

LEGAL STATUS OF JOINT LAND OWNERSHIP RIGHTS IN INTERNATIONAL MIXED MARRIAGE REGIMES

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Abstract:

This study examines the legal status of freehold land acquired during an international mixed marriage between an Indonesian citizen and a foreign national, and the resolution of the normative conflict that such acquisition produces. The conflict arises because marriage law treats property obtained during marriage as joint marital property, while agrarian law reserves freehold land rights exclusively to Indonesian citizens. The research applies a normative legal method using statutory, conceptual and case approaches, drawing on the 1945 Constitution, the Basic Agrarian Law, the Marriage Law, the Citizenship Law and Constitutional Court Decision Number 69/PUU-XIII/2015, analysed descriptively, interpretatively and argumentatively. The findings show that land may be classified as joint marital property under civil law, yet ownership of freehold rights remains recognisable only in favour of the Indonesian spouse, since the principle of nationality limits the subject entitled to hold such rights. The conflict is resolved by the maxim that a specific rule sets aside a general one, placing agrarian law first. Protection for Indonesian citizens accordingly requires a preventive layer of marital agreements and legal counselling, and a repressive layer of relinquishment, nullity and judicial remedy.

INTRODUCTION

Marriage is a social and legal institution that produces consequences for personal status, descent and property. Intensified global mobility driven by education, employment and tourism has increased the number of mixed marriages between Indonesian citizens and foreign nationals, and with them the legal questions that such unions raise for the national legal system (Aulia, Mulyaningrum, & Holish, 2023). Before the enactment of Law Number 16 of 2019 amending Law Number 1 of 1974 concerning Marriage, marriage in Indonesia was governed pluralistically by religious law, customary law and Western law, a condition that generated divergent recognition of the same union and therefore legal uncertainty. The unified statute affirms in Article 35 paragraph (1) that property acquired during marriage becomes joint marital property, while Article 35 paragraph (2) leaves property brought into the marriage and property received as a gift or inheritance under the control of each spouse. Article 36 requires mutual consent for acts concerning joint property, and Article 37 refers the division of joint property upon divorce to the law applicable to the parties. The design expresses the principle of unity of marital property as an expression of equality and shared responsibility within the household (Anggriani & Zandra, 2022).

Agrarian law was constructed on a different foundation. Law Number 5 of 1960 concerning Basic Agrarian Principles was enacted to dismantle the colonial dualism that had granted extensive



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privileges over land to foreign persons and entities, and to reassert national sovereignty over land pursuant to Article 33 paragraph (3) of the 1945 Constitution (Ramadhani, 2022). Article 20 paragraph (1) defines freehold as the hereditary, strongest and fullest right a person may hold over land, subject to the social function attached to all land rights, while Article 21 paragraph (1) restricts that right to Indonesian citizens. The restriction is reinforced by Article 21 paragraph (3), under which a foreign national who acquires freehold through intestate inheritance or through the commingling of property resulting from marriage must relinquish it within one year, failing which the right lapses by operation of law and the land reverts to the State, and by Article 26 paragraph (2), which voids any act intended directly or indirectly to transfer freehold to a foreign national. A conflict of norms therefore emerges the moment an Indonesian citizen acquires freehold land during a mixed marriage without an agreement separating the spouses' property: marriage law places the land in the joint estate, so that the foreign spouse is treated as holding a share, whereas agrarian law forbids precisely that result. The dilemma is acute, since annulling the right injures the Indonesian spouse while recognising it sets aside the principle of nationality, and the gap has in practice encouraged nominee arrangements designed to circumvent the prohibition (Ibnu Isra & Supriyo, 2023; Komariah, Hasan, & Rodiah, 2023; Nisa, 2023).

Constitutional Court Decision Number 69/PUU-XIII/2015 reinterpreted Article 29 of the Marriage Law so that a marital agreement may be concluded before, at the time of, or during the marriage, takes effect from the celebration of the marriage unless the parties provide otherwise, and may not be altered or revoked except by mutual consent and without prejudice to third parties. The decision widened contractual autonomy within family law, yet it regulated the instrument rather than the underlying collision between the unity of marital property and the principle of nationality. Existing scholarship has approached that collision only partially. Lestari (2019) examined the juridical implications of the same decision for post-nuptial agreements without addressing the agrarian dimension; Dewi (2020) analysed the status of joint property under Article 35 of the Marriage Law but did not assess the effectiveness of separation agreements as a preventive device; Pratama (2018) and Putra (2020) traced the consequences that follow when spouses conclude no separation agreement, concentrating on the risk that the right will lapse; Wahyuni (2021) emphasised judicial decisions and notarial practice; and Arimbawa (2020) treated the principle of nationality at a theoretical and conceptual level. None of these studies integrates the resolution of the conflict of norms with a formulated two-layer scheme of preventive and repressive protection, which is the contribution the present article seeks to make.

This article accordingly analyses two questions. First, what is the legal status of freehold land acquired during a mixed marriage between an Indonesian citizen and a foreign national when it is treated as joint marital property, assessed against the principles of nationality and personality? Second, how should the conflict concerning joint marital property be resolved so as to guarantee legal certainty and protect the freehold land rights of Indonesian citizens in an international mixed marriage? The analysis aims to clarify the boundary between the civil classification of land as joint property and its agrarian recognition, and to formulate a protective scheme capable of safeguarding the rights of Indonesian citizens, legal certainty, justice and State sovereignty over land.

METHODS

This study is normative legal research, examining law from an internal perspective with legal norms as its object (Efendi, 2016; Diantha, 2016). Three approaches are combined. The statutory approach examines the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 concerning Basic Agrarian Principles, Law Number 1 of 1974 concerning Marriage as amended by



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Law Number 16 of 2019, Law Number 12 of 2006 concerning Citizenship, Law Number 6 of 2011 concerning Immigration and Constitutional Court Decision Number 69/PUU-XIII/2015 as primary legal materials. The conceptual approach draws on legal principles and doctrine concerning ownership, nationality, joint marital property and legal protection, supported by books, journal articles and previous research as secondary legal materials, with legal dictionaries as tertiary materials. The case approach is used to examine the concrete situation in which freehold land is acquired during a mixed marriage. Legal materials were collected through library research by documenting and recording relevant sources, and were analysed through description, interpretation, evaluation and argumentation in order to identify and resolve the conflict of norms under study (Marzuki, 2017).

RESULT AND DISCUSSION

The Legal Status of Freehold Land Acquired During a Mixed Marriage

The principle of nationality is a foundational principle of Indonesian agrarian law. It proceeds from the understanding that land is not merely an economic object freely traded, but a resource carrying strategic, social, political and cultural value bound to the existence of the nation. Its roots lie in the struggle for independence and in the intention to dismantle a colonial system that had opened wide access to land for foreign parties (Ramadhani, 2022; Lucas & Warren, 2013). Normatively the principle is anchored in Article 33 paragraph (3) of the 1945 Constitution, under which the earth, water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. Within that framework, citizenship is not merely an administrative identity but a legal qualification determining who may enter into a full and permanent relationship with land (Leks, 2024). The principle also expresses the State's right of control, which is a public function rather than private ownership, and it operates alongside the social function of land, so that ownership is never absolute in the liberal sense but is always situated within the interests of the nation (Munir, 2024; Tehupeiory, 2023).

Freehold occupies the highest position within the hierarchy of land rights. Article 20 paragraph (1) of the Basic Agrarian Law describes it as the hereditary, strongest and fullest right that a person may hold over land, while Article 6 subjects all land rights to a social function and Article 2 affirms the State's right of control. Freehold is therefore not only a private relationship between a legal subject and an object, but part of a national legal system carrying a public and sovereign dimension (Harsono, 1999). Read together with Article 21 paragraph (1), which reserves freehold to Indonesian citizens, the right acquires an exclusive and personal character: it attaches fully to a subject who satisfies the citizenship requirement and cannot be extended to a party who does not. Article 21 paragraph (3) confirms this by requiring a foreign national who obtains freehold through intestate inheritance or through the commingling of property resulting from marriage to relinquish it within one year, after which the right lapses by operation of law and the land falls to the State. Article 26 paragraph (2) extends the prohibition beyond direct acquisition by voiding every act intended directly or indirectly to transfer freehold to a foreign national, which demonstrates that agrarian law targets not only open ownership but also legal engineering that would produce the same effect (Butt & Lindsey, 2018; Napitupulu, 2023).

Marriage law approaches the same object from a different direction. Joint marital property is a form of collective ownership between husband and wife arising from the legal event of marriage, in which neither spouse holds a physically separated portion but both hold a common right over the estate as a whole. In a mixed marriage the institution continues to apply in general terms, and where an Indonesian citizen acquires freehold land during the marriage without an agreement separating



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the spouses' property, that land falls within the joint estate by operation of the Marriage Law. The question is what becomes of the freehold right when one spouse is a foreign national who, under agrarian law, does not qualify as a subject of that right. The answer cannot be obtained by applying either statute in isolation. Marriage law governs a civil relationship between spouses; agrarian law governs the relationship between a legal subject and land as a strategic national resource. The two regimes have different scopes and purposes, and their provisions must be read as complementary rather than mutually negating (Hajati, 2021). The principal points of divergence are set out in Table 1.

Table 1. Divergence Between the Marital Property Regime and the Agrarian Regime

Aspect	Marriage Law	Basic Agrarian Law
Legal basis	Article 35 paragraphs (1)–(2), Articles 36–37, Law Number 1 of 1974 as amended by Law Number 16 of 2019	Articles 2, 6, 20 paragraph (1), 21 paragraphs (1) and (3), 26 paragraph (2), Law Number 5 of 1960
Character of the norm	General; applies to every kind of property without specification	Specific; regulates the subject entitled to hold freehold over land
Object regulated	The civil relationship between spouses over marital assets	The legal relationship between a legal subject and land
Governing principle	Unity of marital property, equality and shared responsibility	Nationality, State right of control and social function of land
Qualification of the subject	Both spouses, regardless of citizenship	Indonesian citizens only for freehold rights
Orientation of protection	Economic interests of the family	National interest and State sovereignty over land
Consequence in a mixed marriage	Land acquired during marriage enters the joint estate unless a marital agreement provides otherwise	A foreign spouse must relinquish the right within one year; transfers to foreign nationals are void

Source: Law Number 1 of 1974 as amended by Law Number 16 of 2019 and Law Number 5 of 1960, processed 2026

Table 1 shows that the two regimes do not contradict one another at the level of purpose; they diverge at the level of legal effect. From a civil law perspective, freehold land acquired during a mixed marriage may be classified as joint marital property, because the classification follows from the event of marriage and the time of acquisition. From an agrarian law perspective, however, recognition of ownership over that freehold right remains possible only in favour of the Indonesian spouse, because the qualification of the subject is determined by citizenship and not by the matrimonial regime. Freehold must therefore be understood as an individual right that cannot be fully merged into cross-national collective ownership, even within a marital relationship. Applying the unity of marital property absolutely, without regard to the qualification of the subject, would not enlarge the rights of the spouses; it would expose the right itself to lapse under Article 21 paragraph (3) and would leave the Indonesian spouse in a weaker position than before (Tarfi, 2024).

This conclusion is consistent with the theory of legal protection. Following the formulation attributed to Fitzgerald on the basis of Salmond, law integrates and coordinates competing interests within society, and protecting one interest necessarily entails limiting another. The restriction of freehold to Indonesian citizens is a concrete expression of that coordination: the interest of Indonesian citizens in holding land as a source of livelihood is protected by limiting the qualification



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of other subjects (Limbong, 2012). Legal protection, in this sense, is the shelter afforded to rights so that their holders may actually enjoy what the law confers, an idea reflected in Article 28D paragraph (1) of the 1945 Constitution, which guarantees recognition, security, protection and fair legal certainty. Philipus M. Hadjon's distinction between preventive and repressive protection maps directly onto the agrarian provisions: Article 21 paragraphs (1) and (3) operate preventively by defining and limiting the qualification of the subject in advance, whereas Article 26 paragraph (2), by declaring offending transfers void, operates repressively by attaching a consequence once a violation has occurred. Indonesian agrarian law thus already provides two layers of protection, although their articulation with marriage law remains incomplete.

Assessed through the theory of legal certainty, that incompleteness is the source of the problem. Lon Fuller holds that certainty depends not only on the existence of written rules but on the internal quality of law, including generality, publicity, non-retroactivity and consistent application. Where marriage law declares that property acquired during marriage becomes joint property while agrarian law confines freehold to Indonesian citizens, a consistent interpretation is required if individuals are to plan their legal conduct rationally (Leks, 2024). Nurhasan Ismail's distinction between certainty of norm and certainty of application is equally pertinent: the norm itself is clear, since the Basic Agrarian Law states unambiguously who may hold freehold, but certainty of application demands that land officials and courts apply that limitation consistently, so that identical situations are not resolved differently. Sudikno Mertokusumo links certainty to the protection of individual rights through consistent and fair application, and Apeldoorn emphasises the clarity and stability of the norm as the basis on which individuals rely (Mertokusumo, 2002; McCarthy & Robinson, 2016). Parties to a mixed marriage are entitled to know, before they acquire land, whether the asset will be treated as joint property or will remain subject to the limitation on the qualification of the subject; without that knowledge they face the risk of dispute or of losing the right altogether.

The utilitarian perspective supplies a further justification. For Jeremy Bentham, a good law is one that produces the greatest happiness for the greatest number, and the restriction of freehold to Indonesian citizens can be read as a policy protecting the collective interest of the nation and preventing the concentration of land in foreign hands (Muwahid, 2016; Mill, 2001). The same perspective, however, cautions that policy must account for its effect on individuals: applying joint marital property to freehold land without regard to the agrarian limitation may produce injustice for a particular party. Rule utilitarianism offers the compromise adopted here, namely maintaining the principle of nationality in the qualification of the subject while providing a clear mechanism through which the spouses may order their property relations. The legal status of freehold land in a mixed marriage is therefore twofold: civilly it may form part of the joint estate, but agrarian recognition of ownership attaches only to the Indonesian spouse.

Resolving the Normative Conflict and Formulating Legal Protection

The resolution of the conflict follows from the character of the two norms. Article 35 paragraph (1) of the Marriage Law is general: it speaks of property acquired during marriage without distinguishing between categories of assets, and therefore covers movable property, receivables and land alike. Article 21 paragraph (1) of the Basic Agrarian Law is specific: it regulates one category of object and determines exhaustively which subjects may hold freehold over it. Where a general and a specific provision meet on the same factual situation, the maxim *lex specialis derogat legi generali* applies, so that the specific provision prevails. Applied here, the limitation of the qualification of the subject in agrarian law takes precedence over the general rule on joint marital property. This does

not abolish the institution of joint marital property, which continues to govern the civil relationship between the spouses and all other categories of assets; it limits the legal effect of that institution where the object is freehold land (Mulyani, 2023; Permadi & Herlindah, 2025).

The resolution is substantive as well as technical. The principle of nationality is bound directly to State sovereignty over agrarian resources and insists that full ownership of land must not pass into foreign hands, whether directly or indirectly. Were the rule on joint marital property applied to freehold land without limitation, a foreign spouse would acquire a share through the commingling of property, which is exactly the outcome that Article 21 paragraph (3) anticipates and requires to be undone, and that Article 26 paragraph (2) nullifies where it is engineered deliberately. Generalising the commingling of property to every category of asset would ignore the particular character of land as an object with a public and constitutional dimension (Roestamy et al., 2023; Rudy, 2022). Priority for the Basic Agrarian Law therefore preserves both the internal consistency of the legal system and the sovereignty that the system is designed to protect.

Theories of justice support rather than undermine that priority. John Rawls's conception of justice as fairness combines an equal liberty principle with the difference principle. The first guarantees equal basic rights, including the freedom to marry and to found a family without discrimination, so that a mixed marriage is itself entirely legitimate; the second permits inequalities where they benefit the least advantaged. Reasoning from the original position, where the parties do not know their own citizenship or social standing, a rational choice would still protect a strategic national resource on which the livelihood of the community depends, so the restriction can be regarded as morally defensible provided it does not arbitrarily strip individuals of basic rights. Aristotle's distinction between distributive and corrective justice adds precision: distribution of freehold according to citizenship is a proportional criterion reflecting the legal and political bond between person and State rather than mere discrimination, while corrective justice requires a mechanism for restoring the position where the principle has been breached. Utilitarian reasoning points in the same direction, and although Robert Nozick's libertarian objection warns against excessive State intervention in lawfully acquired holdings, it gives insufficient weight to the social and national dimension that Indonesian law attaches to land (Warren & McCarthy, 2022). The synthesis is a system that keeps the principle of nationality intact while giving individuals a clear route through which to order their property relations.

That route is the formulation of protection in two layers. Preventive protection operates before any dispute or legal loss arises and rests principally on the marital agreement, which under Article 29 of the Marriage Law as reinterpreted by Constitutional Court Decision Number 69/PUU-XIII/2015 may be concluded before, at the time of, or during the marriage. The agreement takes effect from the celebration of the marriage unless the parties stipulate otherwise, and it may not be altered or revoked except by mutual consent and without prejudice to third parties, which balances contractual freedom against the security of creditors. By separating the spouses' assets, the agreement prevents freehold land acquired by the Indonesian spouse from entering the joint estate, and the potential conflict between the two regimes is neutralised at its source (Djaja, 2020; Kusnandar & Rinaldi, 2025). Preventive protection also has an administrative and educational dimension, exercised through notaries and land deed officials who provide legal counselling before any transaction concerning land is executed, so that parties understand the consequences of their acts and decide knowingly. It has, finally, a legislative dimension: harmonisation between marriage law and agrarian law, and consistency of implementing regulations with the principle of nationality,

remove the ambiguity that inadvertent violations and circumvention schemes exploit (Purwa et al., 2023).

Repressive protection operates once a violation or dispute has occurred. Its first form is the obligation of relinquishment under Article 21 paragraph (3), which returns the position to conformity with the principle of nationality within a defined period and, failing compliance, extinguishes the right by operation of law. Its second is the nullity of acts intended to transfer freehold to a foreign national under Article 26 paragraph (2), which preserves the integrity of the agrarian system against arrangements devised to evade the prohibition. Its third is access to judicial settlement, through which an Indonesian citizen involved in a dispute over joint property or land ownership may obtain a decision from an independent and impartial court that interprets and applies the law consistently. Corrective action must nevertheless observe proportionality and fairness, so that an Indonesian spouse acting in good faith is not penalised for a conflict originating in the legislation itself; the repressive function is not merely punitive but restorative, re-establishing the equilibrium that the violation disturbed (Amalia, 2024; Suganda, 2023). The two layers and their statutory bases are summarised in Table 2.

Table 2. Preventive and Repressive Protection for Indonesian Citizens in Mixed Marriages

Layer	Instrument	Legal Basis
Preventive	Marital agreement separating the spouses' property, concluded before, at the time of, or during the marriage	Article 29, Law Number 1 of 1974 as amended by Law Number 16 of 2019; Constitutional Court Decision Number 69/PUU-XIII/2015
Preventive	Legal counselling by notaries and land deed officials prior to any transaction concerning land	Article 21 paragraph (1), Law Number 5 of 1960
Preventive	Harmonisation of marriage law and agrarian law and of their implementing regulations	Article 33 paragraph (3), 1945 Constitution; Article 2, Law Number 5 of 1960
Repressive	Obligation of the foreign spouse to relinquish freehold within one year of acquisition	Article 21 paragraph (3), Law Number 5 of 1960
Repressive	Nullity of acts intended directly or indirectly to transfer freehold to a foreign national	Article 26 paragraph (2), Law Number 5 of 1960
Repressive	Judicial settlement of disputes over joint marital property and land ownership	Article 28D paragraph (1), 1945 Constitution; Article 37, Law Number 1 of 1974

Source: Law Number 5 of 1960, Law Number 1 of 1974 as amended by Law Number 16 of 2019 and Constitutional Court Decision Number 69/PUU-XIII/2015, processed 2026

The formulation must also accommodate the human rights dimension. Marriage is a basic right, and the State may not arbitrarily restrict its legal consequences; at the same time the right is exercised within the national legal order. Protection for Indonesian citizens in a mixed marriage must therefore be designed so as to avoid discrimination while safeguarding the national interest in land, and that balance is the substance of effective and equitable legal protection. The two layers are complementary and must operate simultaneously: without preventive protection the incidence of dispute and violation increases, and without firm repressive protection the norm loses its binding force. Preventive protection is oriented towards the anticipation of risk, repressive protection

towards the treatment of consequences, and both rest on legal certainty, justice and social utility (Daryono, Sigit, Apriandhini, & Parashtheo, 2025; Soekanto, 2015).

CONCLUSION

Freehold land acquired during an international mixed marriage remains subject to the principle of nationality under the Basic Agrarian Law. Article 21 paragraph (1) restricts freehold to Indonesian citizens, and Article 21 paragraph (3) obliges a foreign national who obtains such a right through the commingling of marital property to relinquish it within one year, failing which the right lapses by operation of law. Consequently, although the land may be classified as joint marital property under civil law, agrarian recognition of ownership attaches only to the Indonesian spouse. Freehold is an exclusive individual right that cannot be merged into collective ownership involving a foreign national, and that exclusivity preserves both State sovereignty and the internal consistency of the national legal system.

The conflict between the rule on joint marital property in marriage law and the principle of nationality in agrarian law is resolved by treating the Basic Agrarian Law as the specific norm that sets aside the general provisions of the Marriage Law. The resolution does not abolish joint marital property; it limits its legal effect where the object is freehold land. Protection for Indonesian citizens is then formulated in two layers. Preventively, a marital agreement separating the spouses' assets, reinforced by legal counselling from notaries and land deed officials and by harmonisation of the two regimes, prevents the conflict from arising. Repressively, the obligation of relinquishment, the nullity of transfers to foreign nationals and access to judicial remedy restore conformity once a violation has occurred. The scheme reflects distributive justice, protecting the collective interest of the nation without disregarding the civil rights of individuals.

Two recommendations follow. Couples who intend to enter, or have already entered, an international mixed marriage should conclude a marital agreement regulating the separation of assets, so that freehold land held by the Indonesian spouse does not become commingled. The Government, for its part, should harmonise the Marriage Law and the Basic Agrarian Law and strengthen the role of land deed officials and notaries in providing legal education to the public, in order to forestall divergent interpretation and violation of the principle of nationality. Further research may extend the analysis to the treatment of the same conflict in comparable jurisdictions and to the practice of land registration offices, so that the proposed scheme can be tested against administrative reality.

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