

RECONSTRUCTION OF IMPLEMENTATION OF MARRIAGE AGREEMENTS POST DECISION OF THE CONSTITUTIONAL COURT

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Abstract

This study aims to analyze the application of the marriage agreement after the Constitutional Court's decision. The results of the study found that the Reconstruction of Marriage Agreement Regulations Post Constitutional Court Decisions Based on Pancasila Values of Justice, the values of Pancasila justice in the reconstruction of marriage agreement regulations after Constitutional Court decisions are to provide fair equality for all Indonesian people. This equality provides a just and fair embodiment for citizens to get legal protection. This equal legal protection reflects legal protection to be treated equally before the law for all citizens in order to achieve justice. The existence of a time limit in the marriage agreement, through an authentic deed, does not harm the parties and third parties, and is approved by public officials and court institutions. Reconstruction of legal norms Article 29 paragraph 1, paragraph 3 and paragraph 4, Article 35 paragraphs 1 & 2, and Article 38 of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage underwent a change in meaning, namely before, during and during the bond Marriage agreement can be carried out.

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A. INTRODUCTION

In a marriage, if there is wealth, problems of property¹ status will arise for spouses who have different nationalities or different religions. Regarding the problem of ownership of property in Indonesia, one must look at the rules in terms of obtaining the object, such as in the law on the Basic Agrarian Regulations or MARRIAGE LAW Number 5 of 1960. How can it be emphasized that the condition for being able to own a permanent object, namely land, must be a citizen Indonesian. Likewise in the Criminal Code regarding objects. of course every transfer must use a deed, and the deed must meet the subjective and objective requirements as stipulated in article 1320 of the Criminal Code.² Given the many laws and regulations that have been regulated and must be in sync with each other in order to fulfill the requirements to achieve legal provisions, care must be taken in making decisions, not just for unilateral interests. Previously the rules regarding marriage agreements referred to the MARRIAGE LAW, the Civil Code as well as the UUK and KHI, where the marriage agreement had to be made before or at the time the marriage took place, and could not be made after the marriage because of the interests of a third person.³

The marriage agreement of the post-marital parties is a matter that must be of particular concern. Because of the decision of the Constitutional Court number 69/PUU-XIII/2015 dated October 27 2016, due to a lawsuit by Mrs. Ike Farida, an Indonesian woman who married her husband who is a Japanese citizen. Where the woman wants to buy a house in Indonesia and has paid for the flat in full and cannot be processed because it is contrary to the conditions contained in Article 36 paragraph (1) and Article 35 paragraph (1), namely in Article 36 paragraph (1) contains about can have Building Use Rights are Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia. Such is the case with article 20 concerning property rights. While the

¹ Anis Mashdurohatun, Transfer of Intellectual Property Rights (Studies on the Division of Joint Property (Gonogini) Post-Divorce), International Conference on Law Reform (INCLAR 2019), Atlantis Press, 2019, pp. 70-75

² Jamal Wibowo, Anis Mashdurohatun, Contract Law, Sharia Economics and Business Ethics, Undip Press, Semarang, 2017.

³ Mawardi Muzamil, Anis Mashdurohatun, Comparison of Legal Systems (Western, Customary and Islamic Law), Madina Semarang, 2014.p.88.

opportunities for foreigners are in article 41, namely usufructuary rights. Or the marriage agreement was made before or when the marriage took place. MARRIAGE LAW adheres to the Nationalist principle and the Nationality principle which of course does not adhere to the mixing principle, which means that this principle emphasizes that Indonesia only belongs to Indonesia without the approval of foreign countries.

In Article 33 paragraph 3 which is the basis of the MARRIAGE LAW namely in Article 1 paragraph (2) which states that the entire earth, water and space including the wealth therein within the territory of the Republic of Indonesia as a gift from God Almighty is the earth, water and space of the Indonesian nation and are national wealth. Whereas Article 33 paragraph (3) of the 1945 Constitution which reads Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. Of course this confirms that Indonesian citizens can own Indonesian land and do not need approval from foreign nationals. In the law on mortgage rights, it is stated that Law number 6 of 1996 explains that in terms of land or fixed object collateral in Article 1 paragraph (1) it states mortgage rights over land and objects related to land, hereinafter referred to as mortgage rights. is a guarantee right that is imposed on land rights as referred to in Law Number 5 of 1960 concerning basic regulations on agrarian principles, whether or not along with other objects that are an integral part of the land, for repayment of certain debts, which give the position of priority given to certain creditors over other creditors. Looking at it from a legal perspective, if a fixed object or land and building is to be obtained by means of credit, of course the terms in the BAL and also the requirements for making an authentic deed must look at the law. In terms of debts and receivables, if the object of the collateral is a property right or a building use right, then of course the appearer must be of Indonesian citizenship. So in terms of legal subjects it cannot be separated from a spouse. If an Indonesian citizen who marries a foreigner wants to owe money, what will be the basis for declaring it is not permissible if post-marriage is an opportunity for that and how to charge those who are economical if they are not domiciled in Indonesia. Articles 83 and 84 of the Civil Code stipulate that marriages may be carried out abroad or married with foreign citizenship as long as they are carried out according to the regulations of that country and husband and wife who are Indonesian citizens do not violate the provisions of the Civil Code, especially Chapter I, and a maximum of one year marriage certificate they must be registered in the State of Indonesia at the Agency stipulated by the National Law.

In this case the author assesses that there is a legal imbalance as a result of the Constitutional Court decision number 69/PUU- XIII/2015 dated October 27 2016 by being allowed to make marriage agreements after marriage or after the initial partnership of assets went no like this, of course it is a big question mark for the law itself, if the rules of the marriage agreement do not provide limitations, this will give rise to personal interests and also the opportunity to prevent these assets from becoming a single entity in a legal action that results in losses and compensation. As with credit loans to banks or even for housing loans. It really isn't something that has to be without limitations for an Indonesian citizen who is married to a foreign national and then wants to own assets in Indonesia, be it a house, land or even extend to owning a company. This again needs to be considered. Relations with the State even descendants born from the marriage. The issue of rights is a matter that must be very careful in applying the law, especially in civil matters. Because it is very closely related to the life and interests of legal subjects and also for the interests of the State. Bearing in mind that land and assets in the State of Indonesia are the rights of Indonesian citizens and must be fully protected. For this reason, the rules that are made must be full of consideration and interrelated with one another, not stand alone so as to weaken other laws or regulations. A marriage agreement is a nature that basically protects a person's rights in a marriage bond. Of course the most important thing in marriage is about children and assets acquired before and after marriage. And so that there is legal certainty in both cases. In a marriage, there are many things that must be considered, starting from the marriage rules that are regulated in law and religion, the freedom to determine the choice of a life partner is protected and there must still be rules, what else regarding differences in nationality which will lead to different laws and different rules. must be used, to protect citizens who do not want to change citizenship or belief. The conditions for marriage are regulated in such a way that the Marriage Law number 16 of 2019 concerning amendments to law number 1 of 1974 concerning Marriage and also regulations in religion and KHI (Compilation of Islamic Law). Rules regarding children are also regulated in the Marriage Law and also the Child Protection Law Number 35 of 2014 concerning amendments to Law number 23 of 2002 concerning Child Protection, as well as regarding assets and this are regulated in laws, holy books, and customs. Likewise regarding citizenship arrangements are regulated in law number 12 of 2006 concerning Citizenship of the Republic of Indonesia, and must also pay attention to Law Number 39 of 1999 concerning Human Rights. Not to mention being linked to the rules of the Civil Code. It is not an easy thing to make new rules just because there is a problem for someone or a group of people, of course there must be a thorough consideration of whether it is beneficial for all citizens. Judgment considerations need to look at and pay attention to the whole and by looking at the previous law and for the security of the State and also all elements of the State, both concerning territory, citizens and also the government.

The marriage agreement can function as a preparation before entering into the household ark. A prenuptial agreement is an agreement made before the marriage takes place. The history of the marriage agreement itself was born from western culture. In Indonesia, which still upholds eastern customs, the public considers this agreement to be a sensitive issue, unusual and unusual, rude, materialistic, selfish, unethical, not in accordance with Islamic and eastern customs and so on.¹ Seeing this, it is necessary to do in-depth research on the regulation of marriage agreements after the Constitutional Court's decision.

B. RESEARCH METHOD

This type of research is qualitative research². Research Approach The approach in this study uses a sociological juridical approach from a sociological point of view as an interpretation or interpretation.³ In the sociological approach, it is deeper to study phenomena that occur in society, can be seen from the point of view of the implementation or implementation of the law, so this research uses direct research to obtain data as accurate as possible.⁴ Related to this research, the sources of data used in this study are: Primary Data, is data obtained from statements and information from respondents directly obtained through interviews and observations. Secondary Data, is legal research data obtained directly from the main source, but the data is obtained through intermediaries or other sources such as books, magazines, and journals, from the secondary data of course it has been grouped as follows: Primary Legal Materials, Legal Materials Secondary, and Tertiary Legal Materials⁵. Data collection methods through observation, interviews, and literature studies. Data analysis techniques are qualitative data analysis.⁶

C. RESEARCH RESULTS AND DISCUSSION

C.1 Regulations on the Reconstruction of Marriage Agreement Regulations after the Ruling of the Constitutional Court

With the Constitutional Court Decision 69/2015, the provisions of Article 29 paragraph (1) of the Marriage Law Article 29 paragraph (1) of the Marriage Law jo. The MK 69/2015 decision has been interpreted as follows: "At the time, before it is held or while in the marriage bond the two parties with mutual consent can enter into a written agreement which is ratified by a marriage registrar or notary, after which the contents also apply to third parties as long as the third party is involved."

The Constitutional Court decision 69/2015 has broadened the meaning of the marriage agreement so that the marriage agreement is no longer interpreted only as an agreement made before marriage (prenuptial agreement) but can also be made after the marriage takes place (postnuptial agreement). There are five important elements in the meaning of Article 29 paragraph (1), namely: (1) the agreement was made during the marriage period; (2) mutual agreement; (3) made in writing; (4) legalized by a marriage registrar or notary; and (5) applies to third parties as long as a third party is involved.

Even though the Constitutional Court Decision 69/2015 was requested by Indonesian citizens who are married to foreigners (mixed marriages), the Constitutional Court Decision also applies to married couples of fellow

¹ Muhammad Fajar Nur Alam, *Pandangan Hakim Terhadap Kasus Harta Bersama Pasca Putusan MK Nomor 69/PUU-XIII/2015 Program Studi Hukum Keluarga Fakultas Syariah Dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta*, 1441H/2020M,p.3.

² Anis Mashdurohatun, Zaenal Arifin, *The Inconsistency of Parate Execution Object Warranty of Rights in Banking Credit Agreement in Indonesia*, *International Journal of Applied Business and Economic Research*, Vol.15 Issue.20. 2017

³ Esmi Warassih. *Pranata Hukum: Sebuah Telaah Sosiologis*, (Semarang: Suryandaru Utama, 2005), page. 23-24. See too Anis Mashdurohatun, M Ali Mansyur, *Product capabilities dynamic on industrial design carved wood in Small and Medium Enterprises (SMES) Jepara furniture in promoting the protection of intellectual property rights*, *International Journal of Applied Engineering Research*, Volume 12, Issue 19, 2017. pp.8217-8226.

⁴ Muhammad Zainuddin, *Pemahaman Metode Penelitian Hukum (Pengertian, Paraadigma, dan susunan Pembentukan)*, (Yogyakarta: CV.Istana Agency, 2019), page. 22.

⁵ Bambang S and Eman Suparman Anis Mashdurohatun, *Legal Protection for Creditors in Providing Business Credit with Object of Inventory Warranties Based on Justice Values*, *J.Eng. Applied Scinces*, Volume 14 , Issue 12 , 2019. pp. 4176-4182

⁶ Agus Irawan Yustisianto, Sri endah Wahyuningsih, & Anis mashdurohatun, *Reconstruction of Legal Protection Regulations against Victims of Crime of Household Violence Based on Justice Value*, *Sch Int J Law Crime Justice*, Dec, 2022; 5(12): 513-519

Indonesian citizens. It should be noted that the Post-Marriage Agreement must still be drawn up before a notary after that the marriage agreement is registered with the Religious Affairs Office (KUA) for Muslim couples or the Civil Registry Office (KCS) for non-Muslim couples. This step is especially necessary so that the marriage agreement made is binding for third parties. With the existence of registration with a predetermined agency, the element of publicity has been fulfilled so that it is also binding on third parties. If not registered, the agreement will only bind the husband and wife as parties as stipulated in Articles 1313-1314 and 1340 of the Civil Code.

However, it would be better to guarantee legal certainty and notaries to avoid negative allegations as a result of the marriage agreement, so the deed should be asked for a court order, if the religion is Islam, then go to the religious court, and if you are Muslim, then go to the district court. Only then was the court ordered to register it with the Office of Religious Affairs for Muslims and non-Muslims with the Office of Population and Civil Registry.

This is something that has not been broken so that there are multiple interpretations to create security or legal protection for third parties.

Specifically regarding the recording of marriage agreement reports in the Civil Registry, a Circular Letter of the Director General of Population Affairs and Civil Registry of the Ministry of Home Affairs has issued Number 472.2/5876/DUKCAPIL dated May 19 2017 which is addressed to all heads of the Regency/City population and civil registration services (Dukcapil) in throughout Indonesia, which stipulates that Dukcapil as the implementing agency or Technical Implementation Unit (UPT) where marginal notes will be made in the register of deeds and quotations of marriage certificates, while on marriage certificates issued by other countries but the marriage agreement is made in Indonesia, the report is made in the form certificate.

Where the purpose of the marriage agreement is made are:

1. Separating the assets between the husband and wife so that their assets are not mixed. Therefore, if one day they get divorced, the assets of each party are protected, there is no fight over shared assets or going around.
2. For the debts of each party that they make in their marriage, each will be responsible separately.
3. If one party wants to sell their assets, they do not need to ask permission from their partner (husband/wife)
4. Likewise with the credit facilities that they apply for, they no longer have to ask permission in advance from their spouse (husband/wife) in terms of guaranteeing assets registered in the name of one of them.

As a result of the Constitutional Court's decision, most of them only focus on how to express what is agreed upon, the contents of the agreement do not provide any limitations that the Constitutional Court's decision should have made the DPR pay serious attention to this matter and discuss this article so that it can be considered more closely with other laws.

Marriage Agreement in Legal Culture, among people who still uphold customs and traditions and are also fanatical, will not want to make a marriage agreement. Because the marriage agreement for most people thinks it's for people who have money, have a lot of wealth and are afraid of divorce.

Most people think that a marriage agreement will create distance and selfishness, whereas it is very difficult to unite two families, especially if a marriage agreement is made, there will be distance between the families. Because a society that upholds customs and fanatics makes marriage an addition to the family so that it becomes bigger and the kinship will be even wider. The marriage agreement will cause distance and also difficulties when children are born, of course this will also be agreed upon so that there will be problems in the growth of children if what arises is that the agreement must be carried out.

The marriage agreement is a separation distance for many groups, it is different if each party already has large assets. However, the legal culture always looks at the people who are still in groups, unlike city people who are preoccupied with their lives and defend their lives. The Constitutional Court's decision No 69/2015 still does not shift the minds of the people who still uphold customs. Because of this, the marriage agreement still needs to be repaired and renewed by the DPR as the representative of the people so that this is truly useful and is an important matter for the future. What's more, the Batak people highly uphold adab and procedures for silaturahmi which are thick with traditional meetings and parties. Mutual support and mutual assistance is the principle of the Batak people. The work was done jointly between husband and wife and even children until it was time to go abroad, the term Batak people for their children who study outside their hometown. And this should also be appreciated. Because of that, the boundaries for the marriage agreement must also be seriously considered.

Remembering that the marriage agreement is an agreement, of course each agreement has one element, namely the expiration date of the agreement.

So that arrangements for canceling the marriage agreement should also exist, but the cancellation of the agreement and the marriage agreement made during the marriage is one and the same thing. Because if the marriage agreement is identical because of business and one is destroyed. So can the marital agreement to separate property be able to make legal rules of sale and purchase and grants between husband and wife occur or will they become avals. Of course, it is hoped that there will be continuous improvements to existing regulations.

C. 2 Reconstruction of Regulations Reconstruction of Regulations on Marriage Agreements Post Constitutional Court Decisions Based on Pancasila Values of Justice

Pancasila¹ as the source of all sources of law can be interpreted as a place to explore and find law in a society and a country. This also means that Pancasila is positioned as the source of the legal order of the Indonesian state. In conclusion, there are two meanings of Pancasila as the source of all sources of law in Indonesia, namely: Pancasila is the basic norm which is the mother of all forms of normative order in Indonesia Pancasila is the source or place to explore and find law in a country.²

The five pillars that make up Pancasila are Belief in One Almighty God, just and civilized humanity, Indonesian unity, democracy led by wisdom in deliberations/representations, and social justice for all Indonesian people, and are listed in paragraph 4 of the Preamble (Opening). The five joints that make up Pancasila are the source of all sources of law and order in Indonesia.

The five joints that make up Pancasila are the source of all sources of law and order in Indonesia. Then as an identity is a name or label that is already attached to a person and to describe the identity of that person. And Pancasila itself is an identity that belongs to the Indonesian nation. Therefore, every society will certainly be part of the Indonesian nation which must have a Pancasila spirit as its identity.

Hierarchically in a national paradigm that is in accordance with the values of Pancasila and used as the basis for various decision-making processes, both the ideal basis of Pancasila, the constitutional basis of the 1945 Constitution of the Republic of Indonesia, the visional basis of archipelago insight, the conceptual basis of national security and the juridical basis of laws and regulations that related as well as the theoretical basis and literature review related to the problem being solved.

Pancasila as the philosophy, ideology of the nation and the basis of the State in its implementation has a binding and mandatory nature or is imperative, which means that it is a legal norm that cannot be set aside or violated. Pancasila as a source of law and order (the source of all sources of law) is a view of life, awareness and moral ideals covering the psychological atmosphere and character of the Indonesian people in the life of society, nation and state. Likewise in regulating the administration of state administration which includes ideological, political, economic, socio-cultural and defense and security aspects as well as efforts made to optimize domestic security through upholding the rule of law must be inspired by thoughts based on Pancasila values, among others other:

- 1) The value of social justice that must be realized for all Indonesian people on the basis of morality and ethics.
- 2) Is cooperative, does not impose will and is not arbitrary and upholds the law and human values.
- 3) Paying attention to and guaranteeing equality: degrees, basic rights and obligations of fellow human beings as creatures of God Almighty who have dignity before the law.
- 4) Maintaining a balance between rights and obligations by respecting the rights of others, defending the truth for the sake of justice and not committing acts that are detrimental to the public interest.
- 5) Putting the interests of the nation and state above personal and group interests.

¹ Anis Mashdurohatun, Adhi Budi Susilo, Bambang Tri Bawono, Copyright Protection towards the Society 5.0, Journal of Southwest Jiaotong University, Volume 56, Issue 2, 2021, pp.394-403.

² Anis Mashdurohatun, Trademark Legal Protection against SMEs in Enhancing Global Competitiveness Based on the values of Pancasila, 2nd International Conference on Indonesian Legal Studies (ICILS 2019), Atlantis Press, 2019, pp.93-99.

Observing this description, it becomes increasingly apparent how important the role of state administrators, especially law enforcers (police, prosecutors, judges, lawyers) is in the joint struggle to implement the rule of law in order to optimize domestic security based on the philosophy Pancasila, contained in its provisions and legal norms that cannot be set aside or violated.

The value of Pancasila justice is that justice based on Pancasila has differences and similarities with other justice. The equation of justice based on Pancasila with other justice is to give equal rights to citizens in obtaining their rights in accordance with the capacity of the citizens themselves. Meanwhile, the difference is that justice based on Pancasila is pure justice for the Indonesian nation. Pure justice is obtained from the principles of Pancasila justice obtained from various ethnic groups in Indonesia. Therefore, justice based on Pancasila is part of the Unitary State of the Republic of Indonesia (NKRI).¹

Justice based on Pancasila is processed from thoughts about five principles, namely Pancasila as the principle of law formation based on Pancasila justice which prioritizes human rights and equal protection before the law. There are several characteristics related to justice based on Pancasila. Pancasila itself has the following characteristics or characteristics:

1. Pancasila is a national philosophy that only belongs to the Indonesian nation, other countries do not. Pancasila is the result of the original thinking of the Indonesian people which reflects the truth. As a guide in the life of the nation and state. The philosophy of Pancasila reflects the basis of the state in discovering the essence of truth which is a guide in life. The Indonesian people receive an abundance of grace from God Almighty with Pancasila so that the life of the nation and state can be established which reflects justice, benefit and protection. The grace revealed by God Almighty to the Indonesian people is a gift that is not given to other nations. So, pure Pancasila was born from the thought of our founding fathers/mothers in determining the direction of the nation's goals.
2. Flexible in the sense of being able to be placed in conditions of changing times. The flexible nature of Pancasila is proven that Pancasila is able to keep up with changing times from the Old Order period, the New Order period, and the reformation period until now. In following the development of the era, Pancasila is able to place the values contained in it as a guide in the life of the nation and state. Changes in the period of government did not change the substance and values contained in Pancasila, but these substances and values were able to make a positive contribution in the era of government in 300 various periods. This is where Pancasila can be called flexible because it is able to place itself in the changes and developments of the era in accordance with the goals of national and state life
3. The five precepts are a unified whole that cannot be separated. In interpreting the substance of Pancasila, it is an obligation that the substance of Pancasila cannot be separated. This prevents multiple interpretations of Pancasila from occurring. The full and inseparable meaning of the Pancasila precepts can lead to the same interpretation, the same goals and the same perception in interpreting Pancasila as a guideline for the life of the nation and state. It can be concluded that Pancasila is a unified whole, the precepts in Pancasila cannot be separated from one another because these precepts are interrelated and reflect positive values, one precept with the other precepts.
4. Pancasila is the NKRI and NKRI is Pancasila because Pancasila and NKRI are an agreement that will not be changed. Pancasila exists because the NKRI and NKRI exist based on Pancasila. This shows the close relationship between Pancasila and the Republic of Indonesia. Pancasila and the Unitary State of the Republic of Indonesia are a unity that cannot be changed and need each other because Pancasila is the basis for the life of the nation and state in the Unitary State of the Republic of Indonesia (NKRI).
5. Able to provide a basis for justice in accordance with the style and culture of the Indonesian nation. Because Pancasila is recognized for its truth in a coherent, correspondence and pragmatic way, of course Pancasila has been recognized since Pancasila was born. Pancasila is recognized by many people and serves as a guideline for the Indonesian nation which has been recognized since ancient times until now. The truth is justice that comes from Pancasila, the truth can be recognized. Justice based on Pancasila is justice that really provides what is needed in the life of the nation and state, is able to provide protection for the rights and obligations of citizens and provides social justice for all Indonesian people. The characteristics of justice based on Pancasila include the value of justice that originates from the precepts of a just and civilized humanity and the precepts of

¹ Anis Mashdurohatun, Hayyan Ul Haq, Sony Zulhuda, Social Function Reconstruction Of Intellectual Property Rights (IPR) Based On Justice Values, International Journal of Law Reconstruction, Volume I, Issue 1, September 2017, pp.141-160

social justice for all Indonesian people which are the embodiment of the Unitary State of the Republic of Indonesia.

The value of justice that emerges from the two precepts reflects the values of the other precepts. It can be concluded that the justice value of Pancasila is a reflection of a unified whole of the precepts contained in Pancasila which emerged from the embodiment of the Unitary State of the Republic of Indonesia (NKRI). Justice based on Pancasila adheres to several principles which include justice based on Belief in One Almighty God, humanizing humans by prioritizing Human Rights, namely the right to obtain justice, unity in realizing justice, justice can be acknowledged for its truth for all Indonesian people, and equal treatment before law.

With the issuance of the Marriage Law, the provisions stipulated in the previous Law, ordinances and regulations, insofar as they have been regulated in the new Law, are declared no longer valid. Even so, Islamic Marriage Law for Muslims to obtain guarantees remains in effect, as can be clearly understood from article 2 paragraph (1) of the Marriage Law and what is implied in many articles of the law. This is also in line with the guarantee in article 29 of the 1945 Constitution which originates from Pancasila, the precepts of Belief in One Almighty God on the basis of the philosophy of the State.

In Article 1 Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage it reads that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Supreme God. One. In Article 2 of the Compilation of Islamic Law, marriage is marriage according to Islamic law, namely marriage, namely a very strong contract or *mitssaqaan ghalidzan* to obey Allah's commands and carrying it out is worship.¹

From some of these meanings, marriage is a legal act, therefore marriage gives rise to rights and obligations, both family law and material law. Which must meet the terms and conditions based on the beliefs and rules that exist and apply to them. Because Marriage Law is a rule that is authentic proof that a valid marriage has taken place which is recognized by law. Legal protection as an effort to protect a person's interests by allocating a human right of power to him to act in the framework of that interest.

According to Soekanto, legal protection is basically protection given to legal subjects in the form of legal instruments. Furthermore, Soekanto explained that apart from the role of law enforcers, there are five others that influence the law enforcement process and its protection. C.S.T Kansil explained that legal protection is various legal remedies that must be given by law enforcement officials to provide a sense of security; both mentally and physically from disturbances and various threats from any party.

According to Setiono, legal protection is an action or effort to protect society from arbitrary acts by authorities that are not in accordance with the rule of law.

Furthermore, according to Setiono, the function of legal protection is to create order and peace so as to enable humans to enjoy their dignity as human beings.

Progressive law is a legal development thought initiated by Prof. Satjipto Rahardjo, is of the view that law is formed for humans, not humans for law. His rationale is that current legal studies have reached deep ecology which is fundamental to anthropocentrism thinking.

Marriage agreements may not conflict with laws, immorality and public interest. Even though the marriage agreement is an agreement in which the agreement is an agreement of the parties who make the agreement, the meaning must be tightened because there is already a basis for what must be made in the marriage agreement. The rules of the marriage contract already exist and there should be no excuse for not knowing that they are regulated.²

¹ Jamadi et al., Legal Reconstruction of Intellectual Property Rights as Joint Property in Marriage Based on Justice Value, *Sch Int J Law Crime Justice*, Nov, 2022; 5(11): 489-494

² Zainurohmah, Marcelia Puspa Andini, Anisa Vira Damayanti, Discourse on Post-Divorce Distribution of Joint Assets in the Perspective of Islamic Law in Indonesia, *Contemporary Issues on Interfaith Law and Society*, Volume 2 Issue 1 (January-June, 2023), pp. 71-86.

A marriage agreement is a taboo in people's lives due to a lack of knowledge and outreach by law enforcers on this matter so that all should understand and if it is useful it can be carried out for example interstate marriages which of course there will be difficulties in terms of marital affairs in both countries. this is not done.

In various countries such as Saudi Arabia, Malaysia and Berunai Darussalam, there are countries that do not regulate marriage agreements in their country's Marriage Law. These countries are predominantly Muslim. However, the divorce rate in the countries of Saudi Arabia and Berunai Darussalam does not publish high numbers or it often occurs, for the State of Malaysia a marriage agreement is made, then the agreement also still has to be approved by the Court. Because marriage agreements in Malaysia can only be made in the form of a deed.

The value of Pancasila justice is that justice based on Pancasila has differences and similarities with other justice. The equation of justice based on Pancasila with other justice is to give equal rights to citizens in obtaining their rights in accordance with the capacity of the citizens themselves. Meanwhile, the difference is that justice based on Pancasila is pure justice for the Indonesian nation. Pure justice is obtained from the principles of Pancasila justice obtained from various ethnic groups in Indonesia. Therefore, justice based on Pancasila is part of the Unitary State of the Republic of Indonesia (NKRI).

Pancasila is NKRI and NKRI is Pancasila. In conclusion, the difference between other justice and justice based on Pancasila lies in the Unitary State of the Republic of Indonesia. In addition, the prominent difference lies in secular and non-secular countries, where justice based on Pancasila (non) secular prioritizes justice based on Belief in One Supreme God. The characteristics of justice based on Pancasila are based on the first principle of Pancasila, namely Belief in One Almighty God. In other words, the characteristics of justice based on Pancasila reflect a form of justice based on Belief in One Almighty God. The justice that appears is justice that comes from God which is represented to humans to create fair and civilized humans and justice for all Indonesian people. The characteristics of justice based on Pancasila which are based on the second principle of Pancasila, namely just and civilized humanity, show that justice is only for the benefit of humans as social beings. Humanity gives the meaning that justice gives what is the human right. The right given is in the form of justice that is realized by the authorities or the government. The character of justice provides protection to humans in obtaining justice. Providing protection of human rights as civilized beings by humanizing humans as social beings who need justice. The second principle of Pancasila is a just and civilized humanity. In theory a rule of law, humanity is the main thing in realizing justice. Humans need justice in the protection of their human rights as social beings that must be respected and valued. The concept of a rule of law always prioritizes the protection of human rights. The concept of justice based on the second principle of Pancasila provides justice in the form of protecting human rights. Humanizing humans and respecting and respecting basic human rights in obtaining justice. The characteristics of justice based on Pancasila foster unity for the realization of justice in Indonesia. In accordance with the third principle of Pancasila, namely the unity of Indonesia, justice that is realized requires mutual agreement in determining between justice and injustice. The agreement requires unity in order to realize justice. The characteristics of justice based on Pancasila need to be realized with the same perception of the meaning of justice. The same perception requires unity in realizing justice. The principle of Indonesian unity fosters the same attitude and perception in interpreting the meaning of justice. Justice in the sense of equality, theoretically requires a common perception and point of view about the meaning of justice. The characteristics of justice based on Pancasila require a common perception of justice by fostering national unity and integrity. The characteristics of justice based on Pancasila are in accordance with the fourth principle of Pancasila, namely democracy led by wisdom in deliberations/representation. This principle upholds the democratic state system in order to realize the justice desired by citizens through their representatives. With a democratic system, it is hoped that justice will be realized through representatives of the people in determining policies which of course provide justice. The characteristics of justice based on Pancasila in theory state law requires a form of deliberation to realize justice. The deliberation manifests a government that is obliged to provide justice protection for citizens. The fourth principle of Pancasila provides the embodiment of democracy from the people, by the people and for the people in order to realize justice. Justice will be realized if realized by a clean government that prioritizes protection for its citizens in obtaining justice. The characteristics of justice based on Pancasila are in accordance with the fifth principle of Pancasila, namely social justice for all Indonesian people providing fair equality for all Indonesian people. This equality provides a just and fair embodiment for citizens to get legal protection. This equal legal protection reflects legal protection to be treated equally before the law for all citizens in order to achieve justice. The fifth principle of Pancasila is social justice for all Indonesian people. This equality embodies justice given to all Indonesian people in obtaining justice. Justice is realized in the interests of all Indonesian people. This principle provides equal justice for all Indonesian people. The same justice is in accordance with the theory of justice, namely justice in the sense of equality. Government protection in realizing justice is no

exception for citizens only in obtaining justice. Justice is given equally in accordance with the rights and obligations of citizens. The characteristics of Pancasila justice are part of the form of justice in the form of principles in forming law. It is necessary to distinguish between legal justice and Pancasila justice. Justice based on Pancasila prioritizes human rights and equal protection before the law in its realization as the principles of law formation based on Pancasila. The characteristics of justice based on Pancasila in the form of protection of human rights and equality before the law, of course, cannot be separated from the principles of the five precepts of Pancasila. Justice based on Pancasila is processed from thoughts about five principles, namely Pancasila as the principle of law formation based on Pancasila justice which prioritizes human rights and equal protection before the law. There are several characteristics related to justice based on Pancasila. Pancasila itself has the following characteristics or characteristics:

1. Pancasila is a national philosophy that only belongs to the Indonesian nation, other countries do not. Pancasila is the result of the original thinking of the Indonesian people which reflects the truth. As a guide in the life of the nation and state. The philosophy of Pancasila reflects the basis of the state in discovering the essence of truth which is a guide in life. The Indonesian people receive an abundance of grace from God Almighty with Pancasila so that the life of the nation and state can be established which reflects justice, benefit and protection. The grace revealed by God Almighty to the Indonesian people is a gift that is not given to other nations. So, pure Pancasila was born from the thought of our founding fathers/mothers in determining the direction of the nation's goals.
2. Flexible in the sense of being able to be placed in conditions of changing times. The flexible nature of Pancasila is proven that Pancasila is able to keep up with changing times from the Old Order period, the New Order period, and the reformation period until now. In following the development of the era, Pancasila is able to place the values contained in it as a guide in the life of the nation and state. Changes in the period of government did not change the substance and values contained in Pancasila, but these substances and values were able to make a positive contribution in the era of government in 300 various periods. This is where Pancasila can be called flexible because it is able to place itself in the changes and developments of the era in accordance with the goals of national and state life.
3. The five precepts are a unified whole that cannot be separated. In interpreting the substance of Pancasila, it is an obligation that the substance of Pancasila cannot be separated. This prevents multiple interpretations of Pancasila from occurring. The full and inseparable meaning of the Pancasila precepts can lead to the same interpretation, the same goals and the same perception in interpreting Pancasila as a guideline for the life of the nation and state. It can be concluded that Pancasila is a unified whole, the precepts in Pancasila cannot be separated from one another because these precepts are interrelated and reflect positive values, one precept with the other precepts.
4. Pancasila is the NKRI and NKRI is Pancasila because Pancasila and NKRI are an agreement that will not be changed. Pancasila exists because the NKRI and NKRI exist based on Pancasila. This shows the close relationship between Pancasila and the Republic of Indonesia. Pancasila and the Unitary State of the Republic of Indonesia are a unity that cannot be changed and need each other because Pancasila is the basis for the life of the nation and state in the Unitary State of the Republic of Indonesia (NKRI).
5. Able to provide a basis for justice in accordance with the style and culture of the Indonesian nation. Because Pancasila is recognized for its truth in a coherent, correspondence and pragmatic way, of course Pancasila has been recognized since Pancasila was born. Pancasila is recognized by many people and serves as a guideline for the Indonesian nation which has been recognized since ancient times until now. The truth is justice that comes from Pancasila, the truth can be recognized. Justice based on Pancasila is justice that really provides what is needed in the life of the nation and state, is able to provide protection for the rights and obligations of citizens and provides social justice for all Indonesian people. The characteristics of justice based on Pancasila include the value of justice that originates from the precepts of a just and civilized humanity and the precepts of social justice for all Indonesian people which are the embodiment of the Unitary State of the Republic of Indonesia.

The value of justice that emerges from the two precepts reflects the values of the other precepts. It can be concluded that the justice value of Pancasila is a reflection of a unified whole of the precepts contained in Pancasila which emerged from the embodiment of the Unitary State of the Republic of Indonesia (NKRI). Justice based on Pancasila adheres to several principles which include justice based on Belief in One Almighty God, humanizing humans by prioritizing Human Rights, namely the right to obtain justice, unity in realizing justice, justice can be acknowledged for its truth for all Indonesian people, and equal treatment before law. Thus the values of Pancasila justice in the reconstruction of marriage agreement regulations after the Constitutional

Court decision is to provide fair equality for all Indonesian people. This equality provides a just and fair embodiment for citizens to get legal protection. This equal legal protection reflects legal protection to be treated equally before the law for all citizens in order to achieve justice. The existence of a time limit in the marriage agreement, through an authentic deed, does not harm the parties and third parties and is approved by public officials and court institutions

TABLE
RECONSTRUCTION OF POST DECISION CONSTITUTIONAL COURT REGULATIONS BASED
ON THE VALUE OF PANCASILA JUSTICE
LAW NUMBER 16 OF 2019 REGARDING AMENDMENT TO LAW 1 OF 1974 CONCERNING
MARRIAGE

Before Reconstruction	MK decision	Weaknesses	After Reconstruction
<p>Article 29</p> <p>(1) At the time or before the marriage takes place, the two parties by mutual agreement can enter into a written agreement ratified by the marriage registrar, after which the contents also apply to third parties as long as the third party is involved.</p> <p>(2) The agreement cannot be legalized if it violates the boundaries of law, religion and decency.</p> <p>(3) The agreement comes into effect from the time the marriage takes place.</p> <p>(4) As long as the marriage lasts, the agreement cannot be changed, unless both parties agree to change and the change does not harm the third party.</p>	<p>In the opinion of the Constitutional Court, Article 29 paragraph (4) of the Marriage Law only regulates marriage agreements made before or at the time the marriage takes place. Whereas in reality, there is a phenomenon of husband and wife who for some reason just feel the need to make a marriage agreement while in a marriage bond. So far, in accordance with Article 29 of the Marriage Law, such an agreement must be made before the marriage takes place and must be placed in a notarial deed.</p> <p>"This marriage agreement comes into effect between husband and wife from the time the marriage takes place. The content regulated in the marriage agreement depends on the agreement of the parties of the prospective husband and wife, as long as it does not conflict with the law, religion and decency or decency. As for the form and content of the marriage agreement, both parties are given the widest possible freedom or independence.</p> <p>the phrase "at the time or before the marriage took place" in Article 29 paragraph (1), the phrase "...since the marriage took place" in Article 29 paragraph (3), and the phrase "during the marriage took place" in Article 29 paragraph (4) of the Marriage Law limiting the freedom of 2 (two) individuals to enter into or when to enter into an "agreement" so that it is</p>	<p>Application of Article 29 In practice, the marriage agreement is kind of hidden, then invalidated by the court, the time limit is not clear and causes a lot of harm to the state in connection with the credit agreement and when it ends is not clear so that it is detrimental to the parties and does not fulfill the values of Pancasila justice</p>	<p>1) At the time or before the marriage takes place, the two parties by mutual agreement can enter into a written agreement that is legalized by the marriage registrar and the court, after which the contents also apply to third parties as long as the third party is involved.</p> <p>2) The agreement cannot be ratified if it violates the boundaries of law, religion and decency, and does not harm state finances.</p> <p>3) The agreement is valid from the time the marriage takes place until no more than 20 years.</p> <p>4) As long as the marriage lasts, the agreement cannot be changed, except if both parties have an agreement to change and the change does not harm the third party, and no more than 20 years</p>

Before Reconstruction	MK decision	Weaknesses	After Reconstruction
	<p>contrary to Article 28E paragraph (2) of the 1945 Constitution as argued by the Petitioners.</p> <p>“Thus, the phrase 'at the time or before the marriage took place' in Article 29 paragraph (1) and the phrase 'during the marriage took place' in Article 29 paragraph (4) of the Marriage Law are conditionally contradictory to the 1945 Constitution as long as they are not interpreted, including during the marriage bond," he said.</p> <p>By declaring that Article 29 paragraph (1) of the Marriage Law is conditionally contradictory to the 1945 Constitution, the Court emphasized that the provisions of Article 35 paragraph (1) of the Marriage Law which were also requested by the Petitioner must be understood in relation to Article 29 paragraph (1) of the Marriage Law in question. "In other words, there is no issue of unconstitutionality against Article 35 paragraph (1) of the Marriage Law,"</p>		
<p>Article 35 paragraph (1) & (2) Marriage Law (1) Property acquired during marriage becomes joint property. (2) The inherited assets of each husband and wife and the assets obtained by each as a gift or inheritance are under the control of each as long as the parties do not specify otherwise.</p>		<p>If there is a divorce, the assets since the marriage and the assets after the marriage agreement after the marriage become a problem</p>	<p>Article 35 paragraph (1) & (2) Marriage Law (1) Property acquired during marriage becomes joint property unless there is a marriage agreement (2) The inherited assets of each husband and wife and the assets each receives as a gift or inheritance, are under the control of each as long as the parties do not specify otherwise and/or there is a marriage agreement.</p>
<p>Article 38 Marriage Law Marriages can break up because: a. Death, b. Divorce and c. on the decision of the Court.</p>		<p>The marriage agreement will become a force that defeats the judge's decision in the event of the consequences of the marriage dissolution</p>	<p>Article 38 Marriage Law Marriages can break up because: a. Death, b. Divorce and c. on the decision of the Court but not because of the basis of the Marriage Agreement.</p>

D. CONCLUSION

The Constitutional Court decision 69/2015 has expanded the meaning of the marriage agreement so that the marriage agreement is no longer interpreted only as an agreement made before marriage (prenuptial agreement) but can also be made after the marriage takes place (postnuptial agreement). The Post-Constitutional Court (MK) Marriage Agreement Regulation only has meaning with the word "as long as it is not interpreted" of course this will not be repeated in the Constitutional Court's decision, because the Constitutional Court's decision is binding which means it applies to all, so what is heavy in this case is a Notary, because the maker of an authentic agreement deed is of course a Notary, the principle of prudence must of course be tightened and in the deed it must be added that the deed must be requested for a Stipulation in Court and it is the Court that determines it must be registered with the Office of Religious Affairs For those who are Muslim and the Service Residential and civil registration for non-Muslims only then the Agreement is valid. Article 29 Marriage Law because it does not have maximum consideration, because it only decides to look at the applicant's reasons and does not see other statutory regulations that give rise to legal consequences because of the decision. Reconstruction of Marriage Agreement Regulations Post Constitutional Court Decisions Based on Pancasila Justice Values, Pancasila values of justice in the reconstruction of marriage agreement regulations after Constitutional Court decisions are to provide fair equality for all Indonesian people. This equality provides a just and fair embodiment for citizens to get legal protection. This equal legal protection reflects legal protection to be treated equally before the law for all citizens in order to achieve justice. The existence of a time limit in the marriage agreement, through an authentic deed, does not harm the parties and third parties, and is approved by public officials and court institutions. Reconstruction of legal norms Article 29 paragraph 1, paragraph 3 and paragraph 4, Article 35 paragraphs 1 & 2, and Article 38 of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage underwent a change in meaning, namely before, during and during the bond Marriage agreement can be carried out.

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