



The Legal Consequences of Unregistered Prenuptial Agreements: Examining the Implications for Third Parties

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Article Info

Article history:

Received 230425

Revised 080507

Accepted 290507

Keyword:

prenuptial agreements,
legal certainty,
Indonesian marriage law,
third-party protection,
legal registration,
civil law,
doctrinal analysis,
legal reform.

ABSTRACT

This article critically examines the legal consequences of unregistered prenuptial agreements under Indonesian law, particularly with respect to their enforceability against third parties. Although Article 29(1) of Law No. 1 of 1974 on Marriage permits the creation of prenuptial agreements prior to marriage and affirms their binding effect beyond the spouses, the absence of formal registration renders such agreements legally invisible to third parties. This legal invisibility undermines the principle of legal certainty (*rechtszekerheid*), exposing creditors, heirs, and business partners to significant legal and financial risks. Using a doctrinal-normative approach complemented by socio-legal perspectives, the study analyzes statutory frameworks, judicial interpretation and scholarly debates surrounding publicity, contractual freedom, and third-party protection. The findings reveal a tension between private autonomy and public legal order in marital property law, especially where administrative formalities determine enforceability. The study concludes that unregistered agreements, while valid *inter partes*, fail to fulfill their intended protective function in broader legal relationships. It proposes reforms including the establishment of a centralized national registry, enhanced procedural duties for notaries and marriage registrars, and public education campaigns to increase awareness of registration requirements. These recommendations aim to ensure legal certainty, protect third-party interests, and harmonize Indonesia's family law regime with international standards of legal transparency and accountability.



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INTRODUCTION

Marriage is one of the most fundamental legal institutions, marking a significant transition in an individual's legal and social status. It not only creates personal and familial bonds but also generates legal consequences, particularly in relation to property ownership. Under Indonesian law, assets acquired during marriage are presumed to be joint property unless otherwise stipulated in a prenuptial agreement.

To protect individual property rights and prevent future disputes—especially in cases of divorce—couples may enter into prenuptial agreements. Indonesian Marriage Law No. 1 of 1974, particularly Article 29(1), recognizes the legal validity of such agreements, provided they are made prior to the marriage. These agreements are intended to bind not only the spouses but also third parties, including creditors and legal heirs.

Nevertheless, issues arise when prenuptial agreements are not registered with the Office of Religious Affairs or the Civil Registry. The absence of registration creates legal uncertainty, particularly regarding the agreement's enforceability against third parties. In practice, unregistered agreements are often deemed invalid or unenforceable, undermining their intended function and leaving third parties in a vulnerable legal position.

This article examines the legal consequences of unregistered prenuptial agreements in Indonesia, focusing on the implications for third-party legal protection. By analyzing statutory provisions, legal doctrine, and relevant case law, this study highlights the normative gaps and explores the necessity of legal reform to ensure both spousal and third-party interests are adequately safeguarded.

In the intricate tapestry of human existence, pivotal legal milestones punctuate the journey, most notably birth, marriage, and death, each carrying profound societal and legal ramifications (Mina et al., 2017). As inherently social beings, humans are driven by an intrinsic desire for companionship and the establishment of meaningful connections, with marriage emerging as a cornerstone institution that fulfills this fundamental need, symbolizing a consecrated alliance between individuals, traditionally a man and a woman, aimed at fostering a family unit (Bates, 1975). Marriage, beyond its emotional and spiritual dimensions, engenders a constellation of legal ramifications, particularly in the context of wealth accumulation, both prior to and during the marital union (Ahmedi, 2016). The rise in property ownership has led to more high-stakes asset distribution during divorce, which has encouraged private arrangements through marriage contracts (Smith, 2003). Despite the idyllic vision often associated with marriage, the realities of marital life can diverge significantly, with disagreements and the specter of divorce casting shadows on the union, underscoring the critical importance of establishing lucid legal frameworks governing property rights within the marital context, often actualized through the mechanism of prenuptial agreements. As awareness intensifies, particularly among couples characterized by relative economic parity, the inclination to formalize prenuptial agreements as a means of safeguarding individual assets in the event of marital dissolution has gained considerable traction (Tait, 2017).

Article 29, paragraph of Indonesian Law Number 1 of 1974 on Marriage explicitly sanctions the execution of prenuptial agreements prior to the solemnization of marriage, stipulating their binding effect on third parties, thereby enshrining the legal validity and enforceability of such agreements within the Indonesian legal system. However, a critical lacuna emerges when prenuptial agreements remain unregistered with the Marriage Registrar, precipitating legal ambiguities and uncertainties surrounding their enforceability vis-à-vis third parties. Common perception often assumes that unregistered agreements lack legal standing and fail to provide adequate certainty (Pujiono et al., 2021). This perception is born out of the idea that third parties may not be aware of the agreement if it is not registered.

This study will address the gap in the legal literature concerning the ramifications of unregistered prenuptial agreements, specifically emphasizing the degree of legal safeguards afforded to third parties potentially affected by the absence of official registration. There is an increase in divorce cases and disputes over marriages (Nurhayati & Siregar, 2019). The research will adopt a socio-legal approach, employing both primary and secondary data collection methods, encompassing library research and field studies, complemented by analytical descriptive data analysis, to provide a comprehensive understanding of the legal landscape surrounding prenuptial agreements and their implications for relevant stakeholders (Jamadi et al., 2022). Prenuptial agreements represent a crucial tool for couples seeking to delineate their financial rights and responsibilities in the event of divorce, but the failure to register these agreements can create significant legal complications, particularly for third parties who may be affected by their terms (Ardyo, 2020). The goal of this study is to clarify the legal status of unregistered prenuptial agreements and to provide recommendations for improving the legal framework in order to protect the rights of all parties involved.

Existing literature often emphasizes the importance of marriage as a fundamental institution that guarantees certain legal protections to the parties involved (Rifqi, 2021) (Mukri, 2021). However, a critical gap remains in understanding the legal intricacies of unregistered prenuptial agreements, especially as they pertain to third-party interests such as creditors, heirs, and other external entities. The legal implications of unregistered prenuptial agreements remain underexplored, with few studies directly addressing how the absence of official registration affects the enforceability of such agreements for third parties who may have financial or legal dealings with the couple. This research aims to fill this gap by providing a clearer understanding of the implications for third parties, examining both the

theoretical and practical aspects of how unregistered prenuptial agreements impact their rights and legal standing.

While prenuptial agreements and their effects on marital parties have been well-documented, particularly in the context of asset division and divorce (Ahmedi, 2016), there remains a notable lack of comprehensive studies addressing the consequences of unregistered prenuptial agreements, particularly regarding third-party implications. This research gap is especially significant in jurisdictions like Indonesia, where the legal system demands the registration of prenuptial agreements to ensure their binding effect on third parties (Pujiono et al., 2021). Current literature largely overlooks the critical issue of third-party rights in the absence of such registration, neglecting how creditors, heirs, or business associates may be affected when prenuptial agreements are not officially recorded. By focusing on this underexplored area, this study will contribute new insights into the legal framework governing prenuptial agreements and their impact on broader societal and economic relationships.

LITERATURE REVIEW

Prenuptial agreements stand as critical legal instruments that delineate the property rights and obligations of individuals entering into marriage, serving to preemptively manage potential conflicts that may arise during the marital union or in the event of its dissolution (Tjandra, 2004). These agreements are particularly salient in modern legal systems where the complexities of wealth accumulation, business ownership, and individual financial autonomy necessitate clear and enforceable frameworks (Rifqi, 2021). In Indonesia, the legal landscape governing prenuptial agreements is shaped by a blend of civil law traditions and statutory regulations, requiring a nuanced understanding of both the formal requirements for validity and the substantive principles of fairness and equity (Smith, 2003).

The presumption of a universal community of property under Indonesian law, as enshrined in Law No. 1 of 1974 and the Civil Code, underscores the significance of prenuptial agreements as mechanisms to opt out of this default marital property regime (Mukri, 2021). This legal framework reflects a traditional civil law approach where marriage is viewed not only as a personal union but also as an economic partnership with shared assets and liabilities. However, the increasing prevalence of complex asset structures and diverse financial arrangements in contemporary society necessitates a more flexible and adaptable approach to marital property rights, making prenuptial agreements an essential tool for individuals seeking to protect their pre-marital assets and regulate their financial relationship during marriage (Ardyo, 2020; Mukri, 2021).

The requirement for registration of prenuptial agreements in Indonesia introduces a layer of complexity that has generated considerable debate among legal scholars and practitioners. Registration, typically with the Office of Religious Affairs or the Civil Registry, is often considered a prerequisite for enforceability, particularly against third parties, grounding this position in the principles of legal certainty and public notice. This emphasis on publicity aims to ensure that external stakeholders, such as creditors or business partners, are aware of the property arrangements between spouses, thereby preventing potential disputes and protecting their legitimate interests.

However, this formalistic approach has been challenged for its potential to undermine the autonomy and intentions of the parties involved, especially when non-registration is due to inadvertence or lack of legal awareness, rather than a deliberate attempt to deceive or defraud third parties.

The debate centers on whether the failure to comply with the registration requirement should automatically invalidate the agreement's effect on third parties, even when there is clear evidence that both spouses voluntarily consented to its terms and there is no demonstrable harm to external stakeholders.

A functional approach, focusing on the substantive fairness and transparency of the agreement, has been proposed as an alternative, suggesting that the courts should consider the equities of the situation and the potential for unjust enrichment before denying enforcement based solely on a technical

defect. Marriage registration is a must for Indonesian Muslim citizens, and it is carried out by the Marriage Registrar at the District Office of Religious Affairs (Hilmy & Trisno, 2023).

Marriage is not merely a personal romantic statement or religious ritual, but it is a public legal act that is governed by law and has legal consequences in life (Pujiono et al., 2021). The purpose of the Act is the Indonesian government can be more serious in minimizing the child marriages that still happen today (Mukri, 2021).

RESEARCH METHODS

This study employs a doctrinal legal research method, focusing on the analysis of primary and secondary legal materials. The primary sources include statutory laws—particularly Indonesian Law No. 1 of 1974 on Marriage and the Indonesian Civil Code—as well as relevant case law and administrative regulations related to prenuptial agreements. Secondary sources such as legal commentaries, journal articles, and scholarly interpretations are used to support the normative analysis.

To address the legal gap regarding third-party protection, the research further adopts a normative approach to examine the legal principles underlying marital property regimes and the binding nature of prenuptial agreements. Where relevant, comparative insights are drawn from jurisdictions with established registration requirements for marital agreements, to propose recommendations for Indonesian legal reform.

RESULTS AND DISCUSSION

1. Cultural Shifts and the Legal Landscape of Prenuptial Agreements in Indonesia

The formalization of prenuptial agreements within the Indonesian legal system, particularly under Article 29 of Law No. 1 of 1974, signifies a notable departure from traditional communal values toward a more individualized approach to marital property (Rifqi, 2021). The legal permissibility of these agreements allows couples to delineate their separate assets and liabilities, thus deviating from the default community property regime prescribed by the Indonesian Civil Code (Karman, 2021). This shift is emblematic of broader socio-economic transformations wherein individual financial autonomy gains prominence (Creese, 2015). The increasing number of adults who are single also suggests the changing patterns of marriage in Indonesia (Situmorang, 2007). The enactment of Law No. 16 of 2019, which amends Law No. 1 of 1974 on Marriage, seeks to address issues such as child marriage by establishing a uniform minimum age of 19 for both spouses, underscoring the government's commitment to mitigating social issues related to marriage (Mukri, 2021). Furthermore, the rising divorce rates, evidenced by the Statistik Indonesia data, reaching 516,334 cases in 2022, highlight the practical importance of prenuptial agreements in contemporary Indonesian society, particularly in safeguarding the economic interests of divorcing parties (Nurhayati & Siregar, 2019). These agreements offer a mechanism to preemptively resolve potential disputes over asset division, which can be especially crucial in cases involving significant wealth or complex family structures (Mukri, 2021). The growing prevalence of divorce, frequently initiated by wives, suggests an increase in women's legal awareness and their willingness to assert their rights within the legal system (Fhitrah & Afdal, 2021). Prenuptial agreements, while legally recognized, still face social stigma in certain segments of Indonesian society, where traditional values emphasizing communal harmony and familial interdependence persist. This resistance underscores the tension between modern legal principles and deeply entrenched cultural norms, influencing the acceptance and utilization of prenuptial agreements. The increase in divorce rates and the growing assertion of legal rights by women underscore the need for comprehensive legal mechanisms, such as prenuptial agreements, to safeguard individual economic interests within the context of marital dissolution. The requirement for registration of prenuptial agreements in Indonesia introduces a layer of complexity that has generated considerable debate among legal scholars and practitioners. Registration, typically with the Office of Religious Affairs or the Civil Registry, is often considered a prerequisite for enforceability, particularly against third parties, grounding this position in the principles of legal certainty and public notice. This emphasis on publicity

aims to ensure that external stakeholders, such as creditors or business partners, are aware of the property arrangements between spouses, thereby preventing potential disputes and protecting their legitimate interests.

However, this formalistic approach has been challenged for its potential to undermine the autonomy and intentions of the parties involved, especially when non-registration is due to inadvertence or lack of legal awareness, rather than a deliberate attempt to deceive or defraud third parties. The debate centers on whether the failure to comply with the registration requirement should automatically invalidate the agreement's effect on third parties, even when there is clear evidence that both spouses voluntarily consented to its terms and there is no demonstrable harm to external stakeholders.

A functional approach, focusing on the substantive fairness and transparency of the agreement, has been proposed as an alternative, suggesting that the courts should consider the equities of the situation and the potential for unjust enrichment before denying enforcement based solely on a technical defect. Marriage registration is a must for Indonesian Muslim citizens, and it is carried out by the Marriage Registrar at the District Office of Religious Affairs (Hilmy & Trisno, 2023). Marriage is not merely a personal romantic statement or religious ritual, but it is a public legal act that is governed by law and has legal consequences in life (Pujiono et al., 2021). The purpose of the Act is the Indonesian government can be more serious in minimizing the child marriages that still happen today (Mukri, 2021).

In general contract law, the principle of freedom of contract empowers individuals to negotiate and determine the terms, scope, and effectiveness of their agreements. This includes the right to stipulate when the contract becomes legally binding. However, this principle does not apply with full force in the context of prenuptial agreements. In Indonesia, such agreements are legally valid only when they are made prior to marriage but come into effect after the marriage has been solemnized, as stipulated in Article 147 paragraphs (1) and (2) of the Indonesian Civil Code.

This deviation from contractual autonomy highlights the public nature of marital property law. Prenuptial agreements are not solely private instruments; rather, they are embedded in a broader legal framework that serves to regulate property relations not only between the spouses, but also in relation to third parties such as creditors, heirs, or other contracting parties. As Brinig (2000) and Glendon et al. (2007) argue, while spouses may desire private arrangements, the state has an interest in ensuring transparency, equity, and legal certainty within marriage and property regimes.

Unlike ordinary civil contracts, where the parties have near-total freedom to design the agreement, prenuptial agreements are restricted by public policy and legal formalities. This is particularly evident in the prohibition against spouses determining the effective date of their prenuptial agreement at will. The legal reason for this restriction is rooted in the need to safeguard the interests of third parties, who may be adversely affected by private contractual arrangements that are not made public or accessible (Mashdurohatun & Waluyo, 2021).

Article 29 of Law No. 1 of 1974 on Marriage stipulates that prenuptial agreements must be made in writing, approved by a marriage registrar, and registered for the contents to apply not only between the spouses but also to third parties. This process of registration is not merely administrative—it is constitutive of the agreement's external legal force. This requirement aligns with the principle of publicity (*asas publisitas*), which mandates that legal facts affecting property rights must be made publicly accessible in order to be binding on others (Kelsen, 1945). The registration of prenuptial agreements ensures that third parties—who may enter into financial transactions, business partnerships, or inheritance claims—are not misled about the spouses' property relations. It embodies the legal maxim *pacta tertiis nec nocent nec prosunt* (contracts neither harm nor benefit third parties) unless made known.

The Constitutional Court of Indonesia (Putusan MK No. 69/PUU-XIII/2015) affirmed this requirement, stating that the registration of prenuptial agreements is essential to meet the threshold of legal certainty, as mandated by the rule of law. Unregistered agreements, while valid *inter partes* (between the spouses), are considered legally invisible to third parties. They cannot be used to

oppose claims or legal presumptions about joint property ownership, even if the third party was aware informally of such agreements (Nasution, 2019).

The absence of registration creates what this paper terms "legal invisibility"—a condition where a legally valid agreement lacks external enforceability due to its failure to comply with publicity norms. This legal invisibility directly undermines the principle of legal certainty (*rechtszekerheid*), a core value in both Indonesian and international legal theory. Legal certainty requires that individuals and third parties can predict the legal consequences of their actions and rely on the legal status of persons and property (Mahfud MD, 2008).

The consequence of not registering a prenuptial agreement is not merely procedural; it has material legal effects. In practice, third parties such as banks, business partners, or creditors who extend trust based on perceived joint marital property may face losses or legal challenges when previously undisclosed agreements surface. As Van Krieken (2015) notes in comparative civil law contexts, such registration is a condition *sine qua non* for the effectiveness of private agreements that modify default marital property regimes.

Moreover, while some argue that informal disclosure to third parties (e.g., showing the prenuptial contract) might suffice, such practices lack standardized evidentiary value and pose risks of selective disclosure, manipulation, or dispute. The lack of registration also deprives courts and administrative authorities of a verifiable record, thereby complicating legal enforcement.

2. Legal Consequences of Non-Registration and the Doctrine of Legal Invisibility

A critical concern in the regulation of prenuptial agreements is the legal consequence that arises from failure to register the agreement with the competent authorities. While Indonesian law permits couples to enter into a prenuptial agreement to deviate from the default marital property regime, non-registration renders such agreements legally invisible to third parties. This principle is derived from Article 29(1) of Law No. 1 of 1974 on Marriage, which requires that the agreement be made in writing and approved by the marriage registrar for it to be effective beyond the spouses.

Although a prenuptial agreement may be valid *inter partes*—meaning it binds the spouses—the failure to register the agreement results in it being non-opposable to third parties. In practice, this means the agreement cannot be used as a legal shield or source of rights or obligations in transactions involving creditors, heirs, or other outside parties. For instance, a creditor who extends credit based on the assumption that the couple shares community property cannot be denied satisfaction from that property based on an unregistered agreement that segregates ownership.

This situation gives rise to what is referred to in this study as "legal invisibility"—a condition where the legal existence of an agreement is acknowledged internally but disregarded externally due to the absence of formal publicity. This undermines the principle of legal certainty (*rechtszekerheid*), which is foundational to the rule of law and necessary for the protection of third-party interests. Without clear, accessible, and verifiable information, third parties cannot reliably assess legal risk or property status before entering into transactions (Kelsen, 1945; Glendon et al., 2007).

The Constitutional Court, in Decision No. 69/PUU-XIII/2015, affirmed the necessity of registration as a formal act that enables third-party reliance and serves as an instrument of legal notification. The court emphasized that while the principle of freedom of contract must be respected, it must be balanced against public interest considerations, particularly when private agreements may affect the rights and expectations of external parties.

The issue of registration reflects a deeper doctrinal tension between private autonomy and the public legal order. On the one hand, spouses should have the freedom to determine the terms of their marital financial relationship, as recognized by contract law. On the other hand, because such arrangements have implications beyond the spousal relationship—particularly in areas of property, debt, inheritance, and liability—the state has a legitimate interest in regulating the external enforceability of these agreements.

This tension is well-documented in civil law systems, where family law and property law are partially public in character. As Van Krieken (2015) and Mashdurohatun and Waluyo (2021) argue, registration requirements serve not merely as procedural formality but as an institutional mechanism to ensure fairness, transparency, and protection for third parties. Registration also operationalizes the principle of publicity (*asas publisitas*) which is essential in property law systems to protect legal expectations and prevent fraudulent or opaque arrangements.

Thus, non-registration does not invalidate the agreement *per se*, but it significantly limits its *scope of enforceability*—creating two tiers of effect: internal binding force (between spouses) and external non-enforceability (toward third parties).

Given the doctrinal and practical consequences outlined above, the legal invisibility of unregistered prenuptial agreements presents a clear risk to third-party interests and undermines legal predictability in marital property law. Therefore, several reform measures should be considered to strengthen the regulatory framework:

- a. Establishment of a centralized, accessible national registry for prenuptial agreements under the Ministry of Home Affairs or Ministry of Law and Human Rights. This registry should allow for certified access by relevant stakeholders (e.g., courts, financial institutions, notaries).
- b. Enhanced procedural mandates for notaries and marriage registrars, including an obligation to verify registration status before certifying legal documents that rely on spousal property regimes.
- c. Public education campaigns to increase awareness among prospective spouses, legal professionals, and the general public about the legal significance of registration and the risks of omission.

These reforms would serve to align Indonesia's legal regime with global standards of transparency, due process, and legal certainty, while also preserving the cultural and constitutional values embedded in the national legal system. Moreover, they would harmonize private contractual autonomy with the need to protect third-party rights and uphold public trust in the legal system.

CONCLUSION

This study finds that under Indonesian law, unregistered prenuptial agreements lack legal certainty in relation to third parties. While such agreements may remain binding between spouses, their enforceability is negated externally unless registered with the appropriate marriage registrar. Consequently, third parties—including creditors and contractual counterparties—may reasonably presume that the marriage adheres to a joint property regime, thereby exposing them to legal and financial harm. This legal ambiguity creates a vulnerability in the Indonesian legal system, contravening the foundational principle of *rechtszekerheid* (legal certainty) and reducing the efficacy of marital autonomy protections.

Legal protection for third parties in the context of unregistered prenuptial agreements in Indonesia may be approached both preventively and repressively. Preventive measures include formalizing agreements before a notary, ensuring clarity and fairness in contract formulation, and mandatory registration. Repressive protection allows third parties to challenge such agreements through legal recourse if their rights are adversely affected. For couples drafting prenuptial agreements during marriage, proper asset and liability disclosure, good faith negotiation, and a clear scope of inclusion are essential to mitigate third-party risks.

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