Contractus Vol. 01 No. 2 (2026): 80-98
E-ISSN: xxxx-xxxx (*Online*)

Legal Circumvention through Postnuptial Agreements: A Good Faith Analysis of Bank Protection against Defaulting Debtors

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Article Information

Article History
Submitted: 1 May 2026
Received: 11 June 2026
Accepted: 29 July 2026

Keywords:
good faith; postnuptial agreement; bank legal protection; actio pauliana

Abstract

Protection in Indonesian banking and security law has predominantly been examined from the customer's perspective, leaving the bank's position as creditor underexplored, particularly where a debtor exploits a family-law instrument to shield assets during an ongoing credit relationship. This article examines the legal standing of a postnuptial agreement executed. In contrast, a bank credit agreement remains in force, assessed under the principle of good faith in Article 1338, paragraph (3), of the Indonesian Civil Code. The purpose of this study is twofold: to determine the legal standing of a postnuptial agreement against an ongoing credit agreement following Constitutional Court Decision Number 69/PUU-XIII/2015, and to formulate the preventive and repressive legal protection available to a bank where such an agreement indicates an attempt to evade credit obligations. This normative legal research employs statutory, conceptual, and limited case approaches, drawing on primary and secondary legal materials analyzed through systematic interpretation. The findings show that a postnuptial agreement remains formally valid as a family-law instrument, yet its enforceability against the bank is not absolute where bad faith is established through three cumulative indicators: temporal proximity between the agreement and the debtor's financial distress, absence of notice to the bank, and a tangible effect on repayment capacity; such an agreement becomes non-opposable to the bank rather than void. Legal protection for banks is available through preventive measures, namely contractual disclosure clauses, strengthened credit analysis, and collateral independent of marital property status, and through repressive measures, namely actio pauliana and a civil claim for nonopposability.

Introduction

Banking and security law in Indonesia has developed with a strong emphasis on customer protection. Bank lending places tangible collateral at

the center of credit security, and most securitylaw scholarship revolves around how a bank ensures that collateral remains enforceable once a debtor defaults.[1] The principle of prudential banking has become the primary framework used to assess the adequacy of protection afforded to banks in extending credit.

Such scholarship tends to focus on risks attached directly to the collateral object, such as defects in land certificates or inadequate collateral valuation. A risk that is rarely discussed is the change in the legal status of a debtor's property arising from a family-law event that occurs after the credit agreement has been signed. One such event is the execution of a postnuptial agreement, that is, a marriage agreement made after the marriage has taken place, rather than before or at the time of the marriage.

Constitutional Court Decision Number 69/PUU-XIII/2015 marked a turning point in this regulatory framework. The decision held that Article 29 paragraph (1) of Law Number 1 of 1974 on Marriage is contrary to the 1945 Constitution insofar as it is not interpreted to mean that a marriage agreement may be made before, at the time of, or during the marriage.[2] Before this decision, a marriage agreement could only be made before or at the time the marriage was solemnized. Since the decision, spouses may execute a marriage agreement at any point during the marriage, provided it is ratified by the marriage registrar or a notary.[3]

This flexibility benefits spouses who need to rearrange marital property for business, professional, or family financial planning reasons. The same flexibility may be misused by a spouse who is bound by a bank credit agreement and has begun to experience repayment difficulties. Executing a marriage agreement at such a time may separate the debtor's property from the joint marital estate, moving part of the assets beyond the bank's reach as a creditor, even though the debt to the bank arose before the marriage agreement was made.[4]

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[1] Etty Mulyati and Fajrina Aprilianti Dwiputri, "Prinsip Kehati-Hatian dalam Menganalisis Jaminan Kebendaan sebagai Pengaman Perjanjian Kredit Perbankan" [in Indonesian], Acta Diurnal Jurnal Ilmu Hukum Kenotariatan 1, no. 2 (2018): 134–148, https://doi.org/10.24198/acta.v1i2.112, p. 134.

[2] Constitutional Court of the Republic of Indonesia, Decision Number 69/PUU-XIII/2015 concerning the Judicial Review of Law Number 1 of 1974 on Marriage against the 1945 Constitution of the Republic of Indonesia, 27 October 2016. p. 156

[3] Sonny Dewi Judiasih, Deviana Yuanitasari, and Revi Inayatillah, "Model Perjanjian Kawin yang Dibuat Setelah Perkawinan Berlangsung Pasca Berlakunya Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015" [in Indonesian], Masalah-Masalah Hukum 47, no. 3 (2018): 252–267, https://doi.org/10.14710/mmh.47.3.2018.252-267, p. 255.

[4] William Surya Putra Handoko, "Akibat Hukum bagi Kreditur Setelah Perjanjian Perkawinan Dibuat dan Telah Disahkan" [in Indonesian], Jurnal Ilmiah Pendidikan Pancasila

Research on the intersection between postnuptial agreements and creditor interests has begun to emerge, although it remains limited in three respects relevant to the present study. First, Inayatillah, Judiasih, and Afriana show that spousal responsibility in a credit agreement secured by joint marital property may change significantly once a postnuptial agreement is executed after the credit agreement is in force,[5] yet their study stops at identifying this consequence without articulating a legal test for distinguishing a legitimate property arrangement from one made in bad faith. Second, Putri, Judiasih, and Lubis affirm that creditor interests are among the considerations a notary should weigh when asked to execute a postnuptial agreement,[6] but their focus is the notary's professional duty rather than the bank's available legal remedies. Third, Sirait, Sudirman, and Disemadi recently mapped preventive and repressive legal protection for banks in small and medium enterprise credit agreements,[7] a framework this article adopts, but their study does not extend to family-law instruments such as postnuptial agreements as a distinct source of credit risk. The present article addresses this gap by proposing a good-faith-based legal test for postnuptial agreements made during an ongoing credit relationship and by extending the preventive-repressive framework specifically to that risk.

Scholarship on the principle of good faith under Article 1338, paragraph (3), of the Civil Code generally addresses its application to commercial contracts, such as loan agreements, sale and purchase agreements, and business partnerships.[8] Irfansyah, Darmawan, and Hardyansah similarly find that, despite its centrality to contract performance, the good faith principle continues to be applied inconsistently in Indonesian practice owing

dan Kewarganegaraan 6, no. 1 (2021): 55–65, https://doi.org/10.17977/um019v6i1p55-65, p. 58.

[5] Revi Inayatillah, Sonny Dewi Judiasih, and Anita Afriana, "Pertanggungjawaban Suami Isteri dalam Perjanjian Kredit dengan Jaminan Harta Bersama pada Perkawinan dengan Perjanjian Kawin" [in Indonesian], Acta Diurnal Jurnal Ilmu Hukum Kenotariatan 1, no. 2 (2018): 187–203, https://doi.org/10.24198/acta.v1i2.115, p. 195.

[6] Revi Nadia Putri, Sonny Dewi Judiasih, and Nun Harrieti Anisa Lubis, "Perlindungan Hukum terhadap Kreditor dan Upaya Notaris Membuat Perjanjian Perkawinan Setelah Perkawinan" [in Indonesian], Veritas et Justitia 5, no. 2 (2019): 464–491, https://doi.org/10.25123/vej.3353, p. 470.

[7] Regina Ulianna Sirait, Lu Sudirman, and Hari Sutra Disemadi, "Legal Protection for Banking Institutions in Small and Medium Enterprise Credit Agreements," SIGn Jurnal Hukum 6, no. 2 (2025): 468–481, https://doi.org/10.37276/sjh.v6i2.408, p. 469.

[8] Fajar Satriyawan Wahyudi and May Shinta Retnowati, "Kebebasan Berkontrak, Kekuatan Mengikatnya Kontrak, Itikad Baik Saat Pelaksanaan Kontrak, Itikad Baik Pra Kontrak" [in Indonesian], Journal of International Multidisciplinary Research 2, no. 7 (2024): 306–312, https://doi.org/10.62504/jimr791, p. 308.

to the absence of clear operational benchmarks.[9] Its application to postnuptial agreements, particularly in relation to creditor interests, has only recently begun to receive attention. Anugerahayu and Alvina found that the implementation of the good faith principle in marital property-separation agreements remains largely formal, limited to satisfying the administrative requirements of deed making, and has not yet addressed the substantive question of third-party interests that may be harmed, particularly where the agreement is made after a debt obligation has arisen.[10] This condition, in their view, risks giving rise to legal circumvention, or fraus legis, namely the use of a formally valid legal instrument to achieve a purpose that departs from its original regulatory intent.[11]

This academic imbalance can be explained historically, but it cannot be justified doctrinally. Classical contract law treats good faith as a condition for the performance of every agreement, without distinguishing whether the agreement is commercial or familial in nature.[12] The Civil Code places the law of obligations in Book Three as a general framework applicable to every agreement, including a marriage agreement insofar as it concerns property. The separation of family law from the law of obligations in academic practice is therefore more methodological than substantive, and should not prevent the consistent application of the good faith principle to postnuptial agreements that affect third parties.

The position taken in this article is not that every postnuptial agreement made during an ongoing credit relationship is inherently suspect. Most postnuptial agreements continue to be made for legitimate reasons, such as arranging family property for the benefit of children or separating one spouse's business risk from the other's assets. The narrower question this article addresses is how the law can distinguish a postnuptial agreement made for a legitimate purpose from one made solely to evade credit obligations, without sacrificing legal certainty for spouses who act in good faith.

The discussion above reveals a gap between das sollen and das sein. Normatively, every agreement must be performed in good faith, as provided in

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[9] Moh. Faqih Irfansyah, Didit Darmawan, and Rommy Hardyansah, "Implementation of the Principle of Good Faith in Contract Performance," Bulletin of Science, Technology and Society 3, no. 2 (2024): 51–56, p. 52.

[10] Ayang Afira Anugerahayu and Hera Alvina, "Implementasi Prinsip Itikad Baik dalam Perjanjian Pisah Harta Suami-Istri: Tinjauan Hukum Perjanjian di Indonesia" [in Indonesian], Juridica: Jurnal Fakultas Hukum Universitas Gunung Rinjani 7, no. 2 (2026): 97–111, https://doi.org/10.53952/juridicaugr.v7i2.523, p. 98.

[11] *Ibid.*, p. 99.

[12] Niru Anita Sinaga, "Peranan Asas-Asas Hukum Perjanjian dalam Mewujudkan Tujuan Perjanjian," Binamulia Hukum 7, no. 2 (2018): 107–120, https://doi.org/10.37893/jbh.v7i2.318, p. 114.

Article 1338 paragraph (3) of the Civil Code.[13] Factually, this provision is not yet operational enough to assess a postnuptial agreement made close in time to the onset of a debtor's financial difficulty in a credit relationship with a bank. Marriage-law regulations do not require an examination of a prospective party's credit status as part of executing and ratifying a postnuptial agreement. Banking regulations, for their part, do not provide a specific mechanism for a bank to challenge a marriage agreement executed by its debtor after the credit agreement is in force.

Based on this gap, this article formulates two legal issues. First, what is the legal standing of a marriage agreement made during the marriage, following Constitutional Court Decision Number 69/PUU-XIII/2015, against an ongoing credit agreement, viewed through the principle of good faith under Article 1338 paragraph (3) of the Civil Code? Second, what preventive and repressive legal protection is available to a bank where the execution of such an agreement is indicated as an attempt to evade a defaulting debtor's credit repayment obligations?

Methods

This study uses normative legal research. Three approaches are employed: the statutory approach, the conceptual approach, and a limited case approach. Primary legal materials comprise the Indonesian Civil Code, Law Number 1 of 1974 on Marriage as amended by Law Number 16 of 2019, Constitutional Court Decision Number 69/PUU-XIII/2015, and Law Number 10 of 1998 on Banking. Secondary legal materials consist of books and journal articles relevant to good faith, postnuptial agreements, and creditor legal protection. The legal materials are analyzed prescriptively through systematic interpretation of the norms intersecting family law and the law of obligations.

Results and Discussion

Legal Standing of a Marriage Agreement Made during the Marriage against an Ongoing Credit Agreement

Temporal Limits on the Validity of a Postnuptial Agreement after Constitutional Court Decision 69/2015

Constitutional Court Decision Number 69/PUU-XIII/2015 changed the constitutional interpretation of Article 29 paragraph (1) of the Marriage Law, so that the execution of a marriage agreement is no longer limited to before or

[13] Indonesian Civil Code, Staatsblad 1847 Number 23, Article 1338 paragraph (3).

at the time of the marriage.[14] The Constitutional Court's principal consideration was that the time restriction on executing a marriage agreement creates difficulty in practice for spouses who only recognize the need to rearrange marital property after the marriage has taken place, for instance because one spouse begins operating a high-risk business.[15]

This consideration proceeds from the spouses' internal interest, not from the interest of a third party who may be affected. The Constitutional Court essentially assessed the constitutionality of the norm from the standpoint of the spouses' right to arrange their marital property, not from the standpoint of a creditor who already has a pre-existing legal relationship with one of the spouses. The absence of explicit consideration of creditor interests in the decision does not mean that such interests are automatically set aside, because every norm derived from this decision remains subject to the general principles of the law of obligations, including the principle of good faith.

A marriage agreement made during the marriage takes effect from the date it is ratified by the marriage registrar or a notary, rather than retroactively to the date the marriage was solemnized.[16] This provision gives clear temporal certainty. Rights and obligations arising before the date of ratification remain subject to the joint marital property regime under Articles 35 and 36 of the Marriage Law. Rights and obligations arising after the date of ratification are subject to the terms agreed in the marriage agreement.
This non-retroactive principle also serves as an important marker for assessing good faith. A marriage agreement that takes effect from the date of ratification, rather than from the start of the marriage, means that the law itself already provides an objective temporal boundary for sorting which debts fall under the joint property regime and which fall under the new regime created by the marriage agreement. This boundary is a useful starting point for a bank, because the bank need not assess the validity of the marriage agreement as a whole, but only whether the disputed debt arose before or after the date of ratification.

The temporal-limit provision is textually clear enough, but it does not resolve the substantive issue that arises when a marriage agreement is

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[14] Constitutional Court of the Republic of Indonesia, Decision Number 69/PUU-XIII/2015 concerning the Judicial Review of Law Number 1 of 1974 on Marriage against the 1945 Constitution of the Republic of Indonesia, 27 October 2016, p. 156

[15] Putu Astika Yasa and Made Subawa, "Analisis Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015 tentang Perjanjian Kawin" [in Indonesian], Kertha Semaya: Journal Ilmu Hukum 7, no. 2 (2019): 1–14, https://doi.org/10.24843/KM.2019.v07.i02.p11, p. 5.

[16] Judiasih, Yuanitasari, and Inayatillah, "Model Perjanjian Kawin yang Dibuat Setelah Perkawinan Berlangsung Pasca Berlakunya Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015" [in Indonesian], *Masalah-Masalah Hukum* 47, no. 3 (2018): 252–267, https://doi.org/10.14710/mmh.47.3.2018.252-267, p. 260.

executed while one spouse's financial condition is deteriorating because of unpaid credit. Formally, such a marriage agreement remains valid because it satisfies the procedural requirements for executing and ratifying a deed. Formal validity does not automatically render the agreement effective against a third party whose interest is harmed, in this case the bank as creditor.

Article 1340 of the Civil Code provides that an agreement binds only the parties who made it and cannot cause loss or benefit to a third party, except in the circumstances provided in Article 1317 of the Civil Code.[17] This principle essentially protects a marriage agreement, as a private legal act of the spouses, from outside interference, including by a bank. A bank, not having been a party to the marriage agreement, formally has no standing to invalidate it merely on the ground of disagreeing with its content.

Classical doctrine treats the privity principle as a rule that protects party autonomy from outside interference, in line with the principle of pacta sunt servanda, which makes an agreement binding as law for those who made it.[18] If maintained absolutely without exception, however, such autonomy may create structural injustice toward a third party whose claim arose earlier than the disputed legal act. A bank, in this position, does not interfere with the spouses' freedom to arrange their marital property; rather, it defends a right that already existed before the new legal act was performed. This distinction matters, because a bank's claim does not target the validity of the marriage agreement as a family-law act, but its effect on a right the bank already held.

The privity principle is not without limits. Civil law recognizes an exception where a legal act performed by two persons causes real harm to a third party who already holds a claim against one of them. This exception does not negate the formal validity of the act in question; it opens an avenue for the harmed third party to challenge the act's effect upon itself.[19] Prihandini explains that the absence of regulation on this mechanism is one source of legal uncertainty that emerged after Constitutional Court Decision 69/2015 took effect, particularly concerning collateral execution when a debtor defaults.[20]

Article 1338 paragraph (3) of the Civil Code provides that every agreement must be performed in good faith.[21] Civil law doctrine distinguishes

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[17] Indonesian Civil Code, Staatsblad 1847 Number 23, Article 1340.

[18] Sinaga, "Peranan Asas-Asas Hukum Perjanjian dalam Mewujudkan Tujuan Perjanjian," *Binamulia Hukum* 7, no. 2 (2018): 107–120, https://doi.org/10.37893/jbh.v7i2.318, p.108.

[19] Yudiana Dewi Prihandini, "Perlindungan Hukum terhadap Pihak Ketiga atas Perjanjian Perkawinan yang Dibuat Setelah Perkawinan" [in Indonesian], Jurnal Lex Renaissance 4, no. 2 (2019): 354–366, https://doi.org/10.20885/JLR.vol4.iss2.art9, p. 360.

[20] *Ibid.*, p. 363.

[21] Indonesian Civil Code, Staatsblad 1847 Number 23, Article 1338 paragraph (3).

subjective good faith from objective good faith. Subjective good faith concerns the honesty of a person's intent when performing a legal act, assessed from the actor's inner perspective. Objective good faith concerns the propriety and reasonableness of an agreement's performance, assessed from the standpoint of prevailing societal norms.[22]

Testing a postnuptial agreement made while credit is ongoing is more appropriately done through objective good faith. The issue at stake is not solely the debtor's inner intent, but the propriety of the act when viewed from the standpoint of a bank that already has a pre-existing legal relationship with the debtor. This choice is not without methodological grounds. Subjective good faith requires proof of inner intent, which in practice is nearly impossible to establish directly without the debtor's own admission. Objective good faith shifts the burden of proof from inner intent to observable objective facts, giving the bank a more realistic prospect of proof without sacrificing judicial caution in assessing a debtor's intent. Three elements may serve as parameters for testing objective good faith in this context.

First, the temporal proximity between the emergence of signs of the debtor's financial difficulty, such as arrears in installment payments, and the execution and ratification of the marriage agreement. The closer the timing, the stronger the inference that the marriage agreement was made in response to financial pressure rather than as part of reasonable family financial planning.

Second, whether or not the bank was notified of the plan to execute a marriage agreement before the deed was ratified. The absence of notice, particularly where the credit agreement requires disclosure of changes to the debtor's marital property status, may be taken as an indication that the debtor concealed a legal step that could harm the bank.

Third, the tangible effect of the marriage agreement on the bank's ability to recover repayment from the debtor's property. This effect can be seen from the proportion of property that moves beyond the bank's reach as a result of the property separation produced by the marriage agreement.

These three elements are interrelated and must be assessed cumulatively, not in isolation. Cumulative assessment is necessary because no single element suffices to establish bad faith. Temporal proximity alone, for example, may simply be coincidental and unrelated to the credit, so it must be reinforced by the absence of notice and a tangible effect on repayment capacity before a conclusion of bad faith can be legally sustained. The research of Inayatillah, Judiasih, and Afriana is relevant in supporting this

[22] Miftah Arifin, "Membangun Konsep Ideal Penerapan Asas Iktikad Baik dalam Hukum Perjanjian" [in Indonesian], Jurnal Ius Constituendum 5, no. 1 (2020): 66–82, https://doi.org/10.26623/jic.v5i1.2119, p. 70.

parameter. Their study shows that certainty for a bank providing credit secured by joint marital property depends heavily on disclosure regarding changes to the debtor's property status during the term of the credit.[23] The absence of such disclosure is one factor that weakens the bank's position when it must prove loss arising from a marriage agreement executed by its debtor.

Where the three elements are cumulatively satisfied, the appropriate legal consequence is not avoidance of the marriage agreement as a whole, but a declaration that the agreement is non-opposable to the bank as creditor. The marriage agreement remains valid as a family-law act between husband and wife. It simply does not bind the bank with respect to a debt that arose before the date the marriage agreement was ratified.

This approach aligns with the view of Windayanti, Narsudin, and Natanegara, who emphasize that the legal effect of a marriage agreement on a third party must be distinguished from its legal effect on the spouses who made it.[24] The non-opposability approach is more proportionate than total avoidance. It continues to respect the spouses' constitutional right to arrange their marital property as guaranteed by Constitutional Court Decision 69/2015, while protecting the bank's pre-existing claim. This proportionality deserves emphasis, because total avoidance risks exceeding the interest actually meant to be protected. The bank's interest is sufficiently satisfied by rendering the marriage agreement ineffective against the existing debt, without negating the entire property arrangement agreed by the spouses for the period thereafter.

The objective good faith approach above can be reinforced by the theory of legal circumvention, or fraus legis facta. This theory assesses whether a valid legal instrument is used in a manner that departs from its original regulatory purpose to achieve a result that the law actually prohibits or restricts.[25] A postnuptial agreement is, in principle, designed to give spouses flexibility in arranging their marital property according to their needs, not to

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[23] Inayatillah, Judiasih, and Afriana, "Pertanggungjawaban Suami Isteri dalam Perjanjian Kredit dengan Jaminan Harta Bersama pada Perkawinan dengan Perjanjian Kawin" [in Indonesian], *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan* 1, no. 2 (2018): 187–203, https://doi.org/10.24198/acta.v1i2.115, p. 198.

[24] Winda Windayanti, Udin Narsudin, and F. Davy Gunady Natanegara, "The Legal Consequences of Unregistered Prenuptial Agreements: Examining the Implications for Third Parties," International Journal of Latin Notary 5, no. 2 (2025): 46–54, https://doi.org/10.61968/journal.v5i2.101, p. 49.

[25] Ayang Afira Anugerahayu and Hera Alvina, "Implementasi Prinsip Itikad Baik dalam Perjanjian Pisah Harta Suami-Istri: Tinjauan Hukum Perjanjian di Indonesia" [in Indonesian], *Juridica: Jurnal Fakultas Hukum Universitas Gunung Rinjani* 7, no. 2 (2026): 97–111, https://doi.org/10.53952/juridicaugr.v7i2.523, p. 100.

serve as a means of evading an obligation that has already arisen toward a third party.

When a postnuptial agreement is used solely to move property beyond a creditor's reach, this family-law instrument departs from its original function. This departure is not always apparent from the content of the marriage agreement itself, since textually a marriage agreement merely arranges the separation of property between husband and wife, without stating any purpose of evading an obligation to a third party. The departure becomes apparent only when the marriage agreement is read together with the timing of its execution and its effect on the creditor, as already described through the three elements of objective good faith in the preceding section.

The theory of fraus legis thus functions to complement the test of objective good faith, not to replace it. Objective good faith provides a concrete parameter for assessing facts. The theory of fraus legis provides a conceptual framework explaining why a formally valid legal act may lose its binding force against a particular third party. Together, the two provide a stronger basis for a bank to challenge a postnuptial agreement indicated as having been made in bad faith.

The findings in this section answer the first legal issue. A marriage agreement made during the marriage remains formally valid following Constitutional Court Decision 69/2015. Its effect on an ongoing credit agreement is not absolute. Objective good faith, tested through the three elements of temporal proximity, absence of notice, and tangible effect on repayment capacity, serves as the parameter for assessing whether the marriage agreement can be maintained against the bank.

Legal Protection Available to a Bank against the Execution of a Marriage Agreement Indicated as an Attempt to Evade Credit Responsibility

The Preventive and Repressive Protection Framework

Philipus M. Hadjon distinguishes legal protection into preventive legal protection and repressive legal protection. Preventive protection aims to prevent disputes before they arise. Repressive protection is intended to resolve disputes that have already arisen through a dispute-resolution institution.[26] This framework is used to formulate the steps a bank may take against the risk of legal circumvention through a postnuptial agreement. The combination of prevention and dispute resolution gives a bank two mutually reinforcing layers of protection.

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[26] Melisa Lani Safitri, "Perlindungan Hukum terhadap Konsumen Atas Penggunaan Suku Bunga Anuitas dalam Perjanjian Kredit Perbankan," KREATIF: Jurnal Pengabdian Masyarakat Nusantara 6, no. 1 (2026): 144–158, https://doi.org/10.55606/kreatif.v6i1.9617, p. 149.

Article 8 of Law Number 10 of 1998 on Banking requires a bank to have confidence in a debtor's ability and capacity to repay its debt as agreed before extending credit.[27] This obligation is known as the prudential banking principle. Mulyati and Dwiputri explain that the application of this principle is most often discussed in the context of analyzing tangible collateral, since tangible collateral is the most effective instrument for a bank to secure repayment once a debtor's credit becomes non-performing.[28] Disemadi similarly emphasizes that prudent risk management throughout the lending process, not merely at disbursement, is essential to containing the legal, operational, and reputational risks a bank faces in extending credit.[29] Applying the prudential principle to the risk of postnuptial agreements needs to extend beyond examining tangible collateral alone. Collateral is indeed the primary safeguard, but its value generally covers only part of the total credit facility, particularly for under-collateralized credit or credit with a high loan-to-value ratio. A debtor's overall repayment capacity, including property beyond the collateral object, remains part of the credit feasibility assessment from the outset. A change in the debtor's property status caused by a postnuptial agreement is therefore relevant to monitor, not only at the credit-disbursement stage but throughout the term of the credit. Four measures may be taken by a bank at the pre-contractual stage and throughout the credit term.

The first measure is a contractual clause requiring the debtor to notify the bank of any change to marital property status during the credit term, including a planned postnuptial agreement. This clause should carry the legal consequence of default if the obligation is breached, so that the absence of notice can serve as evidence of a contractual breach, rather than merely an indication of bad faith that must be separately proven.

The second measure is strengthening the credit-analysis process by including the debtor's family-law status as one aspect of examination, in line with the five C's of credit analysis, particularly character and condition. This examination can be conducted by confirming marital status and the existence of any marriage agreement at the time the credit application is submitted. The

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[27] Law of the Republic of Indonesia Number 10 of 1998 on the Amendment to Law Number 7 of 1992 on Banking (State Gazette of the Republic of Indonesia of 1998 Number 182, Supplement to the State Gazette of the Republic of Indonesia Number 3790), Article 8.

[28] Etty Mulyati and Fajrina Aprilianti Dwiputri, "Prinsip Kehati-Hatian dalam Menganalisis Jaminan Kebendaan sebagai Pengaman Perjanjian Kredit Perbankan" [in Indonesian], *Acta Diurnal Jurnal Ilmu Hukum Kenotariatan* 1, no. 2 (2018): 134–148, https://doi.org/10.24198/acta.v1i2.112, p. 140.

[29] Hari Sutra Disemadi, "Risk Management in the Provision of People's Business Credit as Implementation of Prudential Principles," Diponegoro Law Review 4, no. 2 (2019): 194–208, https://doi.org/10.14710/dilrev.4.2.2019.194-208, p. 196.

bank thereby has baseline data for comparison if the debtor's marital property status later changes.

The third measure is securing collateral that is independent of the debtor's marital property status, for instance through a mortgage right or fiduciary security attached directly to the collateral object. Such collateral gives the bank an in rem right enforceable against whoever holds the collateral object, so that its effect does not depend on the debtor's marital property regime, which may change at any time through a postnuptial agreement.

The fourth measure is periodic monitoring of a debtor's legal status throughout the credit term, not only at disbursement. This monitoring can be integrated into the credit-review cycle a bank already conducts, for example upon facility extension or annual collectability review, so that it does not require a separate procedure that would significantly burden the bank's operating costs. Such monitoring is consistent with the continuous, rather than one-off, character of the prudential principle.

These four preventive measures do not eliminate the risk, since their implementation still depends on the debtor's honesty in fulfilling the notification obligation. A debtor genuinely intent on evading credit responsibility has an incentive not to fulfill that obligation, regardless of the contractual sanction attached to it. This shows that preventive protection must always be paired with repressive protection, because each closes a different gap. Preventive protection closes the gap at the stage where risk is formed, while repressive protection closes the gap once that risk has materialized.

Article 1341 of the Civil Code gives a creditor the right to seek avoidance of a debtor's non-obligatory legal act, provided it can be shown that the debtor, and the party with whom the debtor acted, knew that the act would harm the creditor.[30] This instrument is known as actio pauliana and is one repressive avenue available to a bank when preventive measures fail to forestall a detrimental marriage agreement.

In bankruptcy doctrine, actio pauliana is understood as an instrument that bridges a debtor's interest in maintaining autonomy over its property with a creditor's interest in preserving its claim.[31] Applying this instrument outside the bankruptcy context, that is, against a debtor who has not been declared bankrupt but is already in default, does not change its underlying rationale. Article 1341 of the Civil Code applies generally to any creditor harmed by a debtor's legal act, without requiring that the debtor first be

[30] Indonesian Civil Code, Staatsblad 1847 Number 23, Article 1341.

[31] M. Hadi Shubhan, Hukum Kepailitan: Prinsip, Norma, dan Praktik di Peradilan [in Indonesian] (Jakarta: Kencana Prenada Media Group, 2009), p. 175.

declared bankrupt by the Commercial Court. A bank therefore need not wait for the debtor's bankruptcy proceedings before filing an actio pauliana against a postnuptial agreement that harms it, provided the element of knowledge of harm can be established.

Kamilah explains that proving the debtor's element of knowledge is the crucial point in actio pauliana practice, because courts demand concrete evidence, not mere suspicion, that the debtor was aware of the detrimental effect of its act.[32] The three elements formulated in the preceding discussion, namely temporal proximity, absence of notice, and tangible effect on repayment capacity, can serve as tools for the bank to build proof of that element of knowledge. Together they depict a sequence of facts pointing to the debtor's awareness of the harmful effect of its act.

Mantili emphasizes that actio pauliana is fundamentally an instrument that balances the interests of debtor and creditor, not one that automatically casts the debtor as a party that must be harmed absolutely.[33] This balancing principle is relevant in the context of postnuptial agreements, given that the disputed object concerns a family relationship, not merely an ordinary proprietary relationship as commonly found in actio pauliana cases in bankruptcy.

Applying this balancing principle also requires acknowledging that a debtor may have a legitimate reason behind executing a postnuptial agreement, for instance the need to protect one spouse's separate property from the other's business risk, independent of any ongoing credit. Not every postnuptial agreement made during a credit term automatically carries bad faith. The objective good faith test described earlier serves to distinguish such a situation from one that genuinely indicates an attempt to evade an obligation, so that a bank cannot challenge every postnuptial agreement executed by its debtor without a sufficient basis.

The second repressive avenue is a civil claim seeking a declaration that the marriage agreement does not bind the bank, without avoiding the marriage agreement as a whole. This claim differs from actio pauliana in its ultimate purpose. Actio pauliana seeks to avoid the debtor's legal act. A non-opposability claim seeks a declaration that the legal act does not apply against the claimant, without contesting its validity in general. This second approach

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[32] Anita Kamilah, "Penerapan Prinsip Actio Pauliana dalam Kepailitan dan Perlindungan Hukumnya terhadap Pembeli yang Beritikad Baik" [in Indonesian], Jurnal Hukum Mimbar Justitia 7, no. 2 (2021): 160–176, https://doi.org/10.35194/jhmj.v7i2.2116, p. 165.

[33] Rai Mantili, "Actio Pauliana sebagai Upaya Perlindungan bagi Kreditor Menurut Kitab Undang-Undang Hukum Perdata dan Undang-Undang Kepailitan dan Penundaan Kewajiban Pembayaran Utang (PKPU)" [in Indonesian], Adhaper: Jurnal Hukum Acara Perdata 6, no. 2 (2021): 21–38, https://doi.org/10.36913/jhaper.v6i2.127, p. 25.

better suits the character of a marriage agreement as a family-law act touching interests broader than a mere proprietary relationship between debtor and creditor.

Beyond the steps available to a bank, the role of the notary as the public official authorized to execute a postnuptial agreement deserves attention. A notary has a duty to ensure that a deed does not contravene statutory regulations and does not harm a party absent from its execution, insofar as that party's interest can reasonably be identified.[34]

Research by Wahyuni, Safa'at, and Fadli shows that following Constitutional Court Decision 69/2015, a notary holds broader authority in executing marriage-agreement deeds. This authority needs to be balanced with caution in examining the background of the parties making the request.[35] This caution may reasonably be extended to include an examination of a prospective party's credit status, given that the effect of a postnuptial agreement on a creditor can be far-reaching, both for the debtor and for the stability of the credit relationship itself.

Strengthening the notary's gatekeeping role in this context can be pursued in two ways. The first is developing technical guidance for notaries to inquire about and record the existence of a prospective party's active credit before executing a postnuptial agreement deed, as part of the notary's duty to safeguard third-party interests. The second is including a statement on the existence of active credit within the marriage-agreement deed itself, so that this statement can serve as evidence should a dispute with a creditor later arise. This obligation should be formulated proportionately, limited to recording the information the parties provide, so as not to burden the notary with a credit-investigation responsibility beyond the notary's competence and authority.

This approach is also consistent with notarial accountability for exercising due care in every deed executed, without placing the notary in the position of bearing the debtor's credit risk. A notary who has recorded the parties' statements regarding their credit status, and those statements later prove untrue, cannot in principle be held liable for the inaccuracy, provided the notary has fulfilled the formal duty to record and to warn of the legal consequences of the information given. This allocation of responsibility deserves emphasis so that strengthening the notary's role does not become a disproportionate new legal burden on the notarial profession.

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[34] Wahyuni, Rachmat Safa'at, and Muhammad Fadli, "Kewenangan dan Tanggung Jawab Notaris dalam Pembuatan Akta Perjanjian Kawin Pasca Putusan Mahkamah Konstitusi No 69/PUU-XIII/2015" [in Indonesian], Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan 2, no. 2 (2017): 139–145, p. 142.

[35] *Ibid.*, p. 144.

The two avenues of protection, preventive and repressive, should be understood as complementary approaches rather than choices. Preventive protection reduces the likelihood of a dispute through stricter contracts, more thorough credit analysis, and collateral independent of marital property status. Repressive protection provides a way out for the bank when preventive measures fail to forestall legal circumvention through a postnuptial agreement.

The combination gives a bank a more balanced position than reliance on the debtor's good faith alone. This approach is also consistent with the direction taken by Putri, Judiasih, and Lubis, who emphasize the importance of the notary's role in safeguarding creditor interests from the stage of executing the marriage-agreement deed, before a dispute between debtor and bank actually arises.[36] The notary's role at this stage marks the point where the bank's preventive design and the notary's professional duty to safeguard third-party interests converge.

The findings in this section answer the second legal issue. Legal protection for a bank is available through two complementary avenues. The preventive avenue consists of a contractual disclosure clause, strengthened credit analysis, and collateral independent of marital property status. The repressive avenue consists of actio pauliana under Article 1341 of the Civil Code and a claim declaring the marriage agreement non-binding on the bank.

Conclusions

Two conclusions follow from the discussion above. First, a marriage agreement made during the marriage following Constitutional Court Decision Number 69/PUU-XIII/2015 is formally valid as a family-law act, since it satisfies the procedural requirements for executing and ratifying a deed. Its effect on a bank as creditor is not absolute. Testing the agreement through objective good faith, with attention to three elements, namely the temporal proximity between the agreement's execution and the debtor's financial difficulty, the absence of notice to the bank, and the tangible effect on repayment capacity, can serve as the basis for declaring the agreement non-opposable to the bank with respect to a debt arising before its date of ratification. Second, legal protection for a bank is available through two complementary avenues. The preventive avenue consists of a contractual clause on the obligation to notify changes in marital property status, strengthened credit analysis incorporating the debtor's family-law status, and collateral independent of the marital property regime. The repressive avenue

[36] Revi Nadia Putri, Sonny Dewi Judiasih, and Nun Harrieti Anisa Lubis, "Perlindungan Hukum terhadap Kreditor dan Upaya Notaris Membuat Perjanjian Perkawinan Setelah Perkawinan" [in Indonesian], *Veritas et Justitia* 5, no. 2 (2019): 464–491, https://doi.org/10.25123/vej.3353, p. 485.

consists of actio pauliana under Article 1341 of the Civil Code and a civil claim declaring the marriage agreement non-binding on the bank. Both avenues should be pursued together, not as alternatives, since each closes a different legal gap and reinforces the other. Based on these conclusions, three recommendations are offered. For regulators, consideration should be given to a regulation requiring a notary to examine a prospective party's credit status before executing a postnuptial agreement deed, as part of the notary's duty to safeguard third-party interests. For banks, contractual clauses on the obligation to disclose changes in marital property status should be strengthened, together with collateral independent of the marital property regime. For legal scholarship, further research could be directed toward an empirical study of court decisions addressing the conflict between postnuptial agreements and creditor claims, given that this normative study has not extended to the dimension of practical implementation.

Acknowledgments

The author would like to thank the Master of Notarial Law Program, Faculty of Law, Universitas Jember, and academic supervisors Dr. Dyah Ochtorina Susanti, S.H., M.Hum and Dr. Firman Floranta Adonara, S.H, M.H for their guidance during the preparation of this article.

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