The Legal Position Of Marriage Agreements Regarding Land Rights In Mixed Marriages In Indonesia

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Abstract.

The purpose of this article is to analyze the legal position of prenuptial agreements in mixed marriages regarding land rights. The type of research used is normative legal research that investigates the systematics of law. This systematic legal research is conducted on laws and regulations or laws that are in accordance with the topic raised. The results of the study indicate that making a prenuptial agreement for the separation of property in mixed marriages is an effective way to resolve cases related to land rights in mixed marriages. Settlement of land ownership disputes in mixed marriages without a prenuptial agreement in Indonesia is by filing a request for separation of property by one of the husband and wife to the court according to their relative competence. This shows that without a prenuptial agreement, the legal process to protect land rights becomes more complex and requires court intervention. Therefore, a prenuptial agreement is considered important because it provides a more efficient path. According to the author, this settlement is the only best and legal way in the eyes of the law.

Keywords: *Marriage, premarital contract and land.*

I. INTRODUCTION

In essence, marriage is a physical and spiritual bond between a man and a woman to form a happy family. In Indonesia, a marriage bond is not only carried out by an Indonesian citizen (WNI) with another WNI, but there are also many marriages carried out by WNI with a Foreign Citizen (WNA) which are commonly known as mixed marriages. Mixed marriages in Indonesia are a familiar phenomenon. The term mixed marriage will refer to the provisions of the Marriage Law. Mixed marriage in this Law is a marriage between two people who in Indonesia are subject to different laws, because of differences in citizenship and one party is an Indonesian citizen. This mixed marriage will have its own consequences, namely the application of regulations from each legal system that applies to each party involved. [1]. In the event that there is no separation of assets between Indonesian citizens and foreign citizens, it will result in the loss of the rights of the Indonesian citizen concerned to have land rights. [2]. Ownership rights can be transferred and assigned to other parties, transfer of ownership rights can occur due to inheritance, sale and purchase and so on. Based on the Basic Agrarian Law (UUPA), only Indonesian citizens (WNI) can have ownership rights to land. This provision is a logical consequence of the adoption of the principle of nationality in the UUPA. The position of the principle of nationality is very important in agrarian legislation in Indonesia, because it concerns the interests of the Indonesian people and nation to be hosts on their own land. A marriage agreement is a special provision, because in general, assets acquired during a marriage become joint assets.

However, the law provides an exception by allowing the creation of a marriage agreement. The purposes of this agreement include: first, to separate assets between husband and wife, so that their assets are not mixed. Thus, if a divorce occurs, each party can protect their assets without any dispute regarding joint assets. Second, each party will be responsible for the debts they made during the marriage independently. Third, if one party wants to sell assets, there is no need to ask permission from the spouse. Fourth, for credit applications, there is no need to ask permission from the spouse when pledging assets registered in the name of one of the parties [3].

The marriage agreement made by the prospective bride and groom must be in written form, which can be in the form of a notarial deed or a private deed. Based on Article 29 of the UUP, this agreement can be made before or during the marriage. Before the Constitutional Court Decision No. 69/PUU-XIII/2015, the marriage agreement could not be changed during the marriage, unless there was an agreement from both parties and it did not harm a third party. Usually, this agreement includes the division of profits and losses, results and income, and the separation of assets.

The impact of the Constitutional Court Decision has changed the norms regarding the application of the Marriage Agreement Marriage Agreement regarding when the Marriage Agreement is made, namely:

1. By allowing the making of a Marriage Agreement at the time, before it is carried out, or during the marriage bond, it means that the marriage agreement can be made at any time, namely before the marriage according to the laws of each religion and belief, before the marriage is registered by the Marriage Registrar or during the marriage.
2. A marriage agreement is valid from the time the marriage takes place, unless otherwise specified in the marriage agreement. The validity of a marriage agreement since the marriage agreement made throughout the marriage period will not affect the marital property that occurred before the marriage agreement was made.
3. During the marriage, with the consent of both parties (husband and wife), it is permissible to change or revoke the marriage agreement that may concern marital property or other agreements, as long as the changes and revocations do not harm a third party.

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A marriage agreement, also known as a Prenuptial Agreement, is made by prospective husband and wife before marriage to regulate the consequences of marriage regarding assets. In the Civil Code, Article 119 states that assets brought into the marriage will be mixed together. Law No. 1 of 1974 concerning Marriage only regulates marriage agreements in Article 29.A marriage agreement should be made before the marriage takes place, in accordance with applicable provisions. However, in practice, many married couples do not realize the importance of this. Often, they only realize the importance of a marriage agreement after marriage, when they have already entered into the bond. The result of this situation is the emergence of legal implications that can affect the rights and obligations of each partner after marriage. Therefore, the main purpose of making a marriage agreement is to provide legal certainty regarding various aspects regulated in the agreement. The Marriage Law also allows prospective brides and grooms to draw up an agreement that regulates certain goals that they wish to achieve through their marriage [4].According to the provisions of Article 147 of the Civil Code (KUHPerdata), a marriage agreement must be made before the marriage is carried out by both parties. This confirms that a marriage agreement cannot be made after the marriage has taken place. This strict time limit is an obstacle for couples who want to make an agreement after marriage, so they do not have the opportunity to draw up the agreement after the marriage [5] Thus, it is important for prospective brides and grooms to realize that making a marriage agreement is a crucial step and should be done long before the wedding day.

This is not only to avoid legal problems in the future, but also to ensure that both parties have a clear understanding and agreement about their rights and obligations in the marriage that will be carried out.According to Article 29 of the UUP, a marriage agreement can be drawn up before or during the marriage in written form. During the marriage, the agreement cannot be changed unless there is an agreement from both parties and the change does not harm a third party. This provision is regulative, giving freedom to couples to make agreements to ensure that marital assets are not mixed.Based on these provisions, it can be seen that foreign nationals are not allowed to have ownership rights to land. If a foreigner obtains ownership rights due to inheritance or a mixture of assets due to marriage, then he must release the ownership rights within one year after he obtains the rights. If the ownership rights are not released or transferred for more than one year, then the ownership rights will be terminated by law, and the land will fall to the State. The solution that is usually taken to clarify the legal position of marital assets in a mixed marriage is a marriage agreement. The occurrence of a mixture of marital assets occurs automatically after the marriage becomes joint property. Therefore, to avoid the occurrence of a mixture of marital assets brought by husband and wife into the marriage, the Civil Code accommodates by allowing a marriage agreement to be made to deviate from the system of mixing assets in marriage.Legal certainty is one of the crucial aspects of the Indonesian legal system. Without such certainty, the application of law in society will be difficult to implement. In this context, law plays an important role as a norm that regulates social interaction.

[6] According to Sudikno Mertokusumo, legal certainty is a very important guarantee to ensure that the legal system can function consistently and efficiently in society. Legal certainty creates a framework in which individuals can clearly understand their rights and obligations, and how the law will be applied in various situations. Although legal certainty and justice are often considered interrelated, the two have significant differences [7].

The following are the views of several experts regarding legal certainty, which are explained as follows:

1. Apeeldorn provides an in-depth explanation of the concept of legal certainty by underlining several important points. He states that law must be understood as something real and concrete. In this context, legal certainty functions as a foundation that ensures that every individual in society can rely on the law as a clear guideline in living their lives.Legal certainty is a crucial element in creating security for society. With legal certainty, individuals in society are protected from unfair treatment, especially by those who hold higher positions of power. In Apeeldorn's view, the application of legal certainty must be carried out universally and consistently, so that all individuals receive equal treatment before the law.
2. Sudikno Mertokusumo emphasized that belief in the ability of the legal system to function consistently and efficiently in society makes legal certainty a very important guarantee. Although legal certainty and justice are interrelated, the two have fundamental differences. Legal certainty emphasizes consistency and predictability in legal arrangements, while justice involves a more subjective assessment of individual situations and cases. Thus, it is important for the legal system to balance certainty and justice in order to function optimally in protecting the rights of the community [8].

The increasing number of mixed marriages in Indonesia requires the government to clarify property ownership by foreign citizens (WNA). Agrarian Law in Indonesia adheres to the principle of nationalism, which states that foreign citizens cannot own land with the status of Ownership Rights. In addition, Indonesian citizens (WNI) who marry foreign citizens without a separation of property agreement are also not allowed to own land with the status of Ownership Rights because marriage law in Indonesia regulates the mixing of assets.

Ownership Theory

Ownership here is defined as ownership of land. According to Eric T. Freyfogle, ownership of something is very important in people's lives because it is related to various benefits. First, the owner has the freedom to enjoy his property without interference from other parties. Second, the owner can take steps to prevent other parties from trying to control the object he legally owns. Third, the owner has the right to transfer the object he owns to another party [9].

The theory of ownership was also proposed by Paton, who stated that a legal subject who owns an object has several rights related to his property, namely:
a. The owner has the right to enjoy and utilize the object that is legally his;
b. The right to prohibit other parties from enjoying the object he owns;
c. The right to provide a guarantee for the object;
d. Including the right to pass on the object to his descendants.

John Locke argued that ownership means that someone has rights to an object if the owner is legally recognized. The owner has the right to prevent other parties from revoking or interfering with his rights in a particular ownership system. This reflects the exclusive right to enjoy the benefits of ownership, while still considering the unlawful right to obtain objects that are jointly owned.The Constitutional Court Decision Number 69/PUU/XII/2015 has a major impact in the context of making a separation of property agreement, which can now be done after marriage. Before the decision was issued, there had been a court ruling regarding the separation of property agreement, as stated in the Bekasi District Court Decision Number 67/PDT.P/2014/PN.Bks. Previously, a marriage contract could only be drawn up before or during marriage, but now, a husband and wife can make the agreement at any time during the marriage. They can draw up a written agreement and have it legalized through a marriage registrar, or ask a notary to make a deed of agreement. However, the notary must ensure that the agreement made does not harm third parties.

Based on the Constitutional Court Decision Number 69/PUU/XIII/2015. In the decision, the Court provides a constitutional interpretation of Article 29 paragraphs (1), (3), and (4) of the Marriage Law, which are described as follows:

1. "Before or during the marriage bond, both parties can submit a written agreement that is legalized by a marriage registrar or notary, and its contents apply to the third parties involved."
2. "The agreement comes into effect from the time the marriage takes place, unless otherwise specified in the contents of the agreement."
3. "During the marriage, the agreement can regulate marital property or other agreements, which cannot be changed or revoked without the consent of both parties and without harming third parties."

This decision allows the marriage agreement to be adjusted to the legal needs of each couple. In addition, there is jurisprudence formed from previous decisions that support this. [10] A marriage agreement can be made at any time: before, during, or during the marriage bond. This means that a marriage agreement can be drawn up before marriage according to the respective laws, religions, or beliefs, either before the registration of the marriage or during the marriage. During the marriage, with the consent of both parties, the marriage agreement can be changed or revoked, as long as it does not harm a third party.A marriage agreement made before or during marriage, according to Article 29 of the UUP, comes into effect from the time the marriage takes place. Thus, agreements made after the Constitutional Court Decision No. 69/PUU-XIII/2015 also apply throughout the marriage and are valid from the time the marriage begins, unless otherwise specified in the agreement. If there is no determination regarding "when" the agreement comes into effect, then the agreement will be deemed to be valid from the time the marriage takes place. This has the potential to cause problems related to pre-existing assets, which are legally considered joint assets of the husband and wife obtained during the marriage.

Registration of marriage agreements after the enactment of the UUP is now not carried out at the District Court Clerk's Office, but by Marriage Registration Officers at the Civil Registry Office (Population and Civil Registry Office) or the Religious Affairs Office.Regarding the legal status of marriage agreements after the Constitutional Court Decision No. 69/PUU-XIII/2015, the Indonesian Ministry of Home Affairs issued Letter No. 472.2/5876/Dukcapil of the Directorate General of Population and Civil Registration to the Head of the Population and Civil Registry Office in all Regencies/Cities in Indonesia on May 19, 2017. The letter states that: (1) Marriage agreements can be made before, during, and during the marriage with a notarial deed, and must be reported to the Implementing Agency or Technical Implementation Unit (UPT) of the Implementing Agency; (2) The requirements and procedures for recording the reporting of marriage agreements and changes to or revocation of marriage agreements are explained in Appendix I. This Appendix contains the requirements and procedures for recording the reporting of marriage agreements, including an

example of the format for marginal notes on agreements in the deed register. Based on the background as described above, the author is interested in raising and writing this problem in a journal entitled "Legal position of marriage agreements in mixed marriages regarding land rights in mixed marriages".

II. METHODS

The author chose the type of research, namely by using normative legal research. Normative legal research is a study that places law as a building of a system of norms regarding the principles, norms, rules of statutory regulations, court decisions, agreements and doctrines (teachings). Normative legal research, another name for which is doctrinal legal research, is also known as library research or document study because this research is conducted or aimed only at written regulations or other legal materials. In addition to using the type of normative legal research, the author also uses the Legislation Approach, the Conceptual Approach, and uses the Case Approach where the Case Approach used by researchers to study and analyze the resolution of cases in this case the case of testing Law Number 5 of 1960 concerning Basic Agrarian Principles and Law Number 1 of 1974 concerning Marriage against the 1945 Constitution of the Republic of Indonesia in accordance with the Constitutional Court Decision Number. 69 / PUU XII / 2015 which has permanent legal force.

III. RESULT AND DISCUSSION

Marriage is a behavior of God's creatures so that life in the world can reproduce[11]. In living in a couple with a partner, the goal to be achieved is to have offspring, and to realize this, legalization is needed in the form of a marriage bond[12]. A marriage that is carried out legally will have legal consequences, including legal consequences in the field of Property Law. With the existence of a Marriage Agreement, it will minimize the possibility of conflict regarding property between husband and wife, both those obtained before marriage and after marriage.A mixed marriage is a marriage between a man and a woman, which in Indonesia is subject to different laws due to differences in citizenship and one party is an Indonesian citizen. A mixed marriage, also known as a cross-country or international marriage, is a marriage involving couples from two different countries or cultures. This term usually refers to a relationship between two individuals with different cultural, religious, or citizenship backgrounds. Mixed marriages often require adjustments in cultural, legal, and social aspects for both partners and their families. [13] The issue of property in marriage is very important because it is one of the significant factors in determining the happiness and well-being of a household. Property is often a source of conflict, so a clear understanding of the status of property ownership in marriage is very crucial. In the legal context, there is a clear provision that property acquired during marriage is considered joint property.

This means that both partners have equal rights to the property, regardless of who acquired or managed it.The implementation of marriage in Indonesia is regulated by law, namely Law No. 1 of 1974 concerning Marriage, which was later updated by Law No. 16 of 2019. This law formally applies to all Indonesian citizens without exception. It contains provisions regarding the principles and principles that serve as the legal basis for handling various issues related to marriage in Indonesia. [14] The increasing number of mixed marriages in Indonesia has encouraged the government to formulate legal regulations in the Marriage Law which regulates marriage between countries, with provisions contained in Articles 57 to 63 [15].The consequences arising from a legal marriage are the emergence of a unity of property or called joint property or marital property. Marital property (joint property) according to law is all property obtained and controlled by a husband and wife during their marriage, both property of relatives that is controlled, and personal property originating from inheritance, gifts, self-earned property, property of joint search results of husband and wife and gift items. According to Hilman Hadikusuma, marital property can be grouped into several types:

1. Brought-in property

Property brought by a husband or wife into the marriage, either from their own hard work or from gifts or inheritances received before or after marriage.

2. Procurement property

Property obtained during the marriage as a result of the work of the husband and wife.

3. Inherited property.

4. Gift property

Property in the form of gifts, grants, and the like.

In mixed marriages, the consequences are similar to ordinary marriages, but there are special restrictions for immovable property, such as land with Ownership Rights status. The land cannot be owned by a husband or wife who is a foreign citizen (WNA), in accordance with Article 21 paragraph (1) of Law Number 5 of 1960 concerning Agrarian Principles. Article 9 paragraph (2) of the UUPA emphasizes that every Indonesian citizen, both male and female, has the same rights to obtain land rights and to utilize the results, both for themselves and their families. However, this only applies to single Indonesian citizens, who do not have dual citizenship and do not have mixed assets as a result of a mixed marriage (Article 21 Paragraphs (3) and (4) of the UUPA).

a. Ownership Rights in Article 21 of the UUPA
b. Cultivation Rights in Article 30 of the UUPA
c. Building Rights in Article 36 of the UUPA
d. Usage Rights in Article 42 of the UUPA
e. Lease Rights in Article 45 UUPA

For Mixed Marriages, the consequences are the same as marriages in general. It's just that for immovable objects, namely land in the form of Ownership Rights, it cannot be owned by a husband or wife who has the status of a foreigner. Land ownership refers to the rights held by an individual over the land and the buildings on it. When someone has this right, he or she as the owner has the right to do anything related to the land. [16] According to Article 3 of PP 103/2015, Indonesian citizens (WNI) who are married to foreign citizens (WNA) still have land rights that are equal to other WNI who are not married to foreigners. The WNI still has the right to own land, and his or her name can be listed on the land ownership certificate (SHM) as proof of ownership. However, the requirement for WNI who are in a mixed marriage to still have land rights is that the land owned must not be considered joint property. WNI who are in a mixed marriage with a foreigner must separate the rights to their land so that it is not included in the category of joint property [17].

Different laws arise due to a number of factors, such as citizenship, geographic location, social class, and religion. In the context of mixed marriages, the Marriage Law in Indonesia emphasizes the aspect of citizenship, where one of the partners must be an Indonesian citizen. From this provision, it can be concluded that Indonesian citizens have various types of rights to land in Indonesia, such as Ownership Rights, Cultivation Rights, Building Rights, Usage Rights, and can also be holders of Lease Rights. However, it is important to note that this provision does not apply to Indonesian citizens who enter into mixed marriages without making a marriage agreement. In this case, the mixing of assets can result in the loss of land rights that should be owned[18][19]. Thus, the existence of a marriage agreement is very crucial to protect the property rights of Indonesian citizens in the context of mixed marriages. This shows that clear regulations in mixed marriages are very important to maintain individual legal rights amidst the complexities caused by various factors that influence the law.

A. Problems of Mixed Marriages

The problem of mixed marriages is closely related to the Basic Agrarian Law (UUPA), which regulates land ownership in Indonesia for Indonesian citizens who lose their citizenship rights. Article 21 paragraph (1) states that only Indonesian citizens are eligible to have land ownership rights. In addition, the strongest and most comprehensive ownership rights are explained in Article 20 paragraph (1) of the UUPA, which states that ownership rights are hereditary and are the strongest rights among other rights to control land. This aspect is related to the principle of nationalism in Indonesian land law, which states that only Indonesian citizens are permitted to have land ownership rights [20]. Mixed marriages cause problems for Indonesian citizens who lose their land ownership rights in Indonesia [21]. One example is the application for Determination No. 1082/Pdt.P/2016/PN.Sby filed by Probo Suroto and his wife, Bijie Li. Probo Suroto,

as an Indonesian citizen, filed the application because of difficulties in obtaining land ownership rights, while Bijie Li is a foreign citizen from China.In this application, Probo claims that his mixed marital status makes him unable to have ownership rights to the land [22].

This happened because they did not draw up a marriage agreement before getting married, so that his ownership rights could be revoked based on the provisions of Article 21 paragraph (3) and Article 26 paragraph (2) of the UUPA.In the context of legal certainty regarding marriage agreements made after marriage, the Constitutional Court's decision provides leeway for the community to draw up such agreements after marriage. This decision serves as a legal guideline that provides certainty for the community [23]. Previously, the provisions only allowed agreements to be made before marriage, so this decision answers the problem related to agreements that can be made after the marriage bond.The preparation of a marriage agreement must follow the rules of agreements, such as the principle of freedom of contract, pacta sunt servanda, consensuality, good faith, and the principle of personality. According to the principle of freedom of contract, individuals are free to make agreements and determine their contents [24]. However, this freedom must not conflict with existing provisions. In accordance with the principle of pacta sunt servanda, the agreement made is binding on both parties and becomes law for them. Agreement is also important, as indicated by the principle of consensualism, which ensures that the agreement is valid [25]. The principle of personality indicates that the agreement is made for the benefit of the parties involved.

B. Legal Consequences of Marriage Agreement Deeds Made by Notaries in Mixed Marriages

Notaries, in carrying out their duties to make deeds, are not free from the possibility of errors or mistakes, either caused by unprofessional behavior or impartiality towards one of the parties. This can result in problems with the deed made. As a public official authorized to make authentic deeds, Notaries are often less careful, which can cause legal problems, both in the criminal and civil fields. This problem often arises because the parties making the authentic deed provide false documents or information to the Notary.

The Marriage Agreement regulated in the Civil Code and the Marriage Law is an agreement regarding the property of the husband and wife during the marriage, which can deviate from the principles established by law. Prior to the Constitutional Court Decision Number 69/PUU-XIII/2015, Article 29 of the Marriage Law stated that:

1. At or before the marriage, both parties may enter into a written agreement that is mutually agreed upon and ratified by the Marriage Registrar, which then also applies to third parties involved.
2. The agreement cannot be ratified if it violates legal, religious, or moral restrictions.
3. The agreement comes into effect from the time the marriage takes place.
4. During the marriage, the agreement cannot be changed, unless both parties agree to make changes and the changes do not harm third parties.

In addition, according to Article 73 of Presidential Regulation Number 25 of 2008 concerning Requirements and Procedures for Population Registration and Civil Registration, a marriage agreement must be reported to the Population and Civil Registration Service in Indonesia within one year. This marriage agreement must be made with a notarial deed, or can also be made in the form of a written agreement that is ratified by the Marriage Registrar Supervisor, before the marriage takes place and comes into effect from the time the marriage is carried out.Law Number 1 of 1974 concerning Marriage (Marriage Law) provides a clear definition of marriage. Article 1 states that marriage is "a physical and spiritual bond between a man and a woman as husband and wife, with the aim of forming a happy and eternal family based on the Almighty God." In order for a marriage to be considered valid, the Marriage Law stipulates several requirements which are divided into material requirements and formal requirements. Material requirements relate to the individuals of the prospective husband and wife, while formal requirements relate to the procedures for carrying out the marriage.Material requirements are divided into two: absolute material requirements which include situations where both candidates are not in another marriage and meet the age requirements; and relative material requirements which include no close blood relations, never having committed adultery, and not remarrying for the third time (Cahyani, 2020). Formal requirements, according to Article 2 of the Marriage Law, state that a marriage is valid if it is carried out in accordance with religious

law and recorded according to applicable regulations.Marriage registration is further regulated in Government Regulation Number 9 of 1975, which establishes a registration institution for non-Islamic marriages and the Office of Religious Affairs for Islamic marriages.

Marriages held abroad are also regulated in Article 56 of the Marriage Law, where the marriage is considered valid if it is carried out in accordance with local law and must be registered in Indonesia within one year after the couple returns.The legal consequences of marriage include the mixing of assets acquired during the marriage. According to Article 35 of the Marriage Law, assets acquired during the marriage are considered joint assets, which require the consent of both parties for management and control. In cases of mixed marriages between Indonesian and foreign nationals, ownership of property, especially land, becomes a problem because foreign nationals do not have rights to land in Indonesia.Marriage agreements, especially separation of property agreements, are often made to avoid mixing of property. This agreement must be legalized by a notary and can protect the rights of the parties. Constitutional Court Decision Number 69/PUU-XIII/2015 gives notaries more authority in ratifying marriage agreements, allowing agreements to be made before, during, or during marriage.Based on Article 29 paragraph (1) of the Marriage Law, this agreement does not have to be in the form of an authentic deed, but is sufficient in written form. Ratification by a notary guarantees legal certainty for the status of the parties' property. Thus, a marriage agreement deed made by a notary provides legal certainty and protection for the property of each party in the context of a mixed marriage.

C. Legal Basis for Making a Separation of Property Agreement

A separation of property agreement is an agreement stating that all property brought by a husband and wife before marriage, as well as income earned after marriage, is the property of each. This agreement is very important for couples in mixed marriages, especially to protect their rights to property.The Constitutional Court in Decision Number 69/PUU/XIII/2015 stated that the creation of a marriage agreement can be adjusted to the legal needs of each couple, including the separation of property. The law in Indonesia, which regulates the mixing of property in Article 35 Paragraph (1) of Law Number 1 of 1974, emphasizes that property acquired during marriage becomes joint property. However, a separation of property agreement can help a husband or wife who is an Indonesian citizen to retain ownership of land in Indonesia.Thus, the nature of the legal norms contained in Article 35 Paragraph (1) of Law Number 1 of 1974 is mandatory (dwingenrecht), which means that these norms must be obeyed by all parties involved. This imperative norm functions to protect the common interests of couples in marriage and encourage balance in the management of property. This obligation creates legal clarity and certainty, so that it is expected to reduce the potential for conflict related to property in marriage.

D. Legal Basis for Making Joint Property Agreements

Joint property is defined as wealth acquired by a husband or wife during the marriage. This property is owned jointly, so that any legal action related to the property must obtain the approval of both parties. Although the Marriage Law does not explain in detail the form and scope of joint property, there is a legal rule that states that all property acquired during a marriage becomes part of the joint property. Based on this rule, marital property that is included in joint property includes:

"1. Property purchased during marriage will become joint property, regardless of whose name is registered as the owner."

"2. Property purchased or built with funds from joint assets will fall under the jurisdiction of joint assets even though it was built or purchased after a divorce."

“3. "All assets that can be proven to have been acquired during the marriage are included in the jurisdiction of joint assets."

“4. Income originating from assets, joint and personal income of both husband and wife in marriage will automatically become joint property if there is no separation of assets." [26]

With the emergence of joint property in mixed marriages, it seems that the right to equal opportunity to obtain land rights for Indonesian citizens who are bound by mixed marriages is not possible if the couple has not previously entered into a marriage agreement. This is because the emergence of joint property in Mixed marriages cause Indonesian citizens to have the same status as foreign citizens to own joint property

in the form of rights to land or buildings or apartment units. The objects of land rights include the surface and body of the earth, water, and the space above it within the boundaries -certain limits. Land rights holders are given the authority to use their land rights, but rights holders are also limited by law. These limitations include:[27].

1. Must pay attention to social functions;
2. Ownership of land rights may not exceeding the maximum and minimum;
3. Only Indonesian citizens and Indonesian legal entities may have ownership rights based on government regulations. When an Indonesian citizen obtains rights to land or buildings that cannot actually be owned by a foreign citizen, but when this is obtained during a marriage that takes place without a marriage agreement, then the rights to the land or building are included in the joint property so that the citizen... The foreign country legally has a share of half, even though the name of the foreign citizen is not listed in the land title certificate which is proof of ownership. With the foreign citizen also having the land title in the joint property, then if the land title that ownership rights must be released within a period of 1 (one) year since the ownership rights were obtained, likewise if the rights to the land are building use rights, then within a period of 1 (one) year they must be transferred or released. On the other hand, it has been clearly determined by the laws of the Republic of Indonesia, only Indonesian citizens can have a full relationship with the earth, water and space, so that only Indonesian citizens can have hereditary, strongest and most complete land ownership rights.

E. Legal Basis for Changes to Joint Property Agreements

Marriage with a foreign citizen causes an Indonesian citizen to no longer be able to own or have the right to a land right, the legal subject of which may only be owned by an Indonesian citizen without any mixing of assets if he or she is bound by a mixed marriage. , the Indonesian citizen does not have the right to land ownership rights, business use rights and building use rights. In order for an Indonesian citizen in a mixed marriage to still have the same rights as other Indonesian citizens regarding ownership of a land right, the husband and wife must separate the related land rights from the joint property. The separation of assets is carried out by making a marriage agreement that regulates the separation of assets, so that what is obtained and owned by the husband or wife remains in the control of each. In principle, a Marriage Agreement cannot changed or canceled unilaterally during the marriage. However, changes or cancellation of the Marriage Agreement can be done by mutual agreement between husband and wife. This means that unilateral changes are not permitted, but joint changes are permitted. This is in accordance with Article 29 paragraph (4) of the Marriage Law which states that an agreement cannot be changed except with the agreement of both parties, as long as the change does not harm a third party.

As with other agreements, there are several reasons that can be used to cancel a Marriage Agreement. These reasons can be divided into five categories, including:

1. Failure to fulfill the requirements set by law for the type of formal agreement, which results in it being null and void.
2. Failure to fulfill the valid requirements of the agreement, which results in:

a. The agreement is null and void from the start because there is no valid contract.
b. The agreement is null and void because the formal or objective requirements are not met.
c. The agreement is null and void if it is made by an unauthorized person.
d. The agreement is null and void because the requirements for nullity are met.

3. The agreement can be canceled if it does not fulfill the subjective elements required for the validity of the agreement, in accordance with Article 1320 of the Civil Code. These subjective elements include the agreement between the parties and their capacity to carry out legal actions. Article 1330 of the Civil Code states that people who are incapable of making an agreement are those who are minors and those who are under guardianship.

The agreement can also be canceled under several conditions, such as:

a. If the conditions for cancellation in the conditional agreement are met,
b. Cancellation by a third party through actio pauliana,
c. Cancellation by a party with special authority.

A marriage agreement plays an important role, especially in mixed marriages. However, many couples in mixed marriages do not realize the importance of making this agreement. A marriage agreement allows for the separation of assets, which has an impact on the rights of Indonesian citizen couples to own land in Indonesia. Without this agreement, the mixing of assets can cause Indonesian citizens to lose their right to own land. However, for couples who are completely sincere in undergoing marriage, this agreement may be considered unnecessary [28].Regarding Indonesian citizens (participants in mixed marriages) being able to have the same land rights as other Indonesian citizens, it has also been regulated in the Law, that Indonesian citizens who marry foreigners can have the same land rights as other Indonesian citizens, as long as the land rights they obtain are not joint assets, which is proven by the existence of a marriage agreement in terms of the separation of assets between husband and wife.Land ownership disputes in mixed marriages without a marriage agreement can be resolved by submitting a request for separation of assets to the court. According to Article 186 of the Civil Code and the Constitutional Court Decision, Indonesian citizens who marry foreign nationals must separate their land rights to avoid mixing of assets.

Based on Article 21 of Law Number 5 of 1960 concerning Agrarian Principles, only Indonesian citizens can have ownership rights, which means that Indonesian citizens in mixed marriages without a marriage agreement do not have the right to land with Ownership Rights status. Therefore, separation of assets is very important to protect the rights of Indonesian citizens so that they can continue to own land with ownership rights status.The Republic of Indonesia has the right to obtain various types of land rights in Indonesia, such as Ownership Rights, Cultivation Rights, Building Rights, Usage Rights, and Lease Rights. However, this provision does not apply if the Indonesian citizen is married to a foreign citizen and does not make a marriage agreement, which causes a mixture of assets. In mixed marriages, the formation of joint assets makes Indonesian citizens lose the same opportunity to have land rights. This occurs because joint assets in mixed marriages place Indonesian citizens in the same position as foreign citizens in terms of joint ownership of assets, including rights to land, buildings, or apartment units [29].

The objects of land rights include the surface of the earth, the body of the earth, water, and the space above it within certain limits. The holder of land rights has the authority to use the land, but this right is limited by law. These limitations include [30]:

1. Taking into account the social function of the land;
2. Maximum and minimum limits of land rights ownership;
3. Ownership rights can only be owned by certain parties.

When foreign citizens also have rights to land in joint assets, then if the land has the status of Ownership Rights, these rights must be relinquished within one year of being obtained (in accordance with Article 21 Paragraph (3) in conjunction with Article 26 Paragraph (2) of the UUPA). The same applies if the land has the status of Building Use Rights, where the rights must be transferred or released within a period of one year (in accordance with Article 36 Paragraph (2) of the UUPA).The law in Indonesia clearly states that only Indonesian citizens can have a full relationship with the earth, water, and space as regulated in Article 9 Paragraph (1) of the UUPA. Therefore, only Indonesian citizens can have Land Ownership Rights, which are hereditary, the strongest, and the most complete.The marriage agreement in this context functions as a guarantee for Indonesian couples to have wider land rights, including ownership rights, business use rights, and building use rights. Without the agreement, the couple can only enjoy usage rights and rental rights. Resolving disputes through a request for separation of property in court is considered the best and most legal way to resolve land ownership rights issues in mixed marriages without a marriage agreement in Indonesia.Article 21 Paragraph (3) of the UUPA states that foreigners who obtain Ownership Rights through inheritance without a will or due to a mixture of assets due to marriage, as well as Indonesian citizens who lose their citizenship after the enactment of this law, are required to relinquish said Ownership Rights within one year of obtaining or losing citizenship.

If after this time limit the rights are not relinquished, then the rights will be legally void, and the land will become the property of the state, while maintaining the rights of other parties who burden it.This is due to Law Number 1 of 1974 concerning Marriage which states that assets obtained during a marriage become joint assets, where the husband and wife have the same rights to the assets regardless of which party the

assets were obtained from (in accordance with Article 35 of the Marriage Law). Therefore, an Indonesian citizen who is bound in a mixed marriage without a marriage agreement cannot have Ownership Rights to land in Indonesia.If a husband or wife who is an Indonesian citizen wants to continue to have Ownership Rights to land in the context of a mixed marriage, they must make a marriage agreement that regulates the separation of joint assets. This agreement must be made before or at the time the marriage takes place and must be legalized by the Marriage Registrar in accordance with Article 29 of the Marriage Law. With the separation of assets between husband and wife, Indonesian citizens can enjoy their rights as stipulated in Article 9 Paragraph (1) and Paragraph (2) of the UUPA.

Meanwhile, couples who are foreign citizens can still have rights to land or apartment units in Indonesia, by complying with the limitations stipulated by applicable laws. Regarding land rights for Indonesian citizens involved in mixed marriages, it has been regulated in Article 3 Paragraph (1) and Paragraph (2) of Government Regulation Number 103 of 2015, which states that they can have the same land rights as other Indonesian citizens, as long as the rights are not joint assets, which must be proven by the existence of a marriage agreement regarding the separation of assets. With this provision, Indonesian citizens who are bound in a mixed marriage with a union of property cannot legally have rights to land that cannot be owned by foreign citizens according to the regulations in force in Indonesia. The making of a marriage agreement between an Indonesian citizen who is bound by marriage with a foreign citizen has legal consequences, that during the marriage, one of the husband/wife parties can still have rights to land in the form of ownership rights, business use rights, and building use rights. In a marriage between an Indonesian citizen and a foreign citizen carried out with a marriage agreement, the Indonesian citizen can still have absolute rights to land, without having to pay attention to the interests of the foreign citizen who is bound by marriage to him/her.[31]

IV. CONCLUSION

A marriage agreement in a mixed marriage is indeed very important to be made because of the separation of assets that are useful so that Indonesian citizens can have land rights with ownership status and as a solution if in the future there is something undesirable and everything has been arranged. The status of land rights owned by husband and wife in a mixed marriage if they have a marriage agreement, then the couple who are Indonesian citizens can have land rights in the form of ownership rights, business use rights, building use rights, use rights, lease rights. But it is different if the couple does not have a marriage agreement, then it is considered that there is a mixture of assets, so they can only enjoy use rights and lease rights. The settlement of land ownership disputes in mixed marriages without a marriage agreement in Indonesia is by filing a request for separation of assets by one of the husband and wife to the court according to their relative competence. According to researchers, this settlement is the only best and legal way in the eyes of the law.

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