

MIXED MARRIAGES WITHOUT PRENUPTIAL AGREEMENTS IN INDONESIA: LEGAL UNCERTAINTY AND THE QUEST FOR REFORM

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Info Artikel

Abstract

Keywords :

Legal Standing, Marriage Law, Mixed Marriage, Prenuptial Agreement, Property Ownership

A significant concern in mixed marriages is the absence of a prenuptial agreement, which can result in legal complications, particularly concerning property ownership and citizenship rights. In the absence of an agreement, joint property acquired during the marriage may be subject to restrictions, particularly with regard to the ownership of immovable assets by the foreign spouse. The situation is further complicated by the differences in legal systems between the countries of each spouse, which may lead to legal conflicts. The methodological approach employed is underpinned by normative research, bolstered by statutory frameworks, legal concepts, and legal facts. The present study examines the legal position of mixed marriages conducted without a prenuptial agreement, with a focus on its implications for joint property ownership, inheritance rights, and legal certainty. The research findings indicate that the absence of a prenuptial agreement has the potential to impose limitations on the property rights of spouses and engender legal ambiguity. This underscores the necessity for a more explicit legal framework and heightened public awareness regarding the significance of prenuptial agreements.

Abstrak

Kata kunci:

Kedudukan Hukum, Hukum Perkawinan, Perkawinan Campuran, Perjanjian Pra Nikah, Kepemilikan Properti

Masalah utama dalam pernikahan campuran adalah tidak adanya perjanjian pranikah, yang dapat menyebabkan berbagai komplikasi hukum, terutama dalam hal kepemilikan properti dan hak kewarganegaraan. Tanpa perjanjian, harta bersama yang diperoleh selama pernikahan mungkin tunduk pada batasan, terutama mengenai kepemilikan aset tidak bergerak oleh pasangan asing. Situasi ini semakin diperumit oleh perbedaan sistem hukum antara negara masing-masing pasangan, yang dapat menyebabkan konflik hukum. Metode yang digunakan adalah penelitian normatif yang didukung oleh pendekatan perundang-undangan, konsep hukum, dan fakta hukum. Penelitian ini mengkaji kedudukan hukum perkawinan campuran yang dilakukan tanpa perjanjian pranikah, dengan fokus pada implikasinya terhadap kepemilikan harta bersama, hak waris, dan kepastian hukum. Temuan-temuan penelitian mengungkapkan bahwa ketiadaan perjanjian pranikah dapat membatasi hak-hak kepemilikan pasangan dan menciptakan ambiguitas hukum, sehingga menekankan perlunya kerangka hukum yang jelas dan kesadaran masyarakat akan pentingnya perjanjian pranikah. -Kesimpulannya bahwa ketiadaan pengaturan yang

eksplisit sebelum pernikahan dapat membatasi ruang perlindungan hukum terhadap hak kepemilikan individual dalam pernikahan.

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1. INTRODUCTION

Mixed marriages, involving couples with differing nationalities, have become an increasingly relevant topic in the context of globalization. High levels of cross-border mobility have opened opportunities for individuals from diverse cultural, religious, and national backgrounds to establish households together. However, the legal complexities surrounding mixed marriages cannot be overlooked, particularly in a country like Indonesia, which operates under a pluralistic legal system¹. One aspect frequently highlighted in the context of mixed marriages is the existence or absence of a prenuptial agreement², which has significant implications for the legal status of the spouses, the arrangement of joint assets, and other legal rights and obligations³. In this regard, understanding the legal position of mixed marriages without prenuptial agreements is essential to ensure that such couples receive adequate legal protection.

Law No. 1 of 1974 on Marriage provides the legal framework defining mixed marriages as unions between two individuals subject to different legal systems due to differences in nationality or other legal statuses. This definition serves as the foundation for regulating mixed marriages in Indonesia⁴. The law also provides room for couples to establish prenuptial agreements addressing various aspects of the marital relationship, including asset distribution, financial obligations, and asset management. In practice, however, many mixed-marriage couples do not execute prenuptial agreements, often due to a lack of awareness, insufficient access to information, or cultural perceptions that

¹ Jones, T. (2015). *Culture and Power in Indonesia*. Jakarta: Yayasan Pustaka Obor Indonesia.

² Aryani, N. M. (2018). IMPLIKASI PUTUSAN MAHKAMAH KONSTITUSI NOMOR 69/PUU-XIII/2015 PADA PEMBUATAN PERJANJIAN PERKAWINAN. *Vyavahara Duta*, 13(2), 63-71.

³ Hermanto, B. (2023). Antara “kewarganegaraan” warga negara asing dan pengujian konstiusionalitas di Mahkamah Konstitusi. *Majalah Konstitusi*, 201.

⁴ Soesetyo, S. (2024). Mixed Marriages in Indonesia and Citizenship Issues: a Call for Dual Citizenship Reform For Children From Mixed Marriages. *Jurnal Ilmu Hukum Tambun Bungai*, 9(1), 462-471.

such agreements are incompatible with traditional values. The absence of a prenuptial agreement often results in complex legal issues, particularly in the event of disputes or separation.

One major issue faced by mixed-marriage couples without prenuptial agreements relates to the ownership of joint property. In Indonesia, marital law stipulates that assets acquired during the marriage become joint property unless otherwise specified through a prenuptial agreement. For couples with differing nationalities, this rule can lead to significant legal complications, particularly in the ownership and transfer of assets such as land and property, which are tightly regulated under the Basic Agrarian Law. Foreign spouses without a prenuptial agreement often lose rights to property jointly purchased, as Indonesian law restricts land ownership by foreign nationals. This underscores the importance of prenuptial agreements as legal instruments to safeguard the rights of mixed-marriage couples⁵.

Beyond property matters, mixed marriages without prenuptial agreements can also affect the legal status of children born within the marriage. Law No. 12 of 2006 on Citizenship allows children from mixed marriages to hold dual citizenship until a certain age⁶. However, without a prenuptial agreement, the process of securing a child's citizenship can become complicated, especially if the couple experiences conflict or divorce. This presents a significant challenge for mixed-marriage couples who lack a clear legal framework from the outset of their marriage. In certain situations, the absence of a prenuptial agreement may even risk the child's legal rights concerning their parents.

From a cultural perspective, many couples in Indonesia view prenuptial agreements as incompatible with traditional values. Such agreements are often perceived as a sign of mistrust between partners, potentially damaging their relationship⁷. As a result, many couples choose not to create prenuptial agreements despite recognizing their importance in protecting their rights. This perception highlights the need for a paradigm shift in society regarding the function and benefits of prenuptial agreements, particularly in the

⁵ Rohman, M. F. (2017). Implications of the Constitutional Court Decision No. 69/PUU/XIII/2015 on Marriage Agreements and Marriage Goals. *Al-Daulah: Jurnal Hukum Dan Perundangan Islam*, 7(1), 1–27.

⁶ Hermanto, B. (2024). QUO VADIS PENGATURAN PERKAWINAN CAMPURAN DALAM BINGKAI PEMBENAHAN HUKUM KEWARGANEGARAAN INDONESIA. *Jurnal Yudisial*, 17(2), 167-190.

⁷ Herlina, P. (2024). Pengaturan perkawinan campuran sebagai instrumen pencegahan penyelundupan hukum dalam pengembangan bisnis di Indonesia. Disertasi. Denpasar: Program Studi Doktor Ilmu Hukum Universitas Udayana.

context of mixed marriages. The government and legal institutions play a critical role in promoting the importance of prenuptial agreements through comprehensive legal education⁸.

From an Islamic legal perspective, mixed marriages are subject to specific regulations. Islam stipulates that marriages between Muslims and non-Muslims have distinct legal consequences, particularly concerning inheritance rights and asset status⁹. For instance, under Islamic inheritance law, marriages between Muslims and non-Muslims may impact the inheritance rights of spouses and their children. The absence of a prenuptial agreement in such marriages often exacerbates legal complexities, especially in the event of the death of one spouse. This demonstrates that prenuptial agreements are not only relevant in the context of national law but also in ensuring compliance with applicable religious legal principles.

The role of notaries in mixed marriages cannot be overlooked. As officials authorized to draft authentic deeds, notaries are responsible for providing clear legal guidance to couples before marriage. However, in practice, many couples do not receive adequate information about the importance of prenuptial agreements from notaries. This reveals a gap in the legal system that needs to be addressed through stricter regulations and improved education for mixed-marriage couples¹⁰.

Another critical aspect is the administrative impact of the absence of prenuptial agreements in mixed marriages. Foreign spouses married to Indonesian citizens often face difficulties in obtaining visas, residency permits, and citizenship status. Without prenuptial agreements, these administrative processes become more complicated and time-consuming. Additionally, the legal uncertainties faced by the couple can affect the stability of their relationship, potentially leading to negative consequences for the family as a whole.

⁸ Ummah, M. S. (2019). Subjective Health Perception and Related Health Indicators among Home-Dwelling Elderly: A Covariance Structural Analysis. *Sustainability (Switzerland)*, 11(1), 1–14.

⁹ Maloko, M. T., Chotban, S., Fuady, M. I. N., & Hasdiwanti. (2024). Analyzing the prohibition of interfaith marriage in Indonesia: legal, religious, and human rights perspectives. *Cogent Social Sciences*, 10(1), 2308174.

¹⁰ Kristol, A., & Dahinden, J. (2020). Becoming a citizen through marriage: how gender, ethnicity and class shape the nation. *Citizenship Studies*, 24(1), 40-56.

Advances in technology and globalization have provided broader access to information for mixed-marriage couples¹¹. However, information gaps remain a significant issue, particularly for couples residing in remote areas with limited access to legal services. The government, legal institutions, and society must work together to ensure that all mixed-marriage couples have equal access to legal information and assistance. Continuous legal education is key to addressing this issue.

A number of previous studies can be compared with the present study. For example, Hermanto's work¹² focuses on the construction of arrangements in the field of citizenship in Indonesia. One of these arrangements is related to the regulation of mixed marriages. This regulation has implications for a number of Constitutional Court decisions. However, when compared to the present study, Hermanto's work is more specific in discussing aspects of legal certainty for the parties in a mixed marriage who seek their rights. One of these rights is property ownership. Secondly, the work of Bonjour and De Hart¹³ centers on the issue of citizenship arising from mixed marriages. In several cases, the distinguishing factor of this research article is its focus on the Indonesian context, exploring the dimensions that can be pursued within the framework of legal certainty and human rights guarantees for the legal consequences of mixed marriages.

Based on the above analysis, this article intends to examine the legal position of mixed marriages without prenuptial agreements and their implications for the legal rights of couples within the Indonesian legal system. This study will discuss two main legal problems related with how the applicable legal provisions regulate mixed marriages without prenuptial agreements and identify the legal impacts on property ownership, citizenship status, and inheritance rights. Additionally, the article also explore the challenges faced by couples in managing joint property and other rights while analyzing the relevance of prenuptial agreements in providing clearer and more effective legal protection.

¹¹ López, J. L. (2015). "Impossible Families": Mixed-Citizenship Status Couples and the Law. *Law & Policy*, 37(1-2), 93-118.

¹²Hermanto, B. (2023). Dynamics on constitutional court decision towards Indonesia citizenship arrangement: Dinamika Putusan Mahkamah Konstitusi terhadap pengaturan kewarganegaraan Indonesia. *Jurnal Konstitusi*, 20(2), 216-237.

¹³Bonjour, S., & De Hart, B. (2021). Intimate citizenship: Introduction to the special issue on citizenship, membership and belonging in mixed-status families. *Identities*, 28(1), 1-17.

2. LEGAL METHOD

The method employed is founded on normative research¹⁴, bolstered by statutory approaches, legal concepts, and legal facts. This research is further explored through literature studies that are realized in legal prescriptive analysis, with enhancement primary legal sources and secondary legal sources related with property ownership, citizenship status, and inheritance rights.

3. RESULT AND DISCUSSIONS

A mixed marriage refers to a union between two individuals of different nationalities, as defined under Article 57 of Law No. 1 of 1974 on Marriage (Marriage Law). In the Indonesian legal system, a marriage is considered valid if conducted in accordance with the religious laws and beliefs of the respective parties, as stipulated in Article 2(1) of the Marriage Law. However, for couples of differing nationalities, compliance with religious laws must also be complemented by fulfilling the legal requirements of their respective countries. Legal challenges often arise in mixed marriages where no prenuptial agreement is in place, which primarily serves to regulate the separation of assets as well as rights and obligations during the marriage. Without such an agreement, property acquired during the marriage is classified as joint property under Article 35 of the Marriage Law, leading to significant legal implications, particularly regarding asset ownership, such as land, which is strictly regulated in Indonesia to limit ownership by foreign nationals (FN)¹⁵.

The absence of a prenuptial agreement in mixed marriages gives rise to various legal issues, especially concerning the management of joint property. According to Article 21(1) of the Basic Agrarian Law, land ownership rights are reserved exclusively for Indonesian citizens (IC). In cases where no prenuptial agreement exists, land classified as joint property may be deemed to involve foreign ownership. This can render the ownership of such land null and void by operation of law. Furthermore, mixed couples face challenges concerning inheritance and the citizenship status of children born from the marriage. In many instances, legal uncertainties result in prolonged disputes,

¹⁴ Sudiarawan, K. A., Tanaya, P. E., & Hermanto, B. (2020). Discover the legal concept in the sociological study. *Substantive Justice International Journal of Law*, 3(1), 94-108.

¹⁵ Mujiburohman, D. A., Salim, M. N., Junarto, R., & Sutaryono, S. (2023). Mixed marriage in Indonesia: joint property and foreign land ownership restrictions. *The Lawyer Quarterly*, 13(4).

particularly in cases of separation or the death of a spouse. The lack of a prenuptial agreement also limits the couple's ability to jointly invest in fixed assets in Indonesia due to restrictions on foreign ownership of assets.

One of the most intricate issues in mixed marriages without a prenuptial agreement involves land ownership. Indonesian law, as per Article 21(1) of Basic Agrarian Law, prohibits foreign nationals from owning land. In mixed marriages, without a prenuptial agreement stipulating asset separation, land acquired during the marriage becomes part of the joint property. This situation creates legal risks, as joint property involving foreign ownership violates agrarian laws. In some cases, the land may be seized, or its ownership nullified. These provisions not only restrict the rights of the Indonesian spouse to manage joint property but also create legal uncertainties that can disadvantage both parties¹⁶. Moreover, such arrangements often complicate the sale or transfer of land and its use as collateral for credit.

The absence of a prenuptial agreement also affects the legal status of children born from mixed marriages¹⁷. Such children frequently face challenges in determining their nationality, particularly if the foreign parent's country does not recognize dual citizenship. In the context of inheritance, these children may encounter legal hurdles, especially if the inherited property includes immovable assets such as land in Indonesia. Inheritance of land by children holding foreign nationality contravenes Basic Agrarian Law, potentially complicating the division of estates. This issue becomes even more complex in the absence of clear legal instruments such as wills or family agreements. Consequently, prenuptial agreements covering inheritance arrangements are crucial to provide legal protection for children born from mixed marriages.

A primary cause of legal problems in mixed marriages is the low level of legal awareness among couples¹⁸. Many couples do not understand the importance of prenuptial agreements until faced with actual legal challenges, such as joint property disputes or the nullification of land ownership. Research by Hernawan¹⁹ reveals that the majority of

¹⁶ Sumiarni, E. (2024). Historical Study of Marriage Law Between the Norms and the Problematics. *Revista de Gestão Social e Ambiental*, 18(5), 1-19.

¹⁷ Miqat, N., Bakhtiar, H. S., Salam, S., Tridewiyanti, K., & Ibrahim, K. M. (2023). The Development of Indonesian Marriage Law in Contemporary Era. *De Jure: Jurnal Hukum Dan Syar'iah*, 15(1), 54-66.

¹⁸ Putri, B. S., & Junaidi, M. (2025, July). Implications of Constitutional Court Decision Number 69/PUU-XIII/2015 on The Status of Marriage Agreements and The Regulation of Joint Property Separation. In *Proceeding International Conference Restructuring and Transforming Law* (Vol. 4, No. 1, pp. 64-70).

¹⁹ Hernawan, A. (2020). *Legal Perspective on Mixed Marriages in Indonesia*. Jakarta: Pustaka Hukum

mixed couples in Indonesia lack adequate information on the legal implications of their marriage. This is due to insufficient dissemination of information by relevant parties, such as notaries, lawyers, or government agencies²⁰. This low legal awareness complicates couples' ability to manage their legal relationships and increases the risk of conflicts that may harm both parties²¹.

The amendment to Law No. 16 of 2019 concerning the Marriage Law provides an opportunity for couples to create prenuptial agreements after the marriage has taken place. This provision allows couples to legally establish the separation of assets and their rights, provided both parties agree²². Such agreements may include provisions on asset ownership, inheritance, and property division in cases of divorce. Consultation with a notary or legal expert is essential in drafting agreements tailored to the couple's needs²³. With a prenuptial agreement in place, mixed couples can mitigate various legal risks arising from the commingling of joint property.

Notaries play a vital role in assisting mixed couples to understand and draft legal documents suited to their needs²⁴. As authorized public officials, notaries can provide legal advice on prenuptial agreements and assist couples in their preparation. Notaries also clarify the legal implications of such agreements, including provisions for asset separation, inheritance rights, and the management of joint assets. By involving notaries, mixed couples can ensure their agreements are legally valid and comply with applicable laws²⁵.

In some instances, legal disputes involving mixed couples can be resolved through court recommendations. Courts have the authority to issue decisions or recommendations

²⁰ Miqat, N., & Patittingi, F. (2018). The Rights Of Land In Marriage Agreement According To The Constitutional Court Decision Number 69/Puu-Xiii 2015 Based On The Customary Law Perspective. *Yustisia*, 7(1), 98-108.

²¹ Hermanto, B. (2022). Reformulasi Undang-Undang Kewarganegaraan Indonesia: Perspektif politik hukum, problematik, dan prospek pengaturan. *Jurnal Legislasi Indonesia*, 19(2), 209-230.

²² Hartono, H. (2020). Roles of Notary in Drawing Up Marriage Agreement After Constitutional Court Decision Number 69/PUU-XIII/2015. *Prophetic Law Review*, 180-199.

²³ Damayanti, A. (2024). Legal Certainty of Marriage Agreements Made Before Marriage and Their Implications After Divorce. *Sociological Jurisprudence Journal*, 7(1), 15-22.

²⁴Subawa, M. et.al. (2024). *KAPITA SELEKTA DAN FILSAFAT ILMU HUKUM KENOTARIATAN KONTEMPORER INDONESIA*. Uwais Inspirasi Indonesia, Ponorogo.

²⁵ Chiu, T. Y., & Yeoh, B. S. (2021). Marriage migration, family and citizenship in Asia. *Citizenship studies*, 25(7), 879-897.

aimed at fairly resolving disputes in accordance with legal provisions²⁶. These recommendations may include the division of joint property, child custody arrangements, or the resolution of inheritance issues²⁷. Court-facilitated mediation also serves as an effective alternative for dispute resolution, enabling both parties to reach an agreement without undergoing lengthy and costly litigation processes.

Legal education is a critical solution to addressing the challenges faced by mixed couples. The government, legal institutions, and civil society organizations must intensify efforts to raise awareness of the importance of prenuptial agreements and their legal implications. With adequate education, mixed couples can better understand their rights and obligations within the marriage and take necessary steps to protect their legal interests. Furthermore, legal education can help couples avoid future conflicts and legal uncertainties²⁸.

4. CONCLUSION

Mixed marriages in Indonesia without prenuptial agreements present significant legal challenges, particularly concerning the management of joint property, inheritance, and the nationality status of children. The absence of such agreements can result in prolonged legal conflicts, such as the nullification of land ownership due to violations of Article 21(1) of the Basic Agrarian Law, which prohibits land ownership by foreign nationals. Additionally, children born from mixed marriages face uncertainty regarding their nationality and inheritance rights, often exacerbated by the lack of clear legal documentation. The low level of legal awareness among mixed couples compounds these issues, as many couples fail to recognize the importance of prenuptial agreements until confronted with tangible legal problems. Consequently, mixed marriages without prenuptial agreements have the potential to create legal uncertainties that disadvantage all parties involved.

²⁶ Khairunnisa, F., Kusumadara, A., & Widaqdo, S. (2025). Legal Justice Perspective in Influencing Legal Changes Related to Joint Property in Mixed Marriages. *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)*, 7(3), 1345-1383.

²⁷ Sugiastuti, N. Y., Rudyanto, B., & Dancar, A. (2025). International Civil Law Aspects of International Marriage: A Comparative Perspective of Indonesian and Japanese Law. *Jambura Law Review*, 7(1), 105-126.

²⁸ Akbar, A., Lubis, A., Mey Nisa Putri, Habib, M. H., & Andinata, M. F. (2024). History of Mixed Marriages in Indonesia. *Jurnal Pendidikan Tambusai*, 8(1), 48.

To address these challenges, strategic measures are necessary, including enhancing legal education for mixed couples through outreach efforts by the government, notaries, and related institutions. Regulatory amendments permitting the creation of postnuptial agreements offer a practical solution to provide legal protection for mixed couples. Notaries play a critical role in drafting prenuptial agreements tailored to the needs of each couple, thereby minimizing legal risks associated with the commingling of joint property. Furthermore, courts can facilitate dispute resolution by offering mediation services or issuing equitable decisions to resolve conflicts.

By implementing these measures, mixed couples can navigate their marriages with greater legal security and stability, in compliance with applicable laws. Such efforts also contribute to providing enhanced legal protection for children born from these marriages, ensuring their rights and interests are safeguarded. While, policy or legal reform needed related with enhancement of public legal literacy and allowing post-nuptial agreements for future mixed marriages in Indonesia.

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