



DOI: <https://doi.org/10.38035/sijal.v4i2>
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Received: 12-09-2026 | Revised: 01-10-2026 | Accepted: 09-10-2026

Reconstruction of Legal Arrangements for Post-Nuptial Agreements to Ensure Legal Certainty and Protection for Third Parties

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Abstract: Constitutional Court Decision Number 69/PUU-XIII/2015 introduced a fundamental shift in the regulation of marriage agreements by permitting their creation after the marriage has taken place. While this change provides legal certainty for spouses, it raises issues regarding the protection of third parties due to suboptimal technical regulations concerning the registration, publication, and enforceability of such agreements. This study examines the legal framework governing post-nuptial agreements and proposes an ideal regulatory reconstruction to ensure both legal certainty and third-party protection. A normative legal research method was employed, utilizing statutory, conceptual, and case-based approaches. The findings indicate that while post-nuptial agreements now have a legal basis, there remain regulatory gaps regarding asset inventory, disclosure of liabilities, registration, publication, and the protection of third-party rights. Reconstruction of the regulations is necessary to establish a comprehensive, transparent, and equitable framework that balances the autonomy of spouses with the rights of third parties.

Keywords: Post-nuptial agreement, Constitutional, Court.

INTRODUCTION

Marriage is one of the most basic legal institutions that has a strategic position and function in the structure and national legal system of Indonesia. As a legal institution, marriage not only contains spiritual and normative aspects of religion but also gives birth to very wide legal consequences in the civil field. Based on Article 1 of Law Number 1 of 1974 concerning Marriage, marriage is defined as a birth bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the One God (Republic of Indonesia, 1974). This normative provision emphasizes that marriage in Indonesia occupies the aspect of religiosity as the main foundation. However, beyond this transcendental dimension, the act of marriage law automatically changes the civil status of the parties, changes the personal legal position, and creates a new legal order related to the management and ownership of property between husband and wife (Soetojo Prawirohamidjojo, 2018). Therefore, marriage cannot be seen solely as a social event or religious ritual, but must be

understood as a legal event (*rechtfeiten*) that gives birth to expectations, obligations, and rights that are guaranteed and regulated by the state.

From the perspective of the Indonesian legal system, marriage essentially integrates the private dimension and the public dimension simultaneously. The private dimension is reflected through interpersonal relationships between couples that are built on the basis of emotional commitment, morality, and obedience to their respective religious teachings. On the other hand, the public dimension manifests itself in the form of intervention and the state's authority to regulate, codify, certify, and supervise the sustainability of the marriage. State intervention is reflected in the determination of the legal conditions for marriage, implementation procedures, administrative recording obligations, and restrictions on legal consequences through various laws and regulations (Subekti, 2010). The involvement of the state in the domestic realm is based on *ratio legis* that the family institution is the smallest unit in society whose stability has a direct impact on public order (*openbare orde*), child protection, safety of individual rights, and legal certainty of civil relations with third parties. Therefore, the regulation of marriage law is designed to realize the principles of legal certainty, justice, and balanced legal protection for all interested parties. One of the most crucial and often legal impacts of a marriage is the emergence of legal relationships in the field of property (*vermogensrecht*). Based on the provisions of Article 35 paragraph (1) of Law Number 1 of 1974 as amended by Law Number 16 of 2019 concerning Marriage, it is expressly determined that property acquired during marriage becomes joint property (Republic of Indonesia, 2019). This normative construction shows that by *default* (standard system), marriage law in Indonesia adheres to the principle of unanimous unity of marital property (*algehele gemeenschap van goederen*), unless otherwise determined through a written agreement in the form of a marriage agreement (Djaja S. Meliala, 2015). The legal implications of this joint property regime are very basic: any legal action taken by the husband or wife relating to the transfer, guarantee, or seizure of joint property must obtain the written consent of the spouse concerned.

In the reality of modern legal practice, the concept of joint property often triggers conflicts of interest and complex legal issues. The increasingly complex economic dynamics of society demand flexibility in asset management, but the rigidity of the common property regime is often an obstacle. Legal disputes often arise related to the clarity of the status of asset ownership, the liability of civil debts and receivables, the imposition of material security rights (such as dependents or fiduciary rights), banking transactions, the distribution of inheritance, and legal certainty in the management of business activities carried out by one of the spouses (Hilman Hadikusuma, 2012). When one of the parties takes legal action to borrow or develop a risky business, the joint property becomes a guarantee of debt repayment that has the potential to drag the spouse who is not directly involved in the legal action. Therefore, the existence of a flexible regulatory mechanism regarding marital property is a normative imperative to ensure legal certainty and provide proportionate legal protection for the parties.

To anticipate and deviate from the general provisions regarding the common property regime, the law provides space for freedom through an instrument called a marriage agreement (*huwelijksvoorwaarden*). A marriage agreement is a legal institution that gives civil rights and autonomy to prospective husbands and wives to determine their own legal order regarding the binding, separation, management, and distribution of their property (J. Satrio, 2002). In civil law doctrine, the existence of a marriage agreement is a concrete form of applying the principle of freedom of contract (*pacta sunt servanda* and *partij autonomy*) as stipulated in Article 1338 of the Civil Code (KUHPerdata). Through this instrument, the parties are legally granted the right to regulate financial obligations, the separation of inherited and acquired assets, as well as a scheme for the division of responsibility for debt burdens, as long as the agreed clauses do not conflict with morality, public order, religious norms, and the provisions of the law.

However, historically juridical, the arrangement of marriage agreements in Article 29 of Law Number 1 of 1974 before the material test at the Constitutional Court has very rigid

restrictions. Article 29 paragraph (1) of the Marriage Law before it was amended essentially stipulated that a marriage agreement can only be made "at the time or before the marriage takes place" (Republic of Indonesia, 1974). This overly strict temporal restriction was initially designed to create initial legal certainty regarding the status of property and protect the rights of third parties from speculative acts. However, in practice, the time restriction actually becomes a rubber article that causes losses to the civil rights of the community. Many newly married couples realize the urgency of separating assets after years of marriage, especially when business development needs, business loan debt involvement, ownership of high-value assets, or the occurrence of mixed marriages between Indonesian citizens (WNI) and foreign citizens (WNA).

The inability of the old regulations to facilitate dynamic legal needs is seen as no longer in line with the development of the legal needs of modern society. In the era of globalization and economic modernization, legal transactions carried out by members of society no longer revolve around the scope of simple household life, but instead include investment schemes, trade traffic, corporate structures, and *cross-border transactions*. Restrictions on the restriction of marriage agreements that are only limited before or at the time of the marriage contract are seen as killing the freedom of individuals to restructure their household financial management according to the changing economic situation. This condition has the potential to deprive citizens of the constitutional right to control, manage, and obtain legal protection of their personal property rights as guaranteed in the country's basic law.

A fundamental shift in Indonesian marriage law finally occurred with the issuance of the Constitutional Court Decision Number 69/PUU-XIII/2015. This phenomenal decision became a *landmark decision* that significantly changed the constellation and legal paradigm of marriage agreements in Indonesia. Through this ruling, the Constitutional Court gave a *conditionally constitutional* interpretation of Article 29 paragraphs (1), (3), and (4) of the Marriage Law. The Court ruled that a marriage agreement can be made not only before or at the time of the marriage, but also "during the marriage bond" or what is doctrinally known as a *postnuptial agreement* (Constitutional Court of the Republic of Indonesia, 2015). The Constitutional Court's legal considerations are based on the consideration that the rigid time limit has injured the sense of justice and violates the principle of fair legal certainty as mandated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia.

The background of the material test that gave birth to the Constitutional Court Decision Number 69/PUU-XIII/2015 is rooted in a real case experienced by Ike Farida. He is an Indonesian citizen (WNI) who is married to a man of foreign nationality (WNA) without first making a *prenuptial agreement*. When Ike Farida wanted to buy the rights to land/building in the form of an Apartment Unit (Apartment) in Indonesia, he experienced a unilateral rejection and cancellation of the transaction. The cancellation occurred because Indonesian agrarian law—especially the Basic Agrarian Law (UUPA) Number 5 of 1960—adheres to the principle of land law nationalism, where foreigners are strictly prohibited from owning land ownership rights in Indonesia. Because there is no separation of assets, the status of Ike Farida's marital property automatically becomes joint property. As a result, the ownership of land by the Indonesian citizen is considered to have penetrated the legal boundary because the foreigner indirectly participates in the holder of the joint land rights. This case explicitly proves that the rigid rules of the past have discriminated against and taken away the right to ownership of the assets of the citizen's own citizens.

Although the Constitutional Court Decision No. 69/PUU-XIII/2015 is present as a breath of fresh air and legal progressivity that protects constitutional rights, it carries derivative implications that leave fundamental weaknesses. The main weakness lies in the fact that the Constitutional Court's decision is not necessarily followed by the establishment of comprehensive, comprehensive, and systematic implementing regulations. The Constitutional Court only canceled the time limitation norm but did not formulate technical operational details

on how *the postnuptial agreement* should be executed in a practical legal order. Until now, there is a lack of clarity in norms (*norm ambiguity*) and legal gaps regarding when the postnuptial agreement will take effect, how clear the status of assets that have been mixed before the agreement is made, the extent of its retroactive validity (*non-retroactive principle*), and what is the ideal form of legal protection for third parties.

The absence of clear technical regulations regarding the creation of *postnuptial agreements* has created confusion in implementation in various sectors of civil law and state administration. In legal practice, various interpretations arise among legal practitioners, population offices, land agencies, banking institutions, and the world of notaries. One of the most complicated issues is the legal certainty regarding whether the postnuptial marriage agreement is retroactive from the date of the marriage or only valid forward (*prospective*) since the agreement was ratified. This difference in meaning risks triggering fatal legal uncertainty, especially when it is related to debt liability obligations, the imposition of bank guarantees, and existing *business contract* relationships before the marriage agreement was made.

In this context, the issue of legal protection against third parties in good faith (*derden bescherming*) is a central and critical issue that must be resolved. The making of *postnuptial agreements* carried out in the middle of the marriage period is very vulnerable to being overridden by the bad faith of a married couple committing *fraudulent conveyance* (acts of legal smuggling). In many cases, it is possible that the creation of a post-marital property separation is used as a tactical tool to avoid the pursuit of creditors, avoid the execution of the guarantee plan, or save assets from the threat of bankruptcy/bankruptcy of one of the spouses. For example, when a husband has accumulated commercial debts to creditors or banks, the couple can unilaterally agree to a *postnuptial agreement* to transfer all productive assets in the wife's name. In the absence of a strong publicity system and strict legal limits, this action is clearly very detrimental to third parties and threatens the legal stability of the agreement.

This problem is further complicated by the condition of the asynchronization (*disharmonization*) of various sectoral laws and regulations after the issuance of the Constitutional Court Decision Number 69/PUU-XIII/2015. The government has indeed released several follow-up regulation products, such as the Circular Letter of the Director General of Dukcapil Number 472.2/5876/Dukcapil of 2017, the Regulation of the Minister of Home Affairs Number 108 of 2019, the Regulation of the Minister of Religion Number 20 of 2019, and the Decree of the Director General of Islamic Community Guidance Number 473 of 2020. However, the administrative law product only covers aspects of civil registration procedures and has not touched on the substance of the civil law against third parties, the certainty of a retroactive validity period, and general publicity procedures that are absolutely binding on creditors. As a result, there are contradictions and operational doubts in the field when the relevant officials have to record or test the evidentiary strength of the deed.

In this realm, Notaries play a central and strategic role. Based on Law Number 30 of 2004 jo. Law Number 2 of 2014 concerning the Position of Notary, Notaries are the only public official authorized to make authentic deeds regarding all acts, agreements, and determinations, including the making of Deeds of Marriage Agreement (Republic of Indonesia, 2014). Notary Deeds have perfect external, formal, and material evidentiary power (*volledig bewijs*). However, the unclear normative boundaries of postnuptial agreements put Notaries in a position prone to lawsuits and disputes. Notaries are often faced with moral and juridical dilemmas when they have to rely on the principle of rigor to ensure that the separation of the assets requested by the parties does not aim to harm the rights of creditors or other third parties.

Based on a comprehensive explanation of the normative and empirical dynamics above, it is clear that the Constitutional Court Decision Number 69/PUU-XIII/2015 succeeded in expanding and guaranteeing the constitutional rights of married couples, but on the other hand left a legal vacuum that had an impact on the disharmonization of norms and potential losses for third parties. This legal uncertainty has the potential to damage the joints of engagement,

banking, and administrative registration. Therefore, an effort to reconstruct the law that is fundamental and ideal for the arrangement of *postnuptial agreements* is needed to create a fair balance between the personal rights of husband and wife and legal protection for third parties in good faith. It is on the basis of juridical and practical urgency that this research is crucial to be conducted. Based on this background, it is necessary to discuss the issue of how to regulate the legal arrangement of postnuptial marriage agreements after the Constitutional Court Decision Number 69/PUU-XIII/2015 in ensuring legal certainty and protection of third parties and how to reconstruct the ideal legal arrangement of postnuptial marriage agreements to ensure legal certainty and protection of third parties.

METHODS

This research is normative legal research or doctrinal law research also known as literature research. It is called doctrinal law research, because this research is carried out or aimed only at written regulations. While it is referred to as literature research, this research is mostly conducted on secondary data in the library. Normative legal research remains the main method in the study of law because it focuses on the analysis of positive legal norms with a legislative, conceptual, and case approach to answer legal problems that develop in digital society.

RESULTS AND DISCUSSION

Legal Regulation of Post-Marriage Agreements After the Constitutional Court Decision Number 69/PUU-XIII/2015 in Ensuring Legal Certainty and Protection of Third Parties

Marriage based on Article 1 of Law Number 1 of 1974 concerning Marriage is defined as an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One God (Republic of Indonesia, 1974). In the national legal order, the implementation of marriage not only gives birth to personal or domestic relationships between couples but also causes very broad civil law consequences. These legal consequences include the status of property ownership, liability for debts and receivables, kinship relationships, and attachment to obligations with third parties (Subekti, 2010: 45). One of the legal instruments provided to organize and restructure the civil consequences is the marriage agreement (*huwelijksvoorwaarden*). Initially, Article 29 of Law No. 1 of 1974 stipulated a rigid regime where a marriage agreement was only valid if it was made "at the time or before the marriage took place" (*prenuptial agreement*). This rigid provision closed the space for couples to adjust the order of their property in the middle of the household journey, until the birth of the Constitutional Court Decision Number 69/PUU-XIII/2015 which was later confirmed in Law No. 16 of 2019 (Constitutional Court of the Republic of Indonesia, 2015; Republic of Indonesia, 2019).

The birth of the Constitutional Court Decision Number 69/PUU-XIII/2015 has fundamentally collapsed the old paradigm and shifted the philosophy of marriage law in Indonesia. Prior to the ruling, the marriage law system was dominated by a preventive paradigm that viewed the marriage agreement solely as an anticipatory action before the marriage contract is carried out to prevent property disputes in the future (Satrio, 2002). After the Constitutional Court's ruling, the paradigm transformed into an adaptive, responsive, and human rights protection-based paradigm. The state recognizes that the reality of domestic life is very dynamic; economic dynamics, business fluctuations, shifts in social status, and mixed marriages between Indonesian citizens and foreigners require a legal instrument that can restructure property relations without the need to dissolve the marriage (divorce) first (Hadikusuma, 2012). This change marks the shift in the legal approach from the original rigid formalistic to an approach that prioritizes the fulfillment of citizens' constitutional rights. This shift in juridical paradigm is based on the argument that the limitation of the time for making a marriage agreement that is only allowed before marriage is a form of violation of the

right to fair legal certainty as guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Constitutional Court of the Republic of Indonesia, 2015). From the perspective of legal theory, the Constitutional Court Decision No. 69/PUU-XIII/2015 is a *constitutional interpretation* that reflects the doctrine of the *living constitution*, where the basic legal text is interpreted contextually to answer the shifting legal needs of modern society without being trapped in dogmatic textualism (Radbruch, 1950). Thus, this decision cancels the binding force of the time-limiting phrase in Article 29 paragraph (1) of the Marriage Law, so that a marriage agreement can legally be made at any time: before, during, or during the *postnuptial agreement*.

The birth of the recognition of *this postnuptial agreement* is also aligned with the principle of freedom of contract (*party autonomy*) contained in Article 1338 paragraph (1) of the Civil Code (KUHPerdata). This principle emphasizes that every individual who is capable of acting according to the law has the autonomy to formulate, amend, or agree to an agreement that binds the parties as a law (Meliala, 2015). It is important to underline that the Constitutional Court Decision No. 69/PUU-XIII/2015 has never removed or relaxed the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code. Postnuptial marriage agreements are still required to meet four cumulative conditions: the existence of a free agreement between the two parties, the legal competence of the parties, the existence of certain agreed objects, and halal causes (*geoorloofde oorzaak*). Defects in one of these conditions still result in annulment (*nullable*) or null and void.

Judging from Gustav Radbruch's Legal Certainty Theory, law carries out the obligation to balance the value of certainty (*rechtssicherheit*), justice (*gerechtigheit*), and utility (*zweckmassigkeit*) (Radbruch, 1950). The presence of the Constitutional Court Decision No. 69/PUU-XIII/2015 succeeded in eliminating the uncertainty of the status of *the postnuptial agreement* whose validity has been doubted before the courts. However, the achievement of essential legal certainty does not stop at the cancellation of norms at the Constitutional Court level but is highly determined by the clarity of procedures for formation, ratification, and administrative registration in the field. At a practical level, Notaries and Marriage Registrars (KUA/Disdukcapil) play a crucial role as public officials who create the legal certainty. Through the creation of an authentic deed by a Notary and official registration in the population register, the marriage agreement obtains perfect proofing (*volledig bewijs*) and a point of certainty regarding the time of the entry into force of the engagement (Adjie, 2018).

Based on Law No. 2 of 2014 concerning the Notary Position, Notaries are in the position of *legal gatekeepers* who are obliged to test the formal and material legality of the deed they make (Adjie, 2018). In the context of making a *postnuptial agreement* deed, Notaries are required to apply the *prudential principle* through several crucial stages:

1. Carefully invent and verify all assets and debts obtained by the couple during the marriage period.
2. Requesting an official statement that the assets to be separated are not in the object of dispute, are not in the status of collateral confiscation (*conservatoir beslag*), and are not being pledged to creditors or third parties.
3. Ensure that the making of *postnuptial agreements* is not based on bad *faith* to smuggle assets, avoid debt obligations, or harm existing *creditors*.

In addition to the role of the Notary, the function of ratification and recording by the Marriage Registrar is a tangible manifestation of the application of the Principle of Publicity (*publiciteit beginsel*). This administrative registration aims to announce a change in the property regime from joint property (*algehele gemeenschap van goederen*) to the separation of property to the wider community (Subekti, 2010). This is very important so that third parties who will establish an engagement with their husband or wife can know transparently about the map of asset ownership and the limits of the couple's debt liability. The impact of the enactment of *postnuptial agreements* on third parties is the most sensitive discourse in civil law.

According to Philipus M. Hadjon's Legal Protection Theory, the state is obliged to provide balanced protection between the autonomy rights of husband and wife and the rights of a third party in good faith (Hadjon, 1987).

In order to measure the extent to which third parties are entitled to legal protection, the main parameter used is the principle of good faith (*te goeder trouw*). Third parties who must be protected are those who act honestly, reasonably, and do not know (and should not know) the existence of a *postnuptial agreement* or change in the property regime when civil transactions are carried out (Meliala, 2015). The most concrete implementation of this protection can be seen in the position of creditors (such as banks/financing institutions). If a credit or loan is disbursed before the *postnuptial agreement* is signed, then the creditor's receivables are still guaranteed by all the joint assets that existed at the time the loan occurred, based on the *principle of non-retroactivity* (non-retroactive agreement) (Satrio, 2002). The separation of postnuptial assets that is carried out later should not be used to eliminate or reduce the portion of creditors' guarantees that have been legally born. This affirmation is very important so that the *postnuptial agreement* is not misused as a mode of disobedience to debt payments or fraudulent conveyance.

Reconstruction of the Ideal Postnuptial Agreement Legal Arrangement to Ensure Legal Certainty and Protection of Third Parties

Although the Constitutional Court Decision No. 69/PUU-XIII/2015 has resolved the problem of constitutional limitations, positive marriage law in Indonesia still suffers from fundamental normative and technical vulnerabilities. The fundamental weaknesses in the current legal framework include several key aspects:

1. **Absence of Technical Operational Rules:** The Law on Marriage and the Compilation of Islamic Law (KHI) has not yet detailed the requirements for special materials, standard formats, and procedures for making *postnuptial agreements* (Hadikusuma, 2012).
2. **Absence of an Integrated Publicity System:** There is no single *database* of marriage agreement records that can be accessed openly by the public or banking institutions to check the status of customers' assets.
3. **Ambiguity of the Principle of Retroactivity:** There are doubts about the interpretation of whether the *postnuptial agreement* is valid since the marriage took place, since the deed was made, or since it was recorded (Adjie, 2018).
4. **Disparity in Administrative Regulations:** The inconsistency between the Permendagri, Perma, and the Circular Letter of Islamic Guidance creates procedural confusion at the level of the implementing official.

The most fatal weakness in current practice is the unavailability of rules that require property *inventory* and disclosure *obligations* before the deed is ratified. In modern treaty law, the concealment of material facts or debt status when formulating the separation of assets can be categorized as defective will (*gebrek aan de wil*) because there is an element of fraud (*bedrog*) or concealment of information (Meliala, 2015). In addition, the absence of authority for the registrar to examine the substance of the clause has led to the rampant registration of agreements that risk castrating child support rights, cutting off the rights of the wife, or harming creditors' bills. Therefore, holistic and integrated legal reconstruction is needed.

To overcome these gaps and conflicts of norms, the ideal concept of reconstruction of *postnuptial agreement arrangements* must be built on the principles of justice, legal certainty, gender equality, and creditor protection. The main pillars of the ideal legal reconstruction include:

A postnuptial agreement is recognized as valid as long as it is made on a purely undue *influence* agreement and does not deviate from the principles of muamalah and the provisions

of *dwingend recht* (coercive law) in the KHI, such as the obligation of family maintenance and child maintenance (*hadhanah*).

In order to ensure legal certainty, future rules must explicitly distinguish two types of enforcement:

1. **Internal Binding Power (*Inter-Partes*):** The agreement is legally binding between husband and wife since the Notary deed is signed.
2. **External Binding Power (*Erga Omnes*):** The new agreement is binding and can be maintained against a third party from the date of registration/official registration at the marriage registrar's agency (Publicity Principle).

Before the Notary deed is made, the parties are required by law to attach a Property and Debt Inventory List certified by an accountant or notary, along with a full *disclosure statement*. This ensures that the Notary can identify which assets are encumbered by collateral rights or debts before the separation of assets.

Ideal reconstruction requires the digitization of the registration of marriage agreements that are integrated between KUA, Disdukcapil, AHU Online (Kemenkumham), and the banking system/BPN. With the transparency of this electronic-based recording system, every third party who transacts is considered to have known the status of the couple's assets (*constructive notice*), so that disputes regarding the third party's ignorance can be significantly minimized.

The Reconstruction Marriage Law must contain an explicit article stating that *the postnuptial agreement* acts prospectively (forward) and has no retroactive effect on the debt covenant made before the recording of the agreement. Any proven separation clause designed to prevent assets from the execution of existing creditors' receivables is automatically declared null and void.

Through this comprehensive legal update, the national legal system will reap multi-dimensional benefits:

1. Married couples obtain certainty and legal protection in managing family assets flexibly and responsibly.
2. Third parties and the banking investment climate are protected from the risk of asset smuggling and transaction fraud.
3. The realization of harmonization between national marriage law, general civil law, notary law, and the principles of Islamic Law (KHI) in Indonesia.

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

1. Constitutional Court Decision No. 69/PUU-XIII/2015 provides a constitutional basis that legalizes the making of a marriage agreement during the marriage (*postnuptial agreement*) by mutual agreement of husband and wife.

Successfully eliminated legal uncertainty related to the time limit for making a marriage agreement. Affirms that the *postnuptial agreement* may not be used to harm, assign, or extinguish the legitimate rights of third parties (such as creditors, investors, business partners, or guarantors) that were born before the agreement was made. Although it has provided normative certainty, its application in practice has not been optimal due to technical weaknesses in the mechanisms of recording, publicity, asset inventory, and third-party protection.

2. Reconstruction of the Legal Arrangement of the Ideal Postnuptial Marriage Agreement

Establish an integrated legal system that balances the freedom of contract between husband and wife with the protection of the rights of a third party in good faith.

1. Firm acknowledgment and clear procedures for making *postnuptial agreements*.
2. Full *disclosure* obligations regarding debt status and comprehensive asset inventory before the agreement is ratified.

3. The mechanism of recording and publication is open as a form of transparency for the public/third parties.
4. Affirmation that the rights of third parties issued before the agreement is made are absolute cannot be erased or reduced.

Ensure clarity of procedures, deadlines for the entry into force of the agreement, and the legal consequences for the parties and third parties.

Provide **preventive** protection (verification, recording, and publication) and **repressive** (dispute resolution mechanism in the event of losses).

Realizing a fair and dignified legal order by balancing the autonomy of married couples without sacrificing the rights of third parties.

Recommendations

1. It is necessary to strengthen implementing regulations that provide uniform guidelines for notaries, the Office of Religious Affairs, and the Population and Civil Registration Office regarding the procedures for making, ratifying, recording, and publishing post-nuptial marriage agreements.
2. It is necessary to improve the Marriage Law or establish a special implementing regulation that comprehensively regulates the terms, procedures, substance, recording, publication, amendment, cancellation, and legal consequences of postnuptial marriage agreements against the parties and third parties

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