



Legal Implications of Marriage Agreements Regarding Separation of Joint Property Following Constitutional Court Decision Number 69 of 2015

(Case Study Number 49/Pdt.P/2020/PA.Tgrs)

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ABSTRACT

Constitutional Court Decision Number 69/PUU-XIII/2015 has provided a new legal basis for interpreting Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage, which previously only allowed the creation of marriage agreements before or during the marriage. The purpose of this study is to analyze the legal impact of allowing marriage agreements after the marriage has taken place, as a consequence of Constitutional Court Decision No. 69/PUU-XIII/2015, and to examine how this new norm is applied in judicial practice through a case study of Case No. 49/Pdt.P/2020/PA. Tgrs at the Tigaraksa Religious Court. The research uses a normative juridical approach with primary data sources in the form of court decisions and legislation, as well as secondary data such as legal doctrine, theories on agreements and legal certainty, and the results of interviews with relevant law enforcement officials. The findings of the study show that the Constitutional Court's decision expands the application of the principle of freedom of contract contained in Article 1338 of the Civil Code and affirms that married couples have the constitutional right to regulate their civil relations through agreements, including those concerning joint property, without being bound by the time of creation before marriage. In case 49/Pdt.P/2020/PA.Tgrs, the Panel of Judges granted the ratification of the marriage agreement because it fulfilled the elements of legality and did not cause harm to third parties. This shows that the norms resulting from the Constitutional Court's decision have been accepted as a valid source of law in court practice. The legal consequences of marriage agreements made after marriage include the need for new guidelines in the judicial and notarial fields, the importance of the ratification process in court, and the guarantee of legal protection for third parties who may be affected. Although the change in norms has taken place, its implementation still faces obstacles, mainly due to the limited understanding of law enforcement officials and the absence of official technical provisions from the Supreme Court or the Ministry of Religious Affairs as a basis for implementation at the national level.

Keywords: Marriage Agreement, Separation of Joint Property, Religious Courts.

ABSTRAK

Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 telah memberikan landasan hukum baru dalam menafsirkan Pasal 29 ayat (1) Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, yang sebelumnya hanya memperbolehkan pembuatan perjanjian perkawinan sebelum atau saat pernikahan berlangsung. Tujuan dari penelitian ini adalah untuk menganalisis dampak hukum atas diperbolehkannya perjanjian perkawinan setelah

pernikahan berlangsung, sebagai konsekuensi dari Putusan Mahkamah Konstitusi No. 69/PUU-XIII/2015, dan menelaah bagaimana penerapan norma baru ini dalam praktik peradilan melalui studi kasus atas perkara Nomor 49/Pdt.P/2020/PA.Tgrs di Pengadilan Agama Tigaraksa. Penelitian menggunakan pendekatan normatif yuridis dengan sumber data primer berupa putusan pengadilan dan peraturan perundang-undangan, serta data sekunder seperti doktrin hukum, teori tentang perjanjian dan kepastian hukum, serta hasil wawancara dengan aparat penegak hukum terkait. Temuan penelitian menunjukkan bahwa Putusan Mahkamah Konstitusi memperluas penerapan asas kebebasan berkontrak yang termuat dalam Pasal 1338 KUHPerdara, serta menegaskan bahwa pasangan suami istri memiliki hak konstitusional untuk mengatur hubungan keperdataan mereka melalui perjanjian, termasuk mengenai harta bersama, tanpa terikat waktu pembuatan sebelum menikah. Dalam perkara 49/Pdt.P/2020/PA.Tgrs, Majelis Hakim mengabulkan pengesahan perjanjian kawin karena telah memenuhi unsur legalitas dan tidak menimbulkan kerugian terhadap pihak ketiga. Hal ini menunjukkan bahwa norma hasil putusan Mahkamah Konstitusi telah diterima sebagai sumber hukum yang sah dalam praktik pengadilan. Konsekuensi hukum dari perjanjian perkawinan yang dibuat setelah menikah mencakup perlunya pedoman baru di ranah peradilan dan kenotariatan, pentingnya proses pengesahan di pengadilan, serta jaminan perlindungan hukum terhadap pihak ketiga yang berpotensi terdampak. Meskipun perubahan norma telah terjadi, pelaksanaannya masih menghadapi hambatan, terutama karena keterbatasan pemahaman para aparat hukum dan belum adanya ketentuan teknis resmi dari Mahkamah Agung atau Kementerian Agama sebagai dasar pelaksanaan di tingkat nasional.

Kata Kunci: *Perjanjian Perkawinan, Pemisahan Harta Bersama, Pengadilan Agama.*

INTRODUCTION

Marriage is a physical and spiritual bond between a man and a woman as husband and wife, with the aim of establishing a happy and lasting household, based on the values of the One Almighty God. This provision is clearly stated in Law Number 1 of 1974 concerning Marriage (Jahri et al., 2024). Within the national legal framework, the existence of a prenuptial agreement is regulated through Article 29 of the Law, which provides space for prospective husband and wife to arrange certain provisions before entering into marriage. The scope and flexibility of this prenuptial agreement was then expanded through Constitutional Court Decision Number 69/PUU-XIII/2015, which provides legality for the creation of a prenuptial agreement not only before, but also during the marriage. A prenuptial agreement is a form of agreement made by prospective husband and wife before marriage takes place, which aims to regulate the rights and obligations of each party during the marriage and thereafter. The presence of this agreement plays an important role in creating legal certainty and avoiding potential future conflicts, especially those related to joint property or other issues in the marriage relationship. However, before the existence of clear legal regulations, the implementation of prenuptial agreements in Indonesia still faces various challenges and uncertainties in practice (Fitroni et al., 2025).

In the Indonesian legal system, which adheres to the principles of limited monogamy and community property, prenuptial agreements serve as a legal

instrument that provides freedom for married couples to manage their civil interests more freely and according to their needs (Fitroni et al., 2025).

However, prior to the issuance of Constitutional Court Decision Number 69/PUU-XIII/2015, provisions regarding the separation of assets could only be agreed upon if they were outlined in an agreement before the marriage ceremony. If such an agreement was made after the marriage, it was legally considered invalid and ineffective. This situation often creates inequality, especially for women or those who feel vulnerable to the potential misuse of joint assets. Many couples only realize the importance of managing assets through an agreement after marriage, either due to changes in economic conditions, increased understanding of legal aspects, or the need to protect the interests of third parties, such as children from a previous marriage or business partners. In this context, Constitutional Court Decision No. 69/PUU-XIII/2015 represents a significant constitutional step forward, providing legal space to achieve greater justice within the institution of marriage (Gofar et al., 2025).

Constitutional Court Decision No. 69/PUU-XIII/2015 provides a stronger foundation for the validity of prenuptial agreements by clarifying the terms and procedures for their creation. This decision marked a crucial moment in the development of family law in Indonesia, providing legal certainty regarding the validity and enforcement of such agreements. Therefore, the implementation of this decision has had a significant impact on legal practice, particularly in ensuring the protection of the rights of married couples. In this regard, Decision No. 49/Pdt.P/2020/PA.Tgrs serves as a relevant case study for judicial analysis to examine the legal application of prenuptial agreements following the Constitutional Court Decision. Through this review of the court decision, this research aims to uncover the resulting legal implications and provide a more comprehensive understanding of the effectiveness and obstacles to implementing prenuptial agreements in practice (Yusuf et al., 2024).

Based on a review of the Decision dated January 16, 2020, it was discovered that a husband and wife filed a petition with the Tigaraksa Religious Court to obtain a ruling on the separation of assets agreement they entered into after their marriage. This petition was filed because they did not have a prenuptial agreement at the time of their marriage, but later realized the importance of regulating the separation of assets in their marriage. In their petition, they requested that the agreement be declared valid and that it be registered with the Religious Affairs Office (KUA) in the Ciputat Timur District, South Tangerang City. They also requested that three plots of land and a building located in South Jakarta and Bali, previously considered joint property, be declared entirely the property of the wife (Pratiwi et al., 2025).

The Panel of Judges at the Tigaraksa Religious Court granted the petition on February 12, 2020. In their ruling, the judge stated that the proposed separation of assets agreement was legally valid, and ordered that the agreement be registered with the Office of Religious Affairs in accordance with applicable regulations. Furthermore, the judge also determined that the three plots of land and the

building in question fully belong to the wife. This decision serves as concrete evidence of the implementation of Constitutional Court Decision Number 69/PUU-XIII/2015, which opens the opportunity for married couples to enter into prenuptial agreements, even after marriage, as long as they do not conflict with the law and moral norms. This reflects the direction of development of marriage law in Indonesia, which is increasingly responsive and adaptive to the needs of couples in regulating the division of assets more flexibly (Jahiri et al., 2023).

With increasing public awareness of the importance of regulating prenuptial agreements, the need for solid legal certainty is becoming increasingly important. Therefore, this research not only contributes academically but also has significant practical value. The results of this study are expected to serve as a reference for policy makers, law enforcement officers, and the wider community in understanding and implementing legal provisions related to prenuptial agreements, especially after the Constitutional Court Decision Number 69 of 2015, through a juridical approach to Decision Number 49/Pdt.P/2020/PA.Tgrs (Anak et al., 1142).

METHODS

This research employs a normative legal method, a scientific approach aimed at discovering truth through logical reasoning based on legal norms by examining legal materials as the foundation of argumentation (Pradoto, 2017). It uses both primary and secondary data, consisting of statutory regulations, court decisions, and legal doctrines (Kolilah, 2019). As emphasized by Sudikno Mertokusumo, this type of research relies on secondary data obtained from library studies, while primary legal materials, such as the 1945 Constitution, the Civil Code, Law No. 1 of 1974 on Marriage, and relevant court decisions, hold binding authority (Dwiputra, 2022; Nafisa & Suparto, 2024). Secondary legal materials such as scholarly writings, research results, and expert opinions serve to explain and interpret the primary sources, thereby enriching the researcher's analytical framework (Sarizal et al., 2019; Dwinopianti et al., 2017). Complementarily, tertiary legal materials like legal dictionaries, encyclopedias, and indexes function as supporting references that assist in clarifying concepts and facilitating understanding of both primary and secondary legal norms (Putri et al., 2018).

RESULTS AND DISCUSSION

General Overview of Research Subjects

This research examines the legal impact of prenuptial agreements governing the separation of joint assets following the issuance of Constitutional Court Decision Number 69/PUU-XIII/2015. The study focuses on case Number 49/Pdt.P/2020/PA.Tgrs, which was heard at the Tigaraksa Religious Court. The subjects of the research were married couples who applied for legalization of their prenuptial agreements after their marriage had taken place. This phenomenon is a direct consequence of the change in interpretation of Article 29 paragraph (1) of

Law Number 1 of 1974 concerning Marriage resulting from the Constitutional Court decision.

Prior to the issuance of the Constitutional Court Decision, regulations regarding prenuptial agreements were limited, with such agreements only being made before or immediately after the marriage. This limitation created legal inequality and uncertainty, particularly for married couples who later felt the need to separate their assets to obtain legal protection, whether for economic reasons, business interests, or to avoid the risk of a partner's debts.

The issuance of Constitutional Court Decision No. 69/PUU-XIII/2015 has expanded the legal framework by allowing the creation of prenuptial agreements during the marriage. This policy directly impacts legal interpretation, procedures in notarial practice, and the course of proceedings in religious courts. Therefore, this research is considered significant in exploring how this new legal norm is applied in the reality of legal practice.

Research Findings

1. Legal Analysis of Constitutional Court Decision No. 69/PUU-XIII/2015

Constitutional Court Decision No. 69/PUU-XIII/2015 marked a significant milestone in the development of law regarding prenuptial agreements in Indonesia. In this decision, the Court affirmed that the provisions of Article 29 paragraph (1) of Law No. 1 of 1974 are considered inconsistent with the 1945 Constitution of the Republic of Indonesia if interpreted in a restrictive manner, namely only permitting agreements to be made before or during the marriage.

The Court argued that such a time limit creates legal uncertainty and violates the principles of justice and equality between husband and wife. Therefore, the Court affirmed that married couples retain the right to enter into a prenuptial agreement as long as the agreement's contents do not harm third parties. This ruling emphasized the importance of substantive justice and expanded the scope of individual independence in the realm of family law. The principle of freedom of contract, as stipulated in Article 1338 of the Civil Code, was reaffirmed as a key principle through this ruling. With the recognition of the validity of prenuptial agreements made after marriage, there appears to be a shift in legal perspective, from an emphasis on procedural formalities to protecting the substantive rights of the parties to the marriage.

2. Prenuptial Agreements in the Civil Code and the Marriage Law

The Civil Code (KUHPerdota) comprehensively outlines provisions regarding prenuptial agreements, from Articles 139 to 154. This agreement is not mandatory, but if it is to be entered into, it must be formalized in a notarial deed and registered before the marriage takes place. Article 147 of the Civil Code states: "Prospective husband and wife are permitted to enter into a prenuptial agreement to regulate their legal relationship." regarding property during their marriage, provided that it does not conflict with public order and morality." A similar provision is also regulated in Article 29 of Law Number 1 of 1974 concerning Marriage, which states: "At or before the marriage takes place, both parties, by

agreement, may enter into a written agreement authorized by a Marriage Registrar, and the contents of such agreement shall also apply to third parties to the extent that such third parties are related."

However, following the issuance of Constitutional Court Decision Number 69/PUU-XIII/2015, a significant change occurred in the understanding of this provision. This decision opened the way for married couples to enter into a marriage agreement not only before or during the marriage, but also during the marriage. This change carries legal implications, including the requirement for re-registration and the need for ratification by the Religious Court as part of the applicable procedures.

3. Analysis of Case 49/Pdt.P/2020/PA.Tgrs

Case Number 49/Pdt.P/2020/PA.Tgrs was filed by a married couple who have been married since 2018 and intend to obtain ratification of a marital agreement regarding the separation of assets. The couple had previously drafted the agreement with the aid of a memorandum. Ris, then submitted a request for ratification to the Tigaraksa Religious Court.

In its ruling, the Panel of Judges granted the request and declared the proposed agreement legally valid. In its legal considerations, the Panel emphasized that agreements made during a marriage do not conflict with positive law, as they have a constitutional basis through Constitutional Court Decision Number 69/PUU-XIII/2015.

Based on an interview with one of the judges at the Tigaraksa Religious Court, it was explained: "The Panel considers this request not to conflict with applicable legal provisions, because the Constitutional Court has opened up space for married couples to enter into prenuptial agreements during their marriage, as long as they do not harm third parties."

Furthermore, the Panel of Judges noted that there were no objections from third parties and that all administrative requirements had been met, including a notarial deed and other supporting documents.

4. Legal Implications of Prenuptial Agreements Following the Constitutional Court Ruling

The Constitutional Court ruling has created new space in the legal system for married couples to enter into prenuptial agreements regarding the regulation of property ownership, even after the marriage has taken place. This permission has several significant legal implications. First, these provisions strengthen the principle of freedom of contract in the realm of family law, which was previously limited by specific time limits.

Second, the role of notaries and judicial institutions, particularly religious courts, becomes increasingly crucial in the process of drafting and ratifying post-nuptial agreements.

Third, there is a need for further technical regulations from the Supreme Court and the Ministry of Religious Affairs to ensure procedural clarity regarding the ratification and recording of post-nuptial agreements.

Fourth, there is the potential for increased legal protection for couples, particularly in dealing with debt issues, lawsuits, and economic inequality resulting from legal relationships with third parties.

However, implementation in the field has not been entirely ideal. This is due to limited understanding among law enforcement officials and the lack of established standard operating procedures (SOPs) within religious courts regarding the mechanism for ratifying post-nuptial agreements.

CONCLUSION

Based on the results of a normative legal analysis of Constitutional Court Decision Number 69/PUU-XIII/2015 and a case study of Tigaraksa Religious Court Decision Number 49/Pdt.P/2020/PA.Tgrs, the following conclusions can be drawn: (1) Constitutional Court Decision Number 69/PUU-XIII/2015 has had a significant legal impact on the regulation of marriage agreements, particularly by opening up legal opportunities for married couples to draft marriage agreements even after the marriage has taken place. This new interpretation of Article 29 paragraph (1) of Law Number 1 of 1974 provides a constitutional basis for the practice of post-nuptial agreements, which were previously limited to before or during the marriage. This development demonstrates a transformation in the Indonesian marriage legal system toward greater flexibility and responsiveness to social needs, while still upholding the principle of freedom of contract as stipulated in Article 1338 of the Civil Code. (2) The legal considerations used by the Panel of Judges in case No. 49/Pdt.P/2020/PA.Tgrs reflect a direct application of this constitutional doctrine. In their ruling, the judges stated that as long as the prenuptial agreement was legally executed through a notarial deed, did not conflict with applicable legal provisions, and did not harm the interests of third parties, the petition could be granted. The legal basis used was an integration of constitutional norms, civil law principles, and the spirit of the Constitutional Court's ruling, which overall aimed to ensure justice, equality, and legal certainty for the parties. This demonstrates a systematic effort to align national legal norms with the constitutional rights of citizens. (3) Prenuptial agreements made after marriage also have consequences for the legal status of joint property acquired during the marriage. The effect of such agreements depends heavily on the content and clauses agreed to by the parties. If the agreement stipulates that the separation of property is retroactive to the beginning of the marriage, then such agreement can have a retrospective impact on existing joint property. Although this is normatively valid based on the Constitutional Court's interpretation of Article 29 paragraph (3), in practice, such a situation has the potential to give rise to legal issues, particularly if the asset is already tied to the rights or claims of a third party. In such circumstances, the principle of legal certainty becomes crucial to ensure that new regulations do not interfere with the pre-existing legal rights of third parties. (4) From the perspective of the normative methodology used in this research, the results of the analysis of primary legal instruments—such as Constitutional Court decisions, Religious Court decisions, and the norms

contained in the Civil Code and the Marriage Law – indicate that the legal basis for establishing a prenuptial agreement after marriage has strong legal legitimacy. The position of this agreement is increasingly solid as a legal means to protect the civil rights of each partner in a household, as long as the agreement meets the formal and material requirements as stipulated in Article 1320 of the Civil Code and does not conflict with moral norms and public order.

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