

## Conference Paper

# Legal Consequences of Divorce in Intermarriage on the Marital Property in the form of Land Proprietary Rights

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Intermarriage brings legal consequences to the assets in the marriage including the mixing of joint assets. Marital property, specifically, regarding land ownership rights in Indonesia causes a problem if there is a divorce. The joint assets in the form of ownership rights to the land must be shared between Indonesian Citizens and Foreign Citizens while Law Number 5 of 1960 concerning Basic Regulations -The Agrarian principle prohibits foreign nationals from owning property rights. This research aims to find out the position of Foreign Citizens regarding land ownership rights in Indonesian laws and regulations and the legal consequences of divorce on land ownership rights in mixed marriages. This research is normative legal research, the type of research used is research on legal systematics by taking inventory of laws and regulations governing land ownership rights in intermarriage, identifying problems, and analyzing them qualitatively.

**Keywords:** intermarriage, land proprietary rights, divorceCorresponding Author: Isdian  
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isdian@umm.ac.id**Published** 5 January 2024Publishing services provided by  
Knowledge E

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Selection and Peer-review under the responsibility of the 4th INCLAR Conference Committee.

## 1. INTRODUCTION

Mixing joint assets, especially regarding land ownership rights in Indonesia, will cause problems because the principle of nationality no longer allows foreign citizens to have property rights. Article 21, paragraph (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA) discusses the Principle of Nationality, which states that “Only Indonesian citizens can have property rights”. Therefore, whether for cultivation or to build something on it, property rights are essentially reserved for Indonesian citizens who are single citizens [1].

As a result of the principle of nationality, couples in mixed marriages must agree to separate their assets (marriage agreement) so that there is no mixing of assets.[2] Jointly related to land ownership rights. Joint property issues related to land ownership rights

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in mixed marriages do not only occur during the marriage but also when a divorce occurs. For mixed marriage couples of various Muslims, it is expressly regulated in Article 97 of Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (hereinafter referred to as KHI) which states that “Divorced widows or widowers are each entitled to half of the joint property as long as it is not specified otherwise in marriage agreement.” Based on these provisions, without a marriage agreement, every Muslim husband and wife who divorce must divide their joint assets in half, including land ownership rights. In mixed marriage couples, land rights can become part of the joint assets and be divided between the parties. foreign nationals and Indonesian citizens.

A case occurred regarding ownership rights to land in a mixed marriage that was purchased without a property separation agreement. In 2012 an Indian citizen had a religious marriage with an Indonesian citizen in Phuket, Thailand. The marriage was registered at the Religious Affairs Office of Astana Anyar District, Bandung City in 2013 with Number 01/01/IV/2013. During the marriage, the married couple purchased many movable and immovable items, including land and the house building. The purchase is proven by a copy of the Deed of Sale and Building (land and building) for land issued by a Deed Notary in Denpasar with Number 142/2014 in 2014. On February 24, 2015, this married couple officially divorced as evidenced of the divorce certificate issued Denpasar Religious Court Registrar Number 0050/AC/2015/PA.Dps. Then the ex-husband (foreign citizen) filed a joint property lawsuit (gono gini) against movable and immovable property acquired during the marriage, including land and the house building as mentioned above.

This decision raises questions for the author regarding the share of joint property in mixed marriages that can be owned by foreign citizens, especially regarding land ownership rights. The UUPA regulates the obligation for foreigners who acquire property rights, either through inheritance without a will or mixing of assets due to marriage, to relinquish said property rights within 1 year of the acquisition of the rights. [2] Even though it is clearly regulated as such, the fact is that in the above decision, a foreign citizen can obtain ownership rights to land as part of joint assets in the event of a divorce. Ownership rights to land remain part of the joint assets even though 1 year has passed since acquiring these rights [3]. Based on the problems above, this writing focuses on analyzing the legal consequences of divorce on land ownership rights in mixed marriages.

## 2. METHODOLOGY

The author uses a normative type of research in the following legal research.[4] where law is conceptualized as what is written in statutory regulations (law in books) or law is conceptualized as rules or norms, which are standards for human behavior that are considered appropriate [5]. This normative legal research is based on primary and secondary legal materials, namely research that refers to the norms contained in statutory regulations. [6] The nature of the research used in this research is prescriptive legal research, which studies legal objectives and values. justice, validity of legal rules, legal concepts, and legal norms.[7]

## 3. RESULTS AND DISCUSSIONS

Divorce has legal consequences for the dissolution of the marriage and for children and ex-husbands/ex-wives. Furthermore, divorce also has legal consequences for joint assets acquired during the marriage. Rosnidar Sembiring quoted the opinion of Iman Sudiyat, who explained that in general, family assets can be divided into four parts[8]:

1. Inherited property (distributed during life or after the heir dies) for one of the husband and wife from their respective relatives;
2. Assets acquired through business and for themselves by each husband or wife before or during marriage;
3. Assets obtained by husband and wife during marriage through business and as joint property;
4. Property gifted at marriage to husband and wife together.

Joint property is property obtained after the husband and wife are in a marriage relationship through the efforts of both of them or one of their parties [1]. Joint assets reflect the existence of objects that are owned jointly or owned by more than one person. The legal consequences of divorce on the joint property are regulated in Article 37 of Law Number 1 of 1974 concerning Marriage, which states, "If a marriage is dissolved due to divorce, the property is regulated according to each respective law". This article contains provisions that the legal consequences of divorce on joint property are regulated according to religious law, customary law, or other laws.

The Civil Code does not recognize the division of marital assets into inherited or joint assets. Article 119 of the Civil Code stipulates that, legally, the total unity between

the assets of husband and wife applies from the moment a marriage takes place. Only regarding that, there are no other provisions in the marriage agreement.

The unity of property is as long as the marriage is carried out and cannot be abolished or changed by any agreement between the husband and wife. If they intend to carry out this deviation, the husband and wife must follow the marriage agreement regulated in Articles 139 to 154 of the Civil Code.

Article 128 to Article 129 of the Civil Code determines that if the marital bond between husband and wife is broken, the joint assets are divided between the husband and wife without regard to which party the assets were previously obtained. The marriage agreement is permitted by the Legislation as long as it does not violate the morals and general peace that prevail in public life. Specifically stated in Article 21, paragraph (3) of the UUPA, Indonesian national law prohibits foreigners from owning land due to combining marital assets. However, the Compilation of Islamic Law does not contain a similar prohibition. In accordance with Islamic law, if a husband and wife divorce, then the assets acquired during the marriage must be divided into two for each party, both in the form of movable and immovable assets, including property rights to land, as long as both parties remain Muslim, regardless of nationality or in whose name the land deed was issued. A plot of land certified in the name of an Indonesian citizen with title status or other land rights that are part of joint property remains the right of the foreign citizen in the event of a divorce.

Article 21 paragraph (3) UUPA, if analyzed further, provides a grace period of one year from the date of obtaining the right to transfer property rights before the right is lost and the land becomes state property, provided that the rights of other parties that burden it remain valid [9]. This shows that in accordance with the Compilation of Islamic Law, foreign citizens can obtain a proportional share of joint assets in the form of ownership rights to land. However, to fulfill the requirements of Article 21 paragraph (3) UUPA, this right must still be released within one year.

There are several options for dividing ownership rights over land as part of joint assets between Indonesian citizens and foreign citizens; one is the transfer of ownership rights over land through sale and purchase or auction, the results of which are then divided according to their respective shares.[10] Based on this, the transfer of ownership rights to land can not only take the form of buying and selling or auction but can also take the form of exchange, gift, income into company capital (inbreng), and will grant[11]. In addition to transferring land rights, foreign citizens can obtain their rights by changing land ownership rights to use rights by reducing ownership rights or releasing ownership rights accompanied by an application for use rights.

## 4. CONCLUSION AND RECOMMENDATION

The legal impact of divorce on land ownership rights in mixed marriages in Indonesia, especially for mixed marriage couples who are Muslim, is that land ownership rights can fall to foreigners when dividing joint property (Gono-Gini) because the Compilation of Islamic Law does not provide nationality restrictions in dividing joint property. Meanwhile, in Indonesian Agrarian Law, there is a prohibition on land ownership by foreign citizens due to the mixing of marital assets as stated expressly in Article 21 paragraph (3) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. In decision number 149.Pdt.G/2015/PA.Dps, the judge stated that if the assets cannot be distributed, then it can be done by transferring ownership rights to the land by means of sale and purchase or auction. Then the proceeds are divided between the Indonesian citizen and the foreigner. Foreigners can also transfer ownership rights to land they have obtained from sharing joint assets using exchange mechanisms, grants, and capital infusions into the company (inbreng). Apart from that, land ownership rights can also be released accompanied by an application for use rights.

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