

Legal Analysis of Marriage Agreements After the Constitutional Court Decision Number 69/PUU-xiii/2015

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Abstract

This study aims to analyze changes in the legal status and legal protection of prenuptial agreements before and after Constitutional Court Decision Number 69/PUU-XIII/2015. A comparative approach is used to evaluate the impact of this decision on the regulation of joint property, the rights and obligations of husband and wife, and the legal validation mechanism and legal protection for injured parties. The results show that the Constitutional Court decision expanded freedom of contract by allowing prenuptial agreements to be drawn up during the marriage, thereby strengthening flexibility and legal certainty. Furthermore, the validation mechanism now involves notaries and courts to ensure legality and protection for the weaker party and children. The implications of this decision not only increase justice and gender equality in marriage but also positively impact the business and banking worlds through the separation of personal and joint property. However, challenges such as a lack of publicity and technical guidelines still need to be addressed for this decision to be optimally implemented in family law practice in Indonesia.

Keywords: Constitutional Court Decision, Freedom of Contract, Legal Protection, Marriage Law, Prenuptial Agreement.

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1. Introduction

A prenuptial agreement is an essential legal instrument for regulating the dynamics of marriage, allowing couples to flexibly manage their rights and obligations, including the division of inherited property, joint assets, and wealth management. In Indonesia, the foundations of a prenuptial agreement are outlined in Book I of the Civil Code (*Kitab Undang Undang Hukum Perdata/KUHPerdata*) and Law Number 1 of 1974 concerning Marriage (*Undang Undang Perkawinan/UUP*), which emphasizes that this agreement can be made before or during marriage to ensure legal certainty for couples.¹ However, prior to Constitutional Court (*Mahkamah Konstitusi/MK*) Decision Number 69/PUU-

¹ Sri Ahyani, "Implikasi Putusan Mahkamah Konstitusi Nomor 69/PUU/XIII/2015 Terhadap Pasal 29 Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Wawasan Yuridika* 2, no. 1 (2018): 86. See too, Abel Edgar Anugrah Dwiputra, "Perjanjian kawin pasca berlakunya putusan mahkamah konstitusi nomor 69/puu-xiii/2015," *Jurnal Education and Development* 11, no. 1 (2022): 83.

XIII/2015, the practice of prenuptial agreements often faced legal uncertainty, particularly regarding their legal validity and the validity of provisions that conflict with the principle of protecting joint assets. This uncertainty often arose due to the time limit on making the agreement, which was only permitted before or during marriage, thus limiting the flexibility of couples to adjust to their post-nuptial needs.²

The Constitutional Court Decision Number 69/PUU-XIII/2015, issued on October 27, 2016, marked a significant milestone in the evolution of Indonesian marriage law. This decision provided a constitutional interpretation of Article 29 of the Marriage Law, expanding the scope of prenuptial agreements so that they can be made during the marriage, as long as they do not violate the law, morality, and the interests of the children.³ This is based on the principles of justice and equality, as guaranteed by Article 28E paragraph (2) of the 1945 Constitution, and accommodates the needs of couples, especially in mixed marriages between Indonesian citizens (*Warga Negara Indonesia/WNI*) and foreign citizens (*Warga Negara Asing/WNA*), where the separation of assets is crucial for land ownership rights.⁴ Following the ruling, marriage contracts are no longer limited to prenuptial agreements but also include postnuptial agreements, which are validated by a marriage registrar or notary, thereby increasing legal protection for couples and minimizing conflict.⁵

However, this ruling also raises new implications, such as changes in the status of joint property and impacts on third parties, requiring clearer validation

² 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* 6, no. 1 (2017): 55. See too, Herni Widanarti, "Implementasi Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 terhadap Hukum Perkawinan di Indonesia," *Law, Development and Justice Review* 3, no. 1 (2020): 124.

³ Ayang Afira Anugerahayu, "Implementasi Putusan Mahkamah Konstitusi No. 69/ppu-XIII/2015 dalam perjanjian Perkawinan: Implementation of The Constitutional Court Ruling No. 69/PUU-XIII/2015 in Marriage Agreements," *Ganec Swara* 19, no. 2 (2025): 724. See too, Eva Dwinopianti, "Implikasi dan Akibat Hukum Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 terhadap Pembuatan Akta Perjanjian Perkawinan Setelah Kawin yang Dibuat di Hadapan Notaris," (PhD diss., Universitas Islam Indonesia, 2017), 21.

⁴ Desak Laksmi Brata, Ni Ketut Sari Adnyani, and Ketut Sudiatmaka, "Kajian Normatif Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Komunitas Yustisia* 1, no. 3 (2018): 218. See too, Ingrid Fransisca Matina Candra, and Zil Aidi, "Implikasi Atas Berlakunya Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII-2015 Terhadap Perjanjian Perkawinan Di Indonesia," *Unes Law Review* 6, no. 3 (2024): 8850.

⁵ Syaifullahi Maslul, "Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 Ditinjau dari Pemenuhan Hak-Hak Asasi Manusi dan Asas-Asas Pembentukan Perjanjian," *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam* 1, no. 2 (2016): 413. See too, Moh Rohman, "Implikasi putusan Mahkamah Konstitusi nomor 69/PUU/XIII/2015 tentang perjanjian perkawinan terhadap tujuan perkawinan," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 7, no. 1 (2017): 13.

mechanisms to avoid legal uncertainty.⁶ This study aims to analyze the shift in the legal status of marriage contracts, their impact on the regulation of property and the rights of husband and wife, and the validation and protection mechanisms for injured parties following the Constitutional Court ruling.

Previous studies such as Ardhya and Sujana,⁷ Aryani,⁸ and Iswantoro⁹ have discussed the implications of Constitutional Court Decision Number 69/PUU-XIII/2015 on prenuptial agreements, such as changes to the timeframe for making agreements and constitutional protection for couples in mixed marriages. Jabbar¹⁰ and As Shiddiqie,¹¹ studies have highlighted normative aspects, including constitutional interpretation and legal consequences for the separation of assets, as well as the role of notaries in legalization. However, there is a significant gap in the literature regarding post-ruling legalization mechanisms, particularly the integration between courts, notaries, and civil registration institutions, which often gives rise to normative conflicts and legal uncertainty for third parties, such as in bankruptcy or inheritance cases.¹² Many studies focus on positive implications, such as marital flexibility and harmony, but lack a thorough examination of negative risks, including the potential for misuse of agreements to avoid legal obligations or a lack of public awareness leading to rejection by notaries.¹³ Furthermore, interdisciplinary perspectives,

⁶ Fitria Anas, Fanny Tanuwijaya, and Aan Efendi, "Prinsip Kepastian Hukum Pengesahan Perjanjian Perkawinan Oleh Notaris Pasca Putusan Mahkamah Konstitusi RI Nomor 69/PUU-XIII/2015," *Unes Law Review* 6, no. 2 (2023): 6233. See too, Damian Agata Yuvens, "Analisis Kritis terhadap Perjanjian Perkawinan dalam Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Konstitusi* 14, no. 4 (2017): 810.

⁷ Si Ngurah Ardhya, and I. Putu Windu Mertha Sujana, "Konsekuensi Yuridis Berlakunya Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 (2021): 296.

⁸ Nyoman Mas Aryani, "Implikasi Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 Pada Pembuatan Perjanjian Perkawinan," *Vyavahara Duta* 13, no. 2 (2018): 65.

⁹ Iswantoro, "Penyelesaian Sengketa Harta Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, no. 1 (2019): 45.

¹⁰ Ali Jabbar, "Tinjauan Yuridis Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 Khususnya Pasal 29 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dalam Perjanjian Pemisahan Harta Terhadap Perkara Kepailitan," (PhD diss., Universitas Gadjah Mada, 2018), 32.

¹¹ Riskon As Shiddiqie, "Analisis putusan judicial review Mahkamah Konstitusi No. 69/PUU-XIII/2015 terhadap pasal 29 ayat (1), ayat (2) dan ayat (3) UU No. 1 Tahun 1974 tentang perjanjian perkawinan ditinjau dari masalah mursalah," (PhD diss., Universitas Islam Negeri Maulana Malik Ibrahim, 2017), 34.

¹² Fegha Fannissa Dyananto, "Implikasi Pengaturan Harta Bersama Berdasarkan Putusan Mahkamah Konstitusi No. 69/PUU-XIII/2015," *Jurnal Privat Law* 9, no. 2 (2019): 229. See too, Tudi Iskandar, "Proses Turun Waris Setelah Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Hukum to-ra: Hukum Untuk Mengatur dan Melindungi Masyarakat* 11, no. 2 (2025): 418.

¹³ Nauval Raja Hamnan, and Akhmad Budi Cahyono, "Pencatatan Perjanjian Perkawinan dalam Perkawinan Campuran Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015, Perlukah Pengesahan dari Pengadilan?" *UNES Law Review* 7, no. 1 (2024): 645. See too, R. A., Naftalin, "Perjanjian perkawinan pada perkawinan campuran pasca putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 ditinjau dari Sadd Al-Dzari 'ah," (PhD diss., Universitas Islam Negeri Maulana Malik Ibrahim, 2019), 13.

such as integration with Islamic law (*masalah mursalah*) and sociological implications for society, have not been comprehensively explored, particularly in the post-2020 context where the pandemic has impacted marital dynamics.¹⁴ This gap includes the lack of empirical analysis on the effectiveness of protection for disadvantaged parties, such as children or creditors, who are often overlooked in purely normative studies.

This research fills this gap with a comparative approach before and after the Constitutional Court ruling, emphasizing the novelty of analyzing legal protection mechanisms for disadvantaged parties through the integration of new regulations. Different from previous studies which were predominantly normative, this study combines comparative elements to evaluate the practical impact on the property and rights of husband and wife, thus providing policy recommendations for harmonization of laws to increase legal certainty.¹⁵ The formulation of the research problem is:

RQ1: What is the legal status of marriage agreements before and after the Constitutional Court Decision Number 69/PUU-XIII/2015?

RQ2: What is the impact of the Constitutional Court decision on the regulation of property and rights of husband and wife in marriage agreements?

RQ3: What is the mechanism for ratifying marriage agreements and legal protection for parties who are harmed after the Constitutional Court decision?

2. Research Method

This study uses a normative juridical method with a statutory and conceptual approach, as well as a comparative approach to assess before and after the Constitutional Court's decision focusing on the analysis of the Civil Code Book I, Law Number 1 of 1974 concerning Marriage and Law Number 16 of 2019 is concerning Amendments to Law Number 1 of 1974 concerning Marriage, and the Constitutional Court Decision Number 69/PUU-XIII/2015. The normative

¹⁴ Rio Satria, "Dua Putusan Krusial Mahkamah Konstitusi Terlewatkan Dalam Revisi Undang-Undang Perkawinan," *Mahkama Agung*, 2022. Retrieved in October 12, 2025. https://www.pta-bandarlampung.go.id/images/artikel/Dua_Putusan_Krusial_MK_Terlewatkan_di_Dalam_Revisi_UUP.pdf. See too, Laila Yunita, and Suprpto Suprpto, "Ratification of Marriage Agreement After the Enforcement of the Constitutional Court Decision Number 69/PUU-XIII/2015 In Accordance with the Principle of Authentication," *Jurnal Hukum Sehasen Управделу: Unived Press* 10, no. 2 (2024): 578.

¹⁵ Nanda Ayu Lestari, "Implikasi Hukum Putusan Mahkamah Konstitusi Nomor 69/puu-xiii/2015 Tentang Perjanjian Perkawinan Terhadap Pemisahan Harta Bersama Setelah Dilaksanakan Perkawinan," (PhD diss., Universitas Islam Indonesia, 2024), 42. See too, Wayan Santoso, "Analisa Yuridis Fleksibilitas Perjanjian Perkawinan Dan Implikasi Putusan Mahkamah Konstitusi RI No. 69/PUU-XIII/2015," *Jurnal Aktual Justice* 9, no. 1 (2024): 53.

juridical method was chosen because this study examines changes in legal norms related to marriage agreements following the Constitutional Court Decision Number 69/PUU-XIII/2015. In addition, legal literature and case studies are used to evaluate the validity and implementation of prenuptial agreements. Data are analyzed qualitatively to understand the changes in the legal status of prenuptial agreements before and after the Constitutional Court's decision, which extends the time period for making the agreement to the duration of the marriage. This analysis assesses the impact of the decision on the regulation of joint property, the rights and obligations of husband and wife, and legal protection for third parties.

This research utilizes primary and secondary legal sources. The primary legal sources used in this study include laws and regulations and binding court decisions. Primary legal sources include the Civil Code Book I, Law Number 1 of 1974 concerning Marriage, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, and Constitutional Court Decision Number 69/PUU-XIII/2015. Meanwhile, secondary legal sources are used to provide explanations, interpretations, and reinforcement of primary legal sources. Secondary legal sources consist of legal textbooks, scientific journals, expert opinions, and case studies related to marriage law and marriage agreements, which are used to strengthen the analysis and provide a conceptual understanding of the problems studied.

3. Research Results and Discussion

3.1. Legal Status of Marriage Agreements Before the Constitutional Court Decision

Prior to the Constitutional Court's ruling, prenuptial agreements, also known as marriage contracts, had a very limited status. Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage explicitly states:

“At or before the marriage takes place, both parties, with mutual consent, may enter into a written agreement validated by a marriage registrar, after which its contents shall also apply to third parties, as long as they are involved.”

This formulation imposes a strict limitation: prenuptial agreements can only be made at or before the marriage takes place. This means that a married couple cannot make or amend a prenuptial agreement after the marriage has taken place. This limitation has significant legal consequences, particularly in the context of protecting each party's personal assets.

Furthermore, Article 29 paragraph (2) of the Marriage Law states:

“Such agreements cannot be validated if they violate the boundaries of law, religion, and morality.”

This provision reinforces the view that prenuptial agreements before the Constitutional Court ruling had a very limited scope and must comply with legal norms and public morality. Thus, the agreement is only considered valid if it does not conflict with applicable family law principles, particularly regarding the unity of joint property and the responsibilities of husband and wife, as stipulated in Articles 35 and 36 of the Marriage Law.

Article 35 paragraph (1) of the Marriage Law states:

“Property acquired during the marriage becomes joint property.”

Meanwhile, paragraph (2) emphasizes:

“Property brought by each husband and wife, as well as property acquired by each as a gift or inheritance, shall be under their respective control, unless the parties determine otherwise.”

From these provisions, it can be concluded that the Indonesian marriage legal system adheres to the principle of joint property, unless otherwise stipulated through a prenuptial agreement. However, because such agreements can only be made before marriage, separate property management is not legally possible after the marriage. This often creates problems, especially for couples who wish to reorganize their property status for business reasons, debt responsibilities, or other legal reasons.

Book I of the Civil Code, specifically Articles 139 to 154, also regulates prenuptial agreements. Article 139 of the Civil Code states:

“With the conclusion of a marriage, according to the law, there is a commingling of assets between the husband and wife, to the extent not otherwise stipulated in the marriage contract.”

This article reinforces the concept that a prenuptial agreement serves as an exception to the principle of commingling assets. However, Article 147 of the Civil Code provides the same time limit as the Marriage Law, namely that a prenuptial agreement must be made before the marriage takes place and cannot be amended thereafter. Thus, under both the Civil Code and the Marriage Law, the general principle that applies is that a prenuptial agreement

cannot be made or amended after the marriage contract has taken place. These rigid provisions create legal uncertainty for couples who, after marriage, realize the need to separate or reorganize their assets. In practice, courts often reject applications for ratification of prenuptial agreements made after marriage, arguing that they violate Article 29 paragraph (1) of the Marriage Law and Article 147 of the Civil Code. For example, in several court decisions prior to 2015, applications for post-nuptial agreements were deemed invalid because they violated the statutory time limit.

Furthermore, another important principle in civil law is that agreements must not be detrimental to third parties. This is affirmed in Article 1338 of the Civil Code, which states:

“All agreements made legally apply as laws for those who make them.”

However, the following paragraph emphasizes that the implementation of agreements must be carried out in good faith and must not harm the interests of the other party. Therefore, the court has the authority to annul a prenuptial agreement if it is deemed to violate the principles of justice or create inequality that is detrimental to one of the parties or any children born of the marriage. Prior to the Constitutional Court Decision Number 69/PUU-XIII/2015, the legal status of prenuptial agreements is very rigid and places married couples in an inflexible position to address changing circumstances after marriage. Indonesian positive law does not allow for the creation of new agreements after marriage, even when practical or economic reasons dictate a restructuring. As a result, many couples, particularly those running businesses or holding complex assets, face difficulties in protecting their personal assets. Prior to Constitutional Court Decision Number 69/PUU-XIII/2015, prenuptial agreements had very limited legal standing. They were only considered valid if they were made at or before the marriage and were validated by a marriage registrar. Their contents must not conflict with law, religion, or morality. After the marriage, the creation or amendment of a new agreement is declared null and void. Furthermore, the court has the authority to annul an agreement if its contents are deemed detrimental to one of the parties or any children born of the marriage.

Before the issuance of Constitutional Court (*Mahkamah Konstitusi*/MK) Decision Number 69/PUU-XIII/2015, the legal status of marriage agreements in Indonesia was very limited and rigid, as regulated in Article 29 paragraphs (1) and (2) of Law Number 1 of 1974 concerning Marriage and Articles 139 and

147 of the Civil Code. Article 29 paragraph (1) of the Marriage Law expressly states that a marriage agreement can only be made on or before the marriage takes place, with the mutual consent of both parties and validated by a marriage registrar, and applies to third parties as long as the third party is involved.¹⁶ Article 29 paragraph (2) emphasizes that the agreement is invalid if it violates the law, religion, or morality, thus limiting its scope according to applicable family law norms.¹⁷ Article 139 of the Civil Code reinforces the principle of commingling assets as the default law of marriage, unless otherwise stipulated through a prenuptial agreement, while Article 147 of the Civil Code stipulates a time limit for making agreements before marriage without the possibility of subsequent amendments.¹⁸

This limitation reflects the principle of community property as stipulated in Article 35 paragraph (1) of the Marriage Law, which states that assets acquired during marriage become community property, unless otherwise stipulated for assets brought in, gifts, or inheritance (Article 35 paragraph (2)).¹⁹ As a result, married couples cannot reorganize their property status without violating legal provisions, which often creates legal uncertainty, especially in mixed marriages between Indonesian and foreign citizens, where separation of assets is required for land ownership rights under Law Number 5 of 1960.²⁰ In

¹⁶ 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* 6, no. 1 (2017): 56. See too, Sri Ahyani, "Implikasi Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 Terhadap Pasal 29 Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Wawasan Yuridika* 2, no. 1 (2018): 87; Abel Edgar Anugrah Dwiputra, "Perjanjian kawin pasca berlakunya putusan mahkamah konstitusi nomor 69/puu-xiii/2015," *Jurnal Education and Development* 11, no. 1 (2022): 84; Herni Widanarti, "Implementasi Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 terhadap Hukum Perkawinan di Indonesia," *Law, Development and Justice Review* 3, no. 1 (2020): 125.

¹⁷ Desak Laksmi Brata, Ni Ketut Sari Adnyani, and Ketut Sudiarmaka, "Kajian Normatif Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Komunitas Yustisia* 1, no. 3 (2018): 219. See too, Syaifullahi Maslul, "Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 Ditinjau dari Pemenuhan Hak-Hak Asasi Manusi dan Asas-Asas Pembentukan Perjanjian," *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam* 1, no. 2 (2016): 415.

¹⁸ Ingrid Fransisca Matina Candra, and Zil Aidi, "Implikasi Atas Berlakunya Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII-2015 Terhadap Perjanjian Perkawinan Di Indonesia," *Unes Law Review* 6, no. 3 (2024): 8851. See too, Eva Dwinopianti, "Implikasi dan Akibat Hukum Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 terhadap Pembuatan Akta Perjanjian Perkawinan Setelah Kawin yang Dibuat di Hadapan Notaris," (PhD diss., Universitas Islam Indonesia, 2017), 22; Iswantoro, "Penyelesaian Sengketa Harta Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, no. 1 (2019): 46.

¹⁹ Nyoman Mas Aryani, "Implikasi Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 Pada Pembuatan Perjanjian Perkawinan," *Vyavahara Duta* 13, no. 2 (2018): 66. See too, Moh Rohman, "Implikasi putusan Mahkamah Konstitusi nomor 69/PUU/XIII/2015 tentang perjanjian perkawinan terhadap tujuan perkawinan," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 7, no. 1 (2017): 15.

²⁰ 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* 6, no. 1 (2017): 57. See too, Syaifullahi Maslul, "Putusan Mahkamah

practice, courts often reject applications for post-nuptial agreements because they contradict Article 29 paragraph (1) of the Marriage Law and Article 147 of the Civil Code, which emphasizes that new or amended agreements are considered null and void.²¹

The judge's argument in Constitutional Court Decision Number 69/PUU-XIII/2015 is based on the violation of Article 28E paragraph (2) of the 1945 Constitution, which guarantees individual freedom to regulate their legal needs. The judge considered that the time limit for making a prenuptial agreement in Article 29 of the Marriage Law was not in accordance with the principles of justice and equality, especially for couples who need to regulate assets after marriage for economic, business, or mixed marriage reasons.²² This judicial review was triggered by the petition of Ike Farida, who felt that her constitutional rights were violated due to the inability to have ownership rights to land due to the absence of a post-nuptial agreement.²³ This ruling confirms that such time limits contradict the needs of modern society and hinder legal protection, particularly for Indonesian citizens in mixed

Konstitusi Nomor 69/PUU-XIII/2015 Ditinjau dari Pemenuhan Hak-Hak Asasi Manusi dan Asas-Asas Pembentukan Perjanjian,” *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam* 1, no. 2 (2016): 416; Damian Agata Yuvens, “Analisis Kritis terhadap Perjanjian Perkawinan dalam Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015,” *Jurnal Konstitusi* 14, no. 4 (2017): 811.

²¹ Ali Jabbar, “Tinjauan Yuridis Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 Khususnya Pasal 29 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dalam Perjanjian Pemisahan Harta Terhadap Perkara Kepailitan,” (PhD diss., Universitas Gadjah Mada, 2018), 33. See too, Herni Widanarti, “Implementasi Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 terhadap Hukum Perkawinan di Indonesia,” *Law, Development and Justice Review* 3, no. 1 (2020): 127.

²² Sri Ahyani, “Implikasi Putusan Mahkamah Konstitusi Nomor 69/PUU/XIII/2015 Terhadap Pasal 29 Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan,” *Jurnal Wawasan Yuridika* 2, no. 1 (2018): 88. See too, Si Ngurah Ardhya, and I. Putu Windu Mertha Sujana, “Konsekuensi Yuridis Berlakunya Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015,” *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 (2021): 297; Riskon As Shiddiqie, “Analisis putusan judicial review Mahkamah Konstitusi No. 69/PUU-XIII/2015 terhadap pasal 29 ayat (1), ayat (2) dan ayat (3) UU No. 1 Tahun 1974 tentang perjanjian perkawinan ditinjau dari masalah mursalah,” (PhD diss., Universitas Islam Negeri Maulana Malik Ibrahim, 2017), 35; Desak Laksmi Brata, Ni Ketut Sari Adnyani, and Ketut Sudiarmaka, “Kajian Normatif Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015,” *Jurnal Komunitas Yustisia* 1, no. 3 (2018): 220.

²³ Nyoman Mas Aryani, “Implikasi Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 Pada Pembuatan Perjanjian Perkawinan,” *Vyavahara Duta* 13, no. 2 (2018): 68. See too, Damian Agata Yuvens, “Analisis Kritis terhadap Perjanjian Perkawinan dalam Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015,” *Jurnal Konstitusi* 14, no. 4 (2017): 812.

marriages.²⁴ Thus, this ruling opens new room for legal flexibility, although its implementation still depends on legal ratification.²⁵

3.2. Impact of Constitutional Court Decision Number 69/PUU-XIII/2015

Constitutional Court (*Mahkamah Konstitusi*/MK) Decision Number 69/PUU-XIII/2015 brought fundamental changes to the legal system of marriage agreements in Indonesia. This decision affirmed that marriage agreements can be made not only before marriage but also during it, as long as they do not conflict with the law, morality, or the interests of the children. Thus, the Constitutional Court opened up greater freedom for married couples to manage their property status more fairly, flexibly, and in accordance with the evolving needs of living together.

One of the most significant impacts of this decision was the strengthening of the principle of freedom of contract in family law. Prior to this decision, marriage agreements could only be made and ratified before marriage, as stipulated in Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage. This restriction often created problems for couples who, after marriage, wanted to change their property arrangements for specific reasons, such as to protect their respective businesses, avoid responsibility for their partner's debts, or for the sake of more efficient household finances. Following the Constitutional Court's ruling, couples can adjust their agreements without being bound by a pre-nuptial agreement, making the law more adaptable to modern social and economic dynamics.

In addition to strengthening freedom of contract, Constitutional Court Decision Number 69/PUU-XIII/2015 also strengthens protection for the weaker party in prenuptial agreements. The Constitutional Court limits the content of the agreement to the law, morality, or the interests of the child. This limitation is important because excessive contractual freedom has the potential to be exploited by a more dominant party, whether economically or socially, to oppress their partner. For example, in cases where one party insists

²⁴ Fitria Anas, Fanny Tanuwijaya, and Aan Efendi, "Prinsip Kepastian Hukum Pengesahan Perjanjian Perkawinan Oleh Notaris Pasca Putusan Mahkamah Konstitusi RI Nomor 69/PUU/XIII/2015," *Unes Law Review* 6, no. 2 (2023): 6234. See too, Ayang Afira Anugerahayu, "Implementasi Putusan Mahkamah Konstitusi No. 69/ppu-XIII/2015 dalam perjanjian Perkawinan: Implementation of The Constitutional Court Ruling No. 69/PUU-XIII/2015 in Marriage Agreements," *Ganec Swara* 19, no. 2 (2025): 725; Ali Jabbar, "Tinjauan Yuridis Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 Khususnya Pasal 29 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dalam Perjanjian Pemisahan Harta Terhadap Perkara Kepailitan," (PhD diss., Universitas Gadjah Mada, 2018), 35.

²⁵ Iswantoro, "Penyelesaian Sengketa Harta Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, no. 1 (2019): 48.

on a clause that eliminates the right to maintenance or the child's right to joint property, such an agreement would be deemed invalid because it violates a higher legal interest. Thus, the Constitutional Court's ruling maintains a balance between freedom and justice in marital relations.

Another equally important impact is the provision of legal certainty regarding the status of prenuptial agreements. Prior to this ruling, many couples experienced uncertainty because agreements made after marriage were often considered legally invalid and lacked enforceability. The constitutional court then emphasized that as long as the agreement is validated by an authorized official, such as a notary or a court, it has the same legal force as an agreement made before marriage. Therefore, married couples need not worry about their agreement being invalidated solely because of the timing of its creation. This legal certainty provides a sense of security and clarity in regulating the division of rights and obligations of each party.

Furthermore, the constitutional court's ruling also has practical implications for legal protection in the banking and business world. Many couples previously faced obstacles when attempting financial or business transactions because their assets were considered to be intermingled with their spouse's. Following the constitutional court's ruling, couples can legally separate personal and joint assets, thus better managing the risk of debt. In this context, a prenuptial agreement serves not only as a family law instrument but also as a tool for managing economic risk and protecting assets.

From a family law perspective, the constitutional court's ruling also broadens the meaning of the principle of substantive justice in marriage. The Constitutional Court recognizes that in social reality, there are changes in the roles and economic contributions between husband and wife. In some cases, the wife contributes significantly to the household income, even more so than the husband. Therefore, more flexible property arrangements allow for a more proportional and equitable distribution of rights. This ruling marks a new direction in Indonesian marriage law, one that is not solely based on formal norms but also considers social justice and gender equality.

Furthermore, constitutional court decision Number Constitutional Court Decision Number 69/PUU-XIII/2015 also impacted law enforcement and notarial practice, as it provided a constitutional basis for notaries to draft and validate prenuptial agreements made after marriage. Previously, notaries often refused to draft such agreements because they were deemed to lack a

strong legal basis. Now, with the support of the Constitutional Court's ruling, the notary profession has a clear legal basis to provide broader legal services to the public.

Overall, Constitutional Court Decision Number 69/PUU-XIII/2015 brought about a major transformation in Indonesia's marital legal system. This ruling not only upholds the principles of freedom and justice but also strengthens legal certainty and protects the vulnerable. Its implications extend to various areas from the protection of personal assets and household financial management to banking and business practices. Thus, this Constitutional Court Decision marks a significant milestone in the evolution of family law in Indonesia, making it more responsive to the needs of modern society.

The Constitutional Court (*Mahkamah Konstitusi*/MK) Decision Number 69/PUU-XIII/2015 has had a significant impact on the regulation of assets in mixed marriages, where Indonesian-foreigner couples can now make post-nuptial agreements to separate assets, thus enabling Indonesian citizens to retain ownership rights to land without being hindered by the principle of joint property.²⁶ These positive implications include increasing legal certainty for Indonesian citizens in mixed marriages, which were previously hampered by time restrictions, as well as minimizing economic conflicts by accommodating the needs of modern society.²⁷ From an Islamic legal perspective, this ruling aligns with *maslahah mursalah* and *sadd al-dzari'ah*, as it provides benefits such as protection of property, life, and descendants

²⁶ Tubagus Hikam Ahmad, "Analisis Yuridis Terhadap Pelaksanaan Perjanjian Perkawinan Sebelum Dan Sesudah Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," (PhD diss., Universitas Islam Sultan Agung Semarang, 2022), 23. See too, Fegha Fannissa Dyananto, "Pengaturan Harta Kekayaan Bersama Perkawinan Campuran dalam Postnuptial Agreement (Perjanjian Setelah Kawin) Berdasarkan Putusan Mahkamah Konstitusi NO. 69/PUU-XIII/2015 terhadap UU NO. 1 Tahun 1974 tentang Perkawinan," (Surakarta: UNS Press, 2019), 133; Nauval Raja Hamnan, and Akhmad Budi Cahyono, "Pencatatan Perjanjian Perkawinan dalam Perkawinan Campuran Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015, Perlukah Pengesahan dari Pengadilan?" *UNES Law Review* 7, no. 1 (2024): 647; R. A., Naftalin, "Perjanjian perkawinan pada perkawinan campuran pasca putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 ditinjau dari Sadd Al-Dzarî 'ah," (PhD diss., Universitas Islam Negeri Maulana Malik Ibrahim, 2019), 15; Wayan Santoso, "Analisa Yuridis Fleksibilitas Perjanjian Perkawinan Dan Implikasi Putusan Mahkamah Konstitusi RI No. 69/PUU-XIII/2015," *Jurnal Aktual Justice* 9, no. 1 (2024): 55.

²⁷ Riskon As Shiddiqie, "Analisis putusan judicial review Mahkamah Konstitusi No. 69/PUU-XIII/2015 terhadap pasal 29 ayat (1), ayat (2) dan ayat (3) UU No. 1 Tahun 1974 tentang perjanjian perkawinan ditinjau dari masalah mursalah," (PhD diss., Universitas Islam Negeri Maulana Malik Ibrahim, 2017), 37. See too, Anissa Ridhanti, and Abdul Hadi Anshary, "Tinjauan Tentang Peran Notaris Dalam Pengesahan Perjanjian Perkawinan Di Indonesia Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Kajian Ilmu Hukum* 2, no. 1 (2023): 220; Desimawati Sinaga, "Implikasi Yuridis Terkait Peran Notaris Dalam Pengesahan Perjanjian Perkawinan di Indonesia Pasca Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015," *Jurnal Hukum De'rechtsstaat* 6, no. 2 (2020): 100.

without conflicting with sharia, Pancasila, or the 1945 Constitution, thus promoting social and humanitarian justice.²⁸

However, negative impacts also arise, such as the potential for legal uncertainty in bankruptcy proceedings, where post-nuptial agreements can be exploited to avoid debt obligations, harming creditors as third parties if not properly registered.²⁹ Furthermore, the lack of public awareness has led to a lack of public interest and notary public rejection of post-nuptial agreements, both for Indonesian-Indonesian and Indonesian-foreign couples, which have the potential to give rise to legal disputes.³⁰ In the context of inheritance, this ruling impacts the land inheritance process, where agreements can exclude spouses from inheritance certificates, change the distribution of first-class inheritance rights, and require adjustments at the land office.³¹ Although the ruling is final and binding without a full response in the revision of Law Number 16 of 2019, its implications strengthen the Constitutional Court's role in developing adaptive marriage law.³²

²⁸ Ardillah Halim, "Analisis perjanjian perkawinan dalam putusan Mahkamah Konstitusi Nomor 69/PUU-XII/2015 perspektif Masalah Mursalah," (PhD diss., Universitas Islam Negeri Maulana Malik Ibrahim, 2022), 34. See too, R. A., Naftalin, "Perjanjian perkawinan pada perkawinan campuran pasca putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 ditinjau dari Sadd Al-Dzarī 'ah," (PhD diss., Universitas Islam Negeri Maulana Malik Ibrahim, 2019), 16.

²⁹ Nanda Ayu Lestari, "Implikasi Hukum Putusan Mahkamah Konstitusi Nomor 69/puu-xiii/2015 Tentang Perjanjian Perkawinan Terhadap Pemisahan Harta Bersama Setelah Dilaksanakan Perkawinan," (PhD diss., Universitas Islam Indonesia, 2024), 44. See too, Alfian Halifa Pasha, "Implikasi yuridis perjanjian perkawinan yang dibuat dalam proses kepailitan berkaitan dengan putusan Mahkamah Konstitusi Republik Indonesia Nomor 69/PUU-XIII-2015= Juridical implications of marriage agreements made in the bankruptcy process in connection with the decision of the constitutional court of the Republic of Indonesia Number 69/PUU/XIII/2015," (Thesis: Fakultas Hukum Universitas Indonesia, 2018), 12; Nadira Ratunanda Wirjono, "Keabsahan Perjanjian Perkawinan Yang Dicatatkan Debitor Setelah Dinyatakan Pailit Pasca Putusan Mahkamah Konstitusi Republik Indonesia Nomor 69/PUU-XIII/2015 (Studi Putusan-Putusan Pengadilan)," *Indonesian Notary* 7, no. 1 (2021): 4; Laila Yunita, and Suprpto Suprpto, "Ratification of Marriage Agreement After the Enforcement of the Constitutional Court Decision Number 69/PUU-XIII/2015 in Accordance with the Principle of Authentication," *Jurnal Hukum Sehasen Vpēdumēu: Unived Press* 10, no. 2 (2024): 579.

³⁰ Fegha Fannissa Dyananto, "Implikasi Pengaturan Harta Bersama Berdasarkan Putusan Mahkamah Konstitusi No. 69/PUU-XIII/2015," *Jurnal Privat Law* 9, no. 2 (2019): 232. See too, Anissa Ridhanti, and Abdul Hadi Anshary, "Tinjauan Tentang Peran Notaris Dalam Pengesahan Perjanjian Perkawinan di Indonesia Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Kajian Ilmu Hukum* 2, no. 1 (2023): 222; Rio Satria, "Dua Putusan Krusial Mahkamah Konstitusi Terlewatkan Dalam Revisi Undang-Undang Perkawinan," *Mahkama Agung*, 2022. Retrieved in October 12, 2025. https://www.pta-bandarlampung.go.id/images/artikel/Dua_Putusan_Krusial_MK_Terlewatkan_di_Dalam_Revisi_UUP.pdf.

³¹ Tudi Iskandar, "Proses Turun Waris Setelah Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Hukum to-ra: Hukum Untuk Mengatur dan Melindungi Masyarakat* 11, no. 2 (2025): 419.

³² Nanda Ayu Lestari, "Implikasi Hukum Putusan Mahkamah Konstitusi Nomor 69/puu-xiii/2015 Tentang Perjanjian Perkawinan Terhadap Pemisahan Harta Bersama Setelah Dilaksanakan Perkawinan," (PhD diss., Universitas Islam Indonesia, 2024), 45. See too, Rio Satria, "Dua Putusan Krusial Mahkamah Konstitusi Terlewatkan Dalam Revisi Undang-Undang Perkawinan," *Mahkama Agung*, 2022. Retrieved in

Table 1. Comparison Before and After Constitutional Court Decision Number 69/PUU-XIII/2015

Aspect	Before Constitutional Court Decision No. 69/PUU-XIII/2015	After Constitutional Court Decision No. 69/PUU-XIII/2015
1. Legal Status of Marriage Agreements	Valid only if made at or before the celebration of marriage (Art. 29(1) Marriage Law jo. Art. 147 Civil Code)	Valid if made at any time: before or during the marriage (post-nuptial agreements recognized)
2. Timing of Creation & Amendment	Impossible to create or amend after marriage is concluded → null and void by law	Freely created or amended at any point during the subsistence of the marriage
3. Default Regime of Marital Property	Property acquired during marriage becomes joint property (community of property) unless otherwise stipulated before marriage (Art. 35(1))	Community of property remains the default, unless derogated by a marriage agreement (made before or after marriage)
4. Separation of Property	Practically impossible after marriage → problematic for entrepreneurs, creditors, and mixed marriages	Legally possible and valid → highly beneficial for mixed-nationality marriages, business owners, and debt-risk management
5. Registration / Ratification	Must be registered with the Marriage Registrar; automatically binding on involved third parties	- Can be made via notarial deed (authentic deed) - Recommended to be ratified by District/Religious Court for executorial force and publicity - Must be registered with KUA or Civil Registry to bind third parties
6. Protection of the Weaker / Disadvantaged Party	Limited protection because post-marriage agreements were not recognized	Stronger protection: - Court conducts substantive examination - Agreement void if contrary to law, religion, morality, or children's interests

October 12, 2025. https://www.pta-bandarlampung.go.id/images/artikel/Dua_Putusan_Krusial_MK_Terlewatkan_di_Dalam_Revisi_UUP.pdf; Wahyuni, Rachmat Safa'at, and Muhammad Fadli. "Kewenangan Dan Tanggung Jawab Notaris Dalam Pembuatan Akta Perjanjian Kawin Pasca Putusan Mahkamah Konstitusi No. 69/Puu-Xii/2015," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 2 (2017): 140.

Aspect	Before Constitutional Court Decision No. 69/PUU-XIII/2015	After Constitutional Court Decision No. 69/PUU-XIII/2015
7. Interests of Children & Third Parties	Protected in principle, but difficult to enforce because post-marriage agreements were invalid	Explicitly protected: agreement must not prejudice children (born or unborn) or third parties Only binding on third parties after registration (principle of publicity)
8. Impact on Creditors / Bankruptcy	Difficult to separate assets → creditors relatively safe (could seize joint property)	Risk of abuse: spouses may separate assets to evade debts → potential harm to creditors if agreement is not properly registered
9. Notarial & Judicial Practice	Notaries frequently refused to draft post-nuptial deeds Courts rejected ratification applications	Notaries now willing to draft post-nuptial deeds Courts accept and examine ratification applications with substantive review
10. Impact on Mixed Marriages (Indonesian-Foreigner)	Indonesian spouse often lost land ownership rights due to joint property regime → forced divorce was sometimes the only solution	Indonesian spouse can retain land ownership rights via post-nuptial agreement → no need for divorce to achieve asset separation

A comparison of the legal framework before and after Constitutional Court Ruling Number 69/PUU-XIII/2015, as shown in Table 1, demonstrates a transformative shift in Indonesian marriage law, particularly in the regulation of prenuptial agreements. Previously, prenuptial agreements were only valid if they were made before or during the marriage. Consequently, any postnuptial modifications were void. Following the ruling, couples gained the freedom to make or amend agreements at any time during the marriage. This ruling, in turn, expanded contractual autonomy while maintaining the standard community property regime unless otherwise agreed. This change significantly improved the practicality of asset separation, particularly for mixed marriages, entrepreneurs, and individuals facing debt risks. Another important consequence of the ruling is the registration and legalization procedures, where notarial deeds and court approval are now recognized as mechanisms to ensure legal certainty, enforceability, and publicity.

Furthermore, the ruling strengthened protections for the weaker party by requiring substantive judicial review and preventing agreements that violate the law, religion, morality, or the interests of children. Children and third parties are explicitly protected, as the agreement only binds them once it is officially registered.

3.3. Legal Legalization and Protection Mechanism

Following Constitutional Court (*Mahkamah Konstitusi*/MK) Decision Number 69/PUU-XIII/2015, the procedures for ratifying and legally protecting prenuptial agreements have undergone significant developments. Previously, prenuptial agreements could only be drawn up and ratified before the marriage took place, as stipulated in Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage. However, through the Constitutional Court's decision, this time limit was removed, allowing married couples to draft and ratify prenuptial agreements both before and after the marriage takes place. This change requires a more detailed and focused legal mechanism to ensure that prenuptial agreements are legally binding and provide optimal legal protection for the parties.

Practically, post-MK decision, the ratification of prenuptial agreements can be carried out through two main channels: a notary and the court. A prenuptial agreement drawn up before a notary has the legal force of an authentic deed in accordance with Article 1868 of the Civil Code. However, to maintain enforceable legal force and be enforceable in the event of a dispute, the agreement should be ratified by a court. This ratification mechanism guarantees that the contents of the agreement meet the requirements of legal validity and do not conflict with the law, morality, or the interests of the child.

In practice, a married couple wishing to ratify a prenuptial agreement can submit an application to the District Court or Religious Court, depending on their religion and marital status. The court will then examine the substance of the agreement to ensure that it contains no clauses that violate legal norms or cause injustice to either party. For example, if the agreement eliminates the obligation to provide child support or eliminates the child's right to inheritance, the court has the right to refuse ratification. Therefore, the court ratification mechanism serves as a normative filter to maintain justice and protect potentially disadvantaged parties. Furthermore, court ratification provides legal certainty for third parties, such as banking institutions or government agencies, if the agreement is used for administrative purposes or other legal transactions. For example, when one party wishes to obtain a bank

loan or purchase assets in their own name, the ratified prenuptial agreement serves as legal evidence of the separation of assets. This ensures that third parties do not need to worry about lawsuits from the other partner. This is in line with the principle of prudence in legal transactions and supports household economic stability.

In addition to the legalization aspect, legal protection following the Constitutional Court's ruling is also a crucial aspect in ensuring a balance of rights and obligations within a prenuptial agreement. This legal protection encompasses two main dimensions: preventive and repressive protection. Preventive protection is provided through a judicial oversight process during the ratification stage, ensuring that the agreement's contents do not violate the law or morality. Repressive protection, on the other hand, is provided when one party violates the agreement's contents, allowing the injured party to demand fulfillment of their rights based on the ratified agreement. In this context, a legally binding prenuptial agreement can serve as the basis for filing a lawsuit in court if a contractual breach occurs.

Furthermore, the ratification of a prenuptial agreement is also closely related to the principles of justice and child protection. The Constitutional Court emphasized that every prenuptial agreement must consider the interests of children, both those already born and those yet to be born from the marriage. Therefore, when granting ratification, the judge must assess whether the agreement's contents have the potential to diminish children's rights, such as the right to custody, education, or inheritance. These principles place child protection as a moral and legal value that cannot be overridden, even by agreement of the parties. From an administrative law perspective, the court's ratification of a marriage contract also has implications for registration at the Office of Religious Affairs (*Kantor Urusan Agama/KUA*) or the Population and Civil Registry Office (*Kantor Kependudukan dan Pencatatan Sipil/Dukcapil*). A ratified contract must be reported for official registration, ensuring its legal status in various administrative matters, such as registering property ownership, processing taxes, or preparing inheritance documents. This makes the ratification mechanism function not only in a judicial context but also administratively, ensuring its validity in various legal fields.

Following the Constitutional Court (*Mahkamah Konstitusi/MK*) Decision Number 69/PUU-XIII/2015, the mechanism for ratifying marriage agreements increasingly emphasizes the role of notaries as authentic deed makers, which do not require prior court rulings, thereby speeding up the

process and increasing accessibility for couples.³³ Notaries have the authority to alter legal mechanisms by drafting deeds without court procedures, provided the agreement is based on mutual consent and does not violate norms binding third parties after registration at the Office of Religious Affairs or Civil Registration Office to meet the principle of publicity.³⁴ However, if there is a dispute or the need for enforcement, court approval is still necessary to verify validity, especially in cases of mixed marriages where the separation of assets affects land rights.³⁵ Legal protection for the injured party, such as a spouse or child, is enhanced through the principle of good faith and

³³ Tubagus Hikam Ahmad, "Analisis Yuridis Terhadap Pelaksanaan Perjanjian Perkawinan Sebelum Dan Sesudah Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," (PhD diss., Universitas Islam Sultan Agung Semarang, 2022), 23. See too, Si Ngurah Ardhya, and I. Putu Windu Mertha Sujana, "Konsekuensi Yuridis Berlakunya Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Komunikasi Hukum (JKH)* 7, no. 1 (2021): 298; Eva Dwinopianti, "Implikasi dan Akibat Hukum Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 terhadap Pembuatan Akta Perjanjian Perkawinan Setelah Kawin yang Dibuat di Hadapan Notaris," (PhD diss., Universitas Islam Indonesia, 2017), 23; Nanda Ayu Lestari, "Implikasi Hukum Putusan Mahkamah Konstitusi Nomor 69/puu-xiii/2015 Tentang Perjanjian Perkawinan Terhadap Pemisahan Harta Bersama Setelah Dilaksanakan Perkawinan," (PhD diss., Universitas Islam Indonesia, 2024), 46; Anissa Ridhanti, and Abdul Hadi Anshary, "Tinjauan Tentang Peran Notaris Dalam Pengesahan Perjanjian Perkawinan Di Indonesia Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Kajian Ilmu Hukum* 2, no. 1 (2023): 223; Desimawati Sinaga, "Implikasi Yuridis Terkait Peran Notaris Dalam Pengesahan Perjanjian Perkawinan di Indonesia Pasca Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015," *Jurnal Hukum De'rechtsstaat* 6, no. 2 (2020): 102.

³⁴ Fitria Anas, Fanny Tanuwijaya, and Aan Efendi, "Prinsip Kepastian Hukum Pengesahan Perjanjian Perkawinan Oleh Notaris Pasca Putusan Mahkamah Konstitusi RI Nomor 69/PUU/XIII/2015," *Unes Law Review* 6, no. 2 (2023): 6235. See too, Nyoman Mas Aryani, "Implikasi Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 Pada Pembuatan Perjanjian Perkawinan," *Vyavahara Duta* 13, no. 2 (2018): 69; Desak Laksmi Brata, Ni Ketut Sari Adnyani, and Ketut Sudiarmaka, "Kajian Normatif Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Komunitas Yustisia* 1, no. 3 (2018): 221; Alfian Halifa Pasha, "Implikasi yuridis perjanjian perkawinan yang dibuat dalam proses kepailitan berkaitan dengan putusan Mahkamah Konstitusi Republik Indonesia Nomor 69/PUU-XIII-2015= Juridical implications of marriage agreements made in the bankruptcy process in connection with the decision of the constitutional court of the Republic of Indonesia Number 69/PUU/XIII/2015," (Thesis: Fakultas Hukum Universitas Indonesia, 2018), 14; Rio Satria, "Dua Putusan Krusial Mahkamah Konstitusi Terlewatkan Dalam Revisi Undang-Undang Perkawinan," *Mahkama Agung*, 2022. Retrieved in October 12, 2025. https://www.pta-bandarlampung.go.id/images/artikel/Dua_Putusan_Krusial_MK_Terlewatkan_di_Dalam_Revisi_UUP.pdf; Nadira Ratunanda Wirjono, "Keabsahan Perjanjian Perkawinan Yang Dicatatkan Debitor Setelah Dinyatakan Pailit Pasca Putusan Mahkamah Konstitusi Republik Indonesia Nomor 69/PUU-XIII/2015 (Studi Putusan-Putusan Pengadilan)." *Indonesian Notary* 7, no. 1 (2021): 5.

³⁵ 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* 6, no. 1 (2017): 55. See too, Syaifullahi Maslul, "Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 Ditinjau dari Pemenuhan Hak-Hak Asasi Manusia dan Asas Pembentukan Perjanjian," *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam* 1, no. 2 (2016): 417; R. A., Naftalin, "Perjanjian perkawinan pada perkawinan campuran pasca putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 ditinjau dari Sadd Al-Dzari 'ah," (PhD diss., Universitas Islam Negeri Maulana Malik Ibrahim, 2019), 17; Wayan Santoso, "Analisa Yuridis Fleksibilitas Perjanjian Perkawinan Dan Implikasi Putusan Mahkamah Konstitusi RI No. 69/PUU-XIII/2015," *Jurnal Aktual Justice* 9, no. 1 (2024): 56; Damian Agata Yuvens, "Analisis Kritis terhadap Perjanjian Perkawinan dalam Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Konstitusi* 14, no. 4 (2017): 813.

substantive examination by the judge, which ensures that the agreement does not harm the child's interests in support, education, or inheritance.³⁶ In a repressive context, the injured party can file a lawsuit based on an authentic deed, while preventive measures are carried out through regulatory harmonization to avoid normative conflicts.³⁷ Third parties, such as creditors in bankruptcy, are protected by the provision that agreements are only binding once registered, preventing abuse to avoid liability.³⁸ The lack of technical guidance leads to challenges, such as notary refusals or low public awareness, necessitating education and legislative revisions for effectiveness.³⁹

³⁶ Riskon As Shiddiqie, "Analisis putusan judicial review Mahkamah Konstitusi No. 69/PUU-XIII/2015 terhadap pasal 29 ayat (1), ayat (2) dan ayat (3) UU No. 1 Tahun 1974 tentang perjanjian perkawinan ditinjau dari masalah mursalah," (PhD diss., Universitas Islam Negeri Maulana Malik Ibrahim, 2017), 38. See too, Ardillah Halim, "Analisis perjanjian perkawinan dalam putusan Mahkamah Konstitusi Nomor 69/PUU-XII/2015 perspektif Masalah Mursalah," (PhD diss., Universitas Islam Negeri Maulana Malik Ibrahim, 2022), 36; Tudi Iskandar, "Proses Turun Waris Setelah Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Hukum to-ra: Hukum Untuk Mengatur dan Melindungi Masyarakat* 11, no. 2 (2025): 420; Iswantoro, "Penyelesaian Sengketa Harta Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 11, no. 1 (2019): 48; Moh Rohman, "Implikasi putusan Mahkamah Konstitusi nomor 69/PUU/XIII/2015 tentang perjanjian perkawinan terhadap tujuan perkawinan," *Al-Daulah: Jurnal Hukum Dan Perundangan Islam* 7, no. 1 (2017): 16.

³⁷ Sri Ahyani, "Implikasi Putusan Mahkamah Konstitusi Nomor 69/PUU/XIII/2015 Terhadap Pasal 29 Undang-undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Wawasan Yuridika* 2, no. 1 (2018): 89. See too, Ayang Afira Anugerahayu, "Implementasi Putusan Mahkamah Konstitusi No. 69/ppu-XIII/2015 dalam perjanjian Perkawinan: Implementation of The Constitutional Court Ruling No. 69/PUU-XIII/2015 in Marriage Agreements," *Ganec Swara* 19, no. 2 (2025): 728; Ingrid Fransisca Matina Candra, and Zil Aidi, "Implikasi Atas Berlakunya Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII-2015 Terhadap Perjanjian Perkawinan Di Indonesia," *Unes Law Review* 6, no. 3 (2024): 8852; Anissa Ridhanti, and Abdul Hadi Anshary, "Tinjauan Tentang Peran Notaris Dalam Pengesahan Perjanjian Perkawinan Di Indonesia Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Kajian Ilmu Hukum* 2, no. 1 (2023): 225; Herni Widanarti, "Implementasi Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 terhadap Hukum Perkawinan di Indonesia," *Law, Development and Justice Review* 3, no. 1 (2020): 127.

³⁸ Fitria Anas, Fanny Tanuwijaya, and Aan Efendi, "Prinsip Kepastian Hukum Pengesahan Perjanjian Perkawinan Oleh Notaris Pasca Putusan Mahkamah Konstitusi RI Nomor 69/PUU/XIII/2015," *Unes Law Review* 6, no. 2 (2023): 6236. See too, Ali Jabbar, "Tinjauan Yuridis Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 Khususnya Pasal 29 Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dalam Perjanjian Pemisahan Harta Terhadap Perkara Kepailitan," (PhD diss., Universitas Gadjah Mada, 2018), 36; Nadira Ratunanda Wirjono, "Keabsahan Perjanjian Perkawinan Yang Dicatatkan Debitor Setelah Dinyatakan Pailit Pasca Putusan Mahkamah Konstitusi Republik Indonesia Nomor 69/PUU-XIII/2015 (Studi Putusan-Putusan Pengadilan)," *Indonesian Notary* 7, no. 1 (2021): 7; Laila Yunita, and Suprpto Suprpto, "Ratification of Marriage Agreement After the Enforcement of the Constitutional Court Decision Number 69/PUU-XIII/2015 In Accordance with the Principle of Authentication," *Jurnal Hukum Sehasen Ypedumenu: Unived Press* 10, no. 2 (2024): 580.

³⁹ Fegha Fannissa Dyananto, "Implikasi Pengaturan Harta Bersama Berdasarkan Putusan Mahkamah Konstitusi No. 69/PUU-XIII/2015," *Jurnal Privat Law* 9, no. 2 (2019): 23. See too, Nauval Raja Hamnan, and Akhmad Budi Cahyono, "Pencatatan Perjanjian Perkawinan dalam Perkawinan Campuran Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015, Perlukah Pengesahan dari Pengadilan?" *UNES Law Review* 7, no. 1 (2024): 647; Rio Satria, "Dua Putusan Krusial Mahkamah Konstitusi Terlewatkan Dalam Revisi Undang-Undang Perkawinan," *Mahkama Agung*, 2022. Retrieved in October 12, 2025. <https://www.pta->

Overall, this ruling strengthens protection through judicial and administrative integration, although uncertainties remain that require special arrangements for cases such as bankruptcy or inheritance.⁴⁰ With the legal validation and protection mechanisms in place following Constitutional Court Decision Number 69/PUU-XIII/2015, the Indonesian legal system is now more responsive to the needs of a dynamic society. This arrangement not only provides space for couples to adapt prenuptial agreements to their economic and social circumstances but also ensures strong legal oversight to protect the interests of all parties, including children. Thus, the Constitutional Court Decision not only expands family legal freedom but also strengthens the legitimacy of the judiciary in maintaining justice, legal certainty, and the welfare of marriage in Indonesia.

4. Closing

4.1. Conclusions Constitutional Court Decision Number 69/PUU-XIII/2015 marks a major development in Indonesian marriage law by strengthening prenuptial agreements as a flexible tool for regulating the rights and obligations of spouses. Before this ruling, such agreements were rigid and limited to the period before or at the time of marriage, making it difficult for couples to rearrange assets due to the principle of community property, especially in mixed marriages or business contexts. The ruling expanded freedom of contract while maintaining fairness, enabling couples to make agreements at any time during marriage to respond to changing circumstances, such as debt risks or unequal economic contributions, thus

bandarlampung.go.id/images/artikel/Dua_Putusan_Krusial_MK_Terlewatkan_di_Dalam_Revisi_UUP.pdf.

⁴⁰ Riskon As Shiddiqie, "Analisis putusan judicial review Mahkamah Konstitusi No. 69/PUU-XIII/2015 terhadap pasal 29 ayat (1), ayat (2) dan ayat (3) UU No. 1 Tahun 1974 tentang perjanjian perkawinan ditinjau dari masalah mursala4h," (PhD diss., Universitas Islam Negeri Maulana Malik Ibrahim, 2017), 39. See too, Desak Laksmi Brata, Ni Ketut Sari Adnyani, and Ketut Sudiarmaka, "Kajian Normatif Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Komunitas Yustisia* 1, no. 3 (2018): 222; Tudi Iskandar, "Proses Turun Waris Setelah Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Hukum to-ra: Hukum Untuk Mengatur dan Melindungi Masyarakat* 11, no. 2 (2025): 420; Nanda Ayu Lestari, "Implikasi Hukum Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 Tentang Perjanjian Perkawinan Terhadap Pemisahan Harta Bersama Setelah Dilaksanakan Perkawinan," (PhD diss., Universitas Islam Indonesia, 2024), 48; Alfian Halifa Pasha, "Implikasi yuridis perjanjian perkawinan yang dibuat dalam proses kepailitan berkaitan dengan putusan Mahkamah Konstitusi Republik Indonesia Nomor 69/PUU-XIII-2015= Juridical implications of marriage agreements made in the bankruptcy process in connection with the decision of the constitutional court of the Republic of Indonesia Number 69/PUU/XIII/2015," (Thesis: Fakultas Hukum Universitas Indonesia, 2018), 17; Herni Widanarti, "Implementasi Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 terhadap Hukum Perkawinan di Indonesia," *Law, Development and Justice Review* 3, no. 1 (2020): 129; Nadira Ratunanda Wirjono, "Keabsahan Perjanjian Perkawinan Yang Dicatatkan Debitor Setelah Dinyatakan Pailit Pasca Putusan Mahkamah Konstitusi Republik Indonesia Nomor 69/PUU-XIII/2015 (Studi Putusan-Putusan Pengadilan)," *Indonesian Notary* 7, no. 1 (2021): 9.

improving legal certainty, promoting gender equality, and supporting household harmony. Economically, it facilitates business and banking transactions by separating personal assets from joint property, reducing potential losses. The legalization process also became more effective, involving notaries, courts, and official registration to ensure legal compliance and transparency. Despite remaining challenges such as limited public awareness and technical guidance, this ruling makes marriage law more adaptive to modern needs and enhances protection for all parties.

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