

The Strategic Role of Notaries in Guaranteeing Financial Rights in Mixed Marriages: A Study of Marriage Agreements

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Abstract: When a foreign citizen and an Indonesian citizen get married, they participate in a mixed marriage, which is governed by the laws of both countries. The protection of the financial rights of the spouse is one of the many complicated legal issues that arise in mixed marriages between Indonesian citizens and foreigners. The differences in the legal system between the couple's countries of origin are an important background in the need for the preparation of a valid and fair marriage agreement. A marriage agreement is an important instrument to regulate property ownership, financial obligations, and the protection of the rights of each party, both during the marriage and after the divorce. This research formulates two main problems, namely how to regulate the preparation of marriage agreements in mixed marriages, and how the role of notaries in ensuring the protection of the financial rights of mixed couples. The purpose of this study is to analyze the strategic role of notaries in these contexts and assess the effectiveness of the available legal protection mechanisms. This study uses a normative juridical method with a legislative approach and a study of legal documents. The results of the study show that notaries have an important role not only in the preparation of marriage agreement deeds, but also in providing legal education, bridging differences in the legal system, and anticipating potential disputes through the preparation of appropriate dispute resolution clauses. In conclusion, notaries are key actors in ensuring the financial rights of couples in mixed marriages, through agreements that are fair, legal, and in line with the principles of Indonesian and international law.

Keywords: Notary, Financial Rights, Mixed Marriage,

INTRODUCTION

According to Article 1 of Law Number 1 of 1974 concerning Marriage, marriage in Indonesia is defined as an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead. This definition reflects the legal view that marriage is not only an emotional relationship, but is also a legal institution that is protected by the state and must meet established normative provisions. In other words, marriage is a social and spiritual contract based on the principle of mutual responsibility and state recognition. In the classical view, R. Subekti states that "marriage is a legal relationship between

a man and a woman for a long time," which means that the relationship is not only legal-formal, but also permanent within the framework of family life.¹ This is corroborated by the opinion of Sayuti Talib who affirms that marriage is a sacred covenant to form a family, so it must be carried out with full moral and legal responsibility.² Thus, the classical legal perspective places marriage as an institution that regulates the moral and legal aspects in a balanced manner.

As a legal event, marriage has direct legal consequences for the parties, including the rights and obligations of reciprocity between husband and wife. These rights include innate support, loyalty, and mutual respect. According to Sudikno Mertokusumo, the law must provide certainty, justice, and usefulness.³ Therefore, in the context of marriage, legal certainty is needed to ensure that the rights and obligations of the spouse are recognized and can be legally enforced. Therefore, when marriage is not regulated or legally recorded, the potential for rights violations, especially against women and children, will increase. Marriage registration is an important aspect in Indonesian law because it is closely related to the legitimacy of family relations and legal recognition of the status of children and the division of property. Although legal according to religion, without state registration, the marriage has no legal evidentiary power. In practice, this makes it difficult in inheritance division, child custody, or joint property disputes. Thus, the law not only regulates the material and formal requirements of marriage, but also guarantees comprehensive legal protection for the parties involved. As the legal recording and recognition of marriage becomes increasingly important in the national legal system, new and more complex challenges arise when the marriage bond is no longer limited to fellow citizens, but involves couples from two different legal jurisdictions. In this context, globalization is the main triggering factor that brings significant changes to the form and dynamics of marriage in Indonesia, especially through the phenomenon of mixed marriages between Indonesian Citizens and Foreign Citizens.

The development of globalization has blurred geographical and cultural boundaries between countries, including in the aspects of personal and family relationships. High mobility between nations through study, work, or migration has opened up opportunities for intensive interaction between citizens from different backgrounds, including in terms of marriage. Therefore, mixed marriages between Indonesian Citizens and Foreign Citizens are becoming more and more common in Indonesian society today. Juridically, Article 57 of Law Number 1 of 1974 concerning Marriage defines a mixed marriage as "a marriage between two people who in Indonesia are subject to different laws due to differences in nationality and one of them is an Indonesian citizen." This understanding reflects that the legal aspects of mixed marriage become more complex

¹ Hastuti, I. (2020). Legal protection for husband and wife in the implementation of marriage agreements according to Islamic law. *Scientific Journal of Law and Social Dynamics*, 18(1), 62-69. <http://jurnal.untagsmg.ac.id/index.php/hdm/article/view/1753>

² Ja'far, H. K. (2021). *Islamic Marriage Law in Indonesia*. Arjasa Pratama. p.17

³ Moho, H. (2019). Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan dan Kemanfaatan. *Warta Dharmawangsa*, 13(1). <https://jurnal.dharmawangsa.ac.id/index.php/juwart/article/view/349>

because they involve two different legal systems.⁴ In this case, not only Indonesian national law applies, but also foreign law from the foreign couple's country of origin.

The legal complexity in mixed marriages does not stop at the time the marriage is legalized, but also continues in the arrangement of civil rights such as the division of property, inheritance rights, and citizenship of children. Differences in legal principles, such as the common property system in Indonesia which is different from the separate property system in some western countries, often cause conflicts in practice.⁵ Therefore, a deep understanding of private international law is needed in order for couples to obtain equal and fair legal protection. From a social perspective, intermarriage carries dynamic multiculturalism implications, but it also poses new challenges, such as cultural adaptation, value conflicts, and certain social stigmas. However, from a legal point of view, the most obvious challenge is the synchronization of national legal rules with the legal systems of foreign countries, especially when it comes to the recognition and enforcement of civil and civil rights between countries. This is where the law is required to be not only responsive, but also progressive in guaranteeing certainty and protection for couples in mixed marriages.

In this context, the role of legal institutions and officials such as notaries becomes very crucial. Notaries not only act as drafters of authentic deeds, but also as legal advisors who bridge the gap of understanding between the two legal systems. The preparation of a *prenuptial agreement* by a notary is an essential preventive step, especially in regulating the distribution of property and inheritance rights, as well as avoiding potential cross-border legal conflicts in the future.⁶ This agreement can be the basis for the recognition and exercise of rights in both jurisdictions, if it is drafted with the principle of prudence and in accordance with private international law. With the increasing trend of mixed marriages, Indonesia's national law is required to be more adaptive to global dynamics. Progressive policies and harmonization of international law are needed to meet this challenge. In addition, intensive legal socialization to the community is also important, so that prospective couples in mixed marriages have adequate legal understanding and readiness. In this way, Indonesian law can play its role as a fair protector for all citizens, regardless of the spouse's nationality background.

Mixed marriage, in addition to uniting two individuals from different national backgrounds, also brings with it cross-jurisdictional legal implications, especially when it comes to financial rights. When two different legal systems meet in one family relationship, the regulation of property

⁴ Dewi, A. S., & Syafitri, I. (2022). Analysis of mixed marriages and their legal consequences. *Juripol (Journal of Ganesha Polytechnic Institution Medan)*, 5(1), 179-191. <https://jurnal.polgan.ac.id/index.php/juripol/article/view/11323>

⁵ Asnawi, M. N., & Shi, M. (2022). *Joint property law: Comparative legal review, norm review, jurisprudence, and legal reform*. Medium Pregnancy. p. 46

⁶ Zahra, S. Q. A., & Hartati, E. (2023). Efektivitas Pertanggung Jawaban Notaris dalam Penyusunan Akta Autentik Berkaitan dengan Perjanjian Perkawinan. *UNES Law Review*, 6(2), 5429-5439. <https://doi.org/10.31933/unesrev.v6i2.1326>

ownership, inheritance rights, and asset management becomes not simple. Differences in legal principles between couples' countries of origin can lead to norm conflicts, which ultimately create legal uncertainty for couples, especially when it comes to financial arrangements during and after marriage. One of the most crucial challenges in mixed marriages in Indonesia concerns the limitation of property ownership rights by Foreign Nationals (WNA).⁷ Based on Article 21 of the Basic Agrarian Law (UUPA), only Indonesian citizens (WNI) have the right to own land ownership. If in a mixed marriage there is no agreement of separation of property from the beginning, then the property acquired during the marriage is considered joint property. This poses a problem because the existence of foreigners as parties to the common property can be considered a violation of the provisions of land ownership by foreigners.

This condition not only has an impact on foreigners who cannot own land, but can also harm Indonesian couples who lose legal certainty over their asset ownership. In some cases, property such as land or houses acquired during marriage is even threatened with nullity and void or must be transferred because it is considered to violate the principle of ownership. Therefore, a marriage agreement made before marriage is very vital as a legal instrument to separate property ownership, so that Indonesian citizens can still legally own property and are not bound by the legal status of their foreign spouse. Further, issues also arise in terms of inheritance rights and cross-border asset management. Indonesia's legal system recognizes a different inheritance system than western countries that tend to adhere to the testamentary system (based on wills). In mixed marriages, often children or couples with foreign status face difficulties in claiming inheritance rights to property in Indonesia, especially if there is no written arrangement in the form of a marriage agreement or a valid will according to Indonesian law. This is exacerbated by restrictions on the conversion or transfer of land rights to foreign parties, which further narrows the space for financial rights for foreigners in the family. In terms of banking and investment, jurisdictional differences also have an impact on joint account management rights, access to pension funds, and authorization of productive assets in both countries. In this case, mixed couples require comprehensive, cross-border legal protection. Marriage agreements are no longer just about the separation of property, but also become the legal basis for regulating the division of financial responsibilities, family business management, and protection of cross-border assets. In this context, the role of notaries and legal advisors is very important as legal facilitators across jurisdictions.

In the context of mixed marriages involving different legal systems, the marriage agreement is a very strategic legal tool to provide protection for the financial rights of the couple. This agreement is generally drafted to regulate the separation of property between husband and wife, both before and during the marriage. Each spouse can maintain control of their own assets and avoid unfavorable legal consequences with the existence of a legally binding agreement, especially in

⁷ Frahma, E. A. (2024). The Development of Mixed Marriage Law: A Comparative Perspective of Western Civil Law and a Compilation of Islamic Law. *Istidal: Journal of Islamic Law Studies*, 11(2), 175-189. <https://ejournal.unisnu.ac.id/JSHI/article/view/7078>

terms of property ownership and division of common property. Married couples now have the freedom to make a marriage agreement both before and during their marriage, thanks to the Constitutional Court Decision No. 69/PUU-XIII/2015, which amends the provisions of Article 29 paragraph (1) of Law No. 1 of 1974.⁸ This ruling is an important milestone in legal protection, because previously, married couples did not have the opportunity to adjust their financial arrangements through a written agreement. Now, couples who are aware of the importance of financial arrangements can draft an agreement at any time, as long as it is done by mutual agreement and in front of a notary.

In practice, a marriage agreement becomes a strong legal basis for regulating the financial rights and obligations of both parties, including liability for debts, management of joint venture results, and inheritance distribution provisions. When this agreement is carefully crafted, the couple is not only protected from future property disputes, but also from possible violations of the law that may arise, especially for mixed couples who own property in Indonesia but are bound by ownership restrictions due to citizenship status.⁹ In addition, in the context of couples with differences in economic power, the marriage agreement plays an important role in creating balance and justice. For example, in the case of an Indonesian citizen who is married to a foreigner from an economically stronger country, an agreement can protect local assets belonging to Indonesian citizens from being legally bound in a detrimental asset partnership. The same applies to women or non-working parties whose agreements can contain provisions on alimony or financial compensation in the event of a divorce, so that vulnerable parties do not lose access to economic protection.

In many cases, these agreements also have a preventive function against legal disputes, both in national courts and in international jurisdictions. By clearly regulating the separation of assets and financial responsibilities from the beginning, the potential for future conflicts can be suppressed, and the legal settlement process can run more efficiently. This is important, especially when the couple has cross-border assets or children from a mixed marriage whose rights also need to be proportionately guaranteed.¹⁰ The existence of marriage agreements in the Indonesian legal system, especially after being expanded through the Constitutional Court Decision, is a form of legal protection that is adaptive and responsive to modern social and family dynamics. This instrument not only reflects the freedom of contract as stipulated in Article 1338 of the Civil Code, but also becomes a real means to realize the principles of justice and legal certainty in family

⁸ Nafisa, F., & Suparto, S. (2024). Pemisahan Harta Bersama Melalui Perjanjian Perkawinan yang Dibuat oleh Pasangan Perkawinan Campuran Setelah Perkawinan Dilangsungkan Dikaitkan dengan Undang-Undang Perkawinan dan Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015. *Birokrasi: JURNAL ILMU HUKUM DAN TATA NEGARA*, 2(1), 28-40. <https://journal-stiayappimakassar.ac.id/index.php/Birokrasi/article/view/882>

⁹ Salsiah, L., Putri, E. A., & Saimima, I. D. S. (2024). Perjanjian Perkawinan Dan Akibat Hukumnya Atas Harta Bersama. *Jurnal Hukum Sasana*, 10(2), 181-190. <https://ejurnal.ubharajaya.ac.id/index.php/SASANA/article/view/3505>

¹⁰ Nafisa, F., & Suparto, S. *Op. Cit.*, hlm. 30

relations. In the framework of mixed marriage, this agreement is the main buffer in maintaining the balance and integrity of the financial rights of both parties. In order for the marriage agreement to really have legal force and can be used as a handle in dealing with the dynamics of the marital relationship, it is necessary to have the authorized legal authority to realize this instrument legally and authentically. This is where the role of the notary becomes crucial as a public official who not only guarantees the validity of documents, but also ensures comprehensive legal protection for the parties through authentic deeds that have perfect evidentiary power.

As a public official who has the authority to make authentic deeds, including marriage agreements, notaries have a strategic position. Since an authentic deed made by a notary has perfect evidentiary power before the law, it provides the parties with a strong legal foundation.¹¹ The rights and obligations contained in a notarized marriage agreement are guaranteed by legality that is difficult to revoke unilaterally. Notaries have an even more important role in terms of mixed marriages between Indonesian Citizens and Foreign Citizens. This is because the marriage agreement in a cross-border relationship must meet formal and substantial requirements not only according to Indonesian law, but also take into account the applicability and recognition in the country of the foreign couple.¹² Notaries are required to have in-depth knowledge of international civil law in order to be able to draft deeds that are not only nationally valid, but also relevant and recognized across jurisdictions.

One of the most important aspects of the role of notaries is as a guarantor of the protection of the financial rights of Indonesian citizens, especially in the face of legal limitations that apply to foreigners, such as the prohibition on land ownership.¹³ By drafting a marriage agreement that clearly regulates the separation of property, notaries help prevent legal losses for Indonesian citizens, for example if property acquired during marriage has to be withdrawn or transferred due to foreigners' involvement in the joint ownership structure. This is a very important preventive step in maintaining legal certainty for domestic assets. In addition to the substance aspect, the notary is also responsible for ensuring that the process of drafting the agreement is carried out transparently, voluntarily, and by mutual agreement, without coercion or domination of either party. The notary is obliged to explain the content and juridical consequences of the agreement to both parties in a balanced manner. This educational function is important so that couples understand their rights and obligations in full, especially for Indonesian citizens who may not be familiar with the legal system of their spouse's country. Furthermore, in the context of the enforcement of cross-border

¹¹ Fa'adillah, D. (2025). Analisis Tinjauan Tentang Peran dan Tanggung Jawab Notaris dalam Pembuatan Akta Perjanjian. *Edupreneur: Jurnal Pendidikan dan Ekonomi*, 1(1), 19-31. <http://indojurnal.com/index.php/edupreneur/article/view/23>

¹² Sugeng, S. P., & S. H., M. (2021). *Understand International Civil Law in Indonesia*. Medium Pregnancy. p. 48

¹³ Darusman, Y. M. (2016). Kedudukan notaris sebagai pejabat pembuat akta otentik dan sebagai pejabat pembuat akta tanah. *ADIL: Jurnal Hukum*, 7(1), 36-56. <https://academicjournal.yarsi.ac.id/index.php/Jurnal-ADIL/article/view/331>

law, notaries also function as a liaison between international law. In this case, the notary can work with legal experts from other countries to ensure that the marriage agreement made in Indonesia has the possibility of being legally recognized in the foreign couple's country of origin.¹⁴ This ability is very important, especially when a couple has property or children who are in two different countries. Professionalism and cross-jurisdictional capacity are absolute prerequisites for notaries in handling mixed marriage cases. Although notaries have an important role in bridging the legal interests of both parties, ultimately the success of legal protection in mixed marriages is largely determined by the couple's own awareness and understanding of the potential legal risks they face. This is where there is an urgency to further highlight the need for legal protection that arises from the complexity of interstate relationships in marriage, especially when different legal systems intersect and affect the couple's personal and financial rights and obligations.

Many couples in mixed marriages start their domestic life without realizing the legal complexities that come with it. This ignorance often leads to losses, especially when it comes to asset management, debt distribution, and joint property ownership. In the Indonesian legal system, the absence of a marriage agreement automatically gives rise to a joint property regime, which in the context of marriage with foreigners can trigger serious consequences, including the potential cancellation of ownership of land or property due to the involvement of foreign parties.¹⁵ Without a written and legal arrangement, many couples lose a clear legal basis when faced with legal events such as divorce, death, or disputes over assets. This is where legal protection becomes crucial not only as a form of conflict prevention, but also as a mechanism to ensure justice and legal certainty. This kind of legal protection is urgently needed, especially for Indonesian citizens, who in many cases have limited understanding of the legal system of their spouse's country.

Given this vulnerability, legal education is an integral aspect of protection itself. Couples need to be comprehensively informed about what their rights and obligations are in a mixed marriage, as well as how potential legal risks can be minimized through a marriage agreement.¹⁶ The wider community, especially those potentially involved in cross-border marriages, also needs to gain a thorough understanding from the beginning in order to be able to make informed and responsible legal decisions. The urgency of this protection encourages the importance of conducting systematic scientific studies on the practice of marriage agreements in mixed marriages, both from a normative and empirical point of view. Normatively, it is important to review whether existing laws and regulations have adequately provided space and fair protection. Meanwhile, empirically,

¹⁴ Anggara, R. (2021). Studi Komparatif Terhadap Penyimpanan Protokol Notaris Secara Elektronik Di Korea Selatan Dan Di Indonesia. *Indonesian Notary*, 3(3), 13. <https://scholarhub.ui.ac.id/notary/vol3/iss3/13/>

¹⁵ Bagenda, C., Rizkia, N. D., Fardiansyah, H., Hidayat, M. R., Soleh, Y. P., Usman, R., ... & Kholis, I. (2023). *Hukum Perdata*. Penerbit Widina. hlm. 26

¹⁶ Al Akhiru, M. A., & Sinaga, J. S. (2024). Implikasi Hukum Perkawinan Antarnegara dalam Hukum Perdata Internasional. *Jurnal Hukum Cassowary*, 1(1), 1-10. <https://jurnal.asthagrafika.com/index.php/cas/article/view/75>

it is necessary to conduct a study on the implementation of notary practice in the field, how couples respond to the need for agreements, and what obstacles arise in its implementation.

As a key actor in the drafting of a marriage agreement, notaries face the professional burden of maintaining neutrality, providing the right education, and ensuring that the deed created truly reflects a fair agreement. In addition, legal support systems, such as technical guidance, cooperation between countries, or cross-jurisdictional asset protection databases, are also part of the challenges that need to be strengthened. However, although the regulation of marriage agreements has been expanded and recognized in the national legal system, practice on the ground shows that there are still gaps in norms and practices that have the potential to create legal uncertainty. One of the main issues is the ambiguity of norms related to the legal status of marriage agreements made after the marriage takes place, especially in terms of recognition and the power of proof before judicial institutions, both national and international. In addition, there are no clear technical regulations regarding the form, minimum content, and procedure for registering the agreement, thus opening up a space for multiple interpretations between legal practitioners. This ambiguity can be exploited by the more dominant parties in the legal relationship to avoid responsibility or unilaterally interpret the provisions. If it is not immediately regulated in more detail and comprehensively, then the marriage agreement risks losing its effectiveness as an instrument of legal protection that is supposed to ensure justice and certainty for both parties in a mixed marriage..

METHOD

Legislation, legal principles, legal theories, and relevant legal doctrines are examples of written legal norms that are the subject of normative legal research, where this study uses normative legal research.¹⁷ With an emphasis on the study of relevant legal doctrines, legislation, and regulations. The purpose is to analyze the responsibilities of notaries in the preparation of international marriage agreements as well as the protection of the financial rights of couples, especially Indonesian citizens in mixed marriages. The data used are in the form of secondary data obtained through literature studies, including primary legal materials (laws and court decisions), secondary (legal literature), and tertiary. The analysis was also strengthened with limited interviews to obtain practical perspectives from legal practitioners. This research adopts a legislative, conceptual, and case approach, to examine the applicable legal rules, explore legal concepts and theories, and analyze the practice of applying the law through court decisions. This approach was chosen to obtain a comprehensive picture of the effectiveness of legal protection in the practice of mixed marriage. Examining all laws and regulations related to the legal issues being studied is the way the legislative approach is implemented. Marzuki stated that this method is used to ensure the systematics and consistency of relevant positive laws and regulations. The concepts, doctrines,

¹⁷ Muhammad Syahrur, S. T. (2022). *Pengantar Metodologi Penelitian Hukum: Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi dan Tesis*. CV. Dotplus Publisher. hlm. 54

and principles of law that have developed among legal scholars are examined using conceptual methods. This approach is important to explore the meaning of the law deeply and philosophically. Meanwhile, the case approach is an approach that uses the study of court decisions to see how legal norms are applied in practice.¹⁸

RESULTS AND DISCUSSION

A. Arrangements for the Drafting of Marriage Agreements for Mixed Marriage Couples

In Indonesia, the regulation of marriage agreements is regulated in the Civil Code (KUHPercivil) and the Marriage Law. Based on Article 119 of the Civil Code, legally joint property will be formed from the occurrence of marriage, unless the parties make a previous marriage agreement. This means that without the agreement, all property acquired after marriage is considered joint property. The Civil Code opens up space for couples to regulate their own division of property through an agreement, as long as it is made before marriage and stated in an authentic deed.¹⁹ This provision aims for both parties to agree on the content of the agreement consciously, but it is rigid because it cannot be changed after the marriage takes place.

Meanwhile, the Marriage Law also stipulates that Only property acquired during the marriage period becomes joint property, as stated in Article 35 of the Marriage Law, which also regulates the same. The inherited property of each spouse as well as property obtained through inheritance or grants are still considered personal property. The striking difference between the Civil Code and the Marriage Law lies in the scope of the regulation of joint property: the Civil Code considers almost all property, both before and after marriage, to be joint property, except for those explicitly excluded. In contrast, the Marriage Law further limits the scope of joint property and provides stronger protection for individual property. This approach shows an effort to ensure justice and balance of rights in the marital relationship, by recognizing each party's personal rights to certain property outside of the common property.

In making a marriage agreement related to common property, the content of the agreement must be prepared with attention and must not contradict the applicable law, religious norms, or the values of propriety that live in society.²⁰ After the two brides-to-be reach an agreement, they sign the agreement in front of a notary who then pours it in the form of an Authentic Deed, which has higher legal force than the deed under hand. Once made, the agreement must be officially recorded

¹⁸ Marzuki, P. M. (2005). Legal Research Books. *Prenada Media Group, Surabaya*. p. 23

¹⁹ Arief, H. (2017). Marriage Agreement (a study of positive law in Indonesia). *Al-Adl: Legal Journal*, 9(2), 151-172. <https://ojs.uniska-bjm.ac.id/index.php/aldli/article/view/935>

²⁰ Sumarno, E. (2015). The nature of the marriage agreement according to civil law is related to Law Number 1 of 1974 concerning Marriage in Indonesia. *IUS: Scientific Journal of the Faculty of Law*, 3(1), 19-28. <https://ejournal.upm.ac.id/index.php/ius/article/view/390>

both at the Civil Registry Office for those who are married civilly, and at the Office of Religious Affairs (KUA) for Muslim couples. This is in line with the provisions of Article 29 of Law Number 1 of 1974 concerning Marriage which allows marriage agreements to be drafted before or during the marriage period, as long as it is recorded by the marriage registrar. Based on this provision, it can be concluded that the law does not absolutely require the form of a notary deed for the agreement to be legally valid. In other words, a recording by the competent authority is sufficient to give legal force to the marriage agreement made.

In practice, the making of a marriage agreement through a notary deed is often chosen because it is considered to provide stronger legal protection for the parties involved. Notary deeds have an authentic nature, so their evidentiary value before the law is higher than documents made under hand. The notary, as a public official, also has the authority to ensure that the agreement is made legally by fulfilling the elements of the agreement, clarity of content, and a thorough understanding of both parties.²¹ However, the Denpasar District Court Decision Number 1308/Pdt.G/2019/PN.Dps shows that the existence of a notary deed does not always guarantee the legal validity of a marriage agreement. In this case, the agreement that has been made before a notary is declared invalid because there are legal defects, especially in the aspect of translation and understanding of the content by one of the parties who is a foreign citizen. This case makes it clear that even if the formal procedures have been met, the agreement can still be canceled if the substance of its creation does not reflect the full understanding and agreement of the parties.

This problem is an important foundation in encouraging the improvement of regulations related to marriage agreements. One form of regulatory adjustment is reflected in the Constitutional Court Decision No. 69/PUU-XIII/2015, which brought major changes to the regulation of marriage agreements, especially in terms of the time of its creation. This change provides a more flexible legal space and emphasizes the importance of substantial justice in the drafting of agreements, rather than the mere fulfillment of formal aspects. Notaries as state officials are responsible for ensuring that the agreements drafted, including marriage agreements, meet the formal and substantial requirements according to Indonesian law.²² Based on Article 1 number 1 and Article 15 paragraph (1) of the Law on Notary Positions (UUJN), notaries are authorized to draft and ratify authentic deeds, including changing a written agreement into a notary deed if requested by the parties. Even though it is based on the principle of freedom of contract, the content of the marriage agreement must still be in accordance with the law, propriety, and not contrary to public order (Article 1337 of the Civil Code). Therefore, notaries are obliged to ensure that the substance of the agreement does not violate the principles of national and international law. In the case of mixed

²¹ Umbas, S. A. (2017). The position of the deed under the hands of the notary has been legalized in proof in court. *Lex Crimen*, 6(1). <https://ejournal.unsrat.ac.id/index.php/lexcrimen/article/view/15089>

²² Bintang, Amar, et al. "Limitations on Notary Legal Responsibility in Making Deeds Based on Laws and Regulations." *Adagium: Legal Scientific Journal* Vol.3 No.1 (2025), p. 88-103. <https://ejournal.mejailmiah.com/index.php/adagium/article/view/65>

marriages, notaries must also pay attention to potential cross-border legal conflicts. The principle of *due diligence* is important to avoid violations of human rights or laws that apply in other countries.²³

The preparation of a marriage agreement by a notary is not just an administrative process, but involves complex legal aspects. The notary must ensure that each party is aware of the rights, responsibilities, and legal consequences of the agreement. This process includes several important stages, starting from the initial consultation to the official registration. The consultation stage plays a crucial role, where prospective husband and wife are given an explanation of the legal basis of the agreement, such as the Marriage Law, the Civil Code, and the Constitutional Court Decision No. 69/PUU-XIII/2015. Through this stage, the couple gains an understanding of legal protections that include estate arrangements, debts, and divorce scenarios. Thorough consultation aims to prevent imbalances or defects in the agreement, which can lead to cancellation at a later date for violating relevant law.²⁴

Once the agreement is drafted, the next step is to register it before a notary and pour it in the form of an authentic deed. In this process, the notary not only notarizes, but also ensures that all formal and material requirements have been met. An authentic deed, as stipulated in Article 1868 of the Civil Code, has perfect evidentiary force and can only be canceled if it is proven to contain a legal defect. Notaries are also required to verify the identity of the parties, ensure that there are no elements of coercion, and ensure that the agreement is made voluntarily.²⁵ The final stage is the registration of the agreement at the Population and Civil Registry Office, which is necessary for the agreement to have legal force against a third party. Without this record, the agreement is only binding on the husband and wife internally and cannot be used as a basis for legal relations with outside parties, such as financial institutions. In the context of mixed marriage, this registration also plays an important role in ensuring legal recognition of property arrangements in both jurisdictions of each couple's home country.

Marriage agreements play an important role in mixed marriages because differences in nationality can lead to complex legal consequences. Without a sufficient understanding of the legal impact,

²³ Warsito, Happy, and Herman Adriansyah. "The Principle of Prudence in Making Deeds by Notaries." *Repertoire: Scientific Journal of Notary Law* Vol. 11 No. 1 (2022), 24-33. <https://journal.fh.unsri.ac.id/index.php/repertorium/article/download/1640/488>

²⁴ Tobing, Christina NM, et al. "Konsultasi Hukum Mengenai Harta Perkawinan Dan Hak Asuh Anak Pasca Perceraian." *Prosiding Konferensi Nasional Pengabdian Kepada Masyarakat dan Corporate Social Responsibility (PKM-CSR)* 5 (2022), 1-10. <http://www.prosiding-pkmcsr.org/index.php/pkmcsr/article/view/1819>

²⁵ Ashhadi, Farhan. "Juridical Review of the Exoneration Clause in Notary Legal Products is reviewed from Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Notary Position (Case Study of the Notary Office Susanti, SH)." *Journal of Law, Humanities and Politics (JIHHP)* 4.6 (2024). <https://shorturl.at/GLwTC>

this agreement can actually be a source of legal uncertainty. Furthermore, if an agreement is not made, then the spouse is automatically subject to the joint property regime (*gemeinschaft van goederen*) as stipulated in Article 119 of the Civil Code, which can cause conflicts related to asset ownership, financial obligations, and legal rights of foreign spouses.

In the view of Gustav Radbruch's theory of legal certainty, the absence of this agreement leads to ambiguity in establishing the rights and responsibilities of the spouse, especially regarding property and financial division.²⁶ In Indonesia, foreigners are legally prohibited from owning land with ownership status based on Article 21 paragraph (1) of the UUPA. Without a clear separation of assets through an agreement, the foreign spouse not only loses the right to property, but also experiences obstacles in financial transactions, asset purchases, or access to credit facilities. This situation not only harms couples personally, but also creates uncertainty in the national legal and financial systems, especially in the context of increasingly complex cross-jurisdictional arrangements in the global era. According to Article 16 paragraph (1) letter a of Law Number 2 of 2014 concerning the Notary Position (UUJN), notaries have an ethical and professional obligation to provide adequate legal explanations to the parties, including related to legal risks if a marriage agreement is not made. The notary's job is not only to authenticate documents, but also as a party to ensure that the couple understands their rights and obligations in marriage.²⁷ Therefore, the absence of an agreement in a mixed marriage can have legal repercussions that are not only detrimental personally, but also contrary to the principles of legal certainty and protection of rights in notary practice.

Therefore, the role of the notary in the drafting of a marriage agreement is not only limited to providing legal explanations, but also includes the responsibility to ensure that the agreement reflects the principles of justice and equality for both parties, especially in the context of more legally complex mixed marriages. Although the duties of a notary have been regulated in laws and regulations, the main challenge lies in the ability to accommodate the differences in the legal system of each partner country. The responsibility of a notary is not only administrative, but also moral and professional, namely ensuring the protection of the legal rights of both parties in a fair manner. When legal norms between countries conflict, notaries are required to make adjustments while maintaining the principle of justice. Therefore, the role of a notary needs to be carried out proactively, not only following procedures, but also providing a comprehensive understanding of the law and anticipating potential conflicts in the future. This requires precision, meticulousness, and high sensitivity from the notary in ensuring that the agreement really becomes an effective legal protection instrument for couples in mixed marriages.

²⁶ Personal, D. S., & SH, M. (2025). CIVIL LAW. *Introduction to Civil Law*, 52.

²⁷ Ndraha, Saverius, et al. "Legal Protection of Inherited Property by Making a Marriage Agreement Deed." *DICTUM* Vol.3 No.3 (2025), 98-104. <http://jurnal.darmaagung.ac.id/index.php/diktum/article/view/5136>

B. Notary Efforts in Ensuring the Protection of Financial Rights of Mixed Couples

The protection of financial rights in mixed marriages is important to consider because of the differences in the legal system between the couple's country of origin and Indonesian law. Notaries play a strategic role in ensuring a valid and fair marriage agreement, as well as protecting the interests of both parties. In addition to drafting the deed, notaries are also required to provide legal counseling in accordance with the Notary Position Law (UUJN), so that couples understand the rights, obligations, and legal consequences of the agreement. In the context of mixed marriages involving foreigners, notaries must understand the principle of *lex loci celebrationis*, namely that the applicable law is the law where the agreement was made, in this case Indonesian law.²⁸ Notaries need to adjust the content of the agreement to conform to national law without violating the provisions of international law. This is in line with Article 1338 of the Civil Code regarding the importance of agreements that are valid, made in good faith, and in accordance with the law. With this understanding, a notary can help ensure legal protection of the couple's financial rights, both during the marriage and afterward.

In mixed marriages involving different legal systems, the role of the notary is very important in ensuring legal certainty regarding the division of property and financial obligations. The drafting of a marriage agreement requires special attention, especially when it comes to the separation of assets and financial responsibilities during or after the divorce. Notaries are not only in charge of drafting the deed, but also ensuring that the content of the agreement reflects a fair and legal agreement. The difference between the concept of common property in Indonesian law (Law No. 1 of 1974 Article 35) and *the common law system* that emphasizes individual ownership, demands clear arrangements so that the financial rights of both parties are protected. Therefore, notaries must ensure that the content of the agreement reflects the principles of justice, is proportionate to each other's contributions, and is drafted voluntarily. In addition, aspects of financial obligations such as living expenses, asset management, and post-divorce responsibilities need to be carefully detailed. Although the agreement follows Indonesian law, the principle of *lex loci celebrationis* remains a challenge in the case of differences in the legal system. Notaries must be able to bridge these differences by making agreements that are fair, transparent, and compliant with national law, while still respecting the rights of both parties.²⁹

²⁸ Fatahullah, Fatahullah, Israfil Israfil, and Sri Hariati. "The Problem of the Legality of Interfaith Marriage That Is Carried Out Outside the Jurisdiction of Indonesian Law." *Journal of Legal Compilation* Vol.5 No.1 (2020), 41-55. <https://jkh.unram.ac.id/index.php/jkh/article/view/36>

²⁹ Bimasakti, Muhammad Adiguna. "The Validity of Interfaith Marriage and the Authority to Adjudicate Disputes in the Perspective of Law Between Indonesian Legal Systems." *Journal of Islamic Law Studies* Vol.4 No.1 (2020). https://scholarhub.ui.ac.id/context/jils/article/1071/viewcontent/auto_convert.pdf

As previously explained, the responsibilities of a notary in a mixed marriage are not only administrative, but also include an in-depth understanding of the legal implications of each clause of the agreement, especially those regarding the financial rights of the spouse. Without sufficient understanding, couples may not be fully aware of their rights and obligations, which can potentially lead to problems later on. Therefore, the Notary must explain the provisions of Indonesian law, as well as provide an overview of how the legal system of the spouse's home country treats property, debts, and other financial obligations. This education helps couples understand the options available, such as separation of assets or financial responsibility arrangements. In drafting agreement clauses, notaries are obliged to apply the principles of justice and balance, so that the financial rights of both parties are protected fairly and without coercion. This clause aims to regulate the division of assets and financial obligations, but also to safeguard the interests of both parties, both during the marriage and after the divorce.³⁰ This is in line with the principle of *pacta sunt servanda*, that a valid agreement must be respected.³¹ In the context of mixed marriage, the application of the principle of justice is becoming increasingly important due to the differences in the legal system. Notaries must be able to bridge these differences so that the content of the agreement remains fair and in accordance with the applicable laws in Indonesia.

Furthermore, Notaries must ensure that the marriage agreement is not only legally valid, but also capable of preventing potential disputes, especially due to the differences in the legal system between the couples. To anticipate conflicts, it is important to include *choice of law* clauses and dispute resolution forums in the agreement.³² Notaries also need to direct couples to consider mediation or arbitration as an alternative to dispute resolution, in accordance with Law No. 30 of 1999, because it is faster and more efficient than litigation. As part of his professional responsibilities, notaries are obliged to provide clear information about this settlement mechanism, in order to help the spouse avoid adverse legal conflicts. That way, the role of the notary is not only to draw up legal agreements, but also to ensure the protection of the couple's financial rights fairly. Overall, notary efforts include drafting fair agreements, legal education, and facilitating peaceful dispute resolution. With a comprehensive and deliberation-based approach, notaries help create legal protection that provides a sense of security for couples, both during marriage and after.

³⁰ Tuti, Yeni Astri Dias, and Latifa Mustafida. "Legal Protection of Property in Marriage by Making a Marriage Agreement Deed Before Marriage." *Fortiori Law Journal* Vol.1 No.02 (2021), 57-85. <https://jurnal.ucy.ac.id/index.php/flj/article/download/925/963>

³¹ Syamsiah, Desi, Riki Martin Bala Bao, and Nur Fatihah Yuliana. "The Basis of Application of the Pacta Sunt Servanda in the Agreement." *Das Sollen Law Journal* Vol.9 No.2 (2023), 841-848. <http://ejournal.unisi.ac.id/index.php/das-sollen/article/view/2988>

³² Margaretha, N. V., Aminah, A., & Widanarti, H. (2023). THE APPLICATION OF CHOICE OF LAW AND CHOICE OF FORUM CLAUSES IN THE SETTLEMENT OF INTERNATIONAL CONTRACT DISPUTES. *Diponegoro Law Journal*, 12(3). <https://ejournal3.undip.ac.id/index.php/dlr/article/view/38990>

CONCLUSIONS

The Marriage Law and its implementing regulations are one of the laws and regulations that regulate the making of marriage agreements for couples in mixed marriages in Indonesia. An important legal tool to regulate the rights and responsibilities of each party, especially with regard to property ownership and financial liability, is the marriage agreement. In the context of mixed marriage, this agreement must not only meet the provisions of national law, but also take into account the possible differences in the legal system of the country of origin of one of the spouses. Therefore, it is necessary to have a clear, legally valid agreement, and prepared based on the principles of justice and the principle of mutual respect. In ensuring the protection of the financial rights of mixed couples, notaries play a strategic role. Notaries are not only in charge of drafting the deed of agreement, but also providing legal education and explaining the consequences of each clause made. Notaries act as facilitators who bridge the differences in the legal system, as well as provide solutions through alternative dispute resolution such as mediation and arbitration. Thus, notaries contribute to creating legal certainty and justice for couples, both during the marriage period and in the event of divorce, while preventing financial conflicts in the future.

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