



**LEGAL PROTECTION OF THIRD PARTIES IN MARRIAGE AGREEMENTS
AFTER THE CONSTITUTIONAL COURT DECISION NUMBER 69/PUU-XIII/2015:
ANALYSIS OF LEGAL CERTAINTY AND IMPLEMENTATION OF THE
PRINCIPLE OF PACTA SUNT SERVANDA**

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Abstract:

Constitutional Court Decision No. 69/PUU-XIII/2015 represents a significant milestone in the evolution of Indonesian marriage law. This decision arose from a judicial review petition filed by an Indonesian citizen who married a foreign national without a prenuptial agreement and faced obstacles in property ownership due to a formalistic interpretation of Articles 29 and 35 of Law No. 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law) and its relationship to the Basic Agrarian Law (UUPA) regarding the prohibition on foreigners acquiring land rights (Constitutional Court of the Republic of Indonesia, 2015). This research employs a normative juridical method (legal research) with a statutory, conceptual, and comparative approach. Primary data sources include the 1945 Constitution, the Marriage Law, the Civil Code, Constitutional Court Decision No. 69/PUU-XIII/2015, and related implementing regulations. The ratio decidendi of Constitutional Court Decision No. 69/PUU-XIII/2015 rests on the reconstruction of the constitutional interpretation of Article 29 of the Marriage Law through a constitutional add-in interpretation approach, which expands the timeframe for making a prenuptial agreement to include before, during, and after the marriage. The Court emphasized that this expansion must be accompanied by the fulfillment of formal requirements (notarial deed and registration) and material requirements (good faith, not violating law/religion/morality), as well as the principle of publicity to protect third parties from harm.

Keywords:

Marriage Agreements, Third-Party Legal Protection, Legal Certainty

1. Introduction

Constitutional Court Decision No. 69/PUU-XIII/2015 represents a significant milestone in the evolution of Indonesian marriage law. This decision arose from a judicial review petition filed by an Indonesian citizen who married a foreign national without a prenuptial agreement and faced obstacles in property ownership due to a formalistic interpretation of Articles 29 and 35 of Law No. 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law) and its relationship to the Basic Agrarian Law (UUPA) regarding the prohibition on foreigners acquiring land rights (Constitutional Court of the Republic of Indonesia, 2015).

The Constitutional Court tested the constitutionality of the temporal restriction that a prenuptial agreement may only be made "before or at the time" of the marriage. The Court argued that this restriction violates the principles of non-discrimination, the right to fair legal certainty, property rights, and the right to residency guaranteed by the 1945 Constitution, particularly for Indonesian citizens in mixed marriages (Yusri et al., 2019). As a solution, the Court ruled that prenuptial agreements can be made not only before or during marriage, but also during the marriage,

provided that they do not harm third parties. However, this extension of the timeframe for making prenuptial agreements has complex implications for the legal protection of third parties, particularly unsecured creditors. Unsecured creditors are creditors who do not have specific material security rights and rely solely on the debtor's assets as a general guarantee based on Articles 1131 and 1132 of the Civil Code (KUHPerdata). When a husband and wife enter into a postnuptial agreement that changes the property regime from joint property to separate property after the emergence of a debt-credit relationship, the general collateral objects that can be executed by unsecured creditors are reduced or even eliminated (Hendrawan et al., 2019).

The problem is further complicated by the lack of a comprehensive government regulation governing the creation, recording, publication, and enforcement of postnuptial agreements against third parties. The only existing regulation is Ministry of Home Affairs Letter No. 472.2/5876/DUKCAPIL, which is of an internal administrative nature and lacks the legal force of a statutory regulation (Wulandari et al., 2024). This situation creates legal uncertainty due to the lack of uniform national standards regarding registration procedures and the effective date of the agreement against third parties.

From the perspective of the principle of legal certainty (*rechtszekerheidsbeginsel*), this situation is problematic because every legal entity must be able to anticipate the consequences of a legal act in order to rationally regulate its behavior (Ridwan, 2025). Creditors who provide loans based on the status of joint property of a married couple as general collateral may suddenly lose access to the collateral due to a postnuptial agreement drawn up without their knowledge. This clearly violates the principle of legal certainty and has the potential to create moral hazard in the financing system.

Furthermore, there is the issue of the temporal nature of postnuptial agreements, whether they are retroactive (*ex tunc*) or prospective (*ex nunc*). If the agreement is deemed valid from the beginning of the marriage, then all assets acquired since the marriage are considered separate property, even if creditors have provided loans under the assumption that the assets are joint property (Werdiningsih et al., 2020). Conversely, if the agreement is only valid from the moment it is made or recorded, then the creditor's previously established rights remain protected. This ambiguity creates serious legal uncertainty. In the context of the principle of *pacta sunt servanda* as stipulated in Article 1338 of the Civil Code, a legally made agreement applies as law to the parties who make it. However, the binding force of this principle is not absolute, as it is limited by the principle of *res inter alios acta*, which states that an agreement must not harm a third party who did not participate in the making of the agreement (Handoko, 2020). The question that arises is how to balance the freedom of contract of husband and wife based on *pacta sunt servanda* with legal protection for concurrent creditors as third parties.

This research is crucial for comprehensively analyzing the *ratio decidendi* of Constitutional Court Decision No. 69/PUU-XIII/2015, identifying its implications for third-party legal protection based on the principles of legal certainty and retroactivity, and evaluating the binding force of post-nuptial agreements on third parties according to the principle of *pacta sunt servanda*. Therefore, this research is expected to provide theoretical and practical contributions to the development of equitable Indonesian marriage law and provide legal certainty for all parties.

2. Research Method

This research employs a normative juridical method (legal research) with a statutory, conceptual, and comparative approach. Primary data sources include the 1945 Constitution, the Marriage Law, the Civil Code, Constitutional Court Decision No. 69/PUU-XIII/2015, and related implementing regulations. Secondary data sources include books, scientific journals, and legal articles relevant to marriage agreements and third-party protection. Data collection techniques were conducted through library research and legal document analysis. The collected data were analyzed qualitatively using systematic, teleological, and comparative interpretation methods to uncover the essence of third-party legal protection regulations in the context of post-MK Ruling marriage agreements.

2.1. Ratio Decidendi of Constitutional Court Decision Number 69/PUU-XIII/2015

Ratio decidendi is the legal reasoning that forms the basis of a court decision and is binding for similar cases, in contrast to *obiter dictum*, which is merely persuasive or explanatory (Yusri et al., 2019). In Decision Number 69/PUU-XIII/2015, the Constitutional Court's *ratio decidendi* can be identified through four interrelated analytical layers.

First, from the perspective of legal standing and causal verband, the Court acknowledged that the Petitioner suffered specific, actual, and present constitutional harm due to the application of Article 29 paragraph (1) of the Marriage Law, which limits the creation of a prenuptial agreement to only before or during marriage. The loss is in the form of rejection of ownership of apartment units due to a formalistic reading of the joint property regime which is fictitiously considered to be "mixed" with the subject of Foreign Citizens, thus giving rise to a prohibitive effect on property rights and Building Use Rights (HGB) for Indonesian Citizens (Constitutional Court of the Republic of Indonesia, 2015). Second, the Court conducted a reasonableness test and proportionality test between the objectives of the national agrarian policy that prohibits land ownership by foreign citizens and the protection of the constitutional rights of Indonesian citizens in mixed marriages. The Court considered that the guarantee of Article 28D paragraph (1) of the 1945 Constitution concerning fair legal certainty, Article 28H paragraphs (1) and (4) concerning the right to reside and property rights, and Article 28I paragraph (2) concerning the prohibition of discrimination are hard guarantees that should not be castrated by an over-exclusive reading of the law (Constitutional Court of the Republic of Indonesia, 2015). The Court's reasoning method shows a combination of systematic, teleological, and consequentialist interpretations aimed at preventing under-inclusive rules that treat Indonesian citizens in mixed marriages *de facto* as inferior to other Indonesian citizens (Yusri et al., 2019).

Third, the Court recalibrated the norm by interpreting Article 29 of the Marriage Law as conditionally constitutional, allowing prenuptial agreements to be made before, during, or after the marriage, provided they meet the formal and material requirements that protect third parties (Hendrawan et al., 2019; Tutik, 2021). In legal terminology, this constitutes a form of constitutional add-in interpretation, where the court extended a previously closed time window to align with the 1945 Constitution (Miqat et al., 2020). The Court also emphasized the principle of good faith and the prohibition of *pactum turpe* (content contrary to law, religion, or morality) as material limits on the content of agreements.

Fourth, the Court established the publicity of agreements through the creation of authentic deeds by a notary and their recording as prerequisites for their opposability to third parties, such as creditors, thereby avoiding moral hazard in the management of collateral (Hendrawan et al., 2019). The Court did not overturn the ban on foreign citizens owning land, but instead opened a channel for Indonesian citizens in mixed marriages to continue to acquire property rights to land through legal separation of assets, so that the *telos* of agrarian protection remains intact. (Yusri et al., 2019; Tutik, 2021).

Doctrinally, this ruling sets an important precedent because it reinforces the principle of constitutionalization of private law, namely that private relations may not sacrifice citizens' constitutional rights in the material sphere (Asshiddiqie, 2010). The Court affirmed the principle of legal certainty by providing space for the formation of post-marital agreements as *ius novum*, which was previously considered impossible, while balancing it with the principle of justice (equity) in order to protect the rights of Indonesian citizens in mixed marriages (Tutik, 2021). Sociologically, the *ratio decidendi* affirms the need for legal adaptation to the social realities of globalization, where mobility and inter-national marriages are increasing. (Mayasari & Rohmanu, 2022).

2.2. Implications of Constitutional Court Decision Number 69/PUU-XIII/2015 for Third Parties

The principle of legal certainty (*rechtszekerheidsbeginsel*) from a civil law perspective requires that every legal subject be able to anticipate the consequences of a legal act, allowing them to regulate their behavior rationally and reasonably. In the case of postnuptial agreements, legal certainty for third parties, particularly unsecured creditors, is problematic because there is no Government Regulation that technically governs the procedures, requirements, and time limits for drafting and recording prenuptial agreements (Wulandari et al., 2024). The only available administrative regulation is the Ministry of Home Affairs Letter Number 472.2/5876/DUKCAPIL, which is internal in nature and does not have the same normative force as statutory regulations. The absence of government regulations creates a legal vacuum (*leemten in het recht*), which results in inconsistent practices in the field. Population and Civil Registration Offices in various regions have differing interpretations of registration procedures, making it difficult for third parties to obtain certainty about the property status of married couples who enter into postnuptial agreements. In the context of legal certainty, this situation creates significant uncertainty because creditors cannot determine the scope of debtor assets that can be used as general collateral under Article 1131 of the Civil Code.

The principle of publicity in civil law is inseparable from the principle of legal certainty, as both serve as a means of ensuring transparency for third parties. In the context of postnuptial agreements, the principle of publicity should be

implemented through clear, systematic legal instruments with high normative force. However, in reality, registration is based solely on a Circular Letter from the Ministry of Home Affairs, which is internal administrative in nature and does not have the same legal force as a law or government regulation. As a result, the principle of publicity, which should guarantee legal certainty for concurrent creditors, is not effectively implemented, as creditors lack formal assurance that registration with the Population and Civil Registration Office will provide adequate legal protection. (Wulandari et al., 2024).

The regulatory gap at the Government Regulation level creates a gray area that can be exploited opportunistically by bad-faith debtors. In practice, husbands or wives bound by a debt agreement can enter into a postnuptial agreement to separate assets, thereby reducing the general collateral available to concurrent creditors. Because there are no regulations limiting the retroactive effect of such agreements, third parties who have provided credit based on an assessment of joint assets can be directly disadvantaged. The principle of legal certainty prohibits legal consequences that harm third parties without prior notification, but the current regulatory environment allows for this to occur. (Hendrawan et al., 2019).

In the theory of contract law, there is the principle of *res inter alios acta*, which states that an agreement is only binding on the parties who made it, unless the law stipulates otherwise. Constitutional Court Decision 69/PUU-XIII/2015 opens the opportunity for a marriage agreement to be valid for third parties as long as it meets the principle of publicity. However, without a clear Government Regulation, the principle of publicity cannot function optimally because it only relies on administrative records at the Population and Civil Registration Office. In fact, the principle of publicity has an essential function as a condition for the involvement of third parties in any legal act that has external impacts. (Begawan & Wijaya, 2025).

Empirically, concurrent creditors are in the most vulnerable position because they lack collateral rights. They rely solely on the debtor's common assets as the basis for enforcement. In the context of a postnuptial agreement, this position is further weakened because changes in asset status can occur after the debt obligation is formed. As a result, creditors who initially assumed the debtor owned joint assets with their spouse discover that these assets have been separated through a postnuptial agreement. This clearly violates the principle of legal certainty because the creditor's expectations regarding the common collateral object are inconsistent with the legal reality that applies after the agreement is registered. (Hendrawan et al., 2019).

One repressive legal protection instrument available to concurrent creditors is the *actio pauliana*, a lawsuit to annul a debtor's legal actions that are detrimental to the creditor, as stipulated in Article 1341 of the Civil Code. In the context of a postnuptial agreement, a creditor can sue if the agreement was made after the debt-creditor relationship was established and is clearly detrimental to the creditor's interests. However, the effectiveness of the *actio pauliana* depends heavily on the creditor's ability to prove bad faith on the part of the debtor. This burden of proof is particularly heavy, especially in the absence of a Government Regulation requiring transparent and uniform recording of postnuptial agreements (Dewi, 2021).

From a legal protection theory perspective, the state is obligated to provide adequate normative instruments to ensure that third-party rights are not compromised by the freedom of contract between husband and wife. Constitutional Court Decision No. 69/PUU-XIII/2015 was intended to expand benefits for couples, particularly in the context of mixed marriages, but the state failed to immediately follow up with an implementing Government Regulation.

2.3. Legal Consequences of Marriage Agreements Following the Constitutional Court's Decision on Third Parties Based on the Principle of Retroactivity

The main debate following the Constitutional Court Decision Number 69/PUU-XIII/2015 is the question of whether a marriage agreement made after marriage can be applied retroactively, thus binding third parties who were already involved in a legal relationship with the husband and wife before the agreement was made. In civil law theory, the principle of retroactivity (*ex tunc*) is very limited, because it is contrary to the principle of legal certainty (*rechtszekerheid*) which requires that the legal consequences of an agreement apply from the time it is made (*ex nunc*) and may not negate rights that have arisen previously. (Prihandini, 2019).

Historically, the Civil Code and Law No. 1 of 1974 concerning Marriage both limited the time period for making a marriage agreement to "before" or "at the time" of marriage. This limitation reflects caution to prevent the agreement from being used as an opportunistic instrument after the marriage has taken place. This rule also serves as

a preventative mechanism against the possibility of retroactive consequences that would be detrimental to creditors (Dwinopianti, 2017). For comparison, in the Dutch legal system, marriage agreements (*huwelijksvoorwaarden*) can in principle only be made before the marriage takes place. If the agreement is amended after the marriage, the changes must be recorded in a public register so that they can be enforced against third parties. This registration mechanism serves to protect third parties, particularly unsecured creditors, so they know precisely when the marital property regime changes. The Dutch system historically closed the door to retroactivity, with each agreement only valid *ex nunc*, that is, from the moment of publication, not *ex tunc*. (Werdiningsih et al., 2020; Tutik, 2021).

The French legal system also provides important lessons regarding third-party protection in prenuptial agreements. In France, couples can choose a particular marital regime, such as separation of property (*séparation de biens*) or community of property (*communauté des biens*), and this choice must be outlined in a notarial deed before the marriage. If a change in property regime occurs during the marriage, French law requires court approval and publication in the *Journal Officiel* so that third parties are aware of it. This change takes effect *ex nunc* from the moment of publication, and therefore cannot be applied retroactively to third parties who were already in a legal relationship. (Pramasantya, 2017; Prihandini, 2019).

German marriage law provides couples with greater flexibility to determine their property arrangements through a prenuptial agreement (*Ehevertrag*). However, changes to the agreement during the marriage must not be detrimental to third parties, as the principle of legal protection (*Verkehrsschutz*) requires transparency. Amendments to the agreement must be made before a notary and recorded in a public register accessible to third parties. This principle reiterates that the enforceability of an agreement against third parties is *ex nunc*, not retroactive (Dwinopianti, 2017; Werdiningsih et al., 2020).

Compared to the Dutch, French, and German legal systems, Indonesia's legal position following Constitutional Court Decision No. 69/PUU-XIII/2015 appears odd, as it permits postnuptial agreements without detailed regulations regarding publicity mechanisms. Other civil law countries consistently place publicity as a prerequisite for an agreement to be valid against third parties, limiting its enforceability to the future (*ex nunc*). On the contrary, Indonesia allows for uncertainty regarding when postnuptial agreements come into effect, and opens up the possibility of interpretation that they can be applied retroactively (*ex tunc*) from the beginning of the marriage. (Werdiningsih et al., 2020).

The Constitutional Court's decision amended Article 29 paragraph (1) of the Marriage Law by granting couples the right to enter into agreements "before, during, or during the marriage." This expansion opens up the possibility of postnuptial agreements, but is not accompanied by a clear explanation regarding the temporal nature of the agreement, whether it applies retroactively to assets that have existed since the marriage began, or only applies prospectively from the date of registration (Ridwan, 2025). This ambiguity creates serious problems for concurrent creditors. If the agreement is deemed to be valid from the date of marriage, then all assets acquired by the couple since the first day are considered separate assets, even if the creditor provided the loan assuming the assets were joint assets. This creates a situation of *ex post facto* deprivation for creditors, namely the retroactive revocation of collection rights by private instruments (Werdiningsih et al., 2020). Concurrent creditors do not have specific material collateral, but rely on all of the debtor's assets as general collateral. With the retroactive application of a postnuptial agreement, creditors lose access to assets previously considered joint property, thereby reducing the possibility of debt repayment (Prihandini, 2019).

According to the theory of legal protection, the rights of third parties must be protected from being degraded by the private legal acts of others. In this context, the principle of retroactivity contradicts the principle of *res inter alios acta aliis nec nocet nec prodest*, which states that an agreement must not harm or benefit a third party unless otherwise provided by law. Therefore, the application of retroactivity in postnuptial agreements should be rejected (Mulyani, 2022).

2.4. The Binding Force of Marriage Agreements Following the Constitutional Court Ruling Against Third Parties According to the *Pacta Sunt Servanda* Principle

The principle of *pacta sunt servanda* is a fundamental principle in contract law, affirming that a legally concluded agreement is valid as law for the parties making it. This principle is contained in Article 1338 of the Civil Code, which emphasizes that the consensus reached between the parties must be respected and obeyed. Within the framework of a marriage agreement, this principle legitimizes the freedom of a married couple to determine their own property regime, whether in the form of community of property or separation of property (Handoko, 2020).

However, the binding force of this principle is not unlimited, as agreements impact not only the internal relationships of the parties but can also have implications for external relationships with third parties. Therefore, although theoretically pacta sunt servanda is absolutely binding, in practice this principle is limited by the principles of justice, propriety, and legal protection for third parties not party to the agreement. (Handoko, 2020).

Constitutional Court Decision No. 69/PUU-XIII/2015 became a crucial point, demonstrating the dialectic between freedom of contract based on the principle of pacta sunt servanda and the state's obligation to protect the interests of third parties. The Constitutional Court expanded the scope of marriage agreements to include them during the marriage. From the perspective of the principle of pacta sunt servanda, this decision affirmed the freedom of married couples to adapt their agreements to suit their needs and evolving circumstances. However, the Court also explicitly emphasized that such agreements must not be detrimental to third parties (Andari et al., 2023).

The limitations of the principle of pacta sunt servanda in the context of postnuptial agreements are also in line with the doctrine of *res inter alios acta*, which states that an agreement cannot give rise to obligations or losses for parties not involved in its drafting. In this case, concurrent creditors cannot be burdened with losses resulting from agreements made between husband and wife after the credit relationship has been established. Therefore, even though a marriage agreement has binding force for the parties based on pacta sunt servanda, it does not have absolute force against third parties who have placed their trust and rights before the agreement was made. (Pandini et al., 2018).

Judicial practice shows that judges are often faced with conflicts between the principle of pacta sunt servanda and the principle of third-party protection. In credit disputes, for example, judges may reject the enforcement of a prenuptial agreement if it is proven that the agreement was intended to avoid liability to the creditor. This situation demonstrates that the principle of pacta sunt servanda is not understood rigidly, but rather flexibly, taking into account substantive justice (Ridwan, 2025).

2.5. The Nature of Legal Protection for Third Parties Resulting from Postnuptial Agreements

Legal protection for third parties in the context of postnuptial agreements cannot be separated from the principle of prudence in every civil transaction, particularly in creditor-debtor relationships. In practice, the legal status of a husband and wife's assets is one of the basic considerations for creditors when providing financing. If a prenuptial agreement can be unilaterally amended after the legal relationship has been established, without adequate notification or publication mechanisms, then the legal system has fundamentally failed to fulfill its function of legal certainty, which is an absolute requirement in modern legal relations (Rahardjo, 2000).

Civil law doctrine not only guarantees freedom of contract (*contractsvrijheid*) but also requires good faith (*goede trouw*) and protection for third parties acting in good faith. This principle is reflected in Article 1340 of the Civil Code, which stipulates that an agreement binds only the parties and cannot harm third parties. In the context of a postnuptial agreement, if changes to the property regime are made without the knowledge of the creditor and then used as a basis for avoiding execution, there is *fraus legis*, which morally and legally undermines the order of justice. (Hadjon, 1987).

A concurrent creditor is a third party who has a legal relationship with the debtor without the support of material security rights or a special position expressly regulated by law. From the perspective of Indonesian civil law, as stipulated in Articles 1131 and 1132 of the Civil Code, all of the debtor's assets, both movable and immovable, both existing and future, serve as general collateral for all debts owed to their creditors. This position places the concurrent creditor in a vulnerable position to any changes in the legal status of the debtor's assets that could reduce or eliminate the object of the general collateral. Postnuptial agreements, if not expressly regulated and normatively limited, have the potential to become a means of transferring assets from the joint property regime to the personal property of one of the parties. Such changes, if made after the legal relationship between the debtor and the concurrent creditor has arisen, have detrimental legal consequences because the object of the fulfillment of the performance that was originally included in the general collateral becomes unenforceable. (Andari et al., 2023).

The essence of legal protection for unsecured creditors in this context lies in the balance between the principle of freedom of contract and the principle of protection for third parties acting in good faith. Article 1338 of the Civil Code affirms that a legally concluded agreement is valid as law for the parties who made it, but Article 1340 of the Civil Code states that an agreement cannot cause harm to a third party who is not a party to the agreement.

Philosophically, the essence of the legal protection of third parties resulting from postnuptial agreements is rooted in the values of legal certainty (*rechtszekerheid*) and substantive justice, which must be maintained in every contract. The philosophy of civil law teaches that freedom of contract is the natural right of parties to determine their own legal destiny, but this freedom must not harm the interests of third parties acting in good faith (Subekti, 2004). Private justice prioritizes the autonomous rights of married couples to manage their assets, but social justice demands accountability to third parties who have entrusted their rights based on the legal status in effect at the time the contract was made. (Sagala, 2023).

Legally, the nature of the provisions for third-party protection in postnuptial agreements lies in the conflict between the principle of *pacta sunt servanda* and the principle of *res inter alios acta*. Article 1338 of the Civil Code stipulates that a legally concluded agreement is valid as law for the parties making it, while Article 1340 of the Civil Code states that an agreement cannot harm a third party. This conflict of principles became even more acute after the Constitutional Court extended the timeframe for making a prenuptial agreement to the duration of the marriage (Constitutional Court, 2015).

Sociologically, the nature of the provisions for third-party legal protection resulting from postnuptial agreements reflects the relationship between legal structures and social realities. Indonesian legal culture still considers prenuptial agreements to be "upper-class" instruments, typically entered into by couples with significant assets, resulting in relatively low societal acceptance (Sagala, 2023). In banking practice, creditors rely on the status of joint property as general collateral, but if a couple suddenly separates assets under a postnuptial agreement, the object of execution disappears without prior notice. (Andari et al., 2023).

The essence of legal protection for third parties resulting from postnuptial agreements lies in the balance between the contractual freedom of the spouses and the third party's legal interest in legal certainty. This legal protection will only be effective if supported by clear regulations, an open publicity system, and a prospective principle that ensures that the rights of concurrent creditors are maintained without being violated by the spouses' private agreements.

3. Conclusion

First, the ratio decidendi of Constitutional Court Decision No. 69/PUU-XIII/2015 rests on the reconstruction of the constitutional interpretation of Article 29 of the Marriage Law through a constitutional add-in interpretation approach, which expands the timeframe for making a prenuptial agreement to include before, during, and after the marriage. The Court emphasized that this expansion must be accompanied by the fulfillment of formal requirements (notarial deed and registration) and material requirements (good faith, not violating law/religion/morality), as well as the principle of publicity to protect third parties from harm. Second, the implications of the Constitutional Court's ruling for third parties, particularly concurrent creditors, raise serious legal certainty issues due to the absence of implementing government regulations. This lack of norms leads to inconsistent registration practices across regions and opens up opportunities for the misuse of postnuptial agreements to avoid obligations to creditors. From the perspective of the principle of retroactivity, the lack of normative confirmation regarding the prospective validity of agreements raises the risk that the agreement could be applied retroactively, thereby harming creditors whose obligations arose before the agreement was made.

Third, the binding force of postnuptial agreements on third parties, according to the principle of *pacta sunt servanda*, is relative, not absolute. The principle of *pacta sunt servanda* must be harmonized with the principle of *res inter alios acta*, which protects third parties from losses resulting from agreements not entered into by them. Judicial practice shows that judges tend to reject the retroactive enforcement of postnuptial agreements if they have the potential to harm third parties, prioritizing the principle of legal certainty and protection for creditors in good faith.

Fourth, the philosophical, juridical, and sociological nature of the legal protection of third parties arising from postnuptial agreements lies in the balance between the contractual freedom of the husband and wife and the legal interests of third parties in legal certainty. This legal protection will only be effective if supported by clear regulations, a transparent publicity system, and a prospective principle that ensures the protection of the rights of concurrent creditors.

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