

Formulation of Joint Property Agreement: Civil Code, Balinese Customary Law, and Transcendental Justice

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ABSTRACT

The issue of joint property agreements in marriage is an important issue in family law, especially when divorce occurs. In the context of Indonesia's positive law, the regulation of common property normatively refers to the Civil Code (KUHPercivil), especially Articles 119 to 128. However, in practice in indigenous peoples, especially Balinese people who adhere to Balinese Hindu Customary Law, the arrangement and understanding of common property has different values, norms, and structures, which are often not fully recognized in the national legal system. This normative gap raises conceptual issues regarding the recognition and legal protection of joint property agreements in two different legal systems. This research uses a normative legal approach, with legal sources coming from legislation, judges' decisions. Furthermore, legal materials are analyzed using interpretive descriptive and analytical descriptive. The results of the study show that the common property agreement must not only fulfill the elements of the validity of the agreement in a positive legal manner, but must also reflect the values of justice that live in society, especially transcendental justice, which is justice that comes from religious and spiritual values that are upheld in Balinese Hindu customs. So that the ideal formulation of the concept of a common property agreement is to integrate the normative elements of the Civil Code with Balinese Hindu customary law practices. The binding power of mutual price agreements in the context of juridical and transcendental justice, becomes a form of reconstruction of family law that recognizes the plurality of laws and places substantive and spiritual values of justice as the basis for binding agreements, without ignoring the principles of legality and formal legal validity.

Keywords: Joint property agreements; Civil Code; Hindu-Balinese customs; Transcendental Justice

INTRODUCTION

In the provisions of the Indonesian legal system, a joint property agreement is a legal consequence of a marital bond that has implications for the division of property in the event of divorce. Indonesian law stipulates that any property acquired during marriage is considered joint property, regardless of who earned or registered it (Sukiati et al., 2023a). Upon divorce, joint property is typically divided equally between the spouses, as mandated by Article 97 of the Compilation of Islamic Law (KHI) (Jayusman & Imansyah, 2021). This equal division aims to protect the rights of both parties, especially women who may have contributed as homemakers.

Couples can create agreements before or during marriage to outline the division of assets. These agreements must be notarized and registered with the appropriate authorities (Office of Religious Affairs for Muslims, Civil Registration Office for non-Muslims) (Rachman et al., 2021). If a pre-existing agreement is in place, the division of property will follow the terms of that agreement rather than the default equal division.

Judges in religious courts may consider the roles played by each spouse in acquiring the joint property. This can lead to deviations from the standard 50:50 split, especially if one spouse significantly contributed to the household income. In some regions, customary practices and Islamic law may influence the division of property. For instance, in Central Aceh, the division may consider factors like the household income and child custody, even if these practices diverge from national law (Kusmayanti et al., 2021). There are areas where the law is not explicit, such as the division of property following the annulment of a marriage. This lack of clarity can lead to inconsistent judicial decisions and highlights the need for more comprehensive legal codification (Nurunnisa et al., 2023). In mixed marriages involving foreign nationals, the absence of a property separation agreement can complicate property rights, particularly concerning land ownership, which is restricted for foreigners (Mujiburohman et al., 2023). Mediation in religious courts has a low success rate, with only a small percentage of cases being resolved through this method. Factors such as the absence of parties and third-party interventions often hinder successful mediation (Syafei & Djazimah, 2021). The Indonesian legal system provides a structured approach to the division of joint property upon divorce, emphasizing equal division unless otherwise agreed upon by the spouses. However, regional practices, judicial discretion, and gaps in the law can influence the

outcomes, necessitating ongoing legal reforms to ensure fairness and clarity in property division.

In Indonesia, the regulation of common property is primarily governed by the Civil Code (KUHPerdata), which is based on Western civil law principles that emphasize rationality, individualism, and legal formalism. However, Indonesia's pluralistic society also recognizes customary law, which incorporates moral, religious, and spiritual principles to achieve justice. The Civil Code is rooted in Western civil law, focusing on rational, individualistic, and legal-formal principles (Iswantoro et al., 2020). It is the primary legal framework for property division and other civil matters in Indonesia. Customary law, or "adat law," is deeply embedded in the moral, religious, and spiritual values of Indonesian communities. It emphasizes collective rights and community-based management (Silviana et al., 2021). Customary law is recognized constitutionally, and efforts have been made to harmonize it with state laws, especially after the 1998 reformation (Jayus, 2020). Customary law is particularly prevalent in areas such as land ownership, coastal management, and family law. For instance, coastal management practices like Sasi in Maluku and Panglima Laot in Aceh are based on customary law (Tjiptabudy, 2018).

There have been significant efforts to integrate customary law with national legislation. For example, the Basic Agrarian Law incorporates customary land rights, and recent legislative initiatives aim to provide better recognition and protection for indigenous communities (Lubis & Safithri, 2021). Despite these efforts, conflicts often arise due to overlapping regulations and the differing principles of civil and customary law. For instance, the formal agrarian laws sometimes clash with local wisdom and customary practices, leading to disputes over land and resource management (Rumiarta et al., 2022). Customary law plays a crucial role in environmental conservation and social cohesion. The Marga system in South Sumatra, for example, historically managed natural resources sustainably, but its dissolution led to increased deforestation and environmental degradation (Istianda et al., 2023). The coexistence of the Civil Code and customary law in Indonesia reflects the country's legal pluralism. While the Civil Code provides a formal legal framework, customary law continues to be a vital part of the social fabric, ensuring justice through community-based principles. Efforts to harmonize these systems are ongoing, aiming to balance individual rights with collective community values for a more inclusive and just legal system.

Balinese Hindu Customary Law, known as Adat law, plays a significant role in regulating joint property agreements within the community. This customary law is deeply

rooted in collective and spiritual values, emphasizing the sustainability of family values and the sanctity of marriage bonds. However, the integration of these customary practices with the national legal system often leads to conflicts, especially when joint property agreements are disputed in court. The Balinese customary legal system operates alongside the Indonesian state legal system, creating a pluralistic legal environment (Kelly & Windia, 2019a). This duality can lead to conflicts, particularly when national laws do not fully accommodate the values and practices of customary law (Sukirno et al., 2024). Under Indonesian national law, any property acquired during marriage is considered joint property and must be divided equally upon divorce or death, unless there is a prior agreement between the spouses (Salma et al., 2025). This statutory approach may not always align with the communal and spiritual principles of Balinese Hindu Customary Law, which can complicate legal proceedings.

The imposition of modern planning systems and market-based practices by the state has led to the weakening of Adat land tenure and the disintegration of traditional land management institutions. The administration of customary land often includes only the names of individuals who control the land, making it difficult for indigenous villages to prove communal rights (Hariyanto et al., 2024). This individualization can undermine the collective nature of property agreements under customary law. Balinese society is patriarchal, and women often face marginalization in property rights and decision-making within the family and customary affairs (Dewi, 2020). This can further complicate the equitable distribution of joint property in legal disputes. The coexistence of multiple legal orders can impact the defense of human rights. In cases such as teenage pregnancy outside of marriage, state agents and Adat authorities collaborate to fit these situations into the local normative system, highlighting the complexities of legal pluralism (Horii, 2019). The integration of Balinese Hindu Customary Law with the national legal system presents significant challenges, particularly in the context of joint property agreements. The erosion of customary practices, individualization of communal land, and gender inequality are key issues that need to be addressed to ensure that customary values are respected and upheld in legal proceedings. The ongoing tension between state law and customary law underscores the need for a more inclusive and participatory approach to legal governance in Bali.

Balinese Hindu Customary Law, deeply rooted in the island's culture, regulates joint property agreements with a focus on collective, spiritual, and family-oriented values. This customary law often conflicts with the national legal system, leading to legal challenges when

disputes arise. Balinese customary law operates alongside the Indonesian state legal system, creating a pluralistic legal environment (Kelly & Windia, 2019b). This duality can lead to conflicts, especially in land and property matters, where state laws prioritize individual rights and market-based practices over communal and spiritual values. In Balinese Hindu Customary Law, joint property (*harta gono-gini*) is managed collectively and spiritually, emphasizing the sanctity of marriage and family values.

Thus, this study aims to explore and compile the ideal concept of integrative common property agreements, namely combining positive legal norms with customary law principles, and examining the binding power of these agreements in the framework of transcendental justice, as a form of actualization of legal pluralism and protection of local values in the national legal system.

RESEARCH METHOD

This research uses a socio-legal approach (socio-legal research), which is a legal research method that not only focuses on written legal norms (law in the books), but also considers social realities and legal practices that live in society (law in action) (Ivánkova & Wingo, 2022). This approach is relevant because the research not only examines the norms in the Civil Code, but also explores the values of Balinese Hindu customary law that are local and spiritual. This type of research is qualitative-empirical (a combination of normative approaches (analysis of legal documents, regulations, court decisions) and empirical approaches (direct observation and interviews with parties involved in customary law practice)). The statute approach is to examine the legal norms contained in the Civil Code, the Marriage Law, and related regulations. Conceptual approach, which examines the concept of transcendental justice and common property in legal doctrine and literature. The data was analyzed descriptive-qualitatively, using thematic and interpretive analysis techniques. Normative data is studied based on the theory of transcendental justice and legal pluralism, while empirical data is processed to find the reality of implementation and the binding force of the common property agreement substantively.

RESULTS & DISCUSSION

A. Ideal Concept of Joint Property Agreement: A Comparison of Positive Law Norms with Balinese Customary Law Principles

Marital property agreement is an important aspect of family law, especially in ensuring justice, legal certainty, and protection of the rights of husband and wife after divorce or death of one of the parties. In Indonesia, it is regulated in Article 119 of the Civil Code (KUHPerdara), but in practice, especially in areas with a strong customary law system such as Bali, customary norms often contribute significantly to the regulation and resolution of joint property disputes.

The Civil Code may include provisions for resolving disputes related to co-ownership. This could involve indemnities for excluded co-owners or rules for managing shared resources (León Hilario, 2023). Effective governance and management of common wealth is essential for sustainability. This includes favourable land tenure arrangements. Common ownership in the Civil Code is a complex and diverse concept involving collective ownership, defined use rights, and specific legal frameworks. It plays an important role in environmental conservation, economic value, and sustainable management, with various examples and legislative approaches seen in different countries.

The division of joint property as a result of divorce is an issue that has been normatively regulated in various instruments of legislation in Indonesia, both in general civil law and special laws related to mortgage rights. First, the regulation of joint property in marriage is regulated in the Civil Code, specifically in Article 119 of the Civil Code which states that:

"unless otherwise specified in the marriage agreement, then with the continuation of marriage, legally there is a mixing of assets between husband and wife. The joint property becomes joint property, regardless of the origin of its acquisition during the marriage period".

Bali's customary legal system, which operates alongside the Indonesian state legal system, is in a state of flux. Efforts to bridge traditional values with modern legal principles are ongoing, but customary law still has a significant impact on women's rights and property inheritance (Kelly & Windia, 2019c). There is a recognised need for legal reform to provide better protection for women under Balinese customary law. This includes addressing the inequalities faced by childless widows and ensuring that women have more secure property rights (Westendorp, 2015). Women generally have limited inheritance rights. If a marriage ends in divorce, a woman usually returns to her original home without a share of the marital property (*harta karun-gini-gono*). If there are children, the property is inherited by the husband and children; if there are no children, it belongs to the husband's family (Bunga et al., 2024).

In the Civil Code, especially Article 119, it is stated that with marriage, there is a mixing of assets between husband and wife, unless otherwise specified in the marriage agreement. Thus, the regulation of joint property in positive law is still oriented towards the community property system, which places the position of husband and wife as joint owners of all property obtained during marriage, except for inheritance and grants. Joint ownership in the Civil Code refers to ownership by more than one person, where the property is held collectively rather than individually. This concept is distinct from public property, which is owned by government bodies, and private property, which is owned by individuals or corporate entities(Everard & Dupont, 2018). Common ownership often includes various forms of collective enjoyment recognised by the legal system. For example, in Italy, common property rights include grazing, hunting, logging, collecting firewood, and sowing crops(Battisti & Pisano, 2022a). In Italy, the concept of common ownership has evolved to include the environmental value of the land, which is considered in legislative initiatives for land exchanges(Battisti & Pisano, 2022b). Joint property management can provide social, cultural, and non-market benefits to local stakeholders. Effective management requires competitiveness in the market and expertise in management, engineering and sales. Common property can have significant environmental and economic values, especially in rural and mountainous areas. These values are often recognised and protected by national law(Forte & Cupo, 2024).

Legal norms are often inadequate when applied in areas with customary law systems that govern differently (Muhamad Ilham Muklas, 2025). An integrative approach between positive law and customary law is needed to create substantive and contextual justice. In the context of Balinese customary law, the patrilineal family system has implications for property ownership and inheritance. The division of property in Balinese society is based on a kinship system that emphasises the social responsibility of male descendants towards the *sanggah* or family place of worship(Farhana Bakri & Sudaryatmi, 2017). Therefore, after divorce, women usually do not get a share of the joint property, unless specified in a customary agreement or through customary mediation.

The concept of joint property in marriage and post-divorce in Indonesia with Balinese legal subjects, according to legal experts and based on case examples. In Indonesia, joint property acquired during marriage is deemed to be divided between husband and wife, regardless of who acquired it or whose name it is registered in. After divorce, this property

is usually divided equally between the spouses, as stipulated by Indonesian law (Sukiati et al., 2023b). This principle aims to protect the rights of both parties, particularly women who may have contributed to the household in non-monetary ways. The ideal concept of a joint property agreement should not rely solely on the normative text of the Civil Code, but also consider local values (local wisdom). The following comparison of Positive Law Norms with Balinese Customary Law Principles and aspects of transcendental justice can be presented in table 1.

Table 1.

Comparison of Positive Law Norms with Balinese Customary Law Principles and aspects of transcendental justice

Aspects	Civil Code	Balinese Hindu Customary Law	Equation	Transcendental Justice
Legal Basis	Book I of the Civil Code, especially Article 119	Unwritten, oral inherited law and customary practices	Regulating the relationship between husband and wife and the division of property	Prioritizing moral values, spirituality, and cosmic balance
The Concept of Common Property	Property acquired during marriage is joint property, unless otherwise agreed (Pre-Marital Agreement)	Property is acquired jointly but takes into account patriarchal principles and customary inheritance systems	Both know the concept of property acquired during marriage	Demand a fair and civilized division, not just formal legal
Legal Subject	Husband and wife as equal parties in the contract agreement	The husband is dominant, but the role of the wife is still recognized in the customary structure	Both parties are recognized as owners in a family context	The subject is seen as a moral-spiritual entity, not just a positive law

Form of Agreement	It must be written and made before marriage (Article 147 of the Civil Code)	Usually unwritten, based on family and community agreement	Both can be in the form of an agreement even though the mechanism is different	Emphasis on holy intentions, mutual awareness, and honesty
Binding Strength	Juridically binding based on state law	Socially and spiritually binding in indigenous communities	Both have binding power against the agreeing party	Binding morally and inwardly, having an impact on social harmony
Dispute Resolution	Through the courts (Civil)	Through customary forums (<i>Bendesa Adat, Krama Desa</i>)	There is a settlement mechanism, although the paths are different	Emphasizing deliberation, mediation, and relationship healing
Main Objectives	Legal protection and clarity of rights	Preservation of family relationships and community dignity	Maintaining family justice and harmony	Achievement of substantive justice: legal, customary, and spiritual justice

Source: Civil Code and Balinese Hindu Customary Law (processed)

The division of joint property after divorce is also influenced by Islamic law, which emphasizes fairness and fairness. Islamic jurisprudence, as applied in Indonesia, considers the welfare of family members and obeys the commands of the Qur'an and prophetic tradition (Zainurohmah et al., 2023). However, the concept of joint ownership is not explicitly detailed in classical Islamic jurisprudence and has evolved over time to address contemporary issues. In Bali, where Muslims are a minority, Islamic family law, including the division of joint property, is enforced by the Office of Religious Affairs (KUA) and the Religious Court. These institutions ensure that the principles of Islamic law are upheld in matters of marriage, divorce, and joint property (Muhammad et al., 2021). The Balinese Muslim community, despite being a minority, follows this legal framework to maintain harmony and peace in the wider Balinese society. One form of integration can be done through a marriage agreement that accommodates Balinese customary law norms as long as

it does not conflict with the principles of justice, gender equality, and the constitution. The form of agreement that accommodates customs and national law is framed in the perspective of substantive justice, so that it is not just a legal formality.

The application of substantive justice as a principle in common property agreements encourages a contextual approach based on value justice, and not just procedural justice. This means that the distribution of joint property after divorce in Bali and/or Hindu communities in Bali and outside Bali, is not solely based on the textual rules of the Civil Code, but also considers the social burden, economic contribution, and existence of women in the customary system. For justice to be seen as a concrete realization of rights and participation, not just conformity to formal norms.

The ideal model of an integrative-based joint property agreement could include, 1) A pre-nuptial agreement based on customary agreements and national laws; 2) A clause to recognize non-material contributions in the deed of agreement, 3) Strengthening the role of customary institutions in mediation accompanied by legal assistance, and 4) Drafting derivative regulations that recognize the flexibility of local customary law as long as it does not conflict with human rights and the principle of equality.

B. The Binding Power of Common Property Agreements in the Framework of Transcendental Justice

A joint property agreement is a private contract between a husband and wife that regulates the ownership and division of property during and/or after marriage. From a legal perspective, this agreement has binding force as well as the principle *of pacta sunt servanda* as regulated in Article 1338 of the Civil Code. However, in practice, joint property agreements often do not provide substantive protection, especially in the context of power relations, cultural values, and spirituality. Therefore, it is important to review the binding power of this covenant in the framework of transcendental justice, that is, justice that is not only legalistic but also ethically and spiritually charged.

Juridically, the binding power of an agreement is governed by Article 1338 of the Civil Code which states that "*All agreements made lawfully shall be binding on those who make them.*" This provision requires that the agreement must be made legally, free from coercion, and not contrary to decency and public order. By default, any property acquired during a marriage is considered joint property, regardless of who acquired it. In the event of divorce or death, this property is usually divided equally between the spouses unless the marriage

agreement stipulates otherwise (Mesraini, 2012). In cases where there is no agreement, judges in religious courts generally adhere to the rule of law, dividing joint ownership equally. However, if there is an agreement, the division follows the terms of the agreement (Sukiati et al., 2023c). Indonesia's Marriage Law requires the separation of property in mixed marriages to prevent foreigners from owning land. This separation must be documented in the marriage agreement. The binding power of private contracts such as marital agreements must be tested not only in terms of formality, but also in terms of substantive justice and human values, especially when it comes to family relations that are layered with social and spiritual norms.

Transcendental justice is a multifaceted approach to justice that integrates moral, spiritual, and legal dimensions, emphasizing that law is not merely a tool of power or a rational normative system, but a manifestation of divine values and humanity. This concept aligns with the broader notion of transcendental law, which aims to address legal gaps by focusing on higher and more abstract objectives such as justice, effectiveness, sustainability, and fairness (Isman et al., 2024). Transcendental justice involves the spiritualization of legal systems, promoting the dematerialization of the legal system, limiting domination, reducing coercion, and fostering communion and consensus in society (Domingo, 2019). This approach recognizes the higher dimension of law, helping to rethink, reorient, renew, and reform legal systems.

The concept of transcendental justice is deeply rooted in the belief that justice encompasses both divine and natural law. Judges, in this context, act as mediators between the transcendent space of God's will and the immanent space of human existence, ensuring that laws reflect divine principles (Hrabakova et al., 2022). Justice is seen as a cosmic system, a virtue of social institutions, an agreement among parties, or integral righteousness of a person. This multifaceted view acknowledges that principles of justice are influenced by local mythology, religion, and shared history, yet some principles remain universal across cultures (Krašovec, 2015). Justice also has an existential dimension, rooted in irrational attitudes and intuitions. It connects law as a rational phenomenon with particular existential experiences, emphasizing the unity of moral and legal orders. The integration of Islamic jurisprudence principles, such as *maqāṣid al-Sharī'a* (objectives of Islamic law), into global frameworks highlights the importance of balancing justice and moderation. This approach offers a culturally inclusive and ethically grounded perspective on justice.

Transcendental law can guide legal reforms by providing a comprehensive outlook on achieving larger goals, such as justice and sustainability, especially in the digital era. The evolution of legal systems through spiritualization can inspire greater respect for the law and legal systems, fostering a more just and cohesive society. Incorporating diverse cultural and religious principles into legal frameworks can enhance the ethical grounding of laws and address global security challenges more effectively.

In this context, justice is not enough to be measured by legal formalities, but must pay attention to inner balance and civilized relations. Justice is often seen as a more complex and elusive concept compared to legality, which is established through positive law. Justice depends on certain values, which can vary and affect its content, leading to potential conflicts between legality and justice. A transcendental approach to family law is recommended for a pluralistic system such as Indonesia, because it pays attention to the existence of customary norms, religions, and collective ethics of society. In practice, joint property agreements often only accommodate the formal economic or legal power of the husband and wife, without taking into account the non-material contributions of either party. For example, the wife's contribution as a housewife is not always reflected in the post-divorce division of property, although she plays a major role in maintaining and supporting the family's economic life.

A transcendental justice approach emphasizes that contributions are not merely material but are forms of devotion that must be valued spiritually and socially. This principle focuses on laws that transcend the material and temporal worlds, aiming to achieve higher objectives such as justice, sustainability, and fairness (Isman et al., 2024). It suggests that legal systems can be restructured to incorporate abstract values, which can guide changes towards broader goals, including spiritual and social justice. Spiritual values are deeply connected with social relations and the nature of social structures. These values play a crucial role in human development and societal formation, reflecting the identity and historical evolution of a nation (Abdullayeva, 2023). This connection underscores the importance of valuing contributions that are spiritually motivated and socially impactful.

Devotion, as a form of commitment and loyalty, can be expressed through various actions, including charitable giving and social contributions. This devotion is often driven by spiritual discernment and the desire to make a positive impact on others (Abdullayeva, 2023). Recognizing the spiritual and social dimensions of such contributions can enhance their perceived value and significance (Domingo, 2019). The concept of spiritual capital

highlights the importance of core social values and the internal dynamics that drive individuals to live by truth, goodness, and love. This form of capital is essential for creating a moral and ethical culture that prioritizes social and spiritual well-being over mere economic expediency. Historical and contemporary devotional practices, such as meditation and prayer, emphasize the transformative power of spiritual engagement. These practices are not only personal but have ethical and public implications, affecting the senses and soul directly. Therefore, the binding power of the agreement must not close the room for correction if the provisions in the agreement are proven to cause real injustice to one of the parties.

In the framework of Satjipto Rahardjo's *progressive law*, even legally valid agreements can be declared unfair if they substantively injure human values (Kiky Erlani, 2018). Therefore, in the realm of the common property agreement, the binding power must be softened by inner justice and local wisdom, including the principles of gender equality and spirituality. The Supreme Court in several rulings has accommodated this non-legalistic justice, one of which can be seen in Decision Number 76/Pdt.G/2016/PN.MTR, which recognizes the wife's right to a house even though it is not listed in the deed of agreement because it considers the contribution and sustainability of the children's lives.

Harmonization between positive law and transcendental value is carried out in the preparation and interpretation of the common property agreement (Nurjannah Septyanun; Khudzaifah Dimyati & Bambang Setiaji; Muh. Mu'inudinillah Basri, 2020). Notaries and advocates as deed-makers pay attention to ethical values and substantive equality, not just formal validity. Civil law reform is carried out by not only sticking to Article 1338 of the Civil Code but opening up space for the interpretation of social and spiritual justice. Strengthening mediation based on local wisdom and religion as a means of resolving joint property disputes after divorce.

The ideal model of a common property agreement is based on legal pluralism and transcendental justice. Legal pluralism allows for the recognition of property rights that exist outside the laws of the state, such as those based on customary customs or customary religious practices (Suaidi; Hannan Abd, 2024). This can lead to a more comprehensive understanding of property rights that respects diverse cultural norms. In Indonesia, the integration of customary and religious law into the national legal framework has been suggested to promote agrarian justice and sustainable land management, highlighting the potential for legal pluralism to harmonize state and non-state laws.

CONCLUSION

This study reveals that the formulation of the concept of a common property agreement in the Indonesian legal system shows that there is legal pluralism between the Civil Code and customary law, especially the Balinese Hindu Customary Law. The Civil Code views joint property as the result of marriage that is subject to the principles of agreement and formal justice, while Balinese Hindu Customary Law binds the concept of common property to the values of spirituality, communality, and sustainability of the traditional family. Through a socio-legal approach and based on the theory of transcendental justice, it is found that substantive justice can only be achieved if formal legal mechanisms accommodate the customary and spiritual values that live in society. Legal implications of Inkracht Decision Number: 76/Pdt.G/2016/PN. The MTR shows a conflict between the binding power of the agreement on the right of dependency and the protection of customary values and substantive justice in the distribution of joint property after divorce. Thus, a model for the formulation of a collective property agreement is needed that is able to bridge the gap between formal legal certainty and social legitimacy based on transcendental justice values. This is important to create a legal system that is responsive to socio-cultural diversity and strengthen the recognition of customary law within the framework of national law.

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