



The Legal Standing of Prenuptial Agreement Registration at the Time of Divorce Under Indonesian Positive Law

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Abstract

This study aims to analyze marriage as a legal act where the parties involved perform actions prescribed by law, which subsequently result in legal consequences. This research is a normative legal study employing a statutory approach and a conceptual approach. The sources of legal materials include primary, secondary, and tertiary legal sources. Data collection was conducted through library research and documentary studies. The data obtained were analyzed using a descriptive-qualitative method, with a deductive reasoning process moving from general to specific premises. The results indicate that the legal standing of a prenuptial agreement remains valid and possesses binding legal force during a divorce, provided it is executed through a notarial deed and does not violate public policy. Furthermore, the registration of such agreements can still be performed at the Civil Registry Office (for non-Muslims) and the Office of Religious Affairs / KUA (for Muslims).

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Introduction

Marriage is a formal legal act performed by parties in accordance with prevailing statutory provisions, which inevitably entails significant legal consequences. This legal act establishes a framework of rights and obligations for the husband and wife who have committed to one another. As a valid legal institution, the consequences of marriage extend beyond the spouses to bind third parties who may enter into legal relations with them in the future. Consequently, marriage is regarded as a pivotal social event upon which the state confers specific legal effects.^[1]

Regarding marital assets, Article 139 of the Indonesian Civil Code (*Burgerlijk Wetboek*) defines a marriage settlement as an agreement between prospective spouses to regulate the impact of marriage on their property, whether through the establishment of a community of property or a total separation of assets.^[2] In line with this, legal scholars Soetojo Prawirohamidjojo and Asis Safioedin assert that such agreements are fundamentally intended to govern asset distribution before or at the moment the marriage is solemnized.^[3]

Historically, Article 29 of Law No. 1 of 1974 mandated that marriage agreements be executed strictly prior to the wedding. However, the Constitutional Court Decision No. 69/PUU-XIII/2015 introduced a transformative legal dynamic.

¹ Wahyono Darmabrata and Suriani Ahlan Sjarif, *Hukum Perkawinan dan Keluarga di Indonesia* (2nd edn, Fakultas Hukum Universitas Indonesia 2004) 75-76.

² *Indonesian Civil Code (Burgerlijk Wetboek)*, art 139.

³ Hanafi Arief, 'Perjanjian Dalam Perkawinan (Sebuah Telaah Terhadap Hukum Positif di Indonesia)' (2017) 9(2) *Jurnal Al'Adl* 155.

Following this landmark ruling, marriage agreements can now be executed before, at the time of, or during the course of the marriage (postnuptial agreements) via a notarial deed validated by a marriage registrar. To ensure these agreements bind third parties, they must be registered with the Office of Religious Affairs (KUA) for Muslims or the Civil Registry Office (Dukcapil) for non-Muslims, thereby satisfying the principle of publicity.

In practice, however, many couples fail to register their agreements promptly. A problematic legal phenomenon has emerged where agreements are only registered unilaterally during divorce proceedings. This delay raises questions regarding the validity and enforceability of such late registrations. Based on this background, this study addresses the following research questions:

1. How are marriage agreements regulated under Indonesian positive law following the Constitutional Court's intervention?
2. What is the legal standing and enforceability of a marriage agreement that is registered only at the time of divorce?

2. Research Methodology

Research Type

This study employs a normative legal research method. The term originates from the English "normative legal research" and the Dutch "normatief juridisch onderzoek." Normative research is a method used within legal studies that positions law as a structured system of norms. This system encompasses principles, norms, statutory rules, judicial decisions, international treaties, legal systematics, regulations of state institutions, and legal doctrines.

Research Approaches

To obtain comprehensive information regarding the legal issues being addressed, several research approaches are utilized. These approaches serve as guidelines for studying, analyzing, and understanding the core problems. The approaches used in this study are:

1. **Statute Approach:** This approach involves reviewing all laws and regulations relevant to the legal issues at hand.^[4] Through a statute approach, the law is viewed as a closed system characterized by its comprehensive, all-inclusive, and systematic nature.
2. **Conceptual Approach:** This approach moves from the perspectives of experts and evolving doctrines within legal science. This approach is chosen to seek answers to legal issues by analyzing the conceptual foundations of the law.

Data Collection Techniques

The legal materials were collected through library research and documentary studies. This process involved reviewing scientific works, statutory regulations, books, journals,

legal dictionaries, internet resources, and other relevant literature related to the research problem.^[5]

Data Analysis

The data obtained from this research were analyzed using a descriptive-qualitative method with a deductive reasoning process. The descriptive-qualitative process explains the dynamics between the observed phenomena and scientific logic, followed by an interpretation of the legal materials in accordance with the legal issues.^[6] Furthermore, deductive reasoning was applied by categorizing the collected legal materials and analyzing them from general premises to specific conclusions.

3. Discussion

1. Regulation of Marriage Settlements Under Indonesian Positive Law

• Marriage Settlements Under the Indonesian Civil Code (*Burgerlijk Wetboek*)

A marriage settlement is an agreement that deviates from the statutory principles or regulations regarding the community of marital property during a marriage, provided that such an agreement does not contravene morality (*tata susila*) or public order (*tata tertib umum*). Article 139 of the Indonesian Civil Code states:

"By entering into a marriage settlement, prospective spouses are entitled to stipulate various deviations from the statutory regulations concerning the community of property, provided that such agreements do not violate good morals or public order, and that all provisions herein are duly observed."^[7]

Under Article 147 of the Civil Code, a marriage settlement must be executed before the solemnization of the marriage and must be drafted in the presence of a Notary. Failure to execute the agreement before a Notary renders the contract null and void (*batal demi hukum*). In this context, the concept of an "engagement" (*perikatan*) carries a broader and more general legal meaning than a mere "agreement" (*perjanjian*), as further clarified in the Civil Code. An engagement, as defined in Book III of the Civil Code, is a legal relationship (concerning property/assets) between two parties, which grants one party the right to demand something from the other, while the other party is legally obligated to fulfill that demand.^[8] Thus, an engagement represents a legal relationship within the realm of property law, where one party (the creditor) holds a right over another party (the debtor), who is obliged to perform a certain obligation (*prestasi*).^[9]

An engagement may arise either from an agreement or from the law. Article 1233 of the Civil Code stipulates: "Every engagement is born either by agreement or by law."^[10] Prior to the enactment of the Marriage Law, all marriage settlements were required to be executed via a notarial deed (Article 147 of the Civil Code). As public officials, Notaries are governed by the Notarial Office Regulations (*Peraturan*

⁴ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (10th edn, Rajawali Pers 2018) 164.

⁵ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum* (Citra Aditya Bakti 2004) 81-84.

⁶ Muhammad Syamsudin, *Operasionalisasi Penelitian Hukum* (Rajawali Press 2007) 133.

⁷ R Subekti and R Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata* (Pradnya Paramita 1978) 51.

⁸ Subekti, *Pokok-Pokok Hukum Perdata* (PT Intermasa 1983) 122-123.

⁹ Riduan Syahrani, *Seluk-Beluk Dan Asas-Asas Hukum Perdata* (PT Alumni 2006) 196.

¹⁰ R Subekti and R Tjitrosudibio (n 1) 291.

Jabatan Notaris), specifically *Ord. Stbl. 1860 No. 3*. Article 1 of these regulations defines a Notary as the sole public official authorized to draw up authentic deeds regarding all acts, agreements, and stipulations required by general regulation or desired by interested parties to be stated in an authentic deed, ensuring the certainty of its date, preserving the deed, and issuing grosses, copies, and excerpts thereof. Currently, marriage settlements can be executed in writing, either through a notarial deed or a private deed (*di bawah tangan*). If the settlement is executed as a notarial deed, it must be drafted by a Notary. Conversely, a private deed can be prepared by the parties themselves without notarial involvement. Article 1 paragraph (1) of the Law on Notarial Positions (UUJN) reinforces that a Notary is a public official authorized to create authentic deeds and exercise other powers as stipulated by law. Furthermore, Article 1870 of the Civil Code provides that an authentic deed serves as conclusive evidence (*bukti yang sempurna*) between the parties and their heirs or successors regarding its contents. An authentic deed is binding in the sense that its contents must be accepted as true by a judge, provided its falsity is not proven. Such a deed provides "perfect proof," meaning it requires no additional evidence and functions as a binding legal instrument.

The Notary's duties pertain to private law, primarily the creation of authentic deeds for acts or agreements mandated by law or desired by the parties for legal certainty. Simultaneously, the Notary operates within the sphere of public law due to their status as a public official. Drafting a marriage settlement requires specialized expertise; the drafter must possess a profound understanding of marital property law and the ability to formulate every *beding* (clause) or condition with extreme caution and precision.

This precision is critical because, under the Civil Code, the form of marital property remains fixed throughout the duration of the marriage. Consequently, any error in formulating a clause within a marriage settlement cannot be rectified while the marriage subsists. The use of a notarial deed is intended to provide legal certainty regarding the rights and obligations of the spouses over their assets, while also protecting third parties who may have an interest in the existence of the settlement.

However, since the enactment of Law No. 1 of 1974 concerning Marriage, Article 66 stipulates that upon the effectiveness of this Law, the provisions of the Civil Code and other regulations governing marriage are declared void insofar as they have been superseded by the provisions of this Law.

- **Marriage Settlements Under Law Number 1 of 1974 concerning Marriage**

In general, a marriage settlement (prenuptial agreement) stipulates the arrangement of assets between prospective spouses. Principally, the concept of a marriage settlement aligns with the general theory of contracts; it is an agreement between two prospective spouses to regulate their respective personal assets, executed prior to the marriage and validated by a marriage registrar. In the Marriage Law, these settlements are specifically regulated under Chapter V, Article 29, which consists of four paragraphs:

1. **Paragraph (1):** At the time of or before the marriage is solemnized, both parties, by mutual consent, may enter into a written agreement validated by the marriage registrar, after which the contents shall also apply to third

parties insofar as they are involved.

2. **Paragraph (2):** Such an agreement cannot be validated if it violates the boundaries of law, religion, or morality.
3. **Paragraph (3):** The agreement shall take effect from the moment the marriage is solemnized.
4. **Paragraph (4):** During the marriage, the agreement cannot be amended unless there is mutual consent from both parties, and such amendments do not prejudice the interests of third parties.

Although the Law does not provide an explicit definition of a marriage settlement, it can be defined as a legal relationship concerning the assets of both parties, wherein one party promises to perform a certain act, while the other party is entitled to demand the fulfillment of said agreement. More clearly, a marriage settlement is a written agreement made by prospective spouses at the time of or prior to the marriage, validated by a marriage registrar, whose provisions bind third parties to the extent stipulated therein.

- **Marriage Settlements Post-Constitutional Court Decision No. 69/PUU-XIII/2015**

In 2015, the Constitutional Court, through Decision No. 69/PUU-XIII/2015, issued a landmark ruling that fundamentally transformed the concept of marriage settlements in Indonesia. This decision represents a significant legal reform; previously, under Article 29 of the Marriage Law, such agreements could only be executed prior to or at the time of marriage. The Court expanded this provision, allowing marriage settlements to be executed *during* the course of the marriage (postnuptial agreements), even if no prior agreement existed at the inception of the union.

This ruling originated from a petition filed by an Indonesian citizen, Mrs. Ike Farida, who was married to a Japanese national without a prenuptial agreement. During their marriage, Mrs. Farida attempted to purchase an apartment in East Jakarta. However, the developer refused to hand over the unit, citing her husband's foreign nationality and the absence of a separation of assets agreement. This prevented the petitioner from exercising her right to own property, leading her to challenge the constitutionality of the Marriage Law.

The Court's ruling revised Article 29, Paragraph (1) of the Marriage Law to state:

"At the time of, before the solemnization of, or during the bond of marriage, both parties by mutual consent may enter into a written agreement validated by a marriage registrar or a Notary, after which the contents shall apply to third parties insofar as they are involved."

This revision introduced the phrase "or a Notary," establishing a choice of authority for the validation of these agreements. Legally, the role of the marriage registrar and the Notary is placed on equal footing in this context. Consequently, a marriage settlement may be executed as a private deed (*di bawah tangan*) or an authentic deed (*akta otentik*). While a private deed is based solely on mutual consent, an authentic deed executed before a Notary possesses "perfect evidentiary strength" (*kekuatan pembuktian sempurna*).

However, the phrase "validated by a marriage registrar or a Notary" has sparked academic debate regarding overlapping authorities. Under the Law on Notarial Positions (UUJN), a Notary's authority in terms of private deeds is limited to legalizing signatures (*legalisir*) and certifying the certainty of

dates (*waarmerking*). This perceived overlap may lead to legal uncertainty in the administrative process. Nevertheless, the primary purpose of these agreements remains the same: to provide legal protection and serve as a "law" for the parties acting in good faith.

Regarding marital assets, the Civil Code and the Marriage Law share several similarities and differences:

1. **Similarities:** Both require that agreements do not violate public policy or morality and that they generally take effect upon the solemnization of the marriage.
2. **Differences in Form:** The Civil Code mandates a notarial deed for validity (Article 147), whereas the Marriage Law allows for a written agreement that may be a private deed.
3. **Differences in Scope:** Under Article 119 of the Civil Code, marriage automatically triggers a total community of property (including assets owned prior to marriage) unless stipulated otherwise. Conversely, Article 35 of the Marriage Law distinguishes between joint property (acquired during marriage) and separate/inherited property (owned before marriage or received as a gift/inheritance), which remains under the respective control of each spouse unless the parties agree otherwise.

In conclusion, the Constitutional Court's decision provides a flexible mechanism for spouses to protect their individual property rights during the marriage, thereby ensuring that the principle of community of property does not inadvertently infringe upon an individual's right to own assets.

The concept of asset management in this context encompasses both physical and legal control. Based on Article 35, Paragraph (2) of the Marriage Law, it is explicitly stated that only "brought-in assets" (*harta bawaan*) may be regulated differently. This implies that parties can agree via a marriage settlement to convert personal brought-in assets into joint property. However, the Marriage Law remains ambiguous regarding whether the provisions for "joint property" (*harta bersama*) itself can be deviated from by the parties. This suggests a lack of firmness in the Law regarding the total separation of joint property. Nonetheless, it is generally interpreted that joint property cannot be waived by any means. Consequently, under the Marriage Law, marriage settlements are primarily utilized to establish a total union of property, covering both joint and brought-in assets.

In contrast, under the Civil Code (KUHP), marriage settlements are traditionally drafted to facilitate the separation of assets from the default principle of total community of property. This fundamental difference arises from the differing philosophies of the two legal frameworks: the Marriage Law views marriage as a means to achieve both spiritual and material well-being, whereas the Civil Code views marriage purely as a civil bond based on consensual agreement. Despite these differences, asset separation agreements become crucial when dealing with complex assets such as land. Under the Basic Agrarian Law (UUPA), land ownership is restricted by the principle of nationality (limiting ownership to Indonesian citizens). In the case of mixed marriages (between an Indonesian and a foreigner), it is essential that the option for asset separation remains open regarding both the scope of assets and the timing of the

agreement as validated by the Constitutional Court.

Prior to the current developments, the Marriage Law did not explicitly provide for the creation of marriage settlements after the wedding had taken place. Article 29 originally restricted such agreements to being made "at the time of or before" the solemnization. However, in practice, a phenomenon emerged where couples sought to create agreements during the marriage for specific reasons. Historically, this required a court petition to obtain a judge's decree as a legal basis. Following such a decree, the spouses could then execute a marriage settlement before a Notary. According to Article 15, Paragraph (1) of Law No. 2 of 2014 concerning the Notarial Position, Notaries hold the authority to draft authentic deeds for all legal acts and agreements required by law or desired by the parties to ensure legal certainty and evidentiary strength.

Once the notarial deed is executed, it must be registered with the authorized institution either the Civil Registry Office (*Dukcapil*) or the Office of Religious Affairs (*KUA*), depending on the parties' legal status. Failure to register the deed renders the agreement legally non-binding against third parties. This aligns with Article 29, Paragraph (1) of the Marriage Law, which states that the agreement must be "validated" (*disahkan*) by a marriage registrar. As noted by Alwesius, "validated" in this context does not refer to the validity of the contract itself, but rather to its "registration" to satisfy the principle of publicity, ensuring it binds third parties.^[11]

The landscape changed significantly following the Constitutional Court Decision No. 69/PUU-XIII/2015. The case was brought by an Indonesian citizen in a mixed marriage who faced difficulties purchasing property due to the nationality principle in the UUPA. The Court argued that the existing law was too restrictive, as many couples only realize the need for a marriage settlement after the marriage has commenced. The Court concluded that the phrases "at the time of or before" and "since the marriage is solemnized" in Article 29 restricted the individual freedom to contract, which contradicted Article 28E, Paragraph (2) of the 1945 Constitution. Thus, the Court ruled that marriage settlements can now be legally executed at any time during the bond of marriage.

Based on the ruling of the Constitutional Court mentioned above, Article 29, Paragraphs (1), (3), and (4) of Law Number 1 of 1974 concerning Marriage were declared contrary to the 1945 Constitution, insofar as they are not interpreted to mean that a marriage settlement can be executed at any time during the marriage bond. Such agreements shall take effect from the date the marriage is solemnized unless otherwise stipulated in the agreement. Furthermore, during the marriage, the settlement may concern marital assets or other agreements and cannot be amended or revoked unless by mutual consent of both parties, provided that such changes do not prejudice the interests of third parties.

The Constitutional Court's decision does not necessarily invalidate the legal norm in its entirety; rather, the norm is deemed conditionally unconstitutional. This means the norm remains valid only if interpreted in accordance with the Court's ruling (*Amar Putusan*). Such decisions possess final

¹¹ Fitri Khairunnisa, 'Kewenangan Pengesahan Perjanjian Kawin Antara Warga Negara Indonesia (WNI) Dan Warga Negara Asing (WNA) Yang Dibuat Di Luar Negeri' (Thesis, Magister Kenotariatan Universitas Airlangga 2018) 27.

and binding legal force from the moment they are pronounced in a public hearing, leaving no further legal remedies available (*final and binding*). Consequently, the ruling creates a new legal state (declaratory-constitutive). In this capacity, as Hans Kelsen described, the Constitutional Court acts as a "negative legislator," making its ruling equivalent to a constitutional mandate.

The legal force of a Constitutional Court decision encompasses binding force, evidentiary force, and executorial force. This binding force is not limited to the litigating parties (*inter partes*) but extends to all citizens, state institutions, officials, and legal entities within the Republic of Indonesia (**erga omnes**). Therefore, this ruling is binding upon Notaries, as the officials authorized to draft marriage settlement deeds, as well as the Civil Registry Office (*Dukcapil*) and the Office of Religious Affairs (*KUA*), as the authorities responsible for registering such deeds.

The declaration of conditional unconstitutionality implies a shift in the legal mechanism for creating marriage settlements. Previously, couples who wished to create an agreement during their marriage were required to file a petition for a court decree to serve as the legal basis for a Notary to draft the deed. The Constitutional Court's decision was motivated by this societal phenomenon, aiming to provide legal certainty and justice as guaranteed by the 1945 Constitution, particularly regarding the individual's constitutional right to contract (freedom of contract). By exercising its authority under Article 24C, Paragraph (1) of the 1945 Constitution, the Court issued a progressive ruling to accommodate evolving societal legal needs.

Post-ruling, spouses who did not execute a marriage settlement prior to their marriage may now do so at any time without seeking a court decree. They may directly approach a Notary to execute the deed, which must then be registered with the Civil Registry Office or the Office of Religious Affairs for official recordation.

However, in practice, technical obstacles remain regarding the registration of postnuptial agreements. Some civil registry officials strictly adhere to outdated technical guidelines while overlooking the updated statutory provisions. For instance, the standardized form for marriage registration (**Form F2.12**) lacks a specific column for marriage settlements. To overcome these hurdles, the Ministry of Home Affairs must urgently issue new regulations and technical guidelines specifically addressing the registration of agreements made during marriage. Until such provisions are implemented, registration may remain hindered. It is crucial to note that as long as a marriage settlement remains unregistered, it does not bind third parties and remains valid only between the spouses.

2. The Legal Standing of Marriage Settlements Registered at the Time of Divorce

• The Status of Marriage Settlements within the Marital Relationship

A marriage settlement holds the status of a specific contract within family law that binds the husband and wife throughout

the duration of their marriage.^[12] Following the Constitutional Court Decision No. 69/PUU-XIII/2015, a marriage settlement executed during the marriage remains valid and possesses binding legal force for both parties.^[13]

Fundamentally, an engagement or agreement is a legal relationship between two parties who commit to performing certain obligations (*prestasi*) within the realm of property law. In executing such agreements, both parties are held accountable based on several essential elements: the existence of consenting parties, mutual consensus (*meeting of minds*), its nature as a legal act or relationship, its placement within the field of property law, and the establishment of binding legal consequences.

Marriage, by definition, serves a noble purpose within human nature and society. It is a physical and spiritual bond between a man and a woman aimed at forming an enduring and happy family unit, recognized by the state and statutory law. It constitutes an agreement between a man and a woman to bind themselves as husband and wife in a manner that is both religiously lawful and legally valid.

Furthermore, a marriage settlement creates legal events with consequences prescribed by law. The juridical impacts of a marriage settlement include:

1. The agreement binds the husband and the wife;
2. The agreement binds interested third parties;
3. The agreement may only be amended by mutual consent of the spouses, provided it does not prejudice third-party interests and is validated by a marriage registrar.^[14]

The legal consequence of a marriage settlement is the formal separation of assets acquired both before and during the marriage, as stipulated in the agreement. Should one party fail to fulfill the terms of the settlement, such breach may serve as grounds for divorce. Under Chapter V, Article 29, Paragraphs (1) through (4) of the Marriage Law, the provisions are as follows:

Article 29(1): Spouses may enter into a written agreement validated by a marriage registrar, binding third parties insofar as they are involved.

1. **Article 29(2):** The agreement cannot be validated if it violates law, religion, or morality.
2. **Article 29(3):** The agreement takes effect upon the solemnization of the marriage.
3. **Article 29(4):** The agreement cannot be amended during the marriage except by mutual consent and without harming third parties.

Based on Article 29, the validity of a marriage settlement is contingent upon several requirements:^[15]

1. It must be executed by both parties (historically before the marriage, now permissible during the marriage).
2. It must be in written form and validated by a marriage registrar to be included in the marriage certificate.
3. It must not violate legal, religious, or moral boundaries.
4. Any amendments require mutual consent and must not prejudice third parties.

¹² Dini Novelita Rosyanti *et al.*, 'Kedudukan Perjanjian Perkawinan Serta Keterkaitan Dengan Notaris Pasca Putusan Mahkamah Konstitusi No. 69/PUU-XIII/2015' (2024) 1(8) *IIC: Jurnal Intelek Insan Cendikia*.

¹³ Dwi Putri Melisiani, 'Studi Komparatif Tentang Perjanjian Perkawinan Sebelum dan Sesudah Putusan MK' (2018) 1(2) *E-Journal Fatwa Hukum Faculty of Law Universitas Tanjungpura*.

¹⁴ Surini Ahlan Darmabrata and Wahyono Sjarif, *Hukum Perkawinan Dan Keluarga Di Indonesia* (Fakultas Hukum Universitas Indonesia 2004) 99.

¹⁵ Rosnidar Sembiring, *Hukum Keluarga: Harta-Harta Benda Dalam Perkawinan* (PT Raja Grafindo Persada 2019) 68.

In conjunction with the Constitutional Court Decision No. 69/PUU-XIII/2015, marriage settlements primarily regulate brought-in assets (*harta bawaan*) and joint property (*harta bersama*). While Article 35(1) of the Marriage Law stipulates that property acquired during marriage becomes joint property, Article 36 clarifies that spouses retain full legal authority over their respective brought-in assets.

Furthermore, Article 37 of the Marriage Law (as amended by Law No. 16 of 2019) states: "If a marriage is dissolved by divorce, the joint property shall be regulated according to their respective laws." This implies that while the law provides a default framework, a marriage settlement serves as a beneficial instrument to assist the parties in managing their welfare, provided it adheres to prevailing legal norms. Under the Civil Code (*Burgerlijk Wetboek*), specifically Article 1313, an agreement is defined as an act where one or more persons bind themselves to one or more others. Specifically, Articles 139 through 179 of the Civil Code govern marriage settlements. Article 139 allows prospective spouses to deviate from the statutory regulations regarding the community of property, provided they do not contravene public order or morality. Generally, such settlements serve as a legal deviation from the default marital property regime. According to Gatot Supramono, a marriage settlement is a written agreement validated by a marriage registrar, the provisions of which bind third parties as agreed upon by the spouses.

- **Legal Standing of Marriage Settlements at the Time of Divorce**

At the time of divorce, a marriage settlement serves as the primary legal basis for determining the distribution of assets. If the agreement stipulates a separation of assets, the property belonging to each party is excluded from the community of property (*harta bersama*). The Constitutional Court's ruling further implies that the status of assets, which were originally joint property, may transition into separate property in accordance with the provisions of the agreement. Consequently, judges may utilize the marriage settlement as a fundamental consideration in resolving asset disputes following a divorce. A marriage settlement executed in writing and validated by an authorized official possesses the strength of authentic evidence in court, ensuring legal certainty regarding the rights and obligations of both parties. The registration of a marriage is not a factor that determines the validity of the marriage itself; rather, it is an administrative obligation mandated by statutory regulations to satisfy the Principle of Publicity. The validity of a marriage is determined by the requirements prescribed by the religion of each spouse. The state mandates registration as an administrative necessity, which holds significance from two perspectives:

1. **State Perspective:** Registration is required as part of the state's function to guarantee the protection, advancement, enforcement, and fulfillment of human rights. This responsibility must be carried out in accordance with the principles of a democratic constitutional state (*Rechtsstaat*) as articulated in legislation.
2. **Administrative Perspective:** Registration ensures that marriage—a pivotal life event with extensive future legal implications—is documented through authentic evidence. This allows the state to provide effective and efficient services and protection regarding the rights

3. arising from the union. Authentic evidence, such as a marriage act, prevents lengthy and costly evidentiary processes. For instance, regarding the lineage of a child under Article 55 of the Marriage Law, the absence of an authentic deed requires a court decree for determination, which is inherently less efficient than presenting an authentic deed.

Essentially, the status of marriage registration in Indonesian positive law is an obligation that must be fulfilled to achieve normative-judicial validation, signifying that the marriage has met all essential pillars (*rukun*) and requirements according to both Islamic law and Indonesian positive law. Registration grants legitimacy and recognition by the state. Conversely, a marriage that is not registered but meets all religious requirements remains valid from a normative-theological standpoint. Since the religious requirements and the administrative registration carry different legal consequences, registration cannot be categorized as a pillar of marriage (*rukun nikah*).

In conclusion, the author posits that the legal standing of a marriage settlement at the time of divorce remains valid and possesses binding force as long as it is executed via a Notarial Deed and does not contravene public policy. Furthermore, registration can still be performed at the Civil Registry Office (for non-Muslims) or the Office of Religious Affairs (for Muslims) by affixing a Marginal Note (*Catatan Pinggir*) regarding the marriage settlement in the register and the marriage certificate excerpt. This serves to realize the principle of publicity, ensuring legal certainty and protection for all parties involved.

4. Conclusion

Based on the research findings and discussion, the following conclusions are drawn:

1. **Regulation of Marriage Settlements under Indonesian Positive Law:** Following the Constitutional Court Decision No. 69/PUU-XIII/2015, there has been a significant shift in the legal paradigm regarding the timing of marriage settlements. These agreements are no longer restricted to being made before or at the time of marriage (*prenuptial agreement*); they may now also be executed throughout the duration of the marriage (*postnuptial agreement*). Such agreements must be executed in writing, validated by a marriage registrar or a Notary, and governed by the principle of freedom of contract, provided they do not contravene statutory law, religious tenets, or public policy.
2. **Legal Standing of Marriage Settlements at the Time of Divorce:** A marriage settlement maintains its valid legal standing and possesses authentic binding force during divorce proceedings, provided it was executed via a Notarial deed. From a normative-judicial perspective, the registration of the settlement at the Civil Registry Office or the Office of Religious Affairs (KUA) through a "Marginal Note" on the marriage certificate excerpt serves as the fulfillment of the principle of publicity. Even if registration occurs during the divorce process, it continues to provide legal protection for the parties and serves as a fundamental basis for judges in adjudicating the distribution of assets, ensuring that the constitutional rights of the spouses and third parties remain protected.

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