

Comparison of the Legal Consequences of Mixed Marriages with and without a Marriage Agreement

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Abstract

Marriage is a profound and multifaceted bond, encompassing both physical and spiritual dimensions, between a man and a woman, which serves as the cornerstone of family life and social stability. In contemporary Indonesia, globalization and increasing cross-cultural interactions have led to a rise in marriages between Indonesian citizens and foreign nationals, commonly referred to as mixed marriages. Despite this growing trend, many couples enter into such unions without establishing a prenuptial agreement, often due to limited awareness of the legal implications and protections available under Indonesian law. The absence of a prenuptial agreement in mixed marriages can result in complex legal challenges, particularly regarding the ownership, management, and division of marital property, inheritance rights, and the ability of Indonesian citizens to retain legal ownership of property, such as land, that may be restricted for foreigners. This paper examines and compares the legal outcomes of mixed marriages conducted with and without prenuptial agreements, drawing upon Indonesian Civil Law, the Marriage Law (UU No. 1 Tahun 1974), the Agrarian Law (UUPA), and relevant judicial decisions including the Constitutional Court ruling No. 69/PUU-XIII/2015. The study highlights how prenuptial agreements can provide legal certainty, protect property rights, prevent disputes, and ensure fair and equitable treatment for both spouses. By analysing these differences, this research offers valuable insights for couples, notaries, and legal practitioners navigating the increasingly complex legal landscape of mixed marriages in Indonesia, and emphasizes the critical importance of legal awareness and proactive planning in family law matters.

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1. INTRODUCTION

Marriage is essentially a physical and spiritual bond between a man and a woman as husband and wife, to form a happy and eternal family (household) based on the One Almighty God. This definition is as stated in Article 1 of Law Number 1 of 1974 concerning Marriage., which was then updated by Law Number 16 of 2019. According to Wiryono Prodjodikoro, marriage is a life together of a man and a woman, who fulfill the conditions included in the regulations. Thus, marriage is not only seen as a mere social bond, but also as a legal act that gives rise to legal consequences for the parties who carry it out.

In Indonesia's multicultural society, marriage also holds a highly sacred value. Traditions, religious norms, and customs place marriage as a significant event that not only

involves two individuals but also their extended families and the surrounding community. When two people decide to marry, they are not only committing themselves personally but also entering into a legal institution governed by statute.

The legal consequences of marriage are very broad in scope, including those concerning the personal status of husband and wife, the status of children, inheritance, household management, and the regulation of marital assets. As a legal act, every marriage must comply with the positive laws in force in Indonesia, both those regulated in the Civil Code (KUHPerdata) and specifically in Law Number 1 of 1974 concerning Marriage. Marriage law as a regulatory system functions to regulate, direct, and provide legal certainty as well as sanctions for parties who violate the applicable provisions.

Marriage law regulates various important aspects, from the rights and obligations of husband and wife, child custody, guardianship, property division, to divorce and its legal consequences. Therefore, before getting married, couples should have a sufficient understanding of the applicable laws to anticipate any issues that may arise in the future.

Modern developments, particularly with the advent of globalization and advances in digital technology, have opened up a wider social space without geographical boundaries. Cross-border interactions through social media, digital platforms, and international networks have led to an increasing number of Indonesian citizens forming relationships with foreign nationals. This situation has led to an increase in the number of mixed marriages, namely marriages involving parties of different nationalities.

In Article 57 of Law Number 1 of 1974, what is meant by mixed marriage is a marriage between two people who, in Indonesia, are subject to different laws due to differences in citizenship, and one of the parties is an Indonesian citizen. Although both parties are subject to different legal systems, if the marriage is conducted in accordance with their respective laws and registered in the Indonesian civil registry, it is valid and has legal consequences. One of the most important legal consequences concerns the status of assets acquired during the marriage.

This is where the urgent need for more in-depth regulation of marriage agreements, or what is known in legal terminology as prenuptial agreements, emerges. The phenomenon of mixed marriages and the dynamics of joint property management emphasize the importance of legal certainty for both parties before entering into married life. A prenuptial agreement provides a legal instrument that allows couples to clearly plan their rights and obligations, reducing the potential for future conflict and ensuring legal certainty for the family and related parties.

The existence of a prenuptial agreement is essentially a means of providing legal certainty and protection for the parties, particularly regarding the management of marital assets. This agreement serves not only as a formal document but also as a strategic mechanism to clarify the rights and obligations of each party, thereby minimizing the potential for confusion, disputes, or conflicts in the future. In other words, a prenuptial agreement is a form of legal anticipation that can protect the rights of husband and wife, both in marriages between fellow Indonesian citizens (WNI) and in mixed marriages between Indonesian citizens and foreign citizens (WNA), where the management of assets and property ownership becomes a more complex issue.

Before the enactment of Law Number 1 of 1974, provisions regarding marriage contracts were subject to the provisions of the Civil Code (KUHPerdata). Article 119 of the KUHPerdata stipulates that:

"Since the marriage has taken place, by law there is a complete unity of all the assets of the husband and wife."

This provision automatically combines all assets owned by both parties, whether acquired before or after marriage, into a single entity known as joint property. Exceptions are only possible if a mutually agreed-upon and legally documented prenuptial agreement is made. Thus, a prenuptial agreement serves as an instrument that limits the application of the principle of unity of property, allowing couples the flexibility to regulate the division of assets according to their needs and mutual agreement. This is especially important for those with significant assets or certain properties that can only be owned by Indonesian citizens, such as freehold land. From a historical perspective, prenuptial agreements reflect society's legal awareness that each individual has different needs in managing their assets, especially after entering into marriage. This phenomenon also demonstrates how law evolves in response to social, economic, and cultural dynamics. From a philosophical perspective, this agreement demonstrates the principle of freedom of contract, whereby the parties are given the freedom to independently determine how the legal relationship within the marriage will be conducted, as long as it does not conflict with applicable legal, moral, and religious norms. This freedom provides each party with a sense of security, certainty, and control over their assets and responsibilities.

From a sociological perspective, prenuptial agreements emerged as a response to the complexities of modern society, including the rise of mixed marriages resulting from globalization and increasingly easy cross-border interaction. Modern societies face changing lifestyles, high levels of social and economic mobility, and the influence of foreign cultures, creating a need for more flexible and adaptive legal arrangements. In this context, prenuptial agreements not only regulate property but also serve as a means of legal education for the community, as they compel the parties to understand the legal consequences of every action and decision related to their household.

The existence of a prenuptial agreement is also becoming increasingly relevant with the increasing number of mixed marriages and property disputes involving Indonesian citizens. Many cases indicate that Indonesian citizens who fail to enter into a prenuptial agreement before marrying a foreign national face the risk of losing their rights to certain property, particularly freehold land, which is permitted only to Indonesian citizens under the Basic Agrarian Law. With a valid prenuptial agreement, couples can ensure equitable distribution of property, ensure ownership is not threatened, and prevent future conflicts.

Thus, it can be understood that a prenuptial agreement is not merely an administrative formality, but rather a legal instrument with strategic preventive and protective functions. It serves as a bridge to protect the rights of the parties, ensure clarity in asset management, and maintain household harmony. In this modern era, where marriage is no longer merely a matter of two individuals but also involves the interests of family and society, the prenuptial agreement is becoming increasingly important as a relevant, adaptive legal instrument capable of addressing the challenges of a dynamic married life.

2. RESEARCH METHOD

Normative legal research is a fundamental research method in legal studies, focusing on the analysis of legal norms, rules, and principles. The following is an in-depth explanation of this research method. Normative legal research, often called doctrinal legal research or library research, is a process of discovering legal rules, principles, and doctrines to address the legal issues at hand. Its primary focus is on law in text form, or what is written in statutory regulations (*law in books*).

This method examines the internal aspects of positive law and views law as an autonomous institution. This research aims to generate new arguments, theories, or concepts as solutions to legal problems.

Normative legal research exclusively uses secondary data, which is classified into three types, namely Primary Legal Materials, namely Law Number 1 of 1974 concerning Marriage and the Civil Code, Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), Secondary Legal Materials such as scientific works from legal circles (books, journals, articles) and previous legal research results, Tertiary Legal Materials such as legal dictionaries and encyclopedias, and non-legal materials with increasingly developing scientific principles.

Data analysis in normative research is conducted by interpreting and discussing the collected legal materials. This process uses logic and legal reasoning to conclude. A frequently used analytical method is the deductive syllogism, in which legal norms serve as the major premise, legal facts as the minor premise, and the result is a legal conclusion (*conclusion*). Legal interpretation techniques, such as grammatical (based on grammar) and systematic (connecting with other regulations) interpretation, are also often used in the analysis process.

3. RESEARCH RESULTS AND DISCUSSION

Marriage is essentially a physical and mental bond between a man and a woman as husband and wife, which aims to form a happy and eternal family or household, based on the One God. This definition not only emphasizes the spiritual and emotional aspects of marriage but also emphasizes the institution's primary purpose: to create a harmonious, prosperous, and sustainable family. As stipulated in Law No. 1 of 1974 concerning Marriage, marriage in Indonesia has a strong legal basis, which was later updated through Law No. 16 of 2019 to adapt to the dynamics of modern society.

According to Prof. R. Subekti, SH, marriage is a legal, long-term union between a man and a woman. This statement emphasizes that marriage is not merely a fleeting emotional connection, but rather a legal and social bond with long-term implications for both individuals, their families, and the surrounding community. The set of regulations that regulate and sanction human behavior in marriage is called law, and in particular, marriage law functions to provide certainty, regulate rights and obligations, and prevent the emergence of conflicts that could harm one of the parties. All Indonesian citizens wishing to marry are required to comply with the provisions of this Marriage Law. Those married before 1975 remain subject to the Civil Code (KUHP). In other words, Indonesian marriage law adapts to changing times while maintaining the fundamental principles governing the rights and obligations of husband and wife.

In today's era of globalization, marriage has become increasingly complex because it no longer only occurs between fellow Indonesian citizens but also between Indonesian citizens and foreign nationals. This phenomenon is known as mixed marriage. The Marriage Law regulates the definition of mixed marriage in Article 57, which states: "What is meant by mixed marriage in this Law is a marriage between two people who in Indonesia are subject to different laws, due to differences in citizenship, where one party is a foreign citizen and the other party is an Indonesian citizen." This definition emphasizes the importance of understanding differences in citizenship as a factor that can give rise to special legal consequences, particularly regarding property rights and the management of assets in marriage.

One of the most important legal aspects of marriage, including mixed marriages, is the regulation of joint property and the rights of each party. This is regulated in Article 29 of the Marriage Law, which states that at the time of or before the marriage takes place, both parties, with mutual consent, may enter into a written agreement that is validated by a Marriage Registrar. The contents of this agreement also apply to third parties as long as they are involved. A marriage agreement is a strategic legal instrument because it provides certainty regarding the management of property, the distribution of rights, and protection for both parties, as well as preventing future disputes. If the parties agree to enter into a marriage agreement for the purpose of separating property, the agreement must be made in writing before a notary and recorded at the Civil Registry Office. With this agreement, the husband's assets remain his, and the wife's assets remain hers, without being merged into joint assets. This means that each party can manage and transact with its own assets without requiring the consent of the other party. This provides flexibility, legal protection, and certainty that individual rights to assets will not be compromised by the automatic merger into joint assets, particularly in the context of high-value assets or those with legally limited ownership.

In the context of mixed marriages, a prenuptial agreement with separation of assets has significant legal implications, particularly regarding land ownership rights for Indonesian citizens. Based on Article 21 of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), only Indonesian citizens (WNI) can own land. In other words, foreign citizens (WNA) are not permitted to own land with freehold status, either directly or indirectly. This prohibition covers all forms of land acquisition, including inheritance without a will or the mixing of assets in a marriage between a foreigner and an Indonesian citizen. Therefore, foreigners are only permitted to acquire a Right of Use or Building Use Right.

Article 21 of the UUPA specifically regulates several conditions: first, only Indonesian citizens can own property rights; second, the government determines which legal entities can own property rights and the conditions for doing so; third, foreigners who acquire property rights through inheritance or a combination of assets due to marriage are required to relinquish those rights within a certain period of time; and fourth, Indonesian citizens who lose their citizenship must also relinquish their property rights within a period of one year. If these obligations are not met, the property rights are automatically revoked and the land falls to the state. While the rights of the other party encumbering them remain in effect. A prenuptial agreement in mixed marriages is not merely a formal option, but a highly strategic legal instrument. It provides legal certainty regarding asset management, protects property ownership exclusively held by Indonesian citizens, and prevents the risk of future conflict or disputes. Especially in today's increasingly dynamic and global society, this agreement is a crucial tool for balancing the interests of both parties and ensuring a harmonious household.

Based on these provisions, Indonesian citizens who enter into mixed marriages without a prenuptial agreement risk losing their land rights, due to the mixing of assets with foreign nationals who are not entitled to ownership rights. The enactment of Government Regulation No. 103 of 2015 provides a legal solution so that Indonesian citizens can still own land with ownership rights when entering into mixed marriages. With a prenuptial agreement, land ownership rights remain with the Indonesian citizen, and the foreign national has no claim to the property. This makes the prenuptial agreement an important instrument for upholding the principle of agrarian nationalism while protecting property rights for Indonesian citizens. If a prenuptial agreement is not made, all assets acquired

during the marriage automatically become joint property as stipulated in Article 35 of the Marriage Law. Assets brought by each party, as well as assets obtained as gifts or inheritances, remain under their respective control unless otherwise agreed. For couples married before 1975, Article 119 of the Civil Code states that assets become joint property unless otherwise agreed. This joint property must be managed jointly, and any legal action related to the joint property still requires the consent of both husband and wife.

Furthermore, there are several fundamental legal principles that must be understood in detail regarding land ownership in the context of mixed marriages. These principles not only provide limitations but also serve as a crucial instrument in maintaining state sovereignty over land and providing legal certainty for the parties to the marriage.

1. Principle of Nationality

Land law in Indonesia adheres to the principle of nationality, also known as *gronds verponding verbod*, which essentially prohibits land ownership by foreigners. This principle is regulated in Article 21 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA), which states that:

"Only Indonesian citizens can have property rights."

Furthermore, Article 21 paragraph (3) of the UUPA adds an important rule that if someone loses their Indonesian citizenship—whether due to marriage to a foreign national, inheritance, or other reasons—then within one year the person concerned is required to transfer their ownership rights to a third party. If this provision is not met, then the ownership rights are forfeited by law, and the land falls to the state.

This principle states that land in Indonesia may not be owned by foreigners, even though family ties or inheritance. This is an implementation of the principle of nationalism in agrarian law, which places land as part of the nation's sovereignty and a resource that may only be owned by Indonesian citizens.

2. Marriage between Indonesian citizens and foreign nationals

Provisions regarding mixed marriages are regulated in Article 57 of Law Number 1 of 1974 concerning Marriage, which defines a mixed marriage as a marriage between two individuals subject to different laws due to differences in citizenship. In practice, this often occurs when an Indonesian citizen marries a foreign citizen.

If the marriage takes place without a prenuptial agreement (separation of assets agreement), then the provisions of Article 35 paragraph (1) of the Marriage Law apply, which states that property acquired during the marriage becomes joint property. This means that any land or assets acquired by an Indonesian citizen after marrying a foreign national are legally considered joint property, so that the foreign national also has a legal interest in the land.

In fact, according to the provisions of the Basic Agrarian Law, foreign nationals are not permitted to own land at all. Therefore, an Indonesian citizen who marries a foreign national could potentially lose their land ownership rights if there is no prenuptial agreement regulating the separation of assets. To prevent this, a prenuptial agreement with a system of separation of assets is a very important legal instrument. With this agreement, the assets owned by the Indonesian citizen remain personal assets, so they are not mixed into joint assets with the foreign national spouse. This agreement must be made in writing before a notary and registered at the Civil Registry Office or KUA, in accordance with the provisions of Article 29 of the Marriage Law (before the Constitutional Court Decision No. 69/PUU-XIII/2015 allowed for it to be made after the marriage has taken place).

3. Heritage

In addition to transferring assets, foreign nationals can also acquire land with freehold status through inheritance. However, this provision does not grant permanent ownership rights to foreign nationals. Based on Article 21 paragraph (3) of the UUPA, foreign nationals who acquire land with freehold status through inheritance are required to transfer these rights within one year. Failure to do so will automatically revoke the ownership rights, and the land will revert to the state.

This rule has significant practical implications. For example, an Indonesian citizen dies and leaves land with ownership rights to a foreign spouse or child. In this case, the foreigner cannot retain the land long-term. Their only option is to sell or transfer the land rights to a third party within a specified time limit. Otherwise, the state has the right to seize the land to uphold the principle of nationality in land ownership.

The three legal principles above emphasize that land ownership in Indonesia is strictly limited by citizenship status. For Indonesian citizens married to foreign nationals, the safest and most legal solution to maintain land ownership rights is through a prenuptial agreement with separation of assets. Without this agreement, land acquired during the marriage could be forfeited due to non-compliance with the provisions of the Basic Agrarian Law.

This situation demonstrates that the absence of a prenuptial agreement in mixed marriages can pose significant legal risks, particularly regarding land ownership for Indonesian citizens. This underscores the importance of legal awareness for couples to create a prenuptial agreement as a preventative measure that can protect the rights of each party, maintain legal certainty, and avoid conflicts in the management of joint assets, particularly property that has limited ownership for foreign nationals.

As time goes by and the number of cases in which Indonesian citizens feel disadvantaged due to not having made a prenuptial agreement before marriage increases, the Constitutional Court issued Decision Number 69/PUU-XIII/2015. This decision confirms that a prenuptial agreement can be made not only before the marriage takes place, but also during or even after the marriage takes place. This decision provides legal flexibility for couples who have not previously agreed, allowing them to still arrange the separation of assets and receive the same legal protections as if the agreement had been made before marriage.

4. CONCLUSION

Mixed marriages without separation of assets risk causing conflict and legal losses for Indonesian citizens, especially regarding land ownership and management of joint assets, because automatically the assets become joint property and foreign nationals are not allowed to have ownership rights to land according to the UUPA and mixed marriages with separation of assets provide legal certainty and protection for each party, allowing Indonesian citizens to still have ownership rights to land, and facilitating the management of personal assets without requiring the consent of the spouse, thus preventing disputes in the future.

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