



A Judge's Views on the Termination of Marriage Agreements in Mixed Marriages

Harry Sapto¹; K.N. Sofyan Hasan²; Khalisah Hayatuddin²

¹ Master Student at Faculty of Law University of Muhammadiyah Palembang, Indonesia

² Law Lecture at University of Muhammadiyah Palembang, Indonesia

E-mail: harrysapto55@gmail.com

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Abstract

This paper investigates the judicial viewpoints regarding the dissolution of marriage agreements in mixed marriages, which involve participants from diverse cultural, religious, or national backgrounds. The study endeavours to identify the distinctive challenges and considerations that judges encounter in these cases by examining case law, legal principles, and judicial comments. The termination procedure can be complicated by the complex legal questions surrounding jurisdiction, applicable law, and the recognition of foreign judgments that are frequently present in mixed marriages. In addition, the interpretation and enforcement of marital agreements may be influenced by cultural and religious differences, which can affect decisions regarding asset division, child custody, and spousal support. This study illuminates the factors that influence judicial reasoning and the degree to which personal biases and societal norms influence outcomes by conducting a thorough examination of judicial decisions and interviews with judges. The results underscore the necessity of a nuanced approach that ensures fairness and justice in the termination of mixed marriage agreements while also respecting cultural diversity.

Keywords: *Mixed Marriages; Judicial Perspectives; Marriage Termination*

Introduction

Mixed marriages—unions between individuals of varying cultural, religious, or national backgrounds—are becoming more prevalent in a world that is becoming more globalized [1]. Although these unions represent the amalgamation of various traditions and viewpoints, they also pose distinctive legal obstacles, particularly in terms of the termination of marriage contracts[2]. The dissolution of such unions frequently necessitates the negotiation of intricate legal landscapes that encompass a variety of jurisdictions, cultural norms, and legal systems[3]. The lives of those involved are considerably influenced by the interpretations and decisions of judges, who play a pivotal role in this process[4]. It is essential to comprehend how judges approach the termination of marriage agreements in mixed marriages

to gain an understanding of the complexities and nuances of these cases[5]. This investigation explores the judicial viewpoints on this matter to identify the variables that influence judicial decision-making and reasoning[6].

In mixed marriages, the termination of marriage agreements frequently necessitates the resolution of complex legal issues, including the application of the laws of the relevant jurisdiction, the recognition and enforcement of foreign judgments, and the reconciliation of conflicting cultural and religious traditions [7]. Furthermore, these cases can present judges with substantial ethical and emotive challenges, as they are required to balance the best interests of the parties involved, particularly children, with the preservation of cultural diversity and the pursuit of justice. The objective of this paper is to elucidate the judicial thought process in these intricate scenarios through the analysis of case law, legal principles, and interviews with judges[8]. The study endeavours to offer an exhaustive comprehension of the challenges and considerations that judges encounter through this investigation, emphasizing the necessity of a culturally sensitive and nuanced approach to the termination of marriage agreements in mixed marriages. Marriage Law Number 1 of 1974 regulates marriage in Indonesia. The following is an abbreviation for Marriage Law Number 1 of 1974, which governs marriage; 1) Marriage is legitimate provided that it is performed by the regulations of each religion and belief; 2) All marriages are documented by the relevant laws and regulations[9].

The primary significance of this marriage agreement is to deviate from the provisions of statutory law that mandate that the personal assets of each husband and wife are essentially combined into a single, unified entity[10]. Another rationale for maintaining a marriage agreement is that the giver of the assets does not wish for the assets that were gifted to one husband and wife to be transferred to the other party or each other if there are substantial disparities in social class or personal assets [11]. As is the case in mixed marriages, the laws that govern husband and wife are distinct. A marriage agreement establishes legal certainty regarding the promises made, enabling the parties to pursue legal action by the terms of the agreement [4]. The content of the marriage covenant is permissible provided that it does not violate public order or morality. Marriage agreements are prohibited from being made for false reasons (*causa*), promises must not be made that deviate from the rights arising from parental authority (*Ouder Lijkemacht*), the rights determined by law for the bride and groom who live for (*Langstlevende Echtgemoot*), and no agreement is made that contains the release of rights to the inheritance of the people who will inherit it [12].

Methods

This thesis is a normative legal investigation. Where normative legal research is a process that aims to ascertain legal principles, legal rules, and legal doctrine from the legal issues encountered to obtain answers. Of course, normative research must employ a statutory approach, which is an approach that analyzes a variety of legal regulations that are the primary focus and central theme of the research. These regulations have legal implications that will be discussed by the legal issues related to the law. The judge's consideration of the annulment of marriage agreements with the implementation mechanism in mixed marriages between Indonesian citizens and expatriates is particularly relevant to Civil Law and Marriage Law Number 1 of 1974 and its implementing regulations. With this method, the author can ascertain the continuity of statutory regulations concerning other statutory regulations.

This research employs a case approach in addition to a statutory and conceptual approach. The primary objective of the case approach is to examine cases that have resulted in court decisions that have become permanent law and are relevant to the current issues. These cases may occur in Indonesia or other countries. Ratio decidendi, or reasoning, is a component of the case approach that refers to the court's considerations in reaching a decision. Examining the implementation of legal norms or regulations in the

context of legal practice. To employ a case approach, researchers must comprehend the ratio decidendi, which refers to the legal justifications employed by the judge to render a decision.

Result and Discussion

The Status of Joint Property in Mixed Marriages That Have Not Been Registered in Indonesia According to Agreement Law

A prosperous family is formed by a marriage that is legal both religiously and nationally, capable of fulfilling the spiritual and material needs of life worthy of devotion to God Almighty and having a harmonious relationship and harmony between family members, society, and the surrounding environment. Marital assets are all assets controlled by the husband and wife as long as they are still married. Additionally, the ideal number of children is required to achieve physical and spiritual well-being. In the case of joint assets, the husband and wife can act on them with the mutual consent of both parties. However, in the case of inherited assets, each individual has the full right to pursue legal action. If the marriage dissolves, the division of marital assets is conducted by the applicable laws.

The citizenship of the spouse, the nationality of the child, and property during the marriage are all relevant factors in mixed marriages. This is particularly true for the ownership of immovable objects in the form of land, as Law number 5 of 1960 concerning Agrarian Principles stipulates that only Indonesian citizens are permitted to possess ownership rights to land. Owning property or buildings with ownership rights status will be challenging for Indonesian citizens who marry foreign citizens. This is due to the Indonesian Marriage Law, which stipulates that property acquired during marriage is considered joint property, granting both parties equal rights to the property. The Marriage Law regulates the definition of mixed marriage in Article 57, which states: "What is meant by mixed marriage in this Law is a marriage between two people who in Indonesia are subject to different laws, because of differences in nationality, and one of the parties is a foreign citizen and the other is an Indonesian citizen." Mixed marriages that occur outside of Indonesia may involve two distinct legal systems. Consequently, the legal consequences and procedures that determine the validity of the marriage must be carefully considered in the legal systems of each bride and groom [13].

The issue of mixed marriage assets is that if the spouse is an Indonesian citizen, there is no issue, as it is regulated by the husband's law, which is Marriage Law Number 1 of 1974 [14]. If the wife is an Indonesian citizen and the husband is a foreign citizen, the husband may comply with the provisions of Article 2 and Article 6 paragraph (1) of GHR (*Regeling of de Gemengde Huwelijken*) Stb.1898 No.158. This law applies to the husband's side, as the GHR (*Regeling of de Gemengde Huwelijken*) is not applicable. Therefore, it is advisable to regulate this matter in national law and make the necessary adjustments. Principles of health and safety. The Marriage Law encompasses not only matters concerning marriage but also additionally, it governs marital property. This field is one of the civil law areas that has the potential to cause conflict due to its sensitive nature. Regulating this field is more difficult than regulating neutral legal fields. Mixed marriages, which involve immigrants, are characterized by complexities in marital property law and variations in the fundamental principles. The principles of International Private Law are also involved in the complexity of the wealth issues that arise from mixed marriages, in addition to being predicated on the Marriage Law No. 1 of 1974.

The wife applies to him on the terms of her spouse if the husband is a foreign citizen (WNA) and the wife is an Indonesian citizen (WNI). Therefore, it is imperative to adhere to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 7 of 1996 concerning Requirements for Ownership of Residential or Residential Houses by Foreigners and Government Regulation Number 41 of 1996 concerning Ownership of Residential or Residential Houses by Foreigners, who are domiciled in Indonesia. In essence, it stipulates that foreigners who contribute to

Indonesia's national development may possess a residence or dwelling in the form of a home with specific land rights or a unit of flats constructed on land with the right to utilize state land. The individual in question is a foreign national who has invested in a residence or property in Indonesia to maintain and own economic interests in the country.

The Legal Consequences of Marriage Agreements on Joint Property Following Divorce in Mixed Marriages

In the event of a divorce during a marriage, Article 128 of the Civil Code stipulates that the successors of the husband and wife are to divide the joint assets without regard to the source of the goods. Conversely, the Marriage Law stipulates that in the event of a divorce, joint assets are subject to the laws of the respective parties. This is exemplified in Article 37 of the Marriage Law, which refers to the law of each party. The law of each party in this context may include religious, customary, or other laws. A marriage agreement may be established with mutual consent in the form of a written agreement that is ratified by the Marriage Registrar's employee, as per Article 29 of the Marriage Law, both before and during the marriage. Mixed marriages may be governed by either national or foreign law (Marriage Law Number 1 of 1974). Joint assets are assets that are acquired during marriage, except assets that are included in the original assets. This is by Article 1 letter (f) of the KHI regulations, which stipulate that assets acquired independently during marriage are marital assets and are referred to as joint assets regardless of whether they were registered or acquired. Joint assets may be held in the name of either the husband or the wife.

Article 97 of the KHI regulates the division of joint assets in Islamic law. Divorced widows or widowers are each entitled to half of the joint assets, provided that the marriage agreement does not specify otherwise. However, in practice, the distribution of joint assets is not always even. Typically, 50% of the distribution is adjusted to the parties' agreement if each party has a partner's role in procuring goods that have become joint property. This typically occurs when the husband and wife work together. To prevent disputes between the assets of the spouse and wife, the division of joint assets should be conducted fairly. The resolution of a dispute between husband and wife regarding joint property is submitted to the Religious Court, as stipulated in Article 88 of the KHI. A mixed marriage and a marriage will both have legal repercussions for the parties involved. The legal implications of mixed marriages pertain to the citizenship of the spouse, the nationality of the children, and property acquired during the marriage, particularly in the context of land ownership. This is because Law Number 5 of 1960, which pertains to agrarian principles, stipulates that only Indonesian citizens are eligible to possess land ownership rights. Owning property or buildings with ownership rights status will be challenging for Indonesian citizens who marry foreign citizens. This is due to the Indonesian Marriage Law, which stipulates that property acquired during marriage is considered joint property, granting both parties equal rights to the property.

The Panel of Judges' Consideration of the Cancellation of Marriage Agreements in Mixed Marriages in Case Decision Number: 526/Pdt.G/2012/PN.JKT.SEL. was reviewed by the principle of legal application

The plaintiff's lawsuit is primarily a request for the court to declare the marriage agreement null and void about any partnership of assets between the plaintiff and the defendant that was established by the co-defendant. This is because the marriage agreement was based on the defendant's unethical behaviour without any prior explanation. The plaintiff was unable to communicate in Indonesian at the time of the agreement, and the marriage agreement was executed after the marriage. Consequently, this action contravened Article 29 paragraph (1) of the Marriage Law, specifically Law No. 1 of 1974, which mandates that the marriage must occur at or before the wedding. The marriage registrar ratifies a written

agreement that is mutually agreed upon by both parties. Subsequently, the contents of the agreement apply to third parties as long as they are involved.

The defendant responded to the plaintiff's lawsuit by submitting a letter dated 20 February 2013 that essentially rejects the plaintiff's lawsuit on the basis that a copy of the marriage agreement was exchanged outside each partnership of assets in the presence of co-defendant I between the plaintiff and the defendant before the execution of deed Number 44 dated 29 April 2003. Initially, the defendant and plaintiff must engage in a discussion and deliberate on the marriage agreement outside of each asset partnership to ensure that they both consent to the agreement. Following the panel's examination of the plaintiff's primary allegations and the responses of Defendant and Co-Defendant I, the plaintiff was required to establish the validity of a marriage agreement between the plaintiff and the defendant, which was executed before the formation of the marriage. The litigation is rendered null and void as a consequence of the plaintiff and defendant's marriage. The plaintiff's argument that the plaintiff is an Australian citizen is deemed to have been proven, as evidenced by the plaintiff's passport No. E4016832, which is not denied by the defendant or the co-defendants I [P - 1].

It is evident from the aforementioned that the plaintiff was able to establish through his litigation that the marriage agreement between the plaintiff and the defendant was executed after the marriage. Therefore, the marriage agreement between the plaintiff and the defendant, which was executed by co-defendant I after the marriage, was determined to violate the law. The marriage agreement is null and void due to its violation of the law, irrespective of whether the plaintiff received an explanation from the translator during the negotiation of the agreement or whether the defendant acted unethically. Consequently, the judge granted the plaintiff's claim in part and rendered a decision, which was as follows: a. Declare the agreement between the plaintiff and the defendant as stated in Notarial deed No. 44 dated 29 April 2003 concerning a copy of the marriage agreement outside each community of assets, null and void with all legal consequences; b. Sentence the defendant to pay the costs incurred in this case, which amount to Rp. 1,016,000,- (one million sixteen thousand rupiah); c. Reject the plaintiff's claim for the remainder.

Conclusion

Joint Property Status in a Mixed Marriage. Joint property is a property that is acquired during a marriage, from the moment it commences until it ceases due to divorce, death, or a court decision. Paragraph (1) Property acquired during the marriage becomes joint property. Paragraph (2) Inherited assets 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 determine otherwise. The marriage bond is joint property between husband and wife, as stated in Article 35 of the Marriage Law Number 1 of 1974 concerning Marriage. That is, marriage agreements are primarily established before the marriage (pre-wedding) following Article 29 paragraph (1) of the Marriage Law Number 1 of 1974. This law stipulates that both parties may enter into a written agreement with mutual consent at or before the wedding, which is ratified by the employee. The marriage registrar, after which the contents apply to third parties as long as they are involved. According to Article 35 Paragraph (1) of the Marriage Law, the definition of Joint Property is the property that a husband and wife acquire during their marriage. This definition is comprehensible from a formal juridical perspective. As long as the property is acquired during the marriage, it is considered joint property, regardless of the individual recipients. Therefore, Plaintiff, Denis Anthony Michael Keet, the original appellee, continued to receive his share of the Joint Assets after the divorce, which amounted to 50% (fifty per cent). Therefore, the author concurs with the judge's assessment and determination in this instance.

The Legal Consequences of Marriage Agreements on Joint Assets Following Divorce in Mixed Marriages. In the case study of the Decision of the High Court for the Special Capital Region of Jakarta (Number: 526/Pdt.G/2012/PN.JKT), the position of marital assets before and after the Marriage Agreement was registered is that the Marriage Agreement was binding on the parties who made it, namely the husband and wife who made the Marriage Agreement by the Pacta sund servanda principle. Therefore, if the husband and wife desired that the assets that had the status of Joint Assets become the assets of each party, it is legally permissible. Consequently, the assets acquired by the husband and wife during the marriage, whether before or after the Marriage Agreement is made, become the property of each husband and wife. In the interim, the Marriage Agreement that has been registered will also be binding on third parties. A marriage agreement is null and void, which implies that it was never made in the first place, and therefore, there was never an agreement. Consequently, in mixed marriages, there are common assets that must be divided between the husband and wife in the event of a divorce. This division is based on 50% (fifty per cent) or half of the joint assets.

References

- Kamaruddin, "Widows' Rights and Customary Law: Addressing Responsive Law to Divorce Cases of Tolaki Community in Indonesia," *Maz. J. Pemikir. Huk. Islam*, vol. 22, no. 2, 2023, doi: 10.21093/mj.v22i2.6154.
- D. Andriani and D. A. Prasetyo, "Legal Protection of The Rights of Indonesian Citizens for Children in Lifetime Mixed Marriages," *Int. J. Soc. Serv. Res.*, vol. 3, no. 4, 2023, doi: 10.46799/ijssr.v3i4.327.
- D. Setiawan, "Inter-Religious Marriage: A Controversial Issue in Indonesia," *Contemp. Issues Interfaith Law Soc.*, vol. 1, no. 1, 2022, doi: 10.15294/ciils.v1i1.56711.
- R. A. Rizki, S. Sriono, and R. Risdalina, "The Legal Aspect of Cancellation of a Marriage Due To Formed Identity (Case of Decision Number 586 / PDT.G / 2014 / PN. JAKSEL)," *Budapest Int. Res. Critics Inst. Humanit. Soc. Sci.*, vol. 4, no. 2, 2021, doi: 10.33258/birci.v4i2.1972.
- S. Afhami, "Legal Implications of Mixed Marriages: Examining Marriage Agreements and Property Rights," *J. Law Sustain. Dev.*, vol. 12, no. 1, 2024, doi: 10.55908/sdgs.v12i1.3100.
- B. Suyanto, R. Sugihartati, M. A. Hidayat, N. Egalita, and S. Mas'udah, "The causes and impacts of early marriage: the ordeal of girls in East Java, Indonesia," *Sociol. Probl. e Prat.*, no. 101, 2023, doi: 10.7458/SPP202310126851.
- R. F. Pangaribuan and W. Fitri, "Kajian Perkawinan Campuran dalam Perspektif Hukum Perdata Internasional (Perkawinan antara Warga Indonesia dan Warga Belanda)," *Ius Civ. Refleks. Penegakan Huk. dan Keadilan*, vol. 6, no. 1, 2022, doi: 10.35308/jic.v6i1.5296.
- E. Sumiarni, Y. Niken Sharaningtyas, Y. Sri Pudyatmoko, and S. Sefriani, "The Legal Interpretation of Marriage Agreement of Mixed-Marriage in Indonesia," *Int. J. Soc. Sci. Humanit.*, 2022, doi: 10.18178/ijssh.2022.v12.1096.
- S. W. Putri and I. Ismail, "LEGAL PROTECTION OF INDONESIAN CITIZENS WHO CONDUCT MARRIAGE WITH FOREIGN CITIZENS RELATED TO THE ACQUISITION OF LAND RIGHTS," *The Juris*, vol. 7, no. 1, 2023, doi: 10.56301/juris.v7i1.779.
- R. S. Devi, "Certainly of Divorce Laws in Different Countries Base on Indonesian International Civil Law," *J. Progress. Law Leg. Stud.*, vol. 2, no. 01, 2023, doi: 10.59653/jplls.v2i01.496.

- L. Fawwaz Rohmanna, A. K. Adebayo, and S. Alam, “Perspective on Inheritance Rights in Other Wives,” *Golden Ratio Law Soc. Policy Rev.*, vol. 3, no. 1, 2023, doi: 10.52970/grlspr.v3i1.327.
- D. Gunawan, “THE URGENCY OF THE PRENUPTIAL AGREEMENT FOR HUSBAND AND WIFE IN INDONESIAN MARRIAGE LAW,” *J. Philos. Law*, vol. 2, no. 1, 2021, doi: 10.35973/jpl.v2i1.2577.
- Mohd. Yusuf DM and G. M. Saragih, “Juridical Overview of the Prohibition of Interfaith Marriage from the Perspective of Human Rights and Criminal Law in Indonesia,” *J. Sci. Res. Educ. Technol.*, vol. 1, no. 2, 2022, doi: 10.58526/jsret.v1i2.11.
- F. Fitriani, B. Kisworo, and J. Warlizasusi, “Analisis Penerapan Pasal 41 Undang-Undang Nomor 1 Tahun 1974 Tentang Hak Nafkah Anak (Study Kasus Putusan Hakim Pengadilan Agama Lubuklinggau Nomor: 371/Pdt.G/2021/Pa.LLg),” *Hutanasyah J. Huk. Tata Negara*, vol. 1, no. 1, 2022, doi: 10.37092/hutanasyah.v1i1.352.

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