

**IMPLICATIONS OF CONSTITUTIONAL COURT DECISION NUNBER 69/PUU—XIII/2015
ON THE STATUS OF MARRIAGE AGREEMENTS AND THE REGULATION OF JOINT
PROPERTY SEPARATION****Bertha Salmania Putri**

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mj122@ums.ac.id**ABSTRACT**

This research is motivated by the increasing number of divorce cases involving disputes over joint property acquired during marriage. Additionally, many couples bring assets into the marriage, prompting some to enter into a marriage agreement that separates their assets. This study aims to examine: (1) the legal standing of marriage agreements made before and during marriage based on Constitutional Court Decision Number 69/PUU-XIII/2015, and (2) the implications of this decision on marriage agreements made during marriage. The research method used is normative juridical. The study aims to provide a clear and concise overview of the legal force of marriage agreements executed after marriage. The results indicate that (1) marriage agreements made after marriage carry the same legal force as court rulings and are legally recognized under the Constitutional Court Decision, and (2) the decision introduces new provisions allowing marriage agreements to be made during marriage—deviating from previous provisions under Law Number 1 of 1974 on Marriage, which only allowed agreements to be made before marriage.

Keywords: Marriage Agreement, Divorce, Joint Property**INTRODCUTION**

Marriage is a form of worship officially recognized by the state through the Office of Religious Affairs or the Religious Court under the direct supervision of the Ministry of Religious Affairs. In Indonesia, marriage can only be conducted between individuals of the same religion and is valid only if the requirements and procedures are fulfilled in detail during the registration process. Wirjono Prodjodikoro, in his writings, emphasized that the continuation or dissolution of a marriage bond, particularly under special circumstances, depends largely on the personalities of the husband and wife and

their individual circumstances. In essence, the life of a married couple can function if both parties voluntarily agree to live together.

Regulations regarding marriage itself are regulated in Marriage Law Number 1 of 1974 which explains the meaning of marriage itself, where marriage is a relationship that binds both physically and spiritually between a man and a woman who decide to form a legal and legal bond, namely the bond of husband and wife with the hope of creating a family in accordance with the Almighty God. From the brief understanding in article 1, it can be concluded that a marriage is not only a legal or physical bond because basically a marriage is a spiritual bond that exists between both parties who are obliged to provide mutual support to each other in order to form a dream family in accordance with the Almighty God. [1]

Divorce is categorized into two types: death divorce and living divorce. Death divorce occurs when one spouse passes away, confirmed by a death certificate. [2] Living divorce includes “*talak*” divorce, initiated by the husband, and “*gugat*” divorce, initiated by the wife. [3]

Divorce often leads to disputes over property division. Without a specific agreement, any property acquired during the marriage is considered joint property and is divided equally, regardless of whose name it is under. However, some couples enter into a marriage agreement to separate ownership. These agreements are validated through notarial deeds and registered with the Marriage Registry, as outlined in Article 38 of Law Number 1 of 1974 on Marriage.

As awareness grows among couples planning to marry, more are opting to create marriage agreements to protect assets or businesses from the financial consequences of the other party’s misconduct. A marriage agreement is binding once a marriage takes place, whether made before or during the marriage. The Constitutional Court Decision No. 69/PUU-XIII/2015 has created flexibility, allowing marriage agreements to be made at any time. The core of the ruling affirms the right of spouses to protect their assets and provides legal certainty for them and third parties. [4]

Marriage agreements are recommended to be prepared with a notary. As an authorized official, the notary can draft and record the agreement. Alternatively, the Office of Religious Affairs may also record the agreement, especially after the Constitutional Court ruling, which addressed issues such as the inability to process the sale or transfer of jointly owned property by one spouse. [5]

In addition, the ruling changes the rules to allow marriage agreements to be made during the marriage (postnuptial agreement), while still referring to certain formal requirements such as making it before a notary. This ruling provides flexibility for couples to adjust the management of their assets after the marriage takes place. [6]

A brief description above, then in this study, the researcher will discuss 1) The Legal Position of Marriage Agreements Made Before and During Marriage Based on the Constitutional Court Decision

Number 69/PUU-XIII/2015 and 2) Implications of the Constitutional Court Decision Number 69/PUU-XIII/2015 on Marriage Agreements Made During Marriage.

A. RESEARCH METHOD

In this study, normative legal research or sociological law is used with a Legislation approach. [7] This study examines the legislative approach to marriage agreements after marriage that takes place in the midst of society both regionally, nationally, and internationally. This type of research is descriptive research with and explains the phenomena of events that occur at this time. This study uses legislative data as primary material and Marriage Law Number 1 of 1974 as secondary material and scientific references derived from literature studies in the form of data from books, journals, literature as tertiary material, and opinions of legal experts and several other sources that can support the success of this research.

DISCUSSION

1. The Legal Standing of Marriage Agreements Made Before and During Marriage Based on Constitutional Court Decision No. 69/PUU-XIII/2015

A marriage agreement is a legally recognized element of marriage. Its function is to serve as a legal safeguard in marriage, particularly in regard to property rights, helping prevent conflicts between spouses by clearly regulating the separation of personal and joint assets. Such agreements can cover property acquired before or during marriage by either party. Often, the financial situations of spouses differ—for example, one partner may own significantly more assets than the other. Over time, marriage agreements have evolved to address not only property brought into the marriage but also property acquired during the marriage. [8] Both prenuptial and postnuptial agreements hold the same legal weight when executed through mutual consent, notarized, and registered with the Marriage Registrar. This is affirmed under Constitutional Court Decision No. 69/PUU-XIII/2015, based on Article 29 of Law Number 1 of 1974 concerning Marriage.

2. Premarital Agreements, also known as Prenuptial Agreements, are mostly used by prospective husband and wife to set boundaries for what they own and bring before marriage. Ownership of property or business ownership is an important aspect of the separation of assets in a Marriage Agreement. In addition to saving personal ownership, a Marriage Agreement can occur if debts are made by one party, then assets owned before marriage cannot be sued or used without the permission of the original owner of the assets. [9]
3. The Marriage Agreement made during the marriage based on the Constitutional Court Decision has considered that according to the statement in Article 130 paragraph (2) HIR, which states that the peace deed regarding the division of joint assets has the same power as a judge's decision that has permanent legal force and has executory power (executory kracht), then the Plaintiff and Defendant

are ordered to comply with the contents of the peace deed voluntarily. Thus, it can be concluded that the marriage agreement that has been made through a Notary or just a Marriage Agreement that has a Stamp on the Signatures of both parties is considered valid like a Judge's Decision. [10]

From this, we can conclude that a marriage agreement is a written, conscious declaration by a married couple to set boundaries on personal property ownership. Once legally signed, any property—acquired before or after the marriage—remains individually owned and not merged into the marital estate. Similarly, any debts incurred are the responsibility of the spouse who created them. [11]

The reverse also applies: if no marriage agreement exists before the wedding, all property is considered joint marital property by law. This shared ownership implies joint management and mutual responsibility for property acquired during the marriage. [12]

In many marriage agreements that are made before marriage, there is an agreement on the separation of assets that can be classified as a complete separation of assets, or a division in a certain amount with certain rules that are agreed upon and mutually agreed upon, unless there is an agreement between both parties stating for changes or cancellations, but the changes or cancellations do not harm third parties. [13]

According to the decision, a marriage agreement can be made when the marriage has occurred, which can then be legalized through the issuance of a notarial deed and then recorded through the Marriage Registry or Population Registry so that the marriage agreement can be said to be valid in the eyes of the law. [14] Therefore, to avoid losses that occur to third parties in this agreement is a notary, in making a marriage agreement after a marriage bond has occurred, the notary gives instructions to both parties who make a marriage agreement to announce that a marriage agreement will be made in the mass media so that parties who object to the emergence of the marriage agreement can provide an opportunity to hold a discussion before the agreement is made by the parties who will get married. [15]

2. Implications of Constitutional Court Decision No. 69/PUU-XIII/2015 on Marriage Agreements Made During Marriage

According to the Constitutional Court Decision, the marriage agreement contains rules agreed upon by both parties and has been adjusted to a mutual agreement. Both the separation or division of assets will be included in the agreement so that joint assets or assets acquired before marriage can be adjusted to the agreement in their division and when a divorce occurs, the joint assets will be divided according to the written agreement. [16]

This Constitutional Court ruling tested the constitutionality of Article 29(1) of Law Number 1 of 1974, which originally required that marriage agreements be made only before marriage. The Court found this limitation to be unconstitutional and declared the article no longer legally binding insofar as it did not allow for marriage agreements to be made either before or during the marriage, so long as they are made

with mutual consent and validated by a marriage registrar or notary. Once enacted, the contents of such agreements also apply to third parties, provided those third parties are affected by the agreement.

Previously, marriage agreements made after marriage were often not granted legal recognition by the courts. Thus, the Constitutional Court issued this ruling to ensure legal clarity. For example, in District Court Decision No. 253/Pdt.P/2017/PN.Tng, a prenuptial agreement had been made before marriage but had not yet been registered. The court, referring to Article 29(1), required the agreement to be re-registered for it to be legally enforceable—highlighting the rigid pre-marriage timing requirement that the Constitutional Court later overturned.

A marriage contract is a bond or agreement that must be made and stated in the form of a notarial deed before the marriage contract is carried out. This is based on article 147 of the Civil Code. Because the marriage contract is made before the marriage contract, then after the *ijab qobul* is pronounced in front of the Civil Registry employee, the marriage contract is declared active and applies to anyone who is bound since the third party of our agreement registers the local District Clerk. If the marriage contract is not registered with the District Clerk and has not been recorded as a notarial marriage deed, the third party or notary legally declares the agreement formed by the husband and wife to be invalid or in other words that both are undergoing marriage without any separation of property and this is also clearly explained in article 152.

The Constitutional Court ruling is highly relevant in clarifying the legal separation of assets between husband and wife. Previously, agreements could only be made before the marriage, but the decision now allows such agreements to be made at any point during marriage, helping define property status and prevent the blending of pre-existing assets with marital property. This minimizes future legal disputes and provides legal protection for interfaith marriages, where property ownership arrangements may be particularly complex. [17]

Substantively, the Court's decision provides stronger legal certainty for marriage agreements. It affirms legal protection for the agreed terms, allows greater freedom in drafting agreements, and removes the time constraint previously imposed by Law Number 1 of 1974. [18] However, it also stresses that marriage agreements must still be registered with the Marriage Registry Office to be legally binding against third parties. In the absence of such agreements, property acquired during marriage will be treated as joint property and subject to equal distribution during divorce, as determined by applicable law. [19]

From a legal perspective, assets acquired after marriage are viewed as the result of shared effort and are regulated under Indonesian civil law, including Article 35 of the Marriage Law and Article 1238 of the Civil Code. These laws state that all property obtained during marriage is jointly owned unless a marriage agreement states otherwise. Exceptions apply for individual property acquired prior to marriage, through inheritance, or as a gift. Under Constitutional Court Decision No. 69/PUU-XIII/2015, spouses may separate their assets, meaning that even property obtained during the marriage may not be considered

joint property if stated in the agreement. However, the agreement may include exceptions stating that certain assets will still be treated as joint property.

CONCLUSION

Based on the discussion above, the following conclusions can be drawn:

1. The legal standing of Constitutional Court Decision No. 69/PUU-XIII/2015 affirms that marriage agreements made during marriage are legally valid and possess the same legal force as prenuptial agreements. This equal treatment ensures that both types of agreements are legally recognized and can be used as valid legal references in the event of divorce. Since these agreements are executed before a notary public and registered with the District Court, they carry permanent legal force and executorial power, requiring both the plaintiff and the defendant to voluntarily comply with the terms of the agreement.
2. The Constitutional Court's decision Number 69/PUU-XIII/2015 reinforces that a postnuptial agreement (made during marriage) has the same authority as a court decision—as long as it is registered in a notarial deed. The decision has reshaped the legal landscape, which previously only recognized agreements made before marriage, as outlined in Law Number 1 of 1974 on Marriage. Post-decision, both pre- and post-marital agreements now enjoy the same enforceability and legal certainty. This ruling is not intended to inconvenience married couples, but rather to offer greater flexibility and freedom in determining the terms of property arrangements within a marriage. It empowers spouses to tailor their financial agreements in a way that best suits their needs—either before or during their marriage—while still ensuring full legal protection and clarity.

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