

CHAPTER IV

FINDING AND ANALYSIS

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

Marriage is an orderly culture that follows the development of human culture in people's lives. Marriage, as defined in Article 1 of Law No. 1 of 1974, is an inner and outer bond between a man and a woman as a husband and a wife with the aim of forming a family or household which is happy and everlasting based on God. Marriage as a bond physically and spiritually, the husband and wife should help and complement each other so that each can develop his/her personality and helps achieve spiritual and material welfare.³⁸

There is no regulation on the making of marriage agreement after marriage in the Civil Law and the Marriage Law. This marriage agreement is made after the marriage takes place, although the special arrangement is not found in the Civil Law or any other rules since this marriage agreement is found in the society, it must also be subject to the general rules contained in the Civil Law.

The Case Position of Constitutional Court Decision No. 69/PUU-XIII/2015 is: The Petition was submitted by an Indonesian citizen who married a Japanese citizen without an agreement to separate property, in accordance

³⁸ Constitutional Court Decision No.69/PUU-XIII/2015, *Op. Cit.*, p. 152

with case No. 69/PUU-XIII/2015 which filed a Judicial Review to the Constitutional Court received by the Constitutional Court on June 24th, 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 22th, 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 24th, 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 8th, 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 17th, 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 12th, 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."

Therefore, the applicant loses his right to own a house with the Right to Build, and feels that there is a need to change the following rules:

1. Article 21 Paragraph (1), Paragraph (3) and Article 36 Paragraph (1) of the BAL is contrary to the 1945 Constitution, namely Article 28H Paragraph (4), Article 26 Paragraph (1), Article 33 Paragraph (3), 28D 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) of the Marriage Law is contrary to the 1945 Constitution, namely Article 28E Paragraph (2), Article 26 Paragraph (1), Article 33 Paragraph (3), Article 28G Paragraph (1), Article 28H Paragraph (4) and Paragraph (5), Article 28I Paragraph (2), Article 28D Paragraph (1);

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;

In the Case No. 69/PUU-XIII/2015, the Constitutional Court examines was submitted by the applicant regarding Article 21 Paragraph (1) and Article 36 Paragraph (1) of the Agrarian Law (hereinafter referred to BAL) and Article 29 Paragraph (1), Article 29 Paragraph (3), Article 29 Paragraph (4) and Article 35 Paragraph (1) of Marriage Law. The Constitutional Court states that the examination in connection with BAL is unreasonable under the law. In accordance with the Decision which focuses on Marriage Law, the Constitutional Court provides an interpretation of Article 29 Paragraph (1), Article 29 Paragraph (3) and Article 29 Paragraph (4), which provides an opportunity for married couples to enter into a marriage agreement.

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.³⁹ 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 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.⁴⁰

Since the Constitutional Court Decision No. 006/PUU-III/2005, dated May 31, 2005 and the Constitutional Court Decision No. 11/PUU-V/2007,

³⁹ Constitutional Court Decision No.69/PUU-XIII/2015, *Op. Cit.*, p. 154

⁴⁰ *Ibid*

dated September 20, 2007, as well as the decisions of the opinion that the rights and/or authorities as intended in Article 51 paragraph (1) of the Law on Constitutional Court must meet five requirements, namely:⁴¹

- a. the applicant's constitutional rights and/or authorities granted by the 1945 Constitution;
- b. such constitutional rights and/or authorities by the Petitioners are deemed harmed by the coming into effect of the Act petitioned for review;
- c. such constitutional impairment shall be specific (actual) and actual or at least potential in nature which, pursuant to logical reasoning, shall take place for sure;
- d. the existence of causal relations (Causal Verband) between such losses and the coming into effect of the Act petitioned for review;
- e. the possibility that with the granting of the petition the constitutional impairment argued will not or does not occur;

The Constitutional Court ruling on the making of the marriage agreement on Decision No. 69/PUU-XIII/2015, which according to the judge ruling Sudikno Mertodikusumo is "... a statement by the judge, as a state official who is authorized for it, uttered in the hearing and aims to end or settle a problem or dispute between the parties."⁴² The Constitutional Court Decision is final and binding; then, the Constitutional Court's decision to grant a petition

⁴¹ Constitutional Court Decision No.69/PUU-XIII/2015, *Op. Cit*, p. 140

⁴² Sudikno Mertodikusumo, 1988, *Hukum Acara Perdata di Indonesia*, Yogyakarta, Liberty, p. 167

for judicial review of the 1945 Constitution, either partially or entirely granting, by itself has changed the provisions of a law by declaring it contrary to the 1945 Constitution and has no binding legal force.⁴³

However, the meaning of the marriage agreement is loosened by the Constitutional Court Decision No.69/PUU-XIII/2015, in which the content grants the petition for judicial review of the provisions concerning the Marriage Agreement set forth in Article 29 paragraph (1), paragraph (3) and (4) of Law No. 1 of 1974 about Marriage. With the Constitutional Court Decision, now the agreement no longer means a treaty made before marriage, but can also be made after the marriage takes place.

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

⁴³ Oly Viana Agustine, “Politik Hukum Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 dalam Menciptakan Keharmonisan Perkawinan”. *Jurnal RechtsVinding*, Vol. 6 No. 1, April 2017, p. 55

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.

Such a marriage agreement shall be made by mutual consent, by a written agreement authorized by the Registrar, before the marriage takes place or at the time of marriage and the marriage agreement shall come into force since the marriage took place. Such agreements usually contain promises of property acquired during the marriage, usually in the form of obtaining separate property, each party is obtaining what is earned or earned during the marriage, including profits and losses. This marriage agreement applies as a law to those who make it, also applies to third parties who have an interest in it. Juridical impact of the marriage agreement is to include:⁴⁴

1. The agreement binds the husband and the wife;
2. The agreement binds the interested third parties;
3. The Agreement may be altered only with the consent of both parties of husband and wife and shall not impair the interests of any third party, nor be authorized by the marriage registry officer.

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

⁴⁴ Sri Ahyani, "Implikasi Putusan Mahkamah Konstitusi Nomor 69/PUU/XIII/2015 Terhadap Pasal 29 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan" *Jurnal Wawasan Yuridika*, Vol. 2. No. 1, March 2018, p. 92

"or notary."⁴⁵ In consideration of Decision No. 69/ PUU-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.⁴⁶

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.⁴⁷ 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

⁴⁵ 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

⁴⁶ Damian Agata Yuvens, *Op. Cit*, p. 808

⁴⁷ *Ibid*

marriage or other agreements" and "or withdraw/revoke." Consideration given by the Constitutional Court in connection with 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.⁴⁸

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.⁴⁹

In relation to joint property, when seen from the BAL and its implementing regulations stating that only citizens of Indonesia who may have

⁴⁸ *Ibid*

⁴⁹ Constitutional Court Decision No. 69/PUU-XIII/2015, *Op. Cit.*, p. 153

a certificate with the landowner and if the person concerned, after obtaining the certificate right to ownership, then married to expats (not a citizen) and in the period of 1 (one) year after his marriage, he shall relinquish property rights to such land, to another law subject to which it is entitled.

B. 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:⁵⁰

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 *Gono-gini*;
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.

Meanwhile, the purpose of making a 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. The basis for making a marriage agreement after marriage is essentially the same goal,

⁵⁰ *Ibid*

namely to separate property between the husband and the wife so that their property is not mixed.

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.

C. 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.

In the judge's judicial consideration is that supposedly the applicant has made a marriage agreement concerning joint property before the marriage

takes place, but due to the negligence and ignorance of the applicant so that only now the applicant intends to separate the joint property.⁵¹

Since the Constitutional Court Decision and recorded in the state news, the marriage agreement can be made or submitted to a marriage agreement not only at the time or before the marriage takes place but during the marriage takes place. The marriage agreement under paragraph (4), relates to marital property and also other agreements outside of a promised marriage of the marriage.

Regarding the enactment of the marriage agreement, that agreement made during the marriage begins when marriage takes place or in other words that the property before the marriage agreement also participates in the marriage agreement made during the marriage takes place (in marriage bonds). However, to provide legal protection to one of the parties (husband/wife) to existing marriage property before the marriage agreement is made, and to give an opportunity to not be contracted because of the phrase in the decision stating that the validity of the marriage agreement is valid since marriage unless otherwise specified in the agreement the marriage.

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

⁵¹ Sonny Dewi Judiasih, "Pertaruhan Esensi Itikad Baik dalam Pembuatan Perjanjian Kawin Pasca Putusan Mahkamah Konstitusi No. 69/PUU-XIII/2015", Jurnal Notariil, Vol. 1, No. 2, May 2017, p. 73

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.

Accordingly, the Constitutional Court is of the opinion that the marriage agreement is a general agreement. The making of the agreement is based on the following principles:⁵²

1. The principle of freedom of contract which is able to make any commitment as long as it is not contrary to the law, morality and public order as regulated in Article 1337 Civil Code;
2. The principle of Consensualism in the engagement is based on the agreement of the parties, Article 1320 of the Civil Code;
3. The principle of binding power is the principle of *pacta sunt servanda* that is a binding force such as law;
4. The principle of personality is to determine personnel in the agreement as a source of engagement;
5. The principle of trust or *vortrouwensabbeginsel* means a person entering into an agreement and engaging with another person, between the parties there is a belief that will meet each other's accomplishments;
6. The principle of good faith or *togoeder trouw* is in carrying out the engagement based on good faith.

⁵² Sudikno Mertokusumo, *Op. Cit.*, p. 97

The applicant as an individual Indonesian citizen feels aggrieved of his constitutional rights by the enactment of Article 21 Paragraph (1) and Paragraph (3), Article 36 Paragraph (1) of BAL and Article 29 Paragraph (1), Paragraph (3), and Paragraph (4), and Article 35 Paragraph (1) of Marriage Law.

Entry into force of Article 29 Paragraph (1), Paragraph (3) and Paragraph (4) of Marriage Law obviously reduces the freedom of contract. The current provisions only govern marriage agreements made before or at the time of marriage, whereas in reality there is the phenomenon of a husband and wife who for some reason just feel the need to make a Marriage Agreement during the marriage bond. 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.⁵³ 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

⁵³ Oly Viana Agustine, *Op. Cit*, p. 60

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 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. The essence of the marriage agreement after the marriage is an agreement between the husband and wife to separate property ownership and accounts payable, and agreement on a number of other important matters when wading through the household ark.

The basis of the marriage agreement made after marriage, in essence, has the same purpose that is to separate the wealth between the husband and the

wife so that their property is not mixed. Therefore, if one day they got divorce, the property of each party is protected, and there is no seizure of property together/*Gono-gini*.

After the Constitutional Court Decision, marriage law in Indonesia experienced a significant development, the marriage agreement was originally made only before or at the time of marriage, but now, it can be done during the marriage period, and is valid since the marriage is held and the marriage agreement can also be changed/renewed during the period of marriage.