



## Legal Status of Immovable Objects That Are Not Part of Joint Property in Mixed Marriage After Constitutional Court Decision No. 69/PUU-XIII/2015

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**Abstract** - This study analyzes the legal status and implications of immovable property not considered joint property in mixed marriages, based on Constitutional Court Decision No. 69/PUU-XIII/2015. It focuses on the legal consequences for foreign and Indonesian spouses. Mixed marriages involving foreign nationals (WNA) and Indonesians (WNI) face restrictions under agrarian law, limiting foreign ownership of immovable property. While marriage agreements can designate immovable property as personal assets of Indonesians, they risk violating agrarian laws if foreigners gain ownership. To prevent legal disputes with the National Land Agency (BPN), it is crucial to ensure compliance with agricultural regulations through supervision and adherence to legal provisions. This normative juridical study relies on literature-based research. Findings indicate that changes in policies may affect the legal status of immovable property in marriage agreements. Harmonizing conflicting laws and aligning them with Constitutional Court decisions are necessary to ensure the validity and legality of such agreements.

**Keywords:** Property, Marriage Agreement, Civil Law

### I.INTRODUCTION

Esta investigación examina el estatus legal de bienes raíces en matrimonios mixtos de acuerdo con la Decision No. Constitutional Court. 69/PUU-XIII/2015, que implementó modificaciones en la forma en que propiedades, especialmente inmuebles, se gestionan y reparten entre ciudadanos de Indonesia y ciudadanos extranjeros. Este fallo tiene importantes repercusiones en la legítima tenencia de tierras, la observancia de la ley agraria, y los derechos de los cónyuges en matrimonios mixtos. If a foreign citizen (WNA) and an Indonesian resident (WNI) get married and own land together, then there are legal implications. There are restrictions on the ownership of immovable goods by foreigners as stated in the agricultural law, meaning that in mixed marriages, husband and wife cannot directly own land and buildings that are part of common property. Under Indonesian agrarian law, foreign nationals are prohibited from owning land, which creates legal challenges in mixed marriages involving land ownership. When people get married, they usually include words in their contract stating that the property belongs to Indonesian citizens. This makes it more difficult to use this method in real life. (H. A, 2013)

Legal clarity and defense of property rights. The marriage agreement guarantees the couple's personal and joint property, thus allowing them to control it. Based on the Constitutional Court Decision Number 69/PUU-XIII/2015, a prenuptial or postnuptial agreement is allowed. This allows husband and wife to manage their property according to their desires and developing circumstances. That way, everyone knows exactly who has the right to a piece of land.

When it comes time to divorce, the rules and regulations in force will determine how the property from the mixed marriage is divided. If there is no marriage contract, joint property that includes real estate and other items purchased jointly during the marriage can cause problems in court, especially when it comes to foreigners. At the same time, legal conflicts regarding the allocation of common property can cause legal problems that require resolution through the judicial process. The implementation of a marriage contract can effectively reduce the likelihood of conflict by establishing a clear legal framework for the distribution of assets. (Lukman, Andi Tenri, 2021)

Property management and financial decisions that include investments and budgets. Couples who know exactly the state of their personal assets and their combined assets can make wiser financial and investment decisions. Better strategic management of their assets helps maximize the possibilities of economic development. Couples filing these taxes must ensure their tax records accurately show the separation of assets arranged under the marriage agreement to prevent taxation issues. If one of the spouses dies and bequeaths his property to his children, then the division of property depends on whether the property is private property or joint property. At the same time, the rules of the inheritance law in question will determine how the joint property will be divided, while the owner's intention, expressed in the will or in other ways, will govern the division of personal property. A comprehensive marriage agreement with the aim of protecting the rights of heirs and ensuring proper inheritance is very important, especially when there are children involved in the marriage.

This situation is illustrated in the Constitutional Court Decision Number 69/PUU-XIII/2015 in several ways:

- 1) The procedure for registering immovable property as personal property can be complicated, especially in terms of documenting and managing the marriage agreement after the marriage has taken place. This task requires concise documentation and often involves involvement with various government agencies.
- 2) Ownership of foreign nationals. Foreign land ownership in Indonesia is restricted due to agrarian rules. Although a marriage agreement can regulate the treatment of immovable property as personal property for Indonesian citizens, there is a potential risk of violating agrarian laws and facing legal complications if a foreigner owns ownership of the property. In addition to providing periodic supervision and monitoring, it is also important to ensure that marriage agreements and ownership of immovable property always comply with laws and regulations in the agricultural sector. This is necessary to prevent potential legal disputes with the National Land Agency (BPN).
- 3) Due to a lack of legal knowledge, married couples who marry outside of their marital status may not fully understand the importance of a marriage contract in protecting their rights to real estate. This lack of understanding can result in them not fully taking advantage of the Constitutional Court's ruling in their favor. In addition to providing important legal education to mixed marriage couples regarding their rights and the measures necessary to safeguard personal property, especially immovable property. (Kenedi, 2018).
- 4) Changes in restrictions based on this policy, in accordance with Indonesian law, may have an effect on the status of the law of immovable property regulated in the marital contract. It is essential for couples to stay up-to-date on legal developments to ensure the legality and efficacy of their agreements. In addition to legal harmonization, there are times when contradictions or disharmony arise between the Constitutional Court's decisions and other rules. To fill this gap, relevant rules and regulations need to be revised or harmonized.

Although the Constitutional Court's ruling grants greater freedom to married couples in mixed marriages in managing their own finances, it raises a number of problems at the legal, administrative, and social levels (taking into account all the considerations described above). Therefore, to address and address these issues, it is important to have a comprehensive understanding, devise a careful strategy, and, if necessary, seek legal advice. (Hasan, 2017)

Initially, a prenuptial or marital agreement could only be performed in compliance with the guidelines set forth in Law (Undang-Undang (UU) Nomor 1 Tahun 1974 Tentang

Perkawinan, 1974). In accordance with Decision Number 69/PUU-XIII/2015 of the Constitutional Court, the marriage contract can be carried out at any time as long as the couple remains married. Companions can more freely manage their rights and assets according to their needs.

This study aims to analyze the legal status of immovable property in mixed marriages and examine the implications of Constitutional Court Decision No. 69/PUU-XIII/2015, focusing on the intersection of marriage agreements and Indonesian agrarian law. The research also explores potential conflicts in legal interpretation and the need for regulatory harmonization to ensure legal clarity. Complying with the mentioned processes and criteria is essential when drafting a marriage agreement. This includes, among other things, the making of notary deeds and the enrollment of agreements. The recording of a marital contract is a condition to legally bind a third party to the agreement. This process is carried out by the marriage registrar with the aim of making the agreement known to the public. It is important that the content of the prior agreement with the third party is unaffected by this agreement.

Based on the explanation above, the formulation of the problem is concluded as follows: How will the change after the occurrence of non-marital objects that are not part of the common property in mixed marriages after the Constitutional Court decision No.69/PUU-XIII/2015? What are the legal consequences that occur to immovable objects that are not part of common property in mixed marriages after the Constitutional Court decision No.69/PUU-XIII/2015?

## **II. METHOD**

The study of legal principles or normative legal research is what researchers are engaged in. Literature research is another name for normative legal studies because of Soerjono Soekamto's opinion which interprets research using secondary texts or literature sources.

The majority of the research methodologies used in this investigation derived:

- 1) Statute Approach: This method is also called the juridical-normative technique. The main purpose of this method is to see the applicable rules and laws. According to this research method, laws and regulations are the most important source for legal studies. Legislation establishes rules for many legal issues. It is important to review the Marriage Law, the Civil Code, and the Constitutional Court Decision Number 69/PUU-XIII-2015.
- 2) Conceptual Approach: From the point of view of problem-solving analysis, the conceptual approach can be defined as the study of law seen through the lens of the underlying legal ideas or, alternatively, as research based on standards and values related to the concepts used in a regulation.
- 3) Case Approach: Researching examples related to the legal issue under discussion helps one to apply this method. The case under consideration is a case whose court decision has permanent legal force. Each decision is mostly studied in terms of the judge's thinking in making a choice so that it can be used as evidence in resolving legal problems that are occurring.

The data source of this study uses legal materials used include: Civil Code, Law Number 1 of 1974 concerning Marriage, Agrarian Law Number 5 of 1960, Constitutional Court Decision Number 69/PUU-XIII2015. Additional sources that offer the interpretation and analysis of primary legal information are referred to as secondary legal sources. Examples of this category include scientific studies and theses on the topic of marriage agreements, publications by legal experts, draft laws, research results, and literature on the theme of marriage and marriage agreements. Tertiary legal documents are complementary legal sources that provide guidelines and explanations regarding primary and secondary law. These materials can include encyclopedias, dictionaries, and other comparable sources.

### **III. RESULT AND DISCUSSION**

#### **3.1 Problems of Immovable Objects That Are Not Part of Common Property in Mixed Marriages After the Constitutional Court Decision No. 69/PUU-XIII/2015.**

In accordance with the nationalist view of life contained in the Basic Agrarian Law (UUPA), expatriates or Indonesian Foreign Citizens (WNA) are given limited property ownership rights, especially those related to land. The UUPA maintains nationalist principles by restricting exclusive rights to land in Indonesia to Indonesian residents.

##### **Restrictions on land rights for foreigners**

1. Restrictions on land rights for foreigners. When it comes to land or other types of ownership, title refers to the legal right that a person or company has to own and manage the land. Indonesian residents are given exclusive land ownership rights through the application of the UUPA. Property rights are prohibited for individuals who are not citizens. There is a possibility that the legal validity of land ownership rights for Indonesian citizens can be questioned if they marry a foreigner without first making a prenuptial agreement to divide their property. In the event that a non-citizen acquires jointly owned land in a marriage between a foreigner and an Indonesian citizen without a valid marriage agreement, he is obliged to transfer or release the land to its legal owner (either an Indonesian citizen or a legal entity) who meets the required criteria within a certain period of time.
2. Right to use business (HGU), right to use Bagunan (HGB), right to use (articles 30-41 of the UUPA). Indonesian communities and legal organizations are granted the right to cultivate state land for agricultural, fishery, or animal production purposes. It is illegal to transfer ownership of an HGU (Right to Use) to someone who is not a Malaysian citizen. A building can be erected and acquired ownership rights on land that is not the owner's right by using the Building Rights (HGB). Indonesian individuals, Indonesian legal entities, foreigners, and foreign legal entities can obtain HGB through agreements or cooperation. Nonetheless, HGB is subject to certain legal criteria and limitations. In addition, the right of use can also be granted to natural persons who are residents of Indonesia, legal entities foreign legal entities with Indonesian representation, foreign legal entities with an Indonesian domicile, and foreigners domiciled in Indonesia. In terms of exercising their right of use, foreign nationals are often only given a limited time and are forced to obtain special permits or make appropriate preparations.

The nationalist principle in maintaining property rights is contained in the UUPA which specifically grants material rights to land, especially to the people of Indonesia. The goal is to maintain Indonesia's autonomy and national concern for land ownership. Additional government regulations, such as Government Regulation No. 40 of 1996, specifically regulate the rights of foreigners with regard to land use rights, rights of building use, and business use rights. This law, along with other relevant regulations, provides more comprehensive guidance on these challenges. The time limit for signing a marriage agreement is determined in accordance with Law Number 1 of 1974's Article 29 Paragraph 1 requirements. The agreement must be signed either before or at the same time as the marriage contract, as provided for in these restrictions. This law restricts the ability of married persons, including Indonesian citizens married to foreign residents, to engage in or amend a marriage agreement called joint property in accordance with the requirements listed in article 29 paragraph 4 of Law Number 1 of 1974. The consent of both spouses is required for this agreement.

Certain bodies are obliged to transfer property rights in accordance with Article 35 paragraph 1 of Law Number 1 of 1974. Sajuti Thalib explained, joint property is a consequence and occurs in marriage. This is achieved by consolidating marital assets, especially those related to joint assets. Whether in the form of written agreements, tacit agreements, or community customs, the determination of common property is regulated by law. Unless a specific property agreement is made before or during the marriage, the law requires that the husband and wife have joint property. In this scenario, any property acquired by each couple or through joint venture activities during the marriage is considered separate property. The

requirements of article 35 paragraph 1 of Law Number 1 of 1974 concerning property according to Islam and customs must be strictly observed.

The legal responsibility is to ensure the division of property between husband and wife in accordance with customary norms. The principle of Pancasila does not contradict the principle of customary law based on family values. Article 2 of Law Number 12 of 2011 concerning Laws and Regulations emphasizes that customary law values still affect the values of common property, because Law Number 1 of 1974 is the main source of all state laws. Islamic law recognizes the concept of common property, especially in the context of shirkha abdan mufwadah. This concept does not contradict the theory of *receptio a contrario* or Islamic belief; Rather, it is consistent with this theory. In this regard, Section 1 of Article 29 of Law Number 1 of 1974 regulates the deadline for putting a marriage agreement into effect. This time limit is in effect from the date of the marriage contract and prior. The ability of a husband and wife to engage into a marriage agreement at the time of marriage or prior to it cannot be restricted in the case of a mixed marriage between residents of Indonesia and other nations. These agreements can also be made during marriage. One of the main legal evidences in Indonesia, especially those related to property issues, is that it is done in accordance with customary law.

Provisions regarding marital property include the following:

1. As the name implies, marital property is items purchased both during the marriage and going forward of the spouse until the marriage ends in divorce, death, or a court proceeding.
2. A property is called an inheritance if it is owned and managed by all sides, particularly the husband and wife. In terms of law, the only person who has the authority to initiate a legal case regarding property is husband and wife.
3. When a couple has entered into a marital relationship, the property they acquire is the property held by both parties separately.

In accordance with the Constitutional Court's ruling (MK) as stated in Article 29 paragraph 4. A marriage agreement can include other agreements or property owned jointly by the parties, in accordance with the decision of the Constitutional Court detailed in Article 29 paragraph 4. Therefore, the primary terms of the agreement specified in the marriage contract are freely chosen by the parties on their own. Any letter or issue that requires commitment from the parties entering into a marriage agreement will only be legally binding on those parties. This does not apply to documents or other matters. The first paragraph of Article 1338 of the Civil Code regulates the regulations that regulate this information.

The marriage contract is subject to the following conditions:

- a. The parties to a marriage can enter into a prenuptial agreement either before or at the time of marriage.
- b. Created through consensus between all parties involved;
- c. Signed in written form as a valid original deed before a Notary;
- d. Officially registered at the Marriage Registrar's Office at the Civil Office. Proficiency in drafting a marriage contract must also be considered, as the age requirements set by each jurisdiction vary.

Article 330 of the Civil Code regulates the legal authority to enter into an agreement, which applies to all persons over the age of 21, regardless of whether they are married. On the other hand, Law Number 2 of 2014 which is an amendment to Law Number 30 of 2004 concerning the Role of Notaries stipulates that a person who has been at least 18 years old is legally valid to make a marriage agreement. To be able to carry out a marriage contract, a husband and wife must be at least nineteen years old and a woman at least sixteen years old, as stated in the first paragraph of Article 39 of the Marriage Law.

Article 29 of the Marriage Law describes the legal basis for the formation of a marriage agreement. The following are regulated within the framework of Article 29 of the Marriage Law:

- a. Elopement marriage is a union formed through mutual agreement between husband and wife, when they make commitments to each other either before or during marriage.
- b. Signed in front of the Notary by a notary.

- c. It can be changed through consensus deliberation as long as it does not cause harm to third parties.
- d. Register at the Civil Registry Office. After the Constitutional Court Decision, there was a shift creating a marital contract at the moment. Without the need for a prior agreement between Indonesian citizens and foreign citizens, this step allows mixed marriages to occur. (Pratiwi et al., 2020)

The Constitutional Court has ruled that the current restrictions apply only to agreements made before marriage, despite the fact that a husband or wife may feel obligated to enter into a marriage agreement at the time they are united. We reached this conclusion based on legal considerations.

### **3.2 Legal consequences of immovable objects that are not part of common property in mixed marriages after the Constitutional Court Decision No. 69/PUU-XIII/2015.**

The efectos de la ley de matrimonio entre personas de diversas nacionalidades en Indonesia se rigen por la Ley No. 1 de 1974 relativo al Marriage (UUP). Regulation of the Government No. 9 of 1975 junto con la Ley No. 12 dated 2006, both of which relate to citizenship of the Republic of Indonesia, provide additional clarification on these terms and conditions. In the context of a mixed marriage, this framework will be used to investigate the legal consequences that may arise from immovable goods that are not included in the common property.(Sopiany, 2023) Ownership Condition: The current ownership status. In a mixed marriage between an Indonesian Citizen (WNI) and a Foreign Citizen (WNA), all immovable property, both owned before the marriage and obtained during the marriage, but registered in the name of one of the husband and wife is considered included in the marriage. category of private property. The transfer of these qualities from one individual to another. The division of personal property and joint property in marriage is regulated in Article 35 and Article 36 of the Constitution, in accordance with the provisions of laws and regulations.

The provisions of Article 29 of the UUP allow husbands and wives to make a marriage agreement that regulates the division of property. This allows husband and wife to carry out a marriage contract without restrictions. All immovable property that is the subject of this agreement, will be subject to the arrangements that have been determined if the marriage agreement is used to determine the division of personal property and joint property. The following is a group of titles owned by non-citizens to own immovable goods. This privilege is in accordance with the Basic Agrarian Law (UUPA) and Government Regulation No. 41 of 1996 concerning the ownership of residence by foreigners. Non-Indonesian citizens living in Indonesia are generally prohibited from acquiring legal ownership of property. Their rights are limited only to the use of the product. Therefore, the property rights of foreigners who own immovable goods, such as land or buildings, are only limited to either the usage right or the usage right buildings over these goods.

Change of ownership After divorce or death, immovable personal property must be returned to its owner or heirs, as prescribed by the relevant inheritance laws. These individual assets will not be shared as shared assets. Issues related to authority or control over a particular field or subject. If there is a difference of opinion regarding immovable goods, the court of the place where the goods are located shall have jurisdiction over it. For example, if the object is located in Indonesia, then the dispute resolution will be governed by Indonesian law. On the other hand, Indonesian law still provides legal defense for Indonesians married to foreign nationals and have immovable property in Indonesia. It doesn't matter whether they are in mixed marriage or not; They will still have ownership rights to certain immovable goods. Therefore, immovable property that is not jointly owned in a mixed marriage will be subject to individual ownership requirements, the terms stated in the marital contract, as well as national laws and rules pertaining to property use and the rights of foreigners regarding property.

The legal consequences of a marriage agreement that is not recorded in marriages between individuals of different cultural backgrounds. One of the main purposes of A marital contract is meant to set forth obligations regarding the acquisition of property both before and during marriage. Property obtained by husband and wife through a marriage agreement is

called individual property, not joint property. As an efficient preventive measure, a prenuptial agreement provides several advantages in the event of a divorce and is a good way to avoid potential complications. A prenuptial agreement can be made to facilitate the process of dividing the property obtained during the marriage.(Kristanty Mahadewi & Rai Asmara Putra, 2020). Although the Marriage Law does not expressly limit the provisions of the marriage agreement, the Civil Code is the definitive source in its preparation. The Civil Code, which is a related law, regulates the special conditions needed for the establishment of a marriage agreement in Article 1320. Making and declaring a marriage agreement in a notary deed is required based on Article 147 of the Civil Code, this is a must. To make a marriage contract record, the purpose is to make an official deed. In addition to the impact caused by those who participate in the serial marriage agreement, the legal impact of the agreement will also have an impact on third parties and the parties involved.

The application of positive law in Indonesia has undergone considerable changes after the issuance of the Constitutional Court decision Number 69/PUUXIII/2015.(Mahkamah Konstitusi RI, 2015)

1. Indonesia Number 3019 and Article 29 paragraph (1) of Law Number 1 of 1974 concerning Marriage (Statute Book of the Republic of Indonesia Number 1 of 1974, Addendum to the Republic of Indonesia Statute Book Number 1) are contradictory. According to the 1945 Constitution, both parties may enter into a written agreement legalized by a marriage registrar or notary before the marriage takes place or at the time of the marriage, and the contents of the agreement take effect thereafter.
2. In accordance with Statute Book of the Republic of Indonesia Number 1 of 1974, an Addendum to Republic of Indonesia Statute Book No. 3019 the first sentence of Article 29 of Law Number 1 of 1974 concerning Marriage is not requiring the parties to comply by law. Involved. The phrases at this time, before it happened, and at that time are used to characterize it. It is conceivable that two people can approve their marriage to be officially documented and notarized by a marriage registrar or notary at the time of their marriage. If this happens, the third party may be required to comply with the terms of the agreement, provided that such terms are provided with clear guidelines.
3. Article 29 paragraph (3) of Law Number 1 of 1974 concerning Marriage (Statute Book of the Republic of Indonesia) violates the Constitution of the Republic of Indonesia which was ratified in 1945, if the phrase "the agreement comes into force at the time the marriage occurs, unless otherwise specified in the Marriage Agreement" is not covered by the marital contract.
4. When marriage occurs, the covenant becomes legally binding, unless the Marriage Agreement specifies otherwise. This interpretation is related to the third paragraph of Article 29 of Law Number 1 of 1974 concerning Marriage (The Republic of Indonesia's Statute Book Number 1 of 1974, Addendum to the Republic of Indonesia's Statute Book Number 1 in Statute Book of the Republic of Indonesia Number 1 of the Republic of Indonesia Number 3019). This particular section of the law does not require compliance unless its meaning is removed.
5. The fourth paragraph of Article 29 of the law and "part of Law No. 1 of 1974 concerning Marriage" (Statute Book of the Republic of Indonesia No. 1 of 1974, Supplement to Statute Book of the Republic of Indonesia No. 3019) are diametrically contradictory. This debate will continue as long as the rules are interpreted inconsistently. "As long as the marriage is still in progress, the marriage agreement may be about marital property or other agreements, it cannot be changed or revoked, unless one of the parties agrees to change or revoke it, and the change or revocation does not harm the third party."
6. Amendment or revocation of the marriage contract is not allowed unless one of the parties agrees to the change or revocation and the change or revocation does not result in losses to the third party. The fourth paragraph of Article 29 of Law Number 1 of 1974 concerning Marriage (Statute Book of the Republic of Indonesia Number 1 of 1974, Supplement to Statute Book of the Republic of Indonesia Number 3019) is invalid and has legal force if not understood.

Article 29 of the Marriage Law was amended to harmonize with the new provisions as a result of this Constitutional Court decision. One of these changes has an impact on the legality of prenuptial agreements, engagements, and postnuptial agreements. This article replaces the old rules that made it difficult to make a marriage agreement. (Constitutional Court of the Republic of Indonesia., 2015). The Constitutional Court ruled that the registration of marriage must contain a marriage contract in accordance with Article 12 of the People's Party Law Number 9 of 1975, which is specifically related to the implementation of Law Number 1 of 1974 concerning Marriage. The results of interviews with informants in the marriage section at the Denpasar City Civil Registry Office show that there is no time limit in reporting or documenting in the marriage contract. Interracial marriages require the submission of a marriage certificate when the marriage contract was signed. The agreement on marriage can still be carried out according to the law, but it can only be used by the couple. On the other hand, the other party will not be able to rely on the legal force of the agreement until the agreement is registered with the civil registry office.

#### **IV. CONCLUSION**

There is a significant influence of Decree Number 69/PUU-XIII/2015 on local government officials in Indonesia. Everything that neither party has in a mixed marriage and cannot be inherited, is governed by the rules set forth in this deed. As a result of the revocation of special provisions in Law Number 23 of 2014, local governments now have better legal protection in assuming responsibility for their regions. The impact of this Constitutional Court decision needs to be handled carefully so that systemic problems do not occur in the implementation of local government, even though the goal is to maintain the harmony of law and the constitution. Interracial marriage has many legal consequences for common assets so it requires careful consideration. A marriage agreement is essential to establish a clear division between personal and joint property, ensure legal certainty, and safeguard the rights of each spouse. This allows married couples in mixed marriages to manage their assets efficiently and minimize the potential for legal disputes.

The legal, administrative, and social fields must pay special attention to the myriad of problems that may arise due to mixed marriages between foreigners and Indonesian citizens. Comprehensive planning, which includes drafting a marriage agreement and seeking advice from a legal professional, can effectively minimize risks and overcome any difficulties that may occur. It is essential for couples to understand and comply with the legal requirements that apply in Indonesia to guarantee the continuation of their relationship without interruption. Following the Constitutional Court's decision no. 69/PUU, it is necessary to increase caution in anticipating changes in government regulations to prevent potential legal disputes in the future.

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