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## Legal certainty of marital property in mixed marriages within the Mandalika Special Economic Zone (SEZ)

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### ABSTRACT

Mixed marriages between Indonesian citizens and foreign nationals in international tourism areas, such as the Mandalika Special Economic Zone (SEZ), give rise to complex legal consequences regarding marital property and asset ownership. The aggressive tourism-driven investment within the Mandalika SEZ creates a unique legal tension between the facilitation of foreign investment and the strict prohibition of foreign land ownership under Indonesian agrarian law. This study aims to analyze the legal regulation of marital property in mixed marriages under Indonesian law and to examine the legal certainty and protection afforded to Indonesian citizens specifically within the normative framework governing the Mandalika SEZ. This study employs a normative legal research method using a statutory and conceptual approach. The legal materials examined include the Marriage Law, the Indonesian Civil Code, the Basic Agrarian Law, and Constitutional Court Decision Number 69/PUU-XIII/2015. The findings demonstrate a structural normative conflict between family law principles of joint marital property and the nationality principle in agrarian law. Within high-value investment zones like Mandalika, this legal loophole is frequently exploited through illegal nominee agreements, which violate the objective requirements of a valid contract. Although Constitutional Court Decision Number 69/PUU-XIII/2015 provides a progressive legal remedy through postnuptial agreements, there remains a regulatory vacuum specifically addressing asset protection in special economic zones. This study recommends a normative harmonization between family law, agrarian law, and SEZ regulations to ensure absolute legal certainty and to prevent legal circumvention that undermines the constitutional rights of Indonesian citizens.

**Keywords:** marital property; mixed marriage; legal certainty; marital agreement; Mandalika Special Economic Zone.

## 1. INTRODUCTION

The development of globalization and the rapid growth of the international tourism sector have significantly transformed patterns of social relations within society, including the formation of cross-national marital relationships (Rahmatulloh, 2022). In Indonesia, this phenomenon has become increasingly evident in legally designated strategic tourism areas, one of which is the Mandalika Special Economic Zone (SEZ) in the Province of West Nusa Tenggara. The influx of foreign investors, international tourists, and expatriate workers within the area has encouraged increased social interaction between Indonesian citizens and foreign nationals, ultimately resulting in the growing practice of mixed marriages.

Mixed marriages not only establish legal family relations but also give rise to legal consequences in the field of marital assets and property ownership (Pundarika et al., 2025). In legal doctrine, marital property constitutes one of the most complex issues because it involves a collision of legal systems, citizenship status, and strict statutory restrictions on the ownership of certain assets by foreign nationals. These issues become highly problematic when associated with Indonesian land law provisions. Law Number 5 of 1960 concerning the Basic Agrarian Principles (UUPA) strictly stipulates that freehold title rights over land (*hak milik*) may only be owned by Indonesian citizens (Putra et al., 2023). Such provisions are fundamentally intended to protect national sovereignty and prevent the control of land by foreign parties. Nevertheless, within the normative framework of mixed marriages, these regulations frequently create legal antinomies regarding the status of marital property, particularly where an Indonesian citizen marries a foreign national without executing a marital agreement concerning the separation of property. Prior to the issuance of Constitutional Court Decision Number 69/PUU-XIII/2015, parties to a mixed marriage were only permitted to execute a marital agreement before the marriage was solemnized (Dwiputra, 2022). Consequently, many Indonesian citizens legally lost their right to own land because marital property was deemed commingled with the assets of their foreign spouses.

Constitutional Court Decision Number 69/PUU-XIII/2015 subsequently introduced a significant legal development by allowing marital agreements to be executed after the marriage had taken place (Prayogo et al., 2022). The decision provides broader legal protection for Indonesian citizens in mixed marriages (Pundarika et al., 2025). However, from a doctrinal perspective, various legal issues relating to asset ownership and land control in mixed marriages within the Mandalika SEZ continue to arise (Prinz, 2025). The practice of nominee agreements—namely the use of Indonesian citizens' names to control assets for the benefit of foreign nationals—remains a prominent form of legal circumvention (Kresnadjaja & Dharsana, 2024), exploiting the normative gap between investment facilitation and agrarian restrictions.

Existing normative studies concerning mixed marriages have generally focused broadly on standard issues of citizenship and inheritance rights within a general national legal framework (Norayanti et al., 2025). Meanwhile, doctrinal research specifically examining the legal certainty of marital property in mixed marriages within Special Economic Zones remains relatively limited (Thenata & Susantio, 2026). The characteristics of the Mandalika SEZ, governed by specific regulations to accelerate investment and infrastructure, create a distinct normative tension. Unlike ordinary areas, Mandalika is subject to aggressive real estate commercialization and rapid land-value inflation. This commercial environment exacerbates legal vulnerabilities: foreign nationals are incentivized to utilize covert nominee arrangements with local spouses to exploit tourism property demands, effectively bypassing the UUPA. This paper addresses this distinct gap by analyzing the structural legal friction between agrarian mandates, marital property dynamics under the Marriage Law, and the investment-driven environment of the Mandalika SEZ from a purely normative legal perspective.

Based on the foregoing discussion, this research is significant in order to analyze the legal regulation of marital property in mixed marriages under Indonesian law and to examine the legal certainty concerning the protection of marital property for Indonesian citizens within the normative context of the Mandalika Special Economic Zone.

## 2. RESEARCH METHODS

This study exclusively employs a normative legal research method (doctrinal research) to systematically analyze the legal principles, norms, and doctrines governing marital property and land ownership in mixed marriages. The normative approach is conducted through a comprehensive examination of positive laws and regulations to identify legal vacuums, antinomies, and harmonization issues. The research utilizes two primary approaches: the statutory approach and the conceptual approach. The statutory approach examines the hierarchy and synchronization of laws, primarily involving Law Number 1 of 1974 concerning Marriage (as amended by Law Number 16 of 2019), the Indonesian Civil Code (*Burgerlijk Wetboek*), Law Number 5 of 1960 concerning the Basic Agrarian Principles (UUPA), regulations concerning Special Economic Zones, and Constitutional Court Decision Number 69/PUU-XIII/2015. The conceptual approach analyzes the legal doctrines of legal certainty, legal protection, joint marital property, and the principle of nationality in agrarian law. The data sources consist of secondary data, comprising primary legal materials (statutes and court decisions), secondary legal materials (books, journal articles, and legal literature), and tertiary legal materials (legal dictionaries). Data collection was conducted through literature and document studies by systematically cataloging and analyzing relevant legal texts. The gathered legal materials were subsequently analyzed qualitatively and presented deductively to construct prescriptive legal arguments regarding the protection of Indonesian citizens' property rights within the Mandalika SEZ. Through this method, the study aims to construct prescriptive legal arguments and provide recommendations for strengthening legal certainty, harmonizing legal norms, and ensuring better protection of Indonesian citizens' land ownership rights.

## 3. RESULTS AND DISCUSSION

### 3.1. Normative Friction Between Family Law and Agrarian Law in Marital Property

The regulation of marital property in mixed marriages in Indonesia is normatively governed by Law Number 1 of 1974 concerning Marriage and the Indonesian Civil Code (*Burgerlijk Wetboek*). Article 35 of the Marriage Law stipulates that property acquired during the marriage shall constitute joint marital property (*harta bersama*), unless otherwise determined through a marital agreement. From a legal standpoint, this automatic commingling creates an intense normative conflict with the absolute provisions of Indonesian agrarian law.

Under Article 21 of the Basic Agrarian Law (UUPA), freehold title rights over land (*hak milik*) are strictly and exclusively reserved for Indonesian citizens based on the principle of nationality. When an Indonesian citizen in a mixed marriage purchases land without a prior property separation agreement, that land legally enters the joint marital pool. Because the joint pool contains a foreign ownership element (the foreign spouse), the ownership structure immediately violates the UUPA. Consequently, under Article 21 paragraph (3) of the UUPA, the Indonesian spouse is legally mandated to divest or downgrade the land right within one year, failing which the right is forfeited to the state (Mujiburohman et al., 2023; Nurazizah et al., 2025). This normative interaction reveals a critical legal antinomy: the standard protective framework of family law inadvertently strips the Indonesian citizen of their constitutional right to hold land simply due to their marital status.

Prior to Constitutional Court Decision Number 69/PUU-XIII/2015, Article 29 of the Marriage Law strictly mandated that marital agreements could only be executed before or at the time the marriage was solemnized. Such rigid provisions created a legal trap for citizens who were unaware of the agrarian consequences of their mixed marriages (Santoso, 2024). Recognizing this unconstitutional deprivation of property rights, the Constitutional Court introduced a progressive legal development by interpreting Article 29 to permit marital agreements to be executed during the subsistence of the marriage (postnuptial agreements). From a doctrinal perspective, this decision restores the constitutional rights of Indonesian citizens, allowing them to sever the legal commingling of assets retroactively and thereby satisfying the nationality requirement of the UUPA to retain freehold titles.

### **3.2. The Legal Construct of Nominee Agreements and Asset Ownership in the Mandalika SEZ**

While Constitutional Court Decision Number 69/PUU-XIII/2015 provides a theoretical legal remedy, the normative reality within the Mandalika Special Economic Zone presents a distinct set of complexities (Putra, 2023). As a designated SEZ, Mandalika is legally structured to accelerate investment, tourism development, and infrastructure growth. This regulatory environment triggers immense real estate speculation and highly inflated commercial property values. Driven by these economic incentives, foreign nationals seek to acquire permanent spatial control over strategic assets within the zone, which directly contradicts the prohibitions in the UUPA.

To bypass these strict agrarian restrictions, foreign nationals frequently exploit the institution of mixed marriage through the legal construct of nominee agreements (*perjanjian pinjam nama*). In this construct, the Indonesian spouse acts as the formal, registered owner of the land, while a separate, covert contractual arrangement guarantees that the substantive economic benefits, control, and absolute right of disposal remain with the foreign national (Dharma et al., 2022).

This practice reveals a serious gap between formal legality and substantive ownership. Normatively, the land certificate may remain under the name of the Indonesian spouse, thereby appearing to comply with the nationality principle under the UUPA. However, in substance, the legal and economic control over the land is transferred to the foreign national through private contractual arrangements. This situation creates a dual-layered legal structure: the visible layer reflects formal compliance with Indonesian agrarian law, while the hidden layer functions as an instrument to defeat the very purpose of the law. From a doctrinal perspective, such nominee arrangements are problematic because they undermine the mandatory nature of agrarian norms and reduce the nationality principle to a mere administrative formality.

The legal issue becomes more complex when the Indonesian spouse is placed in a vulnerable position. Although formally recognized as the landowner, the Indonesian spouse may have limited autonomy over the land because the nominee agreement often contains clauses requiring them to follow the foreign spouse's instructions regarding sale, lease, transfer, or management of the property. In this sense, the Indonesian citizen's legal status as owner becomes symbolic rather than substantive. This contradicts the objective of legal protection, particularly when the Indonesian spouse's name is used only as a legal instrument to secure foreign economic interests. The risk is even greater in strategic areas such as Mandalika, where land values are highly commercialized and ownership disputes may involve significant financial consequences.

Nominee agreements produce legal uncertainty because they are generally not recognized as valid instruments for transferring land ownership to foreign nationals. If a dispute arises between the spouses, the agreement may be challenged as violating mandatory agrarian law, public order, or the principle of good faith. At the same time, the Indonesian spouse may also face legal and economic risks, including civil claims, pressure to transfer assets, or loss of control over property formally registered under their name. Therefore, the existence of Constitutional Court Decision Number 69/PUU-XIII/2015 does not fully resolve the problem. While the decision allows marital agreements to be made during marriage, it does not automatically prevent the misuse of mixed marriage as a vehicle for disguised foreign land ownership.

Mandalika SEZ illustrates that the protection of Indonesian citizens' property rights cannot rely solely on marital agreements. Stronger regulatory supervision, clearer rules on nominee practices, and stricter enforcement of agrarian restrictions are required to prevent the manipulation of mixed marriages for foreign land control.

From a normative perspective, the practice of nominee agreements constitutes a fundamental violation of Indonesian contract law and agrarian principles. According to Article 1320 of the Indonesian Civil Code, a valid agreement requires a lawful cause (*causa yang halal*). Because a nominee agreement is intentionally drafted to circumvent the mandatory prohibitions of the UUPA (legal smuggling or *fraus legis*), it inherently lacks a lawful cause and is therefore null and void by operation of law (*batal demi hukum*) (Santi & Lukman, 2023).

Despite its legal invalidity, this practice flourishes in the Mandalika SEZ due to a regulatory gap: SEZ regulations focus heavily on facilitating corporate land use rights (*Hak Guna Bangunan* and *Hak Pakai*) but lack specific normative safeguards to prevent individuals from using mixed marriages as vehicles for illegal freehold land control (Setyowati, 2025). This exposes the Indonesian spouse to severe legal risks. Because the underlying nominee agreement is void, any dispute resulting from divorce or separation places the Indonesian citizen in a vulnerable position, facing complex civil lawsuits or the threat of asset confiscation by the state (Lestari & Puspadewi, 2025).

### **3.3. Conceptual Legal Protection for Indonesian Citizens**

In the practice of mixed marriages, Indonesian citizens frequently occupy a more vulnerable position, particularly women (Thenata & Susantio, 2026). Economic inequality and limited legal awareness cause many Indonesian women to lack understanding regarding the legal consequences of marital property and asset ownership, which may result in significant losses in international tourism areas such as the Mandalika Special Economic Zone. Legal protection for Indonesian citizens in mixed marriages must therefore be understood as an integral part of the protection of economic rights and civil rights (Thenata & Susantio, 2026; Widanarti et al., 2022).

The state bears a constitutional obligation to ensure that Indonesian citizens do not lose their property ownership rights as a consequence of marriage to foreign nationals, as guaranteed under the principle of nationality in Indonesian agrarian law. Marital agreements constitute a crucial instrument in providing preventive legal protection. Through marital agreements, spouses may clearly determine the separation of property, asset management, and the respective economic responsibilities of each party in order to prevent legal circumvention through *nominee agreements*. In addition to preventive protection, repressive legal protection is also required in the event of disputes or divorce. In practice, many Indonesian citizens encounter difficulties in maintaining their economic rights following divorce due to the absence of clear arrangements concerning marital property (Thenata & Susantio, 2026), thereby risking the loss of control over assets that should legally belong to them.

Legal certainty regarding assets is also closely related to the protection of children's rights and the economic sustainability of the family. Therefore, the regulation of marital property in mixed marriages must take into account the principles of justice, legal certainty, and protection for the more vulnerable party in order to ensure harmonization between family law and agrarian law.

From a normative legal perspective, the protection of Indonesian citizens in mixed marriages must be understood not merely as a private matter between spouses, but also as part of the state's broader obligation to preserve the integrity of national agrarian policy. The principle of nationality in the UUPA is designed to ensure that land ownership remains under the control of Indonesian citizens and is not indirectly transferred to foreign nationals through legal manipulation. Therefore, when an Indonesian citizen loses effective control over land because of an unclear marital property regime, the issue is not only a family law problem, but also an agrarian law problem with constitutional implications.

Marital agreements play a central role because they create a clear legal boundary between personal assets and joint marital property. After Constitutional Court Decision Number 69/PUU-XIII/2015, marital agreements may be made before, during, or after marriage, as long as they do not harm third parties. This development strengthens preventive legal protection because Indonesian citizens in mixed marriages are no longer trapped by the absence of a prenuptial agreement made before marriage. However, the effectiveness of this protection depends on legal awareness, proper registration, and consistent implementation by notaries, civil registry offices, and land offices. Without administrative synchronization, marital agreements may exist formally but fail to provide practical protection in land registration and property disputes.

The problem becomes more serious when the Indonesian spouse is economically dependent on the foreign spouse. In such circumstances, the Indonesian citizen may be pressured to sign agreements or allow their name to be used in land transactions without fully understanding the legal consequences. This situation creates an unequal bargaining position and may result in the Indonesian spouse becoming merely a nominal landholder. Therefore, legal protection must also consider the vulnerability of the Indonesian

citizen, especially where property is acquired in strategic economic areas such as Mandalika, where land values are high and commercial interests are strong.

Repressive legal protection is equally important when disputes arise. Courts must be able to distinguish between lawful marital property arrangements and nominee schemes intended to disguise foreign land ownership. If the land was legally acquired by the Indonesian spouse and separated through a valid marital agreement, the law should protect the citizen's ownership rights. Conversely, if the arrangement is proven to function as a nominee structure for the benefit of a foreign national, the agreement should be considered contrary to mandatory agrarian law and public order.

Harmonization between family law and agrarian law requires clearer technical regulations, stronger administrative supervision, and consistent judicial interpretation. The objective is not to restrict mixed marriages, but to ensure that Indonesian citizens, children, and family economic interests remain legally protected without weakening the nationality principle in land ownership.

### **3.4. Reformulation of the Regulation of Marital Property in Special Economic Zones**

The social and economic dynamics within international tourism areas such as the Mandalika Special Economic Zone require legal regulations that are more adaptive to the practice of mixed marriages, particularly in light of the high risk of legal circumvention through *nominee agreements*, which contravene the principle of nationality embodied in Indonesian agrarian law (Lestari & Puspawati, 2025; Sudhuri, 2025). One measure that may be undertaken is the strengthening of a more flexible and accessible framework for marital agreements, as guaranteed under Constitutional Court Decision Number 69/PUU-XIII/2015 (Dwiputra, 2022).

Notaries possess a strategic role in providing legal education to mixed-marriage couples concerning the importance of marital agreements and the legal consequences of asset ownership. Accordingly, optimizing the role of notaries as providers of preventive legal consultation becomes essential in preventing legal vulnerability following divorce (Thenata & Susantio, 2026). Therefore, harmonization between family law and agrarian law is necessary in order to avoid regulatory conflicts in the practice of asset ownership (Nurazizah et al., 2025).

Clear and integrated regulations will provide more effective legal certainty for Indonesian citizens involved in mixed marriages. The government must also enhance legal education for the public, particularly within international tourism areas characterized by a high level of cross-border interaction, in order to address the low level of legal awareness that frequently results in the commingling of marital property (Norayanti et al., 2025). Such legal education is essential to improve public awareness regarding the legal risks of mixed marriages in relation to asset ownership and marital property. The digitalization of administrative services relating to marital agreements, as well as the strengthening of supervisory mechanisms over the practice of *nominee agreements*, should also be implemented in order to prevent legal circumvention and to provide more optimal legal protection (Dharma et al., 2022).

## **4. CONCLUSION**

Based on the normative legal analysis, the regulation of marital property in mixed marriages involves a critical structural conflict between the joint property principles in the Marriage Law and the strict nationality principle in the Basic Agrarian Law. Constitutional Court Decision Number 69/PUU-XIII/2015 serves as a vital doctrinal remedy, expanding legal protection by permitting postnuptial agreements, which allow Indonesian citizens to legally separate assets and retain their constitutional right to own freehold land. However, within the specific normative context of the Mandalika Special Economic Zone, the aggressive investment climate exposes a distinct legal vulnerability. The fragmented regulatory framework between SEZ facilitation and agrarian restrictions enables the proliferation of illegal nominee agreements (*fraus legis*), undermining the legal certainty of asset ownership.

Based on the findings of this study, to achieve optimal legal certainty, a normative reformulation and harmonization are imperative. It is recommended that the government enact specific implementing regulations that synchronize family law, agrarian administrative procedures, and SEZ regulations. This

includes mandating Land Deed Officials (PPAT) and Notaries to strictly verify marital agreements in land transactions within investment zones. Codifying the principles of the Constitutional Court Decision into positive legislation will close existing legal loopholes, eliminate the practice of nominee agreements, and ensure comprehensive legal protection for Indonesian citizens in mixed marriages.

Legal protection should not only focus on the validity of marital agreements, but also on the effectiveness of their implementation in land administration practices. A marital agreement that has been validly made and registered will have limited practical value if land offices do not consistently recognize it as a basis for determining individual ownership status. Therefore, the National Land Agency must develop a standardized administrative mechanism for examining marital property status in every land transaction involving Indonesian citizens in mixed marriages. This mechanism is particularly important in the Mandalika SEZ, where land transactions are closely linked to tourism investment, foreign capital, and long-term commercial control.

Law enforcement institutions must adopt a stricter approach toward nominee agreements that are designed to disguise foreign ownership. Such arrangements should be treated not merely as private contractual violations, but as legal circumvention that threatens the integrity of Indonesia's agrarian system. Preventive supervision, administrative sanctions, and judicial consistency are necessary to discourage parties from using mixed marriage as a legal instrument to bypass land ownership restrictions. Ultimately, the harmonization of marital property law, agrarian law, and SEZ regulations is essential to ensure that investment development does not weaken constitutional protection for Indonesian citizens, particularly their right to own and control land within the national legal framework.

### **Ethical Approval**

This study does not require ethical approval because it is a discussion of the results of a previously published study.

### **Informed Consent Statement**

The informed consent did not need for this research because it only taking data only from the previously research that already been published.

### **Authors' Contributions**

A.A.A. contributed to conceptualization, methodology, formal analysis, and writing—original draft preparation. N.P.S. contributed to methodology, formal analysis, investigation, and literature review. M.R.S. contributed to formal analysis, investigation, and literature review. H.A.S., R.W., and M.R.F. contributed to writing—review and editing.

### **Disclosure statement**

No potential conflict of interest was reported by the author(s).

### **Data Availability Statement**

The data presented in this study are available

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## Notes on Contributors

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