

LEGAL STUDY ON LAND OWNERSHIP RIGHTS OF INDONESIAN CITIZENS AS A RESULT OF MIXED MARRIAGES (CASE STUDY OF CONSTITUTIONAL COURT DECISION NO. 69/PUU/XIII/2015)

Dhanna Asha Audria Budi¹, R. Ismala Dewi²

^{1,2} Master of Notarial Law Postgraduate Program, Faculty of Law,
Universitas Indonesia

¹dhannaasha@gmail.com, ²ridewi@ui.ac.id

Article Info

Received: 2024-07-10

Revised: 2024-09-21

Accepted: 2024-11-09

Keywords: Land Rights; Mixed Marriage; Marital Agreement; Justice

Abstract

Mixed marriages in Indonesia often lead to legal complications, one of which concerns the commingling of assets that results in the erosion of the land ownership rights of Indonesian citizens (WNI). This issue arose because, prior to the issuance of Constitutional Court Decision No. 69/PUU-XIII/2015, the prevailing regulations did not allow WNI to enter into a prenuptial agreement after the marriage had taken place. Notably, not everyone understands the legal consequences of mixed marriages, which may lead to the absence of a prenuptial agreement before marriage. With the issuance of Constitutional Court Decision No. 69/PUU-XIII/2015, it is now possible to create a postnuptial agreement after the marriage has been solemnized. The purpose of this study is to analyze the issues surrounding land ownership rights arising in mixed marriages in Indonesia and to explore the solutions developed to achieve justice for all WNI without exception. The research employs a normative juridical or doctrinal approach, relying on secondary or library-based data. The findings indicate that the provisions on land ownership for WNI in

mixed marriages prior to the Constitutional Court Decision No. 69/PUU-XIII/2015 triggered significant controversy, as they were perceived as inconsistent with the principles of justice for WNI, particularly those engaged in mixed marriages without a prenuptial agreement. Following this decision, the regulations concerning marital agreements in mixed marriages were amended, allowing for the execution of postnuptial agreements. This development provides a viable solution to the issues of joint property in mixed marriages for those who had not entered into a prenuptial agreement before marriage, thereby fostering justice for all WNI.

1. Introduction

Indonesian citizens (WNI) in mixed marriages should be allowed to create marital agreements after the marriage has been solemnized. This principle is based on Constitutional Court Decision No. 69/PUU-XIII/2015, which upholds the principle of Equality Before the Law by ensuring equal rights for WNI in mixed marriages and those marrying fellow Indonesian citizens.

Mixed marriages present issues of differential treatment between WNI in mixed marriages and those marrying fellow citizens. Prior to the issuance of Constitutional Court Decision No. 69/PUU-XIII/2015, the prevailing regulations did not provide WNI in mixed marriages the opportunity to create postnuptial agreements to separate assets. Consequently, WNI in mixed marriages without such agreements faced a lack of solutions for this inequitable treatment. In practice, not everyone is aware of the legal consequences of mixed marriages, leading many WNI in such marriages to forego entering into a marital agreement before the marriage takes place.

"Equality before the law" is a legal principle emphasizing that all individuals, regardless of social, economic, or political status, are entitled to equal respect and treatment under the law. This principle ensures that every individual has equal access to justice and fair legal treatment, and it prohibits discrimination in the application of the law.¹

Indonesia, with its diverse population in terms of religion, ethnicity, and culture, coupled with advancements in technology, serves as a gateway connecting

¹ United Nations, "International Covenant on Civil and Political Rights," art. 14, 1966.

the nation to various differences, including relationships with foreign nationals (WNA). Over time, marriages are no longer confined to individuals sharing the same nationality. In reality, many Indonesian citizens (WNI) eventually marry foreign nationals. Nonetheless, such marriages do not diminish the loyalty of these WNI to the Indonesian state. Their loyalty and love for Indonesia are demonstrated by maintaining their Indonesian citizenship.

Such marriages are referred to as mixed marriages, as stipulated in Article 57 of Law No. 1 of 1974 on Marriage. This article defines mixed marriage as a marriage between two individuals who, in Indonesia, are subject to different legal systems due to differences in nationality, with one party holding Indonesian citizenship.²

Mixed marriages give rise to several legal consequences, including those affecting the wife, marital assets, and children. Joint marital property refers to assets acquired by the husband and wife during the marriage, including gifts of money or other items to the couple, as well as assets purchased using funds from the combined earnings or savings of the husband and wife. Such assets are categorized as joint property.³

In practice, many mixed marriages between Indonesian citizens (WNI) and foreign nationals (WNA) are conducted without marital agreements or asset separation agreements prior to the marriage, leading to the automatic pooling of property between WNI and WNA spouses. This mingling of assets results in WNI-owned property automatically becoming the property of the WNA party in the marriage.

This scenario violates Article 21 of the Basic Agrarian Law (UUPA), which stipulates that only Indonesian citizens have the right to own land with Ownership Rights in Indonesia.⁴ The prohibition on foreign nationals (WNA) owning land in Indonesia is primarily aimed at safeguarding national sovereignty, ensuring national security, and maintaining the continuity of national development. This principle is reflected in Law No. 5 of 1960 on Basic Agrarian Principles, which generally prohibits land ownership by WNA.⁵ Therefore, WNI in mixed marriages without a marital agreement for asset separation are unable to acquire Ownership Rights to land in Indonesia. This results in the erosion of rights that should be granted to them as Indonesian citizens.

The impossibility for WNI who marry foreign nationals to own land in Indonesia raises important questions regarding their rights as citizens. This restriction, while linked to national security and the protection of land sovereignty,

² Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Pasal 57.

³ Liky Faizal, "Harta Bersama Dalam Perkawinan", Jurnal Pengembangan Masyarakat Islam, hlm 83

⁴ Aslan Noor, 2006, *Konsepsi Hak Milik Atas Tanah Bagi Bangsa Indonesia*, CV Mandar Maju, Bandung, hal. 85.

⁵ Undang-Undang Nomor 5 Tahun 1960 tentang Pokok Agraria, Pasal 21

appears to undermine the rights of WNI. Despite the legitimate goals behind these restrictions, such as national security, they create a dilemma concerning the constitutional rights of citizens to freely own, use, and control land. These limitations can be seen as a degradation of WNI's rights, given that land ownership is a fundamental aspect of citizenship. Therefore, the balance between safeguarding national interests and protecting citizens' fundamental rights must be further examined to ensure that such policies do not unjustly undermine their constitutional rights.

The provisions that differentiate between WNI who marry fellow WNI and those who engage in mixed marriages are often criticized as discriminatory and inconsistent with the constitutional rights of WNI to receive recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law, as outlined in Articles 27 and 28D(1) of the 1945 Constitution.⁶ This situation is also considered a violation of Article 28I(2), which states: "(2) Every person has the right to be free from any form of discriminatory treatment and has the right to protection against such discriminatory treatment." In the 1945 Constitution amendments, the theory of *Equality Before the Law* is reflected in Article 27(1), which states: "All citizens are equal before the law and the government and must uphold the law and government without exception."

Provisions in the Basic Agrarian Law (UUPA) that differentiate between WNI based on marital status conflict with the 1945 Constitution. The term "Indonesian Citizen" in the UUPA is interpreted as "WNI who are not married or WNI who marry fellow WNI," which contradicts the broader meaning established in the 1945 Constitution. This definition also conflicts with Article 2 of Law No. 12 of 2006, the Citizenship Law, and Article 26(1) of the 1945 Constitution, which states that citizens are individuals of Indonesian descent and foreign nationals who are legally recognized as citizens.⁷

2. Research Method

The purpose of this research is to analyze the issues surrounding land ownership rights that arise in mixed marriages in Indonesia, as well as the solutions created to achieve justice for all WNI, without exception. To address these issues, the research employs a normative juridical approach. The findings are based on the analysis of secondary data, including laws and regulations, court decisions, literature, and legal doctrines.

The writing structure begins with a discussion of the background and problems related to land ownership rights that existed prior to the regulations governing land ownership for WNI in mixed marriages without preuptial

⁶ Undang-Undang Dasar Republik Indonesia Tahun 1945, Pasal 27 dan Pasal 28 D ayat 1.

⁷ Putusan Mahkamah Konstitusi No 69/PUU-XIII/2015

agreements, before the issuance of Constitutional Court Decision No. 69/PUU-XIII/2015. Further discussion explores the application of the principle of “Equality Before the Law” in this context, viewed through the definition of citizenship under the 1945 Constitution. Following this, the research examines the solutions brought about by the issuance of Constitutional Court Decision No. 69/PUU-XIII/2015. The research seeks to determine whether this decision has provided sufficient solutions or if there are still further obstacles that need to be addressed.

3. Results And Discussion

3.1. Issues of Land Ownership Rights for WNI in Mixed Marriages Without Prenuptial Agreements Prior to Constitutional Court Decision No. 69/PUU-XIII/2015

In Indonesia, the principle of nationality serves as the foundation for regulations governing land ownership. This principle is reflected in Law No. 5 of 1960 on Basic Agrarian Principles. Article 20(1) of the law states that Ownership Rights (Hak Milik) are the most comprehensive, strongest, and inheritable rights that individuals can have over land. Furthermore, Article 21 stipulates the restriction on land ownership, specifying that Ownership Rights can only be held by Indonesian citizens (WNI).⁸ The principle of nationality aims to safeguard land sovereignty and protect national interests by preventing foreign ownership of land, which could impact the country's economy, security, and sustainable development. The implementation of this principle in land ownership involves restrictions on ownership, special permit requirements, and mandates for productive use of the land. The principle of nationality, particularly concerning WNI in mixed marriages, can have significant implications for land ownership rights.

Marriage is a form of “bond” between a man and a woman.⁹ The bond referred to is governed by laws that are applicable in society, known as “marriage law” a set of regulations that regulate and impose sanctions on the behaviour of individuals within marriage.¹⁰ Law No. 1 of 1974 on Marriage (UU No. 1 of 1974) outlines various legal consequences, including the rights and obligations of individuals during the marriage, responsibilities toward children, and implications for joint assets. In this context, marriage, as a legal institution, produces valid legal effects, including those related to mixed

⁸ Maria S.W. Sumardjono, *Pengaturan Hak Atas Tanah Beserta Bangunan Bagi Warga Negara Asing dan Badan Hukum Asing*, Jakarta: Penerbit Buku Kompas, 2007, hlm. 1

⁹ Hilman Hadikusuma, “*Hukum Perkawinan Indonesia, Menurut Perundangan, Hukum Adat, Hukum Agama*” (Jakarta: Mandar Maju, 2007)

¹⁰ Achman Ihsan, *Hukum Perkawinan Bagi Mereka Yang Beragama Islam, Suatu Tinjauan dan Ulasan Secara Sosiologi Hukum* (Jakarta: Pradnya Paramita, 1986).

marriages. In mixed marriages, legal consequences arise concerning the legal relationship between the spouses, the impact on marital property, and the legal connection between parents and children.¹¹

Marriage results in the pooling of assets, meaning the combination of property acquired by both spouses. In marital law, the principle of community property is applied in some jurisdictions, stating that property acquired during the marriage becomes jointly owned by both spouses.¹² This includes income, property, and other assets acquired during the marriage. However, the pooling of assets can be avoided or modified through a marital agreement. A marital agreement, also known as a prenuptial agreement or prenup, is a written contract between the prospective spouses created before marriage. In this agreement, the couple can establish financial arrangements, including those related to joint property. One of the issues that arises concerns the formation of joint property as a legal consequence of marriage.¹³

Before the issuance of Constitutional Court Decision No. 69/PUU-XIII/2015, marital agreements could be made either before or at the time of marriage, as stipulated in Article 29(1) of the Marriage Law, which states: "At the time or before the marriage is conducted, both parties may enter into a written agreement, validated by the marriage registrar, after which it is also binding on third parties involved." This marital agreement applies between the husband and wife at the time of marriage and cannot be altered in any way thereafter.¹⁴ This was intended to prevent potential harm to third parties and to ensure legal certainty regarding the integrity of marital property, which could not be altered through changes to marital agreements. As a result, the pooling of assets between spouses occurred automatically. Without a marital agreement stipulating the separation of property, it was not possible to divide assets between them after marriage.

The legal impact on assets in mixed marriages includes ownership of immovable property, such as land, along with anything naturally attached to the land, through human actions, or as a result of specific uses or purposes. According to Law No. 5 of 1960 on Basic Agrarian Principles, only Indonesian citizens (WNI) are allowed to hold Ownership Rights (Hak Milik) to land. Foreign nationals (WNA) face significant difficulty in acquiring land or

¹¹ Herni Widanarti, Akibat Hukum Perkawinan Terhadap Harta Perkawinan (Penetapan Pengadilan Negeri Denpasar N0.536/Pdt.P/2015/PN.Dps), *Dipenegoro Private Law Review*, Vol.2, No.1, Maret 2018.

¹² Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Pasal 35 ayat (1)

¹³ Adhitya Dimas Pratama, "Kedudukan Kepemilikan Hak Atas Tanah Dalam Perkawinan Campuran Tanpa Adanya Perjanjian Pisah Harta". *Jurnal Panorama Hukum*, Vol.3, No.2, Desember 2018.

¹⁴ Kitab Undang-Undang Hukum Perdata, Pasal 147 ayat (2) dan Pasal 149.

buildings with Ownership Rights status.¹⁵ This is because, according to Article 26(1) of Law No. 12 of 2006 on Citizenship, "A WNI woman who marries a foreign national loses Indonesian citizenship if, according to the laws of her husband's country of origin, her citizenship follows that of her husband as a result of the marriage."

If a WNI marries a foreign national and acquires assets, such as Ownership Rights (Hak Milik), Right to Build (Hak Guna Bangunan – HGB), Right to Cultivate (Hak Guna Usaha – HGU), or Ownership Rights to Strata Title Units (Hak Milik atas Satuan Rumah Susun – HMSRS), through inheritance, purchase, donation, or any other means, they are required to relinquish their rights by selling or donating the land within a maximum of 1 (one) year from the date of receiving those rights.¹⁶ If the land rights are not transferred within the specified time frame, those rights will be nullified, and the land will revert to the control of the state.¹⁷

The provisions above, in their practical implications, lead to issues for certain individuals. The aforementioned article is perceived as detrimental and inconsistent with the 1945 Constitution, particularly Article 28H(4), which states that "every person has the right to private ownership, and such ownership cannot be arbitrarily taken by anyone." The term "every person has the right" implies that no exceptions should apply, and that the individuals in question are Indonesian citizens who do not hold dual citizenship and have not lost their nationality, as outlined in Articles 23(a) and (b) of Law No. 12 of 2006 on Citizenship.

The phrase "Warga Negara Indonesia" (Indonesian citizen) in the Agrarian Principles Act (UUPA) is not interpreted in the same manner as outlined in Article 26(1) of the 1945 Constitution, which defines citizens as both native Indonesians and individuals from other nations who have been recognized by law as Indonesian citizens. The definition of "WNI" in the UUPA refers to individuals who are either unmarried or married to fellow Indonesian citizens.

However, many WNI who engage in mixed marriages do not lose their Indonesian nationality; they remain loyal and committed to Indonesia. Yet, due to marriage with a foreign national, they are required to forfeit their rights as Indonesian citizens. This creates discriminatory treatment and a distinction between WNI who are either unmarried or married to fellow Indonesians and

¹⁵ Rangga Raditya, Kedudukan Harta Suami Dan Istri Yang Berupa Tanah Di Dalam Perkawinan Campuran Sesudahnya Berlaku Undang-undang No. 1 Tahun 1974., diakses dari <https://lib.atmajaya.ac.id/default.aspx?tabID=61&sr c=k&id=178056>, pada tanggal 25 Oktober 2023, Pukul 14.08 WIB

¹⁶ Irma Devita Purnamasari, Kiat-kiat Cerdas, Mudah dan Bijak Memahami Masalah Hukum Waris, Bandung, Mizan Pustaka, 2014, hlm. 166.

¹⁷ Pasal 21 ayat (3) Undang-Undang Nomor 5 Tahun 1960 tentang Pokok Agraria

WNI who marry foreign nationals. In other legal provisions, the term "WNI" is not restricted to non-married individuals or those married to fellow Indonesians.

Those affected by these provisions often feel discriminated against, having their constitutional rights violated as stipulated in Article 28D(1) of the 1945 Constitution, which guarantees "every person the right to recognition, guarantees, protection, and legal certainty that is fair and equal before the law." Article 21(3) of the UUPA, when interpreted, implies that WNI who marry foreign nationals must forfeit their rights and cannot own land or buildings. This clearly undermines the principles of recognition, guarantees, protection, and legal certainty that are intended to ensure fair and equal treatment before the law (equality before the law).

Although Article 29(1) of the Marriage Law is intended to provide legal certainty for parties entering into marriage agreements to prevent undesirable consequences from occurring before or during marriage, the prohibition on foreign nationals owning land and buildings remains problematic. Directly and indirectly, the current legal provisions have aligned with the objective of the national legal framework, which is to provide protection and legal certainty for all Indonesian citizens regarding land ownership, as well as to prevent misuse by foreign parties potentially acquiring land. However, these issues still leave significant challenges for Indonesian citizens who are involved in mixed marriages without prenuptial agreements, where existing legal provisions do not offer fair and adequate solutions for them.

In the context of Indonesian law, issues related to land ownership are particularly significant for WNI (Indonesian citizens) in mixed marriages without prenuptial agreements before the issuance of Constitutional Court Decision No. 69/PUU-XIII/2015. Several problems emerge, including legal uncertainty, unequal treatment in ownership, and limited legal protection. The complex legal process and ambiguous interpretations further complicate WNI's efforts to protect their land ownership rights.

Additionally, the impact of these issues is felt not only by individuals but also affects the social and economic stability of their families. Concerns about unclear land ownership can lead to internal conflicts within families and create uncertainty that could disrupt economic stability. These conflicts and uncertainties not only affect the individuals involved but also have broader repercussions for the well-being and unity of the family unit.

Therefore, further efforts are needed to find fair and comprehensive solutions to address these problems. Such solutions must uphold the principles of justice and equality before the law, providing adequate protection for WNI who marry foreigners. In this context, the government and

relevant institutions should consider human rights and constitutional principles to create policies that ensure legal certainty and fair protection for all Indonesian citizens.

3.2. Land Ownership Rights for Indonesian Citizens in Mixed Marriages After the Constitutional Court Decision No. 69/PUU-XII/2015

As the holder of judicial power, the Constitutional Court of the Republic of Indonesia has the authority and duty to conduct Judicial Review, or the reexamination and testing of regulations and decisions made by the legislative and executive bodies. This is regulated in Article 24C of the 1945 Constitution of the Republic of Indonesia. Judicial Review is one of the powers and duties held by the judiciary and other bodies appointed by the state to review and interpret laws and the constitution, providing solutions to legal problems.¹⁸

Judicial review, which takes place in one judicial proceeding, commonly referred to as judicial review, begins with a petition and concludes with a decision. The decision is the written opinion of the constitutional judges regarding the dispute over the interpretation of a norm or principle within the Constitution that is concretized in statutory provisions as the implementation of the state's goals mandated by the Constitution.¹⁹

One example of a judicial review petition is the one filed by Ida Farida against Law No. 5 of 1960 on the Basic Agrarian Law and Law No. 1 of 1974 on Marriage through judicial review with Case No. 69/PUU-XIII/2015. This judicial review addressed the issues of Land Rights and Building Rights for WNI (Indonesian citizens) married to WNA (foreign nationals), resulting in new provisions and possibilities to address the problems faced by many WNI with mixed marriages in Indonesia.

Ike Farida is an individual WNI who felt disadvantaged by the provisions of Articles 21(1), 21(3), Article 36(1) of the Basic Agrarian Law (UUPA), and Articles 29(1), 29(3), 29(4), and Article 35(1) of the Marriage Law, as these provisions eliminated the applicant's right to own Land Rights and Building Rights. The petition was based on the applicant's frustration and the experiences of many WNI in mixed marriages without prenuptial agreements. The applicant felt disadvantaged when the purchase of an apartment was

¹⁸ Nurul Qamar, "Kewenangan Judicial Review Mahkamah Konstitusi", Jurnal Konstitusi, Vol. I, No. 1, November 2012, hlm 2

¹⁹ Maruarar Siahaan, "Peran Mahkamah Konstitusi dalam Penegakan Hukum Konstitusi", JURNAL HUKUM NO. 3 VOL. 16 JULI 2009: 357 – 378, hlm

annulled after full payment was made, citing the reason that the applicant's spouse was a foreign national.²⁰

How vital and valuable it is to have control over the right to land titled "Hak Milik," which legally holds the strongest and most comprehensive position, granting the owner the ability to defend their rights against any party. However, this does not mean that the strongest and most comprehensive nature of ownership makes it an unquestionable, unlimited, and non-contestable right. Under certain circumstances, the right of ownership is also subject to limitations.²¹

Marriage agreement is a written agreement between a prospective husband and wife, documented as a legal contract, aimed at regulating their rights and obligations during marriage. This agreement may cover various aspects, including property separation, financial responsibilities, and provisions related to family matters and inheritance.²² According to Article 147 of the Burgerlijk Wetboek (Civil Code), a marriage agreement must be made in the form of a notarial deed.²³ This is done to ensure the validity of the marriage agreement and to prevent hasty decisions, as this agreement will be valid for a lifetime, ensuring legal certainty. It helps to prevent any potential tampering with valid evidence.

The Constitutional Court Decision No. 69/PUU-XIII/2015 partially granted the petition by broadening the interpretation of prenuptial agreements, particularly concerning the phrase "during the marriage" and leaving other provisions unchanged. The phrases "at the time or before the marriage" in Article 29(1), "since the marriage was solemnized" in Article 29(3), and "during the marriage" in Article 29(4) of the Marriage Law were seen as limiting the freedom of two individuals to agree on when such agreements should be made. Therefore, these phrases were deemed to conflict with Article 28E(2) of the 1945 Constitution, as stated by the petitioners. Consequently, the phrases "at the time or before the marriage" in Article 29(1) and "during the marriage" in Article 29(4) of the Marriage Law were conditionally declared unconstitutional, as long as they are not interpreted to include the entire duration of the marriage.

Article 3 of Government Regulation No. 103 of 2015 states that WNI (Indonesian citizens) who marry WNA (foreign nationals) still retain ownership rights to land equivalent to WNI who do not engage in mixed

²⁰ Putusan Mahkamah Konstitusi No. 69/PUU/XIII/2015

²¹ Darwin, "Analisa Kasus Atas Putusan Mahkamah Agung Nomor 1134/PDT/2009 Tentang Kepemilikan Hak Milik yang Kemudian Subjeknya Diketahui Sebagai Warga Negara Asing Atas Dasar Wasiat", *Premise Law Journal*, vol 7, 2016

²² Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan, Pasal 29

²³ *Burgerlijk Wetboek*, Buku I, Bab I, Pasal 147, www.website-ojk.xyz/burgerlijk-wetboek

marriages. These land rights can still be registered under their names on certificates of ownership as proof of ownership. The requirement for WNI engaged in mixed marriages is that their land must not be considered joint property. In this context, WNI married to WNA must separate their land rights to prevent it from being considered joint property. This separation process requires proof in the form of a notarial deed of separation of property.

From the explanations above, it can be concluded that through the case of petitioner Ike Farida, a new provision arose, affirming regulations regarding the ownership of residential properties by foreigners in Indonesia, specifically Government Regulation No. 103 of 2015. Its primary aim is to address uncertainty and injustice related to land ownership regulations, especially concerning WNI and WNA marriages, thereby mitigating potential losses for WNI and providing solutions to related issues.

Additionally, based on the Constitutional Court's decision, prenuptial agreements are no longer limited to those made before or during the marriage. They can also be made after the marriage has taken place. Consequently, the Constitutional Court decision provides greater flexibility in establishing prenuptial agreements.

Although this decision provides legal guidance on several aspects, some issues remain unresolved post-decision. One such issue is the implementation on the ground, which may not be fully consistent. There is still a possibility of uncertainty or differing interpretations at the implementation level, especially regarding the details of property separation. While the Constitutional Court decision emphasizes the rights of both spouses in mixed marriages, the specific details of property separation remain unclear in practice, leading to ambiguity and uncertainty.

Furthermore, the decision must ensure the protection of women's rights, particularly regarding property separation and their economic security in mixed marriage contexts.

To address these issues, close collaboration between relevant institutions, the government, and other stakeholders is needed. Concrete steps and more detailed implementing regulations may be necessary to ensure fair and uniform implementation across society. These efforts will help ensure that the Constitutional Court Decision is applied correctly and effectively, providing protection for all parties involved, thus creating a clear and just legal environment for mixed marriages in Indonesia.

4. Conclusion

The ownership of land under the Right to Own (Hak Milik) for WNI (Indonesian citizens) in mixed marriages in Indonesia, prior to the issuance of

Constitutional Court Decision No. 69/PUU-XIII/2015, was deemed unjust for WNI in mixed marriages who did not establish a prenuptial agreement before the marriage. This is because, without a prenuptial agreement for the separation of property, WNI in mixed marriages could not have ownership rights to land in Indonesia, as it was presumed to result in joint property, thereby indirectly allowing a foreign national spouse to have ownership rights to land in Indonesia. Prenuptial agreements, however, could only be executed before marriage.

The issuance of Constitutional Court Decision No. 69/PUU-XIII/2015 allowed WNI in mixed marriages to enter postnuptial agreements, meaning agreements made after the marriage has taken place. As a result, WNI in mixed marriages can still enjoy the same rights and treatment as other WNI regarding land ownership, as their property ownership will remain personal and will not lead to foreign nationals acquiring ownership rights to land in Indonesia.

Despite this resolution regarding WNI's land ownership rights, several potential issues remain after the Constitutional Court decision. Uneven implementation on the ground has led to uncertainty and differing interpretations. Uncertainty regarding the details of property separation, particularly regarding the rights of spouses, is another issue that requires further attention. To address these challenges, collaboration between relevant institutions, the government, and other stakeholders is essential to ensure that the Constitutional Court decision is implemented correctly and fairly across all sectors of society.

References

- Darwin, Darwin. "Analisa Kasus Atas Putusan Mahkamah Agung Nomor 1134/pdt/2009 Tentang Kepemilikan Hak Milik yang Kemudian Subjeknya Diketahui sebagai Warga Negara Asing Atas Dasar Wasiat." *Premise Law Journal*, vol. 7, 2016.
- Faizal, Liky. "Harta Bersama Dalam Perkawinan." *Jurnal Pengembangan Masyarakat Islam, Ijtima'iyah*, Vol. 8, No. 2 Agustus 2015.
- Hadikusuma, Hilman. "Hukum Perkawinan Indonesia, Menurut Perundangan, Hukum Adat, Hukum Agama." Jakarta: Mandar Maju, 2007.
- Ihsan, Achman. *Hukum Perkawinan Bagi Mereka Yang Beragama Islam, Suatu Tinjauan dan Ulasan Secara Sosiologi Hukum*. Jakarta: Pradnya Paramita, 1986.
- Noor, Aslan. *Konsepsi Hak Milik Atas Tanah Bagi Bangsa Indonesia*. CV Mandar Maju, 2006.
- Pratama, Adhitya Dimas. "Kedudukan Kepemilikan Hak Atas Tanah Dalam Perkawinan Campuran Tanpa Adanya Perjanjian Pisah Harta." *Jurnal Panorama Hukum* 3, no. 2 (Desember 2018).
- Purnamasari, Irma Devita. *Kiat-kiat Cerdas, Mudah dan Bijak Memahami Masalah Hukum Waris*. Bandung: Mizan Pustaka, 2014.

- Qamar, Nurul. "Kewenangan Judicial Review Mahkamah Konstitusi." *Jurnal Konstitusi* Vol. I, No. 1 (November 2012): 2.
- Raditya, Ranga. "Kedudukan Harta Suami Dan Istri Yang Berupa Tanah Di Dalam Perkawinan Campuran Sesudahnya Berlaku Undang-undang No. 1 Tahun 1974." Diakses dari <https://lib.atmajaya.ac.id/>.
- Siahaan, Maruarar. "Peran Mahkamah Konstitusi dalam Penegakan Hukum Konstitusi." *Jurnal Hukum* No. 3, Vol. 16 (Juli 2009).
- Sumardjono, Maria S.W. *Pengaturan Hak Atas Tanah Beserta Bangunan Bagi Warga Negara Asing dan Badan Hukum Asing*. Jakarta: Penerbit Buku Kompas, 2007.
- Widanarti, Henri. "Tinjauan Yuridis Akibat Perkawinan Campuran Terhadap Anak." *Diponegoro Private Law Review* Vol. 4, No. 1 (February 2019).

Regulations and Legal Decisions

- Undang-Undang Dasar Republik Indonesia Tahun 1945.
- United Nations, "International Covenant on Civil and Political Rights," art. 14, 1966.
- Kitab Undang-Undang Hukum Perdata.
- Burgerlijk Wetboek. Kitab Undang-Undang Hukum Sipil Belanda.
- Undang-Undang Nomor 5 Tahun 1960 tentang Pokok Agraria. Lembaran Negara Republik Indonesia Nomor 33, Tambahan Lembaran Negara Nomor 2041
- Republik Indonesia. Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan. Lembaran Negara Tahun 1974 Nomor 1, Tambahan Lembaran Negara Nomor 3037.
- Putusan Mahkamah Konstitusi No. 69/PUU/XIII/2015