

# The Role of Marriage Agreements in Separation of Assets in Mixed Marriages Between Indonesian Citizens (WNI) and Foreign Citizens (WNA)

<sup>1</sup>Shoniya Dwi Putri Shabrina, <sup>2</sup>Henry Aspan, <sup>3</sup>Fitri Rafianti

<sup>1,2,3</sup>Universitas Pembangunan Panca Budi, Kota Medan, Indonesia

<sup>1</sup>[shoniyadwiputri@icloud.com](mailto:shoniyadwiputri@icloud.com), <sup>2</sup>[henryaspan@yahoo.com](mailto:henryaspan@yahoo.com),

<sup>3</sup>[fitrirafianti@dosen.pancabudi.ac.id](mailto:fitrirafianti@dosen.pancabudi.ac.id)

## Article History

Submission : 25-03-2026  
Received : 30-03-2026  
Revised : 28-04-2026  
Accepted : 30-04-2026

## Abstract

*Mixed marriages between Indonesian citizens (WNI) and foreign nationals (WNA) have seen a significant increase year by year. This phenomenon can lead to various legal issues, one of which concerns the separation of property in marriage to protect the constitutional rights of Indonesian citizens, particularly regarding land ownership. A prenuptial agreement is a legal tool that couples can use to arrange the separation of property in a legitimate and written manner. The purpose of this research is to analyze the role of prenuptial agreements in the separation of property for mixed couples, especially in the context of protecting property rights and legal certainty. The method used is normative legal research with a legislative approach, utilizing data sources in the form of laws and regulations, particularly Law No. 1 of 1974 concerning marriage. The analysis results indicate that prenuptial agreements are crucial in avoiding the commingling of assets, especially to protect the ownership of Indonesian citizens over immovable assets, which are restricted by the Basic Agrarian Law. In mixed marriages, such situations can disadvantage Indonesian citizens regarding land ownership rights, which would become joint property. According to Law No. 5 of 1960 on the Basic Agrarian Law (UUPA), it is stated that foreign nationals are not allowed to own land in Indonesia. As regulated in Article 29 of the Marriage Law, it provides a solution through property separation that can offer protection for Indonesian citizens to safeguard their land ownership rights and assets. The implementation of prenuptial agreements in mixed marriages still faces many challenges, one of which is the insufficient role of notaries and marriage registration institutions in providing education to couples intending to marry. Therefore, there is a need for stronger legal education to support the effectiveness of prenuptial agreements in legal practice in Indonesia. This research concludes that prenuptial agreements play a very important role in providing legal protection for mixed marriages between Indonesian citizens and foreign nationals in the mechanism of property separation. The property separation agreement not only protects the constitutional rights of Indonesian citizens over land but also helps avoid potential legal conflicts that may arise in the future.*

**Keywords:** Prenuptial Agreement, Property Separation, Mixed Marriage, Indonesian Citizens (WNI) and Foreign Nationals (WNA), Land Ownership Rights

## Abstrak

Perkawinan campuran antara warga negara Indonesia (WNI) dan warga negara asing (WNA) telah mengalami peningkatan yang signifikan dari tahun ke tahun. Fenomena ini dapat menyebabkan berbagai masalah hukum, salah satunya menyangkut pemisahan harta dalam



perkawinan untuk melindungi hak konstitusional warga negara Indonesia, khususnya mengenai kepemilikan tanah. Perjanjian pranikah merupakan alat hukum yang dapat digunakan pasangan untuk mengatur pemisahan harta secara sah dan tertulis. Tujuan penelitian ini adalah untuk menganalisis peran perjanjian pranikah dalam pemisahan harta bagi pasangan campuran, khususnya dalam konteks perlindungan hak milik dan kepastian hukum. Metode yang digunakan adalah penelitian hukum normatif dengan pendekatan legislatif, memanfaatkan sumber data berupa undang-undang dan peraturan, khususnya Undang-Undang Nomor 1 Tahun 1974 tentang perkawinan. Hasil analisis menunjukkan bahwa perjanjian pranikah sangat penting dalam menghindari pencampuran aset, terutama untuk melindungi kepemilikan warga negara Indonesia atas aset tidak bergerak, yang dibatasi oleh Undang-Undang Agraria Dasar. Dalam perkawinan campuran, situasi seperti itu dapat merugikan warga negara Indonesia terkait hak kepemilikan tanah, yang akan menjadi harta bersama. Menurut UU No. 5 Tahun 1960 tentang Undang-Undang Agraria Dasar (UUPA), dinyatakan bahwa warga negara asing tidak diperbolehkan memiliki tanah di Indonesia. Sebagaimana diatur dalam Pasal 29 UU Perkawinan, hal ini memberikan solusi melalui pemisahan harta yang dapat memberikan perlindungan bagi warga negara Indonesia untuk menjaga hak kepemilikan tanah dan aset mereka. Implementasi perjanjian pranikah dalam perkawinan campuran masih menghadapi banyak tantangan, salah satunya adalah peran notaris dan lembaga pencatat perkawinan yang kurang memadai dalam memberikan pendidikan kepada pasangan yang akan menikah. Oleh karena itu, diperlukan pendidikan hukum yang lebih kuat untuk mendukung efektivitas perjanjian pranikah dalam praktik hukum di Indonesia. Penelitian ini menyimpulkan bahwa perjanjian pranikah memainkan peran yang sangat penting dalam memberikan perlindungan hukum bagi perkawinan campuran antara warga negara Indonesia dan warga negara asing dalam mekanisme pemisahan harta. Perjanjian pemisahan harta tidak hanya melindungi hak konstitusional warga negara Indonesia atas tanah tetapi juga membantu menghindari potensi konflik hukum yang mungkin timbul di masa mendatang.

**Kata kunci:** Perjanjian Pranikah, Pemisahan Harta, Pernikahan Campuran, Warga Negara Indonesia (WNI) dan Warga Negara Asing (WNA), Hak Kepemilikan Tanah

## Introduction

A marriage agreement is an agreement made before or after marriage, which is regulated based on the agreement of both parties and based on applicable legal provisions. In this context, the marriage agreement must be in accordance with religious norms and morality, and must not eliminate the rights of the husband and wife. Through marriage, rights and obligations arise between husband and wife, including property acquired during the marriage (Salsiah et al., 2024).

The phenomenon of mixed marriages between Indonesian citizens (WNI) and foreign nationals (WNA) is becoming increasingly common, in line with advances in communication technology and other supporting factors. However, these mixed marriages often give rise to legal problems, especially those related to the regulations on marital property. Based on Law Number 1 of 1974, in the absence of a marriage agreement, property acquired during the marriage will be considered joint property. This decision can have significant legal implications, especially in the context of land and building ownership as regulated in the Basic Agrarian Law, where there are restrictions on ownership for foreign nationals (Januar et al., 2025).



Therefore, to anticipate such problems, Indonesian law regulates marriage agreements as stipulated in Article 29 of the Marriage Law. This agreement can regulate the separation of property from the outset, so that the parties can have full control over their respective assets. A significant change also occurred after Constitutional Court Decision Number 69/PPU-XII/2015, which explained that marriage agreements can be made even after the marriage has taken place, opening up opportunities for legal protection for mixed couples. Marriage agreements serve as an appropriate legal means of dealing with property management issues in mixed marriages (sriono, 2017).

Law No. 1 of 1974 concerning marriage was first passed on January 2, 1974, and came into effect on October 1, 1975. It is one of the laws that provides legal reforms in the field of marriage law. Before this law came into effect, Indonesian citizens used customary law. The concept of mixed marriage in the Marriage Law differs from Stb. No. 158 of 1898. Article 1 of Stb. No. 158 of 1898 defines "mixed marriage as a marriage between a woman and a man who are in Indonesia and are subject to different laws." The existence of different laws is caused by differences in nationality, place, class, and religion. Meanwhile, the Marriage Law defines mixed marriage only in terms of differences in nationality, and one of the parties must be an Indonesian citizen (WNI).

Unfortunately, those who get married often do not consider the consequences of marriage without a prenuptial agreement on their assets. This is understandable because every couple who is about to get married hopes for a happy family without thinking about separation, but a prenuptial agreement plays an important role in protecting our assets. Thus, this study aims to explore further the topic of prenuptial agreements in the context of mixed marriages, as well as their legal implications for the management of assets and the protection of rights between husband and wife (Mulyawati, 2017).

## Methods Research

The legal research method used in this study is a normative juridical research with a statutory approach. This statutory approach is carried out by examining various regulations relevant to the discussion, such as Law Number 1 of 1974 concerning marriage and other regulations. Normative legal studies are conducted by examining various formal legal principles, such as laws. This relates to the issue to be discussed in this study, namely the role of prenuptial agreements in mixed marriages (Andri Wijaya, 2022).

## Results and Discussion

### How are marriage agreements implemented in mixed marriages between Indonesian citizens and foreign nationals

The authority of a notary in drawing up a marriage contract can be found in Law No. 30 of 2004, Article 15, paragraph (1): "A notary has the authority to draw up authentic deeds concerning all acts, agreements, and decisions required by law and/or desired by the interested parties to be declared as authentic deeds, guaranteeing the certainty of the date of preparation, or deviating from the deed, providing gross, copies and excerpts of the deed, all as long as the preparation of the deeds is not assigned or excluded to other officials or persons designated by law". The meaning of Article 29 (1) of the Marriage Law has been expanded after the Constitutional Court Decision Number 69/PPU-XII/2015. However, Article 29 (1) still has the same meaning that a marriage agreement is a written agreement in the form of a letter under



hand with a special list in a special notary book (expedition). Other powers of the notary are mentioned in Article 15 paragraph (2), whereby the notary can certify signatures and determine the date of the deed. A copy of the deed with the same wording as the minutes of the deed, which has full probative force, will be given to the parties. Thus, there is legal certainty regarding the content for third parties.

Article 15 (1) of Law Number 30 of 2004 explains the authority that a notary has in drawing up deeds:

- a. Notaries are tasked with compiling all the wishes that govern the parties into an authentic deed.
- b. A Notary Deed is an authentic deed that has strong evidence of recognition, so that no additional evidence is required (Jati, 2023).

The marriage agreement that has been made will then be registered with the Office of Religious Affairs (KUA) for couples who are Muslim, while couples who are not Muslim will have their marriage agreement registered with the Civil Registry Office. With the registration of the marriage agreement with the designated agency, the element of publication is fulfilled, and thus the marriage agreement will be binding on third parties. If the marriage agreement is not registered, it will only be binding on the husband and wife, as explained in Articles 1313-1314 and 1340 of the Civil Code.

The requirements for registering a marriage agreement for Indonesian and foreign couples whose marriage is registered in another country are as follows:

- 1) Photocopies of the identity cards (KTP) of both parties.
- 2) Photocopies of family cards (KK).
- 3) A photocopy of the notarized marriage agreement.
- 4) A photocopy of the marriage book or marriage certificate issued by the country where the marriage was registered (qorib fathan, 2017).

Indonesian citizens who marry foreign nationals are not allowed to have land rights, because the land will be mixed with other joint assets. Government Regulation No. 103 of 2015 explains that Indonesian citizens can have land ownership rights as long as the mixed marriage complies with the regulations. As the number of mixed marriages increases, the need for housing also increases, resulting in Government Regulation No. 103 of 2015 concerning home ownership for foreigners. The purpose of this regulation is to make it easier for foreign nationals to obtain housing. Therefore, in accordance with Article 3 of PP 103/2015, Indonesian citizens in mixed marriages can still have land rights, which means that they have the same rights as those who are not in mixed marriages.

However, if they have a marriage agreement, Indonesian citizens who are part of a mixed marriage will still have rights to land, building use rights, and business use rights, as long as the marriage has a marriage agreement that regulates the separation of property. A marriage agreement must still be made even if they do not have HGB and HGU. This is because a marriage agreement will not only regulate assets during the marriage but also regulate their own assets in the future. It is impossible for one party to have HM, HGB, and HGU if they do not enter into a prenuptial agreement on the separation of property during the marriage. Only Foreign Nationals can have Right of Use (HP). The fact that one of the parties is an Indonesian citizen does not mean that they can still have Right of Use. A marriage agreement for mixed marriages is very important because it will enable a fair division of assets. Most importantly, it allows Indonesian citizens to



have property rights, which can be helpful if something happens in the future. Property rights, rights to use assets, lease rights, and building use rights can all be owned by Indonesian citizens who are married to foreign nationals, provided that they have a marriage agreement. Basically, a marriage agreement can provide preventive and repressive legal protection. Preventive legal protection is the creation of a marriage agreement in which the parties can determine their respective assets in the event of a legal merger of assets. A marriage agreement can be used as written evidence in the event of a future divorce. This is repressive protection, whereby the parties can freely determine the property that was separated before the marriage and the property acquired during the marriage (ananditya windy, 2024) .

Those who enter into a marriage agreement are guided by the regulations governing marriage agreements so that the parties will receive legal protection. The Civil Code explains that a marriage agreement must be made in the form of an authentic notarial deed, because the Marriage Law stipulates that a marriage agreement must be made in writing and then registered with the marriage registrar. However, based on Article 154 of the Civil Code, it is explained that if there is no joint property, the wife is allowed to dispose of or use all of her property for household needs. This provision also applies to couples who do not have an agreement regarding the separation of property. Based on the provisions stipulated in Article 164 of the Civil Code, the pooling of property does not cover profits or losses, but only discusses income and earnings. If at any time there is a financial loss in the household, the husband, as the head of the household, will be responsible. Article 144 of the Civil Code stipulates that the pooling of assets does not cover profits or losses.

In mixed marriages, there will also be a mixing of joint property, and joint property in mixed marriages is prone to legal problems. This is due to differences in nationality, which will involve several legal systems, one of which is national law and marriage law in its implementation. If the mixed marriage is conducted in Indonesia, then they (husband and wife) must accept all consequences based on the Marriage Law. One form of joint property in mixed marriages is ownership rights to immovable property in the form of land. All land ownership in Indonesia is regulated by the Basic Agrarian Law. Indonesian citizens who own land have their rights guaranteed by the constitution, as stipulated in Article 28 letter H paragraph 4 of the 1945 Constitution, which states that everyone has the right to personal property and that it cannot be taken arbitrarily by anyone. As explained in Indonesian regulations, foreign nationals cannot be considered legal subjects who can have rights to land, but this can happen if the foreign national marries an Indonesian citizen, resulting in the mixing of assets. If at any time an Indonesian citizen in a mixed marriage wishes to purchase land, then by law the land will become joint property, which means that the foreign national will have the same rights as the Indonesian citizen in owning the land. In a mixed marriage, the Indonesian citizen may have absolute rights without considering the interests of the foreign national if the marriage includes a prenuptial agreement for the separation of joint property in the form of movable and immovable assets (Nafisa, 2024).

In practice, marriage agreements still face obstacles, one of which is experienced by notaries in the preparation of authentic marriage agreement deeds. The issue is the legalization of deeds issued by notaries, which are then submitted to civil registry officials and the Religious Affairs Office (KUA). Before the deed is legalized by these two institutions, the deed issued by the notary is considered inauthentic and cannot bind third parties. However, Article 1 of the



Notary Law explains that only notaries have this authority, not other officials. Therefore, if other officials are involved, their authority is not the same as that for the issuance of authentic deeds, and is limited to the issuance of deeds of acknowledgment of children, reports of negligence by officials in storing mortgages, civil registration deeds, and marriage agreement deeds. The legalization of marriage agreements is essentially carried out so that all parties involved in the agreement become one entity in the entire document. Notaries not only ensure the legal validity of the deed, but they also need to ensure that all parties involved have the necessary ownership rights, as failure to do so could lead to problems in its implementation. Furthermore, the absence of a court decision that could serve as a basis for notaries in drafting marriage agreements could lead to legal irregularities that could harm third parties. Other obstacles include the good faith of the husband and wife in terms of debts to third parties, violations of the agreement during the marriage, and disputes that lead to court proceedings. A lack of understanding on the part of the family can also hinder and cause problems in its implementation.

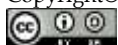
Marriage can be conducted in Indonesia or in another country. However, if the marriage is conducted abroad, it will only be legally valid in the jurisdiction where the marriage took place and must not violate any legal provisions in accordance with Article 6 of the Marriage Law applicable to Indonesian citizens. Marriages conducted abroad must be registered with the competent authority in the country where the marriage took place and reported to the Indonesian Embassy (KBRI). However, if the country does not conduct marriages for foreign citizens, the marriage must be registered at the local Indonesian Embassy, which will then record the marriage in the marriage register and issue an extract from the marriage certificate. and subsequently, the husband and wife must register their marriage conducted abroad at the civil registry office no later than 30 days after their return to Indonesia.

A marriage agreement in a mixed marriage is mandatory, as stated in Article 29 of Law No. 1 of 1974. However, this article does not explicitly explain the obligation of a marriage agreement in a mixed marriage. however, if a mixed marriage does not have a marriage agreement, it will be detrimental to both parties, especially for Indonesian citizens themselves. And for parties who enter into a marriage agreement, if at any time one of the parties violates the agreement, that party will receive the appropriate punishment under the applicable law. And if the violation causes harm to one of the parties, the guilty party is obliged to pay compensation for the losses suffered by the aggrieved party (Desliza et al., 2024).

When we look at the current condition of society, which is vulnerable in maintaining marriages, a marriage contract can be said to be a primary necessity so that we can live peacefully and maintain our property rights. Therefore, this is where the urgency of a marriage agreement lies in renewing and conceptualizing the marriage agreement with the aim of strengthening the bond of the agreement. A marriage agreement not only provides legal protection but also increases our trust in our spouse, and a marriage agreement also has the potential to resolve marital conflicts, especially regarding property issues.

In practice, marriage agreements protect assets and provide legal protection, as can be seen in the following articles:

- a) Article 29 of Law Number 1 of 1974 concerning marriage as the legal basis for regulating marriage in Indonesia;
- b) Article 1338 paragraph (1) of the Civil Code, which states, "all agreements made legally are valid as law for those who make them";



- c) Article 1313 of the Civil Code, which states, “an agreement is an agreement whereby one or more persons bind themselves to one or more other persons”;
- d) Article 119 paragraph (1) which reads, “from the moment of marriage, according to the law, there is a comprehensive joint property between husband and wife. If the marriage agreement does not state that there is a separation of property, as long as the marriage lasts, the marriage agreement cannot be changed”;
- e) Article 186 of the Civil Code, which reads, “During the marriage, the wife may file for separation of property if the husband behaves badly and squanders the joint property, which could lead to the destruction of the household”;
- f) Article 139 of the Civil Code, which reads, “A husband and wife who have a marriage agreement may deviate from the provisions of the Law regarding joint property, as long as the agreement does not violate religion and morality”;
- g) Article 149 of the Civil Code, which states, “After the marriage has taken place, the marriage agreement cannot be changed.” The existence of this article aimed at providing legal certainty and legal protection for spouses from third parties, particularly for creditors, so that they do not experience undesirable situations that could harm them;
- h) Article 147 of the Civil Code, which states that “marriage agreements must be made in the form of a notarial deed”;
- i) Article 2 paragraph (2) of Government Regulation Number 9 of 1975, which states that “marriage agreements must be registered at the KUA and at the Population and Civil Registry Office for non-Muslims” (Budiawan, 2023).

Mixed marriages need to be protected by the government through applicable laws and regulations. As it should be, mixed marriages are regulated in the Civil Code, the Citizenship Law, and the Marriage Law. With the passage of time, relations between countries have developed, resulting in mixed marriages. As a result, these marriages are subject to different laws. In Indonesia, legal relations involving foreign elements are specifically regulated by International Civil Law (HPI). HPI is usually used in the settlement of civil matters involving foreign elements. Because mixed marriages have foreign elements, they are subject to HPI and not only to the Marriage Law. Marriages that are not conducted in Indonesia are regulated in Article 56 of the Marriage Law, so that the procedure for conducting the marriage will follow the place where the marriage is conducted. If the husband and wife return to Indonesia, their marriage will be considered valid if it complies with the rules of Indonesian private international law, which uses the *lex loci celebrationis* provision, meaning that the validity of the marriage is based on the country where the marriage was performed. If the marriage is conducted in Indonesia, it will follow the provisions of the Marriage Law in order to be valid. And in accordance with the principle of *locus regit actum*, legal actions must be based on the procedures of the country where the action is carried out. The marriage agreement must be made in the form of a notarial deed that can serve as authentic evidence and will be considered perfect proof. The law must be able to protect all the rights of Indonesian citizens who marry foreign nationals. Therefore, the marriage agreement must be made in accordance with the principles, rules, and perceptions of Indonesia, which are none other than Pancasila (Andri Wijaya, 2022).



## How Marriage Agreements Provide Legal Protection for the Separation of Property Rights of Spouses in Mixed Marriages

A prenuptial agreement is an important instrument in protecting the assets of a married couple. In Indonesia, prenuptial agreements have been permitted since the enactment of the Civil Code on May 1, 1848. Marriage agreements are regulated and reinforced in Law Number 1 of 1974 concerning marriage. Law Number 1 of 1974 (UUP) explains that it is the legal basis for prospective couples to regulate the assets they will bring and acquire during their marriage. The main purpose of a marriage contract is to provide legal protection for the parties regarding the property they bring and the property they will acquire during the marriage. Marriage contracts are increasingly important in the modern era, with increasing economic uncertainty, including the threat of divorce, as marriage contracts provide legal certainty. Marriage agreements are especially important for mixed marriages, where one party has a different legal system. In this case, the marriage agreement will cover the property that applies according to the country of each party. Without an agreement, the process of dividing property will take a long time due to the different legal systems (Putri et al., 2025). The agreement regulated in Article 29 paragraph (1) of the Marriage Law of 1974 is as follows:

- a. The agreement is made before the marriage takes place, both parties agree to the marriage agreement which is legalized by the marriage registrar, the contents of which will also apply to third parties as long as the third parties are involved.
- b. A marriage agreement cannot be legalized if it violates the limits of law, religion, and morality.
- c. The marriage agreement takes effect after the marriage has taken place.
- d. The marriage agreement can be changed as long as there is agreement between both parties and it does not harm third parties (Amin, 2024).

The marriage agreement will stipulate that there will be no pooling of assets during the marriage, as provided for in Article 144 of the Civil Code to eliminate the pooling of assets, which means that throughout the marriage, the assets of each party will remain separate, so the parties must expressly state that they do not want to pool their assets. With a marriage agreement, each party will remain the owner of the assets they bring into the marriage because they have made a marriage agreement to separate their assets. Therefore, all assets they acquire during the marriage, whether from business ventures or from their personal assets, will remain their personal property. Article 186 of the Civil Code allows for a prenuptial agreement to separate property during marriage, and the wife has the right to file a claim with the judge regarding the separation of property in the following matters:

- 1) If the husband behaves badly by squandering shared property and assets, and allowing the household to be threatened with ruin.
- 2) If, due to disorder and mismanagement of the husband's assets, the guarantee of what is legally the wife's right is lost, or if the assets are in danger due to gross negligence in their management (Kitab Undang-Undang Hukum Perdata, n.d.).

The legal consequences will be even more pronounced if one of the parties is a foreign national, with the legal consequences being borne primarily by the Indonesian citizen who does not renounce their citizenship after the mixed marriage takes place. This is because Article 21 paragraph (1) of Law Number 5 of 1960 states that "Only Indonesian citizens have property rights". paragraph (3) of this article also states that "If there is a merger of assets in which part of

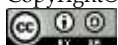


the land or building will become the property of the foreign spouse, this is prohibited by law." Furthermore, paragraph (4) states that "As long as a person has foreign citizenship in addition to Indonesian citizenship, he/she cannot own land with freehold rights and is subject to the provisions of paragraph 3 of this article". A married couple who does not enter into a marriage agreement because they have exceeded the time limit will automatically have their assets combined, which must be accepted by both parties. With regard to property acquired during the marriage, in principle, property acquired during the marriage will become joint property because Article 119 of the Civil Code explains that the wealth that each party brings into the marriage will be combined into one. Thus, it must also be interpreted that Article 21 of Law -Law Number 5 of 1960 is also indirectly interpreted to mean that a person who shares property with a spouse who is a foreign national due to marriage and does not have a marriage agreement must be interpreted as not being allowed to own land in Indonesia during the marriage as stipulated in Article 21 of the Marriage Law. Article 21 must be read in conjunction with Article 119 of the Civil Code, which states that the respective assets brought into the marriage will be combined into one, so Article 21 of the Marriage Law Marriage Law, which is then interpreted implicitly, a man or woman who shares property with their spouse due to marriage who is a foreign national and does not have a marriage agreement may not own land in Indonesia during the marriage.

Article 35 paragraph (1) of the Marriage Law explains that "property acquired during marriage is joint property." Based on this provision, we can understand that husbands and wives have equal rights to property acquired during marriage. This also applies to mixed marriages between Indonesian citizens and foreign nationals, which result in the mixing of property. Mixed marriages will not only have legal consequences regarding the relationship between husband and wife or the status of children, but also regarding wealth. The legal consequences arising from property in mixed marriages concern ownership of immovable property (land ownership). Land ownership is regulated in the Basic Agrarian Law (UUPA), which states that only Indonesian citizens may have rights to land in Indonesia. The UUPA has a principle of nationality which states that foreign nationals cannot own land in Indonesia. Even Indonesian citizens who marry foreign nationals cannot have rights to land, because the land will be mixed with joint property if it is purchased during the marriage.

This was experienced firsthand by an Indonesian citizen named Ike Farida. Ike Farida is an Indonesian citizen who was legally married to a Japanese citizen in August 1995, and the marriage was reported to the Civil Registry Office in DKI Jakarta in May 1999. In 2012, Mrs. Ike Farida entered into an agreement to purchase a flat in Jakarta, but it was unilaterally canceled by the developer, even though at that time Mrs. Ike Farida had made full payment, but the flat was never handed over by the developer. It turned out that the reason for the cancellation was because Mrs. Ike Farida's husband was a Japanese citizen, and Mrs. Ike Farida and her husband did not have a marriage agreement at that time. During the mixed marriage, Mrs. Ike Farida never renounced her status as an Indonesian citizen and chose to live in Indonesia. The cancellation by the developer was based on Article 36 paragraph (1) of the UUPA and Article 35 paragraph (1) of the UUP. Based on these two articles, it can be concluded that if a married couple purchases immovable property during their marriage, the immovable property they purchase will become joint property.

Mrs. Ike Farida then filed a petition for review of the UUPA and UUP to obtain rights to her land with the Constitutional Court. As a result of this review, the Constitutional Court issued



a ruling on the petition filed by parties in mixed marriages, namely in Decision Number 69/PPU-XIII/2015, which stated that initially, marriage agreements could only be made before the marriage took place, but ultimately, marriage agreements could be made during the marriage and must be immediately legalized by a marriage registrar (Rachman et al., 2021).

Therefore, on October 27, 2016, the Constitutional Court issued Decision Number 69/PPU-XIII/2015, which essentially concerned the regulation of marriage agreements contained in Article 29 paragraphs (1), (3), and (4) of the 1974 Law Number 1 on Marriage. The Constitutional Court granted Ike Farida's petition on the condition that she is an Indonesian citizen marrying a Japanese citizen. The Constitutional Court's decision granted part of the petition, namely, Article 29 paragraph (1) of Law Number 1 of 1974 concerning marriage, which states that "before marriage or during marriage, both parties may, by mutual agreement, submit a written marriage agreement that is legalized by a marriage registrar or notary, the contents of which will also apply to third parties involved." Article 29 paragraph (3) of Law Number 1 of 1974 concerning marriage states that "the agreement shall come into effect from the time the marriage is solemnized unless otherwise specified in the marriage agreement", Article 29 paragraph (4) of Law Number 1 of 1974 concerning Marriage states that "during the marriage, the marriage agreement may also regulate matters concerning marital property or other agreements, agreements may be amended with the consent of both parties and shall not prejudice third parties.

Therefore, with the amendment to Article 29 of Law Number 1 of 1974 concerning marriage, the following changes have been made:

- 1) Marriage agreements, which were originally only allowed to be made before the marriage took place, can now be made throughout the duration of the marriage.
- 2) Marriage agreements cannot be legalized if they violate religious law and morality.
- 3) A marriage contract takes effect after the marriage has taken place, unless the parties specify another time in the marriage contract.
- 4) A marriage contract may concern marital property or other agreements. A marriage contract cannot be changed or revoked, unless both parties agree to revoke the contract and this does not harm a third party (Ramadhan et al., 2024).

Basically, a marriage contract is made to deviate from the provisions of the law, especially those relating to property. This is explained in Article 35 of the Law on Marriage, which states that marital property includes property acquired during the marriage and the property brought by each party. Couples who are legally married are not exempt from legal consequences, especially regarding property law. Marriage agreements are made to protect property acquired during the marriage, with the agreement of both parties. Husbands and wives who have different nationalities may also enter into a marriage agreement, whereby one party will be subject to different laws. Constitutional Court Decision Number 69/PPU-XIII/2015 was issued with the aim of reorganizing the timing of the conclusion of marriage agreements. However, the Constitutional Court's decision in this case will not only regulate the creation of marriage agreements but will also regulate the legal consequences of marriage agreements after the marriage has taken place with regard to the property of both parties, and will also implicitly regulate the legal consequences for third parties. In essence, Constitutional Court Decision Number 69/PPU-XII/2015 changes the concept of marriage agreements.



The issuance of Constitutional Court Decision Number 69/PPU-XII/2015 provides some leeway in marriage agreements, which can be very beneficial for Indonesian citizens who have married foreign nationals without a prior separation of property agreement, which could result in Indonesian citizens losing their rights to land and buildings in Indonesia. The legal force of the Constitutional Court's decision consists of binding legal force, legal force that can provide evidence, and executory legal force. The binding legal force of the Constitutional Court's decision will not only bind the parties to the case, but also bind and apply to all citizens, institutions or state officials and legal entities within the territory of Indonesia. Therefore, based on this explanation, the Constitutional Court also binds notaries as officials authorized to draw up marriage agreements and the Population and Civil Registration Office or the Office of Religious Affairs as officials authorized to register marriage agreements (asyatama faradilla., 2021).

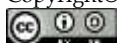
The authority of a notary in a marriage agreement is limited to the contents of the agreement that have fulfilled the requirements for a valid agreement based on Article 1320 of the Civil Code, which stipulates the requirements for a valid agreement due to the existence of an agreement between the two parties. After the marriage agreement is drawn up before a notary, a copy of the deed must be registered and certified by the marriage registrar, after which the agreement will be binding and provide legal protection for the couple. Registering a valid marriage agreement not only provides legal protection to the couple, but also protects and provides legal certainty to third parties. If the marriage agreement is not legalized by the marriage registrar, the marriage agreement cannot be said to be binding on third parties. The importance of legalizing this agreement is so that third parties are aware of and will comply with the agreement, which will also bind them in their legal actions. The third party in a marriage agreement is usually a creditor to whom one of the parties owes a debt. The provisions regarding marriage agreements that bind third parties are regulated in Article 152 of the Civil Code, which explains that third parties will be bound by the agreement if the agreement is not registered in the general register at the district court where the marriage took place. If the marriage is solemnized, the agreement will be registered where the marriage certificate is registered.

A prenuptial agreement serves to provide benefits in resolving issues that may arise in the future. It also facilitates the divorce process between the parties, as the agreement specifies that the assets acquired by each party will be separated, thereby eliminating the possibility of joint ownership of assets during the marriage. The same applies to mixed marriages, where one party is not an Indonesian citizen. When they enter into a property separation agreement based on Article 139 of the Civil Code, the husband and wife may deviate from the laws and regulations regarding joint property as long as the agreement does not violate public morality and order.

Legal protection of land ownership rights for Indonesian citizens must, of course, be in accordance with and based on Pancasila and the 1945 Constitution of the Republic of Indonesia. A marriage agreement is a solution for Indonesian citizens, especially those who marry foreign nationals, as stipulated in Article 139 of the Civil Code. A marriage agreement is an agreement containing an agreement between both parties regarding property in marriage (Fendy Zahri, 2022).

## Conclusion

In mixed marriages, a marriage agreement is essential to guarantee ownership rights to land, HGB (Right to Build), and HGU (Right to Cultivate), as explained in Government



Regulation No. 103 of 2015. Indonesian citizens can have rights to land as long as their marriage includes a marriage agreement that regulates the separation of joint property. A marriage agreement provides legal protection by separating assets acquired during the marriage. With a marriage agreement in place, assets can be divided fairly in accordance with a mutual agreement. Marriage agreements are regulated by various laws in Indonesia, including the Marriage Law, the Civil Code, and Government Regulations, which complement each other in providing a strong legal basis for protecting the interests of husbands and wives as well as third parties. However, unfortunately, marriage agreements still face obstacles, one of which is in the process of legalizing deeds carried out at the KUA and civil registry offices. Other obstacles include the potential for violations of the agreement during the marriage, bad faith on the part of the couple, and a lack of legal understanding.

A prenuptial agreement is legal evidence that can provide legal protection and certainty regarding the assets of the parties. In Indonesia, marriage agreements are based on the Civil Code and Law No. 1 of 1974 concerning marriage, which regulates the contents of marriage agreements and the ratification of marriage agreements. Marriage agreements are even more crucial in cases of mixed marriages because there are differences in legal systems and limitations on land ownership rights for Indonesian citizens, which are regulated in Article UUPA. Without a marriage agreement, there will be a merger of assets, which will be detrimental to Indonesian citizens. Article 21 of the UUPA explains that only Indonesian citizens may have rights to land. A prenuptial agreement serves as a means of regulating the separation of assets, which makes it easier in the event of a future divorce to avoid conflicts over the division of joint property. Prenuptial agreements are an effective solution to legal problems, especially for mixed marriages, by taking into account national laws, religion, and morality. This is in line with the 1945 Constitution in terms of prioritizing the protection of the rights of Indonesian citizens and respecting agreements made in accordance with applicable laws. Therefore, a prenuptial agreement is not only about the mechanism for regulating assets in marriage but also protects all legal rights of the husband and wife and protects third parties, as well as helping to adjust the social and legal dynamics in mixed marriages.

## Bibliography

- Amin, M. (2024). Perjanjian Perkawinan Pada Pasal 29 Undang-Undang No. 1 Tahun 1974. *Journal Of Islamic Law El Madani*, 2(1), 1–9. <https://doi.org/10.55438/jile.v2i1.120>
- Ananditya Windy, Prananda Rahandy. (2024). Kedudukan Harta Perkawinan Terkait Perjanjian Kawin Yang Dibuat Setelah Perkawinan. *Notarius*, 17(3), 2347–2364.
- Andri Wijaya, A. (2022). Perlindungan Hukum Terhadap Pelaku Perkawinan Campuran Atas Status Hak Atas Tanahnya Di Indonesia. *Jurnal Rechtsens*, 11(1), 17–34. <https://doi.org/10.56013/rechtsens.v11i1.1156>
- Asyatama Faradilla., Ridwan Handayani Fully. (2021). Analisis Perjanjian Perkawinan Menurut Undnag-Undang Perkawinan Di Indonesia. *AJUDIKASI: Jurnal Ilmu Hukum*, 5(2), 109–122.
- Budiawan, A. (2023). Perjanjian Perkawinan: Solusi Bagi Keluarga Urban Community Di Indonesia. *Al-Fikra: Jurnal Ilmiah Keislaman*, 22(2), 234. <https://doi.org/10.24014/af.v22i2.29038>
- Desliza, M. F., Hidayat, Y., & Suartini. (2024). Pelaksanaan Perjanjian Perkawinan Setelah



- Menikah Pasca Putusan Mahkamah Konstitusi Republik Indonesia Nomor : 69/Puu-Xiii/2015. *Jurnal Hukum Dan Kesejahteraan*, 9(1), 51–71.
- Fendy Zahri, L. O. (2022). Proses Hukum Pisahan Harta Perkawinan Campuran Berdasar Perjanjian Perkawinan. *Jurnal Multidisiplin Indonesia*, 1(4), 1200–1208. <https://doi.org/10.58344/jmi.v1i4.118>
- Januar, A., Yusuf, M., Maulana, M. Z., & Nugraha, D. M. (2025). Fenomena Pernikahan Warga Negara Indonesia Dengan Warga Negara Asing. *Jurnal Penelitian Nusantara*, 1(2), 39–42.
- Jati, I. Notaris Dalam Pembuatan Akta Otentik Untuk Perjanjian Perkawinan W. (2023). Peran Notaris Dalam Pembuatan Akta Otentik Untuk Perjanjian Perkawinan. *Aainiul Haq: Jurnal Hukum Keluarga*, 3(1), 19–33.
- Kitab Undang-Undang Hukum Perdata. <https://www.google.com/url?q=https://www.hukumonline.com/pusatdata/detail/17229/burgerlijk-wetboek/&sa=U&sqi=2&ved=2ahukewjb0jqtta6saxufe2wgheokozsqfnoecegqaq&usg=Aovvaw3b5jubhl5dcco08pfuqxlw>
- Mulyawati, D. (2017). Implementation Of Separation Property Agreement In Marriages Between Indonesian Citizen And Foreign Citizenpelaksanaan Perjanjian Pemisahan Harta Dalam Perkawinan Warga Negara Indonesia Dengan Warga Negara Asing. *Jurnal Ius* |, 5(2), 264–282. [http://jurnalius.ac.id/ojs/index.php/jurnalius/article/view/460/pdf\\_44](http://jurnalius.ac.id/ojs/index.php/jurnalius/article/view/460/pdf_44)
- Nafisa, F. (2024). *Pemisahan Harta Bersama Melalui Perjanjian Perkawinan Yang Dibuat Oleh Pasangan Perkawinan Campuran Setelah Perkawinan Dilangsungkan Dikaitkan Dengan Undang-Undang Perkawinan Dan Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015*. 2(1), 29–39.
- Putri, A. R., Luisa, M., & Adhi, F. R. W. (2025). Perlindungan Harta Dalam Perkawinan Pentingnya Pencatatan Perjanjian Perkawinan Di Indonesia. *Jurnal Panorama Hukum*, 10(1), 34–45. <https://doi.org/10.21067>
- Qorib Fathan. (2017). *5 Poin SE Kemenag Soal Pencatatan Perjanjian Perkawinan Edaran Tersebut Merupakan Tindak Lanjut Dari Putusan MK Nomor 69 / PUU / XIII / 2015 Perihal Uji Materi Pasal 29 UUU No . 1 Tahun 1974 Tentang Perkawinan . Tags : Kami Hadir Di Instagram* (P. 5).
- Rachman, R., Ardiansyah, E., & Sahrul. (2021). Tinjauan Yuridis Terhadap Kepemilikan Hak Atas Tanah Dalam Perkawinan Campuran. *JALREV: Jambura Law Review*, 3(1), 1–18. <https://ejurnal.ung.ac.id/index.php/jalrev/index>
- Ramadhan, A., Fitriadi, F. I., Aritonang, J. M. P., & Habib, M. (2024). Kekuatan Hukum Mengikat Perjanjian Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan 1. *Journal Of Mandalika Literature*, VI(1), 83–94.
- Salsiah, L., Putri, E. A., & Saimima, I. D. S. (2024). Perjanjian Perkawinan Dan Akibat Hukumnya Atas Harta Bersama. *Jurnal Hukum Sasana*, 10(2), 181–190. <https://doi.org/10.31599/sasana.v10i2.3505>
- Sriono. (2017). *Analisis Putusan Mahkamah Konstitusi Tentang Perjanjian Kawin Yang Dapat Dilakukan Selama Perkawinan Berlangsung*. 05(01), 95–105.

