

REDEFINING INDONESIAN POSTNUPTIAL AGREEMENTS UNDER THE PARADIGM OF MAQASHID AL-USRAH

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Abstract

This study aims to determine how the legal analysis of marriage agreements in Indonesia after the Constitutional Court decision number 69/PUU-XIII/2015 in the perspective of family functioning and maqasid al-usrah. Because the Applicant feels that the constitutional rights guaranteed by the 1945 Constitution of the Republic of Indonesia have been harmed by the norms contained in Article 21 paragraph (1) and paragraph (3) and Article 36 paragraph (1) UUPA and Article 29 paragraph (1), paragraph (3) and paragraph (4) and Article 35 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The approach method used in this study is the normative legal approach method, then the problem approach used in this writing is the Statutory Approach and the Conceptual Approach. Statutory Approach and Conceptual Approach. The results of the study show that the marriage agreement made by husband and wife after the marriage contract does not violate the general principles of the agreement contained in Article 1320 of the Civil Code regarding the condition of a valid agreement. According to maqasid al-usrah, the existence of this marriage agreement provides strong legal certainty between husband and wife, while minimizing conflicts related to property that may later occur in their marriage. This legal mechanism makes an important contribution to protecting the rights of each individual in the household.

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Introduction

The Indonesian legal system views marriage as not just a sacred, innate bond both religiously, customarily, and statutorily (Said et al., 2024); this marriage also gives birth to legal acts with legal consequences, such as spousal obligations, property, child status, and legal protection (Sumiarni, 2024). The family law regime in Indonesia has long followed the strict principle that a marriage agreement (prenuptial agreement) can only be made before or at the time of marriage, as stipulated in Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage, this is in line with the principle of legal certainty and the formalistic nature of Indonesian family law (Rohmadi et al., 2024). However, this legal firmness underwent radical changes after the birth of the Constitutional Court (MK) Decision Number 69/PUU-XIII/2015. This decision revolutionized the couple's permission to enter into a prenuptial agreement during marriage (postnuptial agreement). This change has raised concerns among legal practitioners about potential abuse or lack of good faith in postnuptial agreements. To ensure its validity, the agreement must be authentically formalized by a notary and be valid from the date of signing (Judiasih et al., 2021).

Actually, the birth of this Constitutional Court Decision is the result of constitutional losses experienced by citizens, especially related to mixed marriages. The norms in Article 21 paragraphs (1) and (3) and Article 36 paragraph (1) of the Basic Agrarian Law (UUPA), which intersect with Article 29 of the Marriage Law, are considered to have limited the constitutional right of Indonesian citizens (WNI) to have land rights if they marry a foreign citizen (WNA) without a property separation agreement. Through this ruling, the Constitutional Court seeks to provide equal legal protection (Liman & Rifai, 2024; Sanjaya, 2021). However, the expansion of this meaning has sparked new theoretical and practical debates, especially regarding how the validity of agreements made during the marriage period is tested with the legal principles of general agreements, such as Article 1320 of the Civil Code (KUHPPerdata).

The theme of the Constitutional Court Decision Number 69/PUU-XIII/2015 has been widely studied by previous researchers, such as Sonny Dewi Judiasih et al., who stated that to avoid sharper conflicts between husband and wife, prenuptial or postnuptial agreements must be made authentically and affirmed by a notary (Judiasih et al., 2021). In the end, this Constitutional Court decision can be considered able to provide a sense of comfort and security with the flexibility of making a marriage agreement that is not rigid in a prenuptial agreement; besides that, this decision is also able to become a notary that has a strong role in family law (Jane et al., 2025). An authentic marriage agreement before a notary, as a public official who is authorized to make an authentic deed regarding all acts, agreements, and determinations made before and after marriage, is important in ensuring legal protection for all parties. Registration is not just an administrative formality, but an essential condition for the agreement to be valid and recognized in the legal system and state administration (Lestari, 2025). Constitutional Court Decision No. 69/PUU-XIII/2015 adds to the mastery of the concept of marriage agreement, accepts the existence of an agreement after marriage, and uses the role of the court in determining these provisions in several cases. Efforts to increase awareness and legal education on the importance of recording marriage agreements through notaries (Hamnan & Cahyono, 2024). This Constitutional Court decision rejects some of the applications submitted and provides an interpretation in relation to the marriage agreement, so that the marriage agreement can also be made while in the marriage bond. There are shortcomings in this decision, namely fallacy, lack of consideration, and absence of impact analysis (Yuvens, 2018). The extension of the time for the marriage agreement to be made makes it a preventive effort to minimize marital conflicts (Agustine, 2017).

This study examines the material validity of post-nuptial marriage agreements after the

Constitutional Court Decision No. 69/PUU-XIII/2015 based on the principles of contract law in Article 1320 of the Civil Code and analyzes how the juridical implications of the implementation of the agreement in strengthening family functions and embodying the values of *maslahah* in the framework of *Maqasid Al-Usrah*. Protection of husbands and wives is necessary to provide respect and promote their dignity before the law and society.

Research Method

The approach method used in this research is the normative juridical approach method; then, the problem approach used in this writing is the Statutory Approach and the Conceptual Approach. The Statutory Approach and the Conceptual Approach are used to determine how the form of civil legal efforts in providing legal protection for women victims of neglect in marriage, if the husband's residence is unknown. An analysis of the laws related to the problem is also carried out and then correlated with several legal theories. The primary legal materials used in this study include the Constitutional Court Decision Number 69/PUU-XIII/2015 dated March 21, 2016, Law Number 1 of 1974 concerning Marriage, Government Regulation Number 9 of 1975 implementing Law Number 1 of 1974 concerning Marriage, Compilation of Islamic Law (KHI), Civil Code (KUHP *perdata*), or *Burgelijk Wetboek*. Secondary legal materials such as books, legal journals, research results, and writings by experts or authorized parties, as well as to obtain information in the form of formal provisions and official documents relevant to the research. Tertiary legal materials, such as the Big Indonesian Dictionary (KBBI). The data analysis method is descriptive qualitative, namely, after the processing and presentation process, it is then analyzed using qualitative methods. This analysis is based on existing theories and applicable laws. In addition, it is qualitative because all collected data is systematically compiled and then evaluated qualitatively to achieve clarity on the issues to be discussed.

Results and discussions

Marriage Agreements in Indonesia Following Constitutional Court Decision Number 69/PUU-XIII/2015

Article 29, paragraph (2) of Law Number 1 of 1974 concerning Marriage states that a marriage agreement will be valid if it does not violate the provisions contained in law, religion, and morality. The marriage agreement regulated in Law Number 1 of 1974 concerning Marriage does not violate the principle of general agreements, the provisions of which are contained in Article 1320 of the Civil Code concerning the conditions for a valid agreement. Furthermore, Article 29 paragraph (3) of Law Number 1 of 1974 concerning Marriage states that after a marriage agreement is made and is valid for the husband and wife, the marriage agreement will apply to both of them from the time the marriage takes place. However, the agreement will apply differently for third parties who are directly affected, namely, the marriage agreement will apply to third parties after being registered with the Civil Registration Office or the Office of Religious Affairs (Kambey, 2017).

In contrast to the provisions of Law Number 1 of 1974 concerning Marriage, Article 147 of the Civil Code states that a marriage agreement made in the form of a notarial deed will be valid for the husband and wife after the marriage takes place. Furthermore, Article 152 of the Civil Code states that a marriage agreement will be binding on third parties if it has been recorded in the general register, namely in the clerk's office at the District Court where the marriage took place, and in the clerk's office where the marriage certificate was recorded if the marriage took place abroad. The marriage agreement contained in Law Number 1 of 1974 concerning Marriage has been amended, namely in the Decision of the Constitutional Court Number 69/PUU-XIII/2015.

Constitutional Court Decision Number 69/PUU-XIII/2015 is a decision in the case of testing Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) and Law Number 1 of 1974 concerning Marriage, which are related to the 1945 Constitution of the Republic of Indonesia. The applicant in this case is Ike Farida, who is an Indonesian citizen (WNI) who has the legal capacity, legal relationship, and legal interest to file the a quo application. Ike Farida has married a Japanese citizen and has been registered at the KUA Makasar District, East Jakarta City, and is recorded in the marriage register number 3948/VIII/1995. Between Ike Farida and her husband, there is no agreement on the separation of assets, and she has never relinquished her citizenship and continues to choose Indonesian citizenship and lives in Indonesia.

Postnuptial agreements can be seen through the lens of *maqasid al-usrah*, which emphasizes family welfare, justice, and protection of rights. This agreement is in line with the broader goals of Islamic family law, such as safeguarding wealth (*hifz al-mal*), ensuring justice, and increasing family stability (Busriyanti et al., 2025; Rohmadi et al., 2024). Therefore, legal pluralism in Indonesia requires a harmonious approach to ensure that postnuptial agreements are in accordance with sharia and can be legally enforced (Mustamam et al., 2025).

The application for judicial review of legislation against the 1945 Constitution of the Republic of Indonesia was filed due to the unilateral cancellation of the purchase agreement for an apartment in the Jakarta area, which had been mutually agreed upon between Ike Farida and the developer. Ike Farida had initially paid the apartment in full to the developer, but the agreement was canceled because the applicant's husband was a foreign national, and the applicant did not have a marriage agreement. Therefore, in accordance with Article 36 paragraph (1) of the UUPA and Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage, a woman who is married to a foreign national is prohibited from purchasing land and/or buildings with Building Use Rights status because the assets they acquired have become joint assets.

The applicant feels that the constitutional rights guaranteed by the 1945 Constitution of the Republic of Indonesia have been violated by the norms contained in Article 21 paragraph (1) and paragraph (3) and Article 36 paragraph (1) of the UUPA and Article 29 paragraph (1), paragraph (3) and paragraph (4) and Article 35 paragraph (1) of the 1945 Constitution of the Republic of Indonesia. The applicant feels that these articles have eliminated his constitutional rights and deprived him of his right to have Ownership Rights and Building Use Rights. Therefore, the applicant submitted a request for a Judicial Review of Article 21 paragraph (1) and paragraph (3), Article 36 paragraph (1) of the UUPA, and Article 29 paragraph (1), paragraph (3), and paragraph (4), and Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage against the 1945 Constitution.

Based on the application submitted by Ike Farida, the Constitutional Court granted the applicant's application in part, namely:

- a. Article 29 paragraph (1) of Law Number 1 of 1974 about Marriage contradicts the 1945 Constitution of the Republic of Indonesia because it does not convey that "Before the marriage or during the marital bond, both parties may, by mutual consent, create a written agreement validated by a marriage registrar or notary, allowing its terms to apply to third parties as long as those third parties are engaged."
- b. Article 29 from Law Number 1 of 1974 regarding Marriage lacks enforceable legal authority unless understood as "Before, at the time of, or throughout the duration of the marriage, both individuals may, with mutual consent, present a written agreement that is approved by a marriage registrar or a notary. Subsequently, the terms of this agreement also affect third parties as long as they are part of the agreement. "
- c. Article 29 from Law Number 1 of 1974 regarding Marriage contradicts the 1945 Constitution of the Republic of Indonesia because it should not be understood as "The

agreement shall come into effect from the time the marriage takes place, unless otherwise stipulated in the Marriage Agreement. "

- d. Article 29 in Law Number 1 of 1974 related to Marriage lacks authoritative legal impact unless it is understood as "The agreement will be effective from the moment the marriage occurs, except in cases where the Marriage Agreement specifies otherwise. "
- e. Article 29 of Law Number 1 of 1974 about Marriage conflicts with the 1945 Constitution of the Republic of Indonesia to the extent that it is not understood as "While married, the agreement concerning marital assets or any other agreements may not be altered or annulled unless both parties agree to the modification or cancellation, and the alteration or annulment does not adversely affect any third party. "
- f. Section 29 subsection (4) of Law Number 1 from 1974 relating to Matrimony lacks enforceable legal power unless it is understood as "While the marriage is in effect, any marital property agreements or additional arrangements cannot be altered or annulled without the mutual consent of both involved parties, and such modification or cancellation must not be detrimental to any third parties.

The changes following Constitutional Court Decision Number 69/PUU-XIII/2015 are as follows:

- a) Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage has the addition of the phrase "during the marriage bond, it is ratified by a marriage registrar or notary". There are two new norms added through this article, namely as follows: First, Constitutional Court Decision Number 69/PUU-XIII/2015. The Constitutional Court provides an opportunity for married couples to make a marriage agreement after the marriage has taken place. This will certainly provide benefits for Indonesian citizens who have mixed marriages, namely that these Indonesian citizens have the opportunity to have Ownership Rights and Building Use Rights for land or buildings in Indonesia. Making a marriage agreement can be done at any time when both parties (husband and wife) agree to enter into a marriage agreement. This is to accommodate the needs of married couples that arise after the marriage takes place. Second, Constitutional Court Decision Number 69/PUU-XIII/2015 provides new authority for notaries to ratify marriage agreements that are not even listed in the Notary Law.
- b) Article 29 paragraph (3) of Law Number 1 of 1974 concerning Marriage has the addition of the phrase "unless otherwise stipulated in the Marriage Agreement". This change means that if both parties do not determine the time for the marriage agreement to come into effect, then the marriage agreement will be effective from the time the marriage takes place. The problem is that it will be difficult to determine the status of the husband and wife's property, which has become joint property, and will then change its status to personal property after the marriage agreement is made during the marriage. This will be more complicated because determining the new status of property related to the separation and division of property requires a court decision.
- c) Article 29 paragraph (4) of Law Number 1 of 1974 concerning Marriage has the addition of the phrase "an agreement cannot be changed or revoked, unless both parties have an agreement to change or revoke it, and the change or revocation does not harm a third party." Constitutional Court Decision Number 69/PUU-XIII/2015 provides a new opportunity for married couples who have made a marriage agreement to revoke the marriage agreement. The condition for revoking the marriage agreement is that there must be an agreement between both parties to revoke it, and the revocation will not harm a third party.

Flexibility of Joint Property Regulation in Indonesia in Exceeding the Marriage Agreement

In family functioning theory, it refers to how family members as a whole communicate with each other, relate to each other, maintain relationships, and make decisions and solve problems together. Family function can also be seen as a multidimensional concept that describes the interactions between family members who collectively achieve the family's goals (Roman et al., 2016). Furthermore, family functioning must also be the foundation and guide for every family to achieve prosperity and quality family life. Furthermore, family functions must be carried out well by each family member to achieve success and happiness. When a family functions well, every problem can be resolved effectively due to effective interaction and communication, as well as mutual support among family members, making it easier to face any challenges that arise (Maulina & Amalia, 2019). If parents carry out family functions well, it will undoubtedly impact other family members, including the behavior of children and adolescents (Alfitri et al., 2024).

Stewart and Jr. explain that family function is often defined in various ways, such as affection, communication, self-acceptance, problem-solving, family characteristics, social support, adaptability, time spent together, expressiveness, resentment, and caring among family members, morality and religiosity within the family, and family climate (Stewart & Ware, 1992). According to Openshaw, effective family functioning involves treating all members well. For example, if a family member experiences traumatic stress, the family can help and guide them toward a more positive life. Therefore, family function essentially refers to the quality of interactions between family members (Openshaw, 2011).

Jamaluddin Athiyyah added the types of *maqasid* in the sharia debate from five to twenty-four, which were then categorized into dimensions: the objectives of the *maqasid sharia* in the family context encompass seven important points. Regulate the relationship between men and women ('Aṭīya, 1422H). He explains that sharia has established clear rules for this relationship because of the rights and responsibilities that every individual must uphold. It includes guidelines regarding marriage, polygamy, divorce in certain situations, and prohibitions on relationships outside marriage, such as extramarital affairs, to maintain positive relationships in accordance with sharia ('Aṭīya, 1422H). He states that sharia supports the continuity of generations, which is part of the *sunnatullah* (the law of nature) through the creation of man and woman. Therefore, anything that hinders regeneration, such as homosexuality, infanticide, abortion, and contraception without the consent of the spouse, is prohibited ('Aṭīya, 1422H). Achieving *sakinah* (peace and blessings of Allah), *mawaddah* (love), and *rahmah* (mercy). The primary goal of the family is the creation of peace, which is realized through positive interactions in daily life (Taufiqurohman & Fauziah, 2023).

Maintain the family tree (*hifdẓ nashb*), this is manifested through the prohibition of adultery, which can damage the clarity of offspring, the prohibition on considering adopted children as biological children, the provisions on custody, the prohibition on hiding pregnancies, and refusing recognition of offspring (Auda, 2008). Maintaining religious aspects in the family (*hifdẓ tadayyun fi usrah*), this goal includes freedom to choose religion, education about faith, worship, and morals, as well as respect for people who carry out religious obligations, so that families can avoid evil in this world and the hereafter (Ashur, 2006).

Figure 1. Conceptual Framework of Maqasid al-Usrah in Postnuptial Agreements



As illustrated in Figure 1, the integration of Constitutional Court Decision No. 69/PUU-XIII/2015 into the Indonesian Islamic family law discourse can be systematically mapped through three interdependent pillars of Maqashid al-Usrah:

1. **Wealth Protection (*Hifzh al-Mal*):** In classical Islamic jurisprudence, marriage does not automatically merge the assets of husband and wife; absolute financial autonomy is retained by each individual (Zuhaily, 1989). The previous rigidity of Indonesian law, which forced automatic joint property (*harta bersama*) in the absence of a prenuptial agreement, structurally violated this principle for citizens in mixed marriages (Mujiburohman et al., 2023). Validating postnuptial agreements, the Constitutional Court restored the Shariah ideal of *Hifzh al-Mal*, safeguarding the Indonesian spouse's individual right to own property and protecting their hard-earned assets from foreign legal entanglements or arbitrary forfeiture.
2. **Systemic Justice and Harm Removal (*Al-'Adalah & La Dharar wa La Dhirar*):** the second pillar addresses the legal maxim that "harm must be eliminated" (*al-dharar yuzal*) (al-Suyuthi, 1983). In *Ike Farida's* case, the developer's unilateral cancellation of the apartment purchase contract represents a form of structural injustice (*dhalm*) enabled by statutory loopholes. The developer exploited the strict provisions of the UUPA and the 1974 Marriage Law to justify what essentially amounts to unjust enrichment. The introduction of postnuptial agreements serves as a dynamic legal remedy that eliminates this discriminatory dichotomy, ensuring that third-party corporate entities can no longer weaponize marital status to infringe upon a citizen's basic economic rights (Busari, 2024).
3. **Realization of Family Stability (*Sakinah*):** The ultimate teleological objective (*maqсад*) of family law is the preservation of domestic tranquility (*sakinah*). Financial precarity and structural legal vulnerabilities are empirical catalysts for domestic friction and marital breakdown. When a family is constantly threatened by the potential loss of their home or real estate investments due to rigid state bureaucracy, psychological peace is compromised (Shuid & Mohd Zamin, 2018). The postnuptial agreement mitigates this financial stress-induced friction, transforming the marital bond into a space of safety, equity, and predictable legal certainty.

The regulation of basic rights within the family. This includes the rights and obligations of husband, wife, parents, children, and relations between relatives to maintain harmony within the family, and the regulation of the family economy. This objective is reflected in provisions regarding dowries, maintenance for wives, children, and ex-wives, as well as rights such as inheritance, wills, and waqf, to maintain the family's economic well-being. In these seven theories, Jamaluddin 'Athiyyah can formulate various complex problems arising from family issues. He also has fundamental concepts. He believes that the family is the most important foundation of society. He emphasizes the importance of building strong and harmonious families to create a prosperous society. He believes that children's education is crucial to creating an intelligent and noble generation. He emphasizes the importance of balanced education

between science and religion. He believes that the balance between rights and obligations is crucial in the family ('Aṭīya, 1422H).

The existence of a marriage agreement after the marriage between husband and wife is carried out, apparently, does not violate the general principles of agreements contained in Article 1320 of the Civil Code regarding the valid conditions of an agreement. Furthermore, from the perspective of family functioning and Maqasid Al-Usrah, the marriage agreement after the Constitutional Court Decision Number 69/PUU-XIII/2015 provides legal certainty between husband and wife, because it can minimize the occurrence of conflicts related to property that may later arise in their marriage. Having a prenuptial agreement between a husband and wife after marriage also eliminates legal ambiguity regarding the rights and obligations of each other (Saraçi & Himçi, 2025). It also clarifies the division of marital assets and clarifies the share of property that falls to each spouse (Oktaber, 2023).

Conclusion

The existence of a prenuptial agreement after the marriage between husband and wife is carried out, apparently, does not violate the general principles of agreements contained in Article 1320 of the Civil Code regarding the valid conditions of an agreement. Furthermore, from the perspective of family functioning and Maqasid Al-Usrah, the prenuptial agreement after the Constitutional Court Decision Number 69/PUU-XIII/2015 provides legal certainty between husband and wife, because it can minimize the occurrence of conflicts related to property that may later arise in their marriage. The existence of a prenuptial agreement after marriage between husband and wife also eliminates legal ambiguity related to the rights and obligations between husband and wife. It also clarifies the division of property in marriage. And can clarify the portion of the property that belongs to the husband and wife.

Declaration of AI and AI-Assisted Technologies

During the preparation of this work, Muhammad Ainusyifa'Mif used GeminiAI to vizualization.

CRedit Authorship Contribution Statement

- a. Maftukhin: Conceptualization, Data Curation, Formal Analysis, Investigation, Writing – Original Draft.
- b. Muhammad Ainusyifa'Mif: Supervision, Methodology, Vizualization, Translation, Resources, Writing – Review & Editing.

Declaration of Competing Interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

Data Availability Statement

Data supporting the findings of this study are available upon reasonable request from the corresponding author at maftukhinali02@gmail.com.

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The authors confirm that this study adheres to ethical research standards.

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