

The Validity of Property Ownership by Indonesian Citizens in Mixed Marriages: A Review of the Constitutional Court Decision No. 69/PUU-XIII/2015

Florenxia Devi Nurjayanti ¹⁾ & Amad Sudiro ²⁾

¹⁾ Faculty of Law, Universitas Tarumanagara, Jakarta, Indonesia, E-mail: florenxia.217241049@stu.untar.ac.id

²⁾ Faculty of Law, Universitas Tarumanagara, Jakarta, Indonesia, E-mail: ahmads@fh.untar.ac.id

Abstract. *The issue of property ownership by Indonesian citizens (WNI) in mixed marriages with foreign nationals (WNA) has long created legal uncertainty, particularly regarding land and building ownership. The main legal obstacle lies in Article 21 paragraph (1) of the Basic Agrarian Law (UUPA), which restricts ownership rights over land exclusively to Indonesian citizens. Consequently, an Indonesian citizen married to a foreign national without a prenuptial agreement is deemed to have community property, thereby making land or building ownership contradictory to national agrarian regulations. This study aims to analyze the validity of property ownership by Indonesian citizens in mixed marriages based on Constitutional Court Decision No. 69/PUU-XIII/2015. The research employs a normative juridical method, using statutory, conceptual, and case study approaches—particularly focusing on the reinterpretation of Article 29 of Law No. 1 of 1974 concerning Marriage. Through its decision, the Constitutional Court ruled that a marital agreement may be made not only before or at the time of marriage but also during the course of marriage. This ruling provides a new legal avenue for Indonesian citizens to retain ownership rights over land and buildings by creating a post-nuptial agreement that separates assets from their foreign spouse. The findings indicate that although the decision grants stronger constitutional protection for Indonesian citizens, its implementation still faces administrative challenges and disharmony among implementing regulations. The novelty of this research lies in identifying the Constitutional Court's ruling as a form of substantive legal reform that harmonizes marriage law and national agrarian law, while simultaneously reinforcing the constitutional principles of legal certainty and equality for all citizens.*

Keywords: Agrarian; Agreement; Land; Property; Validity.

1. Introduction

Mixed marriages, namely marriages between Indonesian citizens (WNI) and foreign nationals (WNA), have increasingly emerged in modern Indonesian society as a result of global mobility,

migration, and intensified cross-border interactions. Beyond the cultural and social dimensions, mixed marriages also generate significant legal challenges, particularly concerning citizenship status and property rights (Putra, 2023). Many Indonesian citizens married to foreign nationals face legal uncertainty in owning assets acquired during the marriage especially when such assets involve land or buildings due to restrictions under national agrarian regulations governing the legal subjects entitled to land ownership. In the Indonesian legal system, the Basic Agrarian Law (UUPA) No. 5 of 1960 explicitly stipulates that ownership rights over land may only be held by Indonesian citizens (Rendy et al., 2022). This provision reflects the principle of nationalism over land and agrarian resources, a fundamental legal foundation within Indonesia's constitutional agrarian framework. In many cases, if an Indonesian citizen marries a foreign national without entering into a marital agreement or a specific arrangement separating their assets, property acquired during the marriage is presumed to be joint property (community property) meaning the foreign spouse is legally considered to have a share in it (Yaniza, 2022). Consequently, such a situation contradicts the UUPA when the shared property includes land or buildings, as foreign nationals are legally prohibited from holding ownership rights over them.

Before the issuance of the Constitutional Court Decision No. 69/PUU-XIII/2015, Indonesian legal practice was relatively rigid regarding marital agreements (prenuptial agreements). Such agreements could only be made before or at the time of marriage, with no clear legal basis allowing for postnuptial agreements (Budiarta, 2017). As a result, many mixed-marriage couples combined their assets without legal protection, exposing Indonesian spouses to the risk of losing land ownership rights when their property was deemed part of joint marital assets that included a foreign spouse (Iliyin et al., 2023). One of the most notable examples is the Ike Farida case, which clearly illustrates the implications of this regulation. Ike Farida, an Indonesian citizen married to a Japanese national, did not make a prenuptial agreement. When she attempted to purchase an apartment unit, the developer cancelled the transaction due to her marital status and the legal restrictions on property ownership. As discussed in the study "A Juridical Review on Land Ownership Rights for Indonesian Women in Mixed Marriages," the applicant had not renounced her citizenship, resided legally in Indonesia, and had a lawfully registered marriage, yet she still faced legal barriers in exercising her property rights.

The Constitutional Court Decision No. 69/PUU-XIII/2015 reviewed the constitutionality of Article 35 of Law No. 1 of 1974 on Marriage and Article 21 of the Basic Agrarian Law (UUPA) against the 1945 Constitution of the Republic of Indonesia. The Court ruled that the provision on marital agreements under Article 29 of the Marriage Law which previously limited such agreements to be made before or at the time of marriage could be interpreted to also allow marital agreements to be made during the marriage, provided that both parties consent (Sudharma & Adhyaksa, 2023). This ruling therefore created a new legal pathway for mixed-marriage couples to execute a postnuptial agreement that separates joint property, thereby protecting the land ownership rights of Indonesian citizens (WNI). However, despite being regarded as a progressive legal development, the decision's implementation has faced numerous challenges. Not all notaries or marriage registrars are prepared or willing to

recognize postnuptial agreements, and public awareness of the rights and mechanisms related to such agreements remains limited. Concerns also persist regarding the binding effect of postnuptial agreements on third parties and their recognition in land dispute litigation (Nafisa et al., 2024). Moreover, it has been argued that agrarian regulations particularly the UUPA still contain textual provisions that restrict ownership rights in cases where foreign nationals (WNA) are involved, thereby maintaining a degree of legal uncertainty despite the Court's decision (MUZAKIR, 2024). Legal education, lower court decisions, and notarial practice have not yet fully aligned with the constitutional intent articulated in the Court's ruling (Iliyin et al., 2023).

Previous studies, such as "The Status of Land Ownership in Indonesia as a Result of Mixed Marriages (A Study of Constitutional Court Decision No. 69/PUU-XIII/2015)", have analyzed that in mixed marriages, the absence of a marital agreement separating assets results in joint ownership status, which consequently implies the participation of a foreign spouse and thereby contradicts the UUPA's provisions (Rendy et al., 2022). This reveals a gap between the normative legal reform introduced by the Constitutional Court and its practical implementation in administrative and legal practice. The gap concerns aspects such as legality, formal procedures, protection of third parties, and the accountability of notaries or registrars when postnuptial agreements are rejected or unrecognized. For instance, the study "Separation of Joint Property Through Post-Marital Agreements by Mixed-Marriage Couples" highlights that, although theoretically permissible, postnuptial agreements often encounter administrative barriers and procedural refusals in practice. This research is therefore significant, as it contributes to the strengthening of legal certainty by examining the validity of land and property ownership acquired by Indonesian citizens in mixed marriages after the Constitutional Court's decision. The specific objectives of this study are: (1) to elaborate on the legal consequences of the inability of Indonesian citizens to hold land ownership rights in the absence of asset separation; (2) to analyze how Decision No. 69/PUU-XIII/2015 transformed or expanded the legal framework allowing postnuptial agreements; and (3) to identify implementation barriers and possible regulatory or procedural solutions aimed at reinforcing the validity of property ownership by Indonesian citizens in mixed marriages..

2. Research Methods

This study employs a normative juridical method, which focuses on written legal materials as the primary data source by examining legal principles, norms, doctrines, and relevant judicial decisions. This approach is appropriate for analyzing the validity of property ownership by Indonesian citizens (WNI) in mixed marriages based on Constitutional Court Decision No. 69/PUU-XIII/2015, as the core issue concerns the normative legal system and its compatibility with constitutional principles rather than social behavior. In this context, law is understood as a set of binding normative rules governing citizens, including the provisions of the Basic Agrarian Law (UUPA), Law No. 1 of 1974 on Marriage, and the Constitutional Court Decision No. 69/PUU-XIII/2015. The normative juridical method enables a comprehensive analysis of the statutory regulations governing legal relations between Indonesian and foreign nationals in land ownership and their implications for legal certainty. In addition, the study adopts a

case approach, particularly by examining the ratio decidendi of Constitutional Court Decision No. 69/PUU-XIII/2015 and several related court rulings concerning postnuptial agreements. This approach helps to understand the judges' legal reasoning, interpretation of Article 29 of the Marriage Law, and how such reasoning generated a legal transformation with erga omnes effect applicable universally. This aspect is crucial to assess the extent to which the Constitutional Court's decision has strengthened the legal protection of land ownership rights for Indonesian citizens in mixed marriages.

Furthermore, a conceptual approach is applied by utilizing relevant legal theories to assess the balance between substantive justice and formal legal certainty in the implementation of the Constitutional Court's decision. Using the theory of legal certainty, the research ensures that the legal norms governing land ownership are clear, predictable, and enforceable. Through the theory of legal protection, the study examines how the rights of Indonesian citizens are safeguarded from potential losses arising from mixed marital status. Meanwhile, the theory of justice is employed to evaluate whether the Court's decision provides distributive justice to all citizens without discrimination based on marital status. The data used are secondary legal materials, consisting of: Primary legal materials, including statutory regulations such as the UUPA, the Marriage Law, the Constitutional Court Decision No. 69/PUU-XIII/2015, and its implementing regulations. Secondary legal materials, including literature, books, scholarly journals, and academic works discussing marital agreements and land ownership rights for Indonesian citizens married to foreign nationals. Tertiary legal materials, such as legal dictionaries and encyclopedias, to clarify and reinforce understanding of legal terminology.

Legal materials were collected through library research, a technique chosen for its ability to explore legal reasoning in depth and identify normative interrelations among legal instruments. All materials were then analyzed using a qualitative-descriptive analysis, interpreting statutory texts, literature, and judicial decisions to identify relevant legal meanings. The analysis was conducted systematically in three stages: (1) inventorying legal materials, (2) classifying them according to themes, and (3) interpreting the law. Legal interpretation was performed in accordance with general legal principles, ratio legis, and doctrinal opinions of legal scholars. Accordingly, this methodological framework not only aims to describe the prevailing legal norms but also to identify inconsistencies and disharmonies among legal instruments while providing normative arguments for the harmonization of legal frameworks following Constitutional Court Decision No. 69/PUU-XIII/2015.

3. Results and Discussion

3.1. The Validity of Ownership Rights or Building Use Rights by Indonesian Citizens in Mixed Marriages Based on the Basic Agrarian Law and the Marriage Law

Mixed marriages between Indonesian citizens (WNI) and foreign nationals (WNA) have long created legal dilemmas concerning property ownership, particularly in relation to land and buildings. This issue arises because Indonesia's agrarian legal system regards land ownership as part of national sovereignty, which can only be held by Indonesian citizens. Article 21 paragraph (1) of Law No. 5 of 1960 concerning the Basic Agrarian Law (UUPA) explicitly

stipulates that “only Indonesian citizens may possess ownership rights over land.” This provision was born out of the spirit of nationalization and the affirmation of the *lex patriae* principle, which rejects the control of land by foreign legal subjects. Consequently, when an Indonesian citizen marries a foreign national without a prenuptial agreement on the separation of assets, the property acquired during the marriage is legally considered joint property, as regulated in Article 35 paragraph (1) of Law No. 1 of 1974 on Marriage. Thus, if such joint property includes land or buildings, the foreign spouse is deemed to share ownership of those rights. This situation creates a legal conflict with the UUPA, since foreign nationals cannot be subjects of land ownership rights, rendering such property void *ipso jure* or subject to compulsory relinquishment within a certain period.

This provision has tangible implications for the protection of the economic rights of Indonesian citizens, particularly women, who marry foreign nationals. Numerous cases show that Indonesian citizens have lost ownership of land that should rightfully belong to them because it was deemed to have been “commingled” with the assets of their foreign spouses (Yaniza, 2022). Sociologically, land ownership is not merely an economic symbol but also a part of the constitutional right to housing and a decent livelihood, as guaranteed by Article 28H paragraph (1) of the 1945 Constitution. Before the issuance of Constitutional Court Decision No. 69/PUU-XIII/2015, Indonesian positive law only permitted the making of a marital agreement “before or at the time the marriage is solemnized.” This meant that married couples had no legal avenue to make a postnuptial separation of assets agreement (Putra, 2023). In the context of mixed marriages, such a rule created substantive injustice by preventing Indonesian citizens from rectifying the legal status of their already commingled property. This also generated *rechts onzekerheid* (legal uncertainty) and contradicted the principle of protecting citizens’ constitutional rights (Sudharma & Adhyaksa, 2023). Agrarian law experts such as Boedi Harsono have emphasized that the principle of nationality in the UUPA should not be interpreted as an absolute prohibition that nullifies the civil rights of Indonesian citizens simply because they marry foreign nationals. However, in practice, administrative interpretations in land affairs and technical regulations have often applied this principle rigidly, thereby rendering Indonesian citizens ineligible to hold ownership rights when engaged in mixed marriages without a separation-of-assets agreement (Budiarta, 2017).

The provisions of the Basic Agrarian Law (UUPA) and the Marriage Law prior to the Constitutional Court Decision created discrimination against Indonesian citizens (WNI) in mixed marriages, as the state did not provide a legal protection mechanism for ownership rights lawfully acquired (Yaniza, 2022). This situation implied a potential violation of the principle of equality before the law as enshrined in Article 27 paragraph (1) of the 1945 Constitution. Consequently, there arose an urgent need for a more progressive and humanistic reinterpretation of the law. The normative conflict between the UUPA and the Marriage Law also raised questions regarding the synchronization of regulations within Indonesia’s national legal system (Wantu, 2007). From the perspective of Lawrence Friedman’s theory of the legal system, this issue lies within the dimensions of legal structure and legal culture, which remain misaligned among institutions such as marriage registrars, notaries, and the National Land Agency (BPN). This lack of synchronization weakens legal certainty and undermines public

trust in the national legal system. In this context, Philipus M. Hadjon's theory of legal protection becomes particularly relevant. Hadjon emphasizes that the state is obliged to guarantee protection for every citizen against arbitrary exercises of power, including through fair and adaptive legal instruments. Therefore, prohibiting land ownership by Indonesian citizens in mixed marriages without providing proportional remedies is inconsistent with this principle of legal protection.

Furthermore, according to John Rawls's theory of distributive justice, law must ensure the fair distribution of rights among citizens without discrimination based on social or marital status. If an Indonesian citizen loses ownership rights to land merely due to marital status, such inequality contradicts the principle of justice as fairness. Hence, the state must reform its legal norms to remain consistent with the principles of social justice and equality of citizens' rights. Based on this analysis, it can be concluded that prior to Constitutional Court Decision No. 69/PUU-XIII/2015, Indonesia's legal system created a legal vacuum for Indonesian citizens in mixed marriages (Rendy et al., 2022). They were unable to hold ownership or building-use rights (hak milik or hak guna bangunan) over land because the commingling of assets was deemed to violate the UUPA. This situation called for legal reform through constitutional interpretation that would allow the creation of marital agreements before, during, or after marriage—an innovation later accommodated in the Constitutional Court's decision. Thus, this section underscores that the core issue does not lie in the prohibition of foreign ownership itself, but rather in the normative inconsistency between marriage law and agrarian law. Legal reform through Constitutional Court Decision No. 69/PUU-XIII/2015 is therefore essential as a corrective measure to these normative imbalances and serves as the foundation for the next subsection, which discusses how the decision provides a concrete legal solution for Indonesian citizens in mixed marriages.

3.2. Constitutional Court Decision No. 69/PUU-XIII/2015 as the Legal Basis for Allowing Marriage Agreements Before, During, and After Marriage

The Constitutional Court Decision (Putusan Mahkamah Konstitusi) No. 69/PUU-XIII/2015 represents a landmark moment in the history of Indonesian marital law, as it transformed the legal paradigm concerning the timing of marital agreements. Prior to this ruling, prenuptial agreements (perjanjian perkawinan) could only be made before or at the time of marriage, as stipulated in Article 29 paragraph (1) of Law No. 1 of 1974 on Marriage. This provision created injustice for couples who later realized the necessity of property separation after marriage, particularly for those in mixed marriages seeking to maintain ownership rights separate from their foreign spouse (Putra, 2023). The case of Ike Farida served as the catalyst for this legal reform. In that case, Ike Farida, an Indonesian citizen married to a Japanese national, was unable to purchase property in Jakarta because she was deemed to have lost her ownership rights over land due to the absence of a prenuptial agreement prior to marriage. The prevailing law at that time was considered to have violated the constitutional rights of Indonesian citizens, especially the right to own property as guaranteed under Article 28H paragraph (4) of the 1945 Constitution. Consequently, the Constitutional Court accepted a

judicial review petition to examine the constitutionality of Article 29 of the Marriage Law in light of the 1945 Constitution.

In its consideration, the Constitutional Court held that restricting the making of marital agreements only to the period before or at the time of marriage constituted a disproportionate limitation of rights and contradicted the principle of freedom of contract as guaranteed under Article 1338 of the Indonesian Civil Code (KUH Perdata). The right of each individual to regulate the management of property within marriage forms part of the constitutional rights inherent to every citizen. Therefore, the Court interpreted the phrase “before the marriage takes place” in Article 29 paragraph (1) of the Marriage Law to also include the period “during the marriage,” provided that both parties consent and that such an agreement does not harm third parties. Through this ruling, the Court declared that a marital agreement may be executed at any time before, during, or after the marriage. This decision brought a significant transformation to Indonesia’s marital legal system by providing a lawful mechanism for couples to separate their assets at any point in their marriage. In the context of mixed marriages, the ruling opened a legal avenue for Indonesian citizens to retain ownership rights over land or buildings by executing a postnuptial agreement (*perjanjian pisah harta*) even after the marriage had taken place (Yaniza, 2022). Juridically, Constitutional Court Decision No. 69/PUU-XIII/2015 carries binding legal force and applies universally (*erga omnes*), pursuant to Article 47 of Law No. 24 of 2003 on the Constitutional Court. This means that all state institutions including notaries, marriage registrars, and land administration authorities are obligated to comply with and adapt their administrative practices to this ruling. The decision thus embodies the principle of constitutional supremacy, ensuring that all legal norms subordinate to the 1945 Constitution remain consistent with Constitutional Court jurisprudence.

From a legal theory perspective, the Constitutional Court Decision No. 69/PUU-XIII/2015 reflects the application of a progressive interpretation toward legal norms. According to Satjipto Rahardjo’s theory of progressive law, law should serve as an instrument to liberate humans from structural injustice and rigid formalities. In this context, the Constitutional Court placed substantive justice above formal legal certainty by opening a path for legal reform through constitutional interpretation. This approach reaffirms that law must be dynamic and evolve in accordance with societal needs. However, in practice, the implementation of this ruling has not always proceeded smoothly. Many notaries and civil registry officials remain hesitant to accept marital agreements made after marriage due to the absence of explicit technical regulations (Budiarta, 2017). Several land offices also require additional documentation to verify that property ownership remains separate, leading to inconsistencies in the enforcement of the Constitutional Court’s decision across different regions of Indonesia (Rendy et al., 2022). Another challenge arises from limited legal awareness and socialization. A significant portion of mixed-nationality couples still do not fully understand the legal implications of their marriages, including the importance of marital agreements in safeguarding property rights (Sudharma & Adhyaksa, 2023). Moreover, social stigma persists, as many perceive marital agreements as a sign of distrust between partners, discouraging

them from making such agreements. This underscores the need for more comprehensive legal education among the public.

In the context of agrarian law, Constitutional Court Decision No. 69/PUU-XIII/2015 provides a legitimate legal basis for Indonesian citizens (WNI) to retain ownership or building rights (*hak milik* or *hak guna bangunan*) over land, as long as a marital agreement separating assets has been made. With asset separation, land ownership is no longer considered joint property, thus avoiding conflicts with Article 21 of the Basic Agrarian Law (UUPA). This decision reinforces the principle of legal protection and ensures legal certainty for mixed-nationality couples seeking to preserve their property rights. From Hans Kelsen's theory of legal certainty, this ruling enhances normative certainty by eliminating doubts over the legality of marital agreements made after marriage. Nevertheless, in its implementation, such certainty remains partial due to the absence of harmonized implementing regulations among the Ministry of Law and Human Rights, the Ministry of Home Affairs, and the National Land Agency (Wantu, 2007). Therefore, a government regulation or joint circular among these institutions is necessary to establish a more consistent administrative mechanism. Beyond providing legal protection, this Constitutional Court decision also carries implications for the principle of justice in family and agrarian law. John Rawls emphasizes that true justice requires equal treatment of all individuals regardless of social, economic, or marital status. The Court's ruling aligns with this principle by guaranteeing Indonesian citizens' constitutional rights to property ownership without undermining the spirit of nationalism embodied in the Basic Agrarian Law. Consequently, Decision No. 69/PUU-XIII/2015 not only alters the administrative procedure for creating marital agreements but also symbolizes a broader reform of family law that upholds the protection of citizens' constitutional rights. Despite ongoing implementation challenges, the direction of this legal reform signifies a positive evolution toward a more adaptive, just, and human rights-oriented legal system.

4. Conclusion

Based on the analysis of Indonesia's agrarian and marriage law systems, it can be concluded that prior to the Constitutional Court Decision No. 69/PUU-XIII/2015, Indonesian citizens (WNI) who married foreign nationals (WNA) were prohibited from holding ownership rights (*hak milik*) or building rights (*hak guna bangunan*) over land. This was due to the presumption of joint marital property, which rendered the foreign spouse an unauthorized subject of land ownership. Such a condition resulted in the deprivation of the Indonesian citizen's economic rights and contradicted the constitutional principle embodied in Article 28H paragraph (4) of the 1945 Constitution, which guarantees the right to legally own property. In practice, the provisions of Article 21 of the Basic Agrarian Law (UUPA) and Article 35 of the Marriage Law created implicit discrimination against Indonesian citizens particularly women married to foreigners and led to a legal vacuum in the protection of property rights. Constitutional Court Decision No. 69/PUU-XIII/2015 thus serves as a constitutional breakthrough, granting new legal space for married couples, including those in mixed marriages, to enter into marital agreements either before, at the time of, or after marriage. Through a progressive interpretation of Article 29 of the Marriage Law, the Court affirmed that the freedom of

citizens to arrange asset separation constitutes an integral part of constitutional rights and the principle of freedom of contract. Accordingly, this decision functions as a legal protection instrument that strengthens the position of Indonesian citizens in mixed marriages to retain ownership or building rights over land, provided that such property is separated through a legally valid agreement before a notary. Normatively, this study finds that the novelty of Constitutional Court Decision No. 69/PUU-XIII/2015 lies in its recognition of post-nuptial agreements as a legitimate legal basis for asset separation and property rights protection. Nevertheless, the effectiveness of this ruling still faces implementation challenges due to the absence of harmonized administrative and institutional regulations.

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