

Legal Certainty and the Enforceability of Marriage Agreements on Marital Property

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Abstract. *A marriage agreement, or huwelijksche voorwaarden, is a legal instrument recognized under Article 29 of Law No. 1 of 1974 concerning Marriage and reinforced by the Constitutional Court Decision Number 69/PUU-XIII/2015. This agreement serves to regulate the separation of assets between husband and wife while at the same time providing legal certainty for the parties involved. However, in practice, marriage agreements often raise legal issues, particularly regarding their consequences for joint property as well as individual property. This study aims to analyze the legal consequences of marriage agreements through a case study of Pekanbaru District Court Decision No. 68/PDT/G/2009/PN.PBR Jo No. 62/PDT.G/2015/PN.PBR, in connection with the principle of legal certainty. The research method applied is normative juridical, employing statutory, doctrinal, and case study approaches. The findings reveal that although marriage agreements are legally valid, their implementation continues to face challenges, especially in relation to the enforcement of legal certainty. This study emphasizes the necessity for harmonization of legal norms and consistency in judicial decisions in order to ensure that marriage agreements have binding legal force in protecting the interests of the parties.*

Keywords: *Agreement; Assets; Legal Certainty; Marriage.*

1. INTRODUCTION

Marriage agreements (*huwelijksche voorwaarden*) constitute one of the important legal instruments in regulating marital property within Indonesia's civil law system (Latifani et al., 2024; Putra et al., 2025). As a country characterized by legal pluralism, Indonesia recognizes the coexistence of customary law, religious law, and western civil law derived from the *Burgerlijk Wetboek* (BW) (Iliyin et al., 2023; Wulandari et al., 2024). This pluralistic structure creates complexity in determining the legal regime governing marital property, particularly regarding the separation and classification of assets between spouses (Hulukati, 2024; Rosyadi & Kahar, 2023). Law No. 1 of 1974 on Marriage regulates marriage agreements under Article 29, allowing spouses to stipulate arrangements concerning their property (Wati, 2022). However, in practice, the implementation of marriage agreements frequently gives rise to legal disputes, especially concerning their binding force and legal consequences for marital assets.

Normatively, a marriage agreement executed before a notary qualifies as an authentic deed under Article 1868 of the Indonesian Civil Code, which grants it full evidentiary value (Taufiq & Pribadi, 2023). Theoretically, such an instrument should provide legal certainty to the parties. However, in practice, disputes often arise when marriage agreements are not registered with the competent authority, raising questions about whether they bind only the parties (*inter partes*) or also third parties (*erga omnes*), such as creditors. This situation creates legal uncertainty not only for married couples but also for third parties who rely on the clarity of marital property status.

From a theoretical perspective, this study is grounded in the theory of authentic deeds, the doctrine of binding force in contract law, and the principle of legal certainty (Nugroho et al., 2025; Prastiwi et al., 2025). The principle of legal certainty, as guaranteed under Article 28D paragraph (1) of the 1945 Constitution, requires that laws and legal instruments provide clarity, consistency, and predictability. In the context of marriage agreements, legal certainty should ensure that property arrangements are enforceable and protected against arbitrary interpretation. Nevertheless, the divergence in judicial reasoning, particularly concerning the necessity of registration, indicates a gap between normative theory and judicial practice.

Previous studies have examined marriage agreements from various perspectives. Damayanti & Yunanto (2024) analyzes the legal certainty of marriage agreements made before and after marriage, particularly following Constitutional Court Decision No. 69/PUU-XIII/2015, emphasizing the expansion of spouses' autonomy in determining their property regime. Handayani & Djajaputra (2024) focuses on the legal consequences of unregistered marriage agreements and highlights the vulnerability of such agreements when confronted with third-party claims. Masri & Wahyuni (2021) discusses the implementation of marriage agreements within judicial practice, noting the persistent disputes over joint property despite the existence of notarial deeds.

Although numerous studies have examined marriage agreements in general, most focus on their validity before or after marriage, particularly following Constitutional Court Decision No. 69/PUU-XIII/2015. Limited research specifically analyzes the legal consequences of marriage agreements in concrete judicial decisions at the district court level, especially in relation to the principle of legal certainty and the protection of third parties. Furthermore, previous studies rarely integrate a case analysis with a comparative perspective involving the Constitutional Court's decision and Dutch legal practice within a single analytical framework. This gap highlights the need for a more focused and contextual examination.

Case No. 68/PDT/G/2009/PN.PBR Jo No. 62/PDT.G/2015/PN.PBR at the Pekanbaru District Court exemplifies how marriage agreements can create legal issues. In this case, although a marriage agreement had been drawn up before a notary, a dispute still arose concerning marital assets, which had implications for the principle of legal certainty (Safira & Salam, 2022). Divergent judicial interpretations regarding the binding force of marriage agreements became a central issue, resulting in uncertainty for the parties. Several factors contribute to these problems, including the ambiguous interpretation of Article 29 of the Marriage Law prior to the Constitutional Court Decision No. 69/PUU-XIII/2015, the lack of registration of marriage agreements with authorized institutions, inconsistent judicial attitudes in assessing legal force, and persistent social stigma that views marriage agreements as taboo or contrary to cultural and religious values.

The novelty of this study lies in its specific analysis of Pekanbaru District Court Decision No. 68/PDT/G/2009/PN.PBR Jo No. 62/PDT.G/2015/PN.PBR, which has rarely been examined in Indonesian legal literature. This research connects the issue of marriage agreements with the principle of legal certainty, a fundamental principle in Indonesia's legal system as enshrined in Article 28D paragraph (1) of the 1945 Constitution. This study is significant because it concerns legal certainty for the wider public, particularly married couples and judicial institutions. It is expected that this research will contribute to the development of Indonesian civil law and strengthen its role in the national legal system.

Based on the foregoing background, this study aims to: (1) analyze the legal force of marriage agreements as authentic deeds through the case study of the Pekanbaru District Court decisions; (2) examine their legal consequences on premarital and joint marital assets; (3) evaluate the application of the principle of legal certainty in judicial reasoning; and (4) formulate recommendations for strengthening regulatory harmonization and judicial consistency in the implementation of marriage agreements in Indonesia. By addressing these objectives, this research is expected to contribute theoretically to the development of Indonesian civil law, particularly in the field of marital property regulation, and practically to improving legal certainty for spouses, third parties, and judicial institutions.

2. RESEARCH METHODS

This study employs a normative juridical research method focusing on the analysis of positive law and judicial decisions related to marriage agreements. The primary research object is the Pekanbaru District Court Decision No. 68/PDT/G/2009/PN.PBR Jo No. 62/PDT.G/2015/PN.PBR, examined in relation to statutory provisions governing marital property and notarial deeds. Data were collected through library research, including the examination of primary legal materials such as the Marriage Law, the Indonesian Civil Code (*Burgerlijk Wetboek*), the Notary Law, Constitutional Court Decision No. 69/PUU-XIII/2015, and relevant court judgments, as well as secondary legal materials in the form of academic literature and journal articles. The data collection tools consisted of

document analysis and legal text review. The analysis was conducted qualitatively using statutory, conceptual, and case approaches, supported by methods of legal interpretation, including grammatical, systematic, and historical interpretation, to evaluate the consistency of judicial reasoning with the principle of legal certainty.

3. RESULTS AND DISCUSSION

3.1. General Overview of the Case at Pekanbaru District Court

Case Number 68/PDT/G/2009/PN.PBR Jo Number 62/PDT.G/2015/PN.PBR at the Pekanbaru District Court concerns a civil dispute regarding the validity of a marriage agreement (*huwelijksche voorwaarden*) executed through a notarial deed. In this case, the spouses entered into a marriage agreement regulating the separation of their assets. However, when a dispute arose, the issue centered on whether the marriage agreement could serve as a valid legal basis to determine the ownership status of assets, both premarital and joint property.

The judges considered two essential aspects: first, the formal validity of the notarial deed as an authentic instrument; and second, the legal consequences of the marriage agreement on the assets of the spouses. In its judgment, while acknowledging the notarial deed as authentic, the court found weaknesses in terms of registration and recordation, leading to debates about whether the agreement could bind third parties.

For clarity, the following table summarizes the core issues and decisions:

Table 1. Summary of Legal Issues, Judicial Considerations, and Court Decisions

No.	Case Number	Main Dispute	Judicial Consideration	Decision
1	68/PDT/G/2009/PN.PBR	Marital dispute existence of a marriage agreement before a notary	Judge recognized the notarial deed as formally valid but weak in terms of publicity	Agreement does not fully bind third parties
2	62/PDT.G/2015/PN.PBR	Follow-up lawsuit regarding the effect of the marriage agreement on joint property	Judge emphasized the necessity of registration to bind third parties	Decision reinforced registration as a formal requirement

The findings of the Pekanbaru District Court decisions demonstrate that the existence of a notarial marriage agreement does not automatically guarantee its enforceability against third parties in the absence of proper registration. Although the judges acknowledged the formal validity of the notarial deed, they emphasized the necessity of registration as a prerequisite for its erga omnes effect. This judicial reasoning confirms that the legal force of a marriage agreement is not solely determined by its status as an authentic deed, but also by compliance with the principle of publicity.

This finding is consistent with Handayani & Djajaputra (2024), who argues that unregistered marriage agreements remain legally vulnerable when confronted with claims from third parties, particularly creditors. Similarly, Damayanti & Yunanto (2024) highlights that post-Constitutional Court Decision No. 69/PUU-XIII/2015, the expansion of the temporal scope of marriage agreements must be accompanied by procedural compliance to ensure legal certainty. The Pekanbaru case strengthens this doctrinal position by demonstrating that flexibility in the formation of marriage agreements does not eliminate the requirement of registration as a mechanism to safeguard third-party interests.

Furthermore, the court's reasoning reflects the classical civil law doctrine that distinguishes between formal validity and opposability. In civil law theory, an agreement may be valid between the parties (*inter partes*) yet ineffective toward third parties unless certain publicity requirements are fulfilled. This aligns with comparative insights from Dutch legal practice, where marriage agreements must be executed before a notary and registered in a public registry to bind third parties (Hartati & Humaira, 2025; Heijning, 2024). The Pekanbaru decision implicitly adopts a similar logic, although Indonesia lacks a fully integrated public registry system comparable to that of the Netherlands.

3.2. Marriage Agreement as a Notarial Deed

Normatively, a notarial deed is an authentic instrument with full evidentiary value as provided under Article 1868 of the Indonesian Civil Code (*Burgerlijk Wetboek*). Thus, a marriage agreement executed before a notary should have binding legal force upon the parties. However, complications arise when such agreements affect third parties.

The judges in the Pekanbaru case ruled that although a marriage agreement executed through a notarial deed is formally valid, its binding effect on third parties only arises after it is duly registered at the Civil Registry Office. In other words, a non-registered marriage agreement only has force *inter partes* (between the parties) but not *erga omnes* (against third parties).

This interpretation aligns with the theory of legal effectiveness, which requires that a legal norm must not only be formally valid but also effectively applicable. A notarial marriage agreement without registration is formally valid but ineffective in extending legal protection broadly.

From a theoretical standpoint, this situation reflects the dual character of authentic deeds in civil law systems. On one hand, authenticity ensures evidentiary certainty; on the other hand, enforceability against third parties depends on the principle of publicity. The absence of registration limits the agreement's capacity to produce *erga omnes* effects, thereby restricting its function as a comprehensive protective instrument. In this context, legal certainty cannot be reduced to the formal perfection of the deed, but must also encompass institutional mechanisms that render the legal act transparent and accessible to external parties.

This condition reflects broader doctrinal debates in contemporary Indonesian legal scholarship. Recent studies emphasize that the expansion of marriage agreement flexibility after Constitutional Court Decision No. 69/PUU-XIII/2015 must be accompanied by procedural safeguards to prevent normative ambiguity and inconsistent judicial interpretation (Damayanti & Yunanto, 2024; Handayani & Djajaputra, 2024). The Pekanbaru decision demonstrates how the absence of such safeguards directly affects the enforceability of notarial deeds in practice.

The role of the notary is therefore not merely formal but structural within the legal system. Notaries serve as public officials entrusted with guaranteeing legality, clarity, and balance in private legal transactions. When marriage agreements are executed without subsequent registration, the protective function of the notarial deed becomes partially impaired. This condition raises broader questions regarding the coordination between notarial authority and administrative registration systems, particularly in a legal environment characterized by plural regulatory frameworks governing marital property.

Practically, the findings highlight the need for greater procedural diligence in the drafting and implementation of marriage agreements. Notaries must ensure that parties are informed not only about the content and legal consequences of the agreement, but also about the necessity of registration to secure third-party protection. Courts, in turn, must articulate consistent standards in assessing the binding force of authentic deeds in order to avoid interpretative fragmentation. Without such coherence, the elevated evidentiary status of notarial deeds risks being undermined by procedural deficiencies.

Ultimately, the analysis of marriage agreements as notarial deeds reveals that their legal strength derives from the interaction between authenticity, publicity, and judicial recognition. Only through the integration of these elements can marriage agreements effectively fulfill their intended function of safeguarding property rights and ensuring legal certainty within marital relations.

3.3. Legal Consequences for Assets

The legal consequences of a marriage agreement primarily concern the classification and control of marital assets, particularly the distinction between premarital property and joint property. In principle, a separation-of-property agreement is intended to prevent the automatic formation of community property as stipulated under the Marriage Law and the Civil Code. Through such an agreement, each spouse retains ownership and control over his or her respective assets, thereby limiting potential disputes in the event of divorce or financial liability. However, the Pekanbaru District Court decisions demonstrate that the effectiveness of this arrangement is contingent upon compliance with formal registration requirements.

With respect to premarital assets, the existence of a notarial marriage agreement strengthens the evidentiary position of each spouse in asserting exclusive ownership. The authentic character of the deed provides clarity regarding the intention of the parties

to maintain property separation. In this regard, the agreement fulfills its protective function at the *inter partes* level. Nevertheless, legal complications arise when the agreement is invoked against third parties who were not aware of its existence due to the absence of registration.

The more complex issue concerns joint property (*harta bersama*). In the Pekanbaru case, despite the existence of a separation-of-property agreement, the court maintained that assets acquired during marriage could still be treated as joint property *vis-à-vis* third parties when the agreement had not been properly registered. This judicial stance underscores the principle that marital property arrangements must be publicly ascertainable to produce *erga omnes* effects. Consequently, the absence of registration transforms what was intended as a separation regime into a *de facto* community property regime in relation to external claims.

This situation reveals a structural tension between private agreement and public reliance. From a doctrinal perspective, property regimes are not merely internal arrangements between spouses but legal statuses that affect the broader transactional sphere. Creditors, business partners, and other third parties structure their legal relationships based on assumptions about the marital property regime. Without accessible registration mechanisms, these assumptions become uncertain, increasing the risk of litigation and undermining transactional security.

Recent legal literature has emphasized that marriage agreements should function as preventive instruments to minimize disputes over marital assets, particularly in the context of increasing divorce rates and complex financial arrangements (Damayanti & Yunanto, 2024; Handayani & Djajaputra, 2024). However, the findings of this study suggest that the preventive function of such agreements is weakened when procedural formalities are not fully observed. The persistence of joint property disputes, as noted in empirical observations of Religious Court cases (Masri & Wahyuni, 2021), reflects the limited effectiveness of marriage agreements as conflict-avoidance tools under current institutional arrangements.

The legal consequences identified in this case therefore extend beyond the immediate dispute between spouses. They expose deficiencies in the integration between substantive marital property law and administrative registration systems. The absence of a centralized and publicly accessible registry reduces the transparency of marital property regimes and shifts the burden of risk onto third parties. In such circumstances, legal certainty becomes conditional rather than absolute, dependent on judicial interpretation rather than systemic clarity.

From a theoretical standpoint, the analysis demonstrates that the legal consequences of marriage agreements must be understood within a tripartite framework: contractual autonomy, property status, and public registration. Only when these three elements operate coherently can marriage agreements effectively regulate asset separation and protect both private and third-party interests. Without institutional reinforcement

through registration and consistent judicial standards, the normative promise of asset separation remains vulnerable in practice.

Ultimately, the Pekanbaru decisions illustrate that the legal consequences of marriage agreements on assets are shaped not only by the content of the agreement itself but also by the surrounding legal infrastructure. Strengthening that infrastructure is essential to ensure that marital property arrangements genuinely fulfill their function of safeguarding rights, preventing disputes, and promoting legal certainty.

3.4. Principle of Legal Certainty

The principle of legal certainty constitutes one of the fundamental pillars of the rule of law and is expressly guaranteed under Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Legal certainty requires that legal norms be clear, predictable, and consistently applied so that individuals may regulate their conduct with confidence in the stability of legal consequences. In the context of marriage agreements, this principle demands that property arrangements concluded by spouses produce foreseeable and enforceable legal effects, both internally between the parties and externally toward third parties.

The Pekanbaru District Court decisions reveal a nuanced application of this principle. On one hand, the court acknowledged the formal validity of the notarial marriage agreement, thereby affirming the normative recognition of contractual autonomy within marital relations. On the other hand, the court limited the agreement's external enforceability due to the absence of registration. This dual approach illustrates that legal certainty is not solely a matter of recognizing private agreements, but also of ensuring that such agreements operate within a coherent and publicly verifiable legal framework.

From a theoretical perspective, legal certainty encompasses at least three interrelated dimensions: normative clarity, institutional consistency, and enforceability (Nugroho et al., 2025; Prastiwi et al., 2025). Normative clarity refers to the precision and coherence of statutory provisions regulating marriage agreements, including Article 29 of the Marriage Law and its interpretation following Constitutional Court Decision No. 69/PUU-XIII/2015. Institutional consistency concerns the uniformity of judicial interpretation and administrative practice. Enforceability relates to the practical capacity of legal instruments to generate binding and opposable effects. The Pekanbaru case demonstrates that shortcomings in any of these dimensions may compromise the realization of legal certainty.

Although the Constitutional Court expanded the temporal scope of marriage agreements by allowing them to be made before, during, or after marriage, the decision did not eliminate procedural requirements designed to protect third parties. The absence of harmonized implementing regulations has created interpretative ambiguities, particularly regarding registration mechanisms and their legal consequences. As a result, judicial decisions may vary in assessing the binding force of notarial deeds, thereby weakening predictability in marital property disputes.

The case also illustrates the relationship between legal certainty and the principle of publicity. Legal certainty for third parties depends on their ability to ascertain the applicable marital property regime. Without accessible and reliable registration systems, third parties cannot reasonably assess the legal status of assets, leading to transactional insecurity. In this regard, legal certainty extends beyond the protection of individual rights and encompasses the stability of economic and social interactions.

Furthermore, the findings indicate that legal certainty in the sphere of marital property cannot be achieved solely through formal statutory recognition. It requires the integration of legislative norms, administrative procedures, and judicial interpretation into a consistent framework. When courts apply registration requirements inconsistently or when administrative mechanisms lack transparency, the predictability of legal outcomes becomes contingent on case-by-case judicial discretion rather than systemic coherence.

This study therefore contributes to the doctrinal understanding of legal certainty by demonstrating that the principle operates not merely as an abstract constitutional guarantee, but as a functional requirement embedded in procedural and institutional arrangements. In the context of marriage agreements, legal certainty materializes only when authenticity, publicity, and judicial consistency converge. Absent such convergence, the normative promise of property separation remains fragile, and disputes over marital assets persist despite the existence of formal agreements.

Ultimately, the Pekanbaru decisions underscore that the realization of legal certainty demands regulatory harmonization, clearer registration procedures, and more consistent jurisprudence. Strengthening these elements would enhance public trust in marriage agreements as reliable legal instruments and reinforce the broader commitment of the legal system to the rule of law.

3.5. Critical Evaluation and Recommendations

The findings indicate that while notarial marriage agreements are legally valid, their force is weakened without registration. Inconsistent judicial decisions exacerbate the issue, leading to legal uncertainty. Therefore, several measures are necessary:

- a. **Regulatory Harmonization:** The Marriage Law, Notary Law, and provisions on registration of marriage agreements must be synchronized to eliminate multiple interpretations.
- b. **Judicial Consistency:** The Supreme Court should issue guidelines or establish fixed jurisprudence on the legal standing of notarial marriage agreements.
- c. **Strengthening the Role of Notaries:** Notaries should ensure that marriage agreements are not only executed but also duly registered.

- d. Legal Education for the Public: Awareness campaigns should be conducted to dispel negative stigma surrounding marriage agreements and to highlight their benefits in safeguarding property.

3.6. Comparative Analysis: Constitutional Court Decision No. 69/PUU-XIII/2015

Prior to Constitutional Court Decision No. 69/PUU-XIII/2015, Article 29(1) of Law No. 1 of 1974 restricted marriage agreements to those made "before or at the time of marriage." This restriction caused legal uncertainty, as agreements made after marriage were deemed invalid. Many couples were thus placed in difficult situations when facing issues such as debt, business arrangements, or asset division.

The Constitutional Court, through Decision No. 69/PUU-XIII/2015, declared the restriction unconstitutional for violating citizens' right to fair legal certainty. The ruling expanded the scope of marriage agreements, allowing them to be made before, during, or after marriage. This strengthened both the flexibility of the law and the principle of legal certainty.

Comparing this with the Pekanbaru case shows that, before the Constitutional Court decision, judges tended to narrowly restrict the validity of marriage agreements, even if executed before a notary. The Constitutional Court ruling corrected such narrow practices by affirming the validity of notarial marriage agreements while maintaining registration as a formal requirement.

3.7. Comparative Analysis: Dutch Legal Practice

Indonesia has adopted much of its civil law system from the Netherlands, including marital property arrangements. In the Netherlands, *huwelijkse voorwaarden* (marriage agreements) are regulated under the *Burgerlijk Wetboek* and are a common practice. Unlike in Indonesia, however, Dutch law requires that marriage agreements be both executed before a notary and registered in a public registry to have binding force against third parties.

The key difference lies in the aspect of publicity. In the Netherlands, registration in a public registry guarantees legal certainty, particularly for third parties. With this system, third parties can verify the marital property regime of a couple, thus preventing legal disputes. The system provides transparency and consistency in ensuring legal protection.

In Indonesia, the weakness lies in the absence of a clear and integrated public registry system. Marriage agreements are only recorded at the Civil Registry Office or the Office of Religious Affairs, without a mechanism for public disclosure accessible to third parties. As a result, disputes such as those in the Pekanbaru case are more likely, since third parties cannot verify whether a couple has a property separation agreement.

This comparison suggests that Indonesia must strengthen its legal framework, not only by recognizing notarial deeds as authentic instruments but also by ensuring effective publication mechanisms similar to those in the Netherlands.

3.8. Implications of Comparative Analysis for the Principle of Legal Certainty

From the comparison with the Constitutional Court's decision and Dutch practice, several important implications can be drawn. First, Constitutional Court Decision No. 69/PUU-XIII/2015 has expanded legal flexibility in the making of prenuptial agreements, but this needs to be followed by synchronized technical regulations to avoid multiple interpretations. Second, Dutch practice emphasizes the importance of publication and transparency as prerequisites for the effectiveness of prenuptial agreements. Indonesia can draw lessons by strengthening its system of registration and publication so that prenuptial agreements truly provide legal certainty for all parties. Third, without regulatory harmonization and consistent court rulings, the principle of legal certainty will remain difficult to achieve. The case of the Pekanbaru District Court demonstrates that prenuptial agreements are still vulnerable to dispute, thereby undermining public trust in legal institutions. Through this comparison, it becomes clear that Indonesia's legal system needs to adopt the principle of public transparency from the Netherlands while also reinforcing the flexibility already established by the Constitutional Court's decision.

4. CONCLUSION

Based on the findings, it can be concluded that marriage agreements executed before a notary are legally valid, but their legal force is weakened if not registered. Such agreements only apply inter partes (between the parties) and do not bind erga omnes (third parties). The Pekanbaru District Court's decision demonstrated inconsistency in upholding the principle of legal certainty, while Constitutional Court Decision No. 69/PUU-XIII/2015 expanded legal flexibility. To address these challenges, regulatory harmonization, the establishment of a centralized registration framework, clearer jurisprudential guidelines, and strengthened notarial responsibility are necessary to enhance transparency and protect third-party interests. This study is limited to normative juridical analysis and does not incorporate empirical data on administrative implementation, suggesting that future research should adopt empirical or comparative approaches to further assess the effectiveness of registration systems. Overall, this research contributes to the development of Indonesian civil law by demonstrating that the realization of legal certainty in marriage agreements depends on the integration of authenticity, publicity, and institutional consistency within the broader legal framework.

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