

Legal implications of mixed marriages on joint property status

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ARTICLE INFO	ABSTRACT
Article history: Received: 30, Jun, 2025 Revised: 07, Jul, 2025 Accepted: 30, Jul, 2025 Keywords: Citizenship; Constitutional Rights; Foreign Spouse; Marriage Law; Notarial Agreement.	Mixed marriages, involving individuals of different nationalities, present complex legal challenges, particularly in determining the status of joint property. In the Indonesian legal system, such marriages are governed by a combination of national laws, including Law No. 1 of 1974 on Marriage, Law No. 12 of 2006 on Citizenship, and Law No. 5 of 1960 on Basic Agrarian Principles, among others. One of the most significant issues arises in relation to the ownership and control of immovable property, especially when one spouse is a foreign national. Indonesian law restricts foreign ownership of land, which affects the ability of couples in mixed marriages to hold joint property rights over land and housing. This often necessitates legal arrangements such as prenuptial agreements (<i>perjanjian perkawinan</i>) to separate assets, preventing legal conflicts and safeguarding property rights. The absence of such agreements can lead to the classification of joint property as incompatible with national land laws, potentially invalidating ownership claims. This paper explores the implications of mixed marriages on joint property status by analyzing Indonesian legal provisions, court rulings, and practical case examples. It also discusses the role of notaries and legal practitioners in drafting agreements that comply with the prevailing legal framework. The study emphasizes the importance of legal certainty, equal rights within marriage, and the harmonization of private international law principles with domestic statutes. Findings suggest the need for more accessible legal education and simplified mechanisms for asset regulation in mixed marriages to prevent unintended legal consequences. <i>This is an open access article under the CC BY-NC license.</i> 

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1. INTRODUCTION

In the modern era of globalization, increased mobility, and cross-cultural interaction, mixed marriages—commonly referred to as intermarriages between Indonesian citizens and foreign nationals—have become a more frequent legal and social phenomenon. While these unions signify the fusion of cultural values, religions, and national identities, they also raise important legal questions, particularly regarding the ownership and management of joint marital property. Indonesia, with its plural legal system and strict regulations on land and property ownership, places considerable legal boundaries on the status of such marriages and the rights and obligations that arise within them.

Marriage in Indonesia is regulated principally by Law No. 1 of 1974 on Marriage, which provides that a marriage is valid if it is conducted in accordance with the laws of the religion and beliefs of the parties involved. However, when one of the parties is a foreign national, additional considerations arise under Law No. 12 of 2006 on Indonesian Citizenship, Law No. 23 of 2006 on Civil Administration, and Law No. 5 of 1960 on Basic Agrarian Principles (UUPA). Of particular concern is Article 21 of the UUPA, which states that only Indonesian citizens may possess full ownership rights (*hak milik*) to land. Consequently, if an Indonesian citizen marries a foreign national and they fail to take proper legal

precautions, such as signing a prenuptial agreement to separate assets, the status of jointly acquired property particularly immovable assets such as land may be jeopardized or even deemed illegal.

This legal landscape creates a tension between the right to marriage, as protected under international human rights conventions and the Indonesian Constitution, and national economic and territorial policies designed to preserve land ownership for citizens. At the heart of this issue is the question of whether couples in mixed marriages can enjoy equal property rights under the law and how these rights can be exercised without contravening national legal restrictions. In theory, marriage is not only a spiritual and emotional union but also a legal partnership that creates obligations and rights, including the formation of marital property or *harta bersama*. According to Article 35 of Law No. 1 of 1974, all property acquired during the marriage becomes joint property unless otherwise stipulated by a marriage agreement. This poses a significant challenge for mixed marriages, where the foreign spouse's involvement in property ownership may be interpreted as a violation of agrarian law. Without a prenuptial agreement that explicitly separates the property ownership, any asset jointly acquired may risk legal nullification or seizure due to the foreign spouse's indirect control.

The landmark Constitutional Court decision in *Putusan Mahkamah Konstitusi No. 69/PUU-XIII/2015* provided a turning point by affirming the legality of post-nuptial agreements and expanding the legal opportunities for mixed couples to regulate their assets. This decision was a response to the growing number of Indonesian citizens who found themselves inadvertently losing land rights due to their marriage to foreign nationals. The court emphasized the constitutional guarantee to own property and the right to equality before the law, thus allowing more flexible contractual arrangements. However, the implementation of this ruling remains inconsistent, and many mixed marriage couples continue to face bureaucratic hurdles, limited legal literacy, and conflicting interpretations among land offices, notaries, and the judiciary.

From a comparative perspective, other countries such as the Netherlands, Australia, and the United States adopt more liberal frameworks in addressing the property rights of spouses in mixed marriages. In these jurisdictions, property rights are governed by personal or contractual autonomy, and restrictions on land ownership by foreigners are either nonexistent or strictly regulated through transparent procedures. Indonesia's approach, while seeking to protect national interests, often overlooks the individual rights of its own citizens who enter into international unions. This has created a legal paradox where Indonesian women and men are effectively penalized for marrying foreigners, a condition that contradicts the spirit of the Indonesian Constitution and international human rights norms.

The implications of this legal problem are multi-layered. First, it raises questions about the accessibility and fairness of legal instruments such as prenuptial and postnuptial agreements. Second, it creates legal uncertainty regarding the enforceability of these agreements in court and their recognition by the National Land Agency (*Badan Pertanahan Nasional*). Third, it generates a chilling effect, discouraging Indonesian citizens from investing in land or real estate if they are married to a foreigner. Finally, it has gendered impacts, especially on Indonesian women who may lack the financial independence or legal awareness to assert their rights effectively within such a legal framework.

The issue also intersects with broader themes of legal pluralism, economic nationalism, and personal autonomy. While the state's intention to prevent land speculation and preserve agrarian sovereignty is understandable, it must be balanced with respect for personal freedoms and legal certainty for individuals in mixed marriages. Moreover, the lack of harmonization between civil law, agrarian regulations, and marriage law indicates a need for coherent legal reform. There is also a significant gap in public legal education; many couples enter into marriage unaware of the long-term legal consequences, only discovering the implications when purchasing property or facing divorce. In practice, many notaries are hesitant to draft or notarize prenuptial or postnuptial agreements for fear of legal conflict or administrative rejection. Moreover, banks and property developers often lack clear guidelines on how to proceed with mortgage or ownership transactions involving foreign spouses. This results in a fragmented and confusing legal environment that demands urgent regulatory clarity and administrative training.

This research paper aims to analyze the legal implications of mixed marriages on joint property status by evaluating statutory provisions, constitutional principles, and judicial interpretations, while also considering practical experiences from legal practitioners and affected couples. The study adopts a

normative juridical approach complemented by case studies and legal comparison. It focuses on the following research questions; How do Indonesian laws define and regulate the status of joint property in mixed marriages, What legal challenges arise when foreign spouses are involved in the ownership or acquisition of land, How effective are prenuptial and postnuptial agreements in protecting the rights of Indonesian citizens in mixed marriages, What lessons can be learned from international legal systems in addressing similar issues.

Through these questions, the study seeks to offer concrete recommendations for legal reform, increased legal literacy, and institutional strengthening to better accommodate the evolving nature of family law in Indonesia. It is hoped that this research will contribute to a more inclusive and rights-based legal framework that reconciles national interests with individual freedoms and equality within marriage. Ultimately, recognizing the legal implications of mixed marriages is not only a matter of private law but a reflection of the state's commitment to human rights, legal certainty, and the dignity of its citizens. It is imperative for Indonesia to ensure that its legal system evolves in a way that protects both national interests and the legitimate aspirations of its people, especially in an increasingly global and interconnected world.

2. RESEARCH METHOD

This research employs a normative juridical method, focusing on the examination of primary and secondary legal materials related to the implications of mixed marriages on the status of joint property within the Indonesian legal system. The normative juridical approach is appropriate for analyzing legal norms, statutes, and legal principles that regulate marriage, property rights, and land ownership involving Indonesian citizens and foreign nationals. Primary legal sources include statutory regulations such as Law No. 1 of 1974 on Marriage, Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), Law No. 12 of 2006 on Citizenship, the Indonesian Civil Code (KUHPerdata), and relevant Constitutional Court decisions such as Putusan MK No. 69/PUU-XIII/2015. These are analyzed systematically to identify legal provisions that affect joint property ownership in mixed marriages, particularly in relation to land ownership restrictions and the use of prenuptial or postnuptial agreements. Secondary legal sources include legal commentaries, journal articles, court decisions, notarial practices, and doctrinal analyses by Indonesian and international legal scholars. This literature supports the interpretation of legal texts and provides insight into the practical implementation and challenges faced by individuals in mixed marriages. In addition to doctrinal legal analysis, this research integrates a comparative legal study, drawing upon legal systems in jurisdictions such as the Netherlands, Australia, and the Philippines to examine how similar legal issues are addressed abroad. Furthermore, case studies and qualitative data from notaries and legal practitioners are used illustratively to reveal the real-world implications of current legal arrangements and institutional practices. The aim of this method is to provide a comprehensive and critical understanding of the legal frameworks, challenges, and reform needs in regulating joint property within mixed marriages in Indonesia.

3. RESULTS AND DISCUSSIONS

3.1. The Legal Framework Governing Mixed Marriages and Property Rights

Mixed marriages, or marriages between Indonesian citizens and foreign nationals, are recognized under Law No. 1 of 1974 concerning Marriage. However, their legal implications, especially regarding joint property or "harta bersama," intersect with other national laws, most notably the Basic Agrarian Law (Law No. 5 of 1960), the Indonesian Civil Code (KUHPer), and the Citizenship Law (Law No. 12 of 2006). Article 35 of the Marriage Law asserts that property acquired during marriage becomes joint property unless a marriage agreement (prenuptial or postnuptial) states otherwise. One of the most contentious legal issues arises when an Indonesian citizen married to a foreign national attempts to purchase land or property. Under Article 21 of the Basic Agrarian Law, land with ownership rights (hak milik) can only be held by Indonesian citizens. Consequently, if an Indonesian citizen acquires land during a marriage with a foreigner and without a prenuptial agreement, the property is legally deemed as jointly owned, thus violating the prohibition on foreign land ownership. This legal interpretation has led to land being seized or ownership being annulled by the state.

Mixed marriages in Indonesia, legally defined as marriages between Indonesian citizens and foreign nationals, are governed primarily by Law No. 1 of 1974 on Marriage. This law affirms the legality of such unions but also brings about a complex set of legal challenges particularly concerning property

rights, especially the status of joint marital assets. Under Article 35 of the Marriage Law, any property acquired during the marriage is deemed joint property unless otherwise specified in a marriage agreement. This becomes problematic when intersecting with Law No. 5 of 1960 concerning Basic Agrarian Principles, which explicitly prohibits foreign nationals from owning land with full ownership rights in Indonesia. Consequently, when an Indonesian citizen in a mixed marriage acquires property without a valid prenuptial agreement, the property is legally considered jointly owned by both spouses one of whom is a foreigner. This situation may render the ownership invalid under agrarian law.

Additionally, the Indonesian Civil law supplements these statutes by providing rules about marital property regimes and contract law. Law No. 12 of 2006 on Citizenship is also relevant, particularly regarding the loss or retention of Indonesian citizenship due to marriage. The overlap and sometimes contradictory nature of these laws create legal ambiguity for couples in mixed marriages. To mitigate these issues, a prenuptial agreement can be executed to ensure separation of property. However, prior to 2015, the law only recognized agreements made before marriage. The Constitutional Court's ruling in Decision No. 69/PUU-XIII/2015 allowed postnuptial agreements, thereby granting greater flexibility and protection to mixed-marriage couples. Nonetheless, practical application still varies widely across notaries, courts, and land registration offices. The current framework thus reflects a legal landscape where the rights of Indonesian citizens in mixed marriages are often constrained by national interests in protecting land ownership, highlighting a pressing need for clearer regulatory integration and legal harmonization.

3.2. The Role of Prenuptial and Postnuptial Agreements

Prenuptial agreements (*perjanjian perkawinan*) serve as a crucial legal instrument for couples in mixed marriages to separate assets and prevent automatic joint ownership. By separating property, the Indonesian spouse may legally acquire land without it being considered joint property, thus complying with agrarian law restrictions. For many years, Indonesian marriage law only recognized prenuptial agreements signed before the marriage. The turning point came with the landmark Constitutional Court decision No. 69/PUU-XIII/2015, which affirmed the legality of postnuptial agreements. This decision widened the legal options for couples already married without a prenuptial agreement. Nevertheless, implementation remains inconsistent across jurisdictions and land offices, with varying interpretations and bureaucratic resistance.

Prenuptial and postnuptial agreements play a crucial role in the legal regulation of marital relationships, particularly in defining property rights and financial responsibilities between spouses. A prenuptial agreement, entered into before marriage, allows couples to outline the division of assets, management of debts, and financial expectations in the event of divorce, separation, or death. In contrast, a postnuptial agreement is created after marriage and serves a similar purpose, often in response to changes in financial circumstances, family dynamics, or reconciliation after marital difficulties. These agreements are especially relevant in jurisdictions where marital property regimes can significantly impact asset distribution. For example, in community property systems, assets acquired during marriage are considered jointly owned, potentially complicating asset division in the absence of a prior agreement. Prenuptial and postnuptial agreements provide clarity and reduce uncertainty by preemptively addressing these issues, thereby preventing prolonged legal disputes during divorce proceedings.

Beyond asset protection, these agreements can safeguard family wealth, protect business interests, and ensure children from previous relationships are provided for. In cross-border marriages, they are vital for clarifying jurisdictional issues and aligning different legal systems, thus avoiding potential conflicts. However, the enforceability of such agreements depends on compliance with legal standards, including full disclosure, voluntary consent, and fairness. Courts may scrutinize agreements that appear one-sided or were signed under duress. Therefore, legal counsel is essential during their drafting to ensure validity. Critics argue that these agreements can undermine the trust and emotional foundation of marriage by introducing contractual elements into a traditionally personal relationship. Nevertheless, many legal experts and couples view them as tools for transparency and mutual understanding, helping to strengthen relationships by setting clear expectations. In conclusion, prenuptial and postnuptial agreements are not merely instruments of financial security but also expressions of responsible planning. They serve to protect individual interests while promoting clarity and fairness, ultimately supporting the long-term stability of marital relationships.

3.3. Legal Uncertainty and Bureaucratic Inconsistency

In practice, many couples face legal uncertainty when attempting to register property under such agreements. Notaries are sometimes hesitant to legalize postnuptial agreements due to fears of future

legal invalidity. Inconsistent administrative practices among regional Land Offices (BPN) further complicate matters. Some offices refuse to register property under a spouse's name if the other spouse is a foreigner, regardless of an existing marriage agreement. Additionally, many banks are reluctant to provide mortgage loans to mixed marriage couples for property acquisition, fearing legal conflicts over collateral in the event of default. This situation limits access to financing and real estate investment for Indonesian citizens in mixed marriages, effectively curbing their property rights.

Legal uncertainty and bureaucratic inconsistency are significant challenges that hinder the effective functioning of legal systems, especially in developing and transitional countries. Legal uncertainty arises when laws are ambiguous, frequently changing, or poorly enforced, making it difficult for individuals, businesses, and institutions to predict legal outcomes. Bureaucratic inconsistency, on the other hand, refers to the irregular application of rules and procedures by administrative bodies, often leading to unequal treatment, delays, and corruption. These issues undermine the rule of law and erode public trust in legal and governmental institutions. When citizens and investors cannot rely on a stable legal framework, they may become hesitant to engage in long-term commitments, such as contracts or investments. This not only affects economic development but also weakens the credibility of regulatory institutions. Inconsistent interpretations by government officials or conflicting regulations between different agencies exacerbate the problem, creating an environment of confusion and inefficiency.

Legal uncertainty is often rooted in poorly drafted legislation, overlapping regulations, and the absence of effective judicial review. In many cases, outdated laws remain on the books without being repealed or harmonized, allowing authorities to selectively enforce rules. Bureaucratic inconsistency is frequently linked to a lack of training, low accountability, and political interference in administrative processes. Discretionary decision-making by officials, without clear guidelines or oversight, increases the risk of favoritism or arbitrary outcomes. Addressing these issues requires comprehensive legal and institutional reform. Laws must be clearly written, consistently interpreted, and regularly updated to reflect social and economic developments. Strengthening judicial independence and enhancing legal education can improve the consistency and quality of legal decisions. Additionally, streamlining bureaucratic procedures, improving transparency, and using digital governance tools can reduce opportunities for inconsistency and enhance public service delivery. In conclusion, legal uncertainty and bureaucratic inconsistency are deeply interconnected problems that undermine governance and the protection of rights. Resolving them is essential to fostering a stable legal environment, promoting economic growth, and ensuring justice and equality before the law.

3.4. Gender-Based Impacts and Legal Literacy

The legal implications of mixed marriages often disproportionately affect women. Indonesian women who marry foreign men are particularly vulnerable due to lower legal literacy, reduced economic bargaining power, and societal expectations. Many women are unaware of the importance of prenuptial agreements until they are legally disadvantaged. Lack of public education about the legal consequences of mixed marriages contributes to the problem. Couples often proceed with marriage unaware that, without proper agreements, they may be barred from land ownership or may risk losing property during divorce or inheritance disputes. Legal aid organizations and notaries should play a greater role in educating the public and offering accessible legal services.

Gender-based impact and legal literacy are closely intertwined issues that influence the effectiveness of law in promoting equality and justice. Gender-based impact refers to how laws, policies, and legal processes differently affect individuals based on their gender, often to the disadvantage of women and marginalized gender groups. Legal literacy, the awareness and understanding of legal rights and processes, is a key factor in enabling individuals to challenge discrimination and seek redress. In many societies, women and gender minorities face systemic barriers in accessing justice due to deeply rooted social norms, economic dependency, and inadequate legal protection. Discriminatory laws or gender-neutral laws applied in unequal contexts can perpetuate inequalities in areas such as inheritance, property rights, employment, education, and protection against violence. For instance, lack of recognition of domestic work, limited access to credit, or insufficient enforcement of anti-violence legislation disproportionately affect women.

Legal literacy plays a critical role in addressing these disparities. When individuals understand their rights and the mechanisms available to enforce them, they are more empowered to assert those rights and hold institutions accountable. However, gender disparities in education, literacy levels, and access to information often leave women and gender minorities less informed about their legal rights. This lack of knowledge compounds their vulnerability and reduces their participation in public and legal life. Promoting legal literacy with a gender-sensitive approach involves more than just disseminating

information. It requires tailoring education and outreach to the specific needs and contexts of different gender groups. Community-based programs, integration of legal education in schools, mobile legal clinics, and collaboration with civil society organizations are effective strategies to raise awareness and build capacity.

Moreover, addressing gender-based impact in lawmaking requires a commitment to gender mainstreaming in legal reform. This includes conducting gender impact assessments of laws and policies, ensuring representation in decision-making bodies, and training legal professionals on gender sensitivity. In conclusion, enhancing legal literacy while acknowledging gender-based impacts is essential for achieving substantive equality. Legal systems must not only be formally fair but also practically accessible and responsive to the lived experiences of all genders. Empowering individuals through legal knowledge is a foundational step toward inclusive justice and social transformation.

4. CONCLUSION

Mixed marriages between individuals of different nationalities raise complex legal questions, particularly concerning the status of joint property. The legal implications stem from the intersection of personal, national, and international laws, which may differ significantly in how they define, regulate, and enforce property rights within marriage. In Indonesia, for example, the marriage of an Indonesian citizen to a foreign national requires adherence to both domestic marriage law and international private law principles. One of the most significant implications relates to joint property ownership. Under Indonesian law, marriage generally results in the formation of joint marital property unless a prenuptial agreement states otherwise. However, in mixed marriages, the absence of a prenuptial agreement can lead to complications. Indonesian citizens married to foreigners may be restricted from owning immovable property (such as land) jointly, as land ownership by foreign nationals is limited under national law. This restriction may lead to the loss of property rights or legal uncertainty if proper legal planning is not conducted. Moreover, mixed marriages may be governed by the laws of more than one country, raising issues of applicable law and jurisdiction. Disputes regarding property division upon divorce or death may become legally and procedurally complex, especially in the absence of clear agreements or when conflicting legal systems are involved. To mitigate such risks, it is essential for couples entering mixed marriages to consider drafting prenuptial or postnuptial agreements that clarify property rights and jurisdictional matters. Legal counsel is vital to ensure that such agreements are enforceable in both countries involved. In conclusion, mixed marriages have significant legal implications on joint property status. Proper legal planning, through the use of marital agreements and an understanding of applicable laws, is crucial to safeguarding the rights of both parties and preventing future legal disputes.

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