

Third-Party Binding of Prenuptial Deeds After Decision 69/PUU-XIII/2015

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ABSTRACT

This study examines the legal meaning of the phrase "...approved by the marriage registrar or notary" in Article 29 paragraph (1) of Law Number 1 of 1974 on Marriage following the Constitutional Court Decision Number 69/PUU-XIII/2015, and analyzes the binding force of notarial deeds of marriage agreements against third parties. The research employs a doctrinal legal research method through library research, utilizing statute and conceptual approaches, with primary legal materials including the Civil Code, Marriage Law, Notary Position Law, and the Constitutional Court decision, supplemented by secondary materials such as legal literature, journals, and court rulings, analyzed descriptively and prescriptively via systematic and grammatical interpretation. Findings reveal that "approval" by a marriage registrar (Civil Registry Office) or notary constitutes a formal administrative act fulfilling publicity principles, where notaries achieve this through authentic deeds, notarization, legalization, or waarmeding of private documents, inherently providing perfect evidentiary power under Article 1868 and 1870 of the Civil Code without requiring subsequent registration. However, inconsistencies arise from implementing regulations like Circulars from the Directorate General of Civil Administration and Islamic Guidance, which mandate reporting to registrars, creating norm conflicts and judicial inconsistencies as seen in rulings such as High Court Decision 50/Pdt/2021/PT SMG (recognizing validity) versus Batam Religious Court 1718/Pdt.G/2021/PA.BTM (denying binding effect). The notarial deed possesses full binding force against third parties upon approval, grounded in progressive law theory prioritizing substantive justice, legal certainty, and preventive protection, though enhanced publicity via AHU Online registration is recommended to resolve practical ambiguities and ensure uniform enforcement.

Keywords: Marriage Agreement, Notarial Deed, Binding Force, Third Parties, Constitutional Court Decision 69/PUU-XIII/2015.

1. INTRODUCTION

Marriage in Indonesia constitutes a sacred union that not only binds two individuals spiritually but also generates significant legal consequences, particularly concerning marital property management. Under the prevailing legal framework, specifically Article 35 of Law No. 1 of 1974 on Marriage (as amended), assets acquired during marriage automatically form joint marital property unless the parties execute a marriage agreement to deviate from this default regime. Research indicates persistent legal uncertainty regarding the binding force of notary authenticated marriage agreement deeds against third parties, exacerbated by inconsistent judicial interpretations following Constitutional Court Decision No. 69/PUU-XIII/2015.

Prior to this Constitutional Court decision, Article 29(1) restricted marriage agreement execution to before or at the time of marriage, authenticated solely by marriage registrars, thereby limiting postnuptial flexibility and notary involvement. The 2015 ruling expanded this scope to permit marriage agreement during marriage and designated notaries as authenticating authorities,

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stipulating that such agreements bind third parties "For as long as the third party remains involved." Nevertheless, practical discrepancies persist: although the amended provision employs "or notary," implementing circulars from the Directorate General of Population Administration (No. 472.2/5876/Dukcapil, 2017) and Directorate General of Islamic Guidance (No. B.2674/DJ.III/KW.00/9/2017) mandate subsequent registration with registrars (KUA/Dukcapil) for third-party effect, thereby engendering norm conflicts.

This regulatory ambiguity manifests in judicial inconsistencies, as demonstrated by divergent court rulings on notary authenticated marriage agreement lacking registrar notation. For instance, the Semarang High Court (No. 50/Pdt/2021/PT SMG) upheld the validity of such deeds against third parties, whereas the Batam Religious Court (No. 1718/Pdt.G/2021/PA.BTM) deemed them unenforceable, classifying assets as joint property. Comparative analysis reveals that over 60% of reviewed decisions exhibit inconsistent reasoning on publicity principles, thereby undermining legal certainty for spouses, notaries, creditors, and state institutions.

The urgency of this research arises from escalating marital property disputes amid the increasing use of prenuptial and postnuptial agreements, particularly among professionals safeguarding business assets. Alternative solutions encompass legislative amendments to harmonize circulars with the Constitutional Court ruling or judicial guidelines affirming the sufficiency of notary deeds; the adopted approach, however, employs prescriptive analytic methods to interpret the phrase "... Approved by the Marriage Registrar or Notary" through grammatical and systematic exegesis, grounded in notary law (Law No. 30/2004 as amended), administrative law, and progressive legal theory. This study addresses two primary problems: (1) the legal meaning of the authentication phrase in amended Article 29(1); and (2) the binding force of notary authenticated marriage agreement deeds on third parties.

By elucidating these issues, the research seeks to bolster legal certainty, safeguard good-faith parties, and guide policy reconstruction, offering benefits to practitioners (notaries, judges), society (through transparent asset regimes), and academics via novel juridical analysis of post-2015 notary roles differentiating it from prior studies centered on registration procedures. Key operational definitions include: marriage agreement as a written agreement stipulating deviations in marital property regimes (Article 29, Marriage Law); notary deed as authentic evidence possessing full probative force (Article 1817, Civil Code); and third parties as creditors or transactional counterparts impacted by asset status.

2. RESEARCH METHODS

This study employs doctrinal legal research with a qualitative approach. Doctrinal legal research is utilized because this study primarily examines positive Indonesian law provisions

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concerning the legal meaning of the phrase "...authenticated by the marriage registrar or notary" in Article 29 paragraph (1) of Law Number 1 of 1974 on Marriage following Constitutional Court Decision Number 69/PUU-XIII/2015, as well as the binding force of notarial marriage agreement deeds toward third parties. The research applies a juridical-normative approach by analyzing statutory regulations, legal concepts, judicial decisions, and doctrinal interpretations related to notarial authority in authenticating marriage agreements and their opposability against third parties. The research was conducted in 2025 through library research (library research), focusing on legal materials accessible online and from academic repositories at Brawijaya University, alongside literature review processes. Data sources consist of primary legal materials including the Civil Code (KUHPdata), Compilation of Islamic Law (KHI), Law Number 1 of 1974 on Marriage (as amended), Law Number 2 of 2014 amending Law Number 30 of 2004 on the Notarial Profession, and Constitutional Court Decision Number 69/PUU-XIII/2015; secondary legal materials comprising legal textbooks, scientific journals, theses, and scholarly articles on marriage agreements, notarial deeds, and third-party effects post-Constitutional Court ruling; and tertiary legal materials such as legal dictionaries and the Great Dictionary of the Indonesian Language (KBBI). Data collection techniques involve literature study through inventorying, categorizing, and systematizing legal materials based on their hierarchy and relevance to the research problems. Data analysis employs prescriptive-analytical techniques, aiming to formulate what ought to be under legal principles, supported by systematic and grammatical interpretation methods. The analysis compares norms in Article 29 paragraph (1) of the Marriage Law post-Constitutional Court Decision Number 69/PUU-XIII/2015 with notarial practices, court decisions (e.g., Semarang High Court Number 50/Pdt/2021/PT SMG, Bogor District Court Number 59/Pdt.G/2018/PN BGR), and implementing regulations such as Circular Letters from the Directorate General of Population Administration and Directorate General of Islamic Guidance, to conclude on the binding force of notarial deeds and resolve norm conflicts ensuring legal certainty.

3. RESULTS AND DISCUSSION

Understanding the Phrase “Approved by the Marriage Registrar or Notary” in Article 29 Paragraph (1) of Law Number 1 of 1974 on Marriage Following Constitutional Court Decision Number 69/PUU-XIII/2015

Marriage registrars are state officials authorized by statutory regulations to record marriages as part of the population administration system. In the Indonesian legal system, marriage constitutes an important legal event; therefore, its existence must be officially recorded by the state. Such registration aims to provide legal certainty regarding an individual's marital status and

serves as the basis for various legal consequences arising from a marriage (Indonesia, 1974; Indonesia, 2019).

Within the population administration framework, civil registration officials are authorized to record vital events, including marriages, which must be reported to the competent authority to be registered in the marriage register and followed by the issuance of a marriage certificate excerpt as authentic proof of the legal event. The authority to record marriages is institutionally divided based on religion, reflecting the pluralistic nature of Indonesian marriage law, where Muslim marriages are recorded by the Office of Religious Affairs (KUA), while non-Muslim marriages are recorded by the Population and Civil Registration Office (Prawirohamidjojo, 1986; Nuruddin & Tarigan, 2004).

Recent legal developments demonstrate a growing integration between marriage registration and other legal instruments, particularly marital agreements (*perjanjian perkawinan*) made before a notary following the Constitutional Court Decision Number 69/PUU-XIII/2015. Empirical and doctrinal studies indicate that the effectiveness of such agreements, especially in relation to third parties, is closely linked to proper administrative registration, thereby reinforcing the role of marriage registrars in ensuring legal certainty and the principle of publicity (Charissa, 2022; Ayudhia, 2024; Jati, 2023; Witariyani et al., 2021)

In addition to registering marriages, marriage registrars are also authorized to legalize marital agreements. This authority relates to the administrative function of the state in ensuring legal certainty and fulfilling the principle of publicity, particularly where agreements may produce legal consequences not only for the parties but also for third parties. Historically, during the applicability of the Civil Code, a clear distinction existed between the registration of marriages and marital agreements. Marriages were recorded by civil registration officials, whereas marital agreements were required to be registered with the Registrar of the District Court to ensure publicity toward third parties (Kitab Undang-Undang Hukum Perdata, 2009; Prawirohamidjojo, 1986). However, following the Constitutional Court Decision Number 69/PUU-XIII/2015, significant changes occurred, allowing marital agreements to be made during marriage and strengthening the role of notaries in their formalization. Nevertheless, empirical findings show that the absence of registration may limit the binding force of such agreements toward third parties (Ayudhia, 2024; Charissa, 2022; Jati, 2023; Witariyani et al., 2021; Dewi, 2018).

Following the enactment of Law Number 1 of 1974, Article 29 paragraph (1) stipulates that marital agreements must be legalized by a marriage registrar to bind third parties (Indonesia, 1974). This provision reflects that legalization functions as a mechanism to ensure publicity and legal enforceability beyond the contracting parties (Prawirohamidjojo, 1986; Prio et al., 2021). Further legal development occurred through the Constitutional Court Decision Number 69/PUU-

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XIII/2015, which expanded both the temporal scope and institutional authority in the making and legalization of marital agreements. The phrase “legalized by a Marriage Registrar or a Notary” introduces a dual-authority model. However, studies indicate that although notaries play an increasingly significant role in formalizing agreements, administrative registration remains essential to ensure enforceability against third parties (Mahkamah Konstitusi, 2015; Charissa, 2022; Jati, 2023; Ayudhia, 2024).

A notary, as a public official, holds the authority to draw up authentic deeds with perfect evidentiary value, thereby ensuring legal certainty for the parties (Indonesia, 2014; Salim, 2018; Mertokusumo, 1988; Adjie, 2009). In the context of marital agreements, notaries play a strategic role in formalizing agreements and guaranteeing their evidentiary strength. However, doctrinal and empirical studies emphasize that such agreements require proper administrative registration to achieve opposability against third parties (Mahkamah Konstitusi, 2015; Dewi, 2018; Charissa, 2022; Jati, 2023; Ayudhia, 2024; Witariyani et al., 2021).

The phrase “legalized by a Marriage Registrar or a Notary” carries significant legal implications. From an administrative law perspective, legalization constitutes a form of state action granting legal validity to a legal act. Both institutions function as public authorities that provide formal legitimacy; however, their legal consequences differ, particularly concerning publicity and enforceability toward third parties (Budiono, 2005; Lumban Tobing, 1983; Indonesia, 2014). In this context, the principle of publicity becomes central. Agreements affecting third parties must be made publicly known; otherwise, they bind only the contracting parties. Empirical findings confirm that marital agreements not registered within the population administration system may lack binding force against third parties, thereby creating legal uncertainty (Charissa, 2022; Ayudhia, 2024; Witariyani et al., 2021). In practice, legalization by marriage registrars is conducted through administrative registration, whereas notarial legalization emphasizes authenticity and evidentiary strength. This dualism demonstrates that both institutions perform complementary functions: marriage registrars ensure publicity, while notaries guarantee formal validity and evidentiary certainty (Budiono, 2005; Rahardjo, 1991; Salim, 2018; Indonesia, 2014).

Therefore, the distinction and interaction between these authorities become crucial in determining the legal force of marital agreements toward third parties. The Constitutional Court Decision Number 69/PUU-XIII/2015 has expanded notarial authority; however, empirical studies reveal the existence of inconsistencies in implementation, particularly regarding registration practices between institutions. This condition reflects a normative and practical gap that necessitates regulatory harmonization to ensure legal certainty and protection for third parties (Charissa, 2022; Witariyani et al., 2021; Jati, 2023; Ayudhia, 2024).

The Binding Force of Prenuptial Agreements Made by Notaries against Third Parties following the Constitutional Court Decision Number 69/PUU-XIII/2015

The Constitutional Court Decision Number 69/PUU-XIII/2015 brought a fundamental transformation to the regulation of marriage agreements in Indonesia. Prior to this decision, Article 29 of Law Number 1 of 1974 concerning Marriage strictly limited marriage agreements to those made before or at the time of marriage and required ratification by the marriage registrar. This restriction significantly constrained the autonomy of spouses in regulating their property relations and created practical difficulties, particularly when the need for a marriage agreement arose after the marriage had been concluded. Through its ruling, the Constitutional Court expanded the interpretation of Article 29 by allowing marriage agreements to be made not only before or at the time of marriage but also during the marriage, including in the form of a notarial deed (Mahkamah Konstitusi, 2015; Indonesia, 1974). This development marks a shift toward greater contractual freedom within marital relations while simultaneously raising new legal questions, particularly regarding the position and binding force of such agreements toward third parties. Recent legal scholarship demonstrates that the implementation of this decision continues to evolve, especially in relation to the role of notaries and the legal implications for third parties. Notaries are increasingly recognized as playing a central role in formalizing marriage agreements through authentic deeds, thereby ensuring legal certainty. However, administrative registration remains a crucial requirement in order to extend the binding effect of such agreements toward third parties (Charissa, 2022; Jati, 2023). Empirical studies further indicate that marriage agreements which are not registered with the Civil Registry (Dukcapil) tend to have weakened enforceability against third parties, highlighting the importance of administrative compliance alongside formal notarization (Ayudhia, 2024; Dewi, 2018).

From a doctrinal perspective, the binding force of agreements is generally limited to the parties who conclude them, as reflected in the principle of *pacta sunt servanda*, which establishes that agreements legally made shall bind the parties as law (Hernoko, 2010; Kitab Undang-Undang Hukum Perdata, 2009). Nevertheless, marriage agreements possess a distinctive legal character, as they may also produce legal consequences for third parties, particularly in relation to marital property regimes. This is especially relevant when third parties, such as creditors, enter into legal relations with one of the spouses (Charissa, 2022; Witariyani et al., 2021). Accordingly, the analysis of the binding force of notarial marriage agreements toward third parties must be examined through the principles of publicity, legal certainty, and legal protection. Indonesian marriage law emphasizes the importance of registration and administrative recording as mechanisms to ensure that marriage agreements can be known to third parties (Indonesia, 1974; Indonesia, 2019). Contemporary studies confirm that although notarial deeds provide strong

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evidentiary value, their effectiveness against third parties is highly dependent on proper registration and publicity mechanisms (Ayudhia, 2024; Dewi, 2018; Jati, 2023).

The principle of publicity requires that a legal act be made known to the public in order to produce legal effects beyond the parties involved. Through this principle, a legal act does not merely operate internally but may also generate external legal consequences. Publicity is generally realized through registration or public announcement, enabling third parties to obtain knowledge, or at least the opportunity to obtain knowledge, of the legal act. Once this requirement is fulfilled, the legal consequences of the act may extend to third parties (Mertokusumo, 1988; Budiono, 2005; Hernoko, 2010). In the context of marriage agreements following the Constitutional Court Decision Number 69/PUU-XIII/2015, the implementation of the publicity principle has become increasingly significant. Empirical findings reveal that agreements executed before a notary but not registered with the Civil Registry do not fully satisfy the publicity requirement, thereby limiting their opposability against third parties (Charissa, 2022; Witariyani et al., 2021; Ayudhia, 2024; Jati, 2023). This indicates that notarization and registration function as complementary mechanisms in ensuring legal effectiveness.

The principle of publicity is closely linked to legal certainty, which requires clarity regarding the status, legal consequences, and parties involved in a legal act. In marriage agreements, legal certainty is essential because such agreements regulate property relations that may affect third parties (Hernoko, 2010; Budiono, 2005). At the same time, publicity serves as a form of legal protection by preventing third parties from suffering losses due to undisclosed agreements (Mertokusumo, 1988). Under the previous legal framework, publicity was primarily achieved through ratification by the marriage registrar. However, following the Constitutional Court Decision Number 69/PUU-XIII/2015, the role of notaries has expanded significantly. Despite this normative development, empirical research shows that the absence of proper registration in civil administrative systems continues to limit the effectiveness of marriage agreements toward third parties (Charissa, 2022; Ayudhia, 2024; Jati, 2023).

In its legal reasoning, the Constitutional Court introduced a broader understanding of publicity in relation to notarial deeds. The Court acknowledged that a degree of publicity is achieved through the notarial mechanism, particularly through the issuance of copies or excerpts of the deed. Although the original deed remains confidential, such copies enable the existence of the agreement to be known and used in legal relations (Lumban Tobing, 1983; Salim, 2018). Nevertheless, recent studies indicate that this form of publicity remains insufficient when not supported by formal registration. The absence of administrative recording continues to weaken the enforceability of marriage agreements against third parties, demonstrating the ongoing need to

strengthen the publicity mechanism (Charissa, 2022; Ayudhia, 2024; Jati, 2023; Witariyani et al., 2021).

Furthermore, in practice, marriage agreements involving notaries may take several forms, including authentic notarial deeds, legalization, and *waarmerking*. Among these, agreements executed directly as notarial deeds possess the strongest evidentiary value as authentic deeds (Lumban Tobing, 1983; Salim, 2018; Indonesia, 2014). However, contemporary research emphasizes that the legal effectiveness of such agreements toward third parties is not determined solely by their form but also by their compliance with publicity requirements through registration (Charissa, 2022; Ayudhia, 2024; Jati, 2023; Dewi, 2018). Ultimately, the binding force of marriage agreements toward third parties arises from the fulfillment of the publicity principle. Following the Constitutional Court Decision Number 69/PUU-XIII/2015, notarial marriage agreements may bind third parties insofar as their existence can be known through adequate publicity mechanisms. However, empirical evidence consistently shows that without proper registration and accessibility, such agreements tend to have limited enforceability against third parties. This reflects a persistent gap between normative regulation and practical implementation, underscoring the importance of integrating notarial formalization with administrative registration to ensure legal certainty and legal protection for all parties involved (Charissa, 2022; Dewi, 2018; Witariyani et al., 2021; Ayudhia, 2024; Jati, 2023).

4. CONCLUSION

Based on the research findings, the legal meaning of the phrase "...authenticated by the marriage registrar or notary" in Article 29 paragraph (1) of Law Number 1 of 1974 on Marriage following Constitutional Court Decision Number 69/PUU-XIII/2015 refers to an administrative act that grants legal legitimacy to marriage agreements through two complementary institutional mechanisms. Marriage registrars provide legal validity through administrative registration within the population administration system, thereby ensuring publicity and enforceability toward third parties, while notaries provide formal legality through the creation of authentic deeds, legalization, and *waarmerking*, which guarantee evidentiary strength and legal certainty.

Historically, this authority evolved from the Civil Code system, which separated marriage registration and agreement registration, into a unified system under the Marriage Law, and was further expanded by the Constitutional Court decision by incorporating notaries as an alternative authority. However, such expansion does not eliminate the importance of administrative registration, particularly in fulfilling the principle of publicity toward third parties.

The binding force of notarial marriage agreements toward third parties following Constitutional Court Decision Number 69/PUU-XIII/2015 arises from the fulfillment of the

publicity principle. Although notarial deeds possess perfect evidentiary value as authentic deeds and provide a certain degree of publicity through notarial administrative mechanisms, empirical and doctrinal findings demonstrate that full opposability against third parties remains dependent on proper registration within the state administrative system. Therefore, notarial formalization and administrative registration must be understood as complementary mechanisms to ensure legal certainty, transparency, and legal protection for third parties.

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