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OWNERSHIP OF LAND RIGHTS BY INDONESIAN CITIZENS IN TRANSNATIONAL MARRIAGES WITHOUT PRENUPTIAL AGREEMENTS

Masayu Mahadewi Putri Hidayat
Faculty of Law, Universitas Airlangga

Email : masayumahadewi666@gmail.com

Abstract

Land ownership in Indonesia is closely connected to the principle of nationality under the Basic Agrarian Law, which limits ownership rights over land only to Indonesian citizens. This study examines the legal position of Indonesian citizens who enter into transnational marriages with foreign nationals without a separation of property agreement, particularly in relation to the ownership and transfer of land rights. The main issue arises from the intersection between the Marriage Law, which recognizes joint marital property, and the Basic Agrarian Law, which prohibits foreign nationals from holding ownership rights over land in Indonesia. This research applies a normative juridical method using statutory and conceptual approaches. The findings indicate that the absence of a separation of property agreement may create legal uncertainty for Indonesian citizens in transnational marriages, especially when land acquired during marriage is regarded as joint property containing a foreign ownership element. Therefore, legal protection and clear legal mechanisms are required to ensure that Indonesian citizens, particularly widows or divorced spouses, can retain and transfer land ownership rights without violating the nationality principle in Indonesian agrarian law.

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I. INTRODUCTION

The Indonesian Agrarian Law adheres to the nationalism principle, which prohibits foreign nationals from owning land with Hak Milik status. Even an Indonesian citizen who marries a foreign national without a separation of property agreements cannot own land with Hak Milik status because the Indonesian Marriage Law regulates the mixture of assets.[1] The Government gives serious attention to land ownership, until the Government does not allow the transfer of land rights ownership to foreign nationals due to marriage. This is in accordance with the circular letter from the Head of Land Registration Directorate dated on November 2nd, 1965 Number 7850 which sent to the Head of Land Registration Office of Bukittinggi, which states that if an Indonesian woman marries a foreign national, then there is a mixture of assets, until Article 21(3) Agrarian Law applies, which is an obligation to waive the foreign national spouse's rights to the Indonesian wife in one year, because the land is treated as it is owned by a foreign national, so it cannot be differentiated which part is owned by an Indonesian citizen and which part is owned by a foreign nationals, except if it can be proven that: a) he does not revoke his citizenship, and b) he has married outside the mixture of assets, and proven by an authentic

[1] Yoga Nasa Prastyawan, "*Penyelesaian Sengketa Hak Milik Atas Tanah Dalam Perkawinan Campuran Di Indonesia*," MEDIA of LAW and SHARIA, 2021, h. 316.

deed (notarial deed) about the existence of marriage requirements mentioned.[2] In a transnational marriage between an Indonesian citizen (hereinafter: "WNI") and a foreign national (hereinafter: "WNA") without the possession of a separation of property agreement, the ownership of land rights becomes complex. Generally, Indonesian citizens in a transnational marriage can only own Hak Pakai rights, not Hak Milik, because there is a mixture of assets with the spouse who is a foreign national. This is caused by the Article 21(1) Agrarian Law that asserts only WNI can hold the ownership rights of a land. Transnational marriage is a marriage between two people who have different citizenships, where one of the parties is a WNI and the other is a WNA. This marriage is ruled in the Law No. 1/1974 concerning Marriage and has to fulfill applicable requirements, whether based on the Indonesian law or the laws of the countries of origin of each party. Transnational marriages also require the couple to make prenuptial agreements to regulate things that relate to the marriage during the marriage period.

The most important thing is if the marriage ends in divorce, the division of assets can be hard to interpret, but can be solved with a court verdict. Marriage vows are used as a sacred vow in this bond. The concept of marriage and other related things are regulated in the Law No.1/1974. Because of that, after the marriage, all of the legal actions, like buying and selling, pawning, have to be recognized and agreed upon by both parties, because in a marriage, husband and wife are a legal subject.[3] The meaning of transnational marriage that has been mentioned before, which exists in Pasal 57 Law No. 1/1974, narrows its scope because it only allows dual citizenship and requires that at least one of the couple is a WNI. The consequence of a valid marriage is an automatic mixture of assets between the husband and wife, with the condition that the couple has not made a prenuptial agreement yet. According to Subekti, "mixed assets include all profits and losses incurred by each party in the marriage and those that will be obtained in the future during the marriage."[4]

Land, as a source of human living, cannot be separated from ownership rights, until it needs a legal strength for it. This legal strength is obtained when the land owner registers their land (as mandated in Article 19 Agrarian Law). By registering the ownership rights of a land or giving rights to a land to a right subject, this will administratively guarantee the legal certainty for the subject. Which means, the rights subject can be administratively guaranteed to use of ownership rights of that land for any purpose, as long as the use is in accordance with the purpose. Thus, ideally, if all land is registered and resided by the rights holder, the legal certainty of all lands registered is guaranteed, and the positive impact is to reduce land disputes, especially that related to the use and cultivation of a land. Land prices can also increase over time goes by as a result of land rights registration.[5]

But, in practice, there is still a legal ambiguity regarding the ownership status of WNI in a transnational marriage without a prenuptial agreement. On the other hand, Agrarian Law expressly prohibits WNA to own a land with Hak Milik status (Pasal 21(1) Agrarian Law), meanwhile on the other hand, Law No. 1/1974 regulates the occurence of mixture of assets if there is no separation of property agreements. This legal ambiguity creates an uncertainty in the

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[2] Supriadi, *Hukum Agraria*, Jakarta: Sinar Grafika, 2008.

[3] Bella Fitria Ariyanti, "*Perkawinan Campuran WNA Dan WNI Tanpa Perjanjian Nikah Mengenai Hak Atas Penjualan Tanah Penulis*," Volume 3 Jurnal Hukum dan HAM Wara Sains, 2023, p. 7

[4] Subekti, *Pokok-Pokok Hukum Perdata*, Jakarta: Intermasa, 1995, p. 23

[5] Bella Fitria Ariyanti, "*Perkawinan Campuran WNA Dan WNI Tanpa Perjanjian Nikah Mengenai Hak Atas Penjualan Tanah Penulis*," Volume 3 Jurnal Hukum dan HAM Wara Sains, 2023, p. 313.

rule arrangement, especially when divorce or transfer of rights happens, until it needs a consistent legal interpretation and a vivid legal protection for WNI land owners in transnational marriages.[6]

II. METHODOLOGY

This type of research provides a systematic explanation of the legal rules governing a particular area, analyzes the relationships between these rules, clarifies complex or ambiguous legal issues, and examines the interrelations among statutory provisions, which may ultimately serve as a basis for future legal development. In this research, the legal materials used are primarily derived from written legal sources; therefore, the method employed for collecting legal materials is the library research method. This method is conducted by tracing and examining primary legal materials, secondary legal materials, court decisions, legal textbooks, and scholarly journals. By employing a library research method accompanied by comprehensive legal interpretation, this study is expected to produce a deep, accurate, and academically accountable analysis. In this research, the approach used is the Statute Approach.[7] The statute approach aims to address the legal issues under examination by reviewing legislation and regulations relevant to the legal problem being studied. The second approach employed is the Conceptual Approach, which is derived from theories, views, doctrines, and concepts that have developed within the field of legal science.[8] Accordingly, this research discusses various concepts related to agrarian law by utilizing agrarian theories or concepts, as well as the procedures for the transfer of land ownership rights. this research also applies the conceptual approach. This approach is used to understand and examine legal concepts, principles, and doctrines that have developed within the field of law, particularly those related to the regime of marital property, the constitutional rights of citizens, and national interests in the context of land law.

III. OWNERSHIP OF LAND RIGHTS BY INDONESIAN CITIZENS IN TRANSNATIONAL MARRIAGES WITHOUT SEPARATION OF PROPERTY AGREEMENTS IN THE UNDANG-UNDANG POKOK AGRARIA AND UNDANG-UNDANG PERKAWINAN

A. Transnational Marriage

In Indonesian legal literature, the term transnational marriage is generally used to refer to a marriage between two individuals of different nationalities. Law Number 1 of 1974 on Marriage does not explicitly use the term “transnational marriage,” but instead employs the term “mixed marriage.” Article 57 provides:

“A mixed marriage within the meaning of this Law shall be a marriage between two persons in Indonesia who are subject to different laws due to differences in nationality, one of whom is an Indonesian citizen.”

From this provision, it can be understood that a mixed marriage refers to a marriage between an Indonesian citizen (WNI) and a foreign national (WNA). Thus, the term transnational marriage may be equated with mixed marriage under Indonesian positive law. Furthermore, according to

[6] Putusan Mahkamah Konstitusi Nomor 69/PUU-XII/2015 tentang Perjanjian Perkawinan.
[7] *Ibid*, p. 133.
[8] *Ibid*, p. 135.

Sudargo Gautama, mixed marriage constitutes one of the principal subjects of Private International Law because it involves more than one national legal system in determining the validity of the marriage, its legal consequences, and the civil status of the parties.[9]

1. Legal Consequences of Transnational Marriage

Transnational marriages, involving spouses of different nationalities, give rise to several legal consequences that must be properly understood. Some of the most common legal implications relate to the citizenship status of children, the status of property acquired during the marriage, land rights, and various administrative matters.

1) Citizenship Status. Under Law Number 12 of 2006, a child born from a transnational marriage has the right to obtain Indonesian citizenship as well as the foreign citizenship of the other parent, subject to certain conditions. Children born to an Indonesian citizen (WNI) and a foreign national (WNA) may hold limited dual citizenship until the age of 18. This arrangement allows the child to possess a dual identity derived from both parents' nationalities, although with certain restrictions in terms of citizenship status.[10] Furthermore, in Constitutional Court Decision No. 69/PUU-XIII/2015, it is affirmed that granting citizenship to children of transnational marriages must adhere to the principle of gender equality, ensuring that no discrimination occurs in the conferral of citizenship regardless of the respective nationalities of the parents.

2) Property Regime. With regard to property, Law Number 1 of 1974 stipulates that assets acquired during the marriage, except those obtained through gifts or inheritance, constitute joint property. However, in transnational marriages, this arrangement may give rise to legal issues, particularly when one spouse is a foreign national who is prohibited from possessing or owning land rights in Indonesia. Thus, differing legal systems between the spouses' countries may result in discrepancies concerning the regulation and division of marital property in transnational marriages. This often necessitates the establishment of a prenuptial agreement on the separation of assets to avoid further legal complications.

3) Land Rights. Under the Basic Agrarian Law (Law Number 5 of 1960), only Indonesian citizens may hold ownership rights over land in Indonesia. Consequently, if one spouse in a transnational marriage is a foreign national and the joint property includes land, issues inevitably arise regarding the ownership of such land rights. The foreign spouse cannot hold land ownership rights in Indonesia even if the land is part of the joint marital assets acquired during the marriage. This underscores the need for clearer regulations concerning land rights and the division of marital assets in transnational marriages, which often requires legal arrangements through marital agreements.

4) Immigration and Population Administration. In terms of population administration and immigration, a foreign spouse married to an Indonesian citizen is eligible to apply for a limited stay permit or even a permanent stay permit in Indonesia based on the marital relationship. This allows the foreign spouse to obtain lawful immigration status in Indonesia and continue living with their Indonesian partner in accordance with applicable legal provisions.

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[9] Sudargo Gautama, *Hukum Perdata Internasional Indonesia*, Alumni, Bandung, 2002, p. 145.

[10] Putusan Mahkamah Konstitusi No. 69/PUU-XIII/2015 (Prinsip kesetaraan dalam pemberian kewarganegaraan kepada anak hasil perkawinan campuran).

2. Academic Perspectives

According to Lathifah Hanim, transnational marriages are essentially valid and legally protected; however, in practice they give rise to issues in the areas of agrarian law, the citizenship status of children, and the status of marital property.[11] Sri Wahyuni likewise emphasizes that the dualism of applicable legal systems often creates difficulties for transnational-marriage couples.

B. Separation of Property Agreement

A separation of property agreement is an agreement made by a married couple, either before or during the marriage, to separate the assets acquired by each party during the marital union. This agreement aims to regulate the property owned by each spouse, whether acquired before or during the marriage, so that such property does not become joint marital property for which both parties are jointly responsible.

The separation of property agreement is regulated under Law Number 1 of 1974 on Marriage, which provides the legal basis for spouses to establish an agreement governing the separation of assets. Article 29 paragraph (1) of the Marriage Law states: "A marital agreement may be made before or during the marriage to regulate the assets owned by each party." Through a separation of property agreement, spouses may avoid legal disputes concerning the division of joint property in the event of divorce or the death of one spouse. This agreement may also regulate the rights and obligations of each party concerning the assets they own.

1. The Importance of Separation of Property Agreements in Transnational Marriages

In the context of transnational marriages, a separation of property agreement plays an even more significant role. Given the differences between the legal systems of each spouse's country of origin, such an agreement can provide legal protection regarding asset ownership and inheritance rights. For instance, if one spouse is a foreign national, this agreement may regulate the assets acquired during the marriage, particularly with respect to land ownership, which is governed by Indonesian law.

According to Sudargo Gautama, in transnational marriages, a separation of property agreement is highly recommended to prevent legal issues arising from the differing legal systems applicable in each country.[12] This is crucial because the rights over marital property in the foreign spouse's country of origin often differ, and a separation of property agreement can provide clear legal certainty for both parties.

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[11] Lathifah Hanim, "*Implikasi Yuridis Perkawinan Campuran terhadap Hak atas Tanah di Indonesia*," Jurnal Hukum Ius Quia Iustum, Vol. 24 No. 2, 2017.

[12] Sudargo Gautama, *Hukum Perdata Internasional Indonesia*, Alumni, Bandung, 2002, h. 152.

2. Academic and Practitioner Perspectives

Several legal scholars and practitioners consider separation of property agreements to be highly important, particularly in marriages involving foreign spouses, in order to avoid legal uncertainty. According to Sri Wahyuni, a separation of property agreement can serve as an effective instrument to ensure that the rights of each spouse are protected and to reduce potential legal conflicts, especially those related to property arrangements and citizenship issues in transnational marriages.[13]

C. Regulation of Land Ownership Rights Arising from Transnational Marriages Without a Separation of Property Agreement Under the Basic Agrarian Law and the Marriage Law

The Basic Agrarian Law (Law Number 5 of 1960) stipulates that only Indonesian citizens may hold ownership rights (hak milik) over land in Indonesia. This provision stands in contrast to Law Number 1 of 1974 on Marriage, which provides that property acquired during the marriage becomes joint marital property unless a separation of property agreement has been made. In the absence of such an agreement, all property acquired during the marriage is considered joint property, including land acquired by the spouses. However, problems arise when one of the spouses is a foreign national, who under Indonesian agrarian law is prohibited from holding land ownership rights. Consequently, land ownership acquired during a transnational marriage requires special attention and clear legal regulation.

1. Legal Implications in the Absence of a Separation of Property Agreement

In the absence of a separation of property agreement, all assets acquired during the marriage are deemed joint marital property, as regulated under Article 35 of the Marriage Law. In the context of transnational marriages, this may give rise to significant legal issues, particularly concerning land ownership. Article 21 of the Basic Agrarian Law (UUPA), which restricts foreign nationals (WNA) from owning land rights, creates a situation in which land acquired by a WNI–WNA couple becomes joint property, yet cannot be owned or controlled by the foreign spouse.

In the event of divorce or death, the division of land as joint marital property requires complex legal mechanisms. Land owned by the Indonesian citizen (WNI) spouse may remain in the WNI's ownership, but such land cannot become the property of the foreign spouse. Therefore, to avoid further legal complications, it is recommended that couples entering into transnational marriages establish a separation of property agreement before or during the marriage.

Under the Basic Agrarian Law (UUPA) enacted in 1960, all land in Indonesia is controlled by the state, and only Indonesian citizens may possess land under the right of ownership (hak milik). Article 21 of the UUPA explicitly prohibits foreign nationals from holding ownership rights over land in Indonesia. This is a crucial aspect to consider in transnational marriages, because even when a WNI–WNA couple jointly purchases land during the marriage, the foreign spouse cannot hold ownership rights over such land.

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[13] Sri Wahyuni, "*Perkawinan Campuran dalam Perspektif Hukum Nasional Indonesia*," Jurnal Ilmu Hukum, Vol. 3 No. 1, 2016.

2. Necessary Legal Consultation

Given the complexity of transnational marriage law, it is strongly recommended that couples entering into cross-border marriages consult with a notary or an attorney experienced in international family law and agrarian law. Consultation with legal professionals will provide a clearer understanding of the regulations governing land ownership and the division of assets,

IV. LEGAL MEASURES THAT CAN BE TAKEN BY WIDOWS TO SELL LAND WITH OWNERSHIP RIGHTS ORIGINATING FROM A TRANSNATIONAL MARRIAGE WITHOUT A SEPARATION OF PROPERTY AGREEMENTS

A. Divorce in Transnational Marriages

Divorce in transnational marriages presents additional legal complexities because it involves issues of jurisdictional competence and the recognition of foreign judgments. Under Article 39 paragraph (1) of the Marriage Law, divorce may only be conducted before a court after the court has attempted to reconcile the parties. However, in transnational marriages, determining which court has jurisdiction becomes a central issue.

If the divorce takes place abroad, the foreign divorce decree can only be recognized in Indonesia after undergoing a process of confirmation or recognition by an Indonesian court, as regulated in Article 436 of the *Reglement op de Rechtsvordering* (Rv) and general principles of Private International Law.[14] This means that a foreign court's divorce decision involving an Indonesian citizen (WNI) and a foreign national (WNA) does not automatically have legal effect in Indonesia until it is formally recognized.

1. Determination of Jurisdiction and Applicable Law (lex causae)

In the theory of Private International Law, several fundamental principles are used to determine the law applicable to cross-border divorces. The principle of lex loci celebrationis is used to assess the validity of the marriage based on the law of the place where it was celebrated, while lex domicilii or lex patriae is used to determine the law applicable to the personal status of the parties.

In the context of transnational divorce, Indonesian law tends to apply the lex fori approach, namely the law of the forum (the court) adjudicating the case. his means that if the divorce is filed in Indonesia, Indonesian law will apply. However, if the divorce is filed in a foreign country, the law of that jurisdiction applies, insofar as it does not conflict with Indonesian public order (ordre public).

2. Legal Aspects of Divorce in Transnational Marriages Under Indonesian Law

The most critical issue in transnational divorce concerns the ownership of land rights by the foreign spouse. Under Article 21 paragraph (1) of the Basic Agrarian Law (UUPA), only Indonesian citizens may hold land ownership rights (hak milik). Consequently, if an Indonesian citizen (WNI) marries a foreign national (WNA) without a separation of property agreement (marital agreement), joint marital property is created by law, and the foreign spouse is considered to have an interest in such property. As a result, the Indonesian spouse may lose the right to hold

[14] Huala Adolf, *Aspek-Aspek Hukum Internasional dalam Hubungan Perdata*, Bandung: Alumni, 2002, p. 51.

land under hak milik, as the existence of foreign ownership elements renders it incompatible with agrarian law.[15]

The Constitutional Court Decision No. 69/PUU-XII/2015 affirms that marital agreements may be executed both before and during the marriage, and this development provides protection for Indonesian citizens married to foreign nationals, enabling them to retain land ownership rights under hak milik.[16] However, when divorce occurs without a marital agreement, the settlement of joint property encounters agrarian law constraints, since any land involving a foreign element must be transferred or disposed of within one year in accordance with Article 21 paragraph (3) of the UUPA.

In practice, divorce becomes a crucial moment for determining the status of such land rights. For example, in a divorce between a WNI and a WNA where the land is registered under the WNI's name, the hak milik title legally remains with the WNI; however, the joint ownership element may still be subject to dispute. Therefore, Indonesian courts often consider the need to protect agrarian sovereignty as a basis for refusing to allocate land rights to the foreign spouse.[17]

B. Validity of Land Sale and Purchase

A sale and purchase of land is a legal act in the form of the permanent transfer of land rights from the landowner or rights holder (as seller) to another party (as buyer), whereby the buyer simultaneously pays a sum of money agreed upon by both parties as the purchase price.[18] In Indonesian agrarian law, the sale and purchase of land rights is one form of transfer of rights regulated under the Basic Agrarian Law (UUPA) and its implementing regulations, particularly Government Regulation No. 24 of 1997 on Land Registration. Essentially, a land sale and purchase is a reciprocal agreement between the seller and the buyer that results in the transfer of land rights once the material and formal requirements have been satisfied.[19] Therefore, the validity of a land sale and purchase is determined not only by the agreement of the parties (as required under Article 1320 of the Indonesian Civil Code), but also by compliance with the formal requirements stipulated under agrarian law.[20]

1. Requirements for the Validity of Land Sales and Purchases

The transfer of land rights, whether through transfer by operation of law or transfer by legal action, may only occur when both formal and material requirements are fulfilled. The formal requirement for registering the sale and purchase, exchange, grant, or capital contribution of

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[15] Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan, Isi dan Pelaksanaannya*, Jakarta: Djambatan, 2008, p. 302.

[16] Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015.

[17] Maria S.W. Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya*, Yogyakarta: Gadjah Mada University Press, 2008, p. 117.

[18] Urip Santoso, *Perolehan Hak Atas Tanah*, Kencana, Jakarta, 2015, p. 133.
[19] Urip Santoso, *Perolehan Hak Atas Tanah*, Kencana, Jakarta, 2015. p. 135.

[20] R. Subekti, *Pokok-Pokok Hukum Perdata*, Jakarta: Intermasa, 1996, p. 53.

land must be evidenced by a deed executed by, and before, an authorized Land Deed Official (Pejabat Pembuat Akta Tanah / PPAT). The material requirement for a valid land sale and purchase is that the landowner or rights holder, acting as the seller, must be legally entitled and authorized to transfer the land rights. Meanwhile, the buyer must meet the qualifications to be a lawful subject capable of holding the specific land right that is the object of the transaction.[21] The requirement of a "lawful cause" (sebab yang halal) becomes particularly important in the context of transnational marriages. If the sale and purchase of land is carried out for the purpose of concealing foreign ownership, for example, through a nominee agreement or the designation of an Indonesian citizen as a nominal (fictitious) owner, then such an agreement is deemed null and void by operation of law, as it violates public order (*ordre public*) and the nationality principle under the Basic Agrarian Law (UUPA).[22]

2. Validity of Land Sale and Purchase After Divorce in Transnational Marriages

If, after the divorce, land that originally formed part of the joint marital property is transferred to the foreign spouse through a sale and purchase agreement, such legal action is invalid and void by operation of law.[23] Article 21 paragraph (3) of the UUPA stipulates that if an Indonesian citizen loses their citizenship, or if ownership rights fall into the hands of a foreign national, the land must be relinquished or transferred to an eligible party within one year.

Thus, in the context of divorce, when the joint marital property between a WNI and a WNA includes land, the foreign spouse cannot become the legal subject holding ownership rights.[24] The only permissible options are to sell the land to another Indonesian citizen or to convert the land title into a right of use.[25]

Supreme Court Jurisprudence No. 179 K/Sip/1961 affirms that any legal act resulting in the transfer of ownership rights over land to a foreign national has no legal force and is deemed never to have existed.[26] Therefore, any sale and purchase transaction involving a foreign national, whether directly or indirectly, is considered invalid.

C. Legal Remedies Available to a Widow to Sell Land with Ownership Rights (Hak Milik) Arising from a Transnational Marriage

In the context of transnational marriage, where one spouse is a foreign national (WNA), the legal position of a widow who is an Indonesian citizen (WNI) becomes more complex, particularly when the marital assets include land held under hak milik (ownership rights) acquired during the marriage. Articles 21 paragraphs (1) and (3) of the Basic Agrarian Law (UUPA) affirm that only

[21] Urip Santoso, *Perolehan Hak Atas Tanah*, Kencana, Jakarta, 2015, p. 135.
[22] Boedi Harsono, *Hukum Agraria Indonesia*, p. 314.

[23] Maria S.W. Sumardjono, *Kebijakan Pertanahan antara Regulasi dan Implementasi*, Jakarta: Kompas, 2005, p. 92.

[24] *Ibid*.

[25] *Ibid*.

[26] Yurisprudensi Mahkamah Agung Nomor 179 K/Sip/1961.

Indonesian citizens may possess land under hak milik, and if such ownership passes to a foreign national, it must be relinquished within one year.

Therefore, a widow who is a WNI and was previously married to a WNA must establish her sole ownership over the hak milik land after the marriage has ended, whether due to divorce or the death of her spouse, before she may lawfully sell the land.[27]

1. Issues Concerning the Status of Land in Transnational Marriages

In marriages between an Indonesian citizen (WNI) and a foreign national (WNA), hak milik land acquired during the marriage has the potential to become joint marital property that contains an element of foreign ownership. As a result, the ownership status becomes legally defective because it contradicts the nationality principle.[28] However, Constitutional Court Decision No. 69/PUU-XII/2015 provides legal flexibility by allowing marital agreements to be executed after the marriage has taken place.[29] This enables a widow who is a WNI in a transnational marriage to separate assets following the marriage, thereby allowing the land to remain lawfully owned by the Indonesian spouse even when the marriage involves a foreign element.

2. Legal Analysis

Legally, a widow who is an Indonesian citizen (WNI) has full rights to transfer or sell ownership rights land after a transnational marriage has ended, provided she can prove that the land no longer contains any element of foreign ownership. In principle, once the marriage ends, whether by divorce or death, joint marital property becomes either inheritance property or the personal property of the surviving spouse, and any foreign element in the ownership is considered extinguished.[30] However, if the land is still regarded as part of the joint marital property or if there is evidence of the foreign spouse's involvement in the acquisition of the land, the sale cannot be carried out until a court ruling is obtained to separate the ownership interests.[31]

The principle of protecting national agrarian sovereignty remains a central consideration. Nevertheless, the law must also ensure legal certainty and fairness for Indonesian citizens, particularly women who become widows in transnational marriages. Therefore, the existence of a flexible marital agreement (postnuptial agreement), as recognized by the Constitutional Court, constitutes a progressive solution that allows widows who are Indonesian citizens to retain and lawfully sell land without violating the nationality principle.[32]

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[27] Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan, Isi dan Pelaksanaannya*, Jakarta: Djambatan, 2008, p. 302.

[28] Maria S.W. Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya*, Yogyakarta: Gadjah Mada University Press, 2008, p. 117.

[29] Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015.

[30] Subekti, *Pokok-Pokok Hukum Perdata*, Jakarta: Intermasa, 1996, p. 87.

[31] Maria S.W. Sumardjono, *Tanah dalam Perspektif Hak Ekonomi, Sosial, dan Budaya*, p. 123.

[32] Putusan Mahkamah Konstitusi Nomor 69/PUU-XIII/2015.

V. CONCLUSION

Based on the analysis, the conclusions of this research are land ownership by an Indonesian citizen married to a foreign national (WNA) without a separation of property agreement is confronted with a conflict between the Basic Agrarian Law (UUPA) and the Marriage Law. Under Article 35 of the Marriage Law, all assets acquired during the marriage constitute joint marital property, including land purchased in the name of the Indonesian spouse. However, Article 21 paragraph (1) of the UUPA explicitly provides that ownership rights (hak milik) over land may only be held by Indonesian citizens. The presence of a foreign national within the marital property regime therefore creates a legal situation in which the land is considered to possess a "foreign ownership contamination." As a result, land acquired through a transnational marriage without a separation of property agreement does not receive full legal protection, because it is deemed property that may potentially fall into the hands of a person who does not qualify as a rights holder. Under Article 21 paragraph (3) of the UUPA, such land may even be subject to mandatory release within one year due to the foreign ownership element within the marital property. Without a separation of property agreement, an Indonesian citizen in a transnational marriage is placed in a legally vulnerable position, and land ownership is not fully secure and may lose its status as personal property.

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