



INTERNATIONAL JOURNAL OF EDUCATION AND ECONOMIC SCIENCES (IJEES)

THE LEGAL STRENGTH OF PRENUPTIAL AGREEMENTS IN MIXED MARRIAGES: A JURIDICAL REVIEW IN INDONESIA

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Received: 09 July 2025 • Accepted: 21 July 2025 • Published: 31 July 2025

Abstract

Mixed marriages, defined as marriages between Indonesian citizens and foreign nationals, often give rise to various legal implications, particularly concerning joint property ownership and the citizenship status of children. To prevent potential legal conflicts, couples frequently enter into prenuptial agreements. This study aims to examine the legal strength of prenuptial agreements within the context of mixed marriages in Indonesia. A normative juridical approach is employed, analyzing statutory regulations such as Law No. 1 of 1974 on Marriage and Constitutional Court Decision No. 69/PUU-XIII/2015. The findings indicate that a prenuptial agreement is legally binding if it is made in writing, notarized, and executed prior to the marriage. However, the Constitutional Court's ruling has expanded the scope of such agreements to allow their establishment after the marriage, provided both parties consent. Therefore, prenuptial agreements in mixed marriages serve as a strategic legal instrument to protect the rights and interests of both parties, especially in matters of property ownership and inheritance.

Keywords: Mixed Marriage; Prenuptial Agreement; Legal Protection; Property Ownership; Inheritance Law; Indonesian Law

How to cite: Muliati, F., Amin, M., Juhriati. (2025). The Legal Strength of Prenuptial Agreements in Mixed Marriages: A Juridical Review In Indonesia. International Journal of Education and Economic Sciences (IJEES), 1(2), 23-33

1 Introduction

Marriage in Islamic perspective is considered a sacred institution with strong spiritual, moral, and social dimensions. Prophet Muhammad (peace be upon him) described marriage as “half of religion,” signifying its importance as a means of spiritual development and moral responsibility (Choli et al., 2024). In Indonesian society, which is both religious and pluralistic, marriage is not only a private contract between two individuals but also a social and legal institution with broad implications.

However, in today’s globalized and modern context, marriage faces complex challenges stemming from religious differences, liberal values, and evolving cultural norms. Interfaith marriages, underage marriages, and the rise of cohabitation practices are pressing issues in legal and social discourse. The

Constitutional Court of Indonesia has reaffirmed that marriages are only valid if conducted in accordance with the respective religious teachings (Constitutional Court Decision No. 68/PUU-XII/2014), leading many couples to marry abroad to bypass domestic legal barriers (Paramita & Mahardika, 2025)

Moreover, the increasing number of mixed marriages between Indonesian citizens and foreign nationals presents new legal implications, especially in relation to joint property ownership, inheritance rights, and the citizenship status of children. According to data from the Directorate General of Population and Civil Registration (Dukcapil) of the Ministry of Home Affairs, there were over 5,000 registered mixed marriages annually in Indonesia between 2018 and 2022, with the number showing a steady increase due to globalization, international mobility, and digital connectivity (Dukcapil, 2018). In popular international hubs such as Bali and Jakarta, mixed marriages have become particularly common, reflecting the growing relevance of cross-border family law issues (UNFPA, 2022). In this context, prenuptial agreements are emerging as a preventive legal instrument to manage asset ownership and protect the legal interests of both parties. However, there is still ambiguity and social resistance regarding their enforceability and perceived compatibility with trust and intimacy in marriage. Many Indonesians still view prenuptial agreements with skepticism, often associating them with a lack of faith or commitment, rather than as a tool for legal clarity and protection (Deddy Gunawan, 2021)

While previous studies have largely focused on the normative aspects of marriage or legal protection in cases of divorce (Damanik, 2024; I. Sujana, 2017; Palupi et al, 2024) few have specifically examined the binding legal force of prenuptial agreements within the context of mixed marriages in Indonesia. Most existing literature discusses the concept of prenuptial agreements in general terms, often limited to their preventive role in domestic marriages. However, mixed marriages defined as unions between Indonesian citizens and foreign nationals present unique legal complexities, especially regarding joint property ownership, citizenship of children, and inheritance rights. The enactment of Constitutional Court Decision No. 69/PUU-XIII/2015, which permits the making of prenuptial agreements even after the marriage has been formalized, marks a pivotal development that remains underexplored in academic discourse (Mujiburohman et al., 2023). This legal shift challenges the conventional understanding of marital contracts and calls for a re-evaluation of their enforceability and scope in light of evolving legal norms and social practices in Indonesia.

Accordingly, this study aims to fill that gap by juridically analyzing the legal strength of prenuptial agreements in mixed marriages, especially within the post-constitutional court ruling framework. It further seeks to clarify the legal requirements and enforceability of such agreements, both when drafted before and after marriage, as permitted by Indonesian law. In doing so, this study highlights the urgency of recognizing prenuptial agreements as a strategic legal instrument to safeguard the rights and interests of both spouses, particularly in matters of asset management and inheritance. Finally, the research intends to provide a reasoned legal basis for improving policy direction and public awareness in response to the contemporary dynamics of cross-national marriages in Indonesia.

2 Research Method

2.1 Research Approach

This research adopts a normative legal research approach, which is appropriate for studies that focus on

examining legal norms, principles, and regulations as prescriptive systems. The aim of this study is to analyze the legal enforceability of prenuptial agreements within the context of mixed marriages in Indonesia. As a doctrinal inquiry, this approach emphasizes the analysis of legal texts and authoritative legal opinions rather than empirical observation. The study utilizes three sub-approaches: a *statute approach* to interpret relevant legislation such as Law No. 1 of 1974 on Marriage, Law No. 23 of 2006 on Population Administration, and the Constitutional Court Decision No. 69/PUU-XIII/2015; a *conceptual approach* to explore core legal doctrines like the principle of freedom of contract and legal protection in marriage; and a *case approach* to examine judicial decisions that provide practical insight into the implementation of prenuptial agreements in mixed marriages..

2.2 Data Sources

The primary sources of legal materials in this study consist of binding legal instruments, including statutory laws, constitutional provisions, and relevant judicial decisions, particularly those issued by the Indonesian Constitutional Court and Supreme Court. These primary legal sources provide the formal basis for the legal analysis. In addition, secondary legal sources are employed, including academic books, peer-reviewed legal journal articles, and scholarly commentaries that elaborate on the theoretical and practical dimensions of family law and contract law in Indonesia. Tertiary legal materials such as legal dictionaries and legal encyclopedias are used to clarify terminologies and support conceptual consistency. This hierarchical sourcing structure reflects the standard practice in normative legal research.

2.3 Data Collection Tehniques

Legal materials were collected using the doctrinal method of legal research, primarily through a literature study or *library research*. This involved a systematic review of relevant legislation, judicial decisions, and scholarly writings to construct a coherent legal argument. The process included identifying authoritative legal sources, mapping the development of legal doctrines, and extracting relevant interpretations. While the core of this research remains doctrinal, informal interviews with legal practitioners such as notaries or family law attorneys may be conducted where necessary to enrich the contextual understanding of how prenuptial agreements are applied in practice. These practitioner insights serve as supplemental materials rather than empirical data in the conventional sense.

2.4 Data Analysis Technique

The analysis of legal materials in this study follows a qualitative and analytical approach. It involves interpreting legal norms, comparing statutory provisions, and synthesizing principles derived from judicial reasoning and doctrinal writings. The analysis is structured around thematic legal issues such as legal certainty, contractual freedom, and protection in transnational marital relations. Through legal reasoning and logical construction, the study develops arguments that reflect the coherence, consistency, and applicability of prenuptial agreements in Indonesian mixed marriage contexts. The analytical process aims to reveal not only the current legal position but also the underlying legal values and principles that inform it.

3 Result & Dissscussion

A prenuptial agreement in the context of mixed marriages in Indonesia holds significant legal force and binding effect, provided it is made in accordance with the applicable laws and regulations. This agreement

constitutes a mutual arrangement between the prospective husband and wife, entered into prior to the marriage, and typically governs the separation of assets, financial responsibilities, as well as the rights and obligations within the marital relationship. In the case of mixed marriages between Indonesian citizens (WNI) and foreign nationals (WNA), the prenuptial agreement becomes particularly crucial as it relates to the protection of property ownership rights, especially concerning land and real estate, which under the Basic Agrarian Law, may only be owned by Indonesian citizens. In the absence of such an agreement, the default legal regime of joint marital property (*harta bersama*) would apply, potentially violating agrarian regulations, as foreign nationals are not legally permitted to possess freehold land rights in Indonesia (Rambe et al., 2023).

The legal force of prenuptial agreements is supported by Law No. 1 of 1974 on Marriage, as well as by Constitutional Court Decision No. 69/PUU-XIII/2015, which allows marital agreements to be executed not only before marriage but also during the course of the marital relationship. To obtain full legal enforceability, such agreements must be made in writing before a notary and registered with the appropriate marriage registration authority, either the Office of Religious Affairs (KUA) or the Civil Registry Office (Dinas Kependudukan dan Catatan Sipil). Once properly registered, the agreement becomes binding not only on the spouses but also on third parties, including financial institutions. Therefore, the prenuptial agreement serves as a legitimate legal instrument to safeguard the legal interests of Indonesian citizens, provide legal certainty over the status of marital property, and prevent potential violations of the law in the context of mixed marriages (Mohammad R. Hasan, 2016).

However, in practice, many members of the public still lack a clear understanding of the benefits of prenuptial agreements. There remains a common perception that such agreements signify a lack of trust between partners. Additionally, the formal nature of the process and the requirement to engage a notary are often seen as obstacles. Despite these concerns, the use of prenuptial agreements in mixed marriages is highly recommended, as they function as legal protection instruments that can prevent future legal disputes, particularly those related to asset ownership and the division of property in the event of divorce or the death of one of the spouses (Munawar, 2015).

3.1 Prenuptial Agreement

A prenuptial agreement, commonly referred to as a "prenup," is a legal contract entered into by prospective spouses prior to marriage, which regulates key aspects of their marital relationship, particularly in relation to asset ownership and financial responsibilities during and after the marriage. In Indonesia, the legal basis for such agreements is found in Article 29 of Law No. 1 of 1974 on Marriage and the provisions of the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata*). To be legally binding, the agreement must be made in writing, notarized, and registered with the appropriate authority, either the Office of Religious Affairs (KUA) or the Civil Registry Office depending on the religion of the couple (Hasna et al., 2024)

The primary purpose of a prenuptial agreement is to protect the individual interests of each spouse. It clarifies the management and separation of assets, determines responsibilities for debts, outlines inheritance rights, and regulates financial obligations during the marriage. This clarity serves as a preventive legal mechanism that can mitigate future disputes in the event of divorce or the death of one

party (Ibnu, 2014; Sumirahayu Sulaiman, 2023). For example, the couple may agree that property acquired before marriage remains separately owned, or may establish how jointly acquired assets will be divided. However, the contents of such agreements must not contradict statutory provisions, morality, or public order, and must be based on free, mutual consent. A prenuptial agreement is not only relevant for wealthy couples or those with business interests, but also for couples with modest means who desire legal certainty and transparency. For these couples, such an agreement offers a sense of financial security and stability in their shared life (Andreas et al., 2019). It also allows them to focus on building their marriage without lingering concerns about asset-related conflicts.

Moreover, prenuptial agreements often reflect the values and priorities of the couple. For instance, those who value financial independence may choose to maintain asset separation throughout the marriage, while individuals with children from previous relationships may wish to ensure inheritance protections. The legal framework in Indonesia provides sufficient flexibility to customize the agreement according to the couple's unique circumstances and needs (Vivi, 2015). In recent years, increasing public legal awareness has led to a rise in the use of prenuptial agreements in Indonesia. Nonetheless, stigma remains, some perceive such agreements as indicative of distrust. In reality, a prenuptial agreement is a demonstration of foresight, transparency, and mutual responsibility in planning a lawful and secure marital future (Angga, 2024).

In conclusion, a prenuptial agreement is a vital legal instrument that establishes a clear and resilient foundation for marriage. It offers not only legal protection of assets, but also fosters clarity, trust, and peace of mind for both parties. By defining the legal and financial boundaries of a marital relationship, prenuptial agreements help prevent future conflicts, preserve domestic harmony, and facilitate responsible partnership. As such, drafting and registering a prenuptial agreement should be regarded as a strategic and necessary step for every couple considering marriage in the modern legal context (Rizqi & Muhammad, 2024).

3.2 Mixed Marriages

Mixed marriage is a form of marriage between two individuals of different nationalities, ethnicities, races, or religions. In the context of Indonesian law, this term specifically refers to a marriage between an Indonesian citizen (WNI) and a foreign national (WNA). Such marriages are regulated under Law No. 1 of 1974 on Marriage, particularly Articles 57 to 62, as well as Law No. 12 of 2006 on Citizenship. The purpose of these regulations is to provide legal certainty for couples coming from different national backgrounds and to govern their rights and obligations within the jurisdiction of Indonesian law (Irma, 2011).

One of the key aspects of mixed marriages is the legal process required to formalize the union. Before entering into marriage, the couple must fulfill the legal requirements of both countries involved. In Indonesia, a marriage is considered valid if it is conducted according to the religious laws and beliefs of the parties and is registered with the competent authorities. Therefore, couples intending to enter into a mixed marriage must understand the administrative and legal procedures of two different legal systems to ensure that their marriage is officially recognized (Ahyani, 2018). The issue of citizenship for children born from mixed marriages is also a significant legal concern. Prior to the enactment of the 2006

Citizenship Law, children resulting from mixed marriages generally acquired the nationality of their father. However, under the new law, children of mixed-nationality parents are allowed to hold dual citizenship on a limited basis until the age of 18, after which they must choose one nationality. This provision offers greater flexibility and enhanced legal protection for children from mixed families (Lutfia, 2014).

The issue of land and property ownership is also a major concern in mixed marriages. Under Indonesian law, foreign nationals (WNA) are not permitted to hold ownership rights over land. Therefore, when an Indonesian citizen (WNI) marries a foreign national, the ownership of property particularly land must be carefully managed to avoid legal violations. In such cases, couples often utilize a prenuptial agreement to establish the separation of assets, thereby allowing the Indonesian spouse to legally retain ownership of property without interference from foreign legal claims (Priscyllia, 2022). Cultural, value-based, and language differences present unique challenges in mixed marriages. Couples must develop tolerance, deep mutual understanding, and open communication to ensure that these differences do not become sources of conflict. In many cases, partners in mixed marriages must work diligently to build intercultural understanding and mutual respect for each other's backgrounds. The ability to bridge these differences often becomes a key factor in maintaining a harmonious household (Laurensius, 2013).

On the other hand, mixed marriages also bring significant positive impacts, particularly in social and cultural dimensions. Life in a multicultural family can enrich cross-cultural experiences and broaden perspectives. Children from such families often grow up with multilingual skills and a deeper appreciation of diverse cultures. Moreover, this diversity within the family can serve as a strength in fostering more inclusive and open-minded social relationships (Heru, 2007). With the rise of globalization, mixed marriages are becoming increasingly common. Consequently, countries, including Indonesia, must continuously adapt their legal frameworks and regulations to accommodate these evolving social dynamics in a fair and humane manner. Legal education and guidance for couples intending to enter into mixed marriages are also crucial to prevent misunderstandings or violations of the law. With appropriate legal arrangements and mutual understanding, mixed marriages can serve as a positive vehicle for cultural integration and a harmonious bridge between nations (S. Wahyuni, 2018).

3.3 Legal Force

Legal force refers to the degree or binding power that a legal norm, regulation, or court decision holds over individuals or institutions within a legal system. A legal provision possesses binding force when it is formally recognized and enforced by the state through legitimate institutions such as the legislative, executive, or judiciary branches. With this authority, law regulates human behavior, imposes sanctions, and resolves disputes in an orderly and just manner (Habibah, 2021). Legal force can be classified into several types: binding force, probative force, and executory force. Binding force implies that a norm or ruling must be obeyed by the relevant parties. Probative force refers to the evidentiary value of a document or ruling as valid proof in legal proceedings. Executory force means that a legal provision can be enforced through coercive measures if not voluntarily complied with (M.Nurul, 2016). The sources of legal force include statutory regulations, judicial decisions, recognized customary law, and international treaties or agreements. In the context of statutory law, the legal force of a provision depends on its place within the legal hierarchy. For instance, the 1945 Constitution (UUD 1945) holds the highest legal authority in

Indonesia, followed by laws (*undang-undang*), government regulations, and other subordinate regulations. The higher a provision in the legal hierarchy, the stronger its authority over lower-level norms (Widanarti, 2020).

Court decisions also carry legal force, particularly when they have obtained permanent legal standing (*inkracht van gewijsde*), meaning no further legal remedies are available and the ruling must be executed. In common law systems like those in the United Kingdom or the United States, court rulings can even serve as binding precedents for future similar cases, demonstrating how legal force can evolve through judicial practice (Prasetyawan, 2018). Legal force also depends on the legitimacy and effectiveness of law enforcement itself. Without fair and consistent enforcement, the law's authority becomes weak in the eyes of the public. Therefore, legal institutions such as the police, prosecutors, and courts must uphold integrity so that the law is truly respected and obeyed. Laws enforced in a discriminatory manner will only undermine their authority in the public's perception (Yuvens, 2018).

In addition, legal force has both social and political dimensions. Norms that do not align with principles of justice or lack public support often lose their moral force, even if they remain formally valid. This highlights the importance of public participation in the law-making process to ensure that the resulting regulations reflect the needs and values of society. Ideally, the strength of the law should be not only formal, but also substantive and moral (Yuvens, 2018).

Overall, legal force is the fundamental foundation for the establishment of a state governed by the rule of law. It guarantees justice, legal certainty, and order in societal and national life. Understanding and respecting the power of the law is essential for both citizens and the government, so that the law functions not merely as a tool of authority, but as an instrument of justice and the protection of human rights (Iliyin et al., 2023).

3.4 Marital Property

Marital property, or joint property, refers to all assets acquired during the course of a marriage that are legally considered the shared ownership of both spouses. In Indonesia, this concept is primarily governed by Article 35 of Law No. 1 of 1974 on Marriage, which states that "property acquired during the marriage becomes joint property," regardless of who earns it. This principle upholds the idea of mutual contribution within marriage and serves as the foundation for equitable asset management (Yodanis & Lauer, 2007)

Joint property is distinct from separate property, which includes assets owned prior to the marriage or obtained through inheritance or gifts addressed specifically to one spouse. According to Article 36 of Law No. 1 of 1974, separate property remains under the control of each spouse unless agreed otherwise. Assets such as land, houses, vehicles, salaries, savings, and investments acquired during the marriage are presumed joint unless a prenuptial agreement states otherwise (Iliyin et al., 2023). The management and division of joint property must be based on mutual consent. In the event of a divorce, joint property is divided equally unless stipulated differently in a prenuptial agreement or under specific religious or customary laws. Islamic law in Indonesia recognizes the concept of *gono-gini*, referring to shared marital wealth (Ali, 2018). Meanwhile, customary law (*hukum adat*) may follow local kinship systems that affect rights over property, which vary across ethnic groups (Yuvens, 2018).

Ultimately, marital property reflects fairness and cooperation in marriage. Legal awareness and open communication about property rights are essential for protecting each party's interests and preventing disputes. When clearly understood and properly documented, such as through a notarized prenuptial agreement joint property arrangements can promote financial transparency and family harmony (W. Wahyuni et al., 2017).

3.5 Family Law

Family law is a branch of civil law that governs legal relationships among individuals connected by blood, marriage, or legal adoption. Its scope includes marriage, divorce, spousal rights and obligations, child custody, inheritance, and adoption. The primary function of family law is to regulate family life in an orderly and just manner while safeguarding the rights of family members, particularly children and women, who are often more vulnerable to inequality within familial relationships (S. Wahyuni, 2018). In the context of marriage, family law outlines the legal requirements for a valid marriage, procedures for marriage registration, and the legal consequences arising from such unions. In Indonesia, marriage is regulated under Law No. 1 of 1974 on Marriage, which is further reinforced by the Compilation of Islamic Law (Kompilasi Hukum Islam, or KHI) for Muslim citizens. The underlying goal is to uphold the ideals of a harmonious, compassionate, and dignified family (*sakinah, mawaddah, warahmah*) while ensuring the protection of each spouse's rights within the marital relationship (Laurensius, 2013)

Divorce is another critical focus of family law. To prevent arbitrary dissolution of marriage and to protect the interests of children and disadvantaged spouses, Indonesian law requires that divorce be processed through the court system, the Religious Court (Pengadilan Agama) for Muslims and the District Court (Pengadilan Negeri) for adherents of other religions. Valid grounds for divorce include irreconcilable disputes, domestic violence, or neglect. The legal system aims to ensure that divorce proceedings are fair, justified, and centered on the best interests of all parties involved (Irma, 2011). Child custody, known as *hadhanah* in Islamic jurisprudence, is a vital aspect of family law post-divorce. Custody decisions are made based on the child's best interests. Typically, young children are entrusted to their mothers unless the court deems the mother unfit. The final decision lies with the judge, who considers the emotional, physical, and educational welfare of the child (Angga, 2024). Family law also regulates financial responsibilities, particularly the obligation of the husband to provide *nafkah*, both material and emotional support, to his wife and children. In the event of a divorce, the father retains financial responsibility for the children's upbringing, education, and healthcare. The wife may also claim *nafkah iddah* (financial support during the post-divorce waiting period) and child support, depending on the circumstances and court rulings (Vivi, 2015)

Additionally, adoption is strictly regulated to protect the legal and welfare rights of adopted children. In Indonesia, adoption must be legally sanctioned by the court, ensuring that it aligns with the child's best interests. While adopted children are entitled to care and protection equivalent to biological children, their inheritance rights differ unless specifically granted through a will or testament (*wasiat*). Legal adoption grants the child a recognized identity and certain civil entitlements, including nationality and access to education (Rizqi & Muhammad, 2024). Lastly, inheritance law, as part of family law, governs the distribution of a deceased person's estate. In Indonesia, three legal systems coexist: Islamic inheritance

law, customary (adat) inheritance law, and civil inheritance law (Western law). The applicable system depends on the religious and cultural background of the family. The main objective is to ensure rightful heirs receive their lawful share and to prevent disputes over asset distribution (Vivi, 2015)

4 Conclusion

The legal force of prenuptial agreements in mixed marriages in Indonesia is governed by Law Number 1 of 1974 on Marriage and reinforced by Constitutional Court Decision Number 69/PUU-XIII/2015. In this context, a prenuptial agreement is essential for protecting the rights of both parties, particularly concerning asset ownership and inheritance, as well as facilitating the management of residency permits or citizenship status for the foreign spouse. The agreement must be made prior to the marriage, notarized, and registered at the Office of Religious Affairs or the Civil Registry Office in order to have binding legal power.

In practice, prenuptial agreements in mixed marriages are highly beneficial for couples in overcoming legal obstacles, such as restrictions on property ownership by foreign nationals. Through such agreements, assets acquired during the marriage can be designated as separately owned, allowing the Indonesian spouse to legally own property without being hindered by land ownership regulations that limit foreign ownership. This serves as a strategic legal protection for safeguarding both national interests and individual rights within cross-national marital relationships.

Nevertheless, public awareness and implementation of prenuptial agreements remain limited. Many couples fail to recognize the importance of such agreements until legal problems arise later. Therefore, legal education and guidance from notaries and relevant institutions are essential to ensure that mixed-nationality couples understand and optimally utilize this legal instrument. In this way, prenuptial agreements can serve not merely as a formality, but as a truly effective tool for legal protection in mixed marriages in Indonesia.

Acknowledgement

The author would like to thank the University of Muhammadiyah Bima for supporting this research.

Ethical Considerations

Not Applicable

Conflict of Interest

The Authors declare there is no conflict of interest.

Funding

This research did not receive any financial support.

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