



Legal Implications of the Enactment of *Postnuptial Agreements* on Home Ownership Loans (KPR) by Married Couples in Indonesia

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Abstract

The purpose of writing this article is to examine how the arrangement of home ownership loans (KPR) carried out by married couples after the enactment of the postnuptial marriage agreement and how the liability for debtors of married couples who enter into a postnuptial marriage agreement is accountable to home ownership loans (KPR) in Indonesia. The legal research method applied is normative legal studies whose scope is the laws and regulations regarding marriage and credit agreements. In this study, a conceptual approach and laws and regulations were used. The results of the analysis of this study are the arrangement of home ownership loans (KPR) carried out by married couples after the enactment of the postnuptial agreement subject to agreement law and marriage law. Liability in home ownership loans (KPR) carried out by married couples, the debtor's liability depends on the time of the credit agreement, if the home ownership loan is submitted and agreed before the postnuptial agreement, then the debt is still a joint debt whose repayment must be paid jointly unless there is a new agreement with the bank.

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Introduction

Marriage as one of the human acts that comes from God's decree which has the purpose of maintaining and developing the sustainability of life in the world in a good way.^[1] In Indonesian positive law, the definition of marriage is regulated in Article 1 of Law No. 1 of 1974, which is essential: "*marriage is a bond of innate innate spirit between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) and based on the One Godhead*". Therefore, marriage is not just a biological relationship, but also a bond of birth and mind that has spiritual, moral and normative meanings whose main goal is to create a happy, eternal family based on divine values.

Marriage as a legal event not only has consequences for the civil relationship between a man (husband) and a woman (wife), but also has implications for the status of the property owned by both. Where in the marital relationship not only meets the inner needs including the soul, spiritual, and physical but the existence of wealth relationships as a foundation to meet the needs of the sustainable survival of individual lives of married^[2] couples, one of which is the need for a married couple's place to live, namely having a private house which is the dream of many married couples. However, now with the increase in property prices, cash home ownership has become increasingly difficult for some people, especially young married couples. The increase in land and building prices that is not proportional to the growth of income and financial constraints in meeting the need for decent housing so that in these conditions mortgages are the solution. Home ownership credit (KPR) is a form of financing offered by

¹ Santoso. (2016). The Nature of Marriage According to Marriage Law, Islamic Law and Customary Law. *Journal of Jurisprudence*. 7 (2).

² Rastini, Sanjaya, Jaka Bangkit, Slamet, Rizqi Mulyani. (2021). *Juridical Analysis of the Importance of Making A Marriage Agreement Based On A Civil Law Perspective*. *Lex Generalis Law Journal*. 2 (6). Page 483.

financial institutions to the community to help people realize home ownership through a payment mechanism in installments within a certain period of time. ^[3] Through this scheme, prospective home buyers of married couples are not required to provide a large amount of cash at the initial stage, but rather meet the obligation to pay a down payment, while the remaining house price is paid off in stages in accordance with the agreed credit agreement. Based on data from PT Bank Mandiri (Persero) Tbk, 70% of mortgage requests in the last three years are still dominated by millennials and generation Z, namely under the age of 23 to 39 years, this reflects an increase in awareness of the importance of residential ownership. ^[4] The right of ownership of a house owned by the mortgage mechanism is in principle inherent as a category of property that is jointly owned in marriage, as long as there is no marriage agreement that stipulates the separation of property. This situation is in line with the provisions of article 35 paragraph (1) of Law No. 1 of 1974 related to marriage which affirms that: "*property acquired during the period of marriage that all property obtained during the marriage period becomes part of the common property*". This means that even though the application for a mortgage in marriage takes place administratively only individually by the husband or wife in the marriage bond, the right of ownership of the house is legally still the joint property of both parties. In practice, it is not uncommon to find married couples who have been bound by a mortgage agreement and are still in the installment repayment period, then choose to make a marriage agreement regarding the separation of property. This agreement is usually motivated by various considerations such as business interests, personal asset protection, financial planning and others. This condition raises legal problems, especially related to how the mortgage is regulated after the enactment of the post-marriage agreement that regulates the separation of assets, as well as its responsibilities, these changes in the midst of the ongoing mortgage agreement have the potential to give rise to legal implications for both husband and wife as debtors and banks in ensuring legal certainty and protection of interests. Thus, this phenomenon is important to be studied from a legal perspective in Indonesia.

Scientific papers with a similar theme have previously been carried out in a scientific study entitled "Legal Consequences for Holders of Dependent Rights on the Constitutional Court Verdict Number. 69/PUU-XIII/2015 Concerning Marriage Agreements" by AAA. Ngurah Sri Rahayu Gorda focused on discussing the legal arrangement of dependent rights holders by intermarried couples after the issuance of the Constitutional Court decision. In addition, a similar scientific paper entitled "Juridical Analysis of Post-Marriage Agreements Based on the Decision of the Constitutional Court Number 69/PUU-XIII/2015" by Winshery Tan and Denaya Aprinata focuses on discussing the legal impact of postnuptial marriage agreements. Based on the two previous scientific papers, the author compiled a research with a

different point of view, especially from the object of the study, namely regarding the arrangement of post-marriage marriage agreements to mortgage agreements carried out by married couples reviewed from the perspective of recognized law in Indonesia.

Problem Formulation

1. How is the arrangement of home ownership loans (KPR) carried out by married couples after the enactment of the *postnuptial agreement* in Indonesia?
2. What is the liability for debtors of married couples who enter into a *postnuptial agreement (postnuptial agreement)* against home ownership loans (KPR)?

Purpose

The purpose of this journal is to analyze the legal implications of postnuptial agreements on mortgage arrangements entered into by married couples under Indonesian law. Specifically, this study aims to examine how the execution of a post-marriage agreement concerning the separation of property affects the legal status of mortgaged assets, as well as the rights and obligations of the spouses and creditor banks.

Discussion

A. Arrangement of Home Ownership Credit Agreement (KPR) carried out by married couples after the enactment of the Postnuptial Agreement.

Marriage agreements, which are generally often referred to by the public as property separation agreements, have the purpose of creating a sense of justice for married couples, where each party can regulate and manage their property, and the parties can determine how the personal property will be used in the future. ^[5] Soetojo Prawirohamidjojo is of the view that a marriage agreement is a agreement prepared by a prospective husband and wife before the marriage bond or agreed upon at the time the marriage is carried out with the intention of regulating the consequences and legal position of the assets owned by the parties. The benefits of a married couple agreeing to enter into a marriage agreement are as follows: 1) not mixing assets because the separation of assets is carried out by both parties which can reduce conflicts of property when there is separation in the future. 2) each is responsible for debts made during the marriage period. 3) permission is not required from one of the parties, both wife and husband if one of them wants to transfer, selling assets, or applying for credit by guaranteeing assets belonging to each party. ^[6] Basically, the making of a *postnuptial agreement* has the same purpose as a prenuptial agreement, namely to create openness about financial matters, prevent bad intentions from one of the spouses, prevent waste and provide legal protection to one party from possible lawsuits, but the main purpose of prenuptial and postnuptial agreements is to separate legal consequences that can occur from marriage. ^[7]

³AESIA: Ministry of Finance of the Republic of Indonesia. Url: <https://aesia.kemenukeu.go.id/berita-properti/properti/apa-itu-kpr-berikut-adalah-panduan-lengkap-kredit-pemilikan-rumah-157.html>. Retrieved January 16, 2026 at 15:21 WITA.

⁴ Business coils. (2024). Millennials and Gen Z Dominate Bank Mandiri's Mortgage Demand Up to 70%. Url: <https://kumparan.com/kumparanbisnis/generasi-milenial-dan-gen-z-dominasi-permintaan-kpr-bank-mandiri-hingga-70-22dQqVor1y5>. Accessed on January 16, 2026 at 16:15 WITA.

⁵ Gorda, AAA. Ngurah Sri Rahayu. (2023). Legal Consequences for Holders of Dependent Rights on the Constitutional Court Verdict Number. 69/PUU-XIII/2015 concerning Marriage Agreements. Journal of Legal Analysis: Journal of Law, Faculty of Law & Social Sciences, UNDIKNAS. 6 (1). p., 176.

⁶ Sopiyan, Muhammad. Op.Cit. Hal, 176.

⁷ Yenny is the daughter of Hardiyani. (2023). Reconstruction of the Validity of Post-Marriage Agreements Based on Justice Values. Dissertation from the Faculty of Law, Sultan Agung Islamic University (UNISSULA). p. 207.

A marriage agreement as a legal instrument that provides opportunities and freedom for married couples to regulate the legal consequences of their marriage, more specifically related to the assets owned by both parties in the marriage. To ensure that the marriage agreement is declared valid and valid as a legal provision that is binding on the party holding it or against other parties who have an interest, the agreement must meet subjective, formal and material requirements based on laws and regulations. First, subjective conditions in the marriage agreement refer to the parties who agree to enter into an agreement as stipulated in article 1320 of the Civil Code which stipulates several elements necessary for an agreement to be considered valid, these conditions include the agreement between the parties who formulate the agreement, the ability to bind themselves in the agreement, the existence of a certain object or thing to be agreed upon, At the same time, it is a *halal* cause that is not contrary to rules, decency, and public order. Second, the formal requirements in the marriage agreement, the procedures for making it and the form of the marriage agreement, based on the legal provisions of the marriage agreement, are required to be stated in an authentic deed or notarial deed prepared in front of the authorized official, namely a notary. Therefore, if the marriage agreement is not formulated in an authentic deed formulated before a notary, the agreement does not meet the formal requirements and therefore is null and void. Furthermore, the marriage agreement must be officially recorded so that the marriage agreement is legally published so that the third party can find out about special arrangements regarding the management of the assets of husband and wife. This means that the agreement that is not recorded does not have binding force in relation to a third party who has an interest in the property separation agreement of a married couple. Third, the material requirements of the marriage agreement are related to the substance or content of the agreement, materially the content of the marriage agreement is free and given entirely to married couples, as long as it does not violate the regulations of the law, moral norms or public order.^[8]

Based on the rule of law in Indonesia, the marriage agreement contained in the provisions of article 147 of the Civil Code gives a meaning, namely that the agreement must be stated in a notary deed and the requirement that the time of its creation must be held before the marriage takes place. Referring to Law No. 1 of 1974 in article 29 the agreement was formulated before the marriage was carried out and at the same time must be stated in a notary deed, meaning that the Marriage Law initially did not accommodate the marriage agreement which was the formulation of the marriage agreement after both parties underwent marriage or when the marriage had been carried out. After the Constitutional Court decision No. 69/PUU-XII/2015, it provides space for both parties who formulate a marriage agreement after marriage or *postnuptial agreement*. Where the decision is the legal basis regarding post-nuptial marriage agreements as affirmed that the marriage agreement is when the marriage has not been held or when the marriage has been carried out, based on the

agreement and consent of the prospective husband or wife as well as husband and wife couples can enter into an engagement in writing in the form of an authentic deed prepared before a notary or also ratified by the marriage registrar, The content of the marriage agreement is binding on the other parties involved, namely the related third party. Therefore, it can be interpreted that a couple who have been officially bound in a marriage bond and previously did not make an agreement to regulate the separation of property can now draft and enter into a marriage agreement at the time of the marriage.

In the context of a home ownership credit agreement (KPR) by a married couple, financing is carried out by a third party, namely a financial institution, in this case a bank that requires a material guarantee such as a guarantee right for land rights including buildings on it or often called financed dependent rights. As stated by Dhaniswara K. Harjono, a mortgage is a financing facility offered by banks to consumers who want to buy a house, be it a ready-to-live house or indent, construction on land/land owned or house renovation.^[9] This means that a home ownership credit agreement (KPR) is also related to a third party as the company that finances and is related to the dependent rights charged on land and buildings as collateral to the bank. Therefore, legal certainty for creditors is highly dependent on the clarity of ownership status and control of the collateral object. After the issuance of the decision issued by the Constitutional Court No. 69/PUU-XIII/2015, the enactment of the agreement after the marriage took place which regulates the separation of assets has legal implications, especially regarding third parties who have a legal relationship with the holding of the marriage agreement, especially in this matter the bank as the creditor involved in the mortgage agreement. This situation is due to a change in the property status of the married couple which is determined after the marriage takes place which can affect the legal position of the collateral object that has been burdened with dependents.

B. Liability for married debtors who enter into a *postnuptial agreement (postnuptial agreement)* for the settlement of Home Ownership Loans (KPR).

A *postnuptial agreement* is based on an agreement or determination issued by the District Court as a manifestation of a mutual agreement between husband and wife born of the will and free will decided by the parties to rearrange property while the marriage period is underway. Based on the court's determination, the postnuptial marriage agreement is legally binding for both parties as well as other parties related to all legal interests in the property of a married couple.^[10] Therefore, married couples are obliged to comply with all provisions in the content of the agreement, including the separation of property that has been agreed. This means that since the enactment of the post-marriage agreement, debts that arise after the marriage agreement regarding the separation of property have become the legal obligations of each party who drafts and enters into the agreement.^[11] Referring to Law No. 1 of 1974 related to marriage, there is

⁸ Romance Diah Kumala. (2022). Juridical Analysis of Land Ownership Rights Purchased Before the Marriage Agreement (*Postnuptial Agreement*) in Marriage. Master of Notary Thesis, Faculty of Law, Sultan Agung Islamic University. Pp. 34-36.

⁹ Harjono, Dhaniswara.K. (2016). *Property Law. Indonesian Center for Legal and Business Development (PPHBI)*: Jakarta. Page 416.

¹⁰ Handayani, Fitri Mindari. (2024). The Position of the Marriage Agreement Made After Marriage to the Keiga Party. *Journal of Evidence Of Law*, 3 (1). Page 93.

¹¹ Erlina & Fathinnuddin, Muhammad. (2025). *Postnuptial Agreement* from the date of the deed to joint property in marriage. *Iblam Law Review*, 5 (3). Page 29.

no implicit provision related to liability to pay off debts incurred by husband and wife, both debts arising before marriage or when the marriage bond takes place. This causes accountability for debt repayment which is the internal responsibility of the married couple as well as external responsibility to third parties as creditors.^[12] Therefore, debts incurred and made personally by the husband or wife are basically the personal responsibility of the husband or wife. In general, in marriages that are not made by a marriage agreement, debts that arise during the marriage, including home ownership credit debts (KPR) are joint debts because they are related to joint property as stipulated in article 35 paragraph (1) of Law No. 1 of 1974 which emphasizes that "*property obtained during marriage becomes joint property*", which causes legal consequences, namely that husband and wife are jointly responsible for the repayment of the home ownership credit obligation (KPR) as a form of legal protection for creditors because the jointly owned property can be used as collateral for debt repayment. This principle is different in special circumstances, namely if the husband and wife enter into a *postnuptial agreement*.

A married couple who prepares a *postnuptial agreement* or marriage agreement regarding the separation of property that has been approved through a determination by the District Court and has been recorded based on the applicable law gives rise to an agreement on the separation of property between husband and wife, both in terms of assets, assets and debt liabilities. Debts made by each party are the obligations of the party who made them. This means that the agreement on the *postnuptial agreement* regarding the separation of property results in the absence of any more property owned by the husband and wife, so that all assets in the form of wealth and passive assets in the form of debt are obtained after the enactment of the marriage agreement become their personal property, including the responsibility to pay off debts. Based on the provisions of the law in Indonesia, creditors have the right to demand full payment of debts from joint property assets as long as the debt is born due to family interests in line with applicable regulations. Creditors also have the right to obtain certainty regarding the status of property as collateral in the credit agreement. If the agreement was entered into at the time before the marriage agreement related to the separation of property, then payment can be demanded from the joint property regardless of who held the agreement. On the other hand, if the credit agreement is entered into after the marriage agreement regarding the separation of assets, therefore the creditor ascertains the status of the marriage agreement to find out which party is fully responsible for the repayment of the debt as a responsibility for the debt.^[13]

Especially in home ownership loans (KPR) made by married couples, the debtor's liability depends on the time of the credit agreement, if the home ownership loan is submitted and agreed before the *postnuptial agreement*, then the debt is still a joint debt whose repayment must be paid jointly by the husband and wife unless there is approval from the creditor, namely the bank that facilitate home ownership loan

financing (KPR) by the married couple. Thus, in the context of repayment of debts to third parties, in the context of repayment to the bank as a creditor in an ownership credit agreement (KPR), both parties are still obliged to bear collectively to protect the rights of creditors, or creditors, namely the bank agrees to different liability arrangements as agreed by other spouses in line with the agreement of the parties through the creation of a new credit agreement.

Since the *postnuptial agreement* was enforced by the Constitutional Court decision No. 69/PUU-XIII/2015 which has legal consequences for the separation of the property of a married couple during the marriage period which also has an impact on third parties who have a related legal interest if the marriage agreement is ratified. Referring to the provisions of Article 29 paragraph (4) of the Marriage Law states: "*during the marriage taking place, the marriage agreement can be regarding marital property or other agreements, cannot be changed or revoked, unless there is an agreement from both parties to change or revoke and the change or revocation does not harm the third party*". The article gives the meaning of a guarantee for a third party which means that the marriage agreement formulated and/or amended by a married couple at the time of the marriage or *postnuptial agreement* (*postnuptial agreement*), especially for the home ownership credit (KPR), must not be detrimental to the bank as a creditor or third party, so that the agreement must be stated in an authentic deed so that Changes to the marriage agreement cannot be changed easily. This is important because it is related to the legal certainty of a third party as a creditor to the property pledged by a married couple.

Protection for third parties can be seen in the theory of legal protection, namely through preventive (prevention) and repressive (recovery) measures, so as an effort to minimize the occurrence of disputes in the future, the formulation of a marriage agreement carried out at the will of both parties is obliged to notify the creditor if in the marriage agreement related to the separation of the property of the married couple involved, the third party also has an agreement At the beginning of the parties and one of the parties no one was harmed.^[14] To achieve legal certainty, justice, and protect the parties in making a *postnuptial agreement*, there are a number of things that must be considered, namely:

1. The marriage agreement is made in an authentic deed, which must be held in front of an authorized official, namely a Notary;
2. A marriage agreement is based on the intention or good faith of the parties;
3. The marriage agreement is recorded and ratified by the marriage registrar in order to fulfill the principle of publicity.

Thus, in order to create certainty and protection for all parties involved, it is important to have notice and openness on the part of the newly married couple who have just formulated a marriage agreement at the time of the marriage which contains the separation of assets to the creditor or the bank.

¹² Handoko, William Surya Putra. (2020). Legal Consequences for Creditors After the Marriage Agreement Is Made and Has Been Ratified. *Journal of Legal Horizons*, 11 (3). p.355.

¹³ Thirsa, Griseld Uziel & Ahmad, Muh Jufri. (2025). Legal Liability of Husband and Wife for Credit Agreement Debts Arising Before the Property Separation Agreement. *Journal of Legal Transparency*. Page 95.

¹⁴ Again, Winshery. Aprianata, Denaya. (2018). Juridical Analysis of Post-Marriage Agreements Based on the Constitutional Court Decision Number 69/PUU-XII/2015. *Journal of Judicial Review*. 20 (01). Page 84.

Closing

Conclusion & Suggestion

Based on the findings of the discussion that has been described, it can be concluded that the arrangement of home ownership loans (KPR) carried out by married couples after the enactment of the postnuptial marriage agreement is subject to the law of the agreement and the law of marriage as stipulated in Law No. 1974 related to marriage jo. Constitutional Court Decision No. 69/PUU/XIII/2015 which is a guideline for both parties in formulating the separation of property during marriage. It is agreed that the *postnuptial agreement* related to the separation of property results in the absence of joint property between the two parties, so all assets and debts obtained after the enactment of the marriage agreement become their personal property, including the responsibility to pay off debts. Therefore, especially in home ownership loans (KPR) made by married couples, the debtor's liability depends on the time of the credit agreement, if the home ownership credit is submitted and agreed upon before the *postnuptial agreement*, then the debt is still a joint debt whose repayment must be paid jointly by the husband and wife unless there is agreement from the creditor namely the bank that facilitates the financing of home ownership loans (KPR) by the married couple by making a new agreement.

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