits to the spouse who is not in a mixed marriage.<sup>30</sup>

Marriage agreements are not only made at the time before the marriage but can also be made after the marriage. The marriage agreement is only born with a notary deed becomes the condition of the birth of the marriage agreement, so the marriage agreement must be made by notarial deed.<sup>31</sup> In the Constitutional Court Decision No. 69/PUU-XIII/2015, the Constitutional Court granted the enactment of Article 29 Paragraph (1), Paragraph (3) and Paragraph (4) Law No. 1 of 1974 on Marriage which significantly reduces freedom of contract. Mixed or unmarried marriages should be able to make a marriage agreement on the desired basis when the need requires it. Moreover, the

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<sup>29</sup><http://www.hukumonline.com/berita/baca/lt5811d246a9498/mk-perlonggar-makna-perjanjian-perkawinan> on access October 20, 2017, 08.17 am

<sup>30</sup> Sari Murti W, "Analisis Putusan Mahkamah Konstitusi Nomor 69/PUU XIII/2015" (Disampaikan dalam Seminar Regional: Eksistensi Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi), March 22, 2017

<sup>31</sup> Wisda Rauyani Efa Rahmatika, Akhmad Khisni, "Analisis Yuridis Atas Perjanjian Perkawinan Ditinjau dari Undang-Undang No.1 Tahun 1974 Tentang Perkawinan dan Implikasi Putusan MK No. 69/PUU-XIII/2015". Jurnal Akta Vol. 4 No. 3 September 2017, p. 368

principle of consensualism which states that the agreement must be based on an agreement must be upheld as a tribute to human rights itself.<sup>32</sup>

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<sup>32</sup> Syaifullahil Maslul, "*Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 Ditinjau dari Pemenuhan Hak-Hak Asasi Manusia dan Asas-Asas Pembentukan Perjanjian*". *Mahkamah*, Vol. 1, No. 2, December 2016, p. 423