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Dispute Resolution in Mixed Marriages Under the Perspective of Private International Law in Indonesia

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ABSTRACT

Mixed marriage is a legal phenomenon that continues to increase along with globalization, international mobility, and interactions between citizens of different countries. Such marriages often give rise to legal issues related to citizenship, marital property, child custody, inheritance, and the determination of applicable law. This study aims to analyze the settlement of disputes arising from mixed marriages within the framework of Private International Law in Indonesia. The research uses a normative juridical method through the examination of legislation, legal doctrines, and relevant literature. The findings indicate that Indonesia applies several connecting factors, including nationality, domicile, and legal principles recognized in Private International Law to determine the applicable law in mixed marriage disputes. However, legal uncertainty remains due to the absence of a comprehensive codification of Private International Law in Indonesia. Therefore, legal reform is necessary to provide certainty, justice, and legal protection for parties involved in mixed marriages. The study concludes that strengthening regulations and harmonizing legal principles are essential to effectively address cross-border family law disputes.

Keywords: *Applicable Law; Indonesia; Legal Conflict; Mixed Marriage; Private International Law*

ABSTRAK

Perkawinan campuran merupakan fenomena hukum yang semakin meningkat seiring dengan globalisasi, mobilitas internasional, dan interaksi antarwarga negara dari berbagai negara. Perkawinan semacam ini sering menimbulkan persoalan hukum yang berkaitan dengan kewarganegaraan, harta bersama, hak asuh anak, waris, serta penentuan hukum yang berlaku. Penelitian ini bertujuan untuk menganalisis penyelesaian sengketa yang timbul akibat perkawinan campuran dalam kerangka Hukum Perdata Internasional di Indonesia. Metode penelitian yang digunakan adalah yuridis normatif dengan mengkaji peraturan perundang-undangan, doktrin hukum, dan literatur yang relevan. Hasil penelitian menunjukkan bahwa Indonesia menerapkan beberapa titik taut, seperti kewarganegaraan, domisili, dan asas-asas Hukum Perdata Internasional untuk menentukan hukum yang berlaku dalam sengketa perkawinan campuran. Namun demikian, masih terdapat ketidakpastian hukum karena belum adanya kodifikasi Hukum Perdata Internasional yang komprehensif di Indonesia. Oleh karena itu, diperlukan pembaruan hukum guna memberikan kepastian, keadilan, dan perlindungan hukum bagi para pihak dalam perkawinan campuran. Penelitian ini menyimpulkan bahwa penguatan regulasi dan harmonisasi prinsip hukum sangat diperlukan untuk menyelesaikan sengketa keluarga lintas negara secara efektif.

Kata Kunci: *Hukum yang Berlaku; Hukum Perdata Internasional; Indonesia; Konflik Hukum; Perkawinan Campuran.*



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1. Introduction

Globalization has transformed the way individuals interact across national borders. Advances in transportation, communication technologies, international trade, and educational mobility have significantly increased interactions between citizens of different countries. One consequence of these developments is the growing number of mixed marriages involving individuals from different nationalities. Mixed marriages represent not only a social phenomenon but also a legal challenge. Unlike domestic marriages, mixed marriages involve more than one legal system, creating legal issues that may extend beyond national borders. Questions regarding citizenship, marital property, divorce, child custody, inheritance rights, and jurisdiction frequently arise when disputes occur between spouses of different nationalities.

Private International Law (PIL), often referred to as Conflict of Laws, provides legal mechanisms to determine which legal system should govern a particular dispute involving foreign elements.(Gautama, 2015) The importance of PIL has increased significantly in modern society due to the expansion of international human mobility and cross-border family relationships. Indonesia recognizes mixed marriages under Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019. Although the legislation provides a legal basis for recognizing mixed marriages, many legal issues remain unresolved because Indonesia does not yet possess a comprehensive codification of Private International Law.

The absence of a unified PIL framework often creates difficulties in determining jurisdiction, applicable law, and the recognition of foreign judicial decisions. Consequently, legal practitioners and judges frequently rely on fragmented legal provisions, judicial interpretations, and doctrinal principles.(Collins & Harris, 2022) This paper aims to analyze the legal challenges associated with mixed marriages in Indonesia from a Private International Law perspective and evaluate potential legal reforms that could strengthen legal certainty and justice in international family law disputes.

2. Method

This research method uses normative juridical research which focuses on the study of norms, principles, doctrines, and laws and regulations governing mixed marriage and International Civil Law in Indonesia. The research was conducted through several approaches, namely statutory approach, conceptual approach, and comparative approach.(Ali, 2021) The legislative approach is used to analyze various relevant legal instruments, including the Constitution of the Republic of Indonesia in 1945, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, and the Civil Code (*Burgerlijk Wetboek*). (KUHPerdata: Kitab Undang-Undang Hukum Perdata, 2007)

Furthermore, the conceptual approach is used to examine various legal concepts developed by experts related to conflict of laws, citizenship, domicile, and family law as a theoretical basis for analyzing research problems. The comparative approach is applied by comparing the legal arrangements in Indonesia with several countries, such as the Netherlands, Australia, and Singapore, to identify best practices in resolving mixed marriage disputes. All data are analyzed qualitatively through *legal interpretation* and systematic studies of relevant legal norms, principles, and principles so that comprehensive legal arguments are obtained on the issues studied.

3. Result and Discussion

3.1 Private International Law and the Legal Framework Governing Mixed Marriages in Indonesia

Private International Law (PIL), commonly referred to as the Conflict of Laws, serves as the primary legal framework for resolving private legal relationships containing foreign elements. Unlike substantive law, which regulates rights and obligations directly, PIL determines the appropriate jurisdiction, the applicable law, and the recognition and enforcement of foreign judgments. The historical development of PIL demonstrates its evolution from resolving commercial disputes among medieval European city-states to regulating increasingly complex cross-border legal relationships involving contracts, family law, inheritance, property rights, and international commerce.(Fuady, 2018) In the context of mixed marriages, PIL performs three essential

functions: determining jurisdiction, identifying the applicable law, and facilitating the recognition and enforcement of foreign judicial decisions.

The determination of applicable law relies upon several connecting factors that establish a legal relationship between a dispute and a particular legal system. Indonesia traditionally follows the nationality principle in determining personal status, whereas common law jurisdictions generally emphasize domicile. Modern international legal instruments increasingly adopt habitual residence because it better reflects an individual's actual social and family environment. Other important connecting factors include *lex loci celebrationis*, which governs the formal validity of marriage, and the public policy exception, allowing domestic courts to refuse the application of foreign law that contradicts fundamental national legal principles. These connecting factors play a central role in resolving legal uncertainty arising from cross-border family relationships.

Within the Indonesian legal system, mixed marriages are primarily regulated by Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019, together with Law Number 12 of 2006 concerning Indonesian Citizenship, Population Administration Law, Agrarian Law, and Immigration regulations. These legal instruments collectively establish the legal rights and obligations of spouses of different nationalities. The rapid growth of international education, migration, overseas employment, tourism, digital communication, and global business has significantly increased the number of mixed marriages, thereby expanding the relevance of Private International Law in Indonesia and exposing regulatory gaps that require further legal development.

3.2. Legal Issues Arising from Mixed Marriages in Indonesia

Mixed marriages generate numerous legal issues because they involve individuals subject to different national legal systems. One of the most significant issues concerns citizenship. Before the enactment of Law Number 12 of 2006, Indonesian citizenship law largely followed a paternalistic approach whereby children generally acquired their father's nationality. The introduction of limited dual citizenship significantly improved legal protection for children born from mixed marriages by reducing the risk of statelessness, facilitating international mobility, and preserving legal relationships with both parents. Nevertheless, dual citizenship also creates practical challenges, including conflicting legal obligations, taxation, military service, and the requirement to choose a single nationality upon reaching adulthood.(Harahap, 2017)

Property ownership constitutes another major source of legal complexity. Indonesian Marriage Law recognizes joint marital property acquired during marriage, whereas the Basic Agrarian Law restricts ownership of land under *Hak Milik* exclusively to Indonesian citizens. Consequently, marriages involving foreign spouses frequently encounter obstacles in acquiring and managing immovable property. Legal certainty has improved following Constitutional Court Decision Number 69/PUU-XIII/2015, which permits marriage agreements to be executed both before and during marriage, enabling spouses to separate their property regimes and minimize legal risks associated with land ownership and investment.(Harahap, 2017) This legal development significantly strengthened legal certainty for mixed-nationality couples by permitting marriage agreements to be executed both before and during marriage, thereby enabling spouses to separate their property regimes and minimizing legal risks associated with land ownership and investment. The importance of legal certainty in property transactions is consistent with the view that legal protection in land administration depends upon ensuring that property transactions are conducted in accordance with the law and that the interests of property owners are effectively protected.(Wau & Azwar, 2023)

Additional legal disputes frequently arise during divorce proceedings involving spouses of different nationalities. Determining jurisdiction and applicable law becomes particularly difficult because multiple countries may simultaneously claim authority based on nationality, domicile, residence, place of marriage, or location of marital assets. Similar complexities emerge in recognizing foreign divorce judgments, which are not automatically enforceable in Indonesia.(Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan, n.d.) This development is consistent with the broader objective of Indonesian family law, which seeks to ensure effective legal protection through formal legal recognition of marital rights and obligations, particularly concerning marital property and other civil rights.(Puspa Melati et al., 2025) These jurisdictional uncertainties also affect child custody disputes, where courts increasingly apply the Best Interests of the Child principle by considering emotional welfare, educational opportunities, financial stability, and the child's overall

development. Furthermore, international child abduction has become an increasingly important concern requiring effective cross-border legal cooperation.

Inheritance disputes likewise illustrate the complexity of mixed marriages. Questions regarding the applicable inheritance law, competent court, distribution of overseas assets, and recognition of foreign inheritance judgments often arise because different legal systems adopt different approaches to succession. (Symeonides, 2021) Civil law jurisdictions generally prioritize statutory heirs, whereas common law jurisdictions provide broader testamentary freedom. These differences frequently produce inconsistent legal outcomes, highlighting the necessity for clearer conflict-of-law rules within the Indonesian legal system.

3.3. Comparative Analysis and Future Legal Reform

Comparative analysis demonstrates that several jurisdictions have developed more comprehensive mechanisms for resolving family disputes involving foreign elements. The Netherlands has established a comprehensive Private International Law framework that clearly regulates jurisdiction, applicable law, and recognition of foreign judgments. Australia has developed specialized family courts possessing substantial experience in handling international custody disputes, thereby promoting consistency and legal certainty. Singapore emphasizes judicial efficiency and international cooperation through well-developed procedural mechanisms for resolving cross-border family disputes. (Mills, 2021) These comparative experiences demonstrate that legal certainty is strengthened not only by substantive legislation but also by coherent procedural rules and institutional capacity.

Compared with these jurisdictions, Indonesia continues to regulate mixed marriages through various sectoral laws without an integrated codification of Private International Law. Consequently, issues concerning jurisdiction, applicable law, recognition of foreign judgments, and enforcement remain fragmented across different legal instruments, potentially creating inconsistent legal interpretations and uncertainty for individuals involved in cross-border family relationships. This fragmented regulatory structure is increasingly inadequate in responding to the growing number of transnational marriages resulting from globalization. (Basedow, 2020)

Accordingly, Indonesia should consider comprehensive legal reform through the development of a unified Private International Law framework governing international family relationships. Such reform should clearly regulate jurisdictional authority, connecting factors, recognition and enforcement of foreign judgments, international child protection, marital property, inheritance, and cross-border family dispute resolution. Harmonization with internationally accepted principles, while maintaining consistency with Indonesian constitutional values and public policy, would significantly enhance legal certainty, improve judicial efficiency, and provide stronger legal protection for Indonesian citizens involved in mixed marriages.

4. Conclusion

The increasing prevalence of mixed marriages as a consequence of globalization and international mobility has intensified the need for an effective legal framework capable of addressing cross-border family disputes. This study demonstrates that Private International Law (PIL) plays a fundamental role in ensuring legal certainty by determining jurisdiction, identifying the applicable law, and facilitating the recognition and enforcement of foreign judgments. Through the application of connecting factors such as nationality, domicile, habitual residence, and *lex loci celebrationis*, PIL provides the legal mechanisms necessary to resolve disputes arising from transnational family relationships in a fair and predictable manner.

The findings further reveal that Indonesia has established a basic legal framework governing mixed marriages through the Marriage Law and the Citizenship Law. Nevertheless, the current regulatory framework remains fragmented because it lacks a comprehensive codification of Private International Law. As a result, legal issues concerning citizenship, marital property, land ownership, divorce, child custody, inheritance, jurisdiction, and the recognition of foreign judgments are often resolved through dispersed statutory provisions and judicial interpretation, creating inconsistencies and reducing legal certainty. These challenges are expected to become increasingly significant as cross-border mobility and international marriages continue to grow.

Accordingly, this study argues that Indonesia should prioritize the enactment of a comprehensive Private International Law statute that systematically regulates jurisdiction, choice of law, and the recognition and

enforcement of foreign judgments, particularly in matters of international family law. Such legal reform should also strengthen judicial capacity, promote international legal cooperation, and harmonize domestic regulations with internationally accepted principles while preserving Indonesia's constitutional values and public policy. The establishment of a coherent and integrated Private International Law framework would not only enhance legal certainty and consistency but also provide more effective legal protection for individuals and families engaged in cross-border legal relationships in an increasingly interconnected world.

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