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THE ISSUES OF LAND TENURE IN MIXED MARRIAGE

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Abstract

One of the problems in mixed marriages of different nationalities is joint property. Most mixed-married couples do not make property separation agreements because they are unaware that the Marriage Law governs them. The absence of a marriage agreement results in a mix of assets, which means that foreigners own half of the joint property. The provisions in the land law/ UUPA state that foreigners are prohibited from having land rights except for usufructuary rights and rental rights. This study applied the normative legal research method with a statutory and case-based approach. This study showed that if mixed marriage actors did not have a property separation agreement, Indonesian citizens' land rights ownership status was equal to that of the foreigners. Second, jurisprudence still required a separation of properties in mixed marriages. The agreement could be made before, during, or after the marriage. Third, marriage institutions could conduct legal smuggling to obtain land rights in Indonesia through borrowing names (nominees), usually carried out in an unregistered marriage.

Keywords: *Land Tenure; Joint Property; Mixed Marriages; Foreign Nationals.*

A. Introduction

Globalization has changed various aspects of people's lives around the world. It has integrated international interests in technological, economic, cultural, scientific, and other activities, resulting in increased cooperation between countries. National barriers or boundaries are no longer obstacles to the interaction between one country and another. Even with the ease of communication and transportation, this interaction occurs not only between countries but also between communities and individuals. One consequence of globalization is mixed marriages. On the other hand, it harms the ownership and tenure of Indonesian citizens' land.

Mixed marriages have become a current trend not only in Indonesia but also throughout the world. Hallet mentioned that mixed marriages increased sharply. For example, from 2001 to 2004, it increased by over 50% in Korea. In Taiwan in 2003, it was recorded to grow 32%, after which in Japan, from 1980 to 2000, it increased by 6.5 times (Ardans, 2017). Mixed marriages have also increased and become a trend in Indonesia. At the beginning of 2018, 1,200 Indonesian mixed marriage community members became the perpetrators of mixed marriage families, plus outside members of other communities and those abroad. The number of people in mixed marriages reached more than 3 million (Ardans, 2018). However, official data regarding mixed marriages in Indonesia is not yet available because the government does not record it, and it will continue to increase yearly.

Mixed marriages in Indonesia are dominated by Indonesian women who marry foreign nationals. Generally, mixed marriages occur in tourist and business cities such as Bali, Yogyakarta, Bandung, Malang, Manado, and Solo. Several reasons for mixed marriages are *firstly* due to economic factors, such as the increase in the number of transnational migrant workers; *secondly*, social factors, which are the increase in the frequency of social interactions between migrant workers and residents as a consequence of economic growth; and *thirdly,* socio-economic factors, where women who come from a poorer country seek to marry men who come from other more affluent countries to improve their lives (Angjaya, 2014). Other reasons are mixed marriages because of one profession, the attractiveness of foreign nationals in

terms of career and business development, the desire to change citizenship, the ease of going abroad, and the desire to improve one's life (Djawas & Nurzakia, 2018).

In general, mixed marriages are divided into interfaith marriages and nationalities. Mixed marriages due to differences in nationality are regulated in Articles 57 to 62 of Law Number 1 of 1974 *and* Law Number 16 of 2019 concerning marriage (Marriage Law). Based on Article 57, mixed marriage is a marriage between two people who, in Indonesia, are subject to different laws and have different nationalities, and one of the parties is an Indonesian citizen. Meanwhile, interfaith marriages have yet to be regulated explicitly. Therefore, the marriage law prohibits interfaith marriages. However, the state still recognizes interfaith marriages if carried out outside Indonesia, and the perpetrators of mixed marriages record the proof of their marriage in the Marriage Registration Office.

Mixed marriages will have legal ramifications for married couples who acquire property during the marriage. One of them is joint property, which involves ownership of land rights. Article 35, paragraph 1, of the Marriage Law states, "Wealth acquired during the marriage becomes joint property". The Marriage Law allows foreigners to immediately participate in owning half of the land rights. On the other hand, in the context of Indonesian land law, mixed marriages will eliminate ownership rights to land for Indonesian citizens (if they change their citizenship status to foreigners), and it also applies to foreigners if they do not have a marriage agreement. This happens because of the principle of nationality adopted by Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), which stipulates that "only Indonesian citizens can have land rights" (Article 9 of the UUPA), while foreigners are only allowed to have usufructuary rights and rental rights.

Observing the strong provisions regarding joint property in the marriage law and the principle of nationality reflected in the UUPA, this study will analyze land tenure in mixed marriages from the perspective of national land law and jurisprudence, as well as related to the institution of marriage as a means of legal smuggling.

B. Method

The method used in this study was normative legal research by examining literature material or secondary data. The approach used in this study was an approach to legislation and case studies. a legislative approach by examining the provisions of the Marriage Law and UUPA to produce functional analyses to solve legal issues between the two laws. Meanwhile, the case study approach analyzes the legal considerations used by judges in the decisions of the Constitutional Court and the Supreme Court related to joint property and marriage agreements that have implications for ownership of land rights.

C. Result and Discussion

1. Joint Assets of Mixed Marriage in the perspective of Land Law

The terms '*perkawinan*' and '*pernikahan*' come from the words 'nikah' and 'kawin', which have the same meaning but are linguistically different. 'Nikah' comes from Arabic, while 'Kawin' comes from Indonesian. Therefore, the official mention in the law is 'UU Perkawinan' instead of 'UU Pernikahan'. 'Nikah' is a marriage bond (agreement) carried out according to the provisions of law and religious teachings. Semantically, 'Nikah' comes from the Arabic *Nakaha yankahu*, which means *lughotan* and *istilahan*. According to the language (*lughatan*), marriage is a lawful *farj* (vagina) of women over men in sexual relations. Meanwhile, according to the term, marriage is an agreement between women and men to form a family that is *sakinah, mawadah, and warahmah*, as a means of worship. According to Islamic law, marriage (perkawinan/ pernikahan) is a translation of *nakaha* and *zawaja*, each of which means gathering and pairing. Therefore, marriage is gathering two people who were initially separated and alone into a unified and partnered whole.

One of the legal consequences due to the termination of the marriage relationship is the distribution of joint property. Joint property is a term used in the Marriage Law. Although the fiqh literature does not recognize 'joint property' in the institution of marriage, this term is better known as *syirkah* (Zubaidi, 2019). Syirkah etymologically is a mixture, while in terminology it is a guarantee of rights to something that two or more people generally do. In

addition, syirkah can also be defined as a contract that shows the right to something done by two or more people according to the general view (Faizal, 2015). Then, based on the Marriage Law and its amendments and the Attachment of Presidential Instruction Number 1 of 1991 concerning the Dissemination of the Compilation of Islamic Law (KHI) regulated the joint property. The provisions of joint property are regulated in Articles 35-37 of the Marriage Law related to "property in marriage" and Articles 85-97 of the Compilation of Islamic Law (KHI) on "Property in Marriage". Therefore, joint property in a marriage is considered a form of *syirkah*, which is uniting and associating to form a household.

Joint property is assets obtained during marriage apart from gifts or inheritance, meaning assets obtained for their efforts or individually during the period of the marriage bond (Rofiq, 2015). Joint property can be interpreted as assets obtained during the marriage regardless of who gets the property and who is registered in whose name. If the marriage is terminated, each party is entitled to one-half as long as it is not specified otherwise. If a husband or wife buys objects/ goods during the marriage, they automatically become joint property if there is no marriage agreement. The agreement explains that the husband and wife do not want a mixing of joint property by making a marriage agreement. The assets owned by husband and wife belong to each party to the wealth and income of husband and wife, depending on the presence or absence of a marriage agreement.

A marriage agreement is needed to make it easier to separate joint or non-joint property in the event of a divorce. In addition, the marriage agreement aims to regulate the causes and consequences of marriage related to assets. Based on national land law, mixed marriages between Indonesian citizens and foreigners require a marriage agreement to separate property. If the couple does not have a marriage agreement, the Indonesian citizen will lose the right to own land rights. Furthermore, the Indonesian citizen can only have the same land rights as the foreigner, namely the right to use or lease.

One of the principles in Indonesian land law is the principle of nationality which regulates ownership of land rights. Indirectly, this principle prevents foreigners from obtaining land rights with the status of property rights.

Along with several cases of the institution of marriage as a legal smuggling platform to obtain Indonesian citizenship status. Even when foreigners marry Indonesian citizens, it is carried out to obtain property rights to land. Therefore, the two cases include the type of transfer of land rights by foreigners who are carried out directly or indirectly to Indonesian citizens and are therefore null and void by law. Marriage is a noble institution and should not be a means of legal smuggling.

When compared between the principle of the nationality of land law and the norms of joint property ownership in the Marriage Law are inconsistent and contradictory. The provisions in the marriage law state that "Wealth acquired during the marriage becomes joint property", so it is considered that if an Indonesian citizen marries a foreigner, the foreigner immediately owns half of the joint property. However, the provisions of UUPA limit the ownership of land assets as contained in Article 21 paragraph (3) of UUPA, which states that:

> "After the enactment of this law, foreign nationals obtain property rights due to inheritance without a will or mixing of assets due to marriage, as well as Indonesian citizens who have property rights and after the enactment of this law loses their citizenship, they must relinquish that right within one year of the acquisition of the right or the loss of citizenship. If the property rights are not released after the period, then the rights are nullified by law, and the land falls to the state, provided that the rights of other parties that burden it continue to exist".

Based on the provisions of Article 21 paragraph (3), there are at least three legal events that cause the transfer of property rights to foreigners, including: a) there is a mixture of assets due to mixed marriages, b) inheritance without a will, c) Indonesian citizens who lose their citizenship. If there is a transfer of land tenure to a foreigner, as referred to in Article 21 paragraph (3) of the UUPA, the foreigner who marries an Indonesian citizen is obliged to relinquish their rights within one year from the mixing of assets due to marriage. The same applies to foreigners. If they do not have a marriage agreement, they must release it within one year. The release of rights is interpreted as releasing the legal relationship between the holder of the land rights and the land owned by them to other entitled Indonesian citizens.

Generally, the waiver of the legal relationship of land rights by the party entitled to results in the payment of compensation in the form of money or other forms by the state or the next eligible subject of rights. However, Sitorus expressed that if it is proven that a foreigner has committed legal smuggling, the compensation will be nullified, and the foreigner can be punished (Sitorus, 2016). If one year has passed, the government has no obligation to compensate the person concerned. The state can have a reason because the person concerned has been given the opportunity to transfer his/her rights to a third party. Furthermore, the state is free to hand over the rights to the land to a third party at the request of the next interested person.

In the practice of supervision or law enforcement, the obligation to relinquish rights within one year is not well controlled because, after one year, it does not automatically become state land, nor is it within reach of the land authority. However, foreigners can still defend their land by reducing their rights by applying for a change of ownership rights/ HGB to use rights or rental rights for buildings, provided that the foreigner is domiciled in Indonesia. According to Sumarja, in the program records and activities of the National Land Agency (BPN-RI), there is no supervision activity on the transfer of property rights to land to foreigners due to inheritance without a will, mixing of assets due to marriage, loss of Indonesian citizenship, dual citizenship and buying and selling, exchanging, granting, giving in a will and other acts intended directly or indirectly to transfer property rights to land to foreigners (Sumarja, 2015).

The provisions of Article 36, paragraph (1) of the Marriage Law stipulate that for joint assets, the husband or wife can act with the consent of both parties. Joint property is an asset (including property rights) acquired during the marriage. As long as there is no agreement regarding joint property, it is in joint control of husband and wife. If the land with the right of ownership is purchased during the marriage, it becomes joint property, and if the Indonesian citizen dies, the land with the right of ownership falls to a foreigner. Meanwhile, the provisions of Articles 35 and 36 of the Marriage Law, when linked to Article 21 paragraph (3) of the UUPA, appear to be okay and in line. However, let us

examine further that Articles 35 and 36 of the UUPA are often used for foreigners to obtain land with ownership rights. It is contrary to the provisions of Article 26, paragraph (2) of UUPA. Thus, the regulation of property in marriage weakens the provisions of Article 26, paragraph (2) of the UUPA. The concept of joint property in the marriage law cannot be applied to national land law. In addition to land rights, Article 35-37 of the Marriage Law apply if there is no marriage agreement to separate assets, meaning that everything can be divided in two if the marriage breaks up.

2. Joint Property and Marriage Agreements Issues in Jurisprudence

The "joint property" and "marriage agreement" polemic that links the Marriage Law and the UUPA has become a matter of judicial review in the Constitutional Court and the Supreme Court. The decision of the Constitutional Court Number 69/PUU-XIII/2015 with the case of Judicial Review of Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles and Law Number 1 of 1974 concerning Marriage to the 1945 Constitution of the Republic of Indonesia and Supreme Court Decisions Number 34 P/HUM/2016 and 45 P/HUM/2016 concerning the right to judicial review of Article 3 paragraph (2) Government Regulation of the Republic of Indonesia Number 103 of 2015 concerning Ownership Residential or Residential Houses by Foreigners domiciled in Indonesia.

In Constitutional Court Decision Number 69/PUU-XIII/2015, submitted by Mrs Ike Farida, who is legally married and has been registered at the Office of Religious Affairs with a Japanese citizen but does not have a marriage agreement to separate property. Mrs Ike Farida submitted two main applications; *first*, reviewing the constitutionality of the Law norm in Article 21 paragraph (1) and paragraph (3) as well as Article 36 paragraph (1) of the UUPA. In essence, the provisions of the article regulate property rights and building use rights which Indonesian citizens can only own because they do not have a separate marriage agreement. Therefore, they can lose their rights and opportunities for property rights and building use rights. For example, suppose an Indonesian citizen buys an apartment with the status of ownership

of property rights/ building use rights with credit facilities (KPR). In that case, the developer and bank will refuse the purchase on the grounds that he/ she is married to a foreigner and does not have a marriage agreement.

The request for testing is related to the phrase "Indonesian citizen" in Article 21 paragraph (1) and Article 36 paragraph (1) of UUPA as long as it does not mean "Indonesian citizen without exception in all marital status, Indonesian citizens who are not married, Indonesian citizens who are married to fellow Indonesian citizens, and Indonesian citizens who are married to foreign nationals", and the phrase "since the rights are obtained" in Article 21 paragraph (3) of the UUPA as long as it is not interpreted as "since ownership of rights is transferred" is contrary to the 1945 Constitution and does not have binding legal force.

Then the Constitutional Court in its consideration, argued: a) The enactment of the principle of nationality is as a guarantee of the rights of citizens to matters related to the land system and as a limitation of the rights of foreign citizens to land in Indonesia. UUPA seeks to prevent the control of land by foreign parties who own capital which in turn can threaten and undermine state sovereignty; b) the phrase "Indonesian citizen" will narrow the meaning of an Indonesian citizen as regulated in Article 2 and Article 4 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. Thus the application is not reasoned according to law.

Second, the review of Article 29 paragraph (1), paragraph (3), and paragraph (4), as well as Article 35 paragraph (1) of the Marriage Law, related to the phrase "At or before the marriage takes place" in Article 29 paragraph (1) and paragraph (3) and the phrase "During the marriage takes place" in Article 29 paragraph (4), as well as the phrase "joint property" in Article 35 paragraph (1) of the Marriage Law as long as it is not interpreted as "joint property except for property in the form of property rights and building use rights owned by Indonesian citizens who are married to foreign nationals" is contrary to the 1945 Constitution and has no binding legal force. According to the Court, the current provisions only regulate marriage agreements made before or at the time the marriage takes place. In contrast,

there is a phenomenon of husband and wife who, for specific reasons, feel the need to make a Marriage Agreement while in the marriage bond. Regarding the review of Article 29 of the Marriage Law, the Court partially approved the phrase "before or at the time the marriage takes place" by adding the phrase "during the marriage". Meanwhile, Article 35 paragraph (1) applies the provisions regarding the marriage agreement as referred to in Article 29 paragraph (1) after there is a verdict.

The same content in the judicial review of Article 3 paragraph (2) of Government regulations Number 103 of 2015, related to the obligation of the property separation agreement, is a condition for Indonesian citizens to intervene to purchase land rights with HGB and Proprietary status. Because Article 29 paragraph (1) of the Marriage Law states that the agreement for the separation of assets cannot be made after the marriage takes place (before the decision of the Constitutional Court). Without a property separation agreement, Indonesian citizens involved in intermarriage cannot purchase land with HGB and Hak Milik status, even though the purchaser is an Indonesian citizen. In the certificate/ deed of sale, the Indonesian citizen registered as the buyer does not include the foreigner's name as the owner in the certificate. Certificates are strong evidence of ownership of the land and house assets (Mujiburohman, 2021).

On the material review proposed by Mrs Ike Farida, then the Supreme Court in the Supreme Court Decision Number 34 P/HUM/2016, the Court held that the object of the application for material test rights did not contradict the laws and regulations because: a) Human rights to land for a citizen are limited by the principle of nationality adhered to by the UUPA; b) Only Indonesian citizens may have property rights to land and the right to use buildings, while foreigners are prohibited from having both rights. Therefore, Indonesian citizens who marry foreign nationals are only allowed property rights to land and building use rights if a joint property separation agreement is made with a notarial deed.

The provisions of Article 3 paragraph (2) of Government Regulation Number 103 of 2015 are the object of review by the Indonesian Mixed-Marriage Society (Perkumpulan Masyarakat Perkawinan Campuran Indonesia/

PERCA Indonesia), with the decision of the Supreme Court Number 45 P/HUM/2016. The Court held that since the object of the material test right had been reviewed in case number 34 P/HUM/2016, by rejecting the application of the material test right, by the Erga Omnes Principle (the decisions are general and binding on all citizens, including the applicant), the content of paragraphs, articles, and/ or sections in the regulations that have been reviewed cannot be retested because the purpose and purpose of the application have actually been fulfilled in the decision, so that the consideration and the reason for the decision also apply to the same material.

From the three decisions of the Constitutional Court and the Supreme Court, which were granted related to the review of Article 29 of the Marriage Law, in essence, a marriage agreement can be made "at the time or before the marriage was held" and then added by the Constitutional Court with the phrase "during the marriage". This expansion of meaning accommodates actors in mixed marriages because of their negligence or ignorance of marriage law. Most Indonesians consider marriage agreements taboo to discuss. Therefore, the purpose of making a marriage agreement is to regulate the consequences of marriage involving property (Agustine, 2017).

Arrangements regarding marriage agreements are limited to regulating assets or property only. This marriage agreement protects the husband and wife as long as they are bound by marriage and when they are divorced (Susanti, 2018). Currently, there is no regulation regarding the contents of the marriage agreement. Husband and wife are free to determine the contents of the agreement, for example, about honesty, loyalty, expenses, and income in meeting the needs of life, or it could be about their hobbies. However, the marriage agreement at least contains a matter of separation of properties, which is more remarkable for one party than the other party; the two sides each brought considerable input; each has its own business, and if one party goes bankrupt, the other is not involved; for the debts they incurred before marriage, each will be responsible for themselves.

The marriage agreement is a condition that the perpetrators of mixed marriages must fulfill to avoid legal consequences if the marriage is terminated regarding joint property, as well as a means of legal protection for Indonesian

citizens to obtain land rights. The marriage agreement must be in written form. The agreement is attached to the marriage certificate. It is an integral part of the marriage certificate. The marriage agreement is made by mutual consent or will, ratified by civil registration officers, and must not conflict with law, religion, or morality. An agreement that includes a promise about property acquired during the marriage, typically in the form of separate property acquisition. Each party obtained what was obtained or found during the marriage, including gains and losses. This marriage agreement is binding on those who make it as well as third parties who are interested in it.

3. Institution of Marriage and Legal Smuggling of Land Rights

Legal smuggling is defined as a legal act contrary to the law. Not because of a legal need but is intentionally carried out to avoid the law and to look for holes in the legal network to avoid statutory regulations with bad intentions. Legal smuggling is a method of avoiding legal requirements imposed by applicable laws and regulations in order to avoid an unfavorable legal consequence or realize a desired legal consequence (Kolopaking, 2018).

The models of legal smuggling in agreements regarding land tenure by foreigners are as follows.

a. The master agreement consists of a land agreement and power of attorney. In the land ownership agreement, the Indonesian citizen acknowledges that the land registered in their name does not belong to them but belongs to the foreigner who has provided funds for the purchase of the land with the right of ownership and the building. Furthermore, the Indonesian citizen gives irrevocable power to the foreigner to take all legal actions against the land and building rights.
b. In the Option Agreement, the Indonesian citizen gives the option to purchase the land and building rights to the foreigner because the foreigner provides the funds to purchase the land and the building.
c. In this agreement, the lease term is regulated along with options for its extension and the rights and obligations of the lessor (a WNI) and the lessee (a foreigner).

d. The Power of Attorney to Sell contains the granting of a power of attorney with substitution rights from the Indonesian citizen (authorizer) to the foreigner (endorsee) to carry out legal actions to sell or transfer property rights and buildings.
e. In the heirs' statement letter, the Indonesian citizen's wife and their child said that even though the land and building were registered in the name of the Indonesian citizen's husband, he did not own the land.

The agreement is legal smuggling and cannot be sheltered in the name of freedom of contract. However, freedom of contract cannot be exercised if it is contrary to decency or public order or if a cause is not prohibited and there is good faith (Sucitha, 2012). Agreements were made between Indonesian citizens and foreigners based on false causes. Agreements made under the pretence of hiding the actual cause are not allowed. In this case, the agreement is considered null and void from the start. Because of his position, the judge can pronounce the cancellation, even though any party does not request it. In addition, not all agreements made have binding force as law. Only agreements are made legally and bind both parties.

Apart from agreements, legal smuggling can also occur through marriage institutions using foreigners marrying Indonesian citizens to obtain land rights in Indonesia by borrowing the name (nominee) of Indonesian citizens. Legal smuggling is carried out using the name of the Indonesian citizen through marriage, usually an unofficial marriage. Using the name of an Indonesian citizen, which is bound by an agreement through a notary between the foreigner and the Indonesian woman partner, the Indonesian woman whose name is the holder of land rights feels bound by the trustee agreement that becomes the basis for making a nominee agreement in her name in the ownership of the land rights. In the agreement, foreigners may state that the money used to buy land and buildings belongs to foreigners and authorize foreigners to sell or release land and buildings in the name of Indonesian citizens. The notarial agreement is only a "guise" for foreigners to indirectly transfer land rights to foreigners with an agreement attached to a lease deed, acknowledgement of debt using land certificate guarantees, giving power of sale, and a Deed Granting Mortgage Rights (APHT). This activity is

categorized as a form of legal smuggling in the institution of marriage to deviate from the prohibition on transferring land rights to foreigners.

In the agreement, the position of the Indonesian citizen is as a "trustee" or "nominee". In this kind of agreement, foreigners do not get legal protection (Sumardjono, 2018). The embodiment of this nominee is in the agreement letter between a foreigner and an Indonesian citizen as a nominee, which was created through a package of agreements using such power of attorney, using an Indonesian citizen as a nominee constitutes legal smuggling because the substance is contrary to the UUPA. The nominee's agreement to indirectly transfer property rights to foreigners violates Article 26 paragraph (2) of the UUPA, which results in the agreement being null and void by law. The land falls to the state, and money for purchasing land/ buildings that foreigners have issued for Indonesian citizens cannot be returned.

On the other hand, legal smuggling through marriage institutions by circumventing national and religious law can be found in Article 2 paragraph 1 of the Marriage Law, which states that "Marriage is legal if it is carried out according to the laws of each religion and belief". The enactment of this article has the potential to give rise to a broad interpretation and can lead to various kinds of legal smuggling in the field of marriage law, including: First, holding marriages abroad is partly because of religious differences and partly to get around the prohibition or absence of rules regarding interfaith marriages in Indonesia. In this context, marriages can be carried out between Indonesian citizens or between Indonesian citizens and foreigners. However, wherever a person performs a marriage, it is subject to the marriage law in his country of origin.

Based on the provisions of Article 56 of the Marriage Law, it is stated that the marriage uses the applicable law in the country where the marriage is held and, for Indonesian citizens, does not violate the provisions of the marriage law in Indonesia. Within one year of arriving in Indonesia, it must be registered at the Marriage Registration Office in their place of residence. Suppose it is true that interfaith marriages are intentionally held abroad to avoid the provisions of the articles in the Marriage Law. In that case, it can be said to be legal smuggling.

Second, carry out traditional marriages. This method is usually not recorded, so it deviates from/ ignores the entire norm in the Marriage Law. Although customary law is the basis for forming national land law, not all original customary land laws are directly used, and customary law does not conflict with national and state interests. *Third,* temporary religious conversion before getting married. Changing religions only as a condition for the validity of the marriage and then returning to the teachings of their respective religions. *Fourth,* quasi/ fake marriage to obtain Indonesian citizenship status because the requirements for obtaining citizenship are easier than naturalization. Customary marriages, religious conversions and quasi/ fake marriages open up space for foreigners to obtain and own land rights to land in Indonesia. Foreigners marry Indonesian citizens solely to gain property rights ownership, so marriage is only a cover.

In the UUPA and its implementing regulations, it is clear that the form of land ownership and control for foreigners is only the right to lease and the right to use. Lease rights give a person or a legal entity the right to use other people's land for building purposes by paying the owner a certain amount of rent before or after the land is used. Lease rights do not include registered land rights and cannot be used as collateral for debts with encumbrances of Mortgage Rights. The UUPA does not regulate the period after the lease's expiry. The absence of rules on lease rights has the potential to lead to legal smuggling by 1) granting lease rights for buildings with a "rent" period that exceeds the reasonable limit; 2) the "rent" given is the actual price of the land; 3) the land owner can only ask for his land back by paying back the price (Sumardjono, 2007). Therefore, legal smuggling of this kind can only be detected immediately if a dispute arises and is processed in Court.

Similar to rental rights, use rights can be owned by foreigners Land that can be granted with a Right of Use comes from State Land, Land with Management Rights, and Land with Ownership Rights. The term of the Right of Use is divided into a period of 25 years and can be extended for a maximum of 20 years, and is granted for an indefinite period as long as the land is used for specific purposes, such as for the purposes of government

agency offices, foreign country representative offices, and international agency representatives as well as residences of the Head of Representatives and to carry out the functions of religious bodies and social bodies. However, foreigners are not interested in using rights because they have a period of tenure and ownership of the land.

Legal issues in Article 35 and Article 36 of the Marriage Law for some foreigners as a mode of legal smuggling are then linked to the principle of nationality in Articles 21 and 26 of the UUPA, which prohibits the transfer of rights to foreigners directly or indirectly. In this context, both Indonesian citizens and foreigners are harmed although the presence or absence of a separation agreement. Indonesian citizens suffer losses. Namely, they do not have a property separation agreement, and the status of ownership of land rights is equal to that of foreigners. In other words, Indonesian citizens who are involved in mixed marriages cannot buy land with building rights, property rights, and cultivation rights, even though they retain their citizenship. In addition, foreigners do not have legal certainty over the ownership of a residential or residential house as regulated in Government Regulation Number 103 of 2015. Even though foreigners get property rights due to inheritance without a will or mixing of assets due to marriage, they must relinquish their rights within one year. If it is not done, the land's right to ownership is nullified because the law and the land fall to the state. So that property rights do not fall to the state, and they still want to maintain their land rights, then by decreasing the rights to use rights or rental rights for buildings.

The institution of marriage is noble and sacred in that there is a sacred bond between a man and a woman as husband and wife to form a family that does not differentiate between ethnicity, race, and religion. The husband must protect his wife and provide all the necessities of household life according to his ability. In contrast, the wife is obliged to manage household affairs as well as possible. There should be special rules that regulate mixed marriages and property in marriage. The issue of marriage is not only a matter of 'sunatullah', but there are legal consequences that accompany it, including the citizenship status of husband and wife and children, inheritance, and joint property,

primarily related to the transfer of land rights through buying and selling, exchanging, giving, giving by will and other actions.

D. Conclusion

The Marriage Law has regulated property in marriage. If the marriage is broken, each has the right to get one-half as long as it is not determined otherwise. This does not apply to mixed marriages. Some conditions must be met, which is an agreement to separate assets. Suppose they do not have it from the perspective of land law. In that case, Indonesian citizens have the same status as foreigners, land rights with usufructuary rights or lease rights, even though Indonesian citizens do not change citizenship. These Indonesian citizens cannot have the status of land title, building use rights, or business use rights. They are upheld in national land law by the principle of nationality, which limits land rights to Indonesian citizens and prohibits transferring land rights to foreigners either directly or indirectly.

Articles related to property in marriage and the marriage agreement for the separated property have been subject to a material review by the Constitutional Court and the Supreme Court. However, the entire petition for review was not granted by the Court. Only the petition for review in Article 29 of the Marriage Law was granted when agreeing to the separation of assets. Previously, the agreement could only be done "before and at the time of marriage", but the Court added "during the marriage" for certain reasons. They feel compelled to make a marriage agreement while still in the marriage bond because perpetrators of mixed marriages do so due to negligence or ignorance of marriage law.

Foreigners have used various methods to obtain land rights, such as property rights, one of which is legal smuggling through marriage institutions to get around national, religious, and land laws. Usually, legal smuggling is carried out in marriage institutions through unregistered marriages. Using Indonesian citizens as subjects of land rights bound by an agreement through a notary between the foreigner and the female partner of the Indonesian citizen. Therefore, the Indonesian woman whose name is the land rights

holder feels bound by the trustee agreement that becomes the basis of a nominee agreement made in their name for the ownership of the land rights.

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