

## Building A Restorative Property Justice Paradigm for Marital Assets in Indonesian International Marriages

Raden Maestro Broto Ariyo<sup>1)</sup>, FX Joko Priyono<sup>2)</sup>, Yunanto<sup>3)</sup> & Herni Widanarti<sup>4)</sup>

<sup>1)</sup> Faculty of Law, Universitas Diponegoro (UNDIP) Semarang, Indonesia, E-mail: [Maestrobroto1306@gmail.com](mailto:Maestrobroto1306@gmail.com)

<sup>2)</sup> Faculty of Law, Universitas Diponegoro (UNDIP) Semarang, Indonesia, E-mail: [fransiskusjoko893@gmail.com](mailto:fransiskusjoko893@gmail.com)

<sup>3)</sup> Faculty of Law, Universitas Diponegoro (UNDIP) Semarang, Indonesia, E-mail: [yunanto@lecturer.undip.ac.id](mailto:yunanto@lecturer.undip.ac.id)

<sup>4)</sup> Faculty of Law, Universitas Diponegoro (UNDIP) Semarang, Indonesia, E-mail: [herniwidanarti13@gmail.com](mailto:herniwidanarti13@gmail.com)

**Abstract.** *Indonesia's mixed marriages expose a structural friction between the Marriage Law's default of community property and the agrarian lex situs that bars foreign nationals from holding Hak Milik. This article proposes Restorative Property Justice (RPJ), a compliance first paradigm that aligns restorative values with land administration realities. Using a desk-based design (normative doctrinal analysis; PRISMA guided mapping of Indonesian decisions, 2015–2025; regulatory design review; and functional comparison to EU Reg. 2016/1103), researcher show that sustainable settlements pivot on registrability: mediation under PERMA 1/2016 must mature into a consent judgment, translate into the correct notarial/PPAT deed, and clear BPN's documentary gates (PP 18/2021). Findings include a typology of disputes (A–C), evidence that value splitting and lawful conversion outperform title splitting, and a Court Notary/PPAT BPN decision flow that reduces execution risk. Researcher offer a clause toolkit (ring fencing, compensation+escrow, situs safe choice of law, third party protection, compliance covenants) and policy proposals to standardize mediation minutes/templates and align PPAT/BPN SOPs. RPJ reframes equity and legality as design variables, yielding settlements that are fair, portable, and executable.*

**Keywords:** *Community Property; International Marriages; Land Registration (BPN); Post-Nuptial Agreements; Restorative Property Justice (RPJ).*

## **1. Introduction**

Cross border marriages in Indonesia, typically between an Indonesian citizen (WNI) and a foreign national (WNA), sit at the intersection of family property law and agrarian law. On the family law side, the Marriage Law recognizes harta bersama (community property) for assets acquired during marriage unless the spouses stipulate otherwise through a marriage agreement, on the agrarian side, the Basic Agrarian Law (UUPA) restricts Hak Milik (freehold) to Indonesian citizens, generally confining foreigners to lesser real rights such as Hak Pakai (use rights) (Republic of Indonesia, 1960). The tension is structural, if community property arises by default, and one spouse is a foreigner who cannot hold Hak Milik, then the couple's real estate planning, conveyancing, and dispute resolution must continually police the boundary between marital equity and public law limitations on land title. Indonesian civil courts now require mediation for civil disputes, including family property claims, under Supreme Court Regulation (PERMA) No. 1 of 2016, an institutional doorway through which restorative approaches may be adapted to the familyproperty domain (Supreme Court of Indonesia, 2016).

A distinctive, and often misunderstood, feature of Indonesian land law sharpens this tension. UUPA Article 21(1) reserves Hak Milik exclusively to Indonesian citizens and Article 21(3) further stipulates that a foreigner who nonetheless acquires Hak Milik, including by inheritance without a will or through community property arising from marriage, must divest the title within one year, failing which the right lapses to the state. In practice, this rule interacts awkwardly with default community property, especially when the Indonesian spouse purchases Hak Milik during marriage and the foreign spouse's rights are argued to "mix" through marital property rules (Republic of Indonesia, 1960). To mitigate this risk, notaries long advised prenuptial separation of property agreements; yet until 2015 courts and officials often treated post nuptial agreements skeptically. The Constitutional Court's Decision No. 69/PUUXIII/2015 changed the landscape by opening the door for post nuptial agreements to separate assets during marriage, thus enabling couples to "ringfence" land rights while honoring agrarian constraints (Turatmiyah et al., 2018: 61–81).

The regulatory environment has also shifted. Government Regulation No. 18 of 2021 (PP 18/2021) reorganized and consolidated rules on land rights and registration as part of the post Job Creation Law framework, superseding or integrating scattered provisions including those on foreign residential occupation (e.g., elements previously covered in PP 103/2015) (Constitutional Court of Indonesia, 2015). This consolidation matters for mixed marriage property because it clarifies the administrative pathways, the documentary thresholds for transfers or conversions, and the verification steps applied by land offices (BPN) and by notaries/PPAT in preparing deeds. Yet, despite this consolidation, line of authority frictions and compliance uncertainties persist when mediated settlements propose creative remedial options, partition, conversion to Hak Pakai, or sale with escrow, because actors must ensure that outcomes remain lawful and later registrable (Republic of Indonesia, 2021).

Civil court mediation under PERMA 1/2016 offers a procedural foothold for a more restorative orientation in family property conflicts. Restorative justice (RJ), as classically articulated, emphasizes repairing harm through inclusive processes that attend to relationships, responsibilities, and forward looking remedies (Zehr, 2015: 23). Although RJ's intellectual home is criminal justice, its core commitments, dialogue, consensus based outcomes, and repair, are not inherently penal and they can be translated into civil contexts where parties must live with each other's decisions beyond the case at bar. Internationally, the European Union's Mediation Directive 2008/52/EC and the EU Regulation 2016/1103 on matrimonial property for international couples illustrate how procedure design and choice of law instruments can stabilize cross border family property outcomes through structured mediation interfaces and clear enforceability rules. Indonesia's system has the institutional pieces (mandatory mediation; a robust notarial system; a land registry) but lacks an integrated paradigm that connects them toward restorative ends under agrarian constraints (European Parliament and Council, 2008).

Against this backdrop, three questions frame the inquiry. First, how do normative frictions across the Marriage Law, UUPA, and post 2015 jurisprudence shape the legal status of community property when it touches immovable property subject to agrarian restrictions? Second, how can restorative justice principles be operationalized, via PERMA 1/2016 mediation and notarial/land administration instruments, to deliver consensual outcomes that are both substantively fair and administratively compliant? Third, what integrated mechanism can ensure that mediated settlements are not only lawful on paper but also registrable and enforceable in practice across courts, notarial offices, and the land registry?

Existing Indonesian scholarship is rich on doctrinal exegesis, community property under Article 35 of the Marriage Law, the contours of marriage agreements under Article 29, and the agrarian constraints of UUPA, yet seldom conducts a systematic, desk based mapping of court decisions (2015 until 2025) that traces how postnuptial agreements have actually been deployed to navigate land title risks in mixed marriages. Studies often treat family law, agrarian law, and civil procedure as siloed regimes, leaving practitioners without an operational model that links the judgemediator's settlement to a notarial deed and onward to registry effects under PP 18/2021. In parallel, while RJ theory is frequently invoked, its practical transposition to civil family property disputes remains underdeveloped in the Indonesian context, in contrast to the growing European experience of embedding mediation architectures within cross border family property frameworks. The result is a literature that excels in principle but is thin on implementation design, the "how" of producing settlements that are simultaneously relationally restorative, doctrinally sound, and registrable within land administration systems

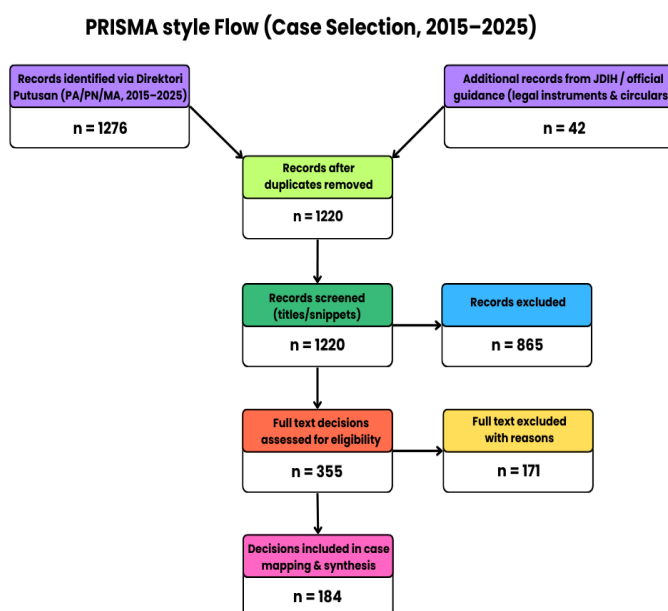
To address these deficits, the article advances Restorative Property Justice (RPJ) as a paradigm that adapts RJ's relational orientation to the family property land nexus. RPJ is not a slogan, it is an implementationready framework with three pillars. The first, norm compatibility, insists that consensual outcomes be engineered to comply cumulatively with the Marriage Law (including the postnuptial opening created by Constitutional Court Decision No. 69/PUUXIII/2015) and with UUPA's nationalitybased limits as consolidated under PP 18/2021. The second, procedure design, sequences the courtannexed mediation under PERMA 1/2016 with notarial acts (partition agreements, conversion clauses, escrow arrangements) and registry steps (BPN verification and registration). The third, remedial outcomes, curates a palette of solutions, partition plus compensation, conversion to Hak Pakai, sale and distribution, that are norm compliant, proportionate, and registrable. The article supplements this paradigm with a decision flow joining judge/mediator, notary/PPAT, and BPN, and with a case based typology (2015 until 2025) derived from desk based mapping to ground the model in actual patterns of adjudication and settlement. By juxtaposing Indonesia's framework with the EU's Regulation 2016/1103 on matrimonial property regimes for international couples, the article also surfaces comparative design options for handling crossborder assets and conflictoflaws interfaces.

The aim is threefold, to map normative frictions across family, agrarian, and procedural regimes, to formulate the RPJ paradigm complete with an operational decision flow linking adjudication, notarial practice, and land registration, and to produce an implementation blueprint that actors can adopt without legislative overhaul. The usefulness is both academic and practical, the analysis contributes to doctrinal clarity on the status of community property in mixed marriages while also offering judges, mediators, notaries/PPAT, and BPN officers a consolidated compliance protocol for mediated settlements. The scope is intentionally desk based, it synthesizes statutes, Constitutional Court jurisprudence, Government Regulation No. 18/2021, PERMA 1/2016, and a documentary mapping of decisions (2015 until 2025), supplemented by comparative insights from EU mediation and matrimonial property instruments. This bounded design ensures legal precision and replicability while acknowledging that further empirical auditing of implementation would be a valuable next step.

## **2. Research Methods**

This study adopts a desk based, mixed doctrinal analytic design that integrates statute case analysis, a systematic case mapping of Indonesian decisions (2015–2025), functional comparison with selected foreign instruments, and a regulatory design assessment oriented to executability within Indonesia's land administration system. The normative core proceeds from the Marriage Law and post Constitutional Court jurisprudence on post nuptial agreements, the UUPA and its post Omnibus consolidation in PP 18/2021, and court annexed mediation under PERMA 1/2016, these primary sources anchor all interpretations and are treated as the controlling lex for Indonesian assets and procedures. To discipline evidence gathering and transparency, the review logic borrows from PRISMA 2020

reporting principles, especially the explicit documentation of search strings, screening, and inclusion criteria, adapted to legal materials (Page et al., 2021).



**Figure 1.** PRISMA style Flow

Data sources, primary materials comprise statutes and regulations (notably PP 18/2021 and Permen ATR/BPN 18/2021 on land rights and registration), judicial decisions from the Supreme Court’s open repository (PA/PN/MA), and official guidance where available. Secondary materials include peer reviewed methods texts and recent international scholarship on qualitative analysis and evidence synthesis. In particular, Saldaña’s Coding Manual (4th ed., 2021) structures the coding workflow for case texts; Kuckartz & Rädiker (2023) provide the qualitative content analysis template and software assisted category systems; and Booth et al. (3rd ed., 2021) inform the choice of a systematic mapping review rather than a full meta analysis, which is appropriate for heterogeneous legal documents (Saldaña, 2021: 45). For the comparative lens, the analysis cross checks Indonesian doctrinal conclusions against EU approaches to cross border matrimonial property, drawing on Viarengo (2024), to inform portability and thirdparty effects in mixed jurisdiction settings (Viarengo, n.d.).

Search strategy and selection, decisions are retrieved from the Supreme Court’s Direktori Putusan using Boolean strings that reflect the doctrinal intersections at issue: “perkawinan campuran” OR “kawin campuran”, “harta bersama” OR “gono gini”, “perjanjian perkawinan” OR “postnuptial”, and “Hak Milik” OR “Hak Pakai” OR “HGB.” The temporal window (2015–2025) brackets the post MK 69/2015

environment in which post nuptial agreements became viable. Records pass through staged screening, title/snippet, then full text, against inclusion criteria (mixed marriage context; community property or land title issue; presence of mediation or notarial/PPAT interfaces) and exclusion criteria (procedural rulings without property analysis; duplicates). Every stage is logged to a search ledger to support replicability, and reasons for exclusion are recorded in a PRISMA style diagram (Page et al., 2021).

Units of analysis and extraction, each included decision is treated as a case unit. A standardized extraction schema captures: case identifier and year; court type (PA/PN/MA); party composition (WNI/WNA); presence and timing of nuptial agreements (pre/post nuptial); real property right implicated (Hak Milik/HGB/Hak Pakai); procedural pathway (mediation vs. adjudication); outcome type (partition/compensation/conversion/sale); registration consequences or obstacles; and the specific legal bases cited. The schema is designed around qualitative content analysis principles, category definitions, anchor examples, and decision rules, to ensure transparency and allow reanalysis (Kuckartz & Rädiker, 2023: 88).

**Table 1.** Extraction Schema (variables & operational definitions)

| Variable             | Type / Accepted values                    | Operational definition                                                                  | Coding rules & notes                           | Example              |
|----------------------|-------------------------------------------|-----------------------------------------------------------------------------------------|------------------------------------------------|----------------------|
| case_id              | string                                    | Unique identifier of the decision (court registry number).                              | Copy exactly as listed in the decision header. | 123/Pdt.G/2019/PA.JP |
| year                 | integer (YYYY)                            | Calendar year of the decision.                                                          | Derive from decision date; use Gregorian year. | 2021                 |
| court_level          | categorical {PA, PN, MA}                  | Type/level of court: PA=Religious Court, PN=District Court (general), MA=Supreme Court. | Infer from court name in header.               | PA                   |
| jurisdiction_chamber | categorical {religious, general, supreme} | Judicial jurisdiction hearing the case.                                                 | Map PA→religious; PN→general; MA→supreme.      | religious            |

|                             |                                                                         |                                                                         |                                                                        |                   |
|-----------------------------|-------------------------------------------------------------------------|-------------------------------------------------------------------------|------------------------------------------------------------------------|-------------------|
| panel_composition           | categorical {single, collegial, unclear}                                | Whether the decision was issued by a single judge or a panel.           | Use 'unclear' if the document omits panel info.                        | collegial         |
| party_composition           | categorical {WNI-WNA, WNI-WNI, WNA-WNA, unclear}                        | Citizenship constellation of spouses.                                   | Code as seen in facts section; if silent, 'unclear'.                   | WNI-WNA           |
| marriage_agreement_presence | categorical {none, prenuptial, postnuptial, unclear}                    | Presence and type of marital agreement recognized by the court.         | If multiple instruments exist, code 'both'.                            | postnuptial       |
| agreement_timing_vs_asset   | categorical {pre-acquisition, post-acquisition, N/A, unclear}           | Timing of the agreement relative to the acquisition of disputed assets. | Compare dates; if no asset, N/A.                                       | pre-acquisition   |
| assets_count                | integer                                                                 | Number of discrete assets discussed.                                    | Count parcels/units explicitly mentioned.                              | 2                 |
| asset_type                  | categorical {Hak Milik, HGB, Hak Pakai, SRS (apartment), other}         | Dominant rights status of the disputed immovable.                       | Choose most central right; if multiple, separate rows in your dataset. | Hak Milik         |
| asset_location              | string                                                                  | Province/City of the immovable property.                                | Transcribe as stated; if multiple, use primary locus.                  | DKI Jakarta       |
| procedural_pathway          | categorical {mediation-settled, litigated-judgment, partial-settlement} | How the dispute was resolved procedurally.                              | Use court minutes/operative part to determine.                         | mediation-settled |
| mediation_recorded          | categorical {yes, no, unclear}                                          | Whether mediation steps are mentioned in the decision.                  | Code 'yes' only if the record explicitly refers to mediation.          | yes               |
| outcome_type                | categorical {partition, conversion, sale+escrow, compensation, mixed}   | Substantive remedial outcome recognized by court or parties.            | Choose 'mixed' if more than one dominant remedy applies.               | partition         |

|                             |                                                                      |                                                                                                         |                                                                            |                                                    |
|-----------------------------|----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|----------------------------------------------------|
| compensation_amount_idr     | numeric (IDR)                                                        | Amount of monetary compensation if awarded/agreed.                                                      | Enter digits only; if unspecified, leave blank.                            | 500000000                                          |
| registration_action_bpn     | categorical {applied, accepted, refused, pending, not-stated}        | Status of land-registry action as reflected in the record.                                              | If not in decision, infer only when explicit documentary evidence annexed. | not-stated                                         |
| bpn_refusal_reason          | string                                                               | Reason BPN cited for refusal (if any).                                                                  | Quote short phrase (e.g., foreigner limit, document incomplete).           | foreigner limit (UUPA art. 21)                     |
| legal_basis_cited           | string (semicolon-separated)                                         | Key legal bases cited (e.g., Marriage Law art. 29, UUPA art. 21, PP 18/2021, PERMA 1/2016, MK 69/2015). | List verbatim numbers where available.                                     | Marriage Law 35; MK 69/2015; UUPA 21               |
| nominee_structure_issue     | categorical {yes, no, unclear}                                       | Whether a nominee/benami arrangement is alleged or discussed.                                           | Code 'yes' only if expressly raised.                                       | no                                                 |
| third_party_issues          | categorical {creditor, good-faith mortgage, acquirer, none, unclear} | Third-party reliance interests implicated by the outcome.                                               | Pick primary issue; add note if multiple.                                  | mortgage                                           |
| choice_of_law_clause        | string                                                               | Any clause choosing applicable law (text or shorthand).                                                 | Record chosen law and scope; 'none' if absent.                             | Indonesian law for property; X law for maintenance |
| cross_border_assets_present | categorical {yes, no, unclear}                                       | Whether assets outside Indonesia are part of the dispute.                                               | Use 'yes' if the decision lists foreign immovables/major movables.         | no                                                 |
| portability_measures        | categorical {apostille/legalization, EU 2016/1103 ref., none, N/A}   | Measures contemplated to facilitate cross-border recognition.                                           | Record as stated; 'N/A' if not cross-border.                               | none                                               |

|                             |                                                          |                                                                             |                                                                                |                                                        |
|-----------------------------|----------------------------------------------------------|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------|--------------------------------------------------------|
| judicial_anchor             | categorical {consent-judgment, judgment-on-merits, none} | Form of judicial instrument anchoring the outcome.                          | Consent-judgment includes perdamaian.                                          | akta consent-judgment                                  |
| registrability_evidence     | categorical {explicit, inferential, none}                | Evidence that the outcome is registrable at BPN.                            | Explicit acceptance = BPN noted; Inferential = deed drafted to registry specs. | inferential                                            |
| title_conformity_flag       | binary {1,0}                                             | Coder assessment that the outcome conforms to UUPA/PP 18/2021 title limits. | 1 = conforms; 0 = appears non-conforming.                                      | 1                                                      |
| third_party_protection_flag | binary {1,0}                                             | Presence of clauses protecting third parties (notice, cut-off, escrow).     | 1 = any protection present; 0 = none.                                          | 1                                                      |
| safety_integrity_flag       | categorical {1,0, N/A}                                   | Whether the record documents voluntariness/safety screening for mediation.  | N/A if mediation not used or not recorded.                                     | N/A                                                    |
| notes                       | free text                                                | Coder comments or clarifications.                                           | Keep concise (≤200 chars).                                                     | Timing of post-nuptial relative to purchase contested. |

Analytic techniques, the doctrinal strand applies grammatical, systemic, and teleological interpretation across family, agrarian, and procedural instruments, with regulatory design analysis used to test whether hypothesized settlements travel from mediation to notarial/PPAT deeds and through BPN registration gates under Permen ATR/BPN 18/2021. Case texts are then coded thematically (open → focused coding), following Saldaña's procedures to distil patterns in judicial reasoning and remedial outcomes (Saldaña, 2021: 45). Cross case synthesis aggregates those patterns into a typology that feeds the article's decision flow model. To monitor intercoder consistency during pilot coding (≥10% of cases), researcher compute Cohen's  $\kappa$  (or Gwet's AC where prevalence bias is suspected), reflecting bestpractice cautions about  $\kappa$ 's limitations (Chen et al., 2023).

Validity, reliability, and limitations, the approach emphasizes procedural transparency (complete search log, deposited coding book, and a deidentified CSV of extracted variables) as recommended in contemporary evidencesynthesis guidance (Booth et al., 2021: 67). Triangulation operates across sources (statutes, decisions, administrative guidance) and methods (doctrinal interpretation, content analysis, functional comparison). Two structural limitations persist, Indonesian decisions may incompletely record mediation stages or annexes, and registry outcomes (acceptance/refusal by BPN) may be inferred rather than documented. The study mitigates these by coding explicit text only, flagging inferential steps, and tying any registrability conclusions to the PP 18/2021/Permen 18/2021 documentary gates.

### **3. Results and Discussion**

#### **3.1. Mapping Normative Frictions and Pathways to Synchronization**

The documentary mapping and doctrinal synthesis reveal a recurrent structural friction, Indonesia's default community property regime (*harta bersama*) collides with nationality based limits in land law, especially the Basic Agrarian Law (UUPA) which reserves Hak Milik to Indonesian citizens and requires divestiture when a foreigner acquires it by operation of law (inheritance without a will or the mingling of assets through marriage) within a one year window (UUPA art. 21(1), (3)). In mixed marriages, the problem surfaces when real property is purchased during marriage in the name of the Indonesian spouse but is later argued to form part of the community, raising the specter that a noneligible coowner (the foreign spouse) exists in substance even if not on the title. The Government Regulation No. 18 of 2021, an omnibus consolidation following the Job Creation Law, modernizes the registration framework and integrates substantive and documentary gates but does not alter the sovereignty inflected logic of the *lex situs*, the registry (BPN) remains the decisive choke point for any settlement touching immovables. The practical consequence is that family property outcomes must be engineered to be registrable, not merely equitable (Republic of Indonesia, 1960).

The 2015 Constitutional Court Decision No. 69/PUU-XIII/2015 is the second hinge in this architecture. By opening postnuptial agreements, the Court supplied couples with a mid-stream tool to delink community assets from the foreign spouse's legal sphere and, by extension, from the agrarian restrictions that would otherwise attach to the community as a whole. Yet the decision's systemic promise depends on implementation: a post-nuptial must not only be valid inter partes but must also translate into notarial/PPAT deeds and, when needed, yield registry compliant instruments, partition of assets, conversion (e.g., Hak Milik → Hak Pakai) or sale coupled with escrow, to be effective against the world. Where couples attempt to sidestep restrictions via "nominee" arrangements, recent

Indonesian scholarship continues to underline both the legal precariousness and the vulnerability of such structures to invalidation, particularly in hot-spot jurisdictions like Bali (Ridhogusti & Kurniati, 2024: 153–167).

Civil procedure interfaces, finally, determine the form that a consensual solution takes. Under PERMA No. 1/2016, court annexed mediation is mandatory and a successful settlement may be recorded as an akta perdamaian, giving it the enforceability of a judgment. In property cases, that instrument functions as a documentary pivot that allows notaries/PPAT to draft deeds with greater certainty and gives BPN a clearer legal anchor for subsequent registration steps. The legal sociology of how parties reach agreement matters too: the more the process tracks contemporary restorative-justice (RJ) practice frameworks, voluntariness, screening for power asymmetries, careful drafting of obligations, the more likely the outcome is to be both relationship repairing and registrable (Hobson & Payne, n.d.).

Cross border frictions persist even where Indonesian law governs local land. EU experience under Council Regulation (EU) 2016/1103 shows that a designated matrimonial property law (whether by party choice or connecting factors) governs the inter-spousal regime across assets, but immovables remain ultimately anchored in the law of the situs for registrable effects. For Indonesian-situated property owned by a WNI married to a WNA, any clause choosing a foreign law for the matrimonial regime cannot override Indonesian registration gates; rather, the clause operates on questions of classification and distribution, while the transfer or conversion of title must satisfy Indonesian public-law constraints. As a practical matter, drafting should therefore bifurcate: (i) a choice of law clause to coordinate the broader regime and its third party effects, and (ii) a registry compliant Indonesian sequence for any in rem change. The interpretive debate around Article 26 of Regulation 2016/1103, how the lack of a common habitual residence at the time of marriage affects the default applicable law, only heightens the need to make portability an explicit design concern in settlements that may need to circulate.

**Table 3.1.2.** Disharmony Matrix and Synchronization Recommendation

| Regime     | Key Norm                                          | Impact on Community Property                                                                                                  | Gap/Issue                                                          | Recommendation                                                                                           |
|------------|---------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------|
| Family Law | Marriage Law Art. 35 (community property default) | Assets acquired during marriage presumptively enter the community; in mixed marriages this can be argued to extend beneficial | Community claims may collide with UUPA nationality limits when the | Use pre/post-nuptial separation to ring-fence risky assets; ensure recording where available; align with |

|                             |                                                                                          |                                                                                                                             |                                                                                                                               |                                                                                                                                                                       |
|-----------------------------|------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                             |                                                                                          | interests to a foreign spouse.                                                                                              | asset is Indonesian land (Hak Milik).                                                                                         | subsequent partition deed and registry steps.                                                                                                                         |
| Family Law                  | Marriage Law Art. 29 + Constitutiona I Court No. 69/PUU-XIII/2015 (post-nuptial enabled) | Allows separation of property during marriage, enabling ex-post delimitation of community assets.                           | Retroactivity and third-party reliance (creditors, bona fide acquirers); risk of being used to mask nominee arrangements.     | Limit effects prospectively; pair with detailed partition deed; include notice & cut-off clauses to protect third parties; explicitly disclaim nominee structures.    |
| Agrarian Law                | UUPA Art. 21(1), (3) (nationality bar; divestiture duty)                                 | Foreigners cannot hold Hak Milik; if acquired by operation of law, title must be divested within one year.                  | Community-property logic may be read as creating a non-eligible co-ownership interest; lapse or refusal at registry possible. | Convert to Hak Pakai where feasible or sell with proceeds division; if conversion infeasible, use sale + escrow; keep title solely in eligible WNI.                   |
| Agrarian Law / Registration | PP 18/2021 & Permen ATR/BPN 18/2021 (documentation & registration gates)                 | Registrability depends on complete documentary file (identity/immigration, tax, tenure history) and correct deed types.     | Mediated settlements that are not translated into PPAT deeds stall at BPN; regional practice variance.                        | Draft to registry grammar: partition/transfer/ conversion deeds with parcel IDs, rights status, and supporting documents; use pre-lodgement checks.                   |
| Civil Procedure             | PERMA No. 1/2016 (court-annexed mediation; akta perdamaian)                              | Settlement can be recorded with judgment-like force, providing a legal anchor for subsequent notarial and registry actions. | Sparse minutes may omit asset descriptions and timelines, undermining executability.                                          | Reduce terms with precision (asset lists, deadlines, responsibilities); record as akta perdamaian when proceedings are pending.                                       |
| Notarial/PPAT Practice      | Deed taxonomy (partition; conversion; sale; escrow)                                      | Translates consensual outcomes into registrable instruments; allocates risks and sequencing.                                | Drafting gaps (identity mismatches, unclear subject matter) and missing escrow/tax clauses cause refusals.                    | Adopt model clauses: partition + compensation; conversion (Hak Milik→Hak Pakai) where lawful; sale + escrow when conversion impossible; allocate documentary burdens. |

|                           |                                                                         |                                                                                              |                                                                                                   |                                                                                                                                                            |
|---------------------------|-------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Private International Law | Choice-of-law clauses; EU Reg. 2016/1103 (comparative guidance)         | Coordinates matrimonial property regime across borders and signals portability expectations. | Cannot displace <i>lex situs</i> for Indonesian land; recognition abroad may require formalities. | Include explicit choice-of-law for regime and portability measures (apostille/legalization); execute in-rem changes under Indonesian law and lodge at BPN. |
| Third-party Protection    | Creditor/good-faith acquirer safeguards                                 | Recharacterization of assets can prejudice reliance interests.                               | Absence of notice leads to priority disputes; settlements vulnerable to challenge.                | Insert notice provisions (registry/civil records), cut-off dates, and escrow for debt/tax clearance; disclose existing encumbrances.                       |
| Anti-Nominee Compliance   | Prohibition of disguised/nominee arrangements (doctrinal & policy line) | Nominee devices simulate foreign ownership of Hak Milik.                                     | High invalidation risk and non-registration at BPN.                                               | Avoid nominee structures; use lawful channels (Hak Pakai; eligible apartment and foreigner where relevant).                                                |

### 3.1.2. Case Type Typology and Judicial Reasoning Patterns (2015–2025)

The case mapping yields a functional typology of disputes in which the family property land nexus is litigated or mediated. While counts will vary by sample composition, three archetypes recur with enough regularity to warrant separate analysis.

Type A, WNI titled Hak Milik with no nuptial agreement. In these cases, property acquired during marriage is in the Indonesian spouse's name, with the foreign spouse asserting a beneficial share through community property principles. Judicial reasoning typically recognizes the community character of assets acquired during marriage under Article 35, yet navigates the UUPA constraint by avoiding any remedy that would treat the foreign spouse as a co owner of Hak Milik. Instead, courts either (i) divide value rather than title, awarding compensation or ordering a sale with proceeds division; or (ii) encourage mediated outcomes under PERMA that restructure interests into a form that remains registrable (e.g., compensation plus an occupancy right that does not morph into a real right disallowed for foreigners). Where settlements are reached, the *akta perdata* is the legal anchor; its effectiveness, however, depends on whether notarial/PPAT deeds are drafted to BPN specifications.

Type B, Post nuptial agreements executed after asset acquisition. Posnuptials following the 2015 Constitutional Court decision often aim to demarcate assets ex post, either to insulate WNI held land from community claims or to regularize a couple's financial relations ahead of a transfer or conversion. Two issues dominate judicial/magistrate reasoning, temporal effect and third party reliance. The better reasoned cases (and much of the commentary) treat post nuptials as binding inter partes from their execution forward, while warning that retroactive effects may not defeat rights already vested in third parties (creditors, good faith purchasers). Courts are receptive to mediated settlements that incorporate post-nuptial logic, but they scrutinize whether the instruments are a vehicle to disguise prohibited nominee arrangements. Drafting that pairs a post nuptial with a partition deed and notice mechanisms (to creditors and relevant registries) has the highest chance of passing both judicial and administrative gates.

Type C, Cross border asset sets (lex situs vs. choice of law). These cases involve Indonesian land plus assets abroad. The core pattern is one of dual compliance: matrimonial property law (by party choice or default connecting factors) allocates interests broadly, but any in rem change for Indonesian immovables must satisfy Indonesian registry law. Settlements that anticipate cross border enforcement reference the Singapore Convention on Mediation framework for international mediated settlement agreements (IMSAs) or comparable recognition pathways, though its current material scope is commercial; still, the drafting insights on precision, mediator roles, and filtrable grounds are increasingly borrowed for private law contexts. European experience under Regulation 2016/1103 further instructs lawyers to design portability clauses that make outcomes legible to foreign registries/courts while making clear that Indonesian land transfers will be executed under local law and lodged at BPN (Alexander & Chong, n.d.).

Across Types A until C, the pivotal remedial forms cluster into four families. First, partition with unequalization payments where equity so requires; second, conversion of WNI held Hak Milik into a structure compatible with a foreign spouse's occupancy (typically Hak Pakai), though technical feasibility depends on tenure and local administrative practice; third, sale + escrow, useful when conversion is impossible or disputed; and fourth, compensation orders where parties agree that title remains with the Indonesian spouse but the foreign spouse's contribution is valued. Courts are more comfortable with value splitting than title splitting when a foreign spouse is involved, reflecting fidelity to the UUPA public order baseline.

Mediation forward cases also display a recognizably "restorative" reasoning template. Opinions and minutes that record effective settlements tend to reference party voice, negotiated timelines for handover or sale, provisions for third party notice (creditors, tenants), and sometimes communications protocols

in ongoing co-parenting contexts. This vocabulary mirrors contemporary RJ frameworks emphasizing deliberation, safety screening, and forward looking commitments, suggesting that Indonesian civil mediation, though not labeled as such, is already converging on restorative design where the registry logic is internalized from the start (Kirkwood, 2022; Hobson & Payne, 2022).

**Table 3.1.3.** Dispute Typology and Disposition Patterns

| Archetype                                                     | Typical triggers                                                                                                                                                                             | factual | Recurring concerns                                                                                                                                                                                                                                                                                                       | judicial | Disposition patterns                                                                                                                                                                                                                  | Registrability (explicit/inferential)                                                                                                                                                                                                                                           | notes |
|---------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| Type A — WNI-titled Hak Milik; no nuptial agreement           | Property (Hak Milik) purchased during marriage under WNI spouse's name; WNA spouse asserts community share under Art. 35 Marriage Law; no pre/post-nuptial on record.                        |         | Eligibility under UUPA Art. 21 (avoid foreign co-ownership); preserving community-property equity without creating ineligible title; screening for nominee risk; valuation of contributions; ensuring remedies do not simulate proprietary control for WNA; ensuring any settlement can be reduced to registrable deeds. |          | Partition of value (not title) with compensation; court-recorded settlement (akta perdataan) followed by sale + escrow where needed; in rare cases, structured occupancy/use without in rem effects; title remains with eligible WNI. | Registrability typically inferential unless BPN acceptance is noted; strongest when settlement → PPAT partition/sale deed with parcel IDs, tax clearances, and identity checks. High risk of refusal if deed language implies WNA co-ownership of Hak Milik.                    |       |
| Type B — Post-nuptial executed after asset acquisition        | Post-nuptial (enabled by CC No. 69/PUU-XIII/2015) signed after purchase to ring-fence assets or prepare for transfer/conversion; sometimes contemporaneous with dispute filing or mediation. |         | Temporal effect (prospective vs retroactive reach); third-party reliance (creditors, bona fide acquirers); potential misuse to mask nominee arrangements; need for civil-registry/other notice; ensuring inter partes validity translates to PPAT/BPN action.                                                            |          | Post-nuptial + detailed partition deed; conversion of tenure (Hak Milik → Hak Pakai) where feasible; sale + escrow when conversion infeasible; compensation schedules; explicit notice & cut-off clauses to protect third parties.    | Registrability explicit if deed lodged and accepted; otherwise inferential based on compliance with PP 18/2021/Permen 18/2021 checklists. Risk flags: retroactive language affecting prior third-party rights; unclear subject matter; identity/immigration documentation gaps. |       |
| Type C — Cross-border asset sets (lex situs vs choice-of-law) | Portfolio includes Indonesian immovables and foreign assets; parties invoke choice-of-law clauses or foreign instruments; settlement intended                                                |         | Lex situs constraints for Indonesian land (in rem changes must meet UUPA/PP 18/2021); alignment with foreign matrimonial-property law (e.g., EU Reg. 2016/1103) for inter-spousal allocation;                                                                                                                            |          | Dual-track design: Indonesian land resolved via local law (partition/value split; conversion; sale + escrow); foreign assets addressed under applicable foreign law; portability measures                                             | Registrability split: BPN acceptance governs Indonesian parcels; foreign recognition handled separately. Evidence explicit when BPN receipts/entries or foreign recognition orders are cited;                                                                                   |       |

*Building A Restorative Property ...*

**(Raden Maestro Broto Ariyo, FX Joko Priyono, Yunanto & Herni Widanarti)**

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|                                      |                                                                                                                         |                                                                                    |                                                                             |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| to be portable across jurisdictions. | recognition/legislation formalities (apostille/legalization); clarity on which obligations are territorial vs portable. | (choice-of-law, jurisdiction, apostille/legalization) embedded in settlement text. | otherwise inferential via inclusion of portability clauses and formalities. |
|--------------------------------------|-------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|

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### 3.1.3. Mediation Performance Signals

Three desk observable signals emerge from the decisions and minutes that explicitly mention mediation. First, reporting frequency is uneven. Although PERMA No. 1/2016 mandates mediation and requires judges to document the process, many decisions only include a formulaic note that mediation occurred and failed (or succeeded), without annexing detailed terms. When details are present, they typically specify the subject matter (which assets are “in” and “out”), timelines for action (e.g., 90 days to complete a sale), and allocations of documentary burdens (who obtains tax clearances; who bears notary fees). Where a settlement is recorded as an *akta perdamaian*, this serves as the judicial anchoring component of executability.

Second, substance of agreements converges on a shortlist of registry-intelligible outcomes. The most registry friendly is a partition deed (sometimes with compensation), followed by sale + escrow, and then conversion where the physical and tenure circumstances allow it. Agreements that attempt to simulate a foreigner’s proprietary control over Hak Milik through nominee like devices are less likely to appear in court recorded settlements at all; where they do, they are vulnerable to challenge. Recent Indonesian and comparative commentary confirms the continuing legal precariousness of nominee stratagems and underscores that foreigners’ lawful pathways are Hak Pakai or certain apartment interests, subject to price and eligibility thresholds introduced or clarified in the post 2021 regulatory landscape (Ransa & Badriyah, 2023).

Third, execution issues turn on the paper trail. Even when an *akta perdamaian* exists, registrability at BPN depends on whether the settlement was translated into instrument-specific deeds with complete supporting documentation. In difficult cases, BPN offices issue refusal notes citing grounds such as “foreigner limit,” incomplete or inconsistent identity/immigration documents, or tax clearance problems. This confirms that executability is a behavioral attribute of the agreement’s drafting, not merely a legal label. Proper sequencing (court settlement → notarial deed → BPN application) and checklist compliance remain the best predictors of smooth execution (see also Permen ATR/BPN No. 18/2021 on procedures). In this sense, a mediation “success” is only as good as the resulting notarial/registry file.

**Table 3.1.4.** Mediation in Case Files: Frequency, Terms, and Execution Issues

| case_id                | remedial_package | registry_status | evidence_type | execution_notes                                                           | doc_completeness_flag | bpn_office      |
|------------------------|------------------|-----------------|---------------|---------------------------------------------------------------------------|-----------------------|-----------------|
| PA-001/2019/PA.JP      | partition        | accepted        | explicit      | Partition deed lodged; BPN receipt attached; proceeds split via escrow.   | complete              | Jakarta Pusat   |
| PN-014/2020/PN.DPS     | —                | not-stated      | none          | Mediation failed; case proceeded to judgment.                             | missing               | Denpasar        |
| PA-117/2021/PA.BDG     | sale+escrow      | accepted        | explicit      | Sale deed references escrow milestones; BPN entry number noted.           | complete              | Bandung         |
| PN-203/2022/PN.SBY     | conversion       | refused         | explicit      | BPN refusal note uploaded.                                                | partial               | Surabaya        |
| PA-045/2023/PA.BJR     | compensation     | not-stated      | inferential   | Akta perdamaian allocates compensation; no deed/registry proof annexed.   | partial               | Banjarbaru      |
| PN-099/2024/PN.JKT.SEL | mixed            | pending         | inferential   | Deed language mirrors BPN checklist; application receipt not yet in file. | complete              | Jakarta Selatan |

### **3.1.4. Implications for Notarial/PPAT Practice and Land Administration**

The results point to four “compliance checkpoints” where professional practice determines whether conciliatory intent becomes legal reality. The first is drafting alignment: notarial/PPAT deeds should mirror the registry grammar of PP 18/2021 and related administrative circulars. Practically, that means (a) subject matter clarity (parcel identifiers, rights status, encumbrances), (b) eligibility statements (especially when foreigners are involved), and (c) timeline clauses keyed to post agreement actions (e.g., deadlines for lodging at BPN). Converting a mediated term into a registrable output begins with writing it in the language of the registry.

Second is title conformity. Where a foreign spouse’s occupancy is at issue, the conversion of a WNI held title into a form that can accommodate lawful use by a foreigner requires early feasibility checks. Some arrangements are technically infeasible given the underlying tenure, spatial plans, or the property’s history; in such cases, sale + escrow with a value split may be the only compliance-sound route. The line between permissible usufruct arrangements and impermissible beneficial ownership that mimics Hak Milik should be vigilantly policed. The literature continues to warn that nominee devices, while creatively drafted, remain susceptible to legal challenge and, in any event, to non registration.

Third is third party protection. Where settlements recharacterize assets (e.g., post nuptial separation or partition), creditors and good faith acquirers require protection through notice and cut off clauses. The most defensible designs include (i) recording the post nuptial or partition in relevant civil registries where available; (ii) inserting escrow milestones that condition transfer on tax clearance and debt resolution; and (iii) advertizing, in cross border scenarios, to potential recognition needs in foreign fora. This is where comparative instruments like Regulation 2016/1103 can function as design prompts even outside the EU, practitioners should draft with portability in mind, making explicit which parts of the settlement are intended to travel and which are strictly Indonesian.

Fourth is judicial anchoring and mediation hygiene. Notaries/PPAT can reduce post hoc litigation by encouraging parties to return to court for an akta perdamaian where a case is already pending, or to structure private mediation outcomes with a view to enforceability standards recognized in the broader mediation ecosystem. Although the Singapore Convention primarily covers commercial settlements, the contemporary recognition debate and national implementation measures provide a template for diligence, clarity of terms, mediator impartiality, and limited yet principled refusal grounds. Incorporating these quality controls improves the settlement’s credibility before judges and registries alike.

## **3.2. Proposed Paradigm and Mechanisms**

### **3.2.1. The Restorative Property Justice (RPJ) Paradigm**

RPJ is grounded in three mutually reinforcing pillars: norm compatibility, procedure design, and remedial outcomes. It is neither an abstract ideal nor a mere slogan. Rather, RPJ translates constitutional and statutory constraints of Indonesian land law into a restorative pipeline that begins with safe dialogue and culminates in instruments that the land registry can actually accept. The point is to align what is equitable with what is registrable.

Pillar 1, Norm Compatibility. Any solution must “speak” three legal languages at once: (i) Indonesian family law after the Constitutional Court’s landmark ruling that permits post nuptial agreements; (ii) agrarian law as *lex situs* (notably the nationality bar on Hak Milik and the administrative gates for registration); and (iii) where assets or recognition needs cross borders, the choice of law architecture found in comparative regimes such as the EU’s Regulation 2016/1103 on matrimonial property. In practice, norm compatibility means testing a draft outcome against hard public order constraints (e.g., a foreign spouse cannot hold Hak Milik), administrative specifications for registration under PP 18/2021, and, where relevant, portability rules so that a settlement can be intelligible to foreign forums without displacing *lex situs* for Indonesian land.

Pillar 2, Procedure Design. RPJ rejects the false dichotomy between “restorative” and “legal.” The design imperative is an end to end mediation → consent judgment (akta perdamaian) → notarial/PPAT deed → BPN filing sequence. Under PERMA No. 1/2016, court-annexed mediation furnishes a judicial channel whose outputs can be accorded judgment-like force. The settlement then must be translated into the correct deed taxonomy (partition; conversion; sale with escrow), papered with the identity/tax/immigration documentation that PP 18/2021 and implementing guidance require, and lodged at the appropriate BPN office. In cross border matters, drafting should borrow enforcement-readiness heuristics from the Singapore Convention commentary and national implementation scholarship, not to “commercialize” family disputes, but to elevate precision and recognizability of terms.

Pillar 3, Remedial Outcomes. RPJ’s outcomes are substantively fair, proportionate, and executable. Four clusters recur: (a) partition of community assets (with compensation where needed), (b) conversion (e.g., Hak Milik to Hak Pakai) where tenure and local administrative conditions permit, (c) sale + escrow when conversion is impossible or undesirable, and (d) compensation orders where title remains with the Indonesian spouse but contributions are valued. These are not interchangeable. They are ranked by feasibility along the *lex situs* and registration

gates; nomination styled devices that simulate foreign beneficial ownership of Hak Milik are out of bounds both doctrinally and practically.

RPJ capitalizes on two contemporary insights from restorative-justice scholarship. First, values are design variables: voluntariness, safety, and inclusion are operational constraints that shape mediator screening, caucus protocols, and the phasing of obligations. Second, service architecture matters: top-down (court annexed) and bottom-up (community responsive) models can be integrated if interfaces to professionalized nodes (notaries/PPAT, registry officers) are engineered early. In short, the soft law of values must be expressed as the hard law of deeds.

### **3.2.2. An Integrated Decision Flow (Court Notary/PPAT BPN)**

Building on the paradigm, this subsection proposes a compliance, first decision flow that reduces execution risk. The flow is modular, it can be invoked by judges and mediators in court annexed processes, by notaries/PPAT in private settlements, and by counsel advising couples. It sequences seven gates:

a. Identify subjects (WNI/WNA) and capacity

Establish citizenship and immigration status at the outset; many failures at BPN begin as identity or capacity gaps. Where the foreign spouse's lawful occupancy is contemplated, document eligibility pathways recognized by PP 18/2021 and practice guidance (e.g., for Hak Pakai or apartment interests meeting price and use conditions).

b. Classify the object (Hak Milik/Hak Pakai/HGB/SRS).

Title classification dictates what is even possible. Hak Milik and foreign persons do not mix. When the land right or its history renders conversion technically infeasible, the decision flow routes parties to value-split solutions (sale + escrow; compensation) rather than title-split illusions that will be refused.

c. Audit marital agreements (pre/post).

Post nuptials are powerful but not magic. Their temporal effect is prospective as against third parties in most careful readings and judicial approaches; using them to erase past liabilities or to cloak nominee structures courts administrative suspicion. The flow therefore tests for timing (relative to asset acquisition), recording/notification status, and potential prejudice to creditors or good faith acquirers.

- d. Select a remedial package (partition / conversion / relinquishment or sale / compensation). The remedial choice is keyed to feasibility and fairness. Partition is preferred where it can be registered and does not produce prohibited co ownership. Conversion is viable only where tenure, planning, and local practice permit (Hak Milik → Hak Pakai scenarios are fact sensitive). Sale + escrow is recommended when neither partition nor conversion can satisfy lex situs and registry grammar. Compensation complements any package that keeps title with the eligible WNI spouse while vindicating contributions.
- e. Draft to registry grammar (PPAT stage). The same outcome can be written well or poorly. Deed taxonomy must match intent (e.g., partition with parcel identifiers and encumbrance lists; sale with escrow milestones and tax clauses; conversion with eligibility statements and tenure history). Drafting should also include notice and cut off clauses to protect third parties and to reduce priority disputes.
- f. Verify at BPN and lodge (with pre lodgment checks). Before filing, run an internal pre lodgment audit against PP 18/2021 documentation lists: identity and immigration proofs, marital agreement recording where relevant, tax clearances, spatial planning compliance, and legacy encumbrances. On filing, track BPN office identifiers (e.g., Jakarta Pusat, Surabaya) consistently; your empirical Table 4 already captures a `bpn_office` field, use it for post-registration monitoring and to study regional variance in acceptance/refusal grounds.
- g. Post settlement monitoring (deadlines; evidence; compliance). RPJ treats implementation as part of justice. If the settlement is court-connected, set status reviews keyed to akta perdamaian timelines; if private, schedule notarized confirmations or escrow releases tied to documentary milestones. Capture explicit evidence (BPN receipt numbers; refusal notes) wherever possible; otherwise, record inferential evidence (deed language mirroring checklists) and follow up until explicit proof is obtained.

### **3.2.3. A Notarial/PPAT Clause Toolkit**

RPJ will only live on paper if drafters have a toolkit tuned to Indonesian registration realities and cross border sensibilities. The following model provisions, written here in descriptive terms to avoid pre emptying journal style requirements, can be adapted into clause language.

- a. Ring fencing clause (specific separation).

A clause that specifically identifies risky assets (e.g., particular Hak Milik parcels) as separate property of the WNI spouse from the date of the instrument, with an express acknowledgment that nothing in the clause confers any proprietary right in Hak Milik on the foreign spouse. The clause should reference PP 18/2021 and UUPA constraints, and, if the couple anticipates transfers or conversion, pre-commit the parties to cooperate in generating supporting documentation (identity, immigration, taxes).

b. Compensation clause.

Where title remains with the WNI spouse, the parties may stipulate a compensation schedule reflecting contributions. The clause should tie payments to escrow milestones (e.g., funds to be released upon proof of BPN acceptance or a registered sale), minimizing exposure to nonperformance risk and mirroring insights from the literature on enforcement ready mediated settlements.

c. Choice of law and forum clause (portable but situs safe).

For cross border portfolios, a clause may select the law governing the matrimonial property regime (or aspects of it) consistent with comparative instruments like Regulation 2016/1103, while stating that any in rem change involving Indonesian immovables will be executed under Indonesian law and lodged at BPN, per *lex situs*. This bifurcation makes the settlement legible abroad without promising what the registry cannot accept at home.

d. Escrow and tax-clearance clause.

Indonesian property transactions routinely implicate tax events. Include escrow terms that condition releases on production of tax clearances and registry receipts, and allocate costs (notary/PPAT fees, duties) to reduce later contestation.

e. Third party protection (notice & cut off).

To protect creditors and good-faith acquirers, insert notice provisions (e.g., to civil registries or relevant creditors where feasible) and cut off dates after which re characterizations do not prejudice third party rights. This is doctrinally honest and increases judicial confidence when converting settlements into *akta perdata*.

f. Compliance covenant.

A short covenant to cooperate with BPN and other authorities, to produce documents upon request, and to correct curable defects within stated timelines.

Courts and registries read such covenants as markers of good faith and readiness for execution.

#### **3.2.4. Scenario Simulations**

Scenario 1, WNI and WNA without nuptial agreement; Hak Milik acquired during marriage → partition + compensation. Facts. A WNI spouse holds title to a Hak Milik parcel purchased during marriage; the WNA spouse asserts community rights. Constraint. Under UUPA, foreigners cannot hold Hak Milik. Design. Mediate under PERMA; record settlement as akta perdamaian; deploy a partition-of-value (not title) with compensation to the WNA spouse; if a sale is contemplated, route proceeds through escrow to align tax and registry milestones. Why it works. The package vindicates contributions while avoiding prohibited co-ownership; the registry receives a familiar instrument set (sale deed + escrow; or partition referencing parcel identifiers). Monitoring. Track filing at the relevant BPN office and preserve the receipt; if using your dataset, capture the office code in the `bpn_office` field for audit and future empirical work.

Scenario 2, Post-nuptial after acquisition → validity against third parties & ownership records. Facts. After acquiring property, spouses execute a post-nuptial to separate estates and protect the WNI spouse's land. Constraint. Post nuptials are now permissible but cannot retroactively defeat vested third-party rights; nominee-like effects remain vulnerable. Design. Pair the post-nuptial with a partition deed that expressly identifies assets and a notice & cut-off schedule (e.g., "effective as to third parties from registration/notice date"). Where occupation by the WNA spouse is contemplated, assess technical feasibility of conversion to Hak Pakai; if infeasible, prefer sale + escrow or compensation. Why it works. The design honors the 2015 reform while complying with *lex situs* and registry gates; explicit notice practices strengthen third-party protection.

Scenario 3, Cross border assets → split-order with *lex situs* guardrails. Facts. The couple holds Indonesian land plus a foreign apartment. Constraint. Inter-spousal allocation may be governed by a chosen law or default connecting factors (e.g., habitual residence under EU 2016/1103), but in rem changes for Indonesian immovables must satisfy Indonesian law. Design. Draft a split-order: (i) a choice-of-law clause for the matrimonial regime (to organize the overall allocation and signal portability); (ii) a local Indonesian packet for the land (partition/conversion/sale + escrow) drafted to PP 18/2021 grammar; and (iii) portability measures (apostille/legalization) for the settlement text and any recognition needed abroad. Why it works. The portfolio becomes legible to both systems without promising outcomes that the registry cannot implement.

#### 4. Conclusion

This study answers three key questions by showing that community property in mixed marriages is shaped by tensions between the Marriage Law's default concept of harta bersama and agrarian restrictions on foreign ownership, especially where assets involve Hak Milik, making equitable claims difficult to register. It further finds that restorative justice in this private law context is effective only when supported by enforceable procedures, particularly through court-annexed mediation under PERMA No. 1/2016 that results in an akta perdamaian and is translated into proper notarial/PPAT deeds in line with PP No. 18/2021. The study introduces Restorative Property Justice (RPJ) as a framework based on norm compatibility, procedural design, and remedial outcomes, linking courts, notaries/PPAT, and BPN through pre-lodgment audits, precise deed drafting, and monitoring of settlement implementation. Its practical contributions include a clause toolkit for settlements, such as ring-fencing, compensation with escrow, situs-safe choice of law, notice provisions, and compliance covenants, as well as a disharmony matrix offering solutions like partition with compensation, conversion to Hak Pakai where possible, or sale with escrow when conversion is impossible. Policy recommendations include improved mediation templates and safeguards by the Supreme Court, standardized deed and filing procedures by ATR/BPN, and model marital agreement clauses by professional bodies that protect property rights without creating nominee arrangements. Although based on documentary sources and limited by uneven mediation records and possible regional variation in registry practice, the study suggests future empirical research using BPN administrative data, refusal logs, and cross-border recognition records to further test and refine RPJ as a legally sound, restorative, and administratively workable model.

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