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## **Marriage Agreements Following Constitutional Court Decision Number 69/PUU/XII/2015: Normative Implications for the Protection of Joint Property**

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### **Abstract**

The Constitutional Court Decision No. 69/PUU-XII/2015 marked a significant legal reform in Indonesia's marriage law by amending Article 29 of Law No. 1 of 1974 concerning Marriage, which previously restricted the making of prenuptial agreements to before or at the time of marriage. Following this decision, spouses are now permitted to create or amend marital agreements during the course of their marriage. This study aims to examine the normative implications of this ruling, particularly in relation to the protection and management of joint marital

property. Using a normative juridical method with statutory and conceptual approaches, this research analyzes how the decision reshapes the legal framework governing marital property arrangements and enhances the protection of individual and joint ownership rights within marriage. The findings reveal that the Constitutional Court's interpretation expands the legal meaning of marital agreements, providing greater flexibility and legal certainty for married couples in managing their assets. Nevertheless, challenges remain in its practical implementation, particularly concerning the registration process, the recognition of third-party rights, and the potential emergence of legal uncertainty if not properly regulated. Therefore, additional technical and procedural guidelines are necessary to ensure that the objectives of fairness, legal certainty, and protection of property rights can be effectively realized in accordance with the spirit of the Constitutional Court's decision.

**Keywords:** *Prenuptial Agreement, Constitutional Court, Joint Marital Property, Legal Certainty, Normative Implications.*

## **Abstrak**

Putusan Mahkamah Konstitusi Nomor 69/PUU-XII/2015 menandai reformasi hukum yang signifikan dalam sistem hukum perkawinan di Indonesia dengan mengubah ketentuan Pasal 29 Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, yang sebelumnya membatasi pembuatan perjanjian perkawinan hanya sebelum atau pada saat perkawinan dilangsungkan. Setelah putusan tersebut, suami istri diperbolehkan untuk membuat atau mengubah perjanjian perkawinan selama perkawinan masih berlangsung. Penelitian ini bertujuan

untuk mengkaji implikasi normatif dari putusan tersebut, khususnya dalam hal perlindungan dan pengelolaan harta bersama. Dengan menggunakan metode penelitian yuridis normatif melalui pendekatan perundang-undangan dan konseptual, penelitian ini menganalisis bagaimana putusan Mahkamah Konstitusi tersebut membentuk kembali kerangka hukum terkait pengaturan harta perkawinan serta memperkuat perlindungan terhadap hak kepemilikan individu dan bersama dalam rumah tangga. Hasil penelitian menunjukkan bahwa putusan ini memperluas makna dan fungsi perjanjian perkawinan, memberikan fleksibilitas dan kepastian hukum yang lebih besar bagi pasangan suami istri dalam mengelola harta mereka. Meskipun demikian, masih terdapat tantangan dalam penerapannya, terutama terkait proses pendaftaran, pengakuan terhadap hak pihak ketiga, serta potensi munculnya ketidakpastian hukum apabila tidak diatur secara teknis dengan jelas. Oleh karena itu, diperlukan pedoman teknis dan prosedural tambahan agar tujuan keadilan, kepastian hukum, dan perlindungan terhadap hak atas harta bersama dapat terwujud sesuai dengan semangat putusan Mahkamah Konstitusi tersebut.

*Kata kunci: perjanjian perkawinan, Mahkamah Konstitusi, harta bersama, kepastian hukum, implikasi normatif.*

## **Introduction**

Constitutional Court Decision No. 69/PUU-XII/2015 represents a significant milestone in the development of

family law in Indonesia. This decision fundamentally changed the provisions of marriage agreements in Law No. 1 of 1974, which previously only permitted agreements to be made before or during the marriage.<sup>1</sup> With this ruling, married couples are permitted to create or amend a prenuptial agreement after the marriage has taken place. This demonstrates an effort to adapt the law to social dynamics and the needs of modern society.

Normatively, this ruling grants couples greater freedom to manage their assets according to their individual needs and circumstances.<sup>2</sup> This change is in line with the principle of freedom of contract guaranteed by Article 1338 of the Civil Code and the constitutional rights of citizens to obtain legal protection as regulated in Article 28D paragraph (1) of the 1945 Constitution. Thus, the law is now more responsive to aspirations for justice and individual needs.

However, the implementation of the marriage agreement after the marriage has taken place poses challenges. One of the main issues is the legal status of joint property that was formed before the agreement was made.<sup>3</sup>

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<sup>1</sup> Ingrid Fransisca Matina Candra, Zil Aidi, "Implikasi Atas Berlakunya Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII-2015 terhadap Perjanjian Perkawinan di Indonesia", *Unes Law Review*, Vol. 6, No. 3, Maret 2024, 3. <https://doi.org/10.31933/unesrev.v6i3>

<sup>2</sup> Oly Viana Agustine, "Politik Hukum Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 Dalam Menciptakan Keharmonisan Perkawinan", *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* Volume 6, Nomor 1, April 2017, 10. <https://dx.doi.org/10.33331/rechtsvinding.v6i1.121>

<sup>3</sup> Panal Herbet Limbong, Syawal Amry Siregar. "Pengaturan Hukum Dalam Pembagian Harta Bersamaperkawinan Menurut Hukum Perdata yang Berlaku Saat Ini Di Indonesia", *Jurnal Retentum*, Vol 5, No. 2, (2023), 3. <http://dx.doi.org/10.46930/retentum.v5i2.1346>

Is the agreement valid going forward (prospective) or can it change previous circumstances (retroactive)? In practice, this often gives rise to differing interpretations among notaries and marriage registrars.

Furthermore, issues arise regarding third parties who had a legal relationship with one of the partners before the agreement was made. If a marriage agreement is made after a transaction or debt has occurred, there is concern that it could harm a well-intentioned third party.<sup>4</sup> Therefore, such agreements should still respect the principles of legal certainty and protection of third parties as stipulated in the general principles of civil law.

From an administrative perspective, the implementation of this Constitutional Court ruling has not been fully optimal. There are still differing perceptions among notaries, the Office of Religious Affairs (KUA), and the Population and Civil Registry Office regarding the registration of marriage agreements made after marriage. The lack of uniform technical guidelines has led to legal uncertainty in practice, particularly regarding the registration and validation of these documents.<sup>5</sup>

From the perspective of progressive legal theory, this Constitutional Court ruling embodies living law, where the

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<sup>4</sup> Haruri Sinar Dewi, "Efektivitas Putusan MK Nomor 69/PUU-VIII/2015 Studi Kasus Dari Putusan Mk Nomor 69/PUUVIII/2015 Terhadap Pembuatan Akta Perjanjian Kawin Bagi Pihak Ketiga", *Justitia Jurnal Hukum*, Vol. 2, No. 2 Oktober 2018, 2. <https://doi.org/10.30651/justitia.v2i2.2239>

<sup>5</sup> Normaliyanti, Suwaibatul Aslamiah, dkk., "Legal Drafting: Tantangan Menjembatani Teori Dan Praktik Dalam Pembentukan Peraturan Di Indonesia", *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, Vol. 3, Nomor 2 (April-June, 2025), 5. <https://doi.org/10.62976/ijjel.v3i2.1105>

law must adapt to evolving values and societal needs. The law should not rigidly restrict individual freedoms, but rather provide space for a fair and proportional arrangement of rights and obligations within marriage.

However, this change also demands the state's responsibility to prepare adequate derivative legal instruments. Implementing regulations are essential to prevent the Constitutional Court ruling from giving rise to diverse interpretations and inconsistent implementation in practice. Without implementing regulations, the expected substantive justice could turn into new legal uncertainty.

Furthermore, the protection of joint property following the Constitutional Court ruling relates not only to family law but also to the national civil law system as a whole. Changes in the meaning of marriage agreements impact notarial practices, population administration, inheritance and banking law. Therefore, harmonization of regulations is necessary to prevent future legal conflicts. With these various dynamics, it can be concluded that the Constitutional Court Decision Number 69/PUU-XII/2015 is a step forward in providing legal protection and justice for married couples.<sup>6</sup> However, in order for this goal to be truly achieved, it requires support from clear implementing regulations, good public understanding, and the active role of law enforcement in ensuring certainty and fairness in every application of ensuring marriage agreements in Indonesia.

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<sup>6</sup> Ketut Anantha Adi Saputra, Anak Agung Angga Primantari, "Urgensi Penerapan Perjanjian Perkawinan Dalam Melindungi Hak-Hak Setiap Pasangan", *Jurnal Media Akademik (JMA)*, Vol.3, No.9 September 2025, 10. <https://doi.org/10.62281/mp9ve022>

## Metode

This study uses a qualitative approach with a normative juridical method, which aims to understand and analyze in depth the legal and normative implications of Constitutional Court Decision Number 69/PUU-XII/2015 regarding the protection of joint property in marriage. A qualitative approach was chosen because this study focuses on examining the meaning, concepts, and legal norms that have developed following changes in the interpretation of Article 29 of Law Number 1 of 1974 concerning Marriage. The data used in this study are in the form of primary, secondary, and tertiary legal materials, such as laws and regulations, Constitutional Court decisions, law books, scientific journals, and the opinions of relevant legal experts.<sup>7</sup>

Data analysis was carried out descriptively-analytically, by interpreting the contents of legal norms and comparing legal provisions before and after. Following the Constitutional Court's ruling, the researcher examined the legal substance related to marriage agreements, the concept of joint property, and the principles of legal protection within the context of Indonesian family law. Furthermore, this study also examined the implementation of the ruling in practice through a literature review of notarial practices and marriage administration. Therefore, the research findings are expected to provide a comprehensive understanding of the normative

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<sup>7</sup> Asmak UI Hosnah, Dwi Seno Wijanarko & Hotma P. Sibuea, *Karakteristik Ilmu Hukum dan Metode Penelitian Hukum Normatif* (Jakarta: Rajawali Pers, 2021).

implications of the Constitutional Court's ruling on the legal protection system for joint property in marriage in Indonesia.

## **Discussion**

### **1. The Concept and Position of Marriage Agreements in Indonesian Law**

A prenuptial agreement is an agreement between a prospective husband and wife that regulates the status and management of assets during the marriage. In the Indonesian legal system, this is regulated by Article 29 of Law Number 1 of 1974 concerning Marriage.<sup>8</sup> This agreement serves to provide legal certainty regarding joint and personal assets, as long as they do not conflict with law, religion and morality.

Historically, the concept of a prenuptial agreement was also found in Articles 139–154 of the Civil Code, which granted couples the freedom to manage their property. However, after the enactment of the Marriage Law, these provisions were adjusted to reflect values of justice and equality within the family, making this agreement part of the national legal system.

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<sup>8</sup> Munawir, “*Hukum Perkawinan dan Waris Dalam Sistem Hukum Nasional dan Syariah di Indonesia*”, (Jakarta: Serasi Media Teknologi, 2025), 103.

The prenuptial agreement plays a crucial role in preventing property disputes between husband and wife. Through this agreement, both parties can determine the boundaries of property ownership, rights to income, and responsibilities for each other's debts.<sup>9</sup> Thus, However, the agreement must not disadvantage either party or violate the principle of equality in the household. This principle reflects the balance of rights and obligations between husband and wife. this agreement serves not only as internal protection, but also external protection against third parties such as creditors.

The contents of the agreement can include separation of assets, distribution of income, and procedures for managing joint assets.<sup>10</sup> However, the agreement must not disadvantage either party or violate the principle of equality in the household. This principle reflects the balance of rights and obligations between husband and wife.

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<sup>9</sup> Caesarani, dkk, "Keadilan Distributif Atas Pembagian Harta Bersama yang Digunakan Sebagai Sompas Perkawinan Bugis Secara Sepihak". *Jurnal Supremasi*, Vol. 13 No. 2 Tahun 2023, 40. <https://doi.org/10.35457/supremasi.v13i2.2201>

<sup>10</sup> Yosephine Adinda Dwika Sandra, "Implikasi Perjanjian Perkawinan Sebagai Perlindungan Harta Bersama Dan Hak Pada Suami Istri Sebagai Pelaku Usaha Persekutuan Komanditer (CV)", *Jembatan Hukum: Kajian ilmu Hukum, Sosial dan Administrasi Negara*, Vol. 1 No. 3 September 2024, 4. <https://doi.org/10.62383/jembatan.v1i3.449>

In civil law theory, a marriage agreement is an embodiment of the principle of freedom of contract.<sup>11</sup> Couples are given the freedom to adapt their agreement to their respective social, economic, and cultural circumstances. However, this freedom remains limited by moral and legal responsibilities to prevent abuse.

Prior to Constitutional Court Decision No. 69/PUU-XII/2015, prenuptial agreements could only be made before or during marriage. This restriction prevented many couples from reorganizing their assets after marriage, even though social and economic conditions had changed.<sup>12</sup>

## **2. Background and Substance of Constitutional Court Decision Number 69/PUU-XII/2015**

The application for judicial review of Article 29 of Law Number 1 of 1974 was submitted because the provision was deemed to limit the rights of citizens to make agreements after marriage.<sup>13</sup> The time limit for making an agreement is

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<sup>11</sup> Apriyodi Ali , Achmad Fitriani, Putra Hutomo, “Kepastian Hukum Penerapan Asas Kebebasan Berkontrak Dalam Sebuah Perjanjian Baku Ditinjau Berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata”, *Jurnal Riset Ilmiah*, Vol.1, No.2 Oktober 2022, 7. <https://doi.org/10.55681/sentri.v1i2.234>

<sup>12</sup> Angela Florida Mau, Angela Florida Mau, “Tantangan Perkawinan di Tengah Perubahan Sosial: Perspektif Keluarga Kontemporer”, *Jurnal Riset Sosial Humaniora dan Pendidikan*, Vol. 3, No. 1, (2025), 2. <https://doi.org/10.62383/risoma.v3i1.511>

<sup>13</sup> Aldhitama Ramadhan, Fredy Ied Fitriadi, dkk., “Kekuatan Hukum Mengikat Perjanjian Perkawinan Menurut Undang-Undang

considered to be in conflict with Articles 28D and 28E of the 1945 Constitution which guarantee the right to legal certainty and freedom in making agreements.

In Decision No. 69/PUU-XII/2015, the Constitutional Court declared the time limit unconstitutional. This ruling broadened the meaning of Article 29, so that a prenuptial agreement can be made at any time during the marriage.<sup>14</sup> The Court emphasized that a marriage contract is part of a citizen's constitutional right to freely regulate the ownership of his property.<sup>15</sup> The previously applicable restrictions were deemed inconsistent with the principles of substantive justice.

The main substance of this decision is the recognition of equal rights between husband and wife in managing property.<sup>16</sup> The previously applicable restrictions were

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Nomor 1 Tahun 1974 Tentang Perkawinan”, *Journal of Mandalika Literature*, Vol. 6, No. 1, (2024), 9. <https://doi.org/10.36312/jml.v6i1.3834>

<sup>14</sup> Maulana Ibrahim, Sunarm, dkk., “Analisis Yuridis Akibat Perluasan Makna Pasal 29 Undang-Undang No. 1 Tahun 1974 Terhadap Undangundang No. 37 Tahun 2004”, *Jurnal Justika*, Vol. 3, No. 01 Februari (2021), 8. <http://dx.doi.org/10.36764/justika.v3i1.576>

<sup>15</sup> Maulida Putri Restuning Ati, Yudhia Ismail, Wiwin Ariesta, “Akibat Hukum Dan Status Harta Dalam Perkawinan Campuran”, *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, Vol. 3, No. 3 (July-Sept, 2025), 6. <https://doi.org/10.62976/ijijel.v3i3.1279>

<sup>16</sup> Safira Maharani Putri Utami, Siti Nurul Intan Sari Dalimunthe, “Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian”, *Jurnal USM Law Review* Vol. 6, No. 1 Tahun (2023), 4. <https://doi.org/10.26623/julr.v6i1.6899>

deemed inconsistent with the principles of substantive justice. However, normatively, this Constitutional Court decision is a progressive step towards a legal system that is more open, fair and responsive to the needs of society.<sup>17</sup>

### **3. Normative Implications for the Protection of Joint Property**

Constitutional Court Decision No. 69/PUU-XIII/2015 represents a significant milestone in the development of family law in Indonesia, as it explicitly allows married couples to enter into joint property agreements after marriage. Prior to this ruling, Article 29 of the Marriage Law was deemed to limit agreements to premarital agreements. With this amendment, the Constitutional Court progressively reinterpreted this limitation, arguing that it violates the principles of justice and the constitutional right of every citizen to independently manage their own interests. This amendment carries significant normative implications for the management and protection of joint property in Indonesian families.

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<sup>17</sup> Geofani Milthree Saragih, Mirza Nasution, dkk, "Makna Filosofis Putusan Mahkamah Konstitusi Dalam Constitutional Review Dan Urgensi Judicial Activism", *Jurnal Masalah-Masalah Hukum*, Vol. 53, No. 3, November 2024, 4. <https://ejournal.undip.ac.id/index.php/mmh/>

One of the most fundamental impacts of this Constitutional Court ruling is a change in the default regime regarding marital property. Prior to the ruling, couples without a prenuptial agreement were automatically subject to the community property system as stipulated in the Civil Code and Islamic law. With the Constitutional Court ruling, couples have broader legal options: remaining within the community property system, separating assets, or adapting the arrangement to their individual needs. This provides significant flexibility to manage assets more rationally according to the family's economic circumstances.

This ruling also strengthens the principles of justice and the protection of individual rights within the household. In many cases, a joint property system can create uncertainty when one party faces a higher legal risk, for example due to running a business, engaging in business contracts, or having potential personal debts. By separating or realigning assets, husbands and wives can avoid situations where the party not involved in the risky activity bears the legal consequences that should be the sole responsibility of the other party. This principle of justice aligns with the principle of proportionality in modern law.

Furthermore, this Constitutional Court ruling provides greater protection for family assets acquired

before or during marriage. When one party faces legal issues such as debt lawsuits, asset seizures, or third-party claims, the existence of a prenuptial agreement drawn up during the marriage can serve as a basis for distinguishing between personal and joint assets. This is particularly helpful for families seeking to ensure that core family assets remain secure and unaffected by individual risks. In other words, the Constitutional Court ruling provides a mechanism for mitigating legal risk within the household.<sup>18</sup>

This ruling also has a positive impact on couples with differing economic circumstances, business backgrounds, or high-stakes professions. For example, a wife who owns a business with potential debt can choose to separate her assets to avoid burdening her husband, or vice versa. Even couples who work as professionals, such as doctors or entrepreneurs, can protect their family assets from potential lawsuits. Thus, this regulation provides space for fairer asset management tailored to the needs of each party.<sup>19</sup>

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<sup>18</sup> Roulinta Y. Sinaga, *Hukum Perikatan* (Padang: Yayasan Tri Edukasi Ilmiah, 2024), 87.

<sup>19</sup> Amar Bintang, Muhammad Fachrul Aljamili, dkk., "Batasan Tanggung Jawab Hukum Notaris dalam Pembuatan Akta Berdasarkan Peraturan Perundang-Undangan", *Jurnal Ilmiah Hukum*, Vol. 3 No. 1 (2025), 10. <https://doi.org/10.70308/adagium.v3i1.65>

However, this Constitutional Court ruling will not be fully effective without comprehensive and clear implementing regulations. Although the Constitutional Court provides a legal basis for entering into marriage agreements, not all couples understand the procedures for creating them. In practice, questions arise regarding administrative procedures, registration requirements at the Office of Religious Affairs or the Civil Registry, and how notary validation and written evidence must be obtained to ensure the agreement is legally binding. Without clear procedures, the potential for disputes remains open.<sup>20</sup>

Therefore, implementing regulations are crucial to ensure the validity and legal certainty of marriage agreements following the Constitutional Court ruling. Ideal regulations should govern the procedures for drafting, registering, amending, and revoking them, as well as ensuring that the agreements are recorded in the state administration system. This way, married couples can fully benefit from the Constitutional Court ruling, namely legal protection for joint property and respect for individual rights in managing their households. This ruling ultimately

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<sup>20</sup> Mochamad Sueb, *Hukum Perkawinan di Indonesia* (Jakarta: Prenadamedia Group, 2021), 134.

directs Indonesian family law toward a more adaptive, flexible, and equitable system.

Beyond the normative and administrative aspects, the Constitutional Court's ruling also has sociological consequences for Indonesian family life. The marital relationship, previously heavily influenced by the traditional concept of joint property, is now shifting toward a more equal, consensus-based relationship. The recognition that each individual has the right to manage their own economic interests is growing, along with the increasing education and economic participation of women. Marriage agreements are no longer viewed solely as a form of mistrust, but rather as a rational instrument for risk management and legal protection. This shift in perspective marks the modernization of family law, better suited to the dynamics of contemporary society.

From a judicial perspective, Constitutional Court Decision No. 69/PUU-XIII/2015 also provides a new reference for judges in resolving marital property disputes. Judges are no longer rigidly bound by the concept of joint property as the sole applicable regime, but can instead consider post-nuptial agreements as the basis for dividing the parties' rights and obligations. This opens up space for fairer, more contextual, and more proportional decisions.

Marital property disputes can now be resolved by considering the wishes of the parties, as outlined in a valid agreement. Thus, marital agreements also serve as a conflict prevention instrument and a more effective means of dispute resolution.

Overall, Constitutional Court Decision No. 69/PUU-XIII/2015 not only formally changed legal norms but also shifted society's paradigm in interpreting marriage and property management. Marriage is no longer viewed solely as an emotional and social bond, but also as a legal relationship that requires clear regulation of rights and obligations. Going forward, the main challenge lies in how the state ensures that these changes are truly accessible to all levels of society in a fair manner. With strong regulatory support, professional officials, and high legal awareness, this Constitutional Court decision has the potential to become an important foundation for the creation of a modern, responsive, and equitable Indonesian family law system.

#### **4. Impact of Implementation and Legal Challenges in the Field**

Although Constitutional Court Decision No. 69/PUU-XII/2015 has brought significant progress in marriage law, its implementation still faces complex obstacles. The

change in norms allowing for post-marital agreements should have been a significant breakthrough in family law protection. However, in practice, this change has not been fully understood and comprehensively implemented by relevant institutions. There remains a gap between ideal legal norms and administrative realities on the ground. This demonstrates that legal changes do not always go hand in hand with the readiness of the supporting systems.<sup>21</sup> Without adequate legal infrastructure, the primary objectives of the Constitutional Court's ruling risk not being optimally achieved. Consequently, the public remains confused about how to utilize the new rights granted by the ruling. This situation reflects a common challenge in every legal reform process in Indonesia.

One of the main obstacles faced is the lack of clear technical guidelines in many Religious Affairs Offices (KUA) and Population and Civil Registration Offices (*Disdukcapil*). These institutions are the spearheads of marriage administration services for the public. However, to date, not all regions have implementing regulations governing the mechanism for registering post-nuptial

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<sup>21</sup> Maulana Ibrahim, dkk., Analisis Yuridis Akibat Perluasan Makna Pasal 29 undang-undang no. 1 tahun 1974 terhadap undangundang no. 37 tahun 2004, *Jurnal Justitia*, Vol. 3, No. 1, (2021), 3. <http://dx.doi.org/10.36764/justitia.v3i1.576>

agreements. As a result, practices vary from region to region. Some KUAs and *Disdukcapils* even refuse to register post-nuptial agreements due to the lack of a strong technical basis. This situation clearly contradicts the spirit of the Constitutional Court's ruling, which is binding and generally applicable. This lack of uniformity in practice has the potential to create legal uncertainty for married couples. In the long term, this could trigger new disputes due to the lack of administrative certainty.<sup>22</sup>

In addition to constraints within the registrar's office, notaries also face unique challenges in implementing this Constitutional Court ruling. Notaries play a crucial role in drafting legally binding marriage contracts. However, confusion persists regarding the standard format and the limits of notaries' authority in drafting post-nuptial agreements. Most notaries still maintain the old mindset, recognizing only prenuptial agreements. This creates hesitation in accepting requests for post-nuptial agreements. This lack of clarity can be detrimental to those seeking such legal services. Without clear guidelines, the risk of procedural errors and legal flaws in the agreement

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<sup>22</sup> Salsabila Qalwiah Az Zahra, Endah Hartati, Efektivitas Pertanggung Jawaban Notaris dalam Penyusunan Akta Autentik Berkaitan dengan Perjanjian Perkawinan, *Unes Law Review*, Vol. 6, No. 2, (2023), 4. <https://doi.org/10.31933/unesrev.v6i2>

increases. As a result, the very agreements that are supposed to protect the couple can potentially create new legal issues later on.

Another equally important issue concerns the protection of third parties, particularly in civil and business legal relationships. Without an open and easily accessible system for publishing or registering prenuptial agreements, third parties are potentially harmed. Postnuptial agreements can be misused to avoid legal liability, for example, in debt-to-credit relationships. If these agreements are not officially recorded and are unknown to third parties, legal transparency is undermined. This situation contradicts the principles of legal certainty and protection for all parties. Therefore, the state is obligated to establish an administrative system capable of ensuring transparency of information without violating the privacy of married couples. Without a clear system, the potential for legal abuse will increase, which could undermine business confidence in Indonesia's matrimonial legal system.

On the other hand, for women, Constitutional Court Decision No. 69/PUU-XII/2015 provides significant benefits in terms of economic protection. By having the opportunity to enter into post-nuptial agreements, women can protect their personal assets. This is especially

important for women who have businesses, independent incomes, or significant inherited assets. Post-nuptial agreements also strengthen women's bargaining power in managing household assets. In many cases, women were previously in a weak position because all assets were considered joint property without adequate protection.<sup>23</sup> With this ruling, women have a greater opportunity to fairly regulate their economic rights. This positive impact demonstrates that the Constitutional Court's ruling has a strong gender justice dimension. Therefore, protecting women's interests must remain a primary focus in its implementation.

However, these significant benefits will not be optimally realized if public legal awareness remains low. Many married couples do not yet understand the legal rights and opportunities afforded by this Constitutional Court ruling. Prenuptial agreements are often misunderstood as symbols of mistrust or conflict within the household. In fact, these agreements are essentially preventative legal protection instruments. Low legal

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<sup>23</sup> Christine S.T Kansil, Putri Meilika Nadilatasya, "Dampak Putusan Mahkamah Konstitusi Terhadap Dinamika Politik dan Kepercayaan Publik di Indonesia: Analisis Implikasi Hukum dan Etika", *UNES Law Review*, Vol. 6, No. 4, Juni 2024, 2. <https://doi.org/10.31933/unesrev.v6i4>

literacy makes people reluctant to utilize mechanisms that could actually protect them from the risk of future disputes. Therefore, ongoing outreach is crucial. Legal education for the public must be systematic and accessible. Without increased legal awareness, changes in norms will not have a significant impact on social life.

The successful implementation of Constitutional Court Decision No. 69/PUU-XII/2015 depends heavily on the readiness of the administrative system, clarity of technical guidelines, and the level of public legal awareness. Legal reform is not sufficient merely by changing norms at the level of laws or court decisions. Solid cooperation is required between the government, registrars, notaries, academics, and the public. Each element plays a crucial role in ensuring that this Constitutional Court decision can be effectively implemented. Without strong systemic support, the goals of justice and legal certainty will be difficult to achieve. Therefore, regulatory reform, institutional strengthening, and increased legal literacy must go hand in hand. With integrated steps, this Constitutional Court decision will be able to provide tangible benefits for family legal protection in Indonesia.

## **5. Direction of Legal Reform and Policy Recommendations**

Constitutional Court Decision No. 69/PUU-XII/2015 marked a significant turning point in the development of family law in Indonesia, particularly regarding prenuptial agreements. This decision broadened the meaning of prenuptial agreements, which previously could only be made before the marriage took place, to include those made during the marriage.<sup>24</sup> This change provides broader legal protection for both husbands and wives, particularly in the management of assets. In the context of a dynamic modern society, the need for flexible asset management is becoming increasingly urgent.

Therefore, this Constitutional Court ruling is not merely a correction of old norms, but also a new foundation for family law reform that is more responsive to social realities. The proper implementation of this ruling will determine the extent to which the goals of justice and legal certainty can be realized. Without targeted reform measures, this ruling has the potential to become merely a legal norm with no real impact on society. The most urgent initial step following the Constitutional Court's ruling is the development of implementing regulations that detail the

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<sup>24</sup> Atmoko Dwi & Baihaki Ahmad, *Hukum Perkawinan dan Keluarga* (Jakarta: Literasi Nusantara Abadi, 2022), 144.

procedures, forms, and legal consequences of postnuptial agreements.

The lack of technical regulations has often created uncertainty in practice. The government, along with the House of Representatives (DPR), needs to immediately revise Law No. 1 of 1974 concerning Marriage or draft a Government Regulation specifically governing postnuptial agreements. This regulation must clearly define the validity period of the agreement, the legal requirements, and the permissible limitations. Clarity in these norms will provide legal protection not only for married couples but also for third parties such as creditors or business partners. Without legal certainty, the potential for future disputes will increase.

Therefore, regulatory reform is an agenda that cannot be postponed. In addition to establishing regulations, strengthening the role of notaries and marriage registrars is also crucial. Notaries play a central role in drafting marriage agreements, which have the power of proof. However, in practice, there are still differing interpretations regarding the procedures for drafting and recording post-nuptial agreements.

This highlights the need for specialized training and uniform technical guidelines for notaries and marriage

registrars. With clear operational standards, every agreement can be guaranteed to be legally valid and administratively recorded. Uniform procedures will also minimize the potential for abuse of authority. Furthermore, strengthening the capacity of legal officials will increase public trust in the marriage legal system. Without this, the implementation of the Constitutional Court's ruling will be less than optimal.

Furthermore, public outreach is equally crucial to supporting the success of the marriage law system. This legal reform. Until now, prenuptial agreements have often been viewed as taboo, unethical, and even a sign of distrust in marital relationships. This negative view is one factor contributing to the low utilization of prenuptial agreements as an instrument of legal protection. Therefore, legal education for the public needs to be intensified through various media and forums. This outreach should emphasize that prenuptial agreements are not a form of infidelity, but rather an effort to regulate rights and obligations fairly and transparently. With proper understanding, it is hoped that the public will be more open in utilizing this legal instrument. Increased legal awareness will contribute to the

creation of a healthier legal culture. Without adequate outreach, regulatory changes will remain on paper.<sup>25</sup>

Gender equality must also be a primary concern in developing policies related to postnuptial agreements. In family law practice, women are often still in a weaker position, particularly in the control and management of assets. A fairly drafted prenuptial agreement can be a means to protect women's economic rights. Therefore, policies must ensure there is no coercion, pressure, or inequality in the agreement-making process. The state has a responsibility to ensure that women have an equal bargaining position, equal rights with men. The principle of substantive justice must be the primary foundation of every regulation. If gender aspects are ignored, marriage contracts have the potential to become a tool for legitimizing inequality. Therefore, a gender justice perspective must be consistently integrated.

Furthermore, the implementation of postnuptial agreements must also consider their impact on third parties, particularly in civil matters such as banking, trade, and investment. Clarity about the status of joint and

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<sup>25</sup> Dwi Dasa Suryantoro, "Peran Perempuan Dalam Pengambilan Keputusan Keluarga di Era Modern Perspektif Hukum Keluarga Islam", *Jurnal Hukum Keluarga Islam*, Vol. 6 No. 1, 10. <https://doi.org/10.46773/usrah.v6i1.1688>

individual assets is crucial to ensuring transaction certainty. Without clear regulations, financial institutions may experience difficulties in determining the legal responsibility of debtors. Therefore, the system for recording prenuptial agreements must be well-integrated and easily accessible to interested parties in accordance with legal provisions. Transparency in this regard is key to preventing future disputes. Strong legal certainty will also increase business confidence in the Indonesian legal system. Thus, the benefits of this reform will be felt not only by families but also by the broader economic sector.

With various targeted reform measures, it is hoped that Indonesia's marriage law system will become more adaptive to the needs of modern society. Constitutional Court Decision No. 69/PUU-XII/2015 should serve as a gateway to more progressive and equitable family law reform. This reform encompasses not only regulatory aspects but also institutional dimensions, legal culture, and public awareness. Synergy between the government, law enforcement officials, academics, and the public is key to the success of this reform. If all these elements can work in harmony, the primary goals of justice and legal certainty will be more easily achieved.

The marriage contract will truly serve as a protective instrument for both parties. Ultimately, the Indonesian marriage legal system will be able to meet the challenges of the times without abandoning the values of justice and humanity.

## **Conclusion**

Constitutional Court Decision No. 69/PUU-XII/2015 has brought fundamental changes to the Indonesian marital law system, particularly in terms of the regulation of prenuptial agreements. By eliminating the time limit for drafting agreements, married couples now have the freedom to create or amend property agreements at any time during the marriage. Normatively, this strengthens the protection of joint property and affirms the principle of equal rights between husband and wife. This decision also demonstrates a paradigm shift in Indonesian family law toward a more adaptive, progressive, and substantive justice-oriented system.

However, this normative change still faces various challenges in implementation, such as the lack of clear technical regulations, low public legal literacy, and the potential for abuse of agreements in practice. Therefore, regulatory reform and strengthening of the legal

administration system are needed so that post-MK ruling marriage agreements can be implemented effectively, fairly, and transparently. With these steps, it is hoped that this ruling will truly achieve balanced legal protection and legal certainty for married couples in Indonesia.

## Reference

- Agustine, O. V. (2017). Politik Hukum Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 Dalam Menciptakan Keharmonisan Perkawinan. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 6(1), 53-67.  
<https://dx.doi.org/10.33331/rechtsvinding.v6i1.121>
- Ali, A., Fitriani, A., & Hutomo, P. (2022). Kepastian hukum penerapan asas kebebasan berkontrak dalam sebuah perjanjian baku ditinjau berdasarkan Pasal 1338 Kitab Undang-Undang Hukum Perdata. *SENTRI: Jurnal Riset Ilmiah*, 1(2), 270-278.  
<https://doi.org/10.55681/sentri.v1i2.234>
- Andiki, La, L. O. I. (2024). Upaya Sosialisasi dan Penegakan Hukum terhadap Pernikahan Usia Dini. *Jurnal Ilmu Sosial Dan Pendidikan*, 2(2), 08-19.  
<https://jurnal.unusultra.ac.id/index.php/jisdik>
- Ati, M. P. R., Ismail, Y., & Ariesta, W. (2025). Akibat Hukum Dan Status Harta Dalam Perkawinan Campuran. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 3(3), 2371-2381.  
<https://doi.org/10.62976/ijjel.v3i3.1279>
- Bintang, A., Aljamili, M. F., Griptoni, G., Lasmini, L., & Ningsih, W. M. (2025). Batasan Tanggung Jawab Hukum Notaris dalam Pembuatan Akta Berdasarkan Peraturan Perundang-Undangan. *Adagium: Jurnal Ilmiah Hukum*, 3(1), 88-103.  
<https://doi.org/10.70308/adagium.v3i1.65>

- Caesarani, L. T., & Putra, M. F. M. (2023). Keadilan Distributif Atas Pembagian Harta Bersama yang Digunakan Sebagai Sompak Perkawinan Bugis Secara Sepihak. *Jurnal Supremasi*, 38-49. <https://doi.org/10.35457/supremasi.v13i2.2201>
- Candra, I. F. M., & Aidi, Z. (2024). Implikasi Atas Berlakunya Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII-2015 Terhadap Perjanjian Perkawinan Di Indonesia. *Unes Law Review*, 6(3), 8849-8859. *Kajian Ilmu Hukum dan Hukum Islam* 1.2 (2016): 409-424. <https://doi.org/10.31933/unesrev.v6i3>
- Elza, P. (2025). Tantangan dalam implementasi konstitusi di era modern. *Jurnal Hukum Tata Negara dan Konstitusi Vol*, 1(01), 22. <http://ojs.pustakabangsaindonesia.com/index.php/jhtk>
- Kansil, C. S., & Nadilatasya, P. M. (2024). Dampak Putusan Mahkamah Konstitusi Terhadap Dinamika Politik dan Kepercayaan Publik di Indonesia: Analisis Implikasi Hukum dan Etika. *UNES Law Review*, 6(4), 10753-10760. <https://doi.org/10.31933/unesrev.v6i4>
- Limbong, P. H., Siregar, S. A., & Yasid, M. (2023). Pengaturan hukum dalam pembagian harta bersama perkawinan menurut hukum perdata yang berlaku saat ini di Indonesia. *Jurnal Retentum*, 5(2), 177. <https://doi.org/10.62976/ijjel.v3i2.1105>
- Mau, A. F. (2025). Tantangan Perkawinan di Tengah Perubahan Sosial: Perspektif Keluarga Kontemporer. *RISOMA: Jurnal Riset Sosial Humaniora dan Pendidikan*, 3(1), 91-107. <https://doi.org/10.62383/risoma.v3i1.511>
- Normaliyanti, N., Aslamiah, S., Adistianisa, A., & Yamani, A. Z. (2025). Legal Drafting: Tantangan Menjembatani Teori Dan Praktik Dalam Pembentukan Peraturan Di Indonesia. *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory*, 3(2), 1236-1250. <https://doi.org/10.62976/ijjel.v3i2.1105>
- Onggianto, R., & Soemartono, G. P. (2024). Pertanggung Jawaban Hukum Terhadap Ketidaksesuaian Informasi dalam Perjanjian Kredit oleh Pelaku Usaha Jasa Keuangan. *Ranah Research: Journal of Multidisciplinary Research and*

- Development*, 6(4), 1118-1132.  
<https://doi.org/10.38035/rrj.v6i4>
- Ramadhan, A., Fitriadi, F. I., Aritonang, J. M. P., & Habib, M. (2025). Kekuatan Hukum Mengikat Perjanjian Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan. *Journal of Mandalika Literature*, 6(1), 83-94.  
<http://ojs.cahayamandalika.com/index.php/jml>
- Salam, S. N. (2025). Implikasi Putusan Mahkamah Konstitusi terhadap Demokrasi di Indonesia: Studi Yuridis-Normatif. *Perkara: Jurnal Ilmu Hukum dan Politik*, 3(1), 788-806. <https://journal.stekom.ac.id/index.php/PERKARA>
- Sandra, Y. A. D., & Nugraheni, A. S. C. (2024). Implikasi perjanjian perkawinan sebagai perlindungan harta bersama dan hak pada suami istri sebagai pelaku usaha persekutuan komanditer (CV). *Jembatan Hukum: Kajian Ilmu Hukum, Sosial dan Administrasi Negara*, 1(3), 126-138.  
<https://doi.org/10.62383/jembatan.v1i3.449>
- Saputra, Ketut Anantha Adi & Anak Agung Angga Primantari. Urgensi Penerapan Perjanjian Perkawinan Dalam Melindungi Hak-Hak Setiap Pasangan. (2025). *Jurnal Media Akademik JMA*, 3(9). <https://doi.org/10.62281/mp9ve022>
- Saragih, G. M., Nasution, M., & Sihombing, E. N. (2024). Makna Filosofis Putusan Mahkamah Konstitusi dalam Constitutional Review dan Urgensi Judicial Activism. *Masalah-Masalah Hukum*, 53(3), 335-344.  
<https://ejournal.undip.ac.id/index.php/mmh/>
- Siswadi, I., Supriadi, S., & Mario, M. (2022). Kawin beda agama dalam hukum perkawinan Indonesia prespektif HAM. *JiIP- Jurnal Ilmiah Ilmu Pendidikan*, 5(12), 5823-5829.  
<https://doi.org/10.54371/jiip.v5i12.1303>
- Suryantoro, D. D. (2025). Peran Perempuan dalam Pengambilan Keputusan Keluarga di Era Modern Persepektif Hukum Keluarga Islam. *USRAH: Jurnal Hukum Keluarga Islam*, 6(1), 38-51. <https://doi.org/10.46773/usrah.v6i1.1688>
- Utami, S. M. P., & Dalimunthe, S. N. I. S. (2023). Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian. *Jurnal USM Law Review*, 6(1), 433-447.  
<https://doi.org/10.26623/julr.v6i1.6899>

Zahra, Salsabila Qalwiah Az, Endah Hartati, Efektivitas Pertanggung Jawaban Notaris dalam Penyusunan Akta Autentik Berkaitan dengan Perjanjian Perkawinan, *Unes Law Review*, Vol. 6, No. 2, (2023), 4  
<https://doi.org/10.31933/unesrev.v6i2>