

Mixed Marriage Law On Marital Property Due To Divorce

Justicia Firdaus Kurniawan¹, Dominikus Rato², Moh. Ali³

^{1,2,3} Faculty of Law, University of Jember

¹hernandezbarca17@gmail.com, ²dominikusrato.fh@unej.ac.id, ³ali.fh@unej.ac.id

Abstract: Marriage is a relationship that unites two different individuals, men and women in a bond, namely a legal marriage bond. In Article 1 of Law Number 1 of 1974 concerning Marriage, it is explained that marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. In social life, especially in Indonesia, it is possible to have a marriage between an Indonesian citizen and a foreign citizen or commonly called a mixed marriage. The use of normative legal research methods in writing this journal with a statute approach and a conceptual approach in analyzing rules and concepts in Marriage Law related to mixed marriages and marital property resulting from divorce. In Article 57 of Law Number 1 of 1974 concerning Marriage, it is explained that what is meant by mixed marriage in this Law is a marriage between two people who in Indonesia are subject to different laws, due to differences in citizenship and one of the parties is an Indonesian citizen. During the marriage period there is a joint property, regarding the position in Article 35 paragraph 1 of Law Number 1 of 1974 concerning Marriage, it is explained that assets obtained during marriage become joint assets.

Keywords: Marriage; Mixed Marriage; Property.



Copyright © 2024 by Author(s)

This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. All writings published in this journal are personal views of the authors and do not represent the views of this journal and the author's affiliated institutions.

HOW TO CITE:

Justicia Firdaus Kurniawan, Dominikus Rato, and Moh. Ali, “Mixed Marriage Law On Marital Property Due To Divorce,” *Mimbar Yustitia: Jurnal Hukum Dan Hak Asasi Manusia* 8, no. 2 (2024): 111–123, <https://doi.org/10.52166/mimbar.v8i2.8052>

Submitted: 29/11/2024, Reviewed: 22/12/2024, Accepted: 29/12/2024

I. INTRODUCTION

In the current era of modernization, the development of science and technology is growing very rapidly. Especially in the development of technology, where the existence of the internet and communication tools such as *mobile phones*, tablets, laptops makes it easier for users to communicate. And in it there are application features such as *Social Media*, *Video Call* and so on, in this case, it is none other than facilitating fellow human beings to establish social relationships between family, friends or between fellow human beings of different races, tribes, religions and nationalities. With the rapid development of this technology, it is not impossible for humans in establishing social relationships to carry out a legal bond, namely marriage. Both marriages between fellow citizens or different nationalities or commonly called mixed marriages.

Marriage is a physical and spiritual bond between a man and a woman, as husband and wife with the aim of forming a happy, harmonious and eternal family (household) based on the Almighty God where the marriage is a form of "bond" between a man and a woman.¹ In Article 1 of Law Number 1 of 1974 concerning Marriage "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 (household) based on the Almighty God."

Mixed marriages in Indonesia are a familiar phenomenon, in the history of the founding of the nation, mixed marriages have taken place in Indonesia since ancient times, starting from trade missions, until finally giving rise to descendants known as "Indo Chinese", "Indo Arab", and "Indo Dutch". Therefore, almost the majority of people in Indonesia are now not purely "native", but have mixed with other countries.² When viewed from a legal perspective, mixed marriages can be divided into four categories, namely mixed marriages between groups (intergentil), mixed marriages between places (intrelocal), mixed marriages between religions (interreligious), and mixed marriages between countries (international). In these four types of marriages, it also refers to the provisions of Article 57 of Law No. 1 of 1974 on Marriage which states that "mixed marriage is a marriage between two people in Indonesia who are subject to different laws, due to differences in citizenship and one party is an Indonesian citizen."³

Mixed marriages will become a problem of International Civil Law, because they involve 2 (two) legal systems. different nationalities. During the validity period of the GHR (Regeling of de Gemengde Huwelijken) Stb.1898 No.158, to overcome this, the husband's law was enforced. The problem of mixed marital property, if the

¹ I Wayan Ika Suyun Yastika, I Nyoman Putu Budiarta, and Ni Made Pupspasutari Ujianti, "Akibat Hukum Perceraian Pada Perkawinan Campuran," *Jurnal Analogi Hukum* 1, no. 3 (2019): 390–95.

² Endah Pertiwi, Ai Pitri Nurpadilah, and Dodik Wijaya, "Akibat Perkawinan Campuran Terhadap Anak Dan Harta Benda Yang Diperoleh Sebelum Dan Sesudah Perkawinan," *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 1, no. 2 (2019): 1–12.

³ *Ibid.*

husband is an Indonesian citizen, then there is no problem, because it is regulated based on the husband's law, namely Marriage Law No.1 of 1974. If the wife is an Indonesian citizen and the husband is a foreign citizen, then they can adhere to the provisions of Article 2 and Article 6 paragraph (1) of the GHR, namely the husband's law is enforced, therefore since the Marriage Law came into effect, the GHR does not apply, so it is better if this problem is regulated in National Law, and adjusted to the principles of International Civil Law.⁴

In this case, regarding the Marriage Law, apart from containing matters related to marriage, it also regulates marital property. This has been regulated in Article 35 of the Marriage Law No. 1 of 1974, which explains that :

1. Property acquired during marriage becomes joint property.
2. The inherited assets of each husband and wife and the assets obtained by each as a gift or inheritance, are under their respective control as long as the parties do not determine otherwise.

In a marriage regarding marital property in the community life often causes legal consequences. Where this is due to the lack of attention of the husband and wife regarding a marriage agreement. Where in Law No. 1 of 1974 concerning Marriage, it has been explained in Article 29 that :

1. At the time or before the marriage takes place, both parties with mutual consent can enter into a written agreement which is legalized by a marriage registrar, after which the contents also apply to third parties as long as the third party is involved.
2. The agreement cannot be ratified if it violates the limits of law, religion and morality.
3. The agreement comes into effect from the date of the marriage.
4. During the marriage, the agreement cannot be changed, unless both parties agree to change it and the change does not harm a third party.

Based on from background behind problem on, so discussion furthermore is formulation problem, that is: 1. What are the legal aspects regarding mixed marriage law. 2. How Property status and its division in mixed marriages due to divorce.

II. RESEARCH METHODS

Legal research is conducted to find solutions to legal issues that arise. Therefore, legal research is a research within the framework of *know-how* in law. In solving problems in legal research, researchers must adhere to doctrines that are inherent in legal science that cannot be deviated from. And in the end, legal research aims to provide prescriptions about what should be done, not to prove the truth of the hypothesis.⁵ To ensure scientific truth, in conducting research, the right method must be used because it is a guideline in conducting research including analysis of research data. The use of Normative legal research methods in writing this journal

⁴ Herni Widanarti, "Akibat Hukum Perkawinan Campuran Terhadap Harta Perkawinan (Penetapan Pengadilan Negeri Denpasar No: 536/Pdt.P/2015/Pn.Dps.)," *Diponegoro Private Law Review* 2, no. 1 (2018): 343–54.

⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2007). P. 33.

can be used to explore, process, and formulate legal materials obtained so as to obtain conclusions that are in accordance with scientific truth to answer the legal issues faced. The right method is expected to provide a sequential flow of thought in an effort to achieve the study.

Research uses an approach so that obtain information related to legal issues, namely using the Statute Approach, this approach is carried out by examining all laws and regulations relating to provisions on restrictions on religious events, then studying the consistency/consistency between the provisions studied that the marriage law and Civil Code.⁶ And Conceptual Approach, this approach starts from the views and doctrines that develop in legal science. This approach is important because understanding the views/doctrines that develop in legal science can be a basis for building legal arguments when resolving the legal issues faced.⁷

III. ANALYSIS AND DISCUSSION

Legal Aspects Concerning Mixed Marriage Law

Before the enactment of Marriage Law Number 1 of 1974, various marriage laws applied to various groups of citizens. The applicable marriage laws were customary law, religious law, the Civil Code (KUHPdt) and regulations regarding mixed marriages. Mixed marriages before the enactment of the Marriage Law were regulated by the Koninklijk Besluit dated December 29, 1896 Number 23. This regulation is called the Regeling OP de Gemengde Huwelijken (RGH) which is known as the Mixed Marriage Regulation. Article 1 of the RGH defines mixed marriage as "Marriage between people who in Indonesia are subject to different laws". While Article 2 of the RGH states that, "A woman (wife) who enters into a mixed marriage as long as it has not been dissolved, then the woman is subject to the laws applicable to her husband, both public law and civil law".⁸ According to Staatblad 1896 N0. 158 Definition of Mixed Marriages During the Colonial Era The Royal Decree of December 29, 1896 No. 23 Staatsblad 1896/158 (Regeling op de gemengde huwelijken", hereinafter abbreviated as GHR) provides the following definition: Marriage of people who in Indonesia are under different laws (Article 1). According to Article 1 of the GHR, those included in the scope of mixed marriages are :

- a. International mixed marriages, namely between citizens and foreigners, between foreigners with different laws, and marriages conducted abroad.
- b. Mixed marriages between places, for example, marriages between a Batak man and a Sundanese woman, a Javanese man and a Lampung woman, between Arabs from Sumbawa and Arabs from Medan and so on, which are caused by differences in place.

⁶ *Ibid*, hal. 136.

⁷ *Ibid*, hal. 177.

⁸ Defanti Putri Utami and Finza Khasif Ghifarani, "Perkawinan Campuran Di Indonesia Ditinjau Dari Hukum Islam Dan Hukum Positif," *MASADIR: Jurnal Hukum Islam* 1, no. 2 (2021): 156–75.

- c. Inter-group mixed marriages (intergentiel). The existence of inter-group mixed marriages was due to the division of population groups by the Colonial Government into 3 (three) groups, namely: (1) European Group; (2) Foreign Eastern Group; (3) Bumi Putera Group (native population) so that marriages carried out between those of different groups are called inter-group mixed marriages.
- d. Interfaith Mixed Marriage, Marriage for those of different religions is also called mixed marriage. The existence of interfaith marriage in the colonial marriage law system was caused by the Dutch East Indies Government in matters of marriage setting aside religious laws and provisions.⁹

So concretely mixed marriages according to this law are: 1) An Indonesian citizen man marries a foreign citizen woman; and 2) An Indonesian citizen woman marries a foreign citizen man. The definition of Article 1 GHR is very broad in scope, not only limiting the meaning of mixed marriages to marriages between Indonesian citizens or between Indonesian residents and marriages held in Indonesia, as long as the parties holding the marriage in Indonesia are subject to different laws. With the limitation on differences in citizenship, a marriage between two people of different groups (native and foreign) or different religions (Islam and Christian) but both Indonesian, is not included in mixed marriages according to the Marriage Law, but according to GHR is a mixed marriage.¹⁰

The definition of marriage according to Article 1 of Law No. 1 of 1974 concerning Marriage above contains the legal understanding that a marriage has two legal aspects, namely :

1. The formal legal aspect is stated in the sentence "Ikatan lahir batin", which contains the meaning that marriage, besides having a physical bond, also has an inner bond (conscience) that can be felt especially by the parties concerned and this inner bond is the essence of marriage.
2. Social and Religious Legal Aspects, which are expressed in the sentence forming a family (household) and based on belief in the Almighty God, the meaning is that marriage has a very close relationship with aspects of social, social and spiritual law.¹¹

In the Marriage Law Number 1 of 1974 concerning Marriage regarding mixed marriages, it is explained in Article 57 that "What is meant by mixed marriage in this Law is a marriage between two people who in Indonesia are subject to different laws, due to differences in citizenship and one party is an Indonesian citizen." Then in Article 58 of the Marriage Law it is explained that "For people of different citizenships who enter into a mixed marriage, they can obtain citizenship from their

⁹ Pertiwi, Nurpadilah, and Wijaya, "Akibat Perkawinan Campuran Terhadap Anak Dan Harta Benda Yang Diperoleh Sebelum Dan Sesudah Perkawinan.", *Op.cit.*

¹⁰ Utami and Ghifarani, "Perkawinan Campuran Di Indonesia Ditinjau Dari Hukum Islam Dan Hukum Positif." *Op.cit.*

¹¹ Adi Purwanto, "Analisis Hukum Atas Pembagian Harta Bersama Dalam Perkawinan Campuran Pada Putusan Mahkamah Agung Nomor 1400 K/Pdt/2017," *Recital Review* 4, no. 1 (2022): 90–113.

husband/wife and can also lose their citizenship, according to the methods determined in the applicable Republic of Indonesia Citizenship Law." In terms of obtaining citizenship, Article 8 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia explains that "Citizenship of the Republic of Indonesia can also be obtained through naturalization".¹² Then regarding the requirements for citizenship, it is explained in Article 9 of the Republic of Indonesia Citizenship Law which explains that "An application for citizenship can be submitted by the applicant if they meet the following requirements :

- a. has reached the age of 18 (eighteen) years or is married;
- b. at the time of submitting the application, has resided in the territory of the Republic of Indonesia for at least 5 (five) consecutive years or at least 10 (ten) non-consecutive years;
- c. physically and mentally healthy;
- d. be able to speak Indonesian and acknowledge the state philosophy of Pancasila and the 1945 Constitution of the Republic of Indonesia;
- e. never been sentenced for committing a crime punishable by imprisonment for 1 (one) year or more;
- f. if by obtaining Citizenship of the Republic of Indonesia, one does not become a dual citizen;
- g. have a job and/or a steady income; and
- h. pay citizenship fees to the State Treasury.¹³

In the case of loss of citizenship, it is explained in Article 23 of the Republic of Indonesia Citizenship Law that "Indonesian citizens lose their citizenship if the person concerned :

- a. acquire another citizenship of his own free will;
- b. not rejecting or relinquishing another citizenship, while the person concerned has the opportunity to do so;
- c. declared to have lost his citizenship by the President upon his own request, the person concerned is 18 (eighteen) years old or married, lives abroad, and by being declared to have lost his Citizenship of the Republic of Indonesia does not become stateless;
- d. entering foreign military service without prior permission from the President;
- e. voluntarily enter the foreign service, where positions in such service in Indonesia in accordance with the provisions of laws and regulations may only be held by Indonesian citizens;
- f. voluntarily take an oath or declare a promise of allegiance to a foreign country or part of that foreign country;
- g. not required but to participate in the election of something of a constitutional nature for a foreign country;
- h. have a passport or a letter in the nature of a passport from a foreign country or a letter that can be interpreted as a valid sign of citizenship from another country in his name; or
- i. residing outside the territory of the Republic of Indonesia for 5 (five)

¹² Article 8 Law Number 12 of 2006

¹³ *Ibid.*

years continuously, not in the context of state service, without a valid reason and intentionally not stating his/her desire to remain an Indonesian citizen before the 5 (five) year period ends, and every 5 (five) years thereafter the person concerned does not submit a statement of desire to remain an Indonesian citizen to the Representative of the Republic of Indonesia whose work area covers the person's place of residence, even though the Representative of the Republic of Indonesia has notified the person concerned in writing, as long as the person concerned does not become stateless.”¹⁴

Furthermore, Law Number 1 of 1974 concerning Marriage has explicitly explained the rules regarding mixed marriages due to differences in citizenship, namely for Indonesian citizens to refer to article 5762 of the Law. In order for this marriage to take place, article 60 of the Marriage Law states :

1. Mixed marriages cannot be carried out before it is proven that the marriage requirements determined by the law applicable to each party have been fulfilled.
2. To prove that the conditions mentioned in paragraph (1) have been fulfilled and therefore there are no obstacles to carrying out a mixed marriage, those who according to the law applicable to each party are authorized to register marriages, will be given a certificate stating that the conditions have been fulfilled.¹⁵

The requirements that must be met for citizens who will marry because of differences in citizenship include requiring a marriage certificate from the embassy or the relevant country, a passport, and also an oath so that an excerpt of marriage of religious affairs can be issued. Thus, the study of the development of civil law in Indonesia in the matter of marriage has been formulated in the Marriage Law Number 1 of 1974 which aims to protect and provide certainty for its citizens.¹⁶

In this case, Indonesian citizens can enter into mixed marriages with different citizenships, both men and women, by fulfilling several requirements that have been regulated in the applicable laws and regulations. If these requirements are not met, the mixed marriage cannot be carried out. This has been explained in Article 60 paragraph 1 of Law Number 1 of 1974 concerning Marriage that " Mixed marriages cannot be carried out before it is proven that the marriage requirements determined by the applicable law for each party have been fulfilled.”

Property Status and Its Division in Mixed Marriages Due to Divorce

A man and woman who have entered into a marriage bond have the status of husband and wife. Where in this case there are rights and obligations in fulfilling their life needs, where in fulfilling these needs the need for wealth in a marriage. In this case, a marriage cannot be separated from the assets obtained during the marriage or what is

¹⁴ *Ibid.*

¹⁵ M. Nur Kholis Al Amin, “Perkawinan Campuran Dalam Kajian Perkembangan Hukum: Antara Perkawinan Beda Agama Dan Perkawinan Beda Kewarganegaraan Di Indonesia,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 2 (2016): 211–20.

¹⁶ *Ibid.*

commonly referred to as joint assets. In Law No. 1 of 1974 Article 35 paragraph 1 it is explained that "Properties obtained during the marriage become joint assets." This is in accordance with Article 119 of the Civil Code "Since the time the marriage takes place, according to the law there is joint property in its entirety between the husband and wife, as long as there are no other provisions in the marriage agreement. The joint assets, during the marriage, may not be eliminated or changed by agreement between the husband and wife."¹⁷ Article 120 explains that "With regard to the matter of profits, joint assets include the husband and wife's movable and immovable assets, both existing and future, as well as goods they obtain for free, unless in this latter case the inheritor or the grantor explicitly determines otherwise."¹⁸

In the case of a man and woman who are Indonesian citizens (WNI) and foreign citizens (WNA) and vice versa in carrying out a mixed marriage, there are legal consequences that arise if a divorce occurs to the marital property. In carrying out a divorce, of course, there are legal consequences that must be accepted by the parties who are divorcing, one of which is regarding the joint property obtained during the marriage. This legal consequence is very sensitive to the emergence of a dispute, because the husband and wife feel that the property is the result of their work so that the husband and wife feel that they have the right to the property. If the husband and wife have a marriage agreement, if a divorce occurs, it must be in accordance with what has been agreed in the agreement, both the rights to the joint property of the husband and wife are equal or the husband's right to receive a greater share of the joint property than his wife or vice versa, the wife's right to receive a greater share than her husband depends on the contents of the agreement.¹⁹ Based on the Supreme Court Jurisprudence dated December 9, 1959 Number 424K / Sip / 1959 which determines that "A husband and wife who do not have a marriage agreement on joint property if a divorce occurs, the husband and wife are entitled to half of the joint property". Likewise, Article 97 of the KHI stipulates that "if a divorce occurs, the joint property is divided in two. Joint property is not always divided in two". If the joint property is obtained more by the wife than the husband or the husband is unemployed, then the joint property is unfair if divided in two. In this case, the wife must get a larger share than her husband. This is stipulated in Supreme Court Jurisprudence Number 266K/AG/2010. If only the husband works, the joint property must be divided into two parts, because the husband's obligation is to work or provide for the family. Article 128 of the Civil Code also regulates that if the joint property of the husband and wife is dissolved, it is divided in two. The division of joint property in a marriage must be fair between both parties.²⁰

¹⁷ Article 119 Burgerlijk wetboek

¹⁸ Rayhan Isha Mahendra, Dominikus Rato, and Dyah Ochtorina Susanti, "Kewenangan Kepala Desa Dan Camat Dalam Pembuatan Surat Keterangan Ahli Waris," *Mimbar Yustitia: Jurnal Hukum Dan Hak Asasi Manusia* 8, no. 1 (2024): 6–79.

¹⁹ Werdiningsih, "Asas Publisitas Perjanjian Perkawinan (Post Nuptial Agreement): Konsep Kepastian Dan Perlindungan Hukum Bagi Pihak Ketiga," *Jurnal Ilmu Kenotariatan* 4, no. 1 (2023): 45–64.

²⁰ *Ibid.*

Regarding joint property, it can be managed jointly by husband and wife, but in every legal act concerning joint property there must be an agreement from both parties (Article 36 paragraph (1)). While in terms of property brought by each husband and wife have full rights to carry out legal acts regarding their property (Article 36 paragraph (2)).²¹ If a divorce occurs, then joint property is regulated according to their respective laws (Article 37), what is meant by the law of each party in this Marriage Law is religious law, customary law or other law. For Mixed Marriages, it will become a problem of International Civil Law, because it will be linked to 2 (two) different marriage law systems, which in its resolution can be used the provisions of Article 2 and Article 6 paragraph (1) GHR (Regeling of de gemengde huwelijken) S. 1898, namely the law of the husband is applied. The problem of mixed marital property, if the husband is an Indonesian citizen, then there is no problem, because it is regulated based on the law of the husband, namely Law No. 1 1974. Whereas if the wife is an Indonesian citizen and the husband is a foreign citizen, then they can adhere to the provisions of Article 2 and Article 6 paragraph (1) of the GHR, namely the husband's law is applied. However, because the GHR is a product of the Dutch era, this issue should be regulated in National Law, which is adjusted to the development of the times.²²

In mixed marriages, Indonesian citizens who are involved in mixed marriages cannot have Ownership Rights, Cultivation Rights or Building Rights. This is because in Article 35 of Law Number 1 of 1974 concerning Marriage it is stated that property acquired during marriage becomes joint property.²³ If the parties to a mixed marriage do not have a property separation agreement made before the marriage, then they cannot have land rights in the form of Ownership Rights, Cultivation Rights or Building Rights. But they can become holders of Usage Rights. Usage Rights can be held by a foreign citizen, so there is no problem even if one of the parties still has foreign citizen status.²⁴ The status of land rights owned by a husband and wife in a mixed marriage can still be owned if there is a marriage agreement made, if there is none and the land rights are in the form of inheritance, then within a maximum period of 1 year it must be transferred, otherwise the status of the land rights is transferred to the state. If there is a marriage agreement containing the separation of assets, then one party who is an Indonesian citizen can have ownership rights to a plot of land using his/her own name. Land rights that can be owned by a mixed marriage couple are limited to usage rights and also rental rights, if there is a marriage agreement, then the partner who is still an Indonesian citizen can enjoy all land rights in Indonesia as long as they are still Indonesian citizens.²⁵

Regarding the division of joint assets in the form of land, for example, the land is in the territory of Indonesia and based on Article 21 paragraph 1 of the Basic Agrarian

²¹ Pertiwi, Nurpadilah, and Wijaya, "Akibat Perkawinan Campuran Terhadap Anak Dan Harta Benda Yang Diperoleh Sebelum Dan Sesudah Perkawinan." *Op.cit*

²² *Ibid.*

²³ Firman Floranta Adonara, "Kewenangan Notaris Mengesahkan Perjanjian Kawin Sebagai Amanat Konstitusi," *Jurnal Ilmu Kenotariatan* 1, no. 2 (2020): 55–73.

²⁴ *Ibid.* p.69

²⁵ *Ibid.*

Law in the Republic of Indonesia that "only Indonesians have ownership rights to land while foreigners may not have ownership rights to land in Indonesia, only Indonesians have ownership rights to the land, so this will create a sense of injustice for the foreign citizens concerned". So the solution is that the land must be sold and the proceeds of the sale must be divided or the rights to the joint property, the foreign citizen can transfer to a qualified party. If the joint property in the form of land ownership rights is given directly to the foreigner without being sold or transferred, it is the same as giving the sovereignty of the foreign country to the sovereignty of the Republic of Indonesia. Foreigners do not have the right to own land in Indonesia even though it is joint property obtained during their marriage with an Indonesian citizen. Foreigners can obtain the right to use and rent a land. The right to use in question is land owned by the state, while the right to rent, foreigners rent land owned by Indonesians or land owned by the state.²⁶

In this case, before carrying out the marriage, especially in this mixed marriage, a marriage agreement is required. Where the purpose is so that it does not cause legal consequences in the future regarding marital property. Where the provisions regarding this marriage agreement have been explained in Article 29 of Law No. 1 of 1974 concerning Marriage that :

- a. At the time or before the marriage takes place, both parties with mutual consent can enter into a written agreement which is legalized by a marriage registrar, after which the contents also apply to third parties as long as the third party is involved.
- b. The agreement cannot be ratified if it violates the limits of law, religion and morality.
- c. The agreement comes into effect from the date of the marriage.
- d. During the marriage, the agreement cannot be changed, unless both parties agree to change it and the change does not harm a third party."

Agreements are usually made for the sake of legal protection of each party's assets, especially in mixed marriages where the legal systems are different, husband or wife, although the law does not regulate the purpose of a marriage agreement and what can be agreed upon, everything is left to both parties. Legal protection of assets in a mixed marriage agreement applies when the marriage is carried out, which aims to protect the assets of the bride and groom who are in a mixed marriage, where the parties can determine their respective assets. Whether from the beginning there is a separation of assets in the marriage or there is joint property, but the method of division is regulated in the event of a divorce. The assets of each husband and wife and the assets obtained by each as a gift or inheritance are under the control of each as long as the parties do not determine otherwise. Although the law does not explicitly determine what the purpose and contents of a marriage agreement are, as a public official, a Notary in carrying out his duties and authority in making a deed of agreement can formulate laws regarding the principles, principles, forms and

²⁶ Mataniari Diana Teresa Naiborhu, Edi Wahjuni, and Rhama Wisnu Wardhana, "Keabsahan Perjanjian Tidak Tertulis Dalam Arisan Online (Studi Putusan Nomor. 106/Pdt.G/2017/Pn.Plk)," *Jurnal Ilmu Kenotariatan* 2, no. 2 (2021): 53–66.

contents of the intended marriage agreement.²⁷ Actually a marriage agreement is indeed needed by the parties, where they already have assets, and during the marriage expect to get assets. Considerations for making a marriage agreement include :

1. In a marriage with joint assets, the aim is for the wife to be protected from the possibility of the husband's bad actions, *beschikking* of immovable property and certain securities belonging to the wife.
2. In a marriage with separate property the purpose is:
 - a) So that certain items or all items brought by the husband or wife during the marriage are not included in the unity of marital assets and thus, remain individual assets. The existence of such an agreement is a protection for the wife, against the possibility of being held accountable for the assets, against debts made by the husband and vice versa.
 - b) So that the personal assets are free from the husband's control, and the wife can manage the assets herself.²⁸

The benefits of a marriage agreement are that it can regulate the resolution of problems that may arise during the marriage, including the following :

1. Regarding the separation of assets, so there is no joint property. The requirement is, it must be made before marriage, if it is made after marriage, it will be null and void by law and must be registered at the marriage registration office. If you are married, you can no longer separate assets. Everything becomes joint property.
2. Maybe in the process of divorce, want to separate assets, can make an agreement on the division of assets. The point is in a prenuptial agreement can be reached an agreement that there is no mixing of income assets or assets, both during the marriage and in the event of separation, divorce, or death.
3. Regarding the separation of debts, so in the prenuptial agreement it can also be regulated regarding the issue of debts that will remain the responsibility of the party carrying or making the debt. The debts referred to are debts that occurred before marriage, during marriage, after divorce, even death;
4. Responsibility for children from the marriage. Especially regarding the issue of children's living expenses, also their education costs must be arranged in such a way, how much each parent contributes, in this case the goal is to ensure the welfare of the children.²⁹

In this case, in a marriage, it is important to make a marriage agreement, so that there is a separation of assets, namely joint assets which in the Marriage Law have been explained in Article 35 paragraph 1 and regarding the assets brought in which the Marriage Law explains in Article 35 paragraph 2 which explains that "The assets brought in by each husband and wife and the assets obtained by each as a gift or inheritance, are under the control of each as long as the parties do not determine

²⁷ Paima Situmeang, "Implikasi Perjanjian Kawin Terhadap Harta Dalam Perkawinan Campur," *Recital Review* 1, no. 2 (2019): 117–31.

²⁸ *Ibid.* 126

²⁹ *Ibid.* p.129

otherwise." However, many married couples do not pay attention to the importance of an agreement before the marriage takes place, where the marriage agreement itself is a step in legal protection of assets in marriage.

VI. CONCLUSION

According to Staatblad 1896 No. 158, the Definition of Mixed Marriages During the Colonial Era, Beslit Kingdom of December 29, 1896 No. 23 Staatsblad 1896/158 (Regeling op de gemengde huwelijken", hereinafter abbreviated as GHR) is divided into several groups, namely: International mixed marriages, Mixed marriages between places, Mixed marriages between groups (intergentiel), Mixed Marriages between Religions. Mixed marriages are marriages between two people who in Indonesia are subject to different laws, due to differences in citizenship and one party is an Indonesian citizen. The definition of marriage according to Article 1 of Law No. 1 of 1974 concerning Marriage contains the legal understanding that a marriage has two legal aspects, namely: Formal legal aspects and Socio-Religious Legal Aspects. In this case, Indonesian citizens can enter into mixed marriages with different citizenships, both male and female, by fulfilling several requirements that have been regulated in the applicable laws and regulations.

Regarding the position of joint property and joint assets in the law applicable in Indonesia, it is explained in Article 35 paragraph 1 and 2 of Law Number 1 of 1974 concerning Marriage that "(1) Property obtained during marriage becomes joint property. (2) Property brought by each husband and wife and property obtained by each as a gift or inheritance, is under the control of each as long as the parties do not determine otherwise." If a husband and wife have a marriage agreement, if a divorce occurs, it must be in accordance with what has been agreed in the agreement, both the rights to joint property of the husband and wife are equal or the husband's right to receive a larger share of the joint property than his wife or vice versa, the wife's right to receive a larger share than her husband depends on the contents of the agreement.

REFERENCE

- Adonara, Firman Floranta. "Kewenangan Notaris Mengesahkan Perjanjian Kawin Sebagai Amanat Konstitusi." *Jurnal Ilmu Kenotariatan* 1, no. 2 (2020): 55–73. <https://doi.org/10.19184/jik.v1i2.23599>.
- Amin, M. Nur Kholis Al. "Perkawinan Campuran Dalam Kajian Perkembangan Hukum: Antara Perkawinan Beda Agama Dan Perkawinan Beda Kewarganegaraan Di Indonesia." *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 2 (2016): 211–20. <https://doi.org/10.14421/ahwal.2016.09206>.
- Mahendra, Rayhan Isha, Dominikus Rato, and Dyah Ochtorina Susanti. "Kewenangan Kepala Desa Dan Camat Dalam Pembuatan Surat Keterangan Ahli Waris." *Mimbar Yustitia: Jurnal Hukum Dan Hak Asasi Manusia* 8, no. 1 (2024): 6–79. <https://doi.org/10.52166/mimbar.v7i2>.
- Marzuki, Peter Mahmud. *Penelitian Hukum*. Jakarta: Kencana, 2007.

- Naiborhu, Mataniari Diana Teresa, Edi Wahjuni, and Rhama Wisnu Wardhana. "Keabsahan Perjanjian Tidak Tertulis Dalam Arisan Online (Studi Putusan Nomor. 106/Pdt.G/2017/Pn.Plk)." *Jurnal Ilmu Kenotariatan* 2, no. 2 (2021): 53–66. <https://doi.org/10.19184/jik.v2i2.29646>.
- Pertiwi, Endah, Ai Pitri Nurpadilah, and Dodik Wijaya. "Akibat Perkawinan Campuran Terhadap Anak Dan Harta Benda Yang Diperoleh Sebelum Dan Sesudah Perkawinan." *Jurnal Rechten: Riset Hukum Dan Hak Asasi Manusia* 1, no. 2 (2019): 1–12. <https://doi.org/10.52005/rechten.v1i2.36>.
- Purwanto, Adi. "Analisis Hukum Atas Pembagian Harta Bersama Dalam Perkawinan Campuran Pada Putusan Mahkamah Agung Nomor 1400 K/Pdt/2017." *Recital Review* 4, no. 1 (2022): 90–113. <https://doi.org/10.22437/rr.v4i1.14766>.
- Situmeang, Paima. "Implikasi Perjanjian Kawin Terhadap Harta Dalam Perkawinan Campur." *Recital Review* 1, no. 2 (2019): 117–31. <https://online-journal.unja.ac.id/RR/article/view/7457>.
- Utami, Defanti Putri, and Finza Khasif Ghifarani. "Perkawinan Campuran Di Indonesia Ditinjau Dari Hukum Islam Dan Hukum Positif." *MASADIR: Jurnal Hukum Islam* 1, no. 2 (2021): 156–75. <https://doi.org/10.33754/masadir.v1i2.372>.
- Werdiningsih. "Asas Publisitas Perjanjian Perkawinan (Post Nuptial Agreement): Konsep Kepastian Dan Perlindungan Hukum Bagi Pihak Ketiga." *Jurnal Ilmu Kenotariatan* 4, no. 1 (2023): 45–64. <https://doi.org/10.19184/jik.v4i1.38537>.
- Widanarti, Herni. "Akibat Hukum Perkawinan Campuran Terhadap Harta Perkawinan (Penetapan Pengadilan Negeri Denpasar No: 536/Pdt.P/2015/Pn.Dps.)." *Diponegoro Private Law Review* 2, no. 1 (2018): 343–54. <https://ejournal2.undip.ac.id/index.php/dplr/article/view/2827>.
- Yastika, I Wayan Ika Suyun, I Nyoman Putu Budiarta, and Ni Made Pupspasutari Ujianti. "Akibat Hukum Perceraian Pada Perkawinan Campuran." *Jurnal Analogi Hukum* 1, no. 3 (2019): 390–95. <https://doi.org/10.22225/ah.1.3.2019.390-395>.