

Analysis of Joint Property Division in Mixed Marriages: A Case Study of The Supreme Court Decision Number 1400 K/Pdt/2017 Perspective of International Private Law

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ABSTRACT

This study seeks to evaluate the effectiveness of Indonesia's Law Number 1 of 1974 on Marriage, specifically concerning the division of joint property in mixed marriages that involve aspects of international civil law. Supreme Court Decree Number 1400 K/Pdt/2017 offers a key reference point, showcasing how Indonesian law has been applied to govern property division in these cases. The study applies a normative juridical approach to examine legal norms and standards, including legislative analysis of the Marriage Act and the Basic Agrarian Law. It also uses case-based methods to assess international civil law's impact, such as the principle of *lex situs*, which mandates that immovable property like land be governed by the laws of its location. This Supreme Court ruling reveals an attempt to balance Indonesian law with foreign property rights, ensuring that foreign nationals' rights are acknowledged in property division. Such cases underscore the importance of reforming Indonesia's mixed marriage laws to enhance legal clarity and fairness for all parties.

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1. INTRODUCTION

Mixed marriages, where an Indonesian citizen (WNI) marries a foreign citizen (WNA), are common in Indonesian society. This type of marriage involves two different legal systems and can cause various problems, especially related to the division of property during a divorce. When a married couple with different nationalities decides to divorce, the main issue that usually arises is how to divide the assets they purchased during the marriage. Wealth is considered

together with the property if couple does not marry before or at the time of marriage. However, if to property was purchased before the marriage, it is still considered the individual property of each partner [1].

Mixed marriages that occur overseas is not regulated by Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage. Law Number 1 of 1974 concerning Marriage, enacted on January 2, 1974, and effective from October 1, 1975, is one type of Indonesia's marriage law with its legal consequences. Many marriages

nowadays end in divorce. Marriage is no longer considered something sacred, so divorce is seen as normal and not taboo. Even some people use divorce as a way to boost their popularity. Therefore, divorces are increasingly occurring among both the general public and the intellectual elite [2].

Act No. 16 of 2019 on Amendments to Act No. 1 of 1974 on Marriage, also known as Marriage Regulations (UUP) in Indonesia, regulates marriage. Article 1 of the Marriage Law defines marriage as: "Marriage is spiritual and physical the bond of husband and wife between a man and a woman with the aim of creating a happy family and everlasting family or home based on faith in one and only God." Based on this definition, marriage is considered a formal relationship that can be observed because it is formed according to the law [3].

Two people who do not share the same nationality often face legal issues, especially regarding the division of joint property. Supreme Court Decision Letter No. 1400 K/Pdt/2017 is an important example for understanding how Indonesian law regulates the division of joint property in mixed marriages. The focus of this research is to determine the legal consequences of this decision, as well as how it may impact mixed-marriage couples in Indonesia [4].

In the current era of globalization, more and more couples with different nationalities are getting married. This phenomenon has many problems. The most important thing is how to manage the shared property acquired during the marriage. Law Number 1 of 1974 on Marriage regulates the division of joint property in marriage under Indonesian law; however, this regulation often causes problems when applied to mixed marriages involving elements of international civil law. When the mixed marriage ends, whether because of separation or other reasons, the division of shared property is very important [5].

Decision of the Supreme Court Case Number 1400 K/Pdt/2017 shows how international civil law is applied in resolving joint property disputes in mixed marriages. This decision is interesting to study because it

involves the interpretation of rules applicable in Indonesia and abroad. Indonesia often faces problems balancing its own laws and obligations abroad, especially in mixed marriages involving cross-border assets [6].

With the increasing number of marriages between Indonesian citizens and foreign nationals, division joint property in mixed marriages has become an increasingly important legal issue in Indonesia. Often, mixed marriages present complex legal issues, especially regarding the management of joint property. Various forms of assets, such as bank accounts, property, and land, can become joint property of the couple. However, differences in legal systems between the countries participating in the marriage can affect how this property is divided [7].

Number One Act of 1974 on Marriage, along with the principle contained in Civil Code, controlled by division from joint property in Indonesia. However, when involving foreign partners, questions arise about the application of international civil law and how current regulations can accommodate the needs and rights of each party. In this context, it is important to understand how the applicable legal standards can interact and how court decisions affect rights the parties in the division of joint property [8].

This research examines how the Supreme Court applies the principles of international civil law in its decisions, as well as the legal implications for the parties involved. Additionally, this study discusses how national and international rules interact, and the importance of prenuptial agreements for mixed-marriage couples to prevent future legal conflicts [9].

The main focus of this research is how the Supreme Court applies international civil law in its decisions, and whether those decisions are in accordance with the law. The aim of this research is to enhance our understanding of how international civil law regulates division of joint property in mixed marriages and the legal implications for the parties involved [10].

2. METHODS

The normative juridical this method is used. research to analyze and study the applicable legal norms. This research uses legislation, court decisions, and other legal documents to understand and evaluate the application of law in specific contexts, such as the sharing of wealth in a mixed marriage. The normative juridical method focuses on the analysis of applicable legal norms in this context. The methods used include a legislative approach to review national legal regulations, such as Law Number 1 of 1974 on Marriage and the Basic Agrarian Law (UUPA), and a case approach to review the application of international civil law in the decision [11].

Primary data interviews with legal experts and Supreme Court rulings and secondary data come from official documents and legal literature. To collect data, literature review and case analysis were used. They will analyze the data to determine whether the legal standards align with the facts of the case and what the legal consequences of the court's decision are. It is expected that the analysis results will yield conclusions and recommendations regarding the division of joint property in mixed marriages and the importance of creating a prenuptial agreement [12].

3. RESULTS AND DISCUSSION

3.1 *Applicable Legal Provisions Regarding the Division of Joint Property in Mixed Marriages According to International Civil Law in Indonesia?*

Marriage is not only a social and emotional bond between the married couple, but it also has material aspects, such as wealth used to meet daily needs. In every marriage, the husband and wife will acquire property generated from the work they do during the marriage, known as joint property. The concept of joint property encompasses all assets owned by the couple, regardless of who directly earned the money. In

marriage, the establishment of joint property reflects each party's rights and responsibilities regarding the property. During the marriage, both partners have equal rights to own and manage the joint property [13].

Regardless of whether the property owned by the spouses acquired from their work, often referred described as communal property in marriage, it is important for the marriage to establish "control over shared assets during the marriage still ongoing and the joint property split is completed."

However, the distribution of joint property turns into an important issue that needs to be addressed fairly when a marriage ends, whether through divorce or for other reasons. To ensure that each party receives an equal share or in accordance with the court's decision or agreement, this division is carried out based on applicable legal principles. Therefore, maintaining a balance of economic rights between the spouses in marriage requires the separation and control of shared assets [14].

Law Number 1 of 1974 Concerning Civil Code and Marriage (KUH Perdata) regulates the division of joint property in marriage in Indonesia. Unless there is a prenuptial agreement stating otherwise, the property owned by the couple is considered joint property. However, in the case of mixed marriages when a foreign national makes up one side of the rights of the foreign spouse are limited by Indonesian law, especially those related to land ownership.

In interracial unions in Indonesia, the division of shared assets is regulated by several provisions that interact, both from national law and principles of international civil law. Marriage Law Number 1 of 1974 defines shared assets as all possessions owned by the couple during the marriage, unless

there is an agreement stating otherwise [15].

International civil law applicable in Indonesia recognizes the principle of *lex situs*, which means that immovable property, such as land, is governed by the laws of the nation in which the property is found. The Basic Agrarian Law (UUPA) of Indonesia states that foreign nationals are not permitted to own land. Therefore, in mixed marriages, although the foreign partner is qualified to receive a portion of the combined assets, they cannot own land as part of the allocation of shared assets. This principle provides a legal basis for the fair distribution of wealth while remaining in line with national legal limitations.

Decision Number 1400 K/Pdt/2017 of the Supreme Court is an example of how this provision can be applied. In this case, the Supreme Court decided that foreign couples cannot own joint property consisting of land due to the UUPA regulations. Therefore, the Court decided to provide the foreign couple with money as compensation for their share of the land property. Thus, the Court applied the principle of justice in the division of property while maintaining Indonesia's legal authority regarding land ownership [16].

According to Indonesian international civil law, there are several important elements that form the legal provisions with reference to the allocation of joint property in mixed marriages:

a. **Legal Basis Regarding the Distribution of Common Property:** Marriage Law Number 1 of 1974 stipulates that asset purchased by the couple Throughout the marriage is considered shared assets, unless there is an agreement stating otherwise. The Civil Code (KUH Perdata) provides further provisions

regarding ownership and the division of property [17].

- b. **Principle of International Civil Law:** The *Lex Situs* Principle is applied in mixed marriages where one party is a foreign national. According to this principle, immovable assets, such as land, are governed by the national laws of the nation in which they are situated. Therefore, foreign couples cannot directly own immovable property in Indonesia. However, for movable property, the law of the foreign party's country of origin can play a role in determining the ownership and distribution of that property.
- c. **Limited Land Rights:** The Basic Agrarian Law (UUPA) stipulates that foreign national do not have land rights in Indonesia. This affects the division of joint property because foreign spouses cannot claim land as part of the joint property. In cases where mixed couples have joint property that includes land, the Supreme Court often decides to grant monetary compensation to the foreign party as a substitute for land rights [18].
- d. **Supreme Court Decision:** A ruling like Number 1400 K/Pdt/2017 helps understand how international civil law is applied in cases of joint property division. In its decision, The Supreme Court underlined how crucial providing legal protection for foreign parties while still adhering to Indonesian law.
- e. **Advice for Mixed Couples:** Mixed couples are advised to create a clear prenuptial agreement to regulate the division of shared property and prevent future legal conflicts. Understanding the legal differences between the home countries of each partner can help

create better asset division solutions.

Therefore, couples who marry in mixed marriages in Indonesia must understand the legal complexities related to the allocation of shared assets to protect their rights in different legal contexts [19].

Overall, Indonesian international civil law challenges the separation of joint possession in mixed marriages due to various legal frameworks and restrictions related to land ownership by foreign nationals. Couples who marry in a mixed marriage must understand these regulations and consider making a clear prenuptial agreement to protect their rights to the division of joint property. This also shows that Indonesian legal regulations need to be changed or adjusted to better accommodate this complex legal situation.

3.2 *The implications of No. 1400 K/Pdt/2017, the Decision For the parties in a Mixed Marriage?*

Decision of the Supreme Court No. 1400 K/Pdt/2017 has significant consequences for couples in mixed marriages, especially regarding the division of joint property with foreign nationals. First, this decision affirms that the right to joint property for foreign couples cannot be realized in the form of land ownership in Indonesia. The Basic Agrarian Law (UUPA), which prohibits foreign nationals from owning land, regulates this. Thus, foreign spouses can only obtain a share of the joint property as financial compensation or non-land assets. This prevents future disputes by giving mixed couples legal clarity about the boundaries of their rights [20].

In the case of mixed marriages, a prenuptial agreement is very important. Couples can avoid disputes in the future if they agree on a prenuptial agreement that clearly

regulates the division of assets, especially immovable property like land. According to this Supreme Court decision, the applicable national law limits foreign couples' ownership of certain properties without a marriage agreement, which could disadvantage them if not anticipated from the beginning.

The applicable national law can limit the rights of foreign partners to certain assets, which can be detrimental to them if not anticipated from the beginning. Therefore, a prenuptial agreement is very important to protect the rights of mixed couples and prevent future disputes [21].

In addition, this decision shows that international legal rules related to cross-border assets must be taken into account. In mixed marriages, joint property often consists of assets in various countries, and the application of international civil law becomes important to determine which jurisdiction applies to the division of property. According to Decision No. 1400 K/Pdt/2017, national law will have full authority over assets owned by Indonesia, although international legal principles must be considered. Here are some important consequences of this decision:

- a. **Legal Certainty:** This decision provides legal certainty regarding the rights of partners in mixed marriages, especially in terms of the division of joint property. According to the Supreme Court, the rights of foreign couples over immovable property (such as land) remain limited according to Indonesian law even if joint property is recognized. This reduces the uncertainty often experienced by mixed couples regarding the status of their assets [22].

- b. Protection of Foreign Parties: By providing financial compensation as a substitute for land rights that cannot be owned by foreign spouses, the Supreme Court considers the rights of foreign parties. This decision demonstrates an effort in order to safeguard foreign parties' interests and create fairness in the allocation of shared resources.
- c. The Importance of a Prenuptial Agreement This decision highlights the importance for mixed couples to create a prenuptial agreement. Couples can avoid future conflicts by arranging the division of joint property according to mutually beneficial agreements with clear contracts. This agreement may include matters such as the arrangement of movable and immovable property and dispute resolution procedures [23].
- d. Future Legal Reforms: This decision could be a starting point for improving mixed marriage laws in Indonesia. There is a need to consider revising the current laws, particularly those connected to land rights and the separation of cooperative property, to make them more in line with social law and international law due to the complexities faced by mixed couples.
- e. Legal Education and Awareness: This decision also highlights the importance of legal education and legal awareness for mixed couples. Couples can be more proactive in protecting their legal interests by understanding their rights and obligations in a mixed marriage [24].

Couples can be more proactive in protecting their legal interests by understanding their rights and obligations within the context of Indonesian law and international law.

This includes understanding the limitations on foreign nationals owning land and the importance of making clear marriage agreements. High legal awareness among mixed couples will enhance dispute resolution and the protection of their rights in the future [25].

Overall, this decision provides guidelines for couples in mixed marriages regarding their rights and obligations in the allocation of shared assets. These couples must carefully evaluate the legal implications of asset ownership in Indonesia, especially related to land ownership regulations and the importance of a clear prenuptial agreement [26].

4. CONCLUSION

A study on as demonstrated by Supreme Court Decision No. 1400 K/Pdt/2017, international civil law practices, especially *lex situs*, influence the division of property in mixed marriages in Indonesia. In compliance with UUPA, the Basic Agrarian Law, foreign couples who marry in mixed marriages cannot own immovable property such as land in Indonesia. As a result, the Supreme Court must provide compensation in the form of money as a substitute for the land rights. This decision prevents future disputes by providing legal certainty regarding the division of property [27].

Moreover, the ruling underscores the importance of prenuptial agreements for mixed-nationality couples, especially regarding the division of joint property. This agreement protects the rights of both parties and prevents future legal conflicts, particularly due to the differing legal systems for couples of different nationalities.

In this decision, the Supreme Court successfully balanced national law enforcement by adjudicating foreign couples with financial compensation. This shows that, despite legal restrictions on land ownership by foreign citizens, the Court still considers their rights in the division of joint property,

providing better legal protection for all parties involved [28].

Overall, this research highlights the importance of updating the laws on Indonesian mixed-race marriages, especially regarding the allocation of shared assets, as the number of mixed couples is increasing. It is important to raise legal awareness in society and encourage couples to create marriage agreements that can better protect their rights.

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