

THE EFFECTS OF MIXED MARRIAGE LAWS ON THE DIVISION OF PROPERTY UNDER THE MARRIAGE LAW AND INTERNATIONAL CIVIL PRINCIPLES

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Abstract

Blended marriage alludes to a marriage connection between people of various identities. This outcomes in legitimate ramifications in regards to the division of joint resources. This exploration expects to investigate comprehension of blended relationships as per Regulation Number 1 of 1974 concerning Marriage and according to the viewpoint of global confidential regulation, as well as the lawful results of partitioning joint resources in blended relationships. By utilizing optional legitimate sources, this exploration utilizes a Standardizing Juridical examination technique, in particular by checking out at speculations, legal guidelines and case regulation. As per Marriage Regulation Number 1 of 1974, blended relationships happen on the off chance that one accomplice is an Indonesian resident and the other isn't. This happens when two individuals whose regulations are not quite the same as Indonesian regulation wed in Indonesia. With regards to the authorization of the Marriage Regulation, there are two sorts of conjugal resources, in particular acquired resources (individual resources) and joint resources. All in all, blended relationships are managed in Regulation Number 1974 concerning Marriage and in Global Confidential Regulation applying the standard of *lex loci festivities*, which expresses that the law that applies to the marriage is the law where the marriage happens, and the division of joint property is directed as per law of each party.

Keywords: Marriage, Mixed Marriage, Joint Property

INTRODUCTION

Mixed marriages or marriages between citizens are one of the problems that arise due to changes in global interactions and technology. Intense meetings and interactions between foreigners and Indonesian citizens are commonplace, especially for foreigners who have lived in Indonesia for a long time. This meeting can lead to a serious relationship or even official marriage, so this phenomenon is difficult to avoid. Especially for women who marry men from other countries, there needs to be a legislative framework that recognizes their marriages and protects them from legal action.

During the colonial period, the marriage legal system in Indonesia included a variety of different regulations. Various population groups have different marriage rules, as is the case between marriage laws for foreigners and marriage laws for native people. This kind of legal condition raises questions about which rules to apply when marriages occur between individuals from different population groups or categories. The Dutch East Indies government responded to this problem by issuing regulations on Mixed Marriages (*Regeling op de Gemengde Huwelijken*) through King's Decree Number 23 dated 29 December 1896/158. In Indonesia, mixed marriage is defined as a union between citizens of different legal systems (Article 1 *Regeling op de Gemengde Huwelijken*, GHR). Legal and jurisprudential experts agree that marriages between men and women, which are generally regulated by different laws, are considered mixed marriages.

Mixed Marriage is a confusing issue in the realm of Private Global Regulation because it encompasses two unique sets of public common law. In implementing *Regeling de Gemengde Huwelijken* (GHR) S Number 158, the method used is the implementation of the law against couples to overcome differences in the entire legal apparatus. The joint assets of husband and wife are managed based on the laws of the country of husband and wife as stated in Article 37 of the Marriage Law Number 1 of 1974, therefore there is no legal dispute if the husband is domiciled in Indonesia. Then again, in the event that the wife is a foreign resident and the wife is an Indonesian resident, then he can demand that the husband's citizenship be regulated by taking into account Article 6 paragraph (1) GHR and Article 2, namely that the husband's law applies, because since the enactment of the Marriage Law, The GHR does not apply, so this issue should be regulated in National Law, and adjusted to the principles of International Private Law.

According to Article 57 of the Marriage Law Number 1 of 1974, a marriage that brings together individuals with different nationalities is called a mixed marriage. Based on this understanding, we can recognize the following characteristics of mixed marriages: first, marriage between male and female individuals; secondly, this happened in Indonesia where the laws and regulations are different; third, caused by national differences; and fourth, one of the partners is an Indonesian citizen.

The differences between husband and wife bring with them their different habits and cultures, which must be united in the bond of marriage. Even though you may share the same religious beliefs, uniting different cultures is often difficult. The idealistic goals of marriage are often difficult to achieve because conflicts and disputes often occur, which can cause couples to choose to separate or divorce according to law. (Yastika, 2019)

Mixed marriages between Indonesian individuals and foreign individuals result in legal implications for marital assets, especially in the context of mixing joint assets during the marriage. Article 35 of Law Number 1 of 1974 defines "joint property" as wealth obtained by one of the spouses at the time of marriage. Congenital assets are assets that are brought into a marriage. Assets brought into marriage do not change hands between husband and wife unless there is a different determination, such as in the marriage contract. (Situmeang, 2018)

In the case of Decision Number 550/Pdt.G/2020/PA.Sor, there was a mixed marriage between an Indonesian citizen, namely Siska Sagita Nasution, and a foreign citizen with Dutch citizenship, namely Pepijn Jochem De Blecour, who entered into a marriage bond on January 7 1996, carried out in an Islamic manner at the Margacinta District Religious Affairs Office, Bandung City, as stated in the official statement, namely Excerpt from Marriage Certificate No. 611/17/II/1996. At the time of the marriage, they did not separate their assets, so that everything obtained by the Plaintiff and Defendant in the marriage would become Joint Assets (*Gono-gini*). On September 24 2019 the Soreang Religious Court decided the marriage of the Plaintiff and Defendant by divorce, as stated in its Decree No.1895/Pdt.G/2019/PA.Sor. and the Soreang Religious Court has issued an Excerpt from Divorce Deed No.2482/AC/2019/PA.Sor.

For this situation, Pepijn Jochem De Blecour stated that joint assets must be isolated from each other so that they no longer experience the situation together. The joint property acquired during the marriage is a plot of land with an extension house on it covering an area of 320 M², located in the Dago Pakar Resort Complex, Jalan Bibit Iris No. 3, Plot No. 93 Slope Mata Air, RT/RW 003/007, Mekarsaluyu City/District, Cimenyan Region, Bandung Regency, West Java Region, Indonesia.

There are two things that the author observes from the basic description above, namely how mixed marriages are in the perspective of Law Number 1 of 1974 concerning marriage as well as in international civil principles, and what are the legal consequences of mixed marriages on the division of joint property according to Law Number 1 of 1974 concerning marriage.

RESEARCH METHOD

Researchers to analyze this research using a normative juridical approach, this research examines theories, rules and regulations that previously existed and are directly relevant to the findings and are based on secondary legal material. This research methodology is used with secondary data based on literature study because it requires a review of relevant legal and regulatory documents as well as books, journals, research articles and other related documents. The data obtained was then analyzed qualitatively by looking at the facts in the case of Decision Number 550/Pdt.G/2020/PA.

RESULTS AND DISCUSSION

Mixed Marriage According to Law Number 1 of 1974 concerning Marriage

Regulation Number 1 Concerning Marriage was ratified by the State Authorities of the Republic of Indonesia in 1974 with the aim of forming a universal regulation that applies to all groups of society in Indonesia. In line with the definition given in Article 57 of Law Number 1 of 1974 concerning Marriage, "mixed marriage" occurs when two people marry even though they depend on various regulations in Indonesia because of their different identities. (Nawawi N, Widyauswara, 2012)

Marriage in Law Number 1 of 1974 means that a man and a woman are legally bound as husband and wife in a sacred agreement, promising each other to serve God Almighty and build a holy house forever. Two main aspects of marriage are highlighted by this definition:

1. Formal aspect (law) as expressed in the concept of "inner and outer ties". This shows that marriage is not only a bond that is visible physically, but also has an emotional connection dimension that can be felt, especially by the individuals involved, which is the core of the institution of marriage.
2. Aspects of the Social and Religious Dimensions, which are reflected in efforts to frame the family by believing in God Almighty. This shows that marriage has a close relationship with other aspects of the world, so that the actual component and the deep component play an important role.

Explanation of the meaning of marriage as explained in Law Number 1 of 1974, there tends to be an opinion that marriage is a physical and spiritual bond between a man and a woman as partners, with the aim of forming a prosperous and eternal family, in accordance with belief in God Almighty Power.

Mixed relationships are regulated in the Indonesian Marriage Regulations. In accordance with Article 57 of the Marriage Regulations, a mixed marriage is a marriage where one of the partners is a resident of Indonesia, and the marriage occurs between two people whose citizenship is so that it is subject to various regulations in Indonesia. As mentioned in this article, mixed nationality marriages occur if the couples come from different countries and are therefore subject to the laws of both countries. The main part of the law touches on the rules of husband-wife monogamy. The next section is about legal differences between married people. However, the third element is public contrast that causes legitimate diversity in Indonesia, not contrast in religion, identity or class. The legal and formal results of mixed relationships are different from those between residents of the same country, which is one of the new outcomes of this kind of relationship.

Mixed marriages that occur in Indonesia must be held in accordance with the provisions of the Marriage Law, and must not be carried out before it is ensured that all marriage requirements stipulated by law applicable to each party have been fulfilled. According to Article 60 Paragraph (2) of the Marriage Law, if it has been determined that there are no obstacles to mixed marriages, the authorized official in accordance with the law of each person can register the marriage and receive documents confirming that all requirements have been fulfilled. Conditions for previous marriages considered invalid because of the marriage regulations in Law Number 1 of 1974 concerning Marriage and Implementing Regulation Number 9 of 1975. (Erika, Nanda, 2023). Conditions and Procedures when carrying out a Mixed Marriage:

1. If a marriage is held in Indonesia, the law that must be implemented is in accordance with the Marriage Law Number 1 of 1974.
2. Requirements for mixed marriages still refer to the marriage requirements that apply to each individual.
3. If the authorities in the person's home country refuse to provide the certificate, at the request of the interested party, the court may issue an order to replace the certificate without requiring further legal action.

4. The endorsement or option to change the authentication will lose its validity if the marriage is not consummated within approximately half a year after the statement is given.

If a marriage takes place abroad between two Indonesian citizens or one Indonesian citizen and a foreigner, Article 56 of the Marriage Law is defined as follows:

1. A marriage that takes place outside the territory of Indonesia between two Indonesian residents or one Indonesian resident and another resident is valid if it is carried out based on the regulations and guidelines used in the country where the marriage takes place and does not ignore any of these things.
2. About a year after returning to Indonesia, the couple is required to register their marriage verification at the Civil Registry Office where they live.

In relation to Article 56 paragraph (1) of Law Number 1 of 1974 concerning Marriage, the implementation of mixed marriages due to differences in nationality which are carried out outside Indonesia or carried out in Indonesia, either by two Indonesian citizens or one Indonesian citizen and one foreign citizen recognized as valid, if it fulfills the principle of *loci actus* or *lex loci celebrationis*, that the mixed marriage in question must be followed in accordance with the law used at the location of the marriage with the provisions that Indonesian citizens must respect the principle of personality, meaning that the prospective Indonesian citizen husband and wife must remain submissive and pay attention to the provisions of national marriage law. (Bagenda, Rizkia et al, 2023)

Registration for mixed marriages is carried out with the aim of obtaining a copy of the Official Marriage Document (marriage book) issued by an authorized official. For individuals who adhere to the Islamic religion, the registration is carried out by a Marriage Registrar or an assistant to a Marriage Registrar for Divorce and Reconciliation.

On the other hand, Civil Registry Office officers are responsible for registering people who are not Muslim. In addition, the Ministry of Foreign Affairs and the Ministry of Law and Human Rights legalize a copy of the marriage certificate, which is then recorded at the Embassy of the husband's home country. This ensures that the marriage is recognized internationally, both by national law and Indonesian law.

The legal requirements for registering marriages held abroad are outlined in Article 37 of Law Number 23 of 2006 which has been amended through Law Number 24 of 2013 concerning Modifications to the Population Administration Law. This regulation applies to both Indonesian residents and foreigners. This article highlights the importance of reporting marriages involving native Indonesians that occur outside the Unitary State of the Republic of Indonesia to the Representative of the Republic of Indonesia and registering them with institutions that have authority in the country where the marriage took place. The local Republic of Indonesia Representative Office will register the couple if the country of marriage does not have its own system for foreigners. Additionally, the Marriage Certificate extract and Marriage Certificate Registry must be updated to reflect this marriage registration. No later than 30 days after returning to Indonesia, the individual is required to provide a report on their marriage registration to the Implementing Agency at their place of residence. Marriages that occur outside the territory of Indonesia will not be recognized as valid according to Indonesian legal regulations, unless the marriage is registered in accordance with the requirements of the Law.

Mixed Marriage According to the Perspective of Private International Law

Private international law is concerned with relations between individual men and women whose residence and nationality place them within the legal scope of two or more countries. (Saija, 2019)

Within the scope of Private International Law, the crux of the problem often lies in determining which legal system should be applied to a particular situation. Requirements for marriage validity can be divided into two categories: material requirements (essential validity) and formal requirements (formal validity). Formal requirements concern things such as the registration process, witness statements, and the place and time of the wedding, while material requirements include things such as the minimum age for marriage.

The English legal system often links this requirement to the concept of domicile; However, there is some debate as to whether the jurisdiction that determines a person's eligibility to marry is the jurisdiction in which they were domiciled before the marriage or the jurisdiction in which they and their spouse reside or choose to reside after the marriage. The laws of the state where the marriage was solemnized (*lex loci celebrationis*) usually determine the essential validity of a marriage in the US.

Article 56 of Law Number 1 of 1974 states that Indonesia adheres to the principle that a marriage is determined by law, without overriding the law of the country where the husband and wife are legally bound to marry.

In International Private Law, a number of principles regulate the development of the legal impact of marriage, including the rights and responsibilities of husband and wife, the nature of the relationship between parents and children, the scope of parental authority, and the division of marital assets:

- a. The legal system that applies where the marriage is legalized or held (*lex loci celebrationis*).
- b. The legal system that applies at home where the husband and wife become joint citizens after marriage (joint nationality).
- c. The legal system that applies in the residence where the husband and wife live together permanently after marriage (joint residence) or in the place where the husband resides permanently after marriage (husband's permanent residence).

Legal Consequences of Mixed Marriages on Joint Property According to Law Number 1 of 1974 concerning Marriage

In the enactment of Marriage Law Number 1 of 1974, there are 2 (two) types of marital assets, namely inherited assets (personal assets) and joint assets. (Ramadhany, 2023)

1. Inherited assets or personal assets

The portion of marital assets that is owned and managed by each spouse separately. Any property considered "innate" may be acquired before marriage, or may be given or inherited with the express purpose of benefiting one or both spouses. Inheritance is legally considered personal property, and the legal owner (husband or wife) has the right to fully manage his or her own inheritance. Paragraphs (2) of Article 35 and (3) of the Marriage Law regulate provisions regarding inheritance.

In accordance with the rules contained in the provisions of Article 35 paragraph (2) of the Marriage Law, unless otherwise agreed, legal protection for the inherited assets of each spouse, as well as assets received as gifts or inheritance, remains under their respective control. As explained in Article 36 paragraph (2) of the Marriage Law, every husband and wife have full authority to carry out legal actions in relation to their inheritance. Apart from assets inherited from generation to generation, married couples can also have what is known as "community assets", or assets acquired during marriage. After marriage, the assets of a husband and wife are considered joint property.

2. Joint Assets

Expenditures for a married couple's lifestyle that do not come from gifts or inheritance. Based on the Civil Code, "The assets held by each spouse in marriage are mixed together" (Article 119). Articles 35, 36, and 37 of the Marriage Law outline the provisions regarding marital assets. As stated in Article 35 of the Marriage Law paragraph (1), property acquired during marriage is joint property. Therefore, whatever the name of the couple listed in the document, any assets acquired during the marriage are considered joint property. The money you earn while married is considered community property even if you buy something with it.

As regulated in Article 36 paragraph (1) of the Marriage Law, husband and wife can only make decisions regarding joint property if both husband and wife give their consent. Here the power of husband or wife is seen as equal, in accordance with the contents contained in Article 31 paragraph (1) of the Marriage Law which states that the roles of husband and wife are equal. So that in managing and determining joint assets, husband and wife are expected to be open to each other and give consent from both parties.

Article 37 of the Marriage Law, if a marriage ends in divorce, the law that applies to each person determines how their joint assets must be managed. Article 37 of the Marriage Law explains that "respective law" includes not only secular law but also religious norms and customs.

Articles 96 and 97 of the Compilation of Islamic Law which regulate the division of joint property, each partner receives half of the joint property, whether the divorce is final or not.

Article 96 Compilation of Islamic Law: (1) In the event of a divorce, the spouse who survives the longest gets half of the joint assets. (2) The distribution of joint property for a husband or wife whose wife or husband has disappeared must be postponed until there is certainty of his death, either actual or final, based on the decision of the Religious Court."

Article 97 of the Compilation of Islamic Law, unless the marriage agreement stipulates otherwise, a divorced widow or widower is each entitled to half of the joint property. Based on this description, a husband and wife who have divorced can divide joint assets equally after divorce by taking half of each portion.

Customary Law is regulated with a central system that includes aspects of the Civil Code and Islamic Law. This means that in a marriage there is a possibility that some of the husband and wife's assets will remain separate from each other and some of these assets will be combined with joint assets. (Nikmah, Yuwafi, 2014)

Article 35 paragraph (2) of the Marriage Law provides flexibility for husbands or wives to regulate differently regarding ownership of inherited assets. This different implementation indicates that husband and wife have the freedom to draw up agreements related to the ownership of inherited assets, with further authority regulated in Article 20 of the Marriage Law which relates to marriage agreements.

In accordance with Marriage Law Number 1 of 1974, a Marriage Agreement is a legally binding contract that can be made by both prospective husband and wife, both before and during their marriage. With mutual agreement, the agreement, which needs to be formulated in writing and approved by the Marriage Registrar, can be extended to other parties. This marriage agreement is binding on all parties involved after the ceremony takes place and cannot be changed without mutual consent, as long as no third party is harmed. (Aris, Widi, Rezi, 2022)

Even though a couple is married, their personal assets and joint assets are still considered different under the Marriage Law. The term "real property" describes property that one spouse brings into the marriage and is responsible for overseeing. However, any assets acquired during the marriage are considered joint assets.

In most marriages, there is a marked difference between how the parties handle community property and how they handle property given or inherited during the marriage. Each spouse has the legal right to their own share of any property, whether inherited, gifted or inherited, and to manage the property according to their wishes, regardless of whether the other spouse agrees or not. On the other hand, joint property is managed jointly by a husband and wife, so that all legal actions related to the property, such as selling or giving a pawn, require approval from both parties, based on the rules of Articles 35 and 36 of the Marriage Law. Even though there is a mixed marriage where the parties own their own property, both parties still have rights to their individual property. However, this can be a source of dispute if there is a conflict of rights regarding joint or inherited assets.

Based on International Private Law, marital property is included in the classification of personal status. With the occurrence of marriage, there is the creation of property within the scope of the marriage. Everything that each individual gets as a gift or hereditary property is under their personal control, unless otherwise agreed in the marriage agreement. (Sugeng, 2021)

In this case, there is a marriage agreement between the husband and wife, the law will apply. However, if there is no marriage agreement, then the HPI recognizes three streams, namely:

1. There are differences in handling between immovable assets and movable assets. The principle of *lex rei sitae*, namely the law that applies in the place where the object is located, is applied to immovable property. Meanwhile, for movable property, the applicable law is the law of the residence of both partners.
2. The field of personal status includes laws connected to marital property. Therefore, the law governing marital property does not make a distinction between items that can be moved or not, and adheres to a unitary system.
3. The rules governing ownership of assets in marriage are considered a contract. This allows the choice to determine which law will be applied: the law chosen by the couple. However, if there is no choice of law, the international law of the country where both partners first have a valid place of residence (habitual residence) will apply.

In the case of Decision Number 550/Pdt.G/2020/PA.Sor, there was a mixed marriage between an individual who had Indonesian citizenship, namely Siska Sagita Nasution, and a foreign citizen who had Dutch citizenship, namely Pepijn Jochem De Blecour, who entered into a marriage bond on January 7, 1996, Islamically located at the Religious Affairs Office, Margacinta District, Bandung City, as stated in the excerpt from deed No. 611/17/1/1996. At the time of the marriage, they did not separate their assets, so that everything obtained by the Plaintiff and Defendant in the marriage would become Joint Assets (Gono-gini). On September 24 2019 the Soreang Religious Court decided the marriage of the Plaintiff and Defendant by divorce, as stated in its Decree No.1895/Pdt.G/2019/PA.Sor. and the Soreang Religious Court has issued an Excerpt from Divorce Deed No.2482/AC/2019/PA.Sor.

With this, Pepijn Jochem De Blecour requested that each member's joint assets be separated from each other, so that they are no longer considered joint assets. Joint wealth acquired during the marriage period, namely a land with a house structure on it covering an area of 320 M2, located in the Dago Pakar Resort Complex, Jalan Iris Garden No. 3, Plot No. 93 Spring Hills, RT/RW 003/007, Mekarsaluyu Village/Subdistrict, Cimenyan District, Bandung Regency, West Java Province, Indonesia.

For this reason, because they married in Indonesia, all consequences should depend on Indonesian marriage regulations and in the separation of joint assets between the parties appointed using Indonesian regulations. Judge's Choice Considering that the Defendant requested the Court to decide on the combined share which was not entirely determined above by the Defendant and Respondent at $\frac{1}{2}$ (approximately 50%) each. Bearing in mind that according to Islamic Regulations

Article 97 which regulates confiscation of joint property, every widow or single man is entitled to half of the total share. Remember, the penalty for splitting joint assets, whoever controls it, is still borne by both players. This is because the method of dividing joint assets requires the dynamic interests of the Defendant and the Litigating Party; The Power of Attorney Decision in Number 550/Pdt.G/2020/PA.Sor states that joint property has a place in the hands of the Defendant and Plaintiff, with the Defendant getting half and the Respondent getting half. Associations or people who control joint property are asked to separate the property according to its parts, as stated in decision number 2. If the property cannot be separated by nature, then a mutual agreement is made and the return is made. of the agreement was entered into. divided between meetings according to their respective offers.

Based on the author's examination, the author approved the Judge's choice on the grounds that the choice was in accordance with the provisions in Article 97 of the Compilation of Islamic Law. As long as nothing else is referred to in the marriage contract, a widow or single man who is separated is entitled to half of the joint property, in accordance with this article. The author in this article agrees that the court's choice in this separation case has taken into account the legal norms that apply in the division of mixed assets. This article assumes that the judge's choice to divide joint assets in the middle is in accordance with ongoing legal arrangements with reference to Article 97 of the Compilation of Islamic Law. This analysis shows that the author agrees with the judge's choice, namely in accordance with Islamic legal norms mandated in the Islamic Regulations.

For couples who have different public and customary rules, a marriage contract is a useful tool to frame their obligations and privileges to property in the event of a mixed marriage. Understanding marriage can be useful if a separation causes challenges in dividing joint assets, regardless of whether the couple divided joint assets before or during the marriage. This will make it easier to provide evidence and ensure a clear division of joint assets.

CONCLUSION

All marriages in Indonesia, regardless of race, must comply with the Marriage Law Number 1 of 1974. According to article 57 of the Marriage Law, a mixed marriage is a marriage where at least one of the individuals in the couple has Indonesian citizenship, and the marriage occurs between two people who have different nationalities, so are bound by different regulations in Indonesia. What is meant is a husband and wife who have different nationalities. Mixed marriages are regulated by a specific legal entity in international private law; specifically, the law states that there are two categories of marriage requirements: material and formal. The age requirement for marriage is considered a material requirement, while the formal requirements include things such as marriage registration, witness statements, as well as the place and time of its implementation (*lex loci celebrationis*), namely if a marriage between individuals of different nationalities occurs in Indonesia, then the rules The law used is Indonesian law.

Community property is regulated by the law of the country where the marriage ends, in the event of a divorce. This is stated in the Marriage Law in Article 37. Article 37 of the Marriage Law defines "relevant law" as including secular and religious norms, as well as customs. In Articles 96 and 97 of the Compilation of Islamic Law which regulate the division of joint property, it is stated that each person receives half of the property owned jointly, whether the divorce is for life or afterward. Because mixed marriages are carried out in Indonesia and in an Islamic manner, the laws used by Indonesian law are the Marriage Law and the Compilation of Islamic Law.

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