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Legal implications of mixed marriage without a prenuptial agreement on land ownership: Case study of Supreme Court Decision Number. 539 K/AG/2021

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Abstract

Mixed marriages between Indonesian citizens and foreign nationals raise complex legal issues, particularly regarding land ownership rights in Indonesia. The absence of a prenuptial agreement in such marriages can result in the loss of land ownership rights for the Indonesian spouse, as regulated under the Marriage Law and the Basic Agrarian Law. The Supreme Court Decision No. 539 K/AG/2021 serves as a significant case to examine the legal implications of mixed marriages without a prenuptial agreement, and this study aims to analyse its impact on the protection of land ownership rights for Indonesian citizens. This research applies a normative juridical qualitative approach by analysing legislation, legal doctrines, and court decisions related to mixed marriages and land ownership. The primary legal basis includes the Marriage Law, the Basic Agrarian Law, Constitutional Court Decision No. 69/PUU-XIII/2015, and Supreme Court Decision No. 539 K/Ag/2021, supported by secondary sources such as journals and legal literature. Through descriptive-analytical analysis, this study highlights the legal considerations and implications of the absence of a prenuptial agreement in mixed marriages, particularly regarding the protection of land ownership rights. The research results show that Supreme Court Decision No. 539 K/Ag/2021 emphasises fairness and legal certainty by recognising land and property acquired during mixed marriages without a prenuptial agreement as joint property to be divided equitably. The decision also highlights potential legal risks, as it indirectly enables foreign nationals to benefit from land ownership rights that are prohibited under the Basic Agrarian Law. Therefore, a prenuptial agreement is an essential preventive measure to provide legal clarity, protect Indonesian citizens, and avoid future legal complications in mixed marriages.

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Introduction

In Indonesia, mixed marriages are complicated, with many legal, cultural, and religious factors to consider. Even though legal frameworks are changing to address some issues, protecting the rights and interests of people in mixed marriages still depends on awareness of and adherence to these laws. As a result of the fact that many couples in mixed marriages are

ignorant of the legal requirements for property separation, issues arise. There are some people who might turn to legal means of smuggling, such as using nominees to get around the restrictions on land ownership (Mujiburrahman et al., 2023). There is reason to be optimistic about the possibility of improved asset management and ownership rights for mixed-marriage couples given the fact that the legal framework is constantly changing, which includes the acceptance of post-nuptial agreements (Sanjaya, 2021).

Because of the laws governing joint property, Indonesians who are married to citizens of other countries are subjected to limitations on their ability to own land. The inclusion of land in joint property is not possible unless a marriage contract explicitly details how property will be divided in the event of a divorce (Rachman et al., 2020). It is important to keep in mind that the information provided in this article is not to be taken as advice of any kind. Couples have the option of dividing their assets after they are married, which is made possible by Constitutional Court ruling number 69/VII/PUU/2015. This ruling permits couples to enter into post-nuptial agreements, which are also supported by Circular Letters from the Ministry of Home Affairs and the Ministry of Religion. It is possible to enter into property division agreements before, during, or after the marriage. These agreements are required to be notarised and registered with the relevant authorities, which include the Civil Registration Office for people who do not identify as Muslim and the Office of Religious Affairs for those who do. Foreigners may unintentionally acquire rights to jointly owned property, including land, which is otherwise subject to restrictions if such agreements are not in place.

Based on Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, hereinafter referred to as the Marriage Law (UUP), marriage is defined in Article 1 of the UUP, which states, "Marriage is a spiritual and physical bond between a man and a woman as husband and wife to form a happy and endless family or household based on the belief in the One and Only God." To achieve a prosperous family, it is necessary to have separate property in marriage (Sembiring, 2020). Article 35, Paragraph (1) of the Marriage Law regulates marital property: "Property acquired during marriage becomes joint property." Article 35, Paragraph (2) of the UUP further regulates inherited property. Continuous globalisation supports common mixed marriages between Indonesian citizens (WNI) and foreign citizens (WNA). Mixed marriages carry legal consequences that extend beyond wealth, including the potential loss of Indonesian or foreign citizenship (Bachrudin, 2024). With the mixed marriage itself and the divorce that might or has already happened, this social dynamic has complicated legal repercussions—notable legal complexity, particularly concerning marital asset administration. Land ownership by Indonesian residents in mixed marriages without a prenuptial agreement is one of the key problems; this usually results in legal conflict after divorce (Mujiburohman, Salim, et al., 2023).

Mixed marriages generate different legal problems, particularly about the disparities in legal systems relevant to every party (Ramulyo, 2017). Indonesian law clearly forbids foreigners from owning land in the framework of land ownership (Anggriani & Zandra, 2021; Putra & Rada, 2020). Mixed marriage affects Indonesian people who marry foreigners legally. Since it is a portion of shared property in marriage, based on rules and regulations on land in Indonesia, which follow the nationalist concepts, they cannot have land rights. Further complicating the situation of land ownership bought or obtained after a mixed marriage is a juridical review towards land rights ownership (Rachman et al., 2020).

A mixed marriage automatically mixes property between husband and wife when one happens without a prenuptial agreement dividing assets (Mujiburohman, Junarto, et al., 2023). Under such circumstances, the legal ramifications get complicated, particularly if assets such as land acquired during the marriage have value. Law No. 5 of 1960 on Basic Agrarian Principles (UUPA) forbids foreigners from holding land in Indonesia. In mixed marriages, all acquired assets are regarded as joint property should a prenuptial agreement separating assets be absent. This creates legal issues when immovable property, such as buildings and land, is purchased under the name of an Indonesian person but funded by a foreign national. One of the key jurisprudences guiding this matter is Supreme Court Decision Number 539 K/AG/2021,

which offers the required interpretation of the rights and obligations of every partner in a mixed marriage linked with land ownership.

Past research studies have underlined the value of prenuptial agreements in agricultural law and mixed marriages. Over land in mixed marriages, prenuptial agreements become a crucial tool for safeguarding Indonesian citizens' rights. This study will analyse the MA decision as a concrete case study, further exploring the legal issues applied by the justices in determining the case and their consequences for Indonesian legal practice. As demonstrated by Supreme Court Decision No. 539 K/Ag/2021, there have, to the best of the author's knowledge, not been many studies particularly analysing the legal consequences of asset financing by foreign nationals in mixed marriages without a marriage agreement. Given the growing number of mixed marriages in Indonesia, this study is quite urgently needed. Mixed Marriages and the relevance of marriage contracts, legal implications of mixed marriages on land ownership, and protection of Indonesian citizens in mixed marriages.

Literature Review

Mixed Marriage

Mixed marriages are a social phenomenon becoming increasingly common in this era of globalisation, where individuals from various countries and cultures meet and build family relationships (Utami et al., 2022). The definition of mixed marriages has evolved since the enactment of the Marriage Law in 1974 (Insarullah et al., 2022). Mixed marriages are regulated explicitly under Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, where Article 57 stipulates, "What is meant by a mixed marriage in this law is a marriage between two people who are subject to different laws in Indonesia due to differences in nationality, one of whom is an Indonesian citizen." Juristically, a mixed marriage is between two people subject to different laws due to differences in nationality, with one party being an Indonesian citizen (Utami et al., 2022).

Socially, mixed marriages entail variations in nationality, culture, customs, and values each partner holds. Mixed marriages often have complicated legal ramifications, particularly concerning the child's citizenship status, inheritance rights, and joint property ownership (Rachman et al., 2020). Based on the framework of international civil law, mixed marriages entail cross-border legal disputes, whereby the applicable legislation for the marriage must be decided according to the principles of international civil law.

Prenuptial Agreement

Particularly regarding marital property, prenuptial agreements are crucial in the Indonesian legal system for controlling the legal relationship between husband and wife. Marriage agreements allow couples to determine how their assets will be managed during the marriage and after divorce (Rachman et al., 2020). A marriage agreement provides legal certainty and protection for the rights of both husband and wife in marriage, especially in the event of divorce or the termination of the marriage due to death. Marriage agreements are regulated under Article 29 of Law Number 1 of 1974 concerning Marriage, which allows prospective husbands and wives to make a written agreement before or during the marriage to arrange the separation of their assets.

The Constitutional Court, through Decision Number 69/PUU-XIII/2015, has expanded the timeframe for creating a prenuptial agreement, which was previously only allowed before marriage, to now include during the marriage. The marriage agreement must be made as a notarial deed to have binding legal force against third parties (Rachman et al., 2020). Marriage agreements must be registered with the office of religious affairs for Muslims and the civil registry office for non-Muslims to be made public. Marriage agreements may include a variety of clauses, such as the absolute separation of property, partial separation, or exceptional management of joint property. The marriage contract must not conflict with the law, morality, or public order.

Within this legal framework, the marriage law (Law No. 1 of 1974) as amended regulates marriage agreements, while the fundamental agrarian law (Law No. 5 of 1960) strictly prohibits foreign nationals from owning land in Indonesia (Trisnayuny & Ardani, 2025). Judges, however, interpret that in the absence of a prenuptial agreement, assets, including land and buildings acquired during mixed marriages, are considered joint property, which indirectly allows foreign nationals to benefit from land ownership rights otherwise restricted under agrarian law (Supreme Court Decision No. 539 K/Ag/2021). This judicial interpretation has triggered contemporary legal debates regarding the balance between protecting the land rights of Indonesian citizens and maintaining the prohibition of land ownership by foreign nationals (Ati et al., 2025). Scholars argue that while the constitutional court's decision promotes fairness and flexibility in protecting Indonesian spouses, it also exposes weaknesses in the agrarian regulatory regime, since joint marital property may still be linked to foreign ownership (Damanik & Damanik, 2024; Utami et al., 2022). Consequently, a prenuptial agreement is widely regarded as a vital legal instrument to ensure clarity of asset ownership, protect Indonesian citizens' rights, and uphold the principle of legal certainty within the context of mixed marriages (Rohman et al., 2023).

Land Rights

The right to land is fundamental for everyone since it provides life and a venue for activities. Law Number 5 of 1960, addressing the basic agrarian law, controls agricultural law in Indonesia. The right to land gives the holder power to use, manage, and control the land in line with relevant legal clauses. As controlled in the basic agrarian law, land rights can take the following forms: ownership rights, building use rights, business use rights, usage rights, rental rights, and others. Land rights become a primary concern in mixed marriages since the husband and wife have different citizenships.

Although in theory foreigners cannot own land in Indonesia, they can have a building or land use right. This is regulated in Article 21, paragraph (1) of the UUPA, *"Only Indonesian citizens can have ownership rights."* Therefore, foreigners cannot own property but can still obtain land use rights (Article 42 UUPA) and lease rights (Article 45 UUPA). This limitation seeks to safeguard national interests and stop land control that is too strong by outside forces. Legislation in Indonesia means foreign nationals, in principle, cannot own land (Salangketo & Anindita, 2024). However, foreign nationals have the right to build and use. Foreign residents of Indonesia who have a residence permit can own a house or residence. This enables them to utilise the land for residential purposes. HGB is the entitlement to construct and possess a structure on land that is not one's own. The validity of HGB is limited to a maximum of thirty years; therefore, it is subject to extension.

A valid residence permit in Indonesia is required for foreign nationals to engage in business that would benefit Indonesia economically. To acquire a residence or house, foreigners must meet specific criteria, such as maintaining a business or employment in Indonesia for a minimum of two consecutive years. Notably, Indonesia imposes certain restrictions on foreign land ownership. The purpose of the aims is to serve national interests and prevent the excessive control of land by external parties (Salangketo & Anindita, 2024). Nevertheless, the state is obligated to maintain and honour the liberties that have been legally granted to its citizens regarding land.

Method

This research employs a normative juridical qualitative methodology, grounded in library analyses of legislation, legal doctrines, and judicial rulings. This research employs a normative juridical qualitative approach, concentrating on normative legal analysis, specifically the examination of applicable positive laws, legal doctrines, and judicial rulings (Marzuki, 2005), concerning mixed marriages and land ownership. The normative juridical qualitative approach is used in this research because the focus lies on normative legal analysis, namely, examining

the applicable positive laws, legal doctrines, and court decisions related to mixed marriages and land ownership.

The primary data was obtained from the Supreme Court decision Number 539 K/Ag/2021, which was analysed descriptively-analytically to understand the legal considerations and their implications for land ownership in mixed marriages without a prenuptial agreement. The criteria for selecting primary legal sources in this research are based on their direct relevance to the object of study, namely, the legal implications of mixed marriages without a prenuptial agreement on land ownership. Therefore, the main legal frameworks chosen include Law No. 1 of 1974 on Marriage and Law No. 5 of 1960 on Basic Agrarian Principles, as well as court decisions closely related to the issue, such as Constitutional Court Decision No. 69/PUU-XIII/2015 and Supreme Court Decision No. 539 K/Ag/2021. These sources are prioritised because they have binding legal authority and serve as the primary references in judicial practice.

Secondary legal sources include legal books, scientific journals, legal articles, and other publications relevant to the research issue. Normative legal research is the appropriate method to analyse this issue, focusing on relevant literature and secondary data. The criteria for selecting secondary legal sources lie in their ability to provide explanations, interpretations, and critiques of the primary sources. Therefore, legal textbooks, scholarly journals, legal articles, and expert opinions relevant to mixed marriages and agrarian law are included. These secondary sources enrich the analysis by offering academic and practical perspectives and by highlighting contemporary legal debates concerning the protection of land rights in mixed marriages.

Result and Discussion

The Supreme Court Decision Number 539 K/AG/2021 is the primary focus of this research, as this decision directly discusses the legal implications of mixed marriages without a prenuptial agreement on land ownership. Important information can be gleaned from the first-instance decision in the joint property case between Pepijn Jochem De Blecourt and Sieska Sagita Nasution. This case was examined and decided by the Soreang Religious Court with Case Number 550/Pdt.G/2020/PA.Sor. The Marriage Certificate Excerpt No. 611/17/I/1996 records this mixed marriage, which took place on January 7, 1996. Then, the divorce date was July 22, 2020, based on Divorce Decree number 2131/AC/2020/PA. The plaintiff filed the lawsuit on July 28, 2020. The object of the dispute is jointly owned property in the form of land and buildings located in Pangauban Village, Katapang District, Bandung Regency.

The considerations given by the judge to the cassation applicant, namely Pepijn Jochem De Blecourt, are as follow the judge considered the existence of valid documents, the evidence submitted by the plaintiff, and the witnesses who are interconnected and related to each other, which explain that the disputed object indeed exists and is a joint property between the plaintiff and the defendant during their marriage. In this case, the object of the dispute is the joint property during the marriage, consisting of several plots of land and buildings, including those located in Bandung. In their lawsuit, the applicants filed a joint property lawsuit. The type of joint property in dispute is a plot of land along with the building located at Iris Garden Street No. 3, Bandung Indah Golf, Cimekar, Cileunyi, Bandung.

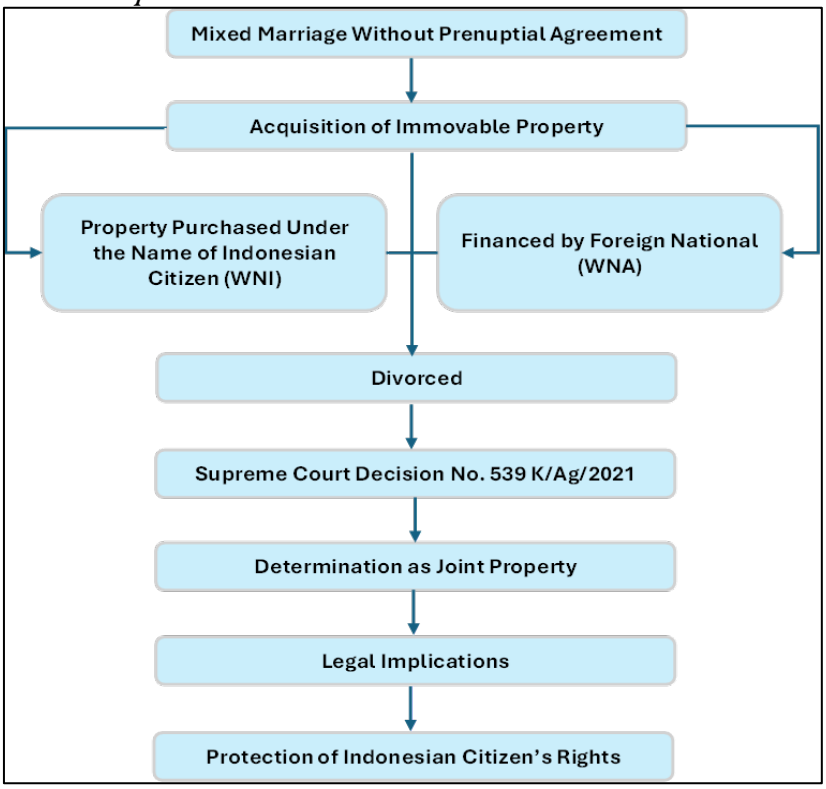
The panel of judges considered several factors in deciding this case: the documentary evidence submitted by the plaintiff, witness testimonies, and the facts revealed during the trial. The panel of judges also considered the applicable legal provisions, namely Article 35 of Law Number 1 of 1974 concerning Marriage, which states that property acquired during the marriage becomes joint property. The panel of judges opined that a plot of land and building located at Iris Garden Street No. 3, Bandung Indah Golf, Cimekar, Cileunyi, Bandung. The Plaintiff and the defendant jointly own Bandung; the joint property must be divided equally between the plaintiff and the defendant (Agustin et al., 2024). Therefore, the verdict partially grants the plaintiff's lawsuit and states that a plot of land and building located at Iris Garden Street No. 3, Bandung Indah Golf, Cimekar, Cileunyi, Bandung. The plaintiff and the defendant

jointly own Bandung. The defendant is to hand over the portion of the joint property to the plaintiff.

In this case, the legal construction is described as a mixed marriage between an Indonesian citizen and a foreign national, where the land and building were purchased in the wife's name with funds from the foreign national. Then, in Supreme Court Decision number 539 K/Ag/2021, it was determined as joint property, so the Indonesian wife still retains her half share of the joint property. Please see diagram 1.

Figure 1.

Flowchart of Legal Implications of Mixed Marriage Without a Prenuptial Agreement on Land Ownership



Sources: Research Data, 2025.

Key Points in Supreme Court Decision Number 539 K/Ag/2021

Supreme Court Decision No. 539 K/Ag/2021 provides a comprehensive decision on the legal implications of mixed marriages without a prenuptial agreement on land ownership. The Supreme Court affirmed that property acquired during a mixed marriage becomes joint property, even if one party is a foreign national. The implication is that the foreign national indirectly has land rights in Indonesia, which is prohibited by Law Number 5 of 1960 on the Basic Agrarian Law. This decision raises fundamental questions about legal protection for Indonesian citizens and legal certainty in mixed marriages.

Mixed Marriage and Its Relevance: Marriage Agreement

Mixed marriages in Indonesia are regulated by Article 57 of Law No. 1 of 1974, which states that marriages between Indonesian citizens and foreign nationals are subject to national legal provisions. In this context, a prenuptial agreement becomes important for separating personal and joint property. Without the agreement, all property acquired during the marriage is considered joint property, including land and buildings. Such an arrangement can lead to legal issues, mainly if a divorce occurs or one party dies. Marriage agreements are becoming increasingly crucial in this era of globalisation, where cross-border human mobility is on the rise and mixed marriages are becoming a common phenomenon (Mahirah, 2025).

Prenuptial agreements in mixed marriages are significant, especially in regulating joint property ownership (Rais, 2019). With the existence of a prenuptial agreement, husband and wife can clearly determine the ownership status of their respective assets, thereby minimising the potential for disputes in the future. Without a prenuptial agreement, property acquired during the marriage will be considered joint property. A prenuptial agreement can provide legal protection for the husband or wife regarding property matters, especially for the party who maintains their citizenship status as an Indonesian citizen (Rohmadi et al., 2024; Saraçi & Himçi, 2025). If property is combined, it risks losing the ownership status of the land it possesses (Mahirah, 2025).

A prenuptial agreement can provide legal protection for the husband or wife regarding property matters, especially for the party who maintains their citizenship status as an Indonesian citizen. If property is combined, it risks losing the ownership status of the land it possesses (Febriansyah & Jasmine, 2022). A prenuptial agreement can also include clauses regarding the transfer of land ownership to other parties who meet the requirements, such as children with Indonesian citizenship or Indonesian legal entities (Awiety & Riyadi, 2020; Mesraini, 2012). Marriage contracts in mixed marriages must also consider international civil law provisions, particularly if the marriage is conducted abroad or involves assets outside the country. A prenuptial agreement has legal binding power on the husband and wife who create it, so it must be made carefully and meticulously and registered at the office of religious affairs or the civil registry office.

Legal Implications of Mixed Marriages on Land Ownership

The UUPA's Article 21, paragraph (1), prohibits foreigners from holding land. Jointly owned land included in a mixed marriage without a prenuptial agreement can be regarded as jointly owned with a foreign national, possibly breaking agricultural rules. Because this is considered part of the invalid joint property, Indonesian citizens may lose their land rights.

Mixed marriages have complicated legal ramifications on property ownership, spanning marriage, agrarian, and inheritance laws (Lasori, 2020). Property bought during a marriage is regarded as joint without a prenuptial agreement. Though the law forbids it, foreign citizens indirectly have rights to land in Indonesia. Particularly concerning the rights and obligations of spouses toward their shared property, the legal repercussions of mixed marriages on land ownership without a prenuptial agreement are rather important. In this regard, it is crucial to realise that Indonesian law tightly controls foreign national land ownership.

Should one party die or a divorce take place, more consequences follow. Regarding divorce, the distribution of shared assets might get difficult since it involves foreign people who might not be entitled to hold land in Indonesia (Winarta et al., 2017). Regarding death, the inheritance of shared property might also lead to the same issues. In mixed marriages, then, a prenuptial agreement is quite crucial to prevent future complicated legal problems. By precisely controlling the distribution of assets between husband and wife, a prenuptial agreement helps each party have defined property rights and responsibilities.

Understanding the legal implications for Indonesian citizens who wed foreign nationals is absolutely vital; they cannot own land in the form of freehold (*Hak Milik*), right to cultivate (*Hak Guna Usaha*), or right to build (*Hak Guna Bangunan*). This restriction arises from Article 35 of the Marriage Law (Law No. 1 of 1974)**,** which treats property acquired during marriage as joint property. Therefore, an Indonesian spouse who marries a foreign national is deemed to share ownership of assets obtained after marriage, even if formally registered under the Indonesian spouse's name (Syavira, 2023). In line with the provisions of Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), foreign nationals are expressly prohibited from holding Freehold Title (*Hak Milik*), Right to Cultivate (*Hak Guna Usaha*), or Right to Build (*Hak Guna Bangunan*). Consequently, once married, an Indonesian citizen in a mixed marriage effectively risks losing full ownership and use rights to such land, since it is automatically categorised as joint property with their foreign spouse (Kemalasari et al., 2022).

More broadly, Indonesia's property law and agrarian law are based on the principle that all land belongs to the State, which grants rights of use to individuals and legal entities under strict conditions (Pertiwi, 2025). The UUPA emphasises the social function of land (Article 6), meaning ownership must serve the interests of the Indonesian people rather than private or foreign exploitation. Agrarian law also seeks to protect farmers and promote agricultural sustainability by regulating land tenure, use, and redistribution (Megananda & Safik, 2024). In this framework, land rights such as *Hak Milik*, *Hak Guna Usaha*, *Hak Guna Bangunan*, and *Hak Pakai* are granted for specific purposes and durations, with only Indonesian citizens permitted to hold the strongest rights like *Hak Milik*. Foreign nationals are generally restricted to weaker rights, such as long-term lease (*Hak Sewa*) or limited *Hak Pakai*, and only under circumstances (PP No. 103/2015 on Ownership of Residential Property by Foreigners).

These rules reflect Indonesia's broader policy of safeguarding national sovereignty over land while still cautiously accommodating foreign participation in the property sector. However, in practice, mixed marriages create legal conflicts: the principle of joint marital property clashes with the prohibition on foreign land ownership. This tension highlights the importance of prenuptial or postnuptial agreements to protect Indonesian citizens' land rights while ensuring compliance with agrarian restrictions.

Then, if you want to have land rights after marrying that foreign national, you must create a marriage agreement or prenuptial agreement that regulates the separation of your assets and your wife's assets. Since 2015, a marriage agreement can be made at any time, before or during the marriage, as regulated in Article 29 of the Marriage Law in conjunction with the Constitutional Court Decision Number 69/PUU-XIII/2015. Still referring to the article and the above-mentioned Constitutional Court decision, the marriage agreement is made in writing and validated by a marriage registrar or a notary. This means that the marriage agreement must be made as a notarial deed, not just an ordinary written agreement. This marriage agreement is binding as law for those who make it, and it also applies to third parties as long as those third parties are involved.

Protection of Indonesian Citizens in Mixed Marriages

In this instance, the cassation respondent says the land and building are joint property since they were acquired during the marriage; the cassation applicant maintains the funding came from personal monies, so the land and building are not joint property. Legal issues of the Supreme Court Justices in Supreme Court Decision Number 539 K/Ag/2021, the Supreme Court justices said that although the cassation applicant stated that the land and building were bought with personal finances, since they were acquired during the marriage, the land and building remain joint property in line with Article 35 of Law Number 1 of 1974 on Marriage.

Although it was not proved that the proceeds from the sale of the apartment in Singapore, S$342,816.86 (about Rp3.53 billion at that time), were used for joint interests, the court nevertheless declared that the proceeds were joint property since they were acquired during the marriage. Likewise, the land and buildings in Bandung, with a land size of 320 m^2 and a building area of 220 m^2, were decided to be joint property, split equally: ½ share for the petitioner, Pepijn Jochem De Blecourt, the husband; ½ share for the respondent, Sieska Sagita Nasution, the wife.

Justices of the Supreme Court base their legal decisions on legal certainty and justice principles. In this regard, the principle of justice requires that the law give all those engaged in the case equal protection regardless of citizenship status or direct financial input to purchase property. Conversely, the legal certainty principle demands that the law give unambiguous, consistent guidelines on the position of property ownership in mixed marriages. Mixed marriages should not cause Indonesian people to lose their land rights; the principle of justice and formal ownership can help to guarantee this. Though the acquisition was made in one party's name and the financial source came from one party, the Supreme Court declared that the land and building are joint property. This indicates that the moment of acquisition (during the marriage) and formal ownership (in whose name) come first over the source of money.

Determining the status of joint property mostly depends on the formal ownership concept and the purchase period. If there is no separate property agreement or other sufficient evidence, the source of finance does not always instantly turn the property into personal ownership.

Within Indonesian agricultural law, formal ownership underlines that land ownership is grounded on legitimate formal proof, such as ownership certificates or other legal documents. This concept emphasises the importance of official records in determining land entitlement (Sudharma & Adhyaksa, 2023). In this instance, the land and construction in Bandung go under Sieska Sagita Nasution (Respondent in Cassation/wife), an Indonesian citizen. By rejecting the unilateral claim from a foreign national who, despite making the payment, lacks a solid legal basis for land ownership, this action gives Indonesian people legal protection.

Conclusion

Supreme Court Decision No. 539 K/Ag/2021 states that the principle of fairness should be applied to prevent Indonesian citizens from losing land rights in mixed marriages. For the Supreme Court, the source of funds is secondary to the formal ownership and the moment of asset acquisition, thereby confirming that land and property obtained during a mixed marriage without a prenuptial agreement shall be recognised as joint property to be divided equitably, regardless of the registered owner or the funding source. In the context of agrarian law, however, this creates tension since Article 21 of the Basic Agrarian Law prohibits foreign nationals from owning land, yet mixed marriages indirectly allow them to benefit from land ownership rights in Indonesia. This situation increases the risk of agrarian law violations and potential loss of land rights for Indonesian citizens.

Indonesian legislation, while seeking to balance fairness and justice, still leaves gaps in protecting both Indonesian citizens and foreign nationals in mixed marriages. Decision No. 539 K/Ag/2021 provides safeguards for Indonesians, but the division of joint property in mixed marriages continues to carry legal uncertainties, especially when assets are located abroad. A prenuptial agreement is therefore regarded as a preventive instrument to avoid disputes and ensure legal clarity of rights and responsibilities between spouses.

Legal reforms are necessary to strengthen protection for parties in mixed marriages. For instance, amendments to the Marriage Law and the Basic Agrarian Law could provide a clearer framework for joint property involving foreign spouses, such as through conditional ownership schemes, long-term lease rights, or trust-like mechanisms that preserve Indonesian land sovereignty while ensuring fairness for foreign partners. Furthermore, regulations should explicitly require transparent registration and supervision of mixed marriage property arrangements to prevent loopholes that undermine agrarian restrictions. By integrating these reforms, Indonesian law would not only uphold the principle of legal certainty but also adapt to the realities of globalisation and increasing cross-border marriages.

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Discklosure Statement

The author declares that there is no conflict of interest in the preparation, analysis, and publication of this research. All arguments, interpretations, and conclusions presented in this paper are the sole responsibility of the author and do not represent any institution or organisation with which the author is affiliated.

Fundling Statement

This research was conducted independently without financial support from any governmental, non-governmental, or private institution. All expenses related to literature review, data collection, and publication were personally borne by the author.

Ethical Approval

This study is based on publicly available legal documents and secondary literature sources. Therefore, no human participants or personal data were involved in the research process, and formal ethical clearance was not required. However, the research adheres to academic integrity and ethical standards in the use, citation, and interpretation of all referenced materials.

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