

## Analysis of Mixed Marriage Law in Indonesia From the Perspective of International Civil Law Improvement

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### Abstract

Law Number 1 of 1974 concerning Marriage contains a section on religiosity. A man and a woman become husband and wife with the aim of realizing a happy and eternal family based on the One Almighty God. This is the definition of marriage itself. The Civil Code and the Marriage Law have different definitions of marriage: in Article 26 of the Law "The Law views the issue of marriage only in civil relations". The research method used in this study is descriptive normative legal research. With the technique of statutory regulations, as well as other related documents that are related to science, the development of its theory. Primary legal materials are obtained from Law Number 1 of 1974 concerning marriage, while secondary legal materials, namely the Civil Code, textbooks, legal journals, expert opinions and legal experts. The data obtained are both secondary and primary. Because there are foreign components in legal relations, international civil law applies. *Algemene Bepalingen* are general regulations that regulate international civil norms in Indonesia. In the concept of international civil law, there are 2 types of schools, namely: 1) Internationality which requires international or multilateral civil law. 2) Nationality because each country has different procedures for International Civil Law for Inter-National Marriage. Marriage between two people from different countries is defined as a mixed marriage based on Article 57 of the Indonesian International Civil Law Marriage Law. However, the third factor, not differences in religion, ethnicity, or social class in Indonesia, is the cause of this gap.

**Keywords:** International Civil Law; Mixed Marriage; Citizenship;

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## INTRODUCTION

In Article 28B of the 1945 Constitution, it is stated that everyone has the right to form a family and continue the rights of children to survive, grow, and develop. Marriage is an important event that occurs in human life and is very sacred because it relies on religious elements in its continuation. The definition of marriage itself is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family based on the One Almighty God. There are differences in the definition of marriage in the Civil Code and the Marriage Law, where in Article 26 of the Civil Code it is defined that "The Law views the issue of marriage only in civil relations". Which means that a valid marriage is when the marriage meets the requirements that have been set out in the Civil Code. While the definition according to the Marriage Law Article 2 paragraph (1) is "A marriage is valid if it is carried out according to the laws of each religion and belief". (*KUHPer*).

Marriage is a legal event, the consequences of which are regulated by law or an event that is given legal consequences. Events by Soerjono Soekanto are said to be "circumstances" and "incidents" so that the attitude of action in law is a legal event. Marriage is a legal event if the marriage is a legitimate marriage. According to the Marriage Law, the principle contained is the principle of monogamy which is authentically regulated in Article 3

paragraph (1). (Mamudji, 1985) Soerojo Wignjodipoero stated that the marriage system is a communal affair. Starting from finding a partner, making an agreement, engagement, marriage ceremony, even to the consequences of marriage. In accordance with togetherness as a characteristic of communality, then the household (besides very personal matters) is also a shared affair. Marriage as a way to be able to realize a happy and eternal family (household) based on the Almighty God means that the marriage should last a lifetime and should not end just like that. Every human being who marries to build a household, of course all with the hope of being able to obtain happiness for themselves and for the people around them, especially their own family. Every individual human being in choosing a partner to marry always dreams that their future marriage will form a happy, prosperous and eternal family. (Yaswirman, 2011)

The rapid development of science and technology, without regard to the boundaries of the State and Nation. This progress has an influence on the increasing ease of relations between fellow human beings, between ethnic groups and between countries in all aspects of life. The interaction that occurs between individuals of different ethnic groups and countries in various fields will give birth to legal relationships, especially in International Civil Law, one of which is mixed marriage. (Benyamin, 2015) Article 16 of the Universal Declaration of Human Rights stipulates that every human being has the right to marry and have a family regardless of nationality, citizenship or religion, as long as they have mutual consent. The right to marry is the most basic right and depends entirely on the choice of each individual. The regulation of this article explains that every marriage is not limited by differences in citizenship. (Kansil, 1996)

The laws and regulations governing mixed marriages are contained in the Marriage Law in Article 57 which states that mixed marriages in this Law are marriages between two people who in Indonesia are subject to different laws, due to differences in citizenship and one party is an Indonesian citizen. The purpose of marriage is to form a happy family and continue the lineage. In Article 59 number (1) of the Marriage Law it states that citizenship obtained as a result of marriage or the dissolution of marriage determines the applicable law, both regarding Public Law and Civil Law, from these provisions, it is very clear that mixed marriages will have legal consequences concerning the citizenship of the parties. Marriages of different citizenships often cause difficulties, especially during the process of registering the marriage that will be held, whether in the country of origin of the prospective husband or in the country of origin of the prospective wife. Mixed marriages are marriages between people who in Indonesia are subject to different laws. The meaning of different laws is due to differences in citizenship, place of group, and religion. Mixed marriages in the Marriage Law only emphasize marriages between Indonesian citizens and foreign citizens. (Syahar, 1976). The research problem can be explained as follows: First, how are mixed marriages regulated based on international civil law. Second, what are the problems in mixed marriages.

## **MATERIALS AND METHODS**

The research method used in this study is descriptive normative legal research. With a library approach technique that covers various books, laws and regulations, as well as other related documents that are related to science, the development of its theory. Primary legal materials are obtained from Law Number 1 of 1974 concerning marriage, while secondary legal materials are the Civil Code, textbooks, legal journals, expert opinions and legal experts. The data obtained, both secondary and primary, are analyzed qualitatively by interpreting based on existing theories and applicable regulations or norms, then assessed and analyzed according to the laws and regulations as a basis for solving problems. (Yenny Febrianty, 2023)

## RESULTS AND DISCUSSION

### A. Definition of International Civil Law

The existence of International Civil Law is because in its legal relationship there is a foreign element (Foreign Element). In general, international civil law rules in Indonesia are regulated in *Algemene Bepalingen*. In the definition of International Civil Law, there are 2 (two) types of schools, namely: 1) Internationality which requires that there be civil law that applies throughout the world or between several countries; 2) Nationality, which in each country has its own International Civil Law. This provides an understanding that this IPR is not a law that has been codified and applies to the international world, but IPR is a codified law in each country, where the law applies to every citizen who engages in international relations. (Oktarina, 2013)

HPI according to several legal experts, including: Sudargo Gautama, states that the entire regulation and legal specialties that indicate which legal system applies or what constitutes law, if the relationships and events between citizens at a certain time show points of connection with the systems with the legal rules of two or more countries that differ in environment, power, place, person and matters. Van Brakel states that HPI is a national law that is specifically intended for international cases, while Mochtar Koesoemaatmadja states that HPI is the entire rule that regulates civil relations that cross national borders. Or the law that regulates relations between actors who are each subject to the civil law of their country.

The scope of HPI itself consists of:

- a) *HPI = rechtstoepasingrecht*, the term Dispute Law is only limited to the issue of "law applied" (*rechtstoepassingrecht*), this is the first view of the material included in *HPI*. This view applies in Germany and the Netherlands, for example. The material included in the field of *HPI* is very limited. But besides this limited view, there are still other views that assume that the field of *HPI* is much broader.
- b) *HPI = Choice of law + Choice of Jurisdiction*, in the Anglo Saxon system it is said that *HPI* does not only consist of "conflict of laws", but also includes issues of "conflict of jurisdiction" or more precisely "choice of jurisdiction", namely the issue of the competence of the judge's authority. So it is not only about which law applies, but also about which judge has the authority. "
- c) *HPI = Choice of law + Choice of Jurisdiction + Condition des Etranges*, the third view of *HPI* is a broader one, namely as known in Latin countries (Italy, Spain, South America). Issues regarding the status of foreigners (*condition des estrangers*, *ureemdelingen-statuu*t) are considered issues of choice of law and choice of law.
- d) *HPI = Choice of law + Choice of Jurisdiction + Condition des Etranges + Nationalite*, in addition we see the broadest system, namely as known in the French *HPI*. In addition to the three types mentioned earlier as the fourth part of *HPI*, issues regarding citizenship (*nationalite*) are added.

### Understanding Marriage and Mixed Marriage

The bond of marriage is a basic element in the formation of a harmonious and loving family, so in the implementation of the marriage, legal norms are needed to regulate it. The application of legal norms in the implementation of marriage is especially needed in order to regulate the rights, obligations, and responsibilities of each family member in order to form a happy and prosperous household. Marriage is not only a religious matter but also a legal act, because in carrying out a marriage, we must comply with the marriage regulations stipulated by the state, namely Law No. 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law) which was enacted on January 2, 1974 and its implementing regulations, namely Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage (hereinafter referred to as *PP No. 9 of 1975*) which came into effect on October 1, 1975.

Mixed marriages according to Law Number 1 of 1974 need to be known first about the definition of marriage, according to the Marriage Law the definition of marriage is regulated in Article 1 which reads "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Almighty God."

Regarding mixed marriages, there are several differences in understanding, including those stated in legislation and the understanding of mixed marriages that develop in everyday society. In the treasury of legislation, there is the *Regeling Op de Gemengde Huwelijken Stb. 1898 Number 158* hereinafter referred to as *GHR* (*Regeling Op de Gemengde Huwelijken*).

The definition of mixed marriage according to *Stb. 1898 No. 158* in article 1 is stated as follows, mixed marriage is a marriage between people who in Indonesia are subject to different laws. From this understanding, those included as mixed marriages are:

1. International marriage: namely between citizens and foreigners, between foreigners with different laws, and marriages held abroad
2. Inter-group marriage: (intergentiel). The existence of mixed marriages between groups is due to the division of population groups by the Colonial Government
3. Inter-Customary Marriage, for example a marriage between a Sundanese woman and a Javanese man
4. Inter-Religious Marriage, a marriage of different religions is also called a mixed marriage. For example, a Muslim woman marries a Christian man. With the enactment of Law No. 1 of 1974, this provision no longer applies.

The definition of mixed marriage in the Marriage Law is regulated in Article 57, which reads: "What is meant by mixed marriage in this Law is a marriage between two people who in Indonesia are subject to different laws, due to differences in citizenship and one party is a foreign citizen and one party is an Indonesian citizen."

#### B. Regulation of Mixed Marriages Based on International Civil Law

The source of *HPI* is equivalent to the source of public law on the grounds that *HPI* is important for public law. The main source of the principle of *HPI* is custom and law, while the written legal sources of *HPI* are not many so that judges encounter legal vacuums as in Article 22 AB stating that if the appointed judge does not want to investigate a case by giving the reason that there is no law or regulation that can be sued, for that the judge will look for it in custom or law, in the case of the two cases above, custom or law that has not been obeyed, he will make his own law with all the authorities appointed is called obeying the law implying that the judge is dynamic and innovative. (Magda)

Legal terms translated from Dutch in the 1950s, the term "mixed marriage" as a translation of the colonial legal term *gemengde huwelijken* has been accepted by many groups. The Dutch term is a term used by colonial law known as *Regeling op de Gemengde Huwelijken* which is regulated in *Staatblad No. 1898:158* or *GHR*. Before the *GHR* was enacted in 1848, marriages between Christians and non-Christians in the Dutch East Indies (mixed marriages between religions) were prohibited. The prohibition was later abolished, but further stipulated in Article 15 *Bepalingen omtrent de invoering en den overgang tot de nieuwe wetgeving* or Provisions on the enactment and transition to new legislation, *Stb. 1848 No. 10*, or known by the abbreviation *Ov. 13* Article 15 *Ov* stated that a non-European who wanted to marry a European, had to first submit to European civil law. (Allagan, 2009) Therefore, European civil law will always apply to mixed marriages. Mixed Marriages During the Colonial Government of the Kingdom of Beslit December 29, 1896 No. 23 *Staatsblad 1896/158* (*Regeling op de gemengde huwelijken*”, hereinafter abbreviated as *GHR*) provides an understanding or understanding, namely: Marriage of individuals in Indonesia is regulated in various regulations based on Article 1, which is remembered to what extent the mixed relationship as indicated by Article 1 of the *GHR* is:

1. Mixed relationships that are global, especially between residents of different nationalities, between outsiders with various regulations, and relationships held abroad.
2. Mixed relationships between tribes, such as the relationship between Javanese and Dayak women, a Lampung man and an Acehnese woman, between and so on where due to differences in place.
3. Integrating relationships between associations (intergentiel). The existence of mixed relationships between these groups is because there is a categorization of population groups by the colonial government into 3 (three) groups, namely: (1) European groups; (2) foreign Eastern groups; (3) Bumi Putera (native social class) as a result of which the relationship between people from various groups is called a mixed relationship between groups.
4. Interfaith marriages for adherents of different religions are also called mixed marriages. The presence of interfaith relationships in religious figures with a series of marriage laws was brought by the Dutch East Indies government to the extent that marriage replaced strict regulations and guidelines. (Hanifah) Among the relationships of various beliefs there is practical inconsistency and many husband-wife relationships that start from the local area and religious figures but are still maintained by the colonial government, even when the 1901 period was interpreted as important to be added to the GHR by regulating Article 7 paragraph (2) which regulates that "the existence of clear differences cannot be used as a prohibition to carry out mixed marriages." (Nawawi) Law of 7 September 1989 on the regulation of conflict of laws in marriage in connection with the ratification of the Hague Convention of 14 March 1978 on the ceremony and recognition of the validity of marriages "(Treaty Series 1987, 137). "Article 1 Applicability of this Act (marriage contracts in the Netherlands and applicable law and recognition of foreign marriages) This Act applies to the contracting of marriages in the Netherlands if, with regard to the nationality or residence of the prospective spouses, a choice must be made with regard to the question of which national law regulates the legal requirements for contracting a marriage". This Statutory Regulation does not apply to the powers (authorities) of the Civil Registry". "Article 2 Recognition of the contracting of a marriage contains a marriage contracted: if each of the prospective spouses meets the requirements for contracting a marriage as indicated by Dutch law and one of them is a Dutch national or has permanent residence in the Netherlands".

In the Civil Code (hereinafter referred to as BW) does not explain the importance of a "marriage". Another term for the word marriage (*huwelijk*) is used in two senses, as follows: proof of "conducting a marriage", as used in Article 104 of the BW. So marriage is a lawful act that is completed at a certain time; "certain conditions" are conditions that a man and a woman are limited by a husband and wife relationship. So marriage in a "legitimate country" is a "legitimate basis". The requirements for implementing a mixed marriage relationship in the act of Law No. 16 of 2019, Article 2. The Indonesian party is obliged to meet the requirements as stated in Articles 27 to 49 of the BW, especially in terms of material needs. For Indonesian residents, the Employee Status Letter (Article 16 AB) applies which contains the conditions for carrying out a marriage. For married couples who are abroad and after a return visit to their country within one (1) year, the legalization of their marriage completed abroad must be recorded in the general register of their place of residence, as stated in Article 84 of the Civil Code. (Indawati)

### C. Problems of Mixed Marriages Based on International Civil Law

In the implementation of mixed marriages, there are several things that become obstacles before implementing intercultural marriages, including, (1) Language Differences, in this article we discuss mixed marriages between Indonesian citizens and Dutch citizens who have different languages in communicating, so that this difference becomes one of the obstacles in this mixed relationship. This obstacle can be overcome by using the international language, namely English. (2) Difficulty in undergoing legality. This will be an obstacle in mixed marriages if the perpetrators of the marriage do not report their marriage to the Population and Civil Registry Service (Dukcapil). Because with the existence of clear legal documents, you are also free from problems while abroad such as the threat of deportation (returned to Indonesia) due to illegal departure, if it is felt that Tibet takes care of these documents because your place of residence is far away and it is difficult to travel back and forth to take care of them. The reason for the occurrence of intercultural relationships is the diversity of the world which opens up opportunities for each other to be able to meet partners from various other different backgrounds, both from various regions and various countries. The main problem that really needs to be considered in undergoing marriage between different countries or communities is the language that is clearly different which is also known that language is a means of communication. Various couples try to solve this problem by using a common language in their daily lives, for example using English, with the hope that this is still the first step towards mastering each partner. However, at the same time communication will feel more difficult when the couple is fighting. In addition, individuals will generally feel better when involving their mother tongue in this situation. Then the language barrier can also interfere with family visits, especially when no one in the family can speak the same language as your partner. Another obstacle in carrying out this mixed marriage is the requirements that must be met. Mixed marriages cannot occur until it is shown that the circumstances of the marriage as stipulated by the appropriate regulations for each party have been met. In order to show evidence that the prerequisites stated in paragraph (1) have been met, which means that there are no more obstacles that make it possible for a mixed marriage to be carried out immediately, then a certificate is given stating that the circumstances have been met. The requirements that must be met for residents who will marry due to differences in citizenship include the requirements for a marriage certificate from the embassy or the country concerned, a passport, and also an articulation of promises so that a marriage certificate can be made and issued (excerpt of marriage of religious affairs). Thus, a study of the improvement of civil law regulations in Indonesia regarding marriage has been planned in Law No. 1 of 1974 which is expected to provide protection and certainty for its citizens. (Amin)

Law No. 1 of 1974 Article 57 states that mixed marriage guidelines are marriages between two individuals with different identities. Reported from the Marriage Article, the components of mixed relationships can also be described as: (a). marriage between 2 people of different sexes; (b). in Indonesia obeying various rules; (c). because of differences in citizenship; (d). there is one party who is an Indonesian citizen. The main section clearly focuses on the rules of monogamy in marriage. The accompanying segment shows that there is a legitimate contrast in the rules that apply to people who marry both men and women. However, what is important is not the consequences of differences in religion, personality, groups in Indonesia, but because the third part is seen from differences in citizenship. (Sianturi)

The procedures for mixed marriages exist for Indonesian people who need mixed relationships (relationships of different identities), especially for Indonesian citizens (*WNI*) who will marry in Indonesia with foreign men (*WNA*) or vice versa, regulated in Law No. 1 of 1974 and Law No. 16 of 2019. Mixed relationships in Indonesia are equipped with the Marriage Law and are required to meet the requirements for marriage. The requirements in

question include: confirmation from two prospective mothers, approval from two guardians/guardians for people who are not yet 21 years old, and as stated in Law No. 1 of 1974 Article 6. Hoping that all requirements have been met, you can ask the marriage registration center to provide information from the marriage registrar of each party. Assuming that the registration place will not provide authentication, the Religious Court makes a decision, stating that the refusal is unreasonable. Authentication or announcement as a substitute for this statement is very important for a very long time. If during that time the marriage has not taken place, then at that time the deed no longer has any power. There are several different letters that must also be prepared: (a). For couples who are about to get married: ask the husband to fulfill important letters from his country. If he wants to get married in Indonesia, he must show proof in the form of a "letter of ratification" which states that he can marry and will marry an Indonesian citizen. This decree is issued by a competent expert in his country. (b). For you, as a prospective wife, you are required to complete your personal data with various personal documents. (Faiz)

This marriage registration is carried out to obtain legalization of the marriage with a marriage certificate (excerpt from the marriage book) by an authorized representative. For individuals who are Muslim, registration is carried out by the Marriage Registrar or the Marriage, Separation and Compromise Collaborator Registration Center. For non-Muslims, registration is carried out by employees who work in civil registry offices. The marriage certificate that you have obtained, however, must be legalized at the Ministry of Law and Human Rights and the Ministry of Foreign Affairs, and registered at the Embassy of the *Ius Civile* Journal of the country of origin of the couple. Through this legalization, your marriage is valid and universally recognized, both according to the laws of your partner's country of origin, or according to Indonesian regulations or referred to internationally. There are several consequences or results that you need to know if you marry a foreigner. One of the most significant is related to the situation with the status of children. (Marsella) In mixed marriages, the regulation of the position of children is stated in Law No. 16 of 2019 Article 59. While in civil law, it is recognized that people have a situation with legitimate subjects since they were conceived. Article 2 of the Criminal Code provides an exception that a child who has not been born or is still in the womb can be transformed into a legitimate subject on the assumption that there is a necessary interest and is conceived alive. (Fauzi) Furthermore, children can be ordered as legitimate subjects who are not eligible to complete lawful activities. Under the old Citizenship Law, children only follow their father's country of origin, but under the new Citizenship Law, children will have dual citizenship. When the young person turns 18 or gets married, he or she must decide. (Setyawan, 2023) An explanation for choosing one of the two must be explained to the child as soon as possible 3 (three) years after the child turns 18 or gets married. Therefore, preparation is needed from the parents to face the journey with a methodology for choosing citizenship. (Katili) For mixed relationships held outside Indonesia, they must register at the Civil Registry Office at least 1 (one) year after the person concerned visits Indonesia again. Marriage certificates are registered at the Marriage Registration Office where you live in Indonesia in accordance with the provisions of Law No. 1 of 1974 Article 56. In *HPI*, what is important is a person's place of residence in a country, the importance of a person's country of residence with the aim that the regulations regarding him are not rigid, for example the law where he is domiciled. In this way, we see the idea of residence contained in the entire series of special regulations, especially the English guidelines which are the most unprecedented home ideas, where the house as mentioned by the English guidelines can be separated into 3 (three) parts, namely Domicilie Of Origin, Domicilie Of Choise and Domicilie by Operation Of law. Every country that adopts this mixed or mixed system is generally determined by the desire called "Juristischem Chauvinismus" which is the desire to focus on the laws of their own country

which are considered extraordinary. In addition, between the current standard and the material standard, the standard applicable in Indonesia will be used. To understand this, we cannot be separated from Article 16 AB. Article 16 AB stipulates that: for residents of the Dutch East Indies (now residents of Indonesia), regulations and guidelines regarding a person's status and authority actually apply to them on the assumption that their position is abroad. These provisions are enforced in line with the status of the workforce which includes: (a). individual regulations including family regulations and marriage regulations and (b). guidelines regarding non-permanent goods. (Hartono, 1976)

## CONCLUSION

Global mixed relationships, especially between people of different nationalities, between outsiders with various regulations, and relationships held abroad. Mixed relationships between tribes, such as the relationship between Javanese and Dayak women, a Lampung man and an Acehnese woman, between and so on where due to differences in place; Blending relationships between associations (intergentiel). The existence of mixed relationships between groups is because there is a categorization of population groups by the colonial government into 3 (three) associations, namely: (1) European association; (2) foreign Eastern association; (3) Bumi Putera (native social class) as a result of which the relationship between people from various associations is called a mixed relationship between associations. Interfaith marriages for adherents of different religions are also called mixed marriages. The presence of interfaith relationships in religious figures with a series of marriage laws was brought by the Dutch East Indies government to the extent that marriage replaced strict regulations and guidelines.

Problems in Mixed Marriages, namely Language Differences, in this article we discuss mixed marriages between Indonesian citizens and Dutch citizens who have different languages in communicating, so this difference becomes one of the obstacles in this mixed relationship. This obstacle can be overcome by using an international language, namely English. Difficulty in undergoing legality, This will be an obstacle in mixed marriages if the perpetrators of the marriage do not report their marriage to the Population and Civil Registry Service (*Dukcapil*). Because with clear legal documents, you are also free from problems while abroad such as the threat of deportation (returned to Indonesia) due to illegal departure, if it is considered difficult to take care of these documents because your place of residence is far away and it is difficult to go back and forth to take care of them.

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