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The Conflict between the Principles of *Lex Patriae* and *Lex Rei Sitae* in the Ownership of Marital Property Without a Marital Agreement

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ABSTRACT

This study discusses the protection of the rights of Indonesian citizen (WNI) wives over marital property in mixed marriages. The research problems addressed in this study are how the principles of *Lex Patriae*, *Lex Rei Sitae*, and *Locus Regit Actum* apply to marital property in mixed marriages, and what forms of legal protection are available for Indonesian wives regarding marital property in the event of a dispute. The research method employed is normative legal research, focusing on examining and analyzing secondary data consisting of primary, secondary, and tertiary legal materials, while utilizing literature reviews and document studies as data collection techniques. The results indicate that in a mixed marriage without a marital agreement separating property in Indonesia, the provisions regarding marital property stipulated in the Marriage Law shall apply. Furthermore, under Indonesian law, immovable property—in this case, land and buildings—is regulated by Indonesian legal regulations, specifically the Law on Basic Regulations on Agrarian Principles (UUPA). Legal protection for the rights of Indonesian wives over marital property can be provided in two ways: legal protection through the formulation of a marital agreement before or during the marriage, and legal protection through court channels if a dispute arises after a divorce. Consequently, Indonesian wives can still obtain protection over marital property acquired during a mixed marriage, even in the absence of a prior marital agreement, through judicial processes under Indonesian law.

KEYWORDS

Indonesian
Citizen Wife;
Marital
Property;
Mixed
Marriage



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INTRODUCTION

Law No. 1 of 1974 on Marriage defines marriage in Indonesia as a physical and spiritual bond between a man and a woman as husband and wife, to establish a happy and lasting family or household based on belief in the One Supreme God.¹ Marriage laws in Indonesia were established to regulate the three pillars of marriage that apply to all Indonesian citizens: marriage based on customary law and culture, marriage based on religious law, and marriage based on state law.²

The definition of a mixed marriage under Indonesian marriage law centers on the difference in nationality between the husband and wife; a marriage between an Indonesian citizen and a foreign national is considered valid if it meets the requirements, and marriage law also governs a person's status, legal capacity, rights, and obligations, making it extremely important. It covers various aspects ranging from the requirements for a valid marriage, the rights and obligations of husband and wife, property acquired during the marriage, to the dissolution of marriage and its legal consequences.³ In any marriage, problems are bound to arise, and this is also true of mixed-nationality marriages, which may face specific challenges—particularly regarding issues such as citizenship status. The most tangible consequence of a mixed-nationality marriage is property rights, one of which is the right of ownership arising from a valid marriage—in this case, joint property.⁴

If one party in a marriage is an Indonesian citizen (WNI), this may result in joint ownership of assets acquired during the marriage, as governed by Indonesian law—specifically Articles 35 through 37 of Law No. 1 of 1974. Article 35, paragraph 1, states that property acquired during the marriage becomes joint property. Article 36, paragraph 1, of Law No. 1 of 1974 states that, regarding joint property, either the husband or the wife may act with the consent of both parties. Thus, assets acquired during the marriage—whether movable or immovable property—may be acquired by either party, whether the wife, the husband, or as a result of a joint venture. Meanwhile, assets or separate property that belong to each party—including gifts, inheritances, or bequests—remain the right and under the control of their respective owners and do not automatically become joint property, unless there is a written agreement or arrangement in place prior to the marriage becoming legally valid. This law outlines the joint property of husband and wife, taking into account the couple's citizenship status, and these provisions address aspects of the management of joint property and the division of property.⁵

¹ Fathul Hamdani & Ana Fauzia, "Tradisi Merariq dalam Kacamata Hukum Adat dan Hukum Islam" (2022) 3:6 *J Huk Lex Gen* 433–447.

² Alexandri De Minggu Moi Wata Lexi Putra, "Tinjauan Yuridis Tradisi Adat Uang Belis (Mahar) dalam Perkawinan Masyarakat di Desa Saga Kecamatan Detusoko Kabupaten Ende" (2023) 7:1 *Lex J Kaji Huk dan Keadilan* 39–62, online: <<https://ejournal.unitomo.ac.id/index.php/hukum/article/view/6598>>.

³ Ach Puniman, "Hukum Perkawinan menurut Hukum Islam dan Undang-Undang No. 1 Tahun 1974" (2018) 19:1 *J YUSTITIA* 85–94.

⁴ Rahmia Rachman, Erlan Ardiansyah & Sahrul, "Tinjauan Yuridis terhadap Kepemilikan Hak atas Tanah dalam Perkawinan Campuran" (2021) 3:1 *Jambura Law Rev* 1–18.

⁵ Anak Agung Alit Raka Ramayudha, "Kedudukan Harta Bersama dalam Perkawinan Campuran di Indonesia" (2023) 6:2 *J Anal Huk* 278–290, online: <<https://journal.undiknas.ac.id/index.php/JAH/article/view/4799>>.



However, in the case of a mixed marriage—that is, between an Indonesian citizen (WNI) and a foreign national (WNA)—the issue of joint property can become highly complex due to the presence of two governing legal systems. In cases of vulnerability—such as legal conflicts arising from divorce—the personal status of the Indonesian wife, which is granted and recognized by the state to perform legal acts in accordance with Indonesian law, carries the risk of losing her rights to the joint property accumulated during the marriage.⁶ Due to the application of foreign law, likely, the rights of an Indonesian wife to joint property acquired during the marriage will be significantly weakened—or perhaps not recognized at all—if the applicable foreign law is applied; furthermore, many parties, particularly wives who are Indonesian citizens, are unaware of the law and do not understand the importance of such protection.⁷

Based on the above, the author examines a specific case study regarding the issue of joint property in a mixed-nationality marriage in the absence of a prenuptial agreement regarding the separation of property. This case involves an Indonesian citizen (WNI) named Sieska Sagita Nasution who is married to a foreign national (WNA) named Pepijn Jochem De Blecourt, a Dutch citizen.

In the case study of Sieska Sagita Nasution, an Indonesian citizen, and Pepijn Jochem De Blecourt, a foreign national, the couple was married in Indonesia, and their marriage was registered at the Margacinta Subdistrict Office of Religious Affairs on January 7, 1996. In this mixed marriage between Sieska Sagita Nasution, an Indonesian citizen, and Pepijn Jochem De Blecourt, a foreign national, no prenuptial agreement regarding the separation of property was entered into. During the course of their marriage, Sieska Sagita Nasution and Pepijn Jochem De Blecourt acquired joint property consisting of a 320-square-meter plot of land and a house built on that land with a floor area of 220 square meters, located at Jalan Iris Garden No. 3, Lot No. 93 Spring Hills, Mekarsaluyu Village, Cimenyan Subdistrict, Bandung Regency. A sales and purchase agreement, numbered 93/SHBV/XIII/10-12 and dated October 25, 2012, was executed for the land and building in the name of Sieska Sagita Nasution, the wife who is an Indonesian citizen (WNI). As time went on, the marriage between Sieska Sagita Nasution and Pepijn Jochem De Blecourt did not last and ended in divorce; Sieska Sagita Nasution and Pepijn Jochem De Blecourt were officially divorced pursuant to a ruling by the Soreang Religious Court on September 24, 2019. Following the divorce, a dispute arose in which the husband, Pepijn Jochem De Blecourt Bin De Blecourt, demanded his share of the joint property, consisting of the land and the house.

Issues related to marital property often arise when a marriage ends, whether due to divorce or death. Therefore, it is important to examine this matter further, given the claims made by foreign nationals regarding property assets in Indonesia. This difference in citizenship may also place the Indonesian wife at a disadvantage.

⁶ Ronald Saija, *Buku Ajar Hukum Perdata Internasional* (Yogyakarta: Deepublish, 2019).

⁷ Mas Erwin Candra Amisena, Dhody Ananta Rivandi Widjadasatmadja & Felicitas Sri Marniati, “Perlindungan Hukum bagi Istri Warga Negara Indonesia (WNI) terhadap Status Harta Bersama dalam Perkawinan Campuran Terkait Pembagiannya Karena Perceraian” (2023) 2:9 SENTRI J Ris Ilm 3510-3518, online: <<https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/1496>>.



METHOD

The research method used in this study is normative legal research, in which the focus is on examining and analyzing legal principles, legal norms, and applicable laws and regulations regarding the protection of a wife's rights to joint property in mixed marriages. The research employs a descriptive-analytical approach, focusing on presenting a systematic, comprehensive, and detailed description of the regulations, legal principles, and implementation of the protection of a wife's rights to joint property acquired during a mixed marriage. This study is a normative legal study conducted as library research; therefore, the data used are secondary data. These secondary data include:

- a. Primary Legal Sources: The primary legal sources examined include legislation (the Civil Code, Law No. 1 of 1974 on Marriage, Law No. 5 of 1960 on Basic Principles of, Law No. 16 of 2019 Amending Law No. 1 of 1974 on Marriage, Government Regulation No. 24 of 1997, Constitutional Court Decision No. 69/PUU-XII/2015, and Government Regulation of the Republic of Indonesia No. 24 of 2016).
- b. Secondary Legal Sources: Sources of information in the field of secondary legal sources include textbooks on marriage law and international private law, scholarly articles, national legal journals, and other academic works.
- c. Tertiary Legal Sources: The data sources used in tertiary legal sources include materials from the internet.

The data collection techniques used in this study were library research and documentary analysis, which involved searching for, collecting, and recording all primary, secondary, and tertiary legal materials highly relevant to the research focus. The data analysis method employed was qualitative data analysis using legal interpretation, specifically grammatical and systematic interpretation, to address the research questions.

RESULT & DISCUSSION

I. The Application of the Principles of *Lex Patriae*, *Lex Rei Sitae*, and *Loci Regit Actum* to Joint Property Based on a Case Study

Article 57 of Law No. 1 of 1974 defines a mixed marriage as a marriage between two people who, in Indonesia, are subject to different laws due to differences in nationality, with one party holding Indonesian citizenship. Based on the case study, the author examined the case of Sieska Sagita Nasution and Pepijn Jochem De Blecourt, one party—the wife, Sieska Sagita—is an Indonesian citizen, and in this mixed marriage, no regulations or prenuptial agreements regarding joint property had been established beforehand.

Mixed marriages were previously governed by Article 1 of the GHR (*Regeling op de Gemengde Huwelijken*), a Dutch regulation governing mixed marriages that was applied in Indonesia before the enactment of No. 1 of 1974 on Marriage, which



defines a mixed marriage as a marriage between individuals in Indonesia who are subject to different laws.⁸

The definition of a mixed marriage under Indonesian marriage law centers on the difference in nationality between the husband and wife; a marriage between an Indonesian citizen and a foreign national is considered valid if it meets the requirements, and marriage law also governs the status, legal capacity, rights, and obligations of individuals, making it a matter of great importance. It covers various aspects, ranging from the requirements for a valid marriage, the rights and obligations of husband and wife, marital property owned by the couple, to the dissolution of marriage and its legal consequences. In any marriage, issues are bound to arise, and this also applies to mixed-nationality marriages, which may face specific challenges—particularly regarding citizenship status. The most tangible consequence of a mixed-nationality marriage is property rights, one of which is the right of ownership arising from a valid marriage; in this context, it refers to joint property.⁹

In legal systems that follow common law, the formal principle applies that the validity of a marriage is determined by the law of the place where the marriage takes place. A marriage must comply with the provisions of religious law as well as the requirements outlined in the Marriage Law, namely:

- a. The *lex loci* principle, which stipulates that the requirements for a valid marriage must be governed by the law of the place where the marriage ceremony is performed.
- b. The principle of nationality, which states that the legal framework governing a person's initial acquisition of nationality forms the basis for the substantive validity of a marriage.
- c. The principle of domicile, which stipulates that the law of the place of residence of each party at the time the marriage takes place serves as the basis for the substantive validity of the marriage.
- d. Furthermore, although the various legal requirements of each party must be met first, the place where the marriage is solemnized (*locus celebris*) remains the primary determinant of the marriage's substantive validity.¹⁰

Marriage in Indonesia, as regulated by Law No. 1 of 1974 on Marriage, follows the system of community property, as stated in Article 119 of the Civil Code: upon the occurrence or solemnization of a marriage, a complete union of the husband's and wife's property shall take effect by operation of law; this provision may not be nullified or altered by any agreement between the husband and wife. Community property in marriage in Indonesia is governed by Law No. 1 of 1974 on Marriage, specifically Article 35, which states that property acquired during the marriage becomes community property, while the separate property of each spouse—as well as property acquired by each as a gift or inheritance—remains under the control of

⁸ Nurul Miqat et al, "The Development of Indonesian Marriage Law in Contemporary Era" (2023) 15:1 *Jure J Huk dan Syar'iah*, online: <<https://ejournal.uin-malang.ac.id/index.php/syariah/article/view/17461>>.

⁹ Rachman, Ardiansyah & Sahrul, *supra* note 4.

¹⁰ Insarullah, Rahmia Rachman & Erlan Ardiansyah, "Perspektif Hukum Perdata Intenasional terhadap Perkawinan Beda Agama Bagi Warga Negara Indonesia" (2022) 6:2 *Wajah Huk*, online: <<https://wajahhukum.unbari.ac.id/index.php/wjhkm/article/view/932>>.



the respective spouse unless the parties agree otherwise. Article 36 regarding joint property stipulates that a husband or wife may act with the consent of both parties; regarding each spouse's separate property, the husband and wife have full rights to perform legal acts concerning their respective property; and Article 37 specifies that if the marriage is dissolved by divorce, the division of joint property is governed by the respective laws of each spouse. The application of the main legal principles in International Private Law (IPL) that apply and interact with one another in the regulation of joint property in a mixed marriage in Indonesia is as follows:

1. *Lex Patriae* Principle

The *Lex Patriae* principle, or the principle of nationality, is a legal principle whereby a person's personal status is determined by the law of their country, and this provision is reflected in Article 16 of the *Algemene Bepalingen (AB)*. In the realm of civil law, there is the principle of *Mobilia Sequuntur Personam*, which means "movable property follows the person"; thus, the *Lex Patriae* principle applies not only to personal status but also encompasses the ownership status of movable property. In other words, the legal status of movable property is governed by the national law of the person who owns or possesses the property.

In the case study involving Sieska Sagita Nasution and Pepijn Jochem De Blecourt, as previously outlined, Pepijn Jochem De Blecourt—a Dutch national—claimed rights to the joint property; thus, the *Lex Patriae* principle and the legal principle that "movable property follows the person" may play a significant role. In this case, no prenuptial agreement regarding the separation of property had been made beforehand; therefore, under Indonesian law—specifically Article 119 of the Civil Code in conjunction with Article 35 of Law No. 1 of 1974 on Marriage—joint property is automatically established for the duration of the marriage, because in a mixed marriage, the *lex patriae* principle applies, whereby the law governing Sieska Sagita Nasution—an Indonesian citizen—is Indonesian law. In the absence of a prenuptial agreement, all property acquired during the marriage becomes joint property, and both spouses have equal and equivalent rights to their joint property. Since Pepijn Jochem De Blecourt is a foreign national, the applicable law is that of his country of origin—in this case, the Netherlands—so if Pepijn Jochem De Blecourt, a Dutch national, claims rights to movable property, his status may be determined based on the law governing his personal status—namely, Dutch law—in accordance with the application of the *Lex Patriae* principle to movable property through the principle of *Mobilia Sequuntur Personam*. However, in this case study, the primary focus of the dispute is land and residential buildings, which are legally classified as immovable property located in Indonesia.

In Indonesia, the legal status of land and buildings located within Indonesian territory—which are classified as immovable property—cannot be governed by the personal status of Pepijn Jochem De Blecourt or by Dutch law, but rather is subject to and falls within the scope of Indonesian law, which is governed by the principles of *Lex Rei Sitae* or *Lex Situs*.¹¹

¹¹ Jaka Ragil Daulay et al, "Asas-Asas Hukum Perdata Internasional" (2026) 3:1 J Intelek Insa Cendikia 478-485, online: <<https://jicnusantara.com/index.php/jiic/article/view/6338>>.



2. *Lex Rei Sitae* Principle

The *Lex Rei Sitae* principle, also known as *Lex Situs*, is one of the main and long-recognized foundations of International Private Law (IPL), as reflected in Article 17 of the *Algemene Bepalingen* (AB). Particularly in the context of regulating immovable property, the scope of this principle is very broad in governing legal relationships that may arise from immovable property. This principle establishes that the law competent to govern all aspects related to immovable property is the law of the country where the property is physically located or situated. In the case involving Sieska Sagita Nasution, an Indonesian citizen, and Pepijn Jochem De Blecourt, a Dutch citizen, the application of the *Lex Rei Sitae* principle is absolute and non-negotiable, and supersedes other principles when dealing with the subject matter of the dispute—which in this case is land and buildings that are actually or physically located within the jurisdiction of the Unitary State of the Republic of Indonesia. Therefore, based on the *Lex Rei Sitae* principle, the law that has the authority and is valid to govern all aspects of said land and buildings is Indonesian law. Under Indonesian law, immovable property such as land and buildings is governed by Indonesian legal provisions, specifically Law of the Republic of Indonesia No. 5 of 1960 on the Basic Provisions of Agrarian Law (UUPA), which regulates, among other things:¹²

a. Article 21 of the UUPA states that:

- 1) Only Indonesian citizens may hold title to land. This provision means that only individuals who hold Indonesian citizenship may be titleholders of land, thereby imposing an absolute prohibition on foreign nationals who do not hold Indonesian citizenship from acquiring title to land. Ownership is the highest and strongest right under Indonesian agrarian law, granting the authority to use and enjoy one's own land, to transfer it through sale or gift, and to own or construct structures—including buildings—on land that is one's own property.
- 2) The Government shall designate the legal entities that may hold property rights and establish the conditions therefor. This article means that the Government has the authority to designate legal entities that are permitted to acquire property rights by complying with all existing and established regulations and requirements, since a legal entity does not automatically acquire property rights merely by virtue of its status as an Indonesian legal entity.
- 3) Foreign nationals who, after the effective date of this Act, acquire ownership rights through intestate succession or the merger of property upon marriage, as well as Indonesian citizens who hold ownership rights and lose their citizenship after the effective date of this Act, are required to relinquish such rights within one year of acquiring them or losing their citizenship. If the property rights are relinquished after that period has elapsed, such rights shall be extinguished by operation of law, and the land

¹² Asri Lilik Handayani, Bona Tua Tampubolon & Lucky Dafira Nugroho, "Penerapan Asas *Lex Loci Rei Sitae* dan *Lex Nationalis* dalam Pewarisan Lintas Batas Negara" (2025) 3:3 *Al-Zayn J Ilmu Sos Huk* 1353–1364, online: <<https://ejournal.yayasanpendidikandzurriyatulquran.id/index.php/AlZayn/article/view/1403>>.



shall revert to the state, provided that the rights of other parties encumbering the land shall remain in effect. This article stipulates that foreign nationals who acquire ownership rights through intestate succession and the merger of assets due to marriage, as well as Indonesian citizens (WNI) who hold ownership rights but, after this law takes effect, lose their Indonesian citizenship and become foreign nationals, are prohibited from retaining ownership rights to land. This is because land ownership rights may only be granted to Indonesian citizens, and such individuals are required to relinquish or transfer their rights within one year, either from the date the ownership rights were acquired or from the date they lost their Indonesian citizenship. If ownership rights are not relinquished by the specified deadline, those rights are automatically deemed extinguished by law, and the land reverts to state ownership. However, even though the land has reverted to state ownership, the rights of other parties attached to the land remain in effect and are not extinguished.

- 4) As long as a person holds foreign citizenship in addition to their Indonesian citizenship, they may not own land as freehold property, and the provisions of paragraph (3) of this article apply to them. This section means that if an Indonesian citizen (WNI) also holds foreign citizenship—a situation known as dual citizenship—that person is not permitted or is prohibited from owning land under freehold title. Since a freehold title can only be acquired by Indonesian citizens who do not hold any other citizenship, the provisions of paragraph (3) of this article apply to those holding foreign citizenship.
- b. Article 36 of the UUPA states that:
- 1) The following may hold a right to use a building:
 - a) Indonesian citizens;
 - b) A legal entity established under Indonesian law and having its registered office in Indonesia.
 - c) Any individual or legal entity holding a right to use a building who no longer meets the requirements outlined in paragraph (1) of this section, within a period of 1 year, must relinquish or transfer that right to another party who meets the requirements. This provision also applies to a party that has acquired a right to use a building if that party does not meet the aforementioned requirements. If the right to use the building in question is not relinquished or transferred within that period, the right shall be extinguished by operation of law, provided that the rights of other parties shall be respected in accordance with the provisions established by Government Regulation.

If a marriage is entered into by an Indonesian citizen (WNI) and a foreign national (WNA) without a prenuptial agreement, the mixed-nationality couple is automatically subject to the laws in force in Indonesia, including provisions regarding property that result in the pooling of assets because one party holds Indonesian citizenship, so that if an Indonesian citizen marries a foreign national with provisions regarding the commingling of assets, the party who is an Indonesian citizen (WNI) cannot hold ownership rights to land in Indonesia, because indirectly, ownership of the land would also become the property of the



party who is a foreign national (WNA). This is in accordance with the provisions of Law No. 5 of 1960 on the Basic Principles of Agrarian Law.¹³

In the case involving Sieska Sagita Nasution, an Indonesian citizen, and Pepijn Jochem De Blecourt, a Dutch citizen, no prenuptial agreement or marriage contract was entered into before the mixed-nationality marriage; therefore, under Indonesian law, the land and buildings are considered joint property.¹⁴ These provisions are outlined in Law No. 1 of 1974 on Marriage, namely:

- a. Article 35, paragraph 1, which states that property acquired during the marriage becomes joint property.
- b. Article 35, paragraph 2, states that the separate property of each spouse and any property acquired by either spouse as a gift or inheritance remains under the control of the respective spouse, unless the parties agree otherwise.

In the case study involving Sieska Sagita Nasution, an Indonesian citizen, and Pepijn Jochem De Blecourt, a Dutch citizen, whose marriage took place without a prenuptial agreement or a property separation agreement, and during that marriage, they acquired joint property consisting of land and a house, as evidenced by a sales and purchase agreement numbered 93/SHBV/XIII/10-12 dated October 25, 2012, in the name of Sieska Sagita Nasution. Under applicable law, Sieska Sagita Nasution, the wife who is an Indonesian citizen, cannot legally own or hold title to the land and building, because the disputed property automatically became joint property with Pepijn Jochem De Blecourt—a foreign national—during the marriage due to the absence of a property separation agreement entered into during the marriage. This contradicts the applicable laws in Indonesia, specifically Article 21 of Law No. 5 of 1960 on the Basic Principles of Agrarian Law, which states that foreign nationals cannot hold title to land and buildings in Indonesia. Consequently, Pepijn Jochem De Blecourt, who is a foreign national, cannot argue that he must follow Dutch law or the *Lex Patriae* principle.

3. *Locus Regit Actum* Principle

The principle of “*Locus Regit Actum*” is a provision that affirms that the formalities of a legal act are subject to the laws of the jurisdiction where the act is performed. This principle is also reflected in Article 18 of the *Algemene Bepalingen (AB)*; thus, if an act—such as the drafting of a deed, the solemnization of a marriage, or the sale and purchase of land—is performed in a particular country, the procedures and formal requirements that must be met must comply with the laws in force in the country where the act is performed.¹⁵

¹³ Michael Fredo Jesikagum, M Fais Hurasan & Cavin George Ngilawane, “Analisis Hukum Perdata Internasional tentang Hak atas Tanah Bagi WNI dan dalam Perkawinan Campuran” (2024) 1:1 *J Huk* Cassowary 16–25, online: <<https://jurnal.asthagrafika.com/index.php/cas/article/view/77>>.

¹⁴ Sabrina Adelia Febriyanti et al, “Isu Yurisdiksi dan Pilihan Hukum dalam Sengketa Harta Gono-Gini Perkawinan Campuran” (2025) 3:4 *QOSIM J Pendidik Sos Hum* 1535–1546, online: <<https://ejournal.yayasanpendidikandzurriyatulquran.id/index.php/qosim/article/view/2510>>.

¹⁵ Muhammad Romli, “Hukum Perdata Internasional Sebagai Sub Sistem Hukum Nasional Indonesia” (2021) 6:2 *J Al-Wasith J Stud Huk Islam* 206–216, online: <<https://jurnal.unugha.ac.id/index.php/wst/article/view/330>>.



In the case study of the marriage between Sieska Sagita Nasution, an Indonesian citizen (WNI), and Pepijn Jochem De Blecourt, a foreign national (WNA), the marriage took place within Indonesian jurisdiction and was registered at the Office of Religious Affairs (KUA) in the Magacinta subdistrict on January 7, 1996. Based on the principle of *locus regit actum*, the validity of the form of this mixed marriage must be determined according to the law in force where the marriage was performed or took place. Therefore, in this case study, since the marriage was performed and solemnized in Indonesia, the law used to determine the formal validity of the marriage between Sieska Sagita Nasution, an Indonesian citizen (WNI), and Pepijn Jochem De Blecourt, a foreign national (WNA), is Indonesian law.

The case study explains that the marriage between Sieska Sagita Nasution, an Indonesian citizen (WNI), and Pepijn Jochem De Blecourt, a foreign national (WNA), resulted in the acquisition of a 320 m² plot of land and a 220 m² building situated on it, located at Jalan Iris Garden No. 3, Lot No. 93 Spring Hills, Mekarsaluyu Village, Cimenyan Subdistrict, Bandung Regency. A Preliminary Sales and Purchase Agreement (PPJB) No. 93/SHBV/XIII/10-12 was executed for the land and building on October 25, 2012, in the name of Sieska Sagita Nasution, the wife, who is an Indonesian citizen (WNI). Based on the principle of *Locus Regit Actum*, in this case study, the legal transaction for the sale and purchase of the land and building took place within the territory of Indonesia; therefore, the legal provisions governing the legal transaction—including the preparation of documents such as the Preliminary Sales and Purchase Agreement (PPJB) and the Deed of Sale and Purchase (AJB)—are Indonesian law.

The Preliminary Sales and Purchase Agreement (PPJB) is an initial document that serves as a binding agreement between the two parties—the seller and the buyer—and is drawn up by a notary public before the execution of the Deed of Sale and Purchase (AJB). The Deed of Sale and Purchase (AJB) itself is a document that officially records the sale and purchase of property, such as land and buildings; the deed of sale and purchase can only be drawn up and issued by a Land Deed Officer (PPAT) as proof of the validity of the transfer of ownership rights to a property from the seller to the buyer. In this case study, the Preliminary Sales and Purchase Agreement (PPJB) is not a document that serves as proof of the validity of ownership rights to the land and buildings that are the subject of the dispute; rather, it is merely a preliminary agreement document containing the terms agreed upon between the buyer and the seller. A Preliminary Sales and Purchase Agreement (PPJB)—which serves as a preliminary agreement before the main agreement between the parties—typically includes various provisions and conditions that must be fulfilled by both the seller and the buyer, which have been mutually agreed upon and are legally binding. An example of such a provision is the right for the seller to grant power of attorney to the buyer. The main purpose is to ensure that the main agreement—in this case, the sale and purchase agreement formalized by a Deed of Sale and Purchase (AJB)—can be signed by the authorized parties in the presence of a Land Deed Officer (PPAT).¹⁶

¹⁶ Anisa Nur Rachmawati Suanda & Arsin Lukman, “Analisis Yuridis tentang Pembagian Harta Bersama dalam Perkawinan Campuran Antara Warga Negara Belanda dan Warga Negara



The Preliminary Sales and Purchase Agreement (PPJB), in this case drawn up in the name of Sieska Sagita Nasution, does not mean that ownership of the land and buildings has been legally transferred to Sieska Sagita Nasution, because the transfer of ownership rights to the land and buildings occurs only upon the existence of a Deed of Sale and Purchase (AJB) drawn up and issued by a Land Deed Officer (PPAT). A Land Deed Officer (PPAT) is a public official authorized to draw up authentic deeds regarding the transfer, encumbrance, and granting of land rights, as well as ownership rights to condominium units. Therefore, as a public official, the Land Deed Officer (PPAT) is responsible for ensuring the formal and substantive validity of every deed drawn up. This is in accordance with Government Regulation of the Republic of Indonesia No. 24 of 2016.¹⁷

Given these provisions, in the case study of the marriage between Sieska Sagita Nasution, an Indonesian citizen (WNI), and Pepijn Jochem De Blecourt, a foreign national (WNA), who did not have or enter into a prenuptial agreement regarding the separation of property during the marriage before the divorce, even though the Preliminary Sales and Purchase Agreement (PPJB) includes the name of the wife, Sieska Sagita Nasution, who is an Indonesian citizen (WNI), this does not automatically negate the fact that the land and buildings legally constitute joint property with her husband, Pepijn Jochem De Blecourt, who is a foreign national (WNA), for the duration of the marriage.

CONCLUSION

In mixed marriages between Indonesian citizens and foreign nationals in Indonesia that do not have a prenuptial agreement, the provisions regarding joint property as outlined in Law No. 1 of 1974 on Marriage apply; and in the case study, the *Lex Patriae* principle—specifically the rule that “movable property follows the person” (*mobilia sequuntur personam*)—cannot be applied absolutely because the disputed objects are immovable property, namely land and buildings. Consequently, the *Lex Rei Sitae* principle applies absolutely, superseding other principles, and the *Locus Regit Actum* principle applies, under which the formalities of marriage and legal acts must be governed by Indonesian law since all such legal events took place in Indonesia. In mixed marriages between Indonesian citizens (WNI) and foreign nationals (WNA), protection of the Indonesian wife’s rights to joint property can be provided in two ways: legal protection through the execution of a prenuptial agreement before or during the marriage, and legal protection through the courts in the event of a dispute. Thus, even in cases where there is no prenuptial agreement, the Indonesian wife can still obtain rights to the joint property acquired during the mixed marriage through judicial proceedings under Indonesian law.

Indonesia di Indonesia: Studi Kasus Putusan Pengadilan Nomor 055/PDT.G/2020/PA.SOR” (2024) 2:8 Kult J Ilmu Hukum, Sosal, dan Hum 213–226, online: <<https://jurnal.kolibri.org/index.php/kultura/article/view/2275>>.

¹⁷ Abdu Razaq et al, “Penerapan Prinsip Keadilan dalam Pertanggungjawaban Hukum Pejabat Pembuat Akta Tanah (PPAT) atas Pembatalan Akta Hibah oleh Pengadilan” (2025) 4:11 SENTRI J Ris Ilm 3152–3160, online: <<https://ejournal.nusantaraglobal.ac.id/index.php/sentri/article/view/4908>>.



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