

## Newsletter

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# Asset Protection Starts Before 'I Do' – and After: Getting Nuptial Agreements Right in Indonesia



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## Introduction

Under Indonesian law, assets within a marriage fall into two categories: joint property (assets acquired during the marriage) and personal property (assets owned prior to the marriage or acquired by way of gift or inheritance). Absent a valid nuptial agreement, all assets acquired during the marriage form part of the joint property pool—divisible between the spouses on divorce and potentially exposed to claims by creditors and other third parties during the marriage.

Indonesian law allows spouses to vary this default regime through a nuptial agreement, entered into either before or at the time of marriage (prenuptial) or, since the Constitutional Court's decision in 2015, during the course of the marriage (postnuptial). However, execution alone does not guarantee protection: as recent court decisions illustrate, both the substance of the agreement and strict compliance with formal requirements (including registration) are critical to enforceability.

This newsletter outlines the legal framework for nuptial agreements in Indonesia and reviews recent judicial decisions, domestic and cross-border, that highlight the limits of these instruments as an asset protection tool.

## I. Getting Nuptial Agreements Right

Under Indonesian law, a nuptial agreement is a written agreement between spouses that governs their marital property regime, including the separation or commingling of assets, as well as the allocation of rights and obligations between them.

In practice, the effectiveness of a nuptial agreement turns on two key elements. Substantively, it must be clearly and systematically drafted so to accurately reflect the parties' intentions. Formally, it must comply with applicable legal requirements, including proper execution and registration, to ensure enforceability.

A nuptial agreement may, among other things, regulate:

1. separation of assets (joint and personal property);
2. allocation of liabilities between the spouses;
3. management and control of each spouse's assets and income; and
4. financial arrangements during the marriage (e.g., household expenses and children's education).

Where properly drafted and implemented, a nuptial agreement can be relied upon. For example:

- *Foreign-executed nuptial agreements may be recognized.* In Decision [No. 2234 K/Pdt/2021](#), the Supreme Court of the Republic of Indonesia (**SCRI**) reversed the appellate court decision and upheld the first-instance court's decision that a nuptial agreement entered into in Italy was enforceable in Indonesia. As a result, Indonesian properties registered under one spouse's name were excluded from joint property; and
- *Properly executed agreements separate assets during marriage.* In Decision [No. 155/Pdt.G/2016/PN.JKT.BRT](#), the West Jakarta District Court upheld that a validly entered nuptial agreement effectively separated the couple's assets during the marriage.

From a formal standpoint, a nuptial agreement must be executed before a notary in the form of a notarial deed and registered with the relevant authority. Prior to the [Constitutional Court Decision 69/2015](#) which was issued in October 2016 (**CC Decision 69/2015**), only prenuptial agreements were recognized, provided that they had been registered with the relevant authority(ies). After CC Decision 69/2015, both prenuptial and postnuptial agreements are possible and registrations must be made with the Office of Religious Affairs (*Kantor Urusan Agama*, **KUA**) or the Civil Registry Office (*Catatan Sipil*, **KCS**), as relevant.

## II. When Nuptial Agreements Fail: Recent Judicial Approaches

The Indonesian judiciary places equal importance on form and substance in assessing the validity and enforceability of nuptial agreements. Recent decisions illustrate three examples why nuptial agreements may fail: defective formalities, commingled assets, and cross-border jurisdictional gaps.

- *Defective formalities.* Where a prenuptial agreement executed in 1974 was not properly registered, and a wife subsequently gave consent in loan documentation that were inconsistent with the asset separation regime, the court treated the agreement as invalid and unenforceable; her petition to exclude assets registered in her name from her husband's bankruptcy estate was refused (SCRI Decision [No. 894 K/Pdt.Sus-Pailit/2019](#));
- *Commingled assets.* A nuptial agreement, properly entered into and registered, does not automatically prevent assets registered in one spouse's name from being subject to seizure in a criminal case: in Jakarta High Court Decision [No. 1/PID.SUS-TPK/2025/PT DKI](#) (and the SCRI rejecting the subsequent appeal), a wife's assets were seized in the corruption proceedings against her husband; and
- *Cross-border jurisdictional gaps.* A foreign court may exercise jurisdiction over marital assets located in that jurisdiction despite an Indonesian prenuptial agreement: in [\[2019\] SGCA 54](#), the Singapore Court of Appeal allowed a wife divorced in Indonesia to seek financial relief in Singapore over property situated in Singapore where she and her former husband were joint tenants.

### Key Takeaways

While a nuptial agreement can be an effective tool to preserve and manage spousal assets, recent decisions confirm that enforceability and the scope of protection turn on three factors: substance (clear, well-drafted terms), form (proper execution and registration with the relevant authority), and implementation (consistent treatment of assets and source-of-funds documentation in practice).

For families with cross-border exposure, an Indonesian nuptial agreement may not be the end of the analysis: foreign courts can entertain claims over assets located in their jurisdiction where the divorce proceedings in another jurisdiction have not addressed those assets. Coordination with foreign counsel and, where appropriate, complementary instruments in relevant jurisdictions should be considered.

For further information or assistance, please contact the authors.