

INTERCOUNTRY MARRIAGE IN THE PERSPECTIVE OF PRIVATE INTERNATIONAL LAW: LEGAL CERTAINTY AND CHALLENGES

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Abstract

The purpose of this study is to examine the principles of international private law in regulating marriages between countries in Indonesia and what challenges are faced by couples from different countries and how this affects legal certainty and protection for them. This study uses normative legal research methods with a comparative approach to various international and national legal systems to reveal how international private law handles legal conflicts arising from marriages from different countries. The results of this study identify legal problems that arise due to differences in the legal systems in force in the countries involved, including in terms of recognition and implementation of court decisions, the legal status of marriage, and personal and family rights. This research concludes that improvements and improvements are needed to existing regulations to provide better legal certainty for couples from different countries. By examining this case study in more depth, this research aims to contribute to further understanding of the complex legal issues regarding marriage between countries and unlock the potential for developing a more coordinated and efficient legal framework in a cross-border context

Keywords: Legal Certainty; Inter-Country Marriages; International Private Law.

INTRODUCTION

Marriage is a physical and spiritual bond between a man and a woman as husband and wife, with the purpose of establishing a harmonious and lasting family based on the values of Almighty God (Republic of Indonesia, 1974). Marriage is an important milestone in human life because it involves not only the couple themselves but also their families and the wider community. In Indonesia, marriage is regulated by legislation, namely Law Number 1 of 1974 concerning Marriage. This law governs various aspects of marriage, including its requirements, implementation procedures, and the legal consequences arising from it.

One of the aspects regulated under the law is marriage involving individuals of different nationalities. Article 57 defines mixed marriage as a marriage between two persons in Indonesia who are subject to different legal systems due to differences in nationality. In such cases, at least one party is an Indonesian citizen, while the other is a foreign national. The foreign element in such a marriage gives the civil relationship an international dimension, thereby placing it within the scope of Private International Law. Consequently, mixed marriages involve complex legal issues because they require consideration of two different legal jurisdictions governing the marriage (Herawati., et al. 2023).

Mixed marriages fall within the scope of Private International Law because they may be conducted abroad, thereby involving two distinct legal systems: Indonesian law and the law of the country where the marriage takes place. Such marriages may be celebrated in the home country of either spouse or in a third country considered neutral. Under Indonesian law, a marriage conducted abroad between Indonesian citizens or between an Indonesian citizen and a foreign national is considered legally valid if it complies with the

laws of the country where the marriage is performed and does not violate Indonesian legal provisions. However, such marriages often encounter various challenges, particularly regarding marriage registration. One important consideration is determining where the marriage will be celebrated, whether in the home country of the prospective husband or the prospective wife, since each country has different legal regulations and procedures concerning marriage registration (Wafaa. et al, 2023).

Conflicts arising from mixed marriages present unique legal challenges, raising questions regarding which legal rules should be applied in resolving disputes. This uncertainty creates a dilemma as to which legal system should serve as the basis for judges in adjudicating disputes involving mixed marriages. In cases of divorce, questions arise concerning which jurisdiction has authority over the parties. Similarly, in the division of marital property, issues emerge as to whether the distribution should follow the law of one spouse's nationality or take into account the legal provisions of both parties (Martinelli, I., et al. (2024).

This paper seeks to examine how the principles of Private International Law regulate international marriages in Indonesia, particularly concerning the determination of the applicable law, marital status, child custody, and the distribution of inheritance. Furthermore, it explores the legal challenges faced by couples of different nationalities in Indonesia and analyzes how these challenges affect legal certainty and legal protection for the parties involved. In addition, this study investigates various policy measures that may be adopted to strengthen legal certainty and enhance legal protection for international couples in Indonesia.

The objectives of this study are to identify the principles of Private International Law governing international marriages in Indonesia, with particular attention to the determination of applicable law, marital status, child custody, and inheritance distribution. The study also aims to examine the legal challenges encountered by couples of different nationalities and assess their implications for legal certainty and legal protection. Finally, this research seeks to analyze potential policy approaches that can be implemented to improve legal certainty and strengthen legal protection for international couples in Indonesia.

METHOD

This study employs a normative juridical approach that focuses on the laws and legal principles applicable in Indonesia. This method analyzes and interprets legal norms through a comprehensive literature review. The study is based on an in-depth analysis of various statutory regulations, official documents, and relevant legal literature. The normative legal approach seeks to understand the nature of law and the prevailing legal norms, as well as to evaluate their application and implementation in legal practice. Through this approach, the research establishes a strong foundation for gaining a deeper understanding of the legal provisions that constitute the object of study.

The data sources used in this research consist of primary legal materials, secondary legal materials, and other supporting sources. The primary legal materials include Law Number 1 of 1974 concerning Marriage, related Government Regulations and Ministerial Decrees, decisions of the Supreme Court and lower courts, as well as relevant international conventions, such as the Hague Conventions concerning International Marriage Law. The secondary legal materials comprise books, journal articles, and theses discussing international or mixed-nationality marriages, legal doctrines developed by legal scholars,

and research reports issued by relevant institutions. In addition, this study utilizes case studies as supporting data sources to provide a more comprehensive understanding of the legal issues under examination.

Data collection in this research is conducted through a literature study. According to Danial and Warsiah (2009), a literature study is a research method that involves collecting various sources, such as books, journals, magazines, and other literature relevant to the research topic and objectives. The purpose of a literature review is to obtain relevant theories and concepts that serve as the basis for analyzing the issues being studied. Furthermore, the data are analyzed using a qualitative analysis method, which involves examining various legal documents and relevant literature to gain a comprehensive and in-depth understanding of the research topic.

RESULTS AND DISCUSSION

Principles of Private International Law in Regulating International Marriage in Indonesia

International marriages have become increasingly common as a result of globalization and the growing mobility of people across national borders. Under Indonesian law, mixed marriages are regulated by Law Number 1 of 1974 concerning Marriage, which defines a mixed marriage as a marriage between an Indonesian citizen and a foreign national. In this context, Private International Law (PIL) plays a crucial role in determining the applicable law, the competent jurisdiction, and the legal consequences of the marriage in each country (Agustina, R., et al. 2024).

Several fundamental principles of Private International Law govern international marriages in Indonesia. One of the key principles is the principle of *lex loci celebrationis*, which provides that the validity of a marriage is determined according to the law of the country where the marriage is celebrated. Consequently, couples who marry abroad must ensure that their marriage complies with the legal requirements of the country where it takes place. Upon returning to Indonesia, the marriage must be registered with the Indonesian Embassy or Consulate and subsequently reported to the Civil Registry Office within the period prescribed by Indonesian law.⁶ Another important principle is the principle of domicile, which states that an individual is subject to the law of the country in which he or she resides. Therefore, if a couple is domiciled in Indonesia, matters relating to marriage and divorce are generally governed by Indonesian law, even when one of the spouses is a foreign national (Santoso, 2024).

In addition, the nationality principle plays a significant role in international marriages, whereby the law applicable to a person is determined by his or her nationality (Robo, 2021). Under this principle, a foreign national who marries an Indonesian citizen remains subject to the law of his or her home country, particularly in matters relating to family law, inheritance rights, and citizenship. Another relevant principle is the principle of the most significant relationship or the application of mixed legal considerations, whereby the law governing a legal relationship takes into account the interests of both states involved. This principle frequently arises in divorce cases, where the spouses may face questions regarding whether the law of the country where the marriage was celebrated or the law of the country of residence should apply (Pangaribuan, 2022).

From a legal perspective, international marriages in Indonesia must be officially registered in order to obtain legal recognition. Muslim couples are required to register their marriages with the Office of Religious Affairs (KUA), while non-Muslim couples must register their marriages with the Civil Registry Office. Children born from mixed marriages

are entitled to limited dual citizenship until the age of eighteen, as stipulated in Law Number 12 of 2006 concerning Citizenship. If a mixed-nationality couple decides to divorce, the divorce petition must generally be filed before the competent court in accordance with applicable jurisdictional rules, either in the place where the marriage was celebrated or where the parties are domiciled. Furthermore, if a divorce decree is issued by a foreign court, the judgment must undergo a recognition process in Indonesia before it can produce legal effects within Indonesian territory.

The principles of Private International Law play a vital role in determining the validity, jurisdiction, and legal consequences of international marriages in Indonesia. The principles of *lex loci celebrationis*, domicile, nationality, and the consideration of multiple legal systems serve as the primary references in determining the applicable law. Therefore, greater harmonization between domestic and international legal frameworks is necessary to provide stronger legal certainty and more effective legal protection for mixed-nationality couples (Wijaya, 2022).

Legal Challenges Faced by International Couples in Indonesia and Their Impact on Legal Certainty and Legal Protection

Marriages between individuals of different nationalities face a variety of complex legal challenges. Within the framework of Private International Law, one of the primary difficulties arises from differences between the legal systems of the spouses' respective countries. These differences often create legal uncertainty regarding marriage registration, children's citizenship status, and the division of property in mixed-nationality marriages (Siahaan, 2019).

One of the major challenges encountered by international couples is the process of marriage registration. Pursuant to Article 56 of Law Number 1 of 1974 concerning Marriage, marriages conducted abroad must be registered with the Indonesian Embassy or Consulate and subsequently reported to the relevant Indonesian authorities within one year after the couple returns to Indonesia. Failure to register the marriage may result in uncertainty regarding its legal status, which can affect the rights of both the spouses and their children (Rahmadani, 2024). Furthermore, discrepancies between the legal regulations of the foreign spouse's country of origin and Indonesian law often complicate the recognition of mixed marriages. Some countries impose legal procedures that differ significantly from those required under Indonesian law, compelling couples to seek solutions that ensure their marriage is legally recognized in both jurisdictions (Rahmatullah, 2024). Citizenship issues also constitute a significant challenge for mixed-nationality couples.

Under Article 58 of Law Number 1 of 1974 concerning Marriage, spouses in a mixed marriage may choose to retain their original nationality or acquire Indonesian citizenship in accordance with applicable regulations. In practice, however, the process of determining and administering the citizenship status of children born from mixed marriages can be lengthy and often requires extensive documentation from the foreign parent's country of origin. Moreover, foreign nationals who marry Indonesian citizens do not automatically obtain permanent residency or Indonesian citizenship. Instead, they must apply for a Limited Stay Permit (KITAS) or a Permanent Stay Permit (KITAP), procedures that are often complex and require sponsorship from their Indonesian spouse (Bagenda, et al. 2024).

The division of marital property in mixed marriages presents another distinct legal

challenge. Articles 35 to 37 of Law Number 1 of 1974 provide that property acquired during the marriage is generally considered joint marital property unless a prenuptial or postnuptial agreement stipulates otherwise. For couples of different nationalities, however, the issue becomes more complicated due to differences in property ownership regulations across jurisdictions. Indonesian law generally prohibits foreign nationals from holding freehold ownership rights over land. Consequently, foreign spouses in mixed marriages may only possess land or residential property through limited legal schemes, such as the Right to Use (Hak Pakai), or through ownership registered under the Indonesian spouse's name. These restrictions may create legal complications, particularly in cases of divorce or the death of one spouse (Paparang, 2022).

The legal challenges faced by international couples in Indonesia have a direct impact on legal certainty and legal protection. Differences in national legal systems frequently create ambiguity regarding the validity and recognition of their marital status. For instance, although a marriage may be considered legally valid in the foreign spouse's country of origin, it may not be recognized under Indonesian law if it has not been properly registered. Such circumstances may affect inheritance rights, the legal status of children, and the distribution of marital assets (Rosidah, dkk, 2023).

Although the Indonesian legal system provides mechanisms intended to ensure legal certainty for mixed-nationality couples, significant legal gaps remain in practice. The government has attempted to address these issues by disseminating information through official platforms and public services; however, limited public awareness and insufficient legal socialization continue to pose substantial challenges (Januar, et al., 2025).. Furthermore, the legal protection of children born from mixed marriages requires particular attention. In the absence of proper registration and documentation, such children may face uncertainty regarding their citizenship status and, in extreme cases, may become stateless. This situation can significantly hinder their access to fundamental rights and public services, including education and healthcare (Pangaribuan, et al., 2022).

Therefore, strengthening legal harmonization, improving administrative procedures, and increasing public awareness regarding the legal requirements of international marriages are essential measures to enhance legal certainty and provide more effective legal protection for mixed-nationality couples and their children in Indonesia.

Legal Certainty and Legal Protection Policies for International Couples in Indonesia

In the context of globalization and increasing human mobility, marriages between Indonesian citizens (WNI) and foreign nationals (WNA) have become more common. Such marriages carry complex legal implications, particularly regarding legal certainty and the protection of the rights of the spouses involved. Indonesia has established various regulations to govern the legal aspects of mixed marriages, including Law Number 1 of 1974 concerning Marriage and relevant provisions under Private International Law (Herrawati et al., 2023).

Legal certainty in mixed marriages is a crucial aspect in ensuring the rights and obligations of both spouses. Based on Article 57 of Law Number 1 of 1974, a mixed marriage is defined as a marriage between individuals of different nationalities. The applicable law to such marriages is generally based on the principle of *lex loci celebrationis*, which refers to the law of the country where the marriage is conducted. In Private International Law, several approaches are used to determine the applicable law in mixed marriages, including party autonomy (choice of law), the law of the place where the marriage is celebrated, and

the national law of each spouse. Indonesia accommodates these approaches by allowing marriage registration in accordance with applicable legal systems, provided that it does not contradict public order (Siahaan, 2019).

However, the administrative registration of mixed marriages often faces challenges, particularly in obtaining the required documents from each spouse's country of origin. To address this issue, the government has introduced regulations clarifying registration procedures, including the requirement for foreign nationals to obtain a Certificate of No Impediment to Marriage (CNI) from their home country prior to marriage (Herrawati et al., 2023)

Legal protection for couples in mixed marriages covers various aspects, including citizenship, inheritance rights, and the legal status of children born from such unions. One of the most common issues concerns the citizenship status of children from mixed marriages. Law Number 12 of 2006 on Citizenship provides a solution by granting limited dual citizenship to children until a certain age, after which they are required to choose one nationality (Midia et al., 2023).

In terms of property ownership, foreign spouses face legal restrictions in Indonesia. Under agrarian law provisions, foreign nationals are not permitted to hold freehold land rights. However, they may acquire limited rights such as the Right to Build (Hak Guna Bangunan) or the Right to Use (Hak Pakai). Therefore, many mixed-nationality couples utilize prenuptial agreements as a legal mechanism to regulate joint property ownership (Limbong, 2024).

Legal protection is also essential in the context of divorce, where applicable law may depend on agreements between the spouses or the law of the country where the marriage was celebrated. Divorce proceedings in mixed marriages often raise challenges, particularly in relation to asset division and child custody, which require harmonization between Indonesian law and the legal system of the foreign spouse's country of origin (Martinelli et al., 2024).

Although regulations governing legal certainty and protection for international couples already exist, several challenges remain in their implementation. One major obstacle is the harmonization of legal systems between Indonesia and the foreign spouse's home country to avoid conflicts in marriage, divorce, and citizenship matters. In addition, improvements in civil registration services are needed to facilitate administrative processes for mixed couples in registering marriages and other legal documents (Midia et al., 2023).

Legal education for mixed couples is also an important factor to ensure that they understand their legal rights and obligations within marriage (Juwilanda, 2021). Furthermore, there is a need to strengthen legal protection for women and children in mixed marriages, particularly in matters relating to citizenship, inheritance rights, and child custody.

CONCLUSION

Marriages between individuals from different countries face various legal obstacles due to differences in legal systems applied in each jurisdiction. In Private International Law, principles such as *lex loci celebrationis* (the law of the place where the marriage is celebrated), the law of domicile, and the national law principle serve as the basis for determining the validity, jurisdiction, and legal consequences of cross-border marriages. The main challenges faced by international couples include marriage registration

procedures, the determination of children's citizenship, the division of marital property, and jurisdiction in divorce cases. One of the most critical issues is the inconsistency between the legal regulations of the foreign spouse's home country and Indonesian law, which may hinder the legal recognition of the marriage. In addition, foreign spouses do not automatically obtain residency rights or property ownership rights in Indonesia, requiring additional legal mechanisms such as prenuptial agreements or specific residence permits.

To improve legal certainty and protection for international couples, this study highlights the need for harmonization between domestic and international legal frameworks, simplification of marriage registration administrative procedures, and enhanced dissemination of legal information for mixed-nationality couples. Furthermore, in divorce matters, clearer mechanisms are required to determine the applicable law in order to avoid disadvantaging either party, particularly with regard to inheritance rights and child custody (Limbong et al., 2024).

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