

Postnuptial Agreement as an Instrument for Protecting the Land Rights of Indonesian Citizens in Mixed Marriages

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Abstract

Land occupies a strategic position in the Indonesian agricultural legal system, in which the right to land ownership is reserved for Indonesian citizens (WNI) only, in accordance with Article 21 of the Basic Agrarian Law (UUPA). This provision poses a problem for WNI who are in mixed marriages. The reason for this is that the joint property system can lead to land ownership rights being regarded as mixed ownership and thus run the risk of passing into the hands of foreign nationals (WNA). This study analyzes the role of marriage contracts as a legal solution to protect the land ownership rights of WNI in mixed marriages. The study uses a legal-normative method with a legislative and conceptual approach. The results of the study show that Constitutional Court Decision No. 69/PUU-XIII/2015 recognizes prenuptial agreements concluded after marriage, allowing for retroactive separation of property. Furthermore, this protection is reinforced by Government Regulation No. 18 of 2021, Article 70, which states that Indonesian citizens married to foreigners can retain land rights based on a property division agreement. This is further reinforced by technical regulations issued by the Ministry of Agrarian Affairs and Spatial



Planning/National Land Agency, which provide legal certainty and administrative mechanisms for land ownership. Overall, marriage contracts serve as an important tool for protecting the constitutional rights of Indonesian citizens, preventing control of land by foreigners, and ensuring justice and legal certainty in mixed marriages.

KEYWORDS

Postnuptial Agreement, Mixed Marriage, Land Ownership Rights, Legal Protection.

Introduction

Land is a strategic asset that has fundamental value for the lives of the Indonesian people, both from economic, social, and legal aspects. As a limited resource, land not only functions as a place to live, but also as an economic guarantee, investment instrument, and inheritance that will be inherited to future generations¹. In the context of national development, land even has a political and ideological dimension because it is closely related to state sovereignty over its territory². Therefore, the control, utilization, and protection of land rights is an issue that is always relevant and receives serious attention from lawmakers and the government.

Given the importance of land in the life of the nation and state, Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA) serves as the main legal basis governing the structure of land ownership and use in Indonesia. One of the fundamental principles in the UUPA is that land ownership rights can only be held by Indonesian citizens (WNI). Article 21 paragraph (1) of the UUPA explicitly states that only Indonesian citizens can have ownership rights³. Furthermore, paragraph (3) of the same article stipulates that if the holder of ownership rights no longer meets the

¹ Maria S.W. Sumardjono, *Tanah Dalam Perspektif Hak Ekonomi, Sosial, Dan Budaya* (Jakarta: Kompas, 2008).

² Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan UUPA, Isi Dan Pelaksanaannya* (Jakarta: Djamban, 2013).

³ Sudargo Gautama, *Tafsiran Undang-Undang Pokok Agraria* (Bandung: PT Citra Aditya Bakti, 1993).

requirements referred to in paragraph (1), then those rights must be transferred to another party who meets the requirements within one year.⁴ This rule is not only administrative in nature, but also has strategic value in protecting national interests, maintaining state sovereignty, and preventing the concentration or control of land by foreign parties that could potentially harm the Indonesian people.

However, this provision creates significant legal complexity for Indonesian citizens who enter into mixed marriages with foreign nationals. According to Law No. 1 of 1974 on Marriage, a mixed marriage is defined as a marriage between two people who are subject to different laws in Indonesia due to differences in citizenship⁵. In practice, mixed marriages often create legal vulnerabilities for Indonesian citizens, especially when it comes to land ownership rights. Agrarian laws that limit land ownership rights to Indonesian citizens conflict with marriage laws that allow for the creation of joint property, creating a rather complex legal dilemma.

The era of globalization and advances in communication technology have facilitated interaction between countries, which in turn has led to an increase in the number of mixed marriages. Mobility in the areas of education, employment, and tourism are the main factors that favor romantic relationships between Indonesian citizens and foreigners. Based on data from the Directorate General of Population and Civil Registration of the Ministry of Home Affairs, the trend toward mixed marriages in Indonesia has seen a significant increase over the past decade, reflecting the intensity of globalization and increasing international mobility. This situation requires the development of a legal system that is adaptable and responsive to social dynamics without neglecting the principle of state sovereignty. On the other hand, several countries, such as Thailand, the

⁴ Pemerintah Pusat Indonesia, “Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria,” Undang-Undang No.5 Tahun 1960 § (1960).

⁵ Pemerintah Pusat Indonesia, “Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan” (1974).

Philippines, and Malaysia, which also apply the principle of restricting land ownership for foreigners, have developed clearer protection mechanisms for citizens who marry foreigners, through trust systems, lease agreements, or a more explicit separation of property in their laws. This comparative experience shows that Indonesia needs to strengthen its legal framework and administrative implementation in order to provide Indonesian citizens in mixed marriages with more optimal protection.

The main problem arises from the application of the community property system, which automatically applies to marriages unless the parties enter into a marriage agreement stipulating otherwise. Under this system, all property acquired during the marriage becomes the joint property of the husband and wife, including land purchased in the name of an Indonesian citizen⁶. This condition has the potential to create legal uncertainty regarding the status of land ownership, given the interests of foreign nationals as partners in the joint property. In other words, even though the land certificate is registered in the name of an Indonesian citizen, the existence of a foreign national partner in the marriage raises the possibility of legal interference that makes ownership of the land no longer purely the personal right of the Indonesian citizen. As a result, Indonesian citizens in mixed marriages face the real risk of losing their ownership rights to the land if they cannot prove that the land is their personal property or personal property that is excluded from joint property.

In practice, there are a number of cases in which Indonesian citizens who marry foreign nationals must relinquish ownership of their land because they are no longer considered eligible as subjects of property rights under Article 21 of the Basic Agrarian Law, even though the land was inherited from their parents prior to marriage. This situation not only causes significant economic losses, but also creates substantive injustice for Indonesian citizens whose rights should be protected by the state. Furthermore, in practice, Indonesian women are more vulnerable to losses

⁶ J. Satrio, *Hukum Harta Perkawinan* (Bandung: PT Citra Aditya Bakti, 1991).

due to the absence of a marriage agreement, especially when they have inherited land or personal property that is then considered joint property. This not only causes economic losses, but also has the potential to violate constitutional rights to ownership and legal certainty as guaranteed in Article 28D paragraph (1) and Article 28H paragraph (4) of the 1945 Constitution⁷. Legal uncertainty regarding land ownership for Indonesian citizens in mixed marriages not only affects individuals but also has broader economic implications. Land as a productive asset that loses certainty of ownership will reduce its economic value, hinder access to bank credit, and ultimately reduce national economic productivity and cause potential losses to the state in the long term.

This situation underwent significant changes after the issuance of Constitutional Court Decision Number 69/PUU-XIII/2015, which provided a new interpretation of Article 29 of the Marriage Law. Through this ruling, the Court broadened the meaning of a marriage agreement so that it could be made not only before the marriage took place, but also after the marriage took place (postnuptial agreement), as long as it did not harm third parties⁸. This ruling is a very important legal breakthrough because it paves the way for couples in mixed marriages to retroactively separate their property, so that Indonesian citizens can retain their land ownership rights. Thus, the Constitutional Court not only provides legal certainty, but also responds to the public's need for substantive justice, which has not been accommodated in the legislation.

The implementation of the Constitutional Court's ruling on the validity of marriage contracts is reinforced by various administrative regulations in the area of land ownership. Regulation No. 29 of 2016 of the

⁷ Pemerintah Pusat Indonesia, "UNDANG-UNDANG DASAR NEGARA REPUBLIK INDONESIA 1945" (1945).

⁸ Lutfiana Dwi Mayasari and Abid Rohmanu, "Tinjauan Yuridis Terhadap Perjanjian Pemisahan Harta Dalam Perkawinan Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015," *Journal of Economics, Law, and Humanities* 1, no. 1 (2022): 23–43, <https://doi.org/10.21154/jelhum.v1i1.529>.

Minister of Agriculture and Spatial Planning/Head of the National Land Authority provides the legal basis for the National Land Authority to recognize marriage contracts and marriage agreements as valid instruments for the registration of land rights. This ensures the administrative implementation of this constitutional recognition. This strengthening is continued by Government Regulation No. 18 of 2021 and Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 18 of 2021, which emphasize that in mixed marriages, the holder of land rights must continue to meet the requirements as a legal entity. In addition, the marriage contract serves as proof of the separation of property. This legal framework provides Indonesian citizens in mixed marriages with concrete protection of their property rights and at the same time ensures the consistent application of the principle of nationality in land ownership in Indonesia.

Although the regulatory framework is in place, the implementation of postnuptial agreements in practice still shows a gap between legal norms and administrative practices. Many land offices and marriage registration agencies do not yet fully understand the mechanism, resulting in inconsistent services, rejections without clear grounds, and requests for additional documents beyond the requirements. This lack of synchronization between central regulations and regional practices creates legal uncertainty, which is exacerbated by the lack of official data and the low number of postnuptial agreements registered with the National Land Agency (BPN) since the enactment of Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 29 of 2016, indicating a lack of socialization and procedural obstacles.

Previous studies have generally focused on normative aspects and have not comprehensively examined the effectiveness of implementation in land administration. Therefore, this study not only analyzes the legal framework but also the dynamics of implementation and technical obstacles, and formulates policy recommendations to strengthen the

protection of Indonesian citizens' property rights in mixed marriages. This study is expected to contribute theoretically and practically to the development of agrarian and family law, while ensuring the optimization of postnuptial agreements as an instrument for protecting land rights amid increasing global mobility.

Methods

This research uses a normative juridical method, which is an approach that examines law as a norm that applies in society and is prescriptive⁹. This method aims to find legal truth based on scientific logic and applicable legal norms. In its application, two approaches are used, namely the statute *approach* and the *conceptual approach*. The legislative approach is used to review relevant positive legal provisions, such as the Basic Agrarian Law, the Marriage Law, the Constitutional Court Decision, and the Regulation of the Minister of ATR/BPN. Meanwhile, the conceptual approach is used to examine legal doctrines and theories related to mixed marriages, marriage agreements, and the protection of land rights for Indonesian citizens. The specification of this study is descriptive analytical, which aims to describe and analyze the application of *postnuptial agreements* as an instrument for the protection of land rights in mixed marriages.

Previous scientific studies on marriage contracts in mixed marriages have been quite diverse, but most studies tend to focus on normative aspects and have not comprehensively examined the effectiveness of marriage contracts in land administration. Research on structural barriers, differing interpretations by various authorities, and the population's limited legal knowledge is still relatively limited. This study therefore attempts to fill this gap by not only analyzing the legal framework, but also examining the dynamics of implementation and technical constraints, and formulating

⁹ Prof. Dr. Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2010).

policy recommendations that can strengthen legal protection for Indonesian citizens in mixed marriages.

Therefore, examining subsequent agreements is important to understand how this instrument can serve as a legal solution to protect the land rights of Indonesian citizens and how its implementation mechanism can be optimized in the Indonesian land administration system. A comprehensive analysis should not only contribute theoretically to the development of agricultural and family law, but also practically to the improvement of national land policy. Ultimately, efforts to strengthen the implementation of marriage contracts will be a strategic step in responding to the challenges of globalization and increasing human mobility, while ensuring that the principle of state sovereignty over land as an important national resource remains effectively protected.

Result and Discussion

1. Postnuptial Agreements as a Legal Solution for Protecting the Property Rights of Indonesian Citizens in Mixed Marriages

Under Indonesian agrarian law, land is considered part of the earth's surface and a strategic natural resource for the community. The 1960 Basic Agrarian Law (UUPA) emphasizes that the relationship between the Indonesian people and land is eternal, so that the state, as the highest authority, is given the power to regulate the allocation, use, supply, and maintenance of land as stipulated in Article 6 of the UUPA¹⁰. From this concept, land rights were born as a legal relationship between individuals and land, which gives the holder the authority to use or utilize the land in accordance with the type of right. The land rights recognized in the UUPA include Freehold Rights,

¹⁰ and Jujun Jamaludin Nasrudin, Nasrudin, Nina Nursari, "Memahami Status Tanah Di Indonesia Antara Hak Milik Dan Hak Menguasai Negara," *Qanuniya: Jurnal Ilmu Hukum* 2, no. 2 (2025): 61–75, <https://doi.org/10.15575/qanuniya.v2i2.2145>.

Cultivation Rights (HGU), Building Rights (HGB), Usage Rights, Building Lease Rights, Land Clearing Rights, Forest Product Collection Rights, and several other temporary rights¹¹.

Among the various land rights, freehold title is the strongest and most comprehensive right that a person can have over land, as stipulated in Article 20 paragraph (1) of the Basic Agrarian Law. This right gives the holder full authority to use, enjoy, and transfer the right to another party, as long as it does not conflict with the social function of land as stipulated in Article 6 of the Basic Agrarian Law. Ownership rights are also hereditary, inheritable, and unlimited in duration. This is what distinguishes ownership rights from other land rights, which are generally limited in duration, such as HGU or HGB¹².

The legal subjects entitled to ownership rights are specified in Article 21 paragraph (1) of the Basic Agrarian Law, namely Indonesian citizens only. Thus, foreign nationals and foreign legal entities are not permitted to hold ownership rights. This prohibition is intended to maintain the sovereignty of the state over land and prevent foreign control of land that could harm national interests. Article 21 paragraph (2) of the UUPA provides limited exceptions only to certain legal entities designated by the government, such as agricultural banks or religious entities, but does not apply to foreign legal entities.

The legal consequences if the property does not meet the requirements are set out in Article 21(3) of the Basic Agrarian Law (UUPA). Foreign nationals who acquire property rights through inheritance without a will or through the mixing of assets as a result of marriage, as well as Indonesian nationals who subsequently lose their

¹¹ Dina Catur Ayu Ningtyas, "Hak Atas Tanah Sebagai Dasar Pembuktian Bagi Pemiliknya Dalam Hukum Agraria Yang Di Dasari UUPA," *Court Review: Jurnal Penelitian Hukum (E-Issn: 2776-1916)* 3, no. 1 (2023): 28–34.

¹² Christiana Sri Murni and Sumirahayu Sulaiman, "Sertifikat Hak Milik Atas Tanah Merupakan Tanda Bukti Hak Kepemilikan Tanah," *Lex Librum : Jurnal Ilmu Hukum* 8, no. 2 (2022): 183–98.

nationality, are required to relinquish or transfer these rights within a maximum period of one year. If the property is not transferred within this period, the property rights are legally revoked and the property reverts to the state, provided that the rights of third parties encumbering the property remain valid. This regulation is a form of state protection to ensure that the land remains in the hands of Indonesian citizens, while emphasizing that property rights are exclusive and cannot be held by foreign nationals.

According to Article 1 of Law Number 1 of 1974 concerning Marriage, marriage is understood as a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family based on Belief in One God. This definition places marriage not only as a civil relationship, but also as an institution that carries certain legal consequences, including in terms of the regulation of the parties' assets. Understanding the basic concept of marriage is important as a foundation before looking further into issues that arise in marriages involving differences in nationality, or what are known as mixed marriages.

Mixed marriages are regulated by Article 57 of Law No. 1 of 1974 on Marriage, which defines a mixed marriage as a marriage between two persons who are subject to different laws due to their different nationalities. In this context, Indonesian citizens who marry foreigners face legal problems, particularly with regard to joint property, as differences in nationality status have a direct impact on property rights. According to Article 35(1) of the Marriage Law, all property acquired during the marriage becomes joint property, unless otherwise agreed in a marriage contract.

Consequently, land purchased by Indonesian citizens after marriage is considered joint property, so that foreign spouses legally own a share of the land, even though the certificate is registered in the

name of the Indonesian citizen¹³. This situation is problematic because foreign nationals are prohibited from owning land, so the ownership status may be invalid according to the Basic Agrarian Law (UUPA). Article 21 paragraph (3) of the UUPA even stipulates that ownership rights that fall to an unauthorized subject must be transferred within one year, otherwise the rights will be forfeited and the land will become state land. Thus, Indonesian citizens in mixed marriages who do not enter into a marriage agreement risk losing their ownership rights, making marriage agreements, including postnuptial agreements, an important legal protection instrument.

Legal issues in mixed marriages essentially reflect a conflict between agrarian law and marriage law. On the one hand, the Basic Agrarian Law (UUPA) adheres to a strict principle of nationality, prohibiting foreign nationals from owning land¹⁴. On the other hand, the Marriage Law establishes the principle of joint property as an automatic consequence of marriage, including in mixed marriages. When both norms are applied simultaneously, a conflict of norms arises that has the potential to harm Indonesian citizens, because formally valid land ownership can be legally invalidated due to the involvement of a foreign spouse as part of the joint property.

In legal theory, this type of conflict of norms is known as normative antinomy, which is a situation where two equally valid regulations produce conflicting legal consequences¹⁵. If not resolved systematically and constitutionally, such conflicts have the potential to create injustice. In this context, Article 21 of the UUPA, which aims to

¹³ Muhammad Rendy Rifki Putra and Heru Susetyo, “Kedudukan Hak Atas Tanah Di Indonesia Akibat Perkawinan Campuran,” *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 11, no. 1 (2022): 34–46, <https://doi.org/10.28946/rpt.v11i1.1393>.

¹⁴ Adham Hasan Hagaspa, “Tinjauan Hukum Kepemilikan Hak Atas Tanah Dalam Perkawinan Campuran Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015” (Universitas Islam Indonesia, 2022).

¹⁵ I Nyoman Putu Atmadja, I Dewa Gede and Budiarta, *Teori - Teori Hukum* (Malang: Setara Press, 2018).

protect national land, can become a “latent threat” to Indonesian citizens because its application is linked to Article 35 of the Marriage Law on joint property without exception for mixed marriages. The Constitutional Court's decision then serves as a means of normative harmonization by opening up the possibility of property separation through a postnuptial agreement. Thus, postnuptial agreements are not only private contracts, but instruments of legal harmonization so that agrarian law and family law run in harmony, so that Indonesian citizens are not continuously in a vulnerable position of losing their land rights.

In Philipus M. Hadjon's legal protection theory, postnuptial agreements in mixed marriages can be understood as a form of preventive and repressive protection¹⁶. Preventive protection is realized through the separation of assets, which prevents the mixing of Indonesian and foreign ownership, thereby avoiding the risk of loss of land ownership rights, while repressive protection is reflected in its function as a means of proof in the event of a dispute. Thus, postnuptial agreements play an important role in protecting the civil rights of Indonesian citizens in mixed marriages.

Furthermore, the existence of postnuptial agreements is also in line with the theory of legal certainty as put forward by Gustav Radbruch, who places legal certainty as one of the fundamental values alongside justice and utility¹⁷. Without a property separation agreement, the legal position of Indonesian citizens in mixed marriages becomes unclear because they are caught between conflicting agrarian and family law regimes. Therefore, the opening of opportunities to make postnuptial agreements through the

¹⁶ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat Di Indonesia: Sebuah Studi Tentang Prinsip-Prinsipnya, Penanganannya Oleh Pengadilan Dalam Lingkungan Peradilan Umum Dan Pembentukan Peradilan Administrasi Negara* (Surabaya: Bina Ilmu, 1987).

¹⁷ Satjipto Rahardjo, *Ilmu Hukum* (Bandung: PT. Citra Aditya Bakti, 2000).

Constitutional Court's decision is an important stepping stone in building a legal system that is not only fair but also certain and predictable in its legal consequences.

Prior to Constitutional Court Decision No. 69/PUU-XIII/2015, Article 29 of Law No. 1 of 1974 on Marriage only allowed marriage contracts to be concluded before or at the time of the wedding ceremony and certified by a registrar. This provision precluded the possibility for married couples to separate their property, so that in mixed marriages the community property system automatically applied, potentially jeopardizing the property rights of Indonesian nationals married to foreigners.

In a constitutional complaint filed by Ike Farida, the Constitutional Court ruled that this restriction violated the principles of equality before the law and fair legal certainty guaranteed in Article 28D(1) of the 1945 Constitution. With this ruling, the Constitutional Court interpreted that marriage contracts can be concluded not only before or at the time of marriage, but also during the marriage, as long as they do not harm third parties. This gave rise to the concept of subsequent marriage contracts as a legal solution for couples, especially Indonesian citizens in mixed marriages, to protect their land ownership rights.

This ruling reflects the application of substantive justice by harmonizing family law and agrarian law for the protection of citizens' constitutional rights. The Court considered that the previous restrictions had caused structural injustice because they had the potential to result in the loss of land rights solely due to marital status. By opening up the possibility of postnuptial agreements, the Constitutional Court has placed property rights, the right to legal certainty, and the right to form a family under a single constitutional protection.

The direct implication of this ruling is the recognition of

postnuptial agreements as a valid legal instrument. Married couples can stipulate the separation of property as an exception to the joint property system as regulated in Article 35 of the Marriage Law, so that land owned by Indonesian citizens is not mixed with the property of foreign spouses. This separation is an absolute requirement for land ownership to remain valid under Article 21 of the Basic Agrarian Law, because the subject of ownership must be purely an Indonesian citizen.

In addition to providing legal certainty, postnuptial agreements also serve to protect the constitutional rights of Indonesian citizens so that they do not lose their land ownership rights within one year as stipulated in Article 21 paragraph (3) of the Basic Agrarian Law¹⁸. This instrument acts as a preventive measure by preventing the mixing of assets, as well as a repressive measure because it can be used as strong evidence in the settlement of disputes in court or before the National Land Agency. Thus, postnuptial agreements become a “fortress” of legal certainty for Indonesian citizens in mixed marriages without violating the principle of nationality in Indonesian agrarian law.

2. Implementation of Postnuptial Agreements in Indonesia's Land Administration System

The implementation of postnuptial agreements in land practice in Indonesia does not stop at legal recognition through Constitutional Court Decision No. 69/PUU-XIII/2015, but also requires administrative instruments to be effectively implemented. This is important because every legal action related to land rights must go through the land administration mechanism managed by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN). Without technical provisions in the implementing

¹⁸ Sayaman Harahap, “Penerapan Ketentuan Pasal 21 Ayat (3) Uupa Tentang Kepemilikan Tanah Bagi Wni Dalam Perkawinan Campuran,” *Jurnal IUS Kajian Hukum Dan Keadilan* 4, no. 3 (2016): 436, <https://doi.org/10.29303/ius.v4i3.328>.

regulations, postnuptial agreements will only remain a legal concept that is difficult to implement in practice. Therefore, the existence of derivative regulations is the main foundation that ensures that postnuptial agreements truly function as instruments for protecting the land rights of Indonesian citizens in mixed marriages.

Legal legitimacy for the implementation of postnuptial agreements in Indonesia's land administration system is obtained through various regulations that form a hierarchy of regulations. The most relevant normative reinforcement is found in Government Regulation No. 18 of 2021, specifically Article 70, which states that Indonesian citizens who marry foreigners can have the same land rights as other Indonesian citizens. Furthermore, paragraph (2) stipulates that these land rights are not joint property, which must be proven by a property separation agreement¹⁹.

This provision provides legal certainty for Indonesian citizens in mixed marriages to retain their property rights over land, as long as they can prove the separation of assets through a marriage agreement. Thus, Government Regulation No. 18 of 2021 explicitly recognizes the validity of property separation agreements, including those made after marriage (postnuptial agreements), as legal instruments to protect the land ownership rights of Indonesian citizens in mixed marriages.

Further technical regulations are outlined in Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 18 of 2021 concerning Procedures for Determining Land Management Rights and Land Rights. This regulation governs the administrative procedures for registration, legal subject verification, and land data maintenance, while also revoking a number of previous regulations, including Minister of Agrarian Affairs and Spatial Planning/Head of the National Land

¹⁹ Pemerintah Pusat Indonesia, "Peraturan Pemerintah (PP) Nomor 18 Tahun 2021 Tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, Dan Pendaftaran Tanah" (2021).

Agency Regulation No. 29 of 2016²⁰. In the context of mixed marriages, this regulation reinforces the principle that legal subjects holding rights must meet the requirements not only at the time of acquisition of rights, but also during the period of ownership. Therefore, the registration of postnuptial agreements at the land office becomes the administrative basis for maintaining the validity of Indonesian citizens' land ownership rights even if they are married to foreign nationals.

An important principle emphasized in land regulations is the principle of continuity of legal subject requirement. This means that the status of Indonesian citizens as rights holders is not only examined at the time of acquisition of rights, but must also be maintained throughout the period of ownership. With a postnuptial agreement that is legally recorded at the relevant agency and reported to the National Land Agency (BPN), Indonesian citizens who are bound in mixed marriages are still considered to meet the requirements as legal subjects of property rights holders. This serves as a guarantee that the land will not fall to the state because it is considered to be mixed with the property of a foreign spouse, while also maintaining the consistency of the principle of nationality in Indonesian agrarian law as stipulated in Article 21 paragraphs (1) and (3) of Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA).

The procedure for implementing a postnuptial agreement in the context of land ownership involves three main stages, namely the drafting of a deed before a notary, registration with the marriage registry, and registration with the National Land Agency (BPN). The first stage begins with the drafting of a postnuptial agreement by the parties before a notary. This provision is based on Article 29 of Law

²⁰ Kementerian Agraria dan Tata Ruang/Badan Pertanahan Nasional Indonesia, "Peraturan Menteri Agraria Dan Tata Ruang/ Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 18 Tahun 2021 Tentang Tata Cara Penetapan Hak Pengelolaan Dan Hak Atas Tanah" (2021).

Number 1 of 1974 concerning Marriage, as interpreted through Constitutional Court Decision Number 69/PUU-XIII/2015, which expands the scope of marriage agreements so that they can be made during the marriage as long as they are mutually agreed upon and do not harm third parties. The deed must be drawn up in the form of a notarial deed in accordance with Law Number 2 of 2014 concerning Amendments to the Notary Law²¹ to provide full evidentiary force, especially when used as an administrative basis in the land process²².

The second stage is the registration of the agreement at the marriage registration agency. This registration is mandated by Article 29 of the Marriage Law in conjunction with Constitutional Court Decision 69/PUU-XIII/2015, which requires every marriage agreement to be registered with the competent authority. For Muslim couples, the registration is carried out at the Office of Religious Affairs based on the Compilation of Islamic Law²³ and the Circular Letter of the Director General of Islamic Community Guidance while for non-Muslim couples²⁴, registration is carried out at the Population and Civil Registration Office in accordance with Law Number 23 of 2006 in conjunction with Law Number 24 of 2013 concerning Population Administration and technical guidelines issued by the Directorate General of Population and Civil Registration as a follow-up to the Constitutional Court Decision.

The final stage is registration with the National Land Agency as

²¹ Pemerintah Pusat Indonesia, “Undang-Undang (UU) Nomor 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris” (2014).

²² Desimawati Sinaga, “Implikasi Yuridis Terkait Peran Notaris Dalam Pengesahan Perjanjian Perkawinan Di Indonesia Pasca Putusan Mahkamah Konstitusi Nomor 69/PUU-Xiii/2015,” *De’Rechtsstaat* 6, no. 2 (2020): 99–111, <https://doi.org/10.30997/jhd.v6i2.2648>.

²³ “INSTRUKSI PRESIDEN REPUBLIK INDONESIA NOMOR 1 TAHUN 1991 TENTANG PENYEBARLUASAN KOMPILASI HUKUM ISLAM PRESIDEN REPUBLIK INDONESIA,” n.d.

²⁴ Direktorat Jenderal Bimbingan Masyarakat Islam (Ditjen Bimas Islam), “SURAT EDARAN DIRJEN BIMAS ISLAM TENTANG PENCATATAN PERJANJIAN PERKAWINAN NO. B.2674/DJ.III/KW.00/9/2017” (2017).

the most crucial part of implementing a postnuptial agreement in the land administration system. Based on ATR/BPN Regulation Number 18 of 2021, land rights holders must meet the legal requirements both at the time of acquisition of rights and throughout the period of ownership. Therefore, the registration of the property separation agreement forms the basis of administration to ensure that the land ownership rights of Indonesian citizens in mixed marriages remain valid and are not considered joint property with their foreign spouses. In practice, applicants submit a copy of the marriage agreement, proof of registration at the KUA or Dukcapil, the identities of the parties, and the land rights certificate to the land office. After all documents have been verified, the National Land Agency (BPN) records the land in the land registry and land title certificate to confirm that the land is the personal property of the Indonesian citizen and is not included in the category of joint property. This registration also serves as formal legal proof that the postnuptial agreement has been integrated into the land administration as an instrument to protect the property rights of Indonesian citizens in mixed marriages²⁵.

Cross-sectoral coordination is a key element in the implementation of postnuptial agreements because it involves notaries, marriage registration agencies (KUA or the Population and Civil Registry Agency), and the National Land Agency. Notaries are authorized to draw up authentic deeds, marriage registration agencies record their validity, and the National Land Agency records them in land registers and certificates. However, this coordination has not been optimal due to the lack of integration between inter-agency information systems. The absence of an electronic data exchange mechanism means that the verification process is carried out manually and repeatedly, potentially causing delays or even failure to record the

²⁵ Pemerintah Pusat Indonesia, “Undang-Undang (UU) Nomor 24 Tahun 2013 Tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2006 Tentang Administrasi Kependudukan” (2013).

agreement, thereby weakening the effectiveness of postnuptial agreements as an instrument for protecting land rights.

Implementation barriers also arise at the administrative and institutional levels. Many marriage registrars and land officials do not fully understand the legal status of postnuptial agreements, often resulting in rejections, delays, or requests for additional documents beyond what is required. Differences in interpretation between agencies have led to disparities in treatment between regions and created legal uncertainty for couples in mixed marriages. This situation is exacerbated by a lack of public awareness, which has resulted in many Indonesian citizens being unaware of the postnuptial agreement mechanism and ultimately losing their land rights even though legal protection instruments are available.

When analyzed based on Soerjono Soekanto's theory of legal effectiveness, these obstacles indicate that the effectiveness of postnuptial agreements is not yet optimal²⁶. The legal substance is basically adequate through the Constitutional Court's decision and its implementing regulations, but the weaknesses lie in the legal structure, legal culture, and administrative means and facilities. The lack of capacity of officials, cultural resistance to marriage agreements, manual recording systems, and low legal literacy among the public are the main factors that hinder the effective functioning of this instrument.

However, the implementation of postnuptial agreements has an important impact on the legal protection of Indonesian citizens in mixed marriages. Administrative recognition by the National Land Agency (BPN) provides legal certainty that land ownership rights remain valid, while also serving as a preventive mechanism to prevent land acquisition by foreign parties. This instrument also reinforces the

²⁶ Soerjono Soekanto., *Efektivitas Hukum Dan Penerapan Sanksi* (Bandung: CV. Ramadja Karya, 1988).

principle of non-discrimination and the protection of constitutional rights as guaranteed by Article 28D paragraph (1) of the 1945 Constitution, so that Indonesian citizens are no longer disadvantaged solely because of their marital status.

To strengthen implementation, more detailed technical arrangements are needed through specific operational guidelines, integration of inter-agency database systems, and capacity building for officials through ongoing training. Public awareness campaigns must be expanded so that couples in mixed marriages understand the urgency of postnuptial agreements. In addition, complaint and public oversight mechanisms need to be developed, and revisions to the Marriage Law can be considered to provide a more definitive normative basis for the registration of postnuptial agreements.

Overall, strengthening the implementation of postnuptial agreements not only protects the individual rights of Indonesian citizens, but also strengthens national land governance and the application of the principle of nationality in land ownership. Amidst the increase in mixed marriages due to global mobility, administrative and institutional reforms are prerequisites for this instrument to function effectively, fairly, and sustainably.

Conclusion

Postnuptial agreements have become increasingly relevant legal instruments in ensuring the protection of land ownership rights for Indonesian citizens in mixed marriages, especially since the Constitutional Court Decision No. 69/PUU-XIII/2015 opened up space for a separation of property agreements during marriage. With the support of Government Regulation Number 18 of 2021 and ATR/BPN technical regulations, this instrument ensures that Indonesian citizens remain qualified as property subjects according to Article 21 of the UUPA while preventing the mixing of assets that can result in the loss of land rights. The implementation of

postnuptial agreements not only provides legal certainty, but also strengthens the principle of nationality in agrarian law and maintains the order of land ownership structures from potential foreign domination. Thus, this instrument plays an important role in ensuring proportional protection for Indonesian citizens in the midst of increasing dynamics of mixed marriage in the era of globalization.

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