JLPH: Journal of Law, Politic and Humanities
E-ISSN: 2962-2816
P-ISSN: 2747-1985
https://dinastires.org/JLPH dinasti.info@gmail.com +62 811 7404 455
**DOI:** https://doi.org/10.38035/jlph.v6i6
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**Received:** 28 September 2026 | **Revised:** 19 Oktober 2026 | **Accepted:** 21 Oktober 2026

# The Legal Status of Joint Property in a Marriage Agreement Entered Into After Marriage

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**Abstract:** Post-nuptial agreements offer married couples the opportunity to manage their assets during the marriage; however, they raise questions regarding the status of assets acquired prior to the agreement's execution. This study aims to analyze the effectiveness of post-nuptial agreements concerning marital assets and their impact on legal certainty. A normative legal research method was employed, utilizing statutory and conceptual approaches alongside a qualitative analysis of existing regulations, Constitutional Court Decision No. 69/PUU-XIII/2015, and relevant legal literature. The findings indicate that marriage agreements may be drafted during the marriage based on mutual consent, provided they meet applicable legal requirements. Assets acquired prior to the agreement are generally considered marital property, and their status does not automatically change. The applicability of the agreement to pre-existing assets depends on the agreement's terms and effective date, as well as the rights of third parties acting in good faith. Clarifying the scope of applicability is crucial for ensuring legal certainty and protecting the parties involved.

**Keywords:** Marriage Agreement, Marital Assets, Legal Certainty

## INTRODUCTION

Under the Indonesian legal system, marriage is not only understood as a physical and emotional bond between a man and a woman, but also gives rise to various legal consequences in civil matters, particularly those related to the management and control of property. One of the legal consequences of marriage is the formation of community property that is, property acquired by the spouses during the marriage, unless otherwise specified in a prenuptial agreement. Therefore, regulations regarding community property are crucial to ensuring that all parties in the marriage enjoy legal security and justice (Salsiah et al., 2024).

The issue of joint property becomes more complicated when a husband and wife only enter into a prenuptial agreement after living together for several years. For example, a married couple who did not enter into an agreement at the outset of their marriage may have acquired a home, a vehicle, savings, or business assets during their marriage. Under the rules governing

joint property, these assets are, by definition, already part of the joint property. During the marriage, the couple then agrees to enter into a prenuptial agreement to regulate the separation of assets due to changes in economic conditions, business interests, or the need to manage the family's wealth. Legal issues arise when the agreement not only pertains to assets acquired after the agreement was made but also includes pre-existing assets that are already considered joint property. This situation raises the question of whether assets already considered joint property can undergo a change in status after the marriage agreement is made, and when such a change begins to have legal effect.

Prior to the legal development brought about by Constitutional Court Decision No. 69/PUU-XIII/2015, Article 29 of Law No. 1 of 1974 on Marriage only permitted the execution of a prenuptial agreement before or at the time of the marriage ceremony. This restriction meant that couples who had not entered into an agreement at the start of their marriage did not have an equal opportunity to restructure their property arrangements during the marriage. Subsequent legal developments then allowed couples to enter into a prenuptial agreement after they were already married. However, extending the timeframe for entering into such an agreement has actually created new issues regarding the agreement's applicability to assets owned prior to its execution. Consequently, the legal issues that have arisen now concern not only the rights of husbands and wives to enter into a prenuptial agreement after marriage but also the status of joint assets that existed before the agreement was made (Warsito et al., 2025).

Constitutional Court Decision No. 69/PUU-XIII/2015 provides a legal basis for husbands and wives to enter into a prenuptial agreement while they are still married. This decision allows for greater flexibility in determining how assets are managed during the marriage, so that couples are no longer limited to making such arrangements only before or at the time of their marriage. A prenuptial agreement entered into after marriage can serve as a way for couples to adjust their asset arrangements to account for the ever-changing circumstances of their life together. However, granting this right does not automatically resolve issues related to the status of assets already owned and that have become joint property prior to the agreement being made. Therefore, it is important to distinguish between the authority to enter into a post-marital agreement and the legal impact of such an agreement on pre-existing joint property (Warsito et al., 2025).

Married couples still bound by marriage have the opportunity to enter into a prenuptial agreement in accordance with Constitutional Court Decision No. 69/PUU-XIII/2015. This ruling grants couples greater freedom in managing their assets, making it a significant development. Although Constitutional Court Decision No. 69/PUU-XIII/2015 has established the legal basis for entering into a prenuptial agreement during the marriage, issues remain regarding the legal impact of such an agreement on assets owned prior to its execution. The provision allows for flexibility regarding the timing of the agreement's execution, but does not specifically establish a clear threshold as to whether assets previously considered joint property can immediately become separate property after the agreement is executed. This issue becomes even more critical if the joint property has already been used as the subject of an agreement with a third party, served as collateral for a debt, or given rise to specific rights and obligations. Therefore, it is necessary to clarify the relationship between the time the agreement is entered into, the status of assets that existed prior to the agreement, the rules applicable to the assets after the agreement, and the protection for third parties acting in good faith (Anugerahayu & D, 2025).

Based on these issues, this study not only addresses the validity of marriage agreements entered into after marriage but further focuses on the status of joint property acquired prior to the agreement as the primary object of analysis. The innovation of this study lies in distinguishing the legal effects on assets that existed prior to the agreement and those acquired after the agreement, taking into account the agreement's effective period, the clarity of the

agreement between the parties involved, and the protection of rights for third parties acting in good faith. Based on this, this study aims to analyze whether a post-marital prenuptial agreement is valid or not, as well as to determine the legal status of joint property owned prior to the agreement's execution, in order to provide legal certainty and security for the husband, wife, and any third parties involved (Anugerahayu & D, 2025).

## METHODS

This study employs a normative legal research method. This method focuses on examining the legal certainty of postnuptial agreements regarding the status of joint property. This study was conducted by reviewing legal materials such as legislation, scholarly journals, books, and other documents related to this issue. The approaches used include a legislative approach; Constitutional Court Decision No. 69/PUU-XIII/2015 is an important part of the examination of changes in the timing of the execution of marriage agreements (Tasrizal, 2025).

This study is descriptive and analytical in nature; it begins by explaining the legal provisions relating to the status of joint property and postnuptial agreements, and then analyzes the legal issues that arise when implementing such agreements. To determine how post-marriage agreements affect joint property, all legal materials obtained were examined qualitatively, taking into account Constitutional Court decisions, legislation, and expert opinions. This method was used to achieve the research objective of gaining an understanding of the extent to which post-marriage agreements can provide legal certainty regarding the status of joint property (Kristianto & Chariansyah, 2026).

## RESULTS AND DISCUSSION

### The Validity of Marriage Agreements Entered Into After Marriage Following the Enactment of Constitutional Court Decision No. 69/PUU-XIII/2015 (Windradi & Wdayati, 2015).

Article 29(1) of Law No. 1 of 1974 on Marriage, which was in effect prior to Constitutional Court Decision No. 69/PUU-XIII/2015, stipulates that a marriage contract may only be entered into before or at the time the marriage takes place. Since there was no law allowing married couples who had not entered into a prenuptial agreement from the outset to do so, this restriction posed a problem for them. Constitutional Court Decision No. 69/PUU-XIII/2015 provided a new interpretation of Article 29 of the Marriage Law, thereby amending that provision (Windradi & Wdayati, 2015).

The Constitutional Court ruled that Article 29(1) of the Marriage Law is inconsistent with the 1945 Constitution of the Republic of Indonesia because it fails to define that a marriage agreement may be entered into either before the marriage or while the husband and wife are still bound by the marriage. A marriage agreement must be in writing, with the consent of both parties, and must be certified by a notary or a marriage registrar. A marriage agreement may also be enforceable against third parties to the extent that such third parties are involved in the agreement (Marpaung, 2025).

The ruling indicates that a prenuptial agreement entered into after the marriage has taken place still has a legal basis and may be deemed valid as long as it meets the applicable requirements. Constitutional Court Decision No. 69/PUU-XIII/2015 grants husbands and wives greater flexibility to enter into prenuptial agreements, including after the marriage has ended. This development allows the parties to adjust the rules governing their marital property in accordance with changes that occur during the course of the marriage. This change indicates that previous regulations were more restrictive, and now husbands and wives have greater freedom in determining their legal relationship regarding marital property (Rambe, 2025).

The validity of a marriage contract remains subject to the fulfillment of the general requirements for the validity of a contract. An agreement made between a husband and wife must not be influenced by coercion, fraud, or mistake. Furthermore, the agreed-upon terms must not conflict with the law, public morality, or the interests of third parties. According to a decision by the Constitutional Court, any amendment or revocation of a marriage contract during the marriage may only be made by mutual agreement of both parties, taking into account the interests and rights of third parties (Rahmandani, 2024).

A postnuptial agreement may be formalized in the form of a deed drawn up before a notary. Husband and wife have the opportunity to enter into a marriage agreement before and during the marriage in accordance with marriage administration regulations. Couples whose marriages are registered through Islamic marriage administration also have the opportunity to enter into a marriage agreement both before and during the marriage (Erlina & Fathinnuddin, 2025).

**Status of Joint Property Acquired Before the Post-Marriage Agreement**

Joint property is one of the legal consequences arising from marriage. According to Article 35(1) of Law No. 1 of 1974 on Marriage, property acquired during the marriage is generally recognized as joint property, while property belonging to the husband and wife individually, as well as property acquired through gifts or inheritance, remains under the control of each respective spouse, unless otherwise agreed. This provision confirms that, in the absence of specific arrangements through a prenuptial agreement, assets acquired after the marriage begins are generally considered joint property. Therefore, when a married couple decides to enter into a prenuptial agreement after they are married, questions arise regarding the status of assets already acquired that had become part of the joint property before the agreement was signed (Ananditya & Prananda, 2024).

Constitutional Court Decision No. 69/PUU-XIII/2015 has had a significant impact on existing regulations. This decision extends the timeframe for drafting a prenuptial agreement, which can now be done not only before or at the time of marriage but also during the marriage. This modification grants married couples the freedom to determine arrangements regarding their assets based on the agreement they establish. However, it is important to distinguish between the right to draft an agreement during the marriage and the legal impact of the agreement on assets that existed prior to its creation. The Constitutional Court's decision opens the door to drafting agreements after marriage, but the issue of the extent to which such an agreement can affect assets that were previously considered joint property requires careful legal interpretation (Erlina & Fathinnuddin, 2025).

Property acquired during the marriage prior to the execution of a prenuptial agreement retains its status as joint property in accordance with the provisions of Article 35(1) of the Marriage Law. This is because the status of joint property arises from the fact that the property was acquired during the marriage, whereas a prenuptial agreement is only formed after an agreement between the husband and wife regarding the management of their assets. Thus, the existence of a subsequently drafted agreement does not automatically eliminate the status of assets that had previously been designated as joint property. Any change to the status of existing assets must be based on the clear terms of the agreement, the consent of the parties involved, and must comply with applicable laws while safeguarding the interests of third parties (Erlina & Fathinnuddin, 2025).

This issue is crucial because a prenuptial agreement is essentially an agreement that governs the legal aspects of property between a husband and wife. When such an agreement is drawn up after the marriage has taken place, each party can establish the separation or specific arrangements regarding their property for the future. However, the application of these provisions to assets acquired prior to the contract cannot be equated with assets acquired after

the contract was drawn up. Assets that were previously part of the joint estate have already established a legal relationship between husband and wife; therefore, any change in their status must be made by mutual agreement of both parties and must not violate pre-existing rights (Barus, 2024).

The effective date of the agreement is a key factor in determining the status of joint property. If the agreement states that the separation of property takes effect as of the date the agreement was made, then property acquired after that date may be treated in accordance with the agreed-upon terms. On the other hand, assets acquired before the agreement was in place are generally still considered joint property, unless there is a clear agreement governing the settlement or division of existing assets. Thus, it is important to distinguish between assets that existed before the agreement and those acquired after the agreement, as each has a different basis and point in time for the establishment of the legal relationship (Ananditya & Prananda, 2024).

This distinction is also necessary to avoid legal uncertainty in the context of civil relationships. If every prenuptial agreement entered into after the marriage is immediately recognized as applying to all property acquired since the beginning of the marriage, there is a possibility of changes to rights over property that was previously jointly owned. This situation can lead to problems when joint property has already been used as the subject of an agreement with a third party, serves as collateral for a debt, has been transferred, or has created certain rights for a third party. Therefore, the freedom of a husband and wife to formulate a prenuptial agreement must remain within the framework of protecting the rights of other parties that have already arisen legally (Ananditya & Prananda, 2024).

The drafting of a post-marital agreement cannot be considered a means of unilaterally altering the legal status. A post-marital agreement must be based on the mutual consent of both parties and drawn up in accordance with the form prescribed by law. If the agreement is intended to regulate existing assets, its content must clearly specify which assets are the focus of the arrangement, what their status will be once the agreement takes effect, and how pre-existing rights and obligations will be settled. Such clarity is necessary to prevent differing interpretations in the event of a future dispute (Rumaherang et al., 2024).

The status of joint property acquired before a post-marital agreement was entered into cannot be separated from the principle that such property status arises during the marriage, in accordance with Article 35 (1) of the Marriage Law. Constitutional Court Decision No. 69/PUU-XIII/2015 grants husbands and wives the authority to enter into agreements during the marriage, but this authority does not mean that the status of all assets acquired prior to the agreement automatically changes. The determination of legal consequences regarding pre-existing assets must take into account the content and effective date of the agreement, the agreement between the parties, and the rights of third parties acting in good faith (Afifa & Ramadhani, 2025).

## CONCLUSIONS AND RECOMMENDATIONS

### Conclusion

Constitutional Court Decision No. 69/PUU-XIII/2015 brings about significant changes by allowing married couples to draft a marriage agreement while they are still married. Such agreements must still meet the requirements for the validity of a contract, be drawn up by mutual consent of both parties, and be written in a format that complies with applicable legal provisions. In this way, post-marital agreements have a legal basis and can serve as a tool for couples to adjust the arrangement of their assets in accordance with the family's needs.

Assets acquired during the marriage prior to the existence of an agreement are, in principle, still considered joint property in accordance with Article 35(1) of the Marriage Law and will not automatically change their status merely because of an agreement entered into

after the marriage. Any assessment of the legal consequences regarding pre-existing assets must take into account the content and effective date of the agreement, the mutual consent of both parties, and the rights of third parties acting in good faith. Therefore, the legal validity of a post-marriage agreement depends heavily on the clarity of the provisions regarding assets both before and after the agreement is made, so that the couple's freedom remains balanced with the protection of pre-existing rights.

**Recommendations**

Based on researcher findings, Future studies should broaden the scope of research by examining the legal consequences of post-marital agreements in different categories of marital assets, particularly assets acquired before and after the agreement is made. Further research should also consider the perspectives of third parties acting in good faith, including creditors and other parties whose rights may be affected by changes in the marital property regime. Comparative studies of different legal systems may provide additional insights into the regulation, effective date, and legal certainty of post-marital agreements. In addition, empirical research involving judges, notaries, legal practitioners, and married couples may contribute to a more comprehensive understanding of the implementation and practical challenges of post-marital agreements.

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