



Between Contractual Freedom and Legal Certainty: The Retroactive Application of Postnuptial Agreements and Its Implications for Marital Property Rights

Nur Hayati¹, Hamzah², Kasmawati³
Doctoral Student¹, Professor², University Lecturer³
Lampung University

Abstract

The recognition of postnuptial agreements in Indonesian family law following Constitutional Court Decision Number 69/PUU-XIII/2015 has introduced greater contractual flexibility for spouses in regulating marital property relations. However, the possibility of applying postnuptial agreements retroactively raises significant legal concerns regarding legal certainty and the protection of marital property rights. Retroactive operation may alter ownership structures that have already acquired legal consequences and potentially affect rights and expectations that emerged before the agreement was concluded. This issue demonstrates a normative tension between the principle of freedom of contract and the doctrine of legal certainty, particularly in determining the permissible temporal effect of postnuptial agreements within marital property law.

This study employs normative legal research using statutory, conceptual, case, and comparative approaches. Legal materials consist of primary, secondary, and tertiary legal sources analyzed through qualitative legal interpretation and doctrinal reasoning. The findings indicate that although postnuptial agreements are legally recognized, retroactive application should not be presumed as an automatic consequence of contractual autonomy. Retroactivity may only be justified under limited circumstances and must remain compatible with legal certainty, proportionality, protection of vested rights, and third-party interests. Accordingly, this study proposes a normative framework in which retroactive postnuptial agreements operate primarily within internal spousal relations without impairing previously established legal consequences concerning marital property rights.

Keywords: postnuptial agreement; retroactive effect; legal certainty; marital property rights; freedom of contract.

Received 22 May., 2026; Revised 28 May., 2026; Accepted 02 June., 2026 © The author(s) 2026.

Published with open access at www.questjournals.org

I. Background

The development of contemporary family law demonstrates a significant shift in understanding marriage not solely as a personal and social institution but also as a legal relationship producing economic consequences. Marriage establishes legal rights and obligations that extend beyond interpersonal relations and include ownership structures, asset administration, inheritance, contractual capacity, and legal interactions with third parties. Within this evolving legal framework, marital agreements have increasingly become important legal instruments that enable spouses to regulate economic arrangements according to their individual circumstances. Traditionally, such agreements were associated with prenuptial arrangements concluded before marriage; however, legal developments in various jurisdictions have gradually recognized postnuptial agreements as legitimate instruments executed during marriage.¹

The increasing recognition of postnuptial agreements reflects broader legal transformations emphasizing private autonomy and contractual freedom. In modern legal systems, spouses are increasingly granted flexibility to determine the structure and management of marital assets in response to changing social

¹ June Carbone & Naomi Cahn, *Marriage Markets: How Inequality is Remaking the American Family* (Oxford University Press 2014), pp. 118–121.

and economic conditions. Such developments correspond with the principle of freedom of contract, which recognizes the authority of individuals to arrange legal relationships voluntarily.² Nevertheless, unlike prenuptial agreements, postnuptial agreements raise distinctive legal concerns because they operate within legal relationships that have already generated rights, obligations, and legitimate expectations.

One of the most controversial issues concerns the possibility of retroactive application of postnuptial agreements. Retroactivity allows legal consequences established through an agreement to affect legal circumstances existing before the agreement was concluded. Within marital property law, retroactive application creates significant legal implications because property accumulated during marriage may already possess a legally determined status under applicable matrimonial property regimes. Consequently, retroactivity potentially alters previously established ownership structures and affects legal interests that emerged before the agreement itself.³

From a normative legal perspective, retroactive postnuptial agreements create tension between two foundational legal principles: freedom of contract and legal certainty. Freedom of contract supports the ability of spouses to determine the contents and legal consequences of agreements according to their mutual consent. Conversely, legal certainty requires legal rules and legal consequences to remain predictable, stable, and foreseeable.⁴ These principles do not necessarily operate harmoniously. Excessive contractual flexibility may weaken legal predictability, whereas rigid adherence to certainty may limit the adaptive function of marital agreements.

This normative tension becomes increasingly relevant because marital property arrangements generate legal consequences not only for spouses but also for third parties. Creditors, commercial actors, heirs, and other legal subjects frequently rely upon the legal status of marital assets when conducting transactions or asserting rights. The retroactive modification of marital property through postnuptial agreements therefore raises questions regarding protection of acquired rights and legitimate expectations. Without clear legal limitations, retroactive agreements may create uncertainty concerning ownership status and enforceability of legal relationships previously considered settled.⁵

Within Indonesian family law, the issue gained substantial importance following Constitutional Court Decision Number 69/PUU-XIII/2015, which expanded legal recognition of marital agreements by permitting agreements during marriage. This decision represented an important development in strengthening contractual autonomy within family law. However, although judicial interpretation recognized the permissibility of postnuptial agreements, uncertainty remains regarding the temporal scope of such agreements and whether retroactive legal consequences may be justified under existing legal principles.⁶

Normatively, the current legal framework presents at least three unresolved legal issues. First, there is uncertainty regarding whether postnuptial agreements may alter the legal status of marital property acquired before execution of the agreement (vague norm). Second, legal rules remain unclear concerning the protection of third-party rights affected by retroactive arrangements (normative vacuum). Third, there appears to be tension between judicial expansion of contractual autonomy and the doctrine of legal certainty embedded within the rule of law (norm conflict). These unresolved issues indicate that recognition of postnuptial agreements does not automatically establish clear standards concerning their retroactive operation.

Existing legal scholarship has primarily focused on the validity and enforceability of postnuptial agreements as instruments of marital autonomy. Previous studies generally examine contractual freedom, asset separation, and formal requirements of marital agreements. However, limited scholarly attention has been devoted to examining retroactive postnuptial agreements specifically through the doctrinal perspective of legal certainty and their implications for marital property rights. Existing discussions also tend to analyze contractual autonomy independently from protection of established legal expectations and acquired rights.⁷ Accordingly, a normative gap remains regarding the conceptual boundaries of retroactivity in marital agreements.

Comparatively, several jurisdictions recognize marital agreements while imposing legal limitations designed to preserve legal certainty and protect vested rights. Such restrictions include limitations against prejudice to creditors, procedural safeguards, and prospective application of legal effects. Comparative developments demonstrate that contractual freedom within family law is not absolute but must operate within

² Ewan McKendrick, *Contract Law: Text, Cases, and Materials*, 9th ed. (Oxford University Press 2020), pp. 223–230.

³ Roscoe Pound, *An Introduction to the Philosophy of Law* (Yale University Press 1922), pp. 102–106.

⁴ Lon L. Fuller, *The Morality of Law*, revised ed. (Yale University Press 1969), pp. 39–41.

⁵ Joseph Raz, *The Authority of Law: Essays on Law and Morality*, 2nd ed. (Oxford University Press 2009), pp. 214–218.

⁶ Constitutional Court of the Republic of Indonesia, Decision No. 69/PUU-XIII/2015 concerning Judicial Review of Article 29 of Law No. 1 of 1974 on Marriage.

⁷ John Eekelaar, *Family Law and Personal Life* (Oxford University Press 2006), pp. 133–145.pgc

legal principles that maintain coherence and predictability of legal relations.⁸ This comparative tendency suggests the importance of constructing a legal framework capable of balancing contractual autonomy and legal certainty.

This article departs from the argument that the current legal discourse has not adequately conceptualized the relationship between retroactive postnuptial agreements and legal certainty in marital property law. Therefore, this study employs normative legal research using statutory, conceptual, and comparative approaches to examine the legal legitimacy of retroactive postnuptial agreements and evaluate their implications for marital property rights. The novelty of this research lies in developing a doctrinal framework that integrates contractual freedom with legal certainty in determining the permissible temporal effect of postnuptial agreements. Accordingly, this article aims to: (1) analyze the compatibility of retroactive postnuptial agreements with the principle of legal certainty; and (2) formulate normative limitations for protecting marital property rights and third-party interests.

II. Research Method

This study employs normative legal research to examine the legal legitimacy and implications of retroactive postnuptial agreements within marital property law. Normative legal research is selected because the object of analysis concerns legal norms, legal doctrines, statutory provisions, and judicial interpretation rather than empirical social phenomena.⁹ This study adopts four legal approaches: the statutory approach, conceptual approach, case approach, and comparative approach. The statutory approach is applied to analyze legal instruments governing marital agreements, particularly Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019 and Article 1338 of the Indonesian Civil Code. The conceptual approach is employed to examine legal doctrines concerning freedom of contract, legal certainty, vested rights, and legitimate expectations. The case approach is utilized through analysis of Constitutional Court Decision Number 69/PUU-XIII/2015 concerning judicial review of Article 29 of the Marriage Law, while the comparative approach supports evaluation of legal developments concerning marital agreements in other jurisdictions.¹⁰

The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include legislation and judicial decisions relevant to marital agreements and marital property arrangements. Secondary legal materials comprise legal doctrines, scholarly books, peer-reviewed journal articles, and academic commentaries relating to family law, contract law, and legal certainty. Meanwhile, tertiary legal materials include legal dictionaries and supporting legal references. Legal materials are collected through library research and analyzed using qualitative legal analysis through legal interpretation and doctrinal reasoning.¹¹ The analysis aims to identify normative inconsistencies, assess the compatibility of retroactive postnuptial agreements with the principle of legal certainty, and formulate normative limitations designed to protect marital property rights and third-party interests.¹²

III. Discussion

A. The Legitimacy of Retroactive Postnuptial Agreements under the Principle of Legal Certainty

The recognition of postnuptial agreements constitutes one of the most significant developments in contemporary family law. Traditionally, marital property arrangements were established at the commencement of marriage and remained relatively fixed throughout the marital relationship. This approach was intended to ensure legal stability and predictability regarding the economic consequences of marriage. However, social and economic transformation has encouraged legal systems to provide greater flexibility for spouses to regulate their property relations according to changing personal and financial circumstances.¹³ Within this development, postnuptial agreements emerge as instruments intended to preserve private autonomy while adapting legal arrangements to contemporary family realities.

In Indonesian law, marital agreements are regulated principally through Article 29 of Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019. Historically, Article 29 was interpreted

⁸ Katharina Boele-Woelki et al., *Principles of European Family Law Regarding Property Relations Between Spouses* (Intersentia 2013), pp. 67–74.

⁹ Peter Mahmud Marzuki, *Penelitian Hukum*, revised ed. (Kencana 2021), pp. 55–60.

¹⁰ Johnny Ibrahim, *Theory and Methodology of Normative Legal Research* (Bayumedia Publishing 2006), pp. 300–320.

¹¹ Terry Hutchinson, *Researching and Writing in Law*, 4th ed. (Lawbook Co. 2018), pp. 9–16.

¹² Soerjono Soekanto & Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, revised ed. (Rajawali Pers 2015), pp. 13–15.

¹³ June Carbone & Naomi Cahn, *Marriage Markets: How Inequality is Remaking the American Family* (Oxford University Press 2014), pp. 118–121.

restrictively because marital agreements were understood as agreements concluded before or at the time of marriage. Such interpretation reflected the classical structure of marital property law in which certainty regarding ownership and asset status was established from the beginning of the marital relationship.¹⁴ Consequently, spouses who wished to reorganize their financial arrangements after marriage encountered legal limitations despite changing economic needs.

This restrictive understanding was substantially altered by Constitutional Court Decision Number 69/PUU-XIII/2015. Through this decision, the Constitutional Court expanded the interpretation of Article 29 by recognizing the legality of marital agreements concluded during marriage. The Court reasoned that limiting marital agreements exclusively to the pre-marital stage could interfere with constitutional guarantees relating to equality before the law and individual freedom to determine legal relations.¹⁵ As a result, Indonesian family law moved toward stronger recognition of contractual autonomy within marriage.

Nevertheless, recognition of postnuptial agreements does not automatically resolve the question of retroactive legal consequences. The Constitutional Court did not explicitly determine whether agreements executed during marriage may alter legal consequences that had already arisen before the agreement existed. Therefore, the normative problem does not concern the legality of postnuptial agreements themselves, but rather whether retroactive operation remains compatible with legal certainty and established property rights.

This issue requires interpretation through a normative legal method. Under the statutory approach (statute approach), Article 29 of the Marriage Law must be interpreted systematically alongside Article 35 of the same law and Article 1338 paragraph (1) of the Indonesian Civil Code. Article 35 establishes that assets acquired during marriage generally become joint marital property, whereas Article 1338 recognizes contractual freedom and the binding force of agreements.¹⁶ Read together, these provisions demonstrate that contractual autonomy exists but does not operate independently from legal consequences already attached to marital property.

Under systematic interpretation, Article 29 cannot be understood as creating unlimited authority to redefine legal ownership retrospectively. If such interpretation were accepted, Article 35 concerning the legal status of marital assets would become ineffective because spouses could continuously alter established ownership arrangements. Therefore, statutory interpretation suggests that recognition of postnuptial agreements should primarily operate prospectively unless legal justification exists for retrospective application.

Under the conceptual approach, retroactivity must be examined through the relationship between freedom of contract and legal certainty. Freedom of contract constitutes a central principle of private law that allows parties to define legal consequences through mutual consent.¹⁷ However, modern legal theory recognizes that contractual freedom is not absolute and remains subject to limitations derived from public order, fairness, and protection of legal expectations.

Legal certainty provides an important doctrinal limitation in this regard. According to Fuller, legality requires that legal consequences remain understandable and foreseeable so that individuals may orient their conduct accordingly.¹⁸ Raz similarly explains that the rule of law requires legal arrangements to possess sufficient predictability to guide social relations effectively.¹⁹ Applying these principles to marital agreements suggests that retroactive changes affecting already-existing legal consequences should be approached restrictively because retrospective modification may undermine reliance interests. From this perspective, retroactive postnuptial agreements reveal a conflict of norms within Indonesian family law.

Normative Source	Legal Position
Article 29 Marriage Law	Recognizes marital agreements
Article 35 Marriage Law	Establishes joint marital property
Article 1338 Civil Code	Protects contractual freedom
Doctrine of Legal Certainty	Protects predictability and stability

¹⁴ Law Number 1 of 1974 concerning Marriage, Article 29.

¹⁵ Constitutional Court of the Republic of Indonesia, Decision No. 69/PUU-XIII/2015.

¹⁶ Law Number 1 of 1974 concerning Marriage, Article 35; Indonesian Civil Code, Article 1338 paragraph (1).

¹⁷ Ewan McKendrick, *Contract Law: Text, Cases, and Materials*, 9th ed. (Oxford University Press 2020), pp. 223–230.

¹⁸ Lon L. Fuller, *The Morality of Law*, revised ed. (Yale University Press 1969), pp. 39–41.

¹⁹ Joseph Raz, *The Authority of Law: Essays on Law and Morality*, 2nd ed. (Oxford University Press 2009), pp. 214–218.

The normative challenge lies in reconciling these legal principles without eliminating the function of any of them. Excessive emphasis on contractual freedom risks weakening predictability of property arrangements, whereas excessive rigidity may undermine legitimate autonomy of spouses.

This conflict becomes clearer when examined through case interpretation (case approach) of Constitutional Court Decision Number 69/PUU-XIII/2015. The ratio decidendi of the Court focused primarily on expanding access to marital agreements and protecting constitutional rights of spouses to regulate property relations during marriage. However, the Court did not expressly authorize retrospective modification of legal consequences that had already become effective.²⁰ Therefore, interpreting the decision as automatic approval of retroactive operation exceeds the judicial reasoning contained within the judgment.

From a doctrinal perspective, the absence of explicit judicial authorization suggests that retroactivity should not be presumed. Rather, retroactive application should satisfy normative requirements ensuring compatibility with legal certainty. Accordingly, this study proposes a doctrinal legitimacy test for retroactive postnuptial agreements consisting of five cumulative requirements:

1. **Legality** – retroactive operation must not contradict statutory provisions;
2. **Predictability** – legal consequences must remain foreseeable;
3. **Protection of vested rights** – existing legal rights must remain protected;
4. **Proportionality** – retroactive effect must be limited to necessary circumstances;
5. **Third-party protection** – acquired rights of external parties must not be impaired.

This doctrinal framework allows retroactivity to be evaluated through objective legal criteria rather than solely through contractual consent.

At the same time, an opposing argument deserves consideration. Supporters of broad contractual autonomy may argue that spouses should possess unrestricted authority to reorganize their marital assets because marriage remains fundamentally a private relationship. Under this view, if both spouses voluntarily consent to retroactive arrangements, legal intervention should remain minimal.

However, such interpretation overlooks the institutional dimension of marriage and the broader legal consequences attached to marital property. Marriage creates legal expectations extending beyond spouses themselves. Property classification may affect creditors, inheritance rights, commercial relations, and judicial decisions. Consequently, unrestricted retroactivity transforms legal arrangements that third parties may have reasonably relied upon.²¹ Therefore, private consent alone cannot justify retrospective legal consequences.

Under the comparative approach, many legal systems recognize postnuptial agreements while imposing limitations intended to preserve legal certainty. European family law principles generally emphasize protection of acquired rights and legal reliability when determining temporal operation of marital agreements.²² Comparative developments indicate that contractual autonomy within family law should operate within a structured legal framework rather than unrestricted private discretion.

Accordingly, the legitimacy of retroactive postnuptial agreements should not derive exclusively from the existence of mutual consent between spouses. Instead, legitimacy depends upon compatibility with legal certainty, coherence of marital property rules, and protection of previously established rights. Recognition of postnuptial agreements through Constitutional Court Decision Number 69/PUU-XIII/2015 should therefore be interpreted as expanding contractual autonomy without automatically authorizing unrestricted retroactive legal effects.

Retroactive postnuptial agreements may be legally justified only under limited circumstances and should not be presumed as an inherent consequence of contractual freedom. The permissibility of retroactivity depends upon satisfying requirements of legality, predictability, proportionality, and protection of vested rights. Consequently, legal certainty remains the principal normative boundary governing the temporal effect of postnuptial agreements in marital property law.

B. Normative Implications of Retroactive Postnuptial Agreements on Marital Property Rights and Third-Party Protection

Having established in the previous discussion that retroactive postnuptial agreements cannot derive legitimacy solely from contractual consent and remain subject to the principle of legal certainty, the subsequent issue concerns the legal implications arising once retroactive operation is recognized. This discussion focuses specifically on how retroactive postnuptial agreements affect marital property rights and whether legal consequences produced before execution of the agreement may legitimately be altered. Unlike the previous

²⁰ Constitutional Court of the Republic of Indonesia, Decision No. 69/PUU-XIII/2015.

²¹ John Eekelaar, *Family Law and Personal Life* (Oxford University Press 2006), pp. 133–145.

²² Katharina Boele-Woelki et al., *Principles of European Family Law Regarding Property Relations Between Spouses* (Intersentia 2013), pp. 67–74.

section, which examined the legitimacy threshold of retroactivity, this section evaluates its normative consequences within marital property law.

Marital property occupies a distinct position within private law because ownership arrangements formed during marriage produce legal consequences extending beyond interpersonal relations. Marriage creates not merely contractual obligations between spouses but also an institutional legal regime governing ownership, administration, liability, and future distribution of assets.²³ Consequently, changes to marital property status cannot be treated as ordinary contractual modifications because they affect legal rights already attached to property relations.

Under Indonesian law, Article 35 paragraph (1) of Law Number 1 of 1974 concerning Marriage provides that property acquired during marriage becomes joint marital property.²⁴ The provision establishes the legal consequence that asset accumulation during marriage automatically enters the marital property regime unless otherwise determined by law or valid agreement. The doctrinal question therefore concerns whether Article 35 should be interpreted as a mandatory legal rule or merely as a default rule capable of retrospective modification.

From a normative legal perspective, Article 35 should be interpreted as establishing a presumptive legal regime rather than an immutable legal consequence. This interpretation follows the existence of Article 29 of the Marriage Law, which allows spouses to regulate property arrangements through marital agreements. However, interpreting Article 35 as a default rule does not imply unrestricted authority to alter property classification retrospectively. The legal consequence created under Article 35 possesses legal effect from the moment assets are acquired and therefore generates legal expectations that deserve protection.²⁵

This interpretation becomes increasingly important after Constitutional Court Decision Number 69/PUU-XIII/2015. The Constitutional Court expanded the possibility for spouses to conclude marital agreements during marriage and thereby strengthened contractual autonomy within family law. However, the ratio decidendi of the Court primarily concerned access to marital agreements and did not expressly authorize retroactive modification of ownership status already established under Article 35.²⁶ Consequently, judicial recognition of postnuptial agreements should not automatically be interpreted as authorization to transform previously accumulated joint assets into separate property without legal limitation.

To clarify the legal implications of retroactivity, the effect of postnuptial agreements on marital property may be illustrated normatively as follows:

Marital Property Status	Legal Position Before Postnuptial Agreement	Legal Position After Retroactive Agreement
Joint marital property	Assets acquired during marriage belong to marital regime	Potential reclassification subject to legal limitations
Separate property	Independently owned assets remain separate	No automatic change
Third-party rights	Protected based on existing legal status	Must remain protected
Legal certainty	Ownership status predictable	Cannot be impaired retroactively

The table demonstrates that retroactivity should not be understood as creating entirely new ownership rights. Rather, retroactive agreements attempt to reclassify legal status previously attached to property. This distinction is essential because legal reclassification differs fundamentally from creation of rights.

Accordingly, retroactive postnuptial agreements raise a doctrinal question regarding whether ownership status already recognized under law may subsequently be altered through private agreement. Property law theory generally treats ownership as a legal position possessing relative permanence because legal actors rely upon ownership structures when organizing transactions and expectations.²⁷ Therefore, retrospective reclassification should remain exceptional.

This issue becomes clearer when analyzed through the doctrine of vested rights. Vested rights refer to rights that have become legally established and therefore deserve protection against subsequent alteration.²⁸ Within marital property law, vested rights emerge not only internally between spouses but also externally toward parties relying upon ownership structures.

²³ John Eckelaar, *Family Law and Personal Life* (Oxford University Press 2006), pp. 133–145.

²⁴ Law Number 1 of 1974 concerning Marriage, Article 35 paragraph (1).

²⁵ Indonesian Civil Code, Article 1338 paragraph (1).

²⁶ Constitutional Court of the Republic of Indonesia, Decision No. 69/PUU-XIII/2015.

²⁷ Roscoe Pound, *An Introduction to the Philosophy of Law* (Yale University Press 1922), pp. 102–106.

²⁸ Joseph Raz, *The Authority of Law: Essays on Law and Morality*, 2nd ed. (Oxford University Press 2009), pp. 214–218.

The implications of retroactive agreements may therefore be divided into three legal dimensions.

(a) Internal Implications for Spousal Property Rights

Retroactivity may alter the internal economic relationship between spouses. Under ordinary marital property rules, spouses acquire collective interests over assets accumulated during marriage. Retroactive agreements may subsequently redefine these interests and convert previously joint assets into separate ownership.

Normatively, such reclassification should not be regarded as invalid merely because it affects existing property arrangements. However, legal legitimacy depends upon preserving predictability and preventing arbitrary transformation of ownership status. Therefore, retroactivity should function primarily as an instrument of internal reorganization rather than retrospective elimination of legal rights.

(b) External Implications for Third-Party Rights

Third-party protection constitutes the strongest normative limitation on retroactive operation.

Creditors, business partners, and contractual counterparties frequently rely upon marital property structures when making legal and economic decisions. If retroactive agreements are allowed to modify ownership retrospectively without restriction, legal reliability would become unstable.²⁹

From this perspective, postnuptial agreements should not possess retroactive effect against third parties whose rights emerged prior to registration or recognition of the agreement.

(c) Implications for Succession and Future Legal Relations

Marital property classification frequently affects inheritance structures and future asset distribution.

Retroactive reclassification introduced after years of marriage may alter expectations concerning succession and economic entitlement. Consequently, legal certainty requires limits preventing retrospective disruption of legal consequences that had already become attached to marital assets.

These implications demonstrate that retroactivity should not be assessed exclusively through consent-based reasoning. Family law differs from ordinary contract law because property arrangements produce institutional consequences extending beyond the immediate parties.

This conclusion supports application of the principle of legitimate expectations. Legitimate expectations arise when legal subjects reasonably organize conduct based upon existing legal arrangements.³⁰ Therefore, legal systems should avoid allowing retrospective arrangements that invalidate expectations previously protected by law.

Comparative legal developments demonstrate similar tendencies. European family law principles generally recognize contractual flexibility in marital agreements but impose safeguards designed to preserve certainty and acquired rights. Such safeguards include disclosure obligations, procedural requirements, and limitations against prejudice to creditors.³¹ Comparative developments indicate that contractual freedom remains subordinate to broader legal principles governing legal stability.

Based on these considerations, this study proposes a normative reconstruction model concerning retroactive postnuptial agreements:

Retroactive postnuptial agreements shall operate only within internal spousal relations and shall not modify legal consequences affecting vested rights, creditor interests, succession interests, or third-party rights existing prior to execution and registration of the agreement.

This reconstruction seeks to balance three objectives simultaneously:

1. preserving contractual autonomy;
2. maintaining legal certainty;
3. protecting established legal interests.

The proposed model also resolves the doctrinal tension identified in the previous section. Whereas Subchapter B.1 established that retroactivity requires normative legitimacy, the present discussion demonstrates that once legitimacy is recognized, legal implications must remain limited through protection of marital property rights and external legal interests.

An opposing argument may suggest that broader retroactivity better accommodates evolving family arrangements and economic realities. Nevertheless, unrestricted retroactivity risks transforming postnuptial agreements into instruments capable of restructuring already-established legal rights. Such an approach would exceed the constitutional rationale underlying Constitutional Court Decision Number 69/PUU-XIII/2015 and undermine the function of legal certainty within family law.

Retroactive postnuptial agreements affect not only contractual relations between spouses but also the legal structure governing marital property rights. Article 35 of the Marriage Law should therefore be interpreted as

²⁹ Ewan McKendrick, *Contract Law: Text, Cases, and Materials*, 9th ed. (Oxford University Press 2020), pp. 223–230.

³⁰ Lon L. Fuller, *The Morality of Law*, revised ed. (Yale University Press 1969), pp. 63–65.

³¹ Katharina Boele-Woelki et al., *Principles of European Family Law Regarding Property Relations Between Spouses* (Intersentia 2013), pp. 67–74.

creating a presumptive property regime that may be modified prospectively but not unrestrictedly retrospectively. Accordingly, retroactive operation should remain exceptional and limited to internal spousal arrangements while preserving protection of vested rights and third-party interests.

IV. Conclusion

The recognition of postnuptial agreements through Constitutional Court Decision Number 69/PUU-XIII/2015 represents an important development in Indonesian family law by expanding contractual autonomy within marital relations. Nevertheless, such recognition does not automatically justify retroactive legal consequences. This study demonstrates that retroactive postnuptial agreements create a normative tension between freedom of contract and the principle of legal certainty, particularly regarding the legal status of marital property acquired prior to the agreement. Through statutory, conceptual, case, and comparative approaches, this research finds that contractual autonomy in marital agreements remains subject to legal limitations intended to preserve predictability, stability, and protection of legal expectations.

Furthermore, this study concludes that retroactive postnuptial agreements should not operate as unrestricted mechanisms for reclassifying previously established marital property rights. Their legal legitimacy depends upon compliance with principles of legality, proportionality, protection of vested rights, and third-party interests. Accordingly, retroactive effect should remain exceptional and primarily limited to internal spousal relations without altering legal consequences that had arisen prior to execution and registration of the agreement. This approach provides a normative framework capable of balancing contractual freedom with legal certainty while maintaining coherence in the regulation of marital property rights.

References

- [1]. Boele-Woelki, Katharina et al., *Principles of European Family Law Regarding Property Relations Between Spouses* (Intersentia 2013).
- [2]. Carbone, June & Naomi Cahn, *Marriage Markets: How Inequality is Remaking the American Family* (Oxford University Press 2014).
- [3]. Constitutional Court of the Republic of Indonesia, *Decision No. 69/PUU-XIII/2015 concerning Judicial Review of Article 29 of Law No. 1 of 1974 on Marriage*.
- [4]. Eekelaar, John, *Family Law and Personal Life* (Oxford University Press 2006).
- [5]. Fuller, Lon L., *The Morality of Law*, revised ed. (Yale University Press 1969).
- [6]. Hutchinson, Terry, *Researching and Writing in Law*, 4th ed. (Lawbook Co. 2018).
- [7]. Ibrahim, Johnny, *Theory and Methodology of Normative Legal Research* (Bayumedia Publishing 2006).
- [8]. Indonesian Civil Code.
- [9]. Law Number 1 of 1974 concerning Marriage.
- [10]. Marzuki, Peter Mahmud, *Penelitian Hukum*, revised ed. (Kencana 2021).
- [11]. McKendrick, Ewan, *Contract Law: Text, Cases, and Materials*, 9th ed. (Oxford University Press 2020).
- [12]. Pound, Roscoe, *An Introduction to the Philosophy of Law* (Yale University Press 1922).
- [13]. Raz, Joseph, *The Authority of Law: Essays on Law and Morality*, 2nd ed. (Oxford University Press 2009).
- [14]. Soekanto, Soerjono & Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, revised ed. (Rajawali Pers 2015).