

Implications of Mixed Marriages and Marriage Agreements

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Abstract

This paper discusses mixed marriages, this kind of thing is practiced by couples of different nationalities and one of them is an Indonesian citizen (WNI), both male and female. Mixed marriages actually have serious implications in practice, such as the citizenship of the children, joint assets, and distribution of inheritance if one of the partners dies. Marriage agreements have an important role in mixed marriages such as protecting and maintaining the rights of Indonesian Citizens and Foreign Citizens (WNA) who carry out mixed marriages. The research method in this paper uses library research while the conclusions in this writing use a juridical-normative approach, with the aim of uncovering the true values in the practice of mixed marriages in society so that they should be actualized in the future. The findings in this study; First, children will have dual citizenship until they are even 18 years old. Second, there is a pooling of assets between foreigners and Indonesian citizens, a foreigner is prohibited from owning Indonesian land. Third, the heirs/third parties do not understand the division of inheritance because of the pooling of assets. The marriage agreement for Muslim couples is based on the Letter of the Director General of Islamic Community Guidance of the Ministry of Religion Number: B. 2674/DJ.III/KW.00/9/2017 that the marriage agreement can be made before, during, and during the marriage which is ratified by notarial deed and can be recorded by the Marriage Registrar (PPN).

Keywords: implications, mixed marriage, marriage agreement

A. INTRODUCTION

Marriage in essence is the union of a male and female pair which initially may not be permissible and considered sacred, and is expected to form a *sakinah, mawaddah, and warahmah family* in order to achieve the pleasure of Allah SWT. Indonesia itself is a heterogeneous society in all aspects of life, both in terms of religion and customs, and has a diverse population due to the settlement of foreigners. Then people of Chinese, Arab, Indian, or other descent came. Such an environment opens up opportunities for people to bind themselves in a bond caused by the daily interaction between indigenous people and immigrants with the high mobility of the population.¹

¹ Sanaa T Alharahsheh, Mohamad M Mohieddin, and Feras K Almeer, "Marrying out: Trends and Patterns of Mixed Marriage amongst Qataris," *Int'l J. Soc. Sci. Stud.* 3 (2015): 211.

Marriage in Indonesia does not only occur among Indonesian citizens, but also with citizens from other countries². This kind of thing is mostly done by artists in Indonesia, but there are also many ordinary people who do mixed marriages like this, and it is a matter of pride for certain communities. Mixed marriage itself is explained in Article 45 of Law Number 1 of 1974, mixed marriage is a marriage between two Indonesians subject to different laws, due to differences in nationality one of the parties is a foreign citizen and one of the parties is Indonesian citizenship.

Mixed marriages have left serious problems related to the ownership of assets by Indonesian citizens³. Although it is not explicitly stated that Indonesian citizens who are married to foreigners cannot obtain property rights over assets, in practice Indonesian citizens face serious problems related to property rights. It is interesting that this problem stems from not only the provisions contained in the basic Agrarian Law but also the provisions in the Marriage Law related to joint assets, which then bring about an amendment or new legal provisions related to marriage agreements which are considered to have also contributed to the loss of Indonesian citizens' rights. who are married to foreign nationals to property with the status of property rights?

Based on this, the writer is interested in further examining 1) how is the arrangement of mixed marriages in Indonesia? 2) what is the relationship between the marriage agreement and mixed marriages? 3) what is the impact of mixed marriage?

The study of mixed marriages has become a hot topic of conversation in the current digitalization era because lately the practice of mixed marriages itself has begun to emerge in society. In further developments, recent researchers have also conducted research on patterns of mixed marriages or similar, including Herni Widanarti⁴, Aislie Anantama Septiawan⁵, Herni Widanarti⁶, Laurensius Arliman S⁷, Rahmat Fauzi⁸, M. Nur Kholis Al Amin⁹, Justitia Henryanto

² Vivian De Klerk, "The Cross-Marriage Language Dilemma: His Language or Hers?," *International Journal of Bilingual Education and Bilingualism* 4, no. 3 (2001): 197–216.

³ Fauzia P Bakti and Aulia Rivai, "Marriage Agreement for Indonesian Citizens Involved in Mixed Marriages," *International Journal of Global Community* 2, no. 1-March (2019): 83–96.

⁴ Herni Widanarti, "Akibat Hukum Perkawinan Campuran Terhadap Harta Perkawinan (Penetapan Pengadilan Negeri Denpasar No: 536/Pdt. P/2015/PN. Dps.)," *Diponegoro Private Law Review* 2, no. 1 (2018).

⁵ Aislie Anantama Septiawan, "Perjanjian Perkawinan Pada Perkawinan Campuran Dalam Kepemilikan Tanah Di Indonesia," *Lambung Mangkurat Law Journal* 2, no. 1 (2017): 62–74.

⁶ Herni Widanarti, "Tinjauan Yuridis Akibat Perkawinan Campuran Terhadap Anak," *Diponegoro Private Law Review* 4, no. 1 (2019).

⁷ Laurensius Arliman, "Peran Lembaga Catatan Sipil Terhadap Perkawinan Campuran Berdasarkan Undang-Undang Perkawinan," *JCH (Jurnal Cendekia Hukum)* 4, no. 2 (2019): 288–301.

⁸ Rahmat Fauzi, "Perkawinan Campuran Dan Dampak Terhadap Kewarganegaraan Dan Status Anak Menurut Undang-Undang Di Indonesia," *Soumatara Law Review* 1, no. 1 (2018): 153–75.

Ghazaly¹⁰, Oly Viana Agustine¹¹, Puji Kurniawan¹², Damian Agata Yuvens¹³, and others.

Most studies on mixed marriages are equipped with various kinds of analysis, to make it easier to find differences and similarities with the research that the author wrote, the researcher will group this literature review into two parts, namely first mixed marriages and secondly regarding marriage agreements and others. Then the author's position in this paper is trying to complement existing previous studies, the author focuses on the implications of mixed marriages and marriage agreements.

Research related to mixed marriages has been researched by Herni Widanarti. This study attempts to analyze the legal consequences of mixed marriages on marital assets according to Marriage Law No. 1 of 1974 and to find out the consequences *of* mixed marriage law on marital assets according to the Principles of Civil Law International. The conclusion of this study shows that according to Law Marriage No. 1 of 1974 concerning marriage if the parties do not hold it marriage agreement, the marital property becomes joint property. In progress, in practice, the marriage agreement can be made after the marriage takes place with submit an application to the court and having obtained a court order which has permanent legal force. With the Decree of the District Court Denpasar No. 563/Pdt.P/2015/PN.Dps. Likewise, Aislie Anantama Septiawan in her writing that a marriage agreement is very important to make especially in mixed marriages, because its existence in marriage mixture is useful for separating the wealth of being an Indonesian citizen can have rights to land with the status of property rights if there is no agreement marriage, the Indonesian citizen cannot have the right to land in the form of property rights except usufructuary rights and lease rights. In accordance with Article 29 paragraph 2 of Law Number 1 of 1974 concerning Marriage which regulates the limits of the contents of the marriage agreement that may not violate the law, religion, and decency that creates legal obscurity. As for the research written by Herni Widanarti, in her writing, it is stated that Marriage Mixture creates legal consequences, including the existence of a legal relationship between people's parents and children, especially the legal status of the child's citizenship. The same thing was stated by Laurensius Arliman S, he mentioned that the implementation of marriage Mixing can be done if the

⁹ M Nur Kholis Al Amin, "Perkawinan Campuran Dalam Kajian Perkembangan Hukum: Antara Perkawinan Beda Agama Dan Perkawinan Beda Kewarganegaraan Di Indonesia," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 2 (2017): 211–20.

¹⁰ Justitia Henryanto Ghazaly, "Kepemilikan Hak Atas Tanah Dalam Perkawinan Campuran," *JCH (Jurnal Cendekia Hukum)* 5, no. 1 (2019): 117–30.

¹¹ Oly Viana Agustine, "Politik Hukum Perjanjian Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/Puu-Xiii/2015 Dalam Menciptakan Keharmonisan Perkawinan," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 6, no. 1 (2017): 53–67.

¹² Puji Kurniawan, "Perjanjian Perkawinan; Asas Keseimbangan Dalam Perkawinan," *Jurnal el-Qanuniy: Jurnal Ilmu-Ilmu Kesyarahan dan Pranata Sosial*, Vol. 6, No. 1, (2020): 125-137.

¹³ Damian Agata Yuvens, "Analisis Kritis Terhadap Perjanjian Perkawinan Dalam Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Jurnal Konstitusi* 14, no. 4 (2018): 799–819.

parties have fulfilled all the specified requirements by law as contained in Article 60 Paragraph (1) Law 1 of 1974.

Subsequent research is classified regarding marriage agreements, in this theme, Oly Viana Agustine's research was found, in his research using the normative approach of the Qur'an and Sunnah it can be seen that the Constitutional Court Decision Number 69/PUU-XIII/2015 provides a new political law, where the agreement marriage which previously could only be made by prospective husbands and prospective wives before marriage (prenuptial agreement), now can be made by the husband and wife after the marriage takes place. Likewise, with Puji Kurniawan's research, this study tries to analyze marriage agreements as long as they do not conflict with laws, decency, and public order, and pay attention to general rules relating to the prohibition of the contents of marriage agreements. This is in accordance with the principle of balance that we can find in laws and regulations. The same thing is in the research of Damian Agata Yuvens, The history of the formation of the Constitutional Court decision No. 69/PUU XIII/2015 namely in testing several provisions in the Law of the Republic Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations and Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage aimed at ensuring that Indonesian citizens who marry foreign nationals can still have rights to land with the title Right of Ownership as well as Building Use Rights. The end result, the Constitutional Court of the Republic of Indonesia, through Decision No. 69/PUU XIII/2015, rejected some of the applications submitted and provide interpretations in connection with the marriage agreement, so that the marriage agreement can also be made while in the marriage bond.

B. METHOD

This study uses a qualitative method. Qualitative methods are traditional research methods that have been used for a long time. The method in this writing uses *library research* with a focus on studying and examining how the mixed marriage regulatory system in Indonesia. The conclusion in this paper uses a *normative juridical approach*, with the aim of disclosing the values of truth in the practice of mixed marriages in society so that they should be actualized in the future.¹⁴

C. RESULTS AND DISCUSSION

Mixed Marriage in Indonesian Legislation

Mixed marriage is a marriage between two people who in Indonesia are subject to different laws due to differences in nationality¹⁵, one of which is an Indonesian citizen (so not because of religious differences). This can be found in Article 57 of Law Number 1 of 1974. Previously, mixed marriages were defined as marriages carried out by couples subject to different laws because of

¹⁴ P Dr, "Sugiyono, Metode Penelitian Kuantitatif Kualitatif Dan R&D," CV. Alfabeta, Bandung, 2008, 25.

¹⁵ Amalia Chasanah Astari Saraswati and Yudho Taruno Muryanto, "Land Right Inheritance Obtained by the Children of Mixed Marriage," *International Journal of Multicultural and Multireligious Understanding* 5, no. 4 (2018): 435–41.

differences in nationality and also because of differences in religion. This understanding is taken from the rules stated in Article 1 GHR of 1889, by following the broad interpretation of the article. Meanwhile, marriages outside the Indonesian system are marriages held outside Indonesia, either between Indonesian citizens or between Indonesian citizens and foreigners. Seeing the definition above, these two types of marriage are related to one another in several ways. For this reason, it can be said that mixed marriages can become marriages outside the Indonesian system if the marriage takes place in the partner country of the Indonesian woman or man. To be able to hold the second marriage of this type of marriage, the couple must follow several procedures and rules. Mixed marriage procedures and rules are as follows¹⁶:

1. If a marriage is performed in Indonesia, the marriage must be in accordance with applicable law (UU No 1/74) and fulfill the marriage requirements whose fulfillment must be declared by the marriage registration officer, as stipulated in article 60, which is valid for six months. If during the six-month period the letter is not used, the certificate is no longer valid;
2. Candidates who are foreigners must prepare several documents or letters and these documents must be translated into Indonesian by a sworn translator. The letters are as follows:
 - a. Valid ID card/passport
 - b. A certificate that he is not in marital status
 - c. Copy of birth certificate
 - d. Divorce certificate if you have been married before
 - e. Permit to marry an Indonesian citizen
 - f. Recent photo 2x3 sheets
3. The woman who is a foreigner must ensure the presence of a guardian or letter of wakalah from the authorities of the country concerned (for a foreigner's wife);
4. Marriages must be registered at the KUA for those who are Muslim, and at the civil registry office for those who are not Muslim;
5. Legalization of marriage certificate quotations must be carried out at the Ministry of Law and Human Rights and the Ministry of Foreign Affairs, and registered at the embassy of the foreigner's country of origin;
6. child status; under the new citizenship law, children in mixed marriages have dual citizenship and must choose one nationality after the child turns 18 or after he or she is married.¹⁷

Mixed Marriage Agreement

Marriage is a contract between husband and wife. When a marriage contract or transaction is made, mutual cooperation between the two

¹⁶ Euis Nurlaelawati, "Pernikahan Tanpa Pencatatan: Isbat Nikah Sebuah Solusi?," *Musāwa Jurnal Studi Gender Dan Islam* 12, no. 2 (2013): 261–77.

¹⁷ Euis Nurlaelawati, *Hukum Perkawinan Islam Di Indonesia* (Yogyakarta: UIN Suka Press, 2016)., 108-111.

parties starts automatically, including cooperation in obtaining property¹⁸. In this sense, a wife does not have to be directly involved in obtaining money to have rights to joint property. Assuming that the wife is seen as cooperating with looking after the household and children, when the husband goes to work, this frees the wife from the obligation to go to work.¹⁹

Some scholars are of the opinion that without having to make prior approval immediately after the marriage ends, assets acquired during the marriage automatically become the joint property of the husband and wife. This opinion is reinforced by the fact that in Indonesia, women (wives) are used to working to earn their own livelihood, which makes their involvement in generating wealth during their marriage very clear. Following this line of reasoning, and the fact that Indonesian society has long been associated with adat, the *Compilation* felt the need to include the institution of joint property in the Islamic legal system.

Like joint property, marriage agreements are not discussed in fiqh (classical Islamic law). In fiqh, there is the term *aqad* which is a very general term that means engagement and agreement. For this reason, the *aqad* can mean a marriage bond and also an agreement in marriage. A concept or offer related to a marriage agreement is actually found in the talk divorce, which is then accommodated by the government and regulated in the *Compilation*, as well as efforts to adopt community customs.

This divorce *taklik* is a statement from the husband which is pronounced immediately after the marriage contract is held and this is closely related to the continuity of the marriage where the husband depends on his divorce on one or several conditions that may arise later on. In some literature, divorce is expressed as an effort to protect women, especially related to the understanding that divorce lies in the hands of the husband. There is a rule that is usually used as a basis for this teaching, namely *man allaqa talaqan bi bendawaqa'a biwujuudihaa amalan bi muqtadla al haal* '.

The practice of *taklik* divorce has also been carried out by Muslim communities for a long time. Some even place this practice as rooted in the traditions of Indonesia's indigenous peoples²⁰. By referring to customary practices and to the views of the 'ulama, the Indonesian government introduced and included this practice in the provisions of Indonesian laws and regulations, the *Compilation of Islamic Law*. In addition to *taklik talak*, KHI also accommodates the practice of marriage

¹⁸ Barbara Lobodzinska, "A Cross-Cultural Study of Mixed Marriages in Poland and the United States," *International Journal of Sociology of the Family*, 1985, 94–117.

¹⁹ Hilman Hadikusuma, *Hukum Waris Adat* (PT Citra Aditya Bakti, 2021), 70-71.

²⁰ Ratno Lukito, Willem Arnoldus Laurens Stokhof, and Theodorus Cornelis Meij, *Pergumulan Antara Hukum Islam Dan Adat Di Indonesia* (Inis, 1998), 21.

agreements that have been previously regulated by the Marriage Law which actually accommodates provisions in Civil Law.

If the Marriage Law does not place limits on objects that can be agreed upon, the KHI will confirm what has been promised. KHI emphasizes the agreement on assets obtained in marriage²¹. This, according to the author, is a response and thought to the existence of provisions for merging joint assets automatically when a marriage is carried out. Adopting customary provisions and also adjusting to the marriage law, KHI also regulates joint assets, where it is emphasized that assets acquired in marriage are joint assets. However, according to the author, considering that there are no provisions for the marriage agreement in the teachings of Islamic law/fiqh as discussed above, the KHI does not generally provide arrangements for the contents of the agreement and in fact, by including the provisions of the marriage agreement, the KHI only emphasizes further regulation regarding joint property issues. just. So, according to KHI, a marriage agreement can be made over property issues where the couple can enter into an agreement that there is a separation of assets obtained in marriage and or a mixture of assets obtained before marriage (innate assets).

This offer is in line with the provisions of taklik talaq, which is also a type of marriage agreement. However, if taklik talaq is directed at the woman's fate in relation to her right to leave the marriage, the marriage agreement is linked to the income earned by the woman when she is married, and of course also in some cases to protect both parties in relation to the ownership of joint property separately²².

Provisions regarding marriage in Indonesia are regulated in Law Number 1 of 1974. Marriage agreements are regulated in Article 29 paragraph (1) of the Marriage Law jo. Constitutional Court Decision Number 69/PUU-XIII/2015 (“MK Decision 69/2015”): *At the time, before it is held or while in the marriage bond the two parties with mutual consent can enter into a written agreement which is ratified by a marriage registrar or notary, after where the contents also apply to third parties as long as a third party is involved.*

The Constitutional Court decision 69/2015 has broadened the meaning of the marriage agreement so that the marriage agreement is no longer interpreted only as an agreement made before marriage (*prenuptial agreement*), but can also be made during the marriage bond (*postnuptial agreement*). The registration of the marriage agreement in Article 29 paragraph (1) of the Marriage Law, it can be seen that if the marriage agreement is to be binding/applicable to third parties, it must be legalized by a marriage registrar or notary. The marriage agreement must be registered, to fulfill the publicity element of the said marriage agreement.

²¹ Pasal 45 Kompilasi Hukum Islam.

²² Hamidah Upik, “Separation of Assets (Land and Buildings) between Indonesian Citizens and Foreign Citizens Conducting Mixed Marriages,” *International Journal of Innovative Science and Research Technology* 6 (2021): 782–87.

So that third parties (outside the husband or wife) know and comply with the rules in the marriage agreement that has been made by the couple. If it is not registered, then the marriage agreement is only binding/valid for the parties who made it, namely the husband and wife concerned. This is in accordance with Articles 1313, 1314, and 1340 (Civil Code), where agreements are only binding for the parties who make them.

Since the Marriage Law came into effect, the registration/approval/recording of marriage agreements is no longer carried out at the Registrar's Office of the District Court. To answer your question, a marriage agreement can be said to be valid if it is legalized by a marriage registrar or notary, not a district court. For couples who are Muslim, the registration is based on the Letter of the Director General of Islamic Community Guidance, Ministry of Religion Number: B. 2674/DJ.III/KW.00/9/2017 (Ministry of Religion Letter 2017)²³.

The 2017 Ministry of Religion Letter stipulates that marriage agreements can be made before, during, and during the marriage which is ratified by a notarial deed which can be recorded by the Marriage Registrar (PPN), recorded in the notes column on the marriage certificate and in the marital status record column in the quotation of the deed marry. For marriages registered by other countries, but the marriage agreement or amendment/revocation was made in Indonesia, the recording of the said marriage agreement report is made in the form of a certificate by the sub-district Office of Religious Affairs (KUA). The procedures for recording the reporting of marriage agreements for Muslim couples based on the 2017 Ministry of Religion

Impact of Mixed Marriage

1. Child Citizenship

Citizenship is determined by agreement within a country. This provision becomes a guideline for determining nationality²⁴. Citizenship is determined based on place of birth or *Ius Soli* obtains citizenship based on kinship or *Ius Sanguinis* obtains citizenship²⁵. The fundamental difference between *Ius Soli* and *Ius Sanguinis* led to the emergence of dual citizenship. The United States, Australia, Canada, New Zealand, Switzerland, Turkey, Jamaica, and many other countries practice dual citizenship. To date, at least 44 countries practice dual citizenship. Dual citizenship arises because these countries have different citizenship requirements.

²³ <https://bimasislam.kemenag.go.id/uploads/files/SE-Penjuangan-Perjanjan-Perkawinan.pdf>, accessed Thursday 1 December 2022.

²⁴ W Wahono and Abdul Atsar, "Buku Ajar Pendidikan Pancasila Dan Kewarganegaraan," *Yogyakarta: Deepublish*, 2019., 44.

²⁵ Sali Kadria, "A Historical View about Concepts, Theories and Types of Nationalism," *ANGLISTICUM. Journal of the Association-Institute for English Language and American Studies* 6, no. 6 (2017): 23–29.

Individual citizenship is very important. Citizenship is one of the elements or conditions for the establishment of a country. There is a reciprocal relationship between the state and its citizens. Individuals who become citizens must comply with all legal provisions made by the state and the state is obliged to protect citizens wherever they are²⁶.

The reality that occurs is that in a country there is one person who has no citizenship or stateless status but has more than two or several nationalities. The 1954 Convention related to the Status of Stateless Persons, that is, persons who are not considered citizens by any country within its legal jurisdiction. The number of people who are stateless or at risk of becoming stateless has recently increased. The United States is one country with a growing stateless population²⁷.

Indonesian citizenship legal politics adheres to the principle of a single nationality. Indonesia has adhered to this principle since its independence. Indonesia has several regulations regarding citizenship, as follows:

- a. Law of the Republic of Indonesia Number 3 of 1946 concerning Citizens and Residents of the State;
- b. Law of the Republic of Indonesia Number 6 of 1947 concerning Amendments to Law Number 3 of 1946 concerning Citizens and Residents of the State;
- c. Law of the Republic of Indonesia Number 62 of 1958 concerning Citizenship of the Republic of Indonesia;
- d. Law of the Republic of Indonesia Number 3 of 1976 concerning Amendments to Article 18 of Law Number 62 of 1958 concerning Citizenship of the Republic of Indonesia;
- e. Law of the Republic of Indonesia Number 12 of 2006 concerning Citizenship of the Republic of Indonesia; as well as
- f. Government Regulation of the Republic of Indonesia Number 2 of 2007 Concerning Procedures for Obtaining, Losing, Canceling, and Reclaiming Citizenship of the Republic of Indonesia.

Implement a single citizenship system to anticipate dual and stateless citizenship. The principles of principle of single citizenship are explained in Law no. 12 of 2006 does not provide room for dual status and stateless²⁸.

²⁶ Rahmawati Novia Sigit and Novianti Novianti, "Perlindungan Terhadap Orang Tanpa Kewarganegaraan (Stateless People) Dalam Hukum Internasional (Studi Kasus Etnis Rohingya Di Myanmar)," *Uti Possidetis: Journal of International Law* 1, no. 1 (2020): 118–47.

²⁷ Donald Kerwin et al., "Statelessness in the United States: A Study to Estimate and Profile the US Stateless Population," *Journal on Migration and Human Security* 8, no. 2 (2020): 150–213.

²⁸ Chelsea Chesny Bernanda, "Pemberian Kewarganegaraan Indonesia Terhadap Arcandra Tahar Ditinjau Dari Undang-Undang Nomor 12 Tahun 2006 Tentang

The Indonesian state applies the principles of *Ius Soli* and *Ius Sanguinis* in a limited way. The *Ius Soli* Principle defines all people born in Indonesia as Indonesian citizens. Meanwhile, the principle of *ius sanguinis* states that everyone who is born from the descendants of Indonesian citizens abroad is an Indonesian citizen. UU no. 12 of 2006 concerning the limited application of dual citizenship for children born in mixed marriages²⁹.

Lawmakers instituted limited dual citizenship to address the problems created by mixed marriages. These problems can occur during the marriage or after the marriage ends. Limited dual citizenship has implications for children of different races marriages, where the child must submit to two jurisdictions from parents of different nationalities.

Dual citizenship status is regulated in a number of articles in Law no. 12 of 2006, including Article 4, Article 5 paragraph (1), Article 6 paragraph (1), paragraph (2), and paragraph (3). Article 21 paragraph (1), Article 23 letter c, Article 25 paragraph (1), Article 25 paragraph (2), Article 25 paragraph (3), and Article 25 paragraph (4), as well as Article 41. Referring to this provision, Indonesia recognizes the principle of limited dual citizenship for children. Children with dual citizenship up to the specified age limit, which is 18 years old or until the child is married. This policy was implemented because the previous regulations did not reflect the human rights of children of different marriages (HAM), thereby undermining the rights of these children. With the existence of the latest Citizenship Law, it is hoped that no more children from mixed marriages will not have citizenship³⁰.

However, the reality of implementing dual citizenship status in Law no. 12 of 2006 raises problems. This happens, because it does not automatically grant Indonesian citizenship status to foreign women who marry Indonesian citizens, and vice versa. This creates national disparities in mixed-marriage families. Differences in nationality do not only appear at the beginning of marriage but persist after intermarriage between families³¹.

2. Unification of Joint Assets

Mixed marriage is a marriage carried out by a couple of different nationalities where one of them being an Indonesian citizen.

Kewarganegaraan Republik Indonesia,” *Al Qodiri: Jurnal Pendidikan, Sosial Dan Keagamaan* 18, no. 1 (2020): 199–210.

²⁹ May Lim Charity, “Urgensi Pengaturan Kewarganegaraan Ganda Bagi Diaspora Indonesia,” *Jurnal Konstitusi* 13, no. 4 (2016): 809–27.

³⁰ Eka Martiana Wulansari, “Konsep Kewarganegaraan Ganda Tidak Terbatas (Dua Nationality) Dalam Sistem Kewarganegaraan Di Indonesia,” *Recht Vinding Online, Kementerian Hukum Dan Hak Asasi Manusia RI* 3, no. 2 (2015): 31.

³¹ Achmadudin Rajab, “Peran Perubahan Undang-Undang Kewarganegaraan Dalam Mengakomodir Diaspora Untuk Peningkatan Kesejahteraan Masyarakat,” *Jurnal Konstitusi* 14, no. 3 (2018): 531–52.

Marriages carried out by couples of different religions are not included in mixed marriages. Mixed marriages have a serious impact on the ownership of property by Indonesian citizens. Most of these mixed marriage couples do not make a marriage agreement before entering into marriage. The consequence that will arise is the pooling of assets between foreigners and Indonesian citizens. If an Indonesian citizen marries a foreigner, then the Indonesian citizen cannot own land rights in Indonesia, because direct ownership of the land also belongs to the foreigner. A foreigner is prohibited from owning land with the status of property rights in Indonesia based on Law No. 5 of 1960 concerning UUPA³².

The inheritance of each in a mixed marriage is left to both parties because a marriage agreement is usually made to protect the interests of the legal protection of each other's assets even though the law does not regulate it. The parties can determine each other's inherited assets whether from the start there was a separation of assets in marriage or joint assets, however, the distribution method is regulated in the event of a divorce. Inheritance of each husband and wife and assets obtained by each as a gift or inheritance are under the control of each as long as the parties do not specify otherwise. Even though the law does not explicitly determine the purpose and contents of a marriage agreement, as a public official, a Notary in carrying out his duties and authorities in making a deed of agreement can formulate laws regarding the principles, principles, forms, and contents of the marriage agreement in question...

Actually, the marriage agreement is needed by the parties, where they already have assets, and during the marriage, they expect to get assets. Considerations for making a marriage agreement include:

- a. In a marriage with unanimous union assets, the goal is for the wife to be protected from the possibility of the husband's bad actions, bethinking of immovable property, and certain securities belonging to the wife.
- b. In a marriage with the separate property the purpose is:
 - 1) So that certain item or all items brought by the husband or wife in marriage are not included in the marital property union and thus remain as private property. The existence of such an agreement is a protection for the wife, against the possibility of accountability for the property, against debts made by the husband, and vice versa.
 - 2) So that these personal assets are released from the power of the husband, and the wife can manage these assets herself³³.

³² Aslan Noor, "Konsep Hak Milik Atas Tanah Bagi Bangsa Indonesia Ditinjau Dari Ajaran Hak Asasi Manusia," 2006., 85.

³³ Endang Sumiarti, "Kedudukan Suami Isteri Dalam Hukum Perkawinan, Cet. 1" (Wonderful Publishing Company, Yogyakarta, 2004)., 36-37.

The marriage agreement must be made with a notarial deed before, during, and after the marriage takes place, otherwise, it is null and void (*van rechtswege nietig*). And it comes into effect since the marriage took place, another time for that may not be determined. Article 186 of the Civil Code states; In a marriage, separation of assets is permitted, which states that throughout the marriage, each wife has the right to file a claim to the judge regarding the separation of assets in matters of:

- a. if the husband by doing something that is obviously not good has wasted the wealth of the union and in that arena, it exposes the whole household to the danger of collapse;
- b. if due to the absence of good order and method, in managing the husband's own assets, the guarantee for the use of the wife's marital property will be blurred or, if due to some gross negligence in managing the wife's marital assets, the wealth may be in a state of danger³⁴.

3. Inheritance

The impact of mixed marriages will also be related to the distribution of joint assets (part of it) and separate assets (part of it) and also to the distribution of inheritance when the marriage is dissolved due to divorce and or death. Regarding the division of joint assets in a divorce, the parties must carefully look at which assets become joint assets and which parts of the assets are separated after the agreement is made. In this case, joint assets will be divided according to the provisions that have been regulated, and separate assets will become the property of each party.

Even though this looks simple, it is possible that disputes will occur when they cannot agree on the separation of the part of the property which is joint property, and the part which is part of the property that is separate property. A more complicated problem may arise in the case of death, where it is not only the distribution of joint assets that will be resolved but also the distribution of inheritance. The parties must also know which assets are combined when the agreement has not been made and which assets are separated. The combined assets (joint property) will be divided in advance to the surviving parties (widows or widowers) and to the spouse who died, which will then be inherited. The separated assets will then be immediately considered inherited property. The share of the joint assets of the deceased spouse will be combined with the separate assets (after the agreement) and with the inherited/personal assets to become inheritance. However, bearing in mind that in the event of death the heirs may consist of several members and include the family

³⁴ Hazairin, *Tinjauan Mengenai Undang-Undang Perkawinan Nomor 1 Tahun 1974, Cet. II* (Jakarta: Tintamas, n.d.), 21.

of the deceased spouse, disputes, and disagreements in the separation of assets can appear more serious.

D. CONCLUSION

Mixed marriage is a marriage carried out by a couple of different nationalities where one of them being an Indonesian citizen. Marriages carried out by couples of different religions are not included in mixed marriages. Mixed marriages can have implications for: *first*, children will have dual citizenship until they are even 18 years old. *Second*, there is a pooling of assets between foreigners and Indonesian citizens, a foreigner is prohibited from owning Indonesian land. *Third*, the heirs/third parties do not understand the division of inheritance because of the pooling of assets. The marriage agreement for Muslim couples is based on the Letter of the Director General of Islamic Community Guidance of the Ministry of Religion Number: B. 2674/DJ.III/KW.00/9/2017 that the marriage agreement can be made before, during, and during the marriage which is ratified by notarial deed and can be recorded by the Marriage Registrar (PPN).

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