

# THE DOCTRINE OF LEGAL CERTAINTY IN RETROACTIVE POSTNUPTIAL AGREEMENTS AND ITS IMPLICATIONS FOR MATRIMONIAL PROPERTY REGIMES

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## Abstract

This study examines the doctrine of legal certainty in retroactive postnuptial agreements and its implications for matrimonial property regimes. The research focuses on the legal uncertainty arising after Constitutional Court Decision No. 69/PUU-XIII/2015, which permits postnuptial agreements during marriage but does not clearly regulate their retroactive effect on previously acquired marital assets. Using a normative juridical method with statutory, conceptual, and comparative approaches, this study analyzes the relationship between contractual freedom, legal certainty, and third-party protection within matrimonial property law.

The results of the study indicate that unrestricted retroactive postnuptial agreements may undermine legal certainty because they can alter vested rights, affect creditors and third parties, and create inconsistent legal interpretation in judicial and administrative practice. Comparative legal analysis demonstrates that several jurisdictions permit retroactive matrimonial agreements only under strict procedural safeguards, such as registration requirements and protection of third-party rights. Therefore, this study argues that retroactive postnuptial agreements should be permitted only within limited boundaries and accompanied by clear legal regulation to maintain fairness, predictability, and stability in matrimonial property relations.

**Keywords:** legal certainty, retroactive postnuptial agreement, matrimonial property regime, contractual freedom, family law.

## Background of the Problem

The doctrine of legal certainty constitutes one of the most fundamental principles in contemporary legal systems because it ensures predictability, stability, and protection of rights within legal relationships. In the context of family law, legal certainty becomes increasingly important when addressing matrimonial property regimes and the enforceability of marital agreements. Postnuptial agreements, particularly those with retroactive effect, create complex legal consequences because they alter previously existing property relations between spouses after marriage has already produced legal and economic effects. The retroactive application of postnuptial agreements often raises concerns regarding the protection of third parties, vested property rights, and the consistency of judicial interpretation in matrimonial disputes. Legal scholars have therefore emphasized that matrimonial property agreements must balance contractual freedom with the need to preserve certainty and fairness within legal transactions.<sup>1</sup>

Historically, matrimonial property regimes were governed primarily by mandatory statutory frameworks that automatically determined ownership and control over marital assets. However, modern legal developments increasingly recognize party autonomy by allowing spouses to regulate their property relations through prenuptial and postnuptial agreements. This transformation reflects broader developments in private law that prioritize contractual freedom and individual autonomy within marriage. Nevertheless, the expansion of contractual freedom in family law has generated doctrinal tension because marriage is not merely a private contractual relationship but also a social and legal institution with implications for creditors, heirs, and state regulation. Consequently, the retroactive modification of matrimonial property arrangements may undermine predictability in legal relations if the law does not provide clear limitations and safeguards.<sup>2</sup>

<sup>1</sup> Cristina González Beilfuss, "The Unification of Private International Law in Europe: A Success Story?" *Cuadernos de Derecho Transnacional* Vol. 10, No. 2 (2018): 58–75.

<sup>2</sup> Judith T. Younger, "Marital Regimes: A Story of Compromise and Demoralization, Together with Criticism and Suggestions for Reform," *Cornell Law Review* Vol. 67, No. 1 (1981): 45–98.

The issue becomes more significant in jurisdictions that recently expanded the legality of postnuptial agreements through constitutional interpretation or judicial reform. In Indonesia, for example, Constitutional Court Decision No. 69/PUU-XIII/2015 fundamentally altered the traditional understanding of marital agreements by permitting agreements to be made during marriage rather than exclusively before marriage. This decision represented a progressive recognition of spouses' autonomy, especially in mixed-nationality marriages involving property ownership restrictions. Nevertheless, the decision simultaneously created uncertainty regarding the retroactive effect of postnuptial agreements on matrimonial property already acquired during marriage. The absence of comprehensive statutory guidance following the Constitutional Court decision has resulted in inconsistent interpretations concerning the validity, enforceability, and temporal effect of postnuptial agreements.<sup>3</sup>

From a doctrinal perspective, retroactivity in postnuptial agreements directly challenges the principle of legal certainty because laws and agreements are generally expected to operate prospectively rather than retrospectively. The principle against retroactivity exists to protect legitimate expectations and ensure that legal subjects can predict the consequences of their actions. When spouses retroactively alter their matrimonial property regime, the modification may affect previously established rights, including those of creditors and third parties who relied upon the original property arrangement. This creates a legal dilemma between the autonomy of spouses to regulate their financial affairs and the obligation of the state to maintain certainty and fairness in legal transactions. Scholars have therefore argued that retroactive matrimonial agreements require strict legal limitations to prevent abuse and legal manipulation.<sup>4</sup>

Within the framework of comparative family law, several legal systems recognize retroactive effects in matrimonial property agreements under limited conditions. European legal instruments, particularly Council Regulation (EU) 2016/1103 concerning matrimonial property regimes, allow spouses to choose the applicable law governing their matrimonial property regime and, in certain circumstances, grant retroactive effect to that choice. However, the Regulation simultaneously provides explicit safeguards to protect third parties from adverse consequences resulting from retroactive changes. This demonstrates that modern legal systems acknowledge the practical utility of retroactive arrangements while recognizing the risks such arrangements pose to legal certainty. The European approach illustrates the necessity of balancing contractual flexibility with institutional protections that preserve predictability and fairness.<sup>5</sup>

The implications of retroactive postnuptial agreements are particularly visible in disputes involving jointly acquired marital assets. Under traditional matrimonial property regimes, assets acquired during marriage are commonly presumed to form part of the joint marital estate. Retroactive agreements that separate property ownership after assets have already been acquired may substantially alter the distribution of wealth between spouses and potentially prejudice third parties who relied upon the existence of joint property. In practice, this may affect creditors' rights, inheritance claims, taxation obligations, and property registration systems. The uncertainty generated by retroactive arrangements may further complicate judicial proceedings because courts must determine whether the agreement should override pre-existing legal relationships and to what extent retrospective application is legally permissible.<sup>6</sup>

Moreover, legal uncertainty surrounding retroactive postnuptial agreements may undermine public trust in the legal system. One of the primary functions of law is to provide stable and foreseeable rules that guide social and economic interactions. If courts inconsistently interpret retroactive marital agreements or if legislation fails to define their permissible scope, individuals and legal institutions may face difficulty assessing legal risks associated with marriage and property ownership. Inconsistency in judicial interpretation may also encourage forum shopping and strategic litigation by parties seeking favorable property outcomes. Consequently, legal scholars increasingly argue that clear statutory regulation and judicial standards are necessary to maintain coherence in matrimonial property law.<sup>7</sup>

<sup>3</sup> Indonesia Constitutional Court, Decision No. 69/PUU-XIII/2015 concerning Judicial Review of Law No. 1 of 1974 on Marriage.

<sup>4</sup> Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1969), 51–64.

<sup>5</sup> Council Regulation (EU) 2016/1103 of 24 June 2016 Implementing Enhanced Cooperation in the Area of Jurisdiction, Applicable Law and the Recognition and Enforcement of Decisions in Matters of Matrimonial Property Regimes, Official Journal of the European Union L183/1.

<sup>6</sup> J. G. Merrills and A.H. Robertson, *Human Rights in Europe* (Manchester: Manchester University Press, 2001), 142–145.

<sup>7</sup> Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004), 114–126.

Another important issue concerns the intersection between the doctrine of *pacta sunt servanda* and public policy limitations within family law. Contractual agreements are generally binding upon the parties and must be respected as law between them. However, family law agreements are unique because they operate within a legal institution that affects broader societal interests beyond the contracting parties themselves. Courts therefore often impose stricter scrutiny on matrimonial agreements than on ordinary commercial contracts. In cases involving retroactive postnuptial agreements, judges must determine whether contractual freedom should prevail over concerns related to fairness, equity, and the protection of vulnerable parties. This doctrinal conflict reflects the broader challenge of reconciling private autonomy with the public nature of matrimonial relations.<sup>8</sup>

In addition, globalization and transnational marriages have intensified the relevance of retroactive matrimonial agreements in private international law. Cross-border marriages frequently involve multiple legal systems with differing matrimonial property regimes and conflicting rules concerning retroactivity. As international mobility increases, spouses may seek to modify their property arrangements to adapt to changing residency, citizenship, or investment circumstances. However, divergent national approaches to retroactive postnuptial agreements may create jurisdictional conflicts and uncertainty regarding recognition and enforcement abroad. This issue is especially significant in jurisdictions where foreign ownership restrictions or inheritance laws intersect with marital property regulation.<sup>9</sup>

Despite the growing practical importance of retroactive postnuptial agreements, scholarly discussion regarding their implications for legal certainty remains relatively underdeveloped, particularly in relation to matrimonial property regimes in developing legal systems. Existing studies often focus either on constitutional legitimacy or contractual validity without comprehensively examining how retroactivity affects the broader doctrine of legal certainty. Furthermore, limited research has explored the extent to which current legal frameworks adequately protect third parties and preserve consistency in judicial interpretation. This gap in legal scholarship demonstrates the necessity for deeper doctrinal analysis concerning the relationship between retroactive postnuptial agreements, legal certainty, and matrimonial property regulation.<sup>10</sup>

Therefore, this study becomes important because it seeks to analyze the doctrine of legal certainty in relation to retroactive postnuptial agreements and examine their implications for matrimonial property regimes. The research aims to evaluate whether current legal frameworks sufficiently balance contractual autonomy with the need to protect legitimate expectations and legal stability. In addition, this study intends to identify the legal risks arising from retroactive modifications of matrimonial property arrangements and assess the adequacy of judicial and statutory safeguards. Through this analysis, the research is expected to contribute both theoretically and practically to the development of family law, particularly regarding the harmonization of contractual freedom and legal certainty within matrimonial property regulation.

## Research Method

This research employs a normative juridical legal research method (*normative legal research*) to examine the doctrine of legal certainty in retroactive postnuptial agreements and its implications for matrimonial property regimes. The study uses statutory, conceptual, and comparative approaches. The statutory approach analyzes legislation and legal instruments related to marriage law and matrimonial property regimes, including Law No. 1 of 1974 on Marriage, Constitutional Court Decision No. 69/PUU-XIII/2015, and Council Regulation (EU) 2016/1103. The conceptual approach is applied to examine legal doctrines concerning legal certainty, retroactivity, and contractual freedom, while the comparative approach compares regulations and legal practices regarding postnuptial agreements in different legal systems.<sup>11</sup>

The legal materials used in this research consist of primary, secondary, and tertiary legal materials collected through library research. Primary legal materials include legislation, court decisions, and international legal instruments, while secondary legal materials consist of legal journals, textbooks, and scholarly writings relevant to

<sup>8</sup> John H. Langbein and Lawrence W. Waggoner, "Reformation of Wills on the Ground of Mistake," *Columbia Law Review* Vol. 130, No. 3 (1982): 521–530.

<sup>9</sup> Patrick Parkinson, *Family Property Law and International Family Relations* (Oxford: Hart Publishing, 2015), 201–219.

<sup>10</sup> Dewa Gede Sudika Mangku et al., "Legal Certainty of Postnuptial Agreements After the Constitutional Court Decision Number 69/PUU-XIII/2015," *Substantive Justice International Journal of Law* Vol. 6, No. 1 (2023): 45–58.

<sup>11</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017), 133–135.

family law and legal certainty. The collected materials are analyzed qualitatively using descriptive-analytical methods and legal interpretation techniques to evaluate the consistency between legal norms, judicial interpretation, and the protection of third-party interests in retroactive postnuptial agreements.<sup>12</sup>

## Discussion

### A. The Doctrine of Legal Certainty in Retroactive Postnuptial Agreements

The doctrine of legal certainty constitutes one of the fundamental pillars of modern legal systems because it guarantees predictability, consistency, and stability in legal relations. In legal theory, legal certainty is closely related to the principle that law must be clear, foreseeable, and consistently applied so that individuals are able to understand the legal consequences of their actions. Lon L. Fuller emphasized that legal certainty requires laws to be publicly promulgated, non-contradictory, and relatively stable to ensure fairness and legitimacy within the legal system.<sup>13</sup> In the context of family law, the doctrine of legal certainty becomes highly important because marital relationships involve not only private contractual interests between spouses but also broader implications concerning property ownership, inheritance, creditors, and third-party rights.

The development of postnuptial agreements reflects the increasing recognition of party autonomy within matrimonial law systems. Traditionally, matrimonial property regimes were governed through mandatory statutory rules that automatically regulated property ownership during marriage. However, contemporary legal systems increasingly allow spouses to determine their own property arrangements through marital agreements. This shift demonstrates the growing influence of contractual freedom in family law. Nevertheless, the extension of contractual autonomy into matrimonial relations also raises concerns regarding legal stability because marriage possesses both private and public legal dimensions.<sup>14</sup>

Retroactive postnuptial agreements present a particular challenge to the doctrine of legal certainty because they alter legal relations that have already produced legal effects before the agreement was concluded. In general legal doctrine, retroactivity is viewed cautiously because legal rules are expected to operate prospectively rather than retrospectively. The principle against retroactive legal effect exists to protect legitimate expectations and prevent legal unpredictability. When spouses execute a postnuptial agreement with retroactive effect, they effectively redefine the ownership structure of assets acquired during marriage. Such retroactive modifications may create uncertainty for third parties who relied upon the original matrimonial property regime at the time legal transactions occurred.<sup>15</sup>

The legal uncertainty arising from retroactive postnuptial agreements is particularly visible in relation to jointly acquired marital assets. Under many matrimonial property systems, property acquired during marriage is presumed to form part of the joint marital estate unless otherwise stipulated by law or agreement. If spouses subsequently enter into a retroactive postnuptial agreement separating ownership of assets previously considered joint property, the agreement may affect creditors' rights, taxation obligations, inheritance claims, and contractual relationships established before the agreement was made. Consequently, retroactivity may undermine the predictability that legal certainty seeks to protect.<sup>16</sup>

The Indonesian legal system provides a significant example of the tension between contractual autonomy and legal certainty in postnuptial agreements. Prior to Constitutional Court Decision No. 69/PUU-XIII/2015, Article 29 of Law No. 1 of 1974 concerning Marriage permitted marital agreements only before or at the time of marriage. The Constitutional Court expanded this interpretation by allowing agreements to be concluded during marriage. The Court justified its decision on the basis of constitutional protection of individual rights and equality before the law, particularly in mixed-nationality marriages where Indonesian citizens faced restrictions concerning land

<sup>12</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2015), 13–15.

<sup>13</sup> Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1969), 39–41.

<sup>14</sup> Judith T. Younger, "Marital Regimes: A Story of Compromise and Demoralization, Together with Criticism and Suggestions for Reform," *Cornell Law Review* Vol. 67, No. 1 (1981): 45–50.

<sup>15</sup> Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* (Cambridge: Cambridge University Press, 2004), 114–116.

<sup>16</sup> Patrick Parkinson, *Family Property Law and International Family Relations* (Oxford: Hart Publishing, 2015), 201–205.

ownership.<sup>17</sup> Although the decision enhanced legal flexibility and protected constitutional rights, it simultaneously created uncertainty regarding the legal consequences of retroactive postnuptial agreements.

One of the major doctrinal issues resulting from Constitutional Court Decision No. 69/PUU-XIII/2015 concerns the temporal effect of postnuptial agreements. The decision did not comprehensively regulate whether agreements concluded during marriage should apply prospectively or retrospectively. As a result, divergent interpretations emerged among legal practitioners, notaries, judges, and administrative authorities regarding the extent to which postnuptial agreements may alter previously existing property rights. This lack of clarity demonstrates a significant challenge to legal certainty because parties cannot easily predict the legal consequences of retroactive agreements.<sup>18</sup>

From the perspective of legal theory, the retroactive effect of postnuptial agreements may conflict with the doctrine of vested rights. The doctrine of vested rights protects rights that have already been legally acquired from arbitrary alteration through subsequent legal acts. If spouses are permitted to retroactively alter the legal status of property acquired during marriage, questions arise regarding the protection of third parties who relied on the previous property regime. Creditors, for example, may have extended loans based on the assumption that marital assets formed part of a joint estate accessible for debt enforcement. Retroactive agreements that subsequently separate property ownership could therefore prejudice legitimate creditor expectations.<sup>19</sup>

Furthermore, legal certainty requires consistency in judicial interpretation and administrative implementation. However, the absence of comprehensive statutory regulation regarding retroactive postnuptial agreements has contributed to inconsistent legal practice. Some courts and notaries interpret postnuptial agreements as having only prospective effect, while others permit broader retroactive application. Such inconsistency weakens public confidence in the legal system because individuals are unable to predict how courts or administrative institutions will treat similar agreements in future disputes. Inconsistent application of law also creates the possibility of forum shopping, where parties strategically seek jurisdictions or authorities that favor their preferred interpretation.<sup>20</sup>

Comparative legal analysis demonstrates that other jurisdictions generally permit retroactive matrimonial agreements only under strict limitations designed to preserve legal certainty and protect third parties. Council Regulation (EU) 2016/1103 concerning matrimonial property regimes allows spouses to choose the law applicable to their matrimonial property regime and, in certain circumstances, permits retroactive effect. Nevertheless, the Regulation explicitly provides that retroactive application must not adversely affect the rights of third parties who relied upon the previous legal situation.<sup>21</sup> This approach illustrates that legal systems seeking to accommodate contractual autonomy still recognize the necessity of maintaining predictability and protecting legitimate expectations.

The French legal system similarly permits modifications to matrimonial property regimes during marriage through judicial supervision and procedural safeguards. Under French law, changes to matrimonial property arrangements generally require court approval where the modification may affect the interests of creditors or children. Such supervision reflects the understanding that family law agreements possess broader social consequences beyond the contracting parties themselves. Judicial oversight therefore functions as a mechanism to preserve legal certainty and prevent abuse of retroactive legal arrangements.<sup>22</sup>

The doctrine of *pacta sunt servanda*, which requires agreements to be respected as binding law between parties, also plays a central role in the debate concerning retroactive postnuptial agreements. Advocates of contractual freedom argue that spouses should possess broad autonomy to regulate their property relations because marriage involves personal and economic cooperation between individuals. From this perspective, preventing spouses from retroactively organizing their property affairs may unjustifiably interfere with private autonomy. Nevertheless, family law differs from ordinary contract law because matrimonial agreements may directly affect third parties and

<sup>17</sup> Indonesia Constitutional Court, Decision No. 69/PUU-XIII/2015 concerning Judicial Review of Law No. 1 of 1974 on Marriage.

<sup>18</sup> Dewa Gede Sudika Mangku et al., "Legal Certainty of Postnuptial Agreements After the Constitutional Court Decision Number 69/PUU-XIII/2015," *Substantive Justice International Journal of Law* Vol. 6, No. 1 (2023): 45–47.

<sup>19</sup> Roscoe Pound, *An Introduction to the Philosophy of Law* (New Haven: Yale University Press, 1922), 76–79.

<sup>20</sup> Soerjono Soekanto, *Faktor-Faktor yang Mempengaruhi Penegakan Hukum* (Jakarta: Raja Grafindo Persada, 2014), 8–10.

<sup>21</sup> Council Regulation (EU) 2016/1103 of 24 June 2016 Implementing Enhanced Cooperation in the Area of Jurisdiction, Applicable Law and the Recognition and Enforcement of Decisions in Matters of Matrimonial Property Regimes, *Official Journal of the European Union* L183/1.

<sup>22</sup> Frédérique Ferrand, "Matrimonial Property Regimes in French Law," *International Survey of Family Law* (2018): 153–158.

public interests. Consequently, absolute contractual freedom cannot operate without limitation in the family law context.<sup>23</sup>

The principle of proportionality provides an important analytical framework for resolving conflicts between contractual autonomy and legal certainty. Under proportionality analysis, restrictions on retroactive postnuptial agreements may be justified if they are necessary to protect legitimate third-party interests and preserve legal stability. This means that the law should neither prohibit postnuptial agreements entirely nor permit unrestricted retroactive modification of property relations. Instead, legal systems should establish balanced safeguards ensuring that contractual freedom is exercised consistently with principles of fairness, transparency, and predictability.<sup>24</sup>

Moreover, retroactive postnuptial agreements raise constitutional concerns regarding equality and property rights. Constitutional Court Decision No. 69/PUU-XIII/2015 was partially motivated by the need to protect Indonesian citizens married to foreign nationals from discriminatory restrictions affecting land ownership. The Court recognized that prohibiting postnuptial agreements during marriage could unfairly limit constitutional property rights. However, constitutional protection of individual rights must also be balanced against the constitutional principle of legal certainty recognized in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Therefore, constitutional interpretation itself requires balancing between competing legal principles rather than prioritizing contractual autonomy without limitation.<sup>25</sup>

Another important issue concerns the role of notaries in drafting and authenticating postnuptial agreements. In Indonesia, notarial deeds possess strong evidentiary value and serve an essential function in ensuring legal authenticity. However, the absence of detailed statutory guidelines concerning retroactive postnuptial agreements places notaries in a difficult position regarding the scope of permissible contractual clauses. Without clear legal standards, notaries may apply inconsistent interpretations concerning whether agreements may affect previously acquired assets. Such uncertainty potentially increases the risk of future litigation concerning the validity and enforceability of postnuptial agreements.<sup>26</sup>

The doctrine of legal certainty therefore requires clearer legislative regulation regarding the temporal effect of postnuptial agreements. Statutory provisions should explicitly determine whether retroactive application is permitted, the extent of permissible retroactivity, and the safeguards necessary to protect third parties. Such safeguards may include mandatory registration requirements, public notification mechanisms, creditor protection clauses, and judicial supervision in cases involving substantial property modifications. By providing detailed legal standards, legislators can reduce interpretative inconsistency and strengthen public trust in matrimonial property law.<sup>27</sup>

## **B. Implications of Retroactive Postnuptial Agreements for Matrimonial Property Regimes**

Retroactive postnuptial agreements significantly influence the structure and operation of matrimonial property regimes because they alter legal ownership arrangements after marriage has already generated legal and economic consequences. Matrimonial property regimes regulate the classification, management, and distribution of assets acquired during marriage. Traditionally, many legal systems adopt either community property regimes, where assets acquired during marriage become jointly owned, or separation of property regimes, where each spouse retains individual ownership over personal assets. Retroactive postnuptial agreements allow spouses to transform these arrangements after marriage has already commenced, thereby affecting legal relations that previously operated under different assumptions.<sup>28</sup>

One of the most significant implications concerns the status of jointly acquired marital property. Under community property systems, assets obtained during marriage are generally presumed to belong jointly to both spouses regardless of which spouse directly acquired the property. Retroactive agreements separating ownership may therefore substantially redefine the economic relationship between spouses. Assets that were previously considered

<sup>23</sup> John D. Calamari and Joseph M. Perillo, *The Law of Contracts* (St. Paul: West Publishing, 1998), 17–20.

<sup>24</sup> Robert Alexy, *A Theory of Constitutional Rights* (Oxford: Oxford University Press, 2002), 66–69.

<sup>25</sup> Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2011), 123–127.

<sup>26</sup> Habib Adjie, *Hukum Notaris Indonesia* (Bandung: Refika Aditama, 2015), 92–96.

<sup>27</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017), 58–60.

<sup>28</sup> Katharina Boele-Woelki et al., *Principles of European Family Law Regarding Property Relations Between Spouses* (Antwerp: Intersentia, 2013), 21–24.

part of the marital estate may become classified as separate property through contractual recharacterization. Such modifications may directly influence property division in cases of divorce, inheritance disputes, or bankruptcy proceedings.<sup>29</sup>

The retroactive transformation of matrimonial property regimes also affects creditor protection. Creditors frequently rely upon the existence of marital property when assessing the financial reliability of debtors. If spouses are permitted to retroactively separate assets that previously formed part of the joint marital estate, creditors may face reduced opportunities for debt recovery. This creates tension between private contractual freedom and the broader principle of commercial certainty within economic transactions. Consequently, many legal systems impose restrictions preventing marital agreements from prejudicing third-party rights established before the agreement was concluded.<sup>30</sup>

The protection of third parties constitutes one of the primary justifications for limiting retroactive postnuptial agreements. Third parties, including creditors, business partners, heirs, and administrative authorities, often act in reliance upon the legal status of marital property existing at the time transactions occur. Retroactive agreements that subsequently alter property classifications may unfairly disadvantage such parties. Therefore, legal certainty requires mechanisms ensuring that postnuptial agreements do not undermine rights acquired in good faith under previous legal arrangements. Comparative legal systems frequently address this concern through registration requirements or restrictions on retroactive enforceability against third parties.<sup>31</sup>

Another implication concerns inheritance law and succession planning. Matrimonial property regimes directly influence the distribution of assets following the death of one spouse. Retroactive agreements separating property ownership may reduce the surviving spouse's entitlement to assets previously considered part of the joint estate. This may also affect the inheritance rights of children and other heirs. In jurisdictions with forced heirship rules, retroactive reclassification of marital property may create conflicts between contractual freedom and mandatory inheritance protections.<sup>32</sup>

Retroactive postnuptial agreements also create practical challenges for property registration systems. Land registration authorities, banking institutions, taxation agencies, and administrative bodies often rely upon clear legal classification of marital property. When spouses retroactively alter ownership arrangements, administrative institutions may face uncertainty regarding the validity and timing of ownership rights. This may complicate land registration procedures, tax liability assessments, and enforcement of security interests over property. Consequently, retroactive modifications may increase administrative inefficiency and legal disputes concerning ownership documentation.<sup>33</sup>

In the Indonesian context, retroactive postnuptial agreements possess particular relevance concerning land ownership restrictions involving mixed-nationality marriages. Indonesian agrarian law restricts foreign ownership of land rights, and marital property regimes may affect whether Indonesian citizens married to foreigners can retain certain property rights. Constitutional Court Decision No. 69/PUU-XIII/2015 sought to address this issue by permitting postnuptial agreements during marriage. However, uncertainty remains regarding whether agreements concluded after property acquisition may retroactively protect land ownership rights already affected by mixed-marriage status. This uncertainty demonstrates the broader implications of retroactivity for legal certainty and property administration.<sup>34</sup>

The implications of retroactive postnuptial agreements also extend to judicial dispute resolution. Courts faced with disputes involving retroactive agreements must determine whether contractual provisions should override pre-existing legal relationships and to what extent retroactivity is permissible. In the absence of detailed statutory guidance, judicial decisions may vary depending on differing interpretations of contractual freedom, legal certainty,

<sup>29</sup> Grace Ganz Blumberg, *Community Property in California* (New York: Aspen Publishers, 2003), 45–48.

<sup>30</sup> J.G. Merrills and A.H. Robertson, *Human Rights in Europe* (Manchester: Manchester University Press, 2001), 142–145.

<sup>31</sup> Cristina González Beilfuss, “The Unification of Private International Law in Europe: A Success Story?” *Cuadernos de Derecho Transnacional* Vol. 10, No. 2 (2018): 58–63.

<sup>32</sup> Lawrence W. Waggoner, “Marital Property Rights in Transition,” *University of Michigan Journal of Law Reform* Vol. 59, No. 2 (2016): 305–310.

<sup>33</sup> Urip Santoso, *Hukum Agraria dan Hak-Hak Atas Tanah* (Jakarta: Kencana, 2012), 88–92.

<sup>34</sup> Boedi Harsono, *Hukum Agraria Indonesia* (Jakarta: Djambatan, 2008), 294–298.

and public policy considerations. Such inconsistency may weaken coherence within family law jurisprudence and contribute to prolonged litigation.<sup>35</sup>

Furthermore, retroactive postnuptial agreements may create opportunities for legal abuse if not adequately regulated. Spouses facing financial liabilities may attempt to retroactively separate assets in order to shield property from creditors or legal enforcement. Similarly, retroactive agreements may be strategically used during divorce proceedings to manipulate property distribution outcomes. Without clear safeguards, retroactivity may therefore facilitate fraudulent transfers or undermine equitable principles within family law. Legal systems must consequently establish mechanisms preventing agreements from being used to evade legal obligations or prejudice vulnerable parties.<sup>36</sup>

The principle of good faith plays a central role in evaluating the legitimacy of retroactive postnuptial agreements. Good faith requires parties to exercise contractual rights honestly, fairly, and consistently with legitimate expectations. Agreements concluded solely to evade creditor claims or manipulate legal obligations may therefore violate principles of good faith and public order. Courts in many jurisdictions apply good faith analysis when assessing the validity and enforceability of marital agreements. Such analysis functions as an important safeguard ensuring that contractual autonomy operates within ethical and legal boundaries.<sup>37</sup>

The balance between legal certainty and contractual autonomy ultimately requires comprehensive legal regulation. Completely prohibiting retroactive postnuptial agreements may unjustifiably restrict personal autonomy and prevent spouses from adapting property arrangements to changing economic circumstances. However, permitting unrestricted retroactivity may undermine predictability and third-party protection. Therefore, an ideal legal framework should recognize the validity of postnuptial agreements while limiting retroactive effect where it threatens legitimate expectations or vested rights.<sup>38</sup>

To strengthen legal certainty, legislators should establish clear procedural and substantive requirements governing retroactive postnuptial agreements. Procedural safeguards may include mandatory registration, disclosure obligations, creditor notification requirements, and judicial approval in cases involving substantial asset modifications. Substantive safeguards should clarify the extent to which agreements may affect previously acquired assets and specify limitations protecting third-party rights. By implementing such measures, legal systems can better reconcile the competing principles of contractual freedom, fairness, and legal stability.<sup>39</sup>

In conclusion, retroactive postnuptial agreements present both opportunities and risks within matrimonial property regimes. On one hand, they provide flexibility for spouses to organize financial relations according to evolving personal and economic circumstances. On the other hand, retroactivity may undermine legal certainty by altering established legal relationships and affecting third-party rights. The doctrine of legal certainty therefore requires legal systems to regulate retroactive postnuptial agreements carefully through clear statutory standards, judicial consistency, and effective procedural safeguards. Through balanced regulation, the law may accommodate contractual autonomy while preserving predictability, fairness, and stability within matrimonial property relations.

From the author's perspective, retroactive postnuptial agreements should not be absolutely prohibited because marital relationships are dynamic and often require legal adaptation to changing economic and personal circumstances. Nevertheless, retroactive application should only be recognized within limited boundaries. Retroactivity should primarily apply to the internal legal relationship between spouses and should not prejudice third parties who acquired rights or legitimate expectations before the agreement was concluded. Such limitation is essential because the principle of legal certainty protects not only the contracting parties but also broader social and economic relations dependent upon predictable legal arrangements.<sup>40</sup>

A critical weakness within the Indonesian legal framework is the absence of implementing regulations following Constitutional Court Decision No. 69/PUU-XIII/2015. Although the Constitutional Court expanded the

<sup>35</sup> Sudikno Mertokusumo, *Penemuan Hukum* (Yogyakarta: Cahaya Atma Pustaka, 2014), 47–50.

<sup>36</sup> Henry Hansmann and Ugo Mattei, "The Functions of Trust Law: A Comparative Legal and Economic Analysis," *New York University Law Review* Vol. 73, No. 2 (1998): 434–436.

<sup>37</sup> E. Allan Farnsworth, *Contracts* (New York: Aspen Publishers, 2004), 390–394.

<sup>38</sup> H.L.A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1994), 124–127.

<sup>39</sup> Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2013), 310–314.

<sup>40</sup> H.L.A. Hart, *The Concept of Law* (Oxford: Oxford University Press, 1994), 128–131.

permissibility of postnuptial agreements, the decision did not comprehensively determine the temporal scope of such agreements or establish mechanisms for protecting creditors and other third parties. This normative gap has created inconsistent interpretations among judges, notaries, and administrative authorities. Consequently, legal actors often rely upon discretionary interpretation rather than clear statutory guidance, thereby weakening predictability and coherence in matrimonial property law.<sup>41</sup>

The ratio decidendi of Constitutional Court Decision No. 69/PUU-XIII/2015 demonstrates that the Court primarily intended to protect constitutional equality and property rights rather than explicitly authorize unrestricted retroactivity. The Court emphasized that Indonesian citizens in mixed-nationality marriages should not lose constitutional protection of property ownership merely because marital agreements were not concluded before marriage. However, the Court did not clearly determine whether postnuptial agreements could alter the legal status of assets already acquired before the agreement. Therefore, interpreting the decision as granting unlimited retroactive effect would exceed the constitutional reasoning articulated by the Court itself.<sup>42</sup>

From the perspective of legal philosophy, unrestricted retroactive application conflicts with Fuller's conception of legal certainty because retroactivity undermines predictability and the ability of legal subjects to rely upon existing legal norms. Fuller argued that law loses legitimacy when individuals cannot reasonably foresee legal consequences arising from their conduct.<sup>43</sup> Similarly, Gustav Radbruch explained that legal certainty constitutes one of the essential values of law alongside justice and purposiveness. Excessive retroactivity may therefore disrupt the balance between justice for spouses and certainty for third parties. The doctrine of legal certainty consequently requires that retroactive agreements remain subject to proportional limitations and public oversight.

Comparative legal systems demonstrate that retroactivity may be recognized without sacrificing legal certainty if accompanied by effective procedural safeguards. German matrimonial property law, for example, allows modifications of matrimonial property regimes but emphasizes creditor protection and registration mechanisms to preserve legal transparency. Likewise, several European legal systems distinguish between the internal effect of marital agreements between spouses and their external effect toward third parties. Under such approaches, retroactive agreements may regulate internal property relations while remaining unenforceable against creditors or third parties acting in good faith before registration or notification.<sup>44</sup> This distinction offers a valuable model for Indonesian legal reform.

The protection of third parties should therefore become a central element of future regulation concerning retroactive postnuptial agreements. Creditors frequently extend loans or enter commercial relations based upon assumptions regarding the existence of joint marital property. If spouses are allowed to retroactively separate assets without limitation, such agreements may operate similarly to fraudulent transfers designed to evade financial obligations. Accordingly, legal systems should require mandatory registration and public disclosure before retroactive agreements can produce legal effect toward third parties. Judicial supervision may also be necessary where agreements substantially alter ownership structures affecting creditor interests or family welfare.<sup>45</sup>

In addition, Indonesian matrimonial property regulation should adopt a clearer distinction between prospective and retrospective legal effect. Prospective effect should remain the general principle because it best preserves predictability and stability in legal relations. Retroactive effect should function only as a limited exception subject to strict legal requirements, including good faith, absence of prejudice toward third parties, and compliance with procedural safeguards. Such an approach would better harmonize constitutional protection of private autonomy with the constitutional principle of legal certainty under Article 28D paragraph (1) of the 1945 Constitution.<sup>46</sup>

The author therefore proposes several normative reforms to strengthen legal certainty in retroactive postnuptial agreements. First, legislators should enact implementing regulations explicitly defining the temporal scope of postnuptial agreements. Second, all agreements affecting matrimonial property should be subject to mandatory

<sup>41</sup> Habib Adjie, "Perjanjian Kawin Pasca Putusan Mahkamah Konstitusi," *Jurnal Hukum Kenotariatan* Vol. 2, No. 1 (2018): 44–49.

<sup>42</sup> Indonesia Constitutional Court, Decision No. 69/PUU-XIII/2015 concerning Judicial Review of Law No. 1 of 1974 on Marriage.

<sup>43</sup> Lon L. Fuller, *The Morality of Law* (New Haven: Yale University Press, 1969), 51–62.

<sup>44</sup> Katharina Boele-Woelki et al., *Principles of European Family Law Regarding Property Relations Between Spouses* (Antwerp: Intersentia, 2013), 67–72.

<sup>45</sup> Henry Hansmann and Ugo Mattei, "The Functions of Trust Law: A Comparative Legal and Economic Analysis," *New York University Law Review* Vol. 73, No. 2 (1998): 438–442.

<sup>46</sup> Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2011), 131–135.

registration to ensure transparency and public accessibility. Third, retroactive effect should not bind creditors or third parties unless adequate notification mechanisms have been fulfilled. Fourth, judicial approval should be required in cases involving significant asset reclassification or potential prejudice to vulnerable parties. Through these reforms, Indonesian matrimonial property law may achieve a more balanced relationship between contractual freedom, fairness, and legal certainty.<sup>47</sup>

Ultimately, the regulation of retroactive postnuptial agreements illustrates a broader challenge within modern family law: reconciling private autonomy with the public function of law. Marriage is simultaneously a personal relationship and a legal institution producing economic and social consequences extending beyond spouses themselves. Therefore, legal systems must ensure that contractual flexibility does not undermine predictability, equality, and public trust in legal institutions. The doctrine of legal certainty requires that retroactive postnuptial agreements remain carefully regulated so that matrimonial property law continues to provide stability and justice for all legal subjects involved.

## Conclusion

The doctrine of legal certainty plays a fundamental role in regulating retroactive postnuptial agreements within matrimonial property regimes because it ensures predictability, consistency, and protection of rights in legal relations. Constitutional Court Decision No. 69/PUU-XIII/2015 has expanded the recognition of postnuptial agreements in Indonesia by allowing spouses to conclude marital agreements during marriage. However, the absence of clear regulation regarding the retroactive effect of such agreements has created legal uncertainty, particularly concerning the status of previously acquired marital assets and the protection of third-party rights. As a result, differing interpretations among judges, notaries, and legal practitioners have emerged, thereby weakening legal consistency and predictability within matrimonial property law.

This study finds that retroactive postnuptial agreements may provide flexibility and protection of constitutional rights for spouses, especially in changing economic and family circumstances. Nevertheless, unrestricted retroactivity may undermine legal certainty because it can alter vested rights, prejudice creditors and third parties, and create opportunities for abuse of law. Comparative legal analysis demonstrates that several legal systems permit retroactive matrimonial agreements only under strict limitations and procedural safeguards, such as registration mechanisms, creditor protection, and judicial supervision. Therefore, retroactive postnuptial agreements should be recognized only within limited boundaries and must be accompanied by clear statutory regulation to balance contractual freedom, fairness, third-party protection, and legal certainty within matrimonial property regimes.

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