

# Legal Analysis of Amendments To Marital Property

## Separation Agreements In Civil Law Perspective

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### ABSTRACT

Marital property separation agreements are governed by Article 29 of Law Number 1 of 1974 on Marriage and Articles 139–148 of the Indonesian Civil Code, which originally restricted their execution to the period prior to marriage. The issuance of Constitutional Court Decision Number 69/PUU-XIII/2015, however, permits postnuptial amendments with court approval, thereby generating legal uncertainty regarding the legal status of marital assets and inconsistencies in judicial decisions. This study aims to examine the legal status of joint property acquired prior to the amendment of a marital agreement following the Constitutional Court's decision and to analyze the legal implications of amendments or annulments of marital agreements on the position and distribution of marital property. This research employs a normative juridical method with statutory, conceptual, and case approaches, conducted through library research of primary legal materials, including marriage legislation, the Civil Code, and relevant court decisions, as well as secondary and tertiary legal materials. The data are analyzed qualitatively using a descriptive-analytical approach. The results indicate that marital property acquired prior to the amendment of a marital agreement is subject to prospective application and does not have retroactive effect, thereby maintaining its original legal status in accordance with the principle of legal certainty. Furthermore, the study underscores the necessity of implementing regulations to ensure uniformity in notarial and judicial practices and to promote distributive and corrective justice.

**Keywords:** Marital Property Separation Agreement; Amendment of Marital Agreement; Constitutional Court Decision No. 69/PUU-XIII/2015; Civil Law; Legal Certainty.

### 1. INTRODUCTION

Marriage constitutes a legal institution that not only unites two individuals in a lawful bond, both physically and spiritually, but also generates legal consequences with respect to the rights and obligations of the parties involved. One of the fundamental legal aspects arising from the marital relationship concerns the regulation of marital property. In legal practice, the management of property within marriage frequently gives rise to legal issues, particularly in situations where there is a lack of clarity regarding the legal status of asset ownership between husband and wife. Consequently, the regulation of property relations within marriage is an essential element in ensuring legal certainty and in preventing potential disputes in the future.

One legally recognized form of property regulation within marriage is the separation of assets agreement, commonly referred to in notarial practice as a prenuptial agreement. This agreement represents a mutual arrangement between a prospective husband and wife governing the separation of property, encompassing assets owned prior to the marriage as well as those acquired during the course of the marriage. The primary objective of this agreement is to ensure legal



certainty regarding ownership and the allocation of responsibilities between the parties, thereby minimizing the potential for property-related disputes in the future. Within the national legal framework, prenuptial agreements are regulated under Article 29 of Law Number 1 of 1974 on Marriage, which provides that prior to or at the time of the marriage, the parties may enter into a written agreement legalized by the marriage registration officer. Such an agreement shall also have legal effect on third parties insofar as it concerns their interests. Furthermore, under the civil law system, detailed provisions governing prenuptial agreements are set forth in Articles 139 to 148 of the Indonesian Civil Code (Burgerlijk Wetboek). These provisions essentially affirm that a prenuptial agreement may only be executed before the marriage takes place and shall be deemed null and void if concluded after the marriage has been legally solemnized. Accordingly, a separation of assets agreement is generally positioned as an integral component of pre-marital legal arrangements that is legally binding and final upon the commencement of the marriage.

Although a prenuptial agreement on the separation of property is fundamentally intended to provide legal certainty and protection for both spouses in the management of their respective assets, in practice, the need to modify the substance of such agreements frequently arises after the marriage has taken place. Empirical conditions demonstrate that a number of married couples perceive the property separation arrangements agreed upon prior to marriage as no longer compatible with the evolving dynamics of marital life. For instance, when one spouse who was previously economically inactive subsequently contributes significantly to the family's financial stability, there emerges an intention to unify marital assets in order to more adequately reflect the principles of partnership and substantive justice within the household.

The legal implications of amendments to a marital property separation agreement are not limited to the legal relationship between spouses and creditors, but also extend substantially to the sphere of inheritance law. Any alteration in the legal classification of assets whether from separate property to community property or vice versa inevitably reshapes the composition of the decedent's estate, which constitutes the object of distribution upon the death of one of the spouses. Legal uncertainty regarding the moment at which such amendments take effect may give rise to complex inheritance disputes in the future, particularly conflicts between the surviving spouse and other heirs, such as children from a prior marriage or blood relatives. In the absence of clear and comprehensive legal regulation, the mechanism for amending marital agreements is susceptible to misuse, as it may be strategically employed to reduce or even eliminate the forced share (legitieme portie) of heirs through the reclassification of assets undertaken shortly before the decedent's death.



Historically, the Indonesian legal system did not allow any modification to the substance of a marital property separation agreement after the marriage had been solemnized. This restriction was rooted in the provisions of the Indonesian Civil Code, which limited the formation of marital agreements to the period prior to marriage. As a consequence, this rigid regulation created a legal deadlock when societal developments gave rise to an urgent need to amend existing marital agreements. The legal breakthrough emerged through Constitutional Court Decision Number 69/PUU-XIII/2015, which fundamentally permits married couples to alter their marital agreements after marriage, subject to prior court approval. This decision represents a pivotal development in Indonesian civil law, as it enhances legal adaptability by accommodating the evolving and dynamic conditions of marital relationships.

Although Constitutional Court Decision Number 69/PUU-XIII/2015 has provided a legal basis for amending marital property separation agreements after the marriage has taken place, its practical implementation continues to face several challenges. One of the main issues is the absence of technical guidelines or implementing regulations that specifically regulate the procedures for amending such marital agreements. This situation has led to differing interpretations and practices among notaries and other authorized deed officials. Some notaries continue to strictly adhere to the provisions of the Indonesian Civil Code (KUHPerdata), which prohibit amendments to marital agreements after marriage, while others have begun to accommodate such amendments based on the Constitutional Court's decision, despite the lack of clear administrative or regulatory guidance.

This issue reflects a lack of harmonization within the legal system, particularly between legal norms that have been modified through judicial rulings and their practical implementation. Such inconsistency may give rise to legal uncertainty for the public, especially for married couples seeking to amend a separation of property agreement but encountering divergent interpretations or unequal treatment from law enforcement authorities or other competent officials. In this regard, the absence of implementing regulations following the Constitutional Court's ruling has resulted in a legal vacuum, which indirectly undermines the effectiveness of legal protection for the parties concerned.

Legal uncertainty following Constitutional Court Decision Number 69/PUU-XIII/2015 is concretely reflected in the inconsistent determinations issued by district courts across different jurisdictions in Indonesia. This condition demonstrates the absence of uniform judicial standards in interpreting the legal consequences of postnuptial agreements. For example, the South Jakarta District Court, in Determination Number 527/Pdt.P/2020/PN JKT.SEL, explicitly applied the prospective principle, holding that amendments to marital agreements take effect only from the



date of the court determination and therefore do not affect the legal status of property acquired prior to such amendment. In contrast, the determinations of the Denpasar District Court (Determination Number 198/Pdt.P/2017/PN Dps) and the Tangerang District Court (Determination Number 455/Pdt.P/2021/PN Tng), although granting the petitions, did not provide any temporal limitation or clear legal qualification of previously acquired property. This lack of clarity gives rise to multiple interpretations regarding the possible retroactive effect of such agreements. Similar ambiguity is also found in the determinations of the Surabaya District Court (Determination Number 490/Pdt.P/2018/PN Sby) and the Medan District Court (Determination Number 1212/Pdt.P/2019/PN Mdn), which tend to overlook the concrete legal implications for property that already existed at the time the amendments were made. These variations in judicial determinations indicate that, in the absence of clear and standardized judicial guidelines, judges exercise broad interpretative discretion, resulting in legal inconsistency (disparity of law) and undermining legal certainty for the public.

This condition of legal uncertainty fundamentally originates from the problem of normative incompleteness within the national marriage law system. Although the Constitutional Court has granted constitutional legitimacy to the modification of marital agreements, positive law has not yet provided implementing regulations that clearly and comprehensively regulate the procedures for execution, the time limits of applicability, and the protection of assets acquired during the transitional period, both before and after the court determination. The absence of such technical regulations has resulted in a lack of clear guidelines for judges in adjudicating cases and for notaries in drafting deeds, which ultimately leads to legal uncertainty (rechtsonzekerheid) for married couples and may potentially cause losses to third parties. Therefore, considering the urgency of addressing the problems arising from normative incompleteness and inconsistencies in judicial practice, this research is essential to formulate a legal framework that ensures legal certainty and equitable legal protection.

Based on the above explanation, it can be concluded that amendments to marital property separation agreements following Constitutional Court Decision Number 69/PUU-XIII/2015 have generated various legal issues. These issues primarily relate to the legal status of property acquired prior to the amendment, legal certainty regarding the temporal validity of the agreement, and the protection of the rights of third parties, including heirs. The absence of comprehensive legal norms and inconsistencies in judicial practice may lead to civil losses, complex inheritance disputes, and disruptions to the administration of marital and inheritance law. Accordingly, this research focuses on two main legal issues. First, it examines the legal status of joint marital property acquired prior to the amendment of the marital agreement after Constitutional Court Decision Number 69/PUU-



XIII/2015. Second, it analyzes the legal consequences of the amendment or annulment of a marital agreement on the legal position and distribution of property within marriage.

## 2. RESEARCH METHODS

This study employs normative (doctrinal) legal research. This method is chosen because the research primarily examines positive legal norms governing amendments to marital property separation agreements from the perspective of civil law. The research applies a statutory approach, a conceptual approach, and a case approach. The statutory approach is used to identify and analyze relevant legal provisions, including Article 29 of Law No. 1 of 1974 on Marriage, Articles 139–148 of the Indonesian Civil Code, and Constitutional Court Decision No. 69/PUU-XIII/2015. The conceptual approach examines fundamental legal principles such as justice and legal certainty. Meanwhile, the case approach analyzes judicial decisions among others, Decision of the South Jakarta District Court No. 527/Pdt.P/2020/PN JKT.SEL and Decision of the Denpasar District Court No. 198/Pdt.P/2017/PN Dps to identify inconsistencies and disparities in judicial interpretation. The sources of legal materials consist of primary legal materials, including statutory regulations and court decisions; secondary legal materials, comprising legal literature, scholarly journals, and previous studies; and tertiary legal materials, such as legal dictionaries and encyclopedias. Data collection is conducted through library research. The analysis of legal materials is carried out using a qualitative descriptive-analytical method with an argumentative approach to formulate normative recommendations. This approach provides a comprehensive understanding of the legal status of marital property prior to amendment and the legal implications arising from changes to marital property separation agreements.

## 3. RESULTS AND DISCUSSION

### **The Legal Status of Joint Marital Property Acquired Prior to the Amendment of a Marriage Agreement Following Constitutional Court Decision Number 69/PUU-XIII/2015.**

Under the Indonesian marriage law system as regulated by Law Number 1 of 1974 on Marriage, marital property is generally divided into two principal categories, namely joint marital property (harta bersama) and separate property (harta bawaan). Joint marital property includes all assets acquired by the husband and wife during the marriage, such as income from employment, profits from joint business activities, or assets obtained through the contribution of both parties. Meanwhile, separate property refers to assets owned individually by each spouse prior to the marriage or assets acquired individually during the marriage, including grants, inheritance, or gifts specifically given to one spouse. The control and management of such separate property remain



with the respective owner, unless otherwise stipulated in a written agreement. Article 36 of the Marriage Law further stipulates that any legal act concerning joint marital property requires the mutual consent of both husband and wife. This requirement applies to legal actions such as sale, encumbrance, or transfer of rights and is intended to uphold the principle of equality between spouses and to prevent unilateral actions that may cause legal or economic harm to one party. In contrast, the management of separate property does not require spousal consent, thereby guaranteeing individual autonomy over personal assets. In the event that a marriage is dissolved due to divorce, Article 37 of the Marriage Law provides that the division of joint marital property shall be conducted fairly in accordance with the law applicable to the marriage. In practice, this division is generally based on the principle of equal distribution, whereby one-half is allocated to the husband and one-half to the wife, unless the parties have agreed otherwise through a valid and legally binding marital agreement, such as a separation of property agreement, which lawfully modifies the distribution arrangement.

The formation of a marital agreement is principally regulated under Article 29 paragraph (1) of Law Number 1 of 1974 on Marriage, which explicitly stipulates that such an agreement may be made prior to or at the time the marriage is solemnized, and must be validated by the marriage registration officer in order to be legally binding on third parties. This provision, however, underwent a significant legal development following the judicial review conducted by the Constitutional Court through Decision Number 69/PUU-XIII/2015. The decision broadened the interpretation of Article 29 paragraph (1), thereby allowing marital agreements to be made not only before or at the time of marriage, but also during the course of the marriage, subject to court approval. This legal development provides greater flexibility for married couples to regulate their marital property arrangements in response to changing domestic circumstances. Nevertheless, it also raises a fundamental legal issue concerning the temporal effect of postnuptial agreements. The main question is whether such agreements apply prospectively from the date of their execution, or retroactively from the date the marriage was entered into. This issue has important legal implications, particularly regarding the status of joint marital property acquired prior to the agreement, namely whether such property remains subject to the joint property regime as stipulated in Article 35 of the Marriage Law, or is converted into separate property based on the newly concluded agreement. These implications may significantly affect inheritance disputes, creditors' rights, and the legal position of third parties.

Prior to the Constitutional Court Decision Number 69/PUU-XIII/2015, Article 29 paragraph (3) of the Marriage Law provided that :

“A marriage agreement shall take effect at the time the marriage is entered into.”



Following the Constitutional Court Decision Number 69/PUU-XIII/2015, Article 29 paragraph (3) of the Marriage Law is amended to read as follows:

“The agreement shall take effect at the time the marriage is entered into, unless otherwise stipulated in the marriage agreement.”

If Article 29 paragraph (4) of Law Number 1 of 1974 on Marriage is not interpreted in accordance with the Constitutional Court’s interpretation in Decision Number 69/PUU-XIII/2015, the provision would be inconsistent with the 1945 Constitution of the Republic of Indonesia, particularly the principles of freedom of contract and the protection of citizens’ constitutional rights. This constitutional interpretation confirms that a marital agreement concluded after the legal solemnization of a marriage remains legally binding and is effective as of the date of the marriage, unless the parties expressly stipulate otherwise regarding the commencement of its legal effect. Therefore, in the absence of a specific provision determining its effective date, the marital agreement shall, by operation of law (ex lege), take effect from the time the marriage is solemnized, thereby binding the parties retroactively and potentially affecting the legal regulation of assets acquired prior to the agreement.

Married couples who enter into a postnuptial agreement after the marriage has been solemnized, as regulated under Article 29 paragraph (3) of Law Number 1 of 1974 on Marriage as amended by Constitutional Court Decision Number 69/PUU-XIII/2015, are deemed, by default, to have such agreement apply from the commencement of the marriage, unless otherwise stipulated in the agreement. This provision implicitly affects the legal status of joint marital property that had been established and commingled prior to the execution of the agreement, as assets previously classified under the joint property regime may be recharacterized as the separate property of each spouse. This legal consequence gives rise to potential legal uncertainty regarding the status of pre-existing joint property, particularly considering that such property is commonly subject to joint management and may involve third parties, including creditors or business partners. In the absence of clear legal safeguards, the retroactive application of the agreement may trigger disputes concerning the validity of the reclassification of marital property.

In situations where marital property acquired prior to the amendment of a separation of property agreement has been physically or functionally commingled, the division of such assets becomes complex and may lead to prolonged legal uncertainty. To address this issue and to protect the interests of third parties, including creditors and financial institutions, spouses should explicitly stipulate in the amended agreement that property acquired from the date of marriage until the date of ratification of the amendment remains classified as joint marital property and is subject to the principle of equal distribution as regulated under Articles 35–37 of Law Number 1 of 1974 on



Marriage. Meanwhile, property acquired after the ratification date shall be governed by an absolute separation of property regime. This arrangement provides a clear temporal distinction to prevent interpretative disputes and minimizes potential losses for third parties. For instance, movable or immovable assets that have been pledged as collateral for bank loans may not be unilaterally reclassified as the personal property of one spouse, as such reclassification could affect the preferential rights of creditors under Article 1131 of the Indonesian Civil Code and potentially result in civil claims or the invalidation of security rights. Therefore, the inclusion of transitional provisions in amended marital agreements reinforces prospective legal certainty, as reflected in Constitutional Court Decision Number 69/PUU-XIII/2015, while maintaining a balance between the flexibility of marital agreements and the protection of broader civil law principles.

Parties to a marital agreement are granted broad autonomy to apply the principle of freedom of contract in determining the substance and scope of the agreement, including provisions on the separation of marital assets, provided that such arrangements do not conflict with religious law, morality, public order, or applicable statutory regulations. This flexibility enables spouses to determine the effective commencement of the separation of assets, which is fundamentally based on the principle of good faith as stipulated in Article 1338 of the Indonesian Civil Code. Furthermore, marital agreements executed after the legal solemnization of marriage, as permitted following Constitutional Court Decision Number 69/PUU-XIII/2015, may stipulate that the separation of assets applies retroactively from the time the marriage took place or prospectively from the date of execution and legalization by the court or other authorized officials. Such arrangements provide legal certainty while accommodating the evolving dynamics of marital relations.

### **The Legal Consequences of the Amendment or Annulment of a Marriage Agreement on the Status and Distribution of Marital Property.**

Following Constitutional Court Decision No. 69/PUU-XIII/2015, the validation of postnuptial agreements is subject to specific legal requirements in order to have binding legal force against third parties. These requirements include the execution of the agreement in the form of an authentic deed before a legally authorized notary and its official registration with the Population and Civil Registration Office. Such requirements are intended to fulfill the principle of publicity (publicitas) in civil law, thereby ensuring legal transparency, public accessibility, and legal certainty regarding the existence of the agreement. This mechanism also serves to protect the interests of third parties, including creditors and heirs, from potential disputes related to marital property. Furthermore, according to Martiman Prodjohamidjojo, the scope of marital agreements as regulated under Article 29 of Law No. 1 of 1974 on Marriage is strictly limited to agreements that



are voluntary in nature and do not contravene statutory provisions, moral norms, or public order. Accordingly, marital agreements may not be used as instruments to legitimize unlawful acts or to undermine the public interest.

The Constitutional Court Decision Number 69/PUU-XIII/2015 fundamentally restructured the legal framework governing marital agreements in Indonesia by amending and supplementing Article 29 of Law Number 1 of 1974 on Marriage. This decision provides broader legal flexibility for spouses in arranging and managing marital property. Prior to the decision, marital agreements were legally restricted to being executed before or at the time of the marriage ceremony, thereby limiting the parties' ability to adjust their property arrangements after the marriage had been validly concluded. Following the decision, marital agreements may be executed at any stage, namely before, at the time of, or during the subsistence of the marriage, including the possibility of amendment in accordance with changes in the spouses' domestic circumstances. With respect to the legal effectiveness of marital agreements, the previous regime stipulated that such agreements automatically took effect upon the validity of the marriage. In contrast, the post-decision legal regime allows the spouses to determine the commencement of legal effect independently, whether immediately after the marriage or at a specific time expressly stipulated in the agreement. This development enhances legal certainty by accommodating the temporal needs of the parties while maintaining predictability in the application of the law. Furthermore, the decision clarifies the mechanism for amendment and revocation of marital agreements. Under the previous framework, amendments or revocations were permissible as long as they were mutually agreed upon by the spouses and did not harm third parties. The current legal framework reaffirms this principle in a more explicit manner by emphasizing that any amendment or revocation must obtain the consent of both parties and must not prejudice the rights of third parties, such as creditors or heirs. This clarification aims to prevent legal manipulation and potential disputes concerning marital property. Finally, the decision expands the authority to legalize marital agreements. Whereas legalization was previously limited to marriage registration officers, it may now also be carried out by notaries. This expansion of authority improves administrative efficiency and enhances public access to legal services, particularly within notarial practice related to the regulation of separate property arrangements.

Following Constitutional Court Decision Number 69/PUU-XIII/2015, marriage agreements may now be entered into by spouses even after the marriage has been legally concluded. This development reflects the application of the principle of freedom of contract as stipulated in Article 1338 paragraph (1) of the Indonesian Civil Code. Under this principle, the parties are granted the freedom to determine the contents of their agreement, including



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arrangements concerning marital property, provided that such arrangements do not conflict with statutory provisions, morality, or public order. This flexibility represents a significant development in Indonesian marriage law, considering that Article 29 of Law Number 1 of 1974 on Marriage previously restricted the making of marriage agreements to the period prior to or at the time of the marriage ceremony. In practice, several conditions have emerged that necessitate the formation of postnuptial agreements.

First, the lack of awareness or negligence of prospective spouses regarding the legal requirement to establish a marriage agreement before marriage often results in the realization of the need for property separation only after the marriage has taken place. Second, the potential risk of legal disputes arising from joint marital property may complicate the management of individual assets, leading spouses to opt for separate liability over their respective properties in order to prevent future conflicts. Third, the increasing influence of individualistic values driven by social liberalization and the adoption of Western cultural practices has encouraged spouses to maintain financial and legal independence, thereby reducing their willingness to assume shared responsibilities.

Fourth, postnuptial agreements are particularly necessary in mixed-nationality marriages, especially those involving Indonesian citizens married to foreign nationals, to preserve ownership rights over land, cultivation rights, or building use rights. Such rights are prohibited from joint ownership with foreign nationals under the Basic Agrarian Law, making property separation agreements a relevant legal mechanism to address these restrictions.

Pursuant to Article 152 of the Indonesian Civil Code, a prenuptial agreement becomes binding upon third parties from the date of its official registration with the registry of the District Court where the marriage is solemnized. This provision serves to ensure legal certainty in transactions or legal relationships involving external parties. Furthermore, Article 29 of Law Number 1 of 1974 on Marriage comprehensively stipulates that prospective spouses may enter into a written prenuptial agreement based on mutual consent prior to or at the time of the marriage, which must subsequently be legalized by the Marriage Registrar. Accordingly, such an agreement is not only binding upon the spouses but also enforceable against third parties insofar as their legal interests are affected. This regulation affirms that a prenuptial agreement must not conflict with statutory provisions, religious values, or public morality, and that it becomes legally effective upon the lawful solemnization of the marriage. The agreement remains valid throughout the duration of the marriage, unless amended by mutual consent of both parties, provided that such amendment does not prejudice the rights of third parties. This legal framework reflects a balance between the principle of freedom of contract under civil law and the protection of public interests. This balance



is further reinforced by Constitutional Court Decision Number 69/PUU-XIII/2015, which allows for post-marital amendments to prenuptial agreements through a court determination. Nevertheless, this development has given rise to disparities in legal practice, particularly concerning the temporal applicability of such amendments to the status of marital property.

A marriage agreement becomes effective upon the lawful solemnization of the marriage, with the provision that its substance or content cannot, in principle, be altered, except when the husband and wife reach a unanimous decision (consensus) to modify it, as permitted under Constitutional Court Decision No. 69/PUU-XIII/2015, provided that such modifications do not prejudice the interests of third parties, such as creditors or heirs. Furthermore, a prenuptial agreement must adhere to the principle of publicity through official registration, either before the Marriage Registrar or by post-marriage court ratification, so that the terms of the agreement are publicly accessible. This requirement is essential, as it ensures that third parties are informed of, and bound by, the property arrangements established by the spouses, thereby providing legal certainty in civil transactions. If the agreement is neither registered nor publicly announced, pursuant to the principle of *pacta sunt servanda* as stipulated in Articles 1313 (agreements bind the parties who make them), 1314 (agreements have the force of law for the parties), and 1340 (validity requires consent, capacity, a specific object, and a lawful cause) of the Indonesian Civil Code the agreement remains binding only internally between the spouses and does not affect third parties.

Marriage agreements create binding rights and obligations, as well as legal consequences for the parties involved. Following the Constitutional Court Decision No. 69/PUU-XIII/2015, such agreements may be executed not only before or at the time of marriage but also during the marriage, offering greater flexibility in asset management in line with domestic life dynamics. The effective date of the agreement may commence from the official marriage date or as specified within the agreement, while its binding effect on third parties becomes valid only upon registration with the civil registry or marriage registrar. Marriage agreements are dynamic and may be amended or revoked by mutual consent of both parties, provided that such modifications do not prejudice the rights of third parties, such as creditors or heirs. This ensures the principles of justice and legal certainty are maintained. All modifications or annulments must be authorized by the marriage registrar to acquire formal legal force toward external parties, although this procedure is not explicitly regulated in positive law. Internally, marriage agreements are automatically binding under the principle of *pacta sunt servanda*, as stated in Article 1338 of the Indonesian Civil Code (KUHPerdata), which affirms that agreements carry the same legal force as statutes for the parties. Asset management under the agreement covers all property, including premarital assets and assets



acquired during the marriage, with responsibilities allocated jointly or separately according to the parties' arrangement. Finally, registering the creation or modification of the agreement with the marriage registrar fulfills the principle of publicity, protecting third-party interests and preventing future disputes through administrative transparency.

Married couples who intend to formulate a marital agreement during the course of their marriage are required to conduct a thorough and comprehensive inventory of their assets and liabilities as a primary preventive measure. This inventory should include detailed documentation of all assets (such as land, buildings, vehicles, bank accounts, and investments) and liabilities (both consumer and productive debts) that existed prior to the execution of the agreement. It is recommended that pre-agreement assets and liabilities are excluded from the scope of the new arrangement, so that their status remains as shared obligations under the previous marital property regime for example, joint property under Article 35 of Law No. 1 of 1974 or provisions of the Civil Code. This approach not only provides legal certainty for the parties but also reduces the potential for disputes with third parties, such as creditors, heirs, or business partners, which may arise from retroactive changes in property status following Constitutional Court Decision No. 69/PUU-XIII/2015.

#### **4. CONCLUSION**

Based on a normative juridical analysis of the legal status of joint property acquired prior to the amendment of a marital agreement following Constitutional Court Decision No. 69/PUU-XIII/2015, it is concluded that such property, by default, remains under the community property regime as regulated in Article 35 of Law No. 1 of 1974 on Marriage, unless the parties explicitly stipulate a prospective transitional provision to exclude pre-amendment assets from the separation of property arrangement. This approach prevents legal uncertainty arising from the retroactive interpretation of Article 29 paragraph (3) of the amended Marriage Law while safeguarding the interests of third parties, including creditors, in accordance with Article 1131 of the Civil Code.

The legal consequences of modifying or annulling a marital agreement provide adaptive flexibility in property management through the principle of freedom of contract (Article 1338 of the Civil Code), provided that the amendment is properly authenticated by a notary or court and registered with the Population and Civil Registration Office to fulfill the publicity principle. The amendment is valid if it does not harm third parties and is based on good faith, with an inventory of pre-agreement assets serving as a preventive mechanism to maintain shared liability over previously acquired assets.



In conclusion, Constitutional Court Decision No. 69/PUU-XIII/2015 transforms Indonesian marriage law by allowing post-marriage amendments. However, derivative regulations are required to govern temporal mechanisms, transitional asset inventories, and third-party protection to address disparities in court rulings and achieve a balance between legal certainty (Rechtssicherheit) and distributive justice in marital property management.

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