



Postnuptial Agreement as a Legal Instrument in Restoring the Validity of the Sale and Purchase Deed of Mixed Marriage Land

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Abstract

Background. The absence of a marriage agreement in a mixed marriage triggers a normative conflict between the Marriage Law and the Basic Agrarian Law (UUPA), which threatens the right of an Indonesian Citizen (WNI) over freehold title land (Hak Milik).

Aims. This research aims to analyze the legal validity of the Land Deed of Sale and Purchase executed without a marriage agreement and to examine the legal certainty of a Postnuptial Agreement as a remedial instrument, based on Gustav Radbruch's theory.

Methods. This doctrinal legal research employs statutory and conceptual approaches through a qualitative analysis of legal materials.

Result. The results indicate that a freehold title AJB executed without a marriage agreement is legally defective and null and void due to violations of subjective and objective contract requirements, including the UUPA's prohibition on foreign ownership. This juridical defect is remedied through a Postnuptial Agreement pursuant to Constitutional Court Decision Number 69/PUU-XIII/2015, which serves as a curative and retroactive legal remedy.

Conclusion. According to Gustav Radbruch's theory of legal certainty, this instrument confers actual legal certainty only if it is formalized in a Notarial Deed, registered with the civil registry agency (the principle of publicity), and free from any bad faith aimed at circumventing the law.

Implementation. Furthermore, its retroactive effect must be strictly limited so as not to prejudice the rights of third parties and not to validate land objects that have exceeded the time limit for the relinquishment of rights.

Keywords: Mixed Marriage, Land Deed of Sale and Purchase, Postnuptial Agreement, Freehold Title, Legal Certainty.



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INTRODUCTION

All individuals hold the inherent right to join a family unit through legal marriage, as guaranteed by the state. The right to self-defense is enshrined in this honorable institution by the 1945 Constitution. Legal guarantees to realize this fundamental right are provided by the government, regardless of social background. In the context of the Republic of Indonesia as a Unitary State, this guaranteed protection aims to realize the welfare of every Indonesian citizen.

The dynamics of social life due to the current of globalization have expanded the scope of human interaction beyond national borders. This cross-border interaction encourages the occurrence of intermarriage that brings together two legal subjects with significantly different nationalities. The Marriage Law defines this relationship as a bond between two individuals based on legal norms that have differentiated in the legality of citizenship. This difference in citizenship status in a marriage bond carries unique and complex juridical consequences for the perpetrators, especially in the realm of international civil law ¹.

When dividing marital property, the complexity of the law becomes much clearer. The idea of joint property is upheld by the Marriage Law, which affirms that every object of wealth obtained in marriage is subsequently declared as joint property ². To protect the family's financial stability, this provision can be legally enforced regardless of who works or on whose behalf the assets are recorded. For marriages where one of the spouses is a foreign national, the idea of joint property presents a new legal challenge.

However, the principle of property unity clashes strongly with the principle of nationality embraced in national agrarian law. The Basic Agrarian Law (UUPA) regulates absolute restrictions on Foreign Citizens in the context of land ownership with the status of Property Rights in the territory of the Republic of Indonesia ³. The mixing of property due to marriage causes the land purchased by Indonesian citizens to be considered to contain elements of foreign ownership so that it becomes legally flawed. This clash of norms results in Indonesian

¹ Zenny Agustin, Syuryani, and Jasman Nazar, 'DIVISION OF JOINT PROPERTY DUE TO DIVORCE IN MIXED MARRIAGE', *The Law Journal*, 2.2 (2024), 29–36.

² Lily Andayani, Sherly M Imam Slamet, and Indah Dwiprigitaningtias, 'THE POSITION OF INHERITED PROPERTY (ORIGINAL PROPERTY) IN THE PROCESS OF TRANSFER OF RIGHTS ACCORDING TO THE PERSPECTIVE OF LAW NUMBER 1 OF 1974 CONCERNING MARRIAGE', *JOURNAL OF ACADEMIA PRAJA*, 7.1 (2024), 111–24.

³ Nadia Ardine and others, 'Land Ownership Rights for Indonesian Citizens Who Marry Foreigners', *Journal of Law and Socio-Politics*, 1.4 (2023), 274–85 <<https://doi.org/https://doi.org/10.59581/jhsp-widyakarya.v1i4.1924>>.

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citizens being threatened with losing their land rights and are required to transfer these rights within a span of one year ⁴.

The threat of loss of rights is not just a legal theory, but has befallen many mixed marriage couples who are victims of this clash of norms. Ike Farida, an Indonesian citizen who married a Japanese citizen, found that the purchase of an apartment was unilaterally canceled because there was no marriage agreement, which is a vivid illustration of the problems that arise ⁵. Manggarai Regency, Flores, Menjerite, Ruteng District, 2017 is another example of this case. Fauziah is an Indonesian citizen from the Bugis ethnic group; Robert is an Australian citizen who claims land rights. Without explaining in detail when they got married, Robert only said that Fauziah was his wife. Despite this, Robert continues to say that the land is his ⁶. The next case was experienced by Merry Anna Nunn, who was denied a Home Ownership Credit (KPR) application by the bank and refused the establishment of an AJB by a Notary because she was married to an American citizen, and was even advised to forge her identity card status to be single so that the transaction could run ⁷.

The series of cases above shows that there is a legal impasse that has negative implications for the civil rights of Indonesian citizens. The Marriage Law textually restricts the formation of a marriage agreement at that time or the marriage has not yet been held ⁸. This time restriction closes a gap for married couples to separate their property in order to comply with agrarian law. The rigidity of these positive legal norms causes mixed marriage couples to be trapped in a situation of lawlessness with no clear remedial solution.

Responding to these dynamics, several previous studies have examined this problem. Pratama (2018) highlighted that the absence of a property separation agreement resulted in Indonesian citizens being obliged to relinquish their property rights or downgrade their status to Hak Pause. In line with this, Wiguna et al. (2020) emphasized that normatively the UUPA limits property rights only to single Indonesian citizens, so that mixed marriage without an

⁴ Fini Annisa Sudhuri, 'THE PRACTICE OF LAND CONTROL BY FOREIGNERS THROUGH NOMINEE AGREEMENTS IN THE LEGAL SYSTEM IN INDONESIA', *Lex Generalis Law Journal*, 5.9 (2024), 1–9.

⁵ Agus Sahbani, 'Perpetrators of Mixed Marriage Sue Agrarian Law and Law 1/74', *HukumOnline*, 2015 <<https://www.hukumonline.com/berita/a/pelaku-kawin-campur-gugat-uu-agraria-dan-uu-perkawinan-lt55796036aaf55/>>.

⁶ Gregorius Afioma, 'The Case of Menjerite Reveals the Mode of Foreigner Land Ownership in Mabar', *Flores.Co*, 2017 <<https://flores.co/pilihan-editor/26076/2017/01/17/kasus-menjerite-ungkap-modus-kepemilikan-tanah-wna-di-mabar>>.

⁷ 'Constitutional Court of the Republic of Indonesia' <https://www.mkri.id/public/content/persidangan/putusan/69_PUU-XIII_2015.pdf>.

⁸ Muhammad Rendy Rifki Putra, Heru Susetyo, and Afdol, 'The Position of Land Rights in Indonesia Due to Mixed Marriage', *Repertoire: Scientific Journal of Notary Law*, 11.1 (2022), 34–46 <<https://doi.org/10.28946/rpt.v11i1.1393>>.

agreement will eliminate these rights due to the mixing of property. However, these studies generally only capture the legal consequences of the absence of agreements in general and the normative procedure for their creation, without analyzing in depth the linearity aspects of the validity of the AJB made before the existence of a marriage agreement is associated with the restrictions of Article 21 of the UUPA.

Therefore, research is important to be carried out to emphasize the creation of AJB where one of the parties is a mixed marriage couple. The absence of an in-depth analysis of the validity of AJB in situations of conflict of norms has resulted in the legal position of Indonesian citizens becoming very vulnerable when conducting land transactions. Thus, the author intends to examine the juridical consequences on the validity of the transfer of rights document due to the clash of two different legal regimes. The purpose of this study is to analyze land purchase and sale agreements formed by notaries for married couples of different races without a property separation agreement.

LITERATURE REVIEW

The Validity of Marriage according to Law No. 1 of 1974

A marriage is considered legitimate based on its registration in accordance with applicable legal norms and regulations and its implementation is in accordance with the norms of religion and beliefs adhered to, as contained in Article 2 of Law Number 1 of 1974⁹. In the context of this research, the article has fundamental relevance as an absolute requirement for legal guarantees for property in marriage. In the absence of a legal and state-registered marriage, the legal relationship between husband and wife is not legally recognized, so any dispute regarding land ownership within the framework of joint property does not have a strong legal basis for further analysis.

Definition and Subject of Mixed Marriage

If one of the spouses is a foreign citizen and the other spouse is an Indonesian citizen, then the marriage is considered a mixed marriage based on Article 57 of Law Number 1 of 1974. This is because Indonesian law applies differently to both couples depending on their citizenship status. The relevance of this article is very important as a determinant of the legal subject in the research, considering that this "mixed" status is what triggers the conflict of

⁹ Devin Irwan Jinoto, 'CONFLICT OF PROPERTY OWNERSHIP DUE TO MARRIAGE WITHOUT A DEED: A STUDY OF FAMILY LAW IN THE DIGITAL ERA', *Rewang Rencang : Lex Generalis Law Journal*, 6.6 (2025), 1–15.

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interest between family law and agrarian law. Subject identification through this article is necessary to distinguish the legal treatment of Indonesian citizens who are perpetrators of mixed marriages compared to Indonesian citizens in general regarding land tenure rights.

The Principle of Common Property in Marriage

All that is obtained in marriage will be considered as joint property in accordance with Article 35 paragraph (1) of Law Number 1 of 1974, but the property brought into the marriage is still controlled by each husband and wife personally unless otherwise stated. The relevance of this article to research lies in its role as the main source of legal *conflict*, because in a mixed marriage without a property separation agreement, any land purchased by an Indonesian husband or wife legally will automatically be considered jointly owned by his or her foreign partner. This mixture of assets has resulted in Indonesian citizens losing their position as sole holders of land rights, so it is considered a violation of the principle of land ownership in Indonesia.

The Principle of Nationality in Land Ownership

Article 21 of the UUPA clearly stipulates that only Indonesian citizens can have Property Rights, while foreigners are limited to owning them. This article is very relevant in research because it is a normative barrier that directly clashes with the principle of common property in Article 35 of Law Number 1 of 1974. The prohibition in Article 21 of the UUPA results in Indonesian citizens who marry foreigners in danger of losing their right to own land in the status of Property Rights, because the existence of common property makes the land as if it is also owned by foreign elements, which is legally prohibited by the principle of Indonesian agrarian nationality ¹⁰.

Restrictions on the Subject of Building Use Rights

In Article 36 of the UUPA, it is stipulated that the right to use buildings (HGB) is limitative to Indonesian citizens and legal entities, explicitly excluding foreigners from these rights. The relevance of this article is to strengthen the basis for restricting land tenure for intermarriage perpetrators, where the inability to have HGB will limit the use of land for economic or residential interests of the couple. This proves that the impact of the conflict of norms between marriage law and land law is not only limited to property rights, but also includes other secondary rights that require strict qualification of legal subjects.

Notary Authority in Making Authentic Deeds (Notary Position Law)

¹⁰ Son, Susetyo, and Afdol. *Op. Cit.* p. 35
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A notary is a public organizer who is authorized to form an official letter about all actions, deeds, and endorsements required by law and/or desired by the interested party. This definition is based on Article 15 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary (UUJN). In the case of land buying and selling, the UUJN is relevant because the notary and PPAT are required to check all the formal and material provisions required before the AJB is made. Notaries and PPATs are required to refuse to execute AJB for mixed-race couples who have not executed a property separation agreement, as this would violate the UUPA's restrictions on foreign nationals who own real estate. Thus, the validity of the transfer of property rights transaction depends on the notary's knowledge of the law of mixed marriage¹¹.

Valid Terms of Agreement and Consequences Null and Void

According to Article 1320 of the Civil Code, there are four elements that are necessary for an agreement to be valid: consent, authority, subject matter, and legal basis. This article refers to Article 1337 of the Civil Code. According to the rule, all causes are prohibited. The relevance of this review is very central in research to test the validity of AJB's existence. For the perpetrators of mixed marriages without separation of property, the creation of the AJB Hak Milik violates the objective requirements (halal cause) because it essentially smuggles the law against the UUPA. Failure to meet these objective requirements results in the AJB being doctrinally defective and null *and void*¹².

Expansion of the Meaning of the Marriage Agreement (Constitutional Court Decision No. 69/PUU-XIII/2015)

Postnuptial agreements, or marriage contracts formed "during the marital bond," are now legally permissible according to the new interpretation of Article 29 of Law No. 1 of 1974 (Constitutional Court Decision No.69/PUU-XIII/2015). The relevance of this decision is as the main analytical knife instrument to answer research problems. This decision presents a breakthrough in curative law that applies retroactively. Through this review, it is analyzed how the *Postnuptial Agreement* was able to legally remove foreign elements from the joint property,

¹¹ Muhamad Rizki, 'Notary Responsibility for the Content of Mixed Marriage Agreements', *The Journal of Sound of Justice*, 8.3 (2024), 524–36.

¹² Ramdhan Imran Ibrahim and Miko Aditiya Suharto, 'Legal Consequences of Land AJB Illegally Signed Based on Civil Law in Indonesia', *The Journal of Sound of Justice*, 9.3 (2025), 408–18.

which led to the restoration of the validity of the AJB which was previously threatened with nullity and nullity¹³.

Principles of Publicity and Legality of Land Administration

The principle of legal certainty in state administrative law requires that any legal action relevant to the registration of land rights must meet the principle of publicity. The relevance of this review is aimed at dissecting the registration practice at the National Land Agency (BPN). Although the civil law *of the Postnuptial Agreement* has been legally signed before a Notary, BPN, as an administrative agency, cannot process the transfer of Property Rights if the agreement is not officially recorded at the Population and Civil Registration Office or KUA. This review proves that state registration is the lifeblood of the *binding power of the Postnuptial Agreement* against third parties, including the state.

Legal Certainty Theory (*Rechtszekerheid*)

Justice, usefulness, and legal certainty (*Rechtssicherheit*) are the three pillars that form the basis of legal goals, according to Gustav Radbruch. In the basis of the validity of the enactment of a law, legal certainty occupies a position as a juridical foundation ¹⁴.

Theoretically, the formation of laws through written documents is expected and needed based on the concept of legal certainty¹⁵. To ensure that legal products that benefit society are truly clear, it is very important. In order for the law to have legal certainty, it must be positively formulated and universally enforced; This ensures that everyone understands the permissible or not related to what is done, which in turn protects them ¹⁶.

Furthermore, legal certainty according to Radbruch refers to the principle that law must be clear, consistent, and predictable ¹⁷. When individuals talk about the need for positive laws to provide stability, predictability, and security for citizens, they are mostly referring to the idea that people need clear laws so that they can plan their behavior. Without clarity, the rule

¹³ Amelia Simorangkir, Wira Franciska, and Felicitas Sri Marniati, 'LEGAL CERTAINTY OF THE DIVISION OF COMMON PROPERTY RIGHTS TO LAND RELATED TO MIXED MARRIAGE WITHOUT A MARRIAGE AGREEMENT', *Journal of Legal Dimensions*, 8.7 (2024), 64–77.

¹⁴ Alfita Yola Hotta, 'Understanding the Principle of Legal Certainty through the Construction of Legal Positivism Reasoning', *Dehasen Law Journal*, 1.1 (2025), 23–28.

¹⁵ Hotta. *Ibid*.

¹⁶ Adiansyah and others, 'Reactualization of Gustav Radbruch's *Recht Idee* Concept as the Foundation of Indonesian Progressive Law', *SENTRI: Journal of Scientific Research*, 5.1 (2026), 180–88.

¹⁷ Anisyaniawati and others, 'The Concept of Law and Justice in Thought', *Praxis: Journal of Applied Philosophy*, 3.1 (2025), 1–15.

of law degenerates into an esoteric morality that is difficult to apply in the social and legal spheres ¹⁸.

The existence of a law that is known and trusted by everyone also means that it is truly effective. This prevents those who deserve justice (those who seek justice) from arbitrary law enforcement. By establishing clear legal standards, social order can be established systematically and firmly, without being influenced by personal opinions or prejudices ¹⁹.

Previous Research

The author examines a large amount of relevant material and other studies to compile this. This was done to find out how much of this subject had been discussed before and to find out what made this research unique. Among the previous investigations are:

1. Pratama (2018) in his research highlighted that the absence of a property separation agreement resulted in Indonesian citizens who were perpetrators of mixed marriages being obliged to relinquish their property rights or downgrade their land ownership status to Hak Pause.
2. Wiguna et al. (2020) emphasized that normatively the UUPA limits Property Rights only to single Indonesian citizens. Therefore, a mixed marriage without a marriage agreement will automatically eliminate these rights due to the enactment of legal property mixing.
3. Ramdhan Imran Ibrahim (2025) in his research entitled *"Legal Consequences of Illegally Signed Land AJB"* concluded that AJB formed by violating the objective conditions of the agreement (in the form of non-halal causes because it is contrary to the UUPA) has a null *and void* status and is considered to have never existed juridically.
4. Amelia Simorangkir (2024) in her research entitled *"Legal Certainty of the Distribution of Shared Property of Land Rights Related to Mixed Marriages"* emphasized that the absence of a marriage agreement destroys the legal certainty of the Property Rights holder. He concluded that the making of the *Postnuptial Agreement* after the Constitutional Court Decision No. 69/PUU-XIII/2015 is the only legal solution to restore legal certainty.
5. Febrina Andarina Zaharnika (2022) in her research entitled *"The Consequences of the Legality of Marriage Agreements (Huwdelijkse Voorwaarden) on Property in Relation to the Principle of Legal Certainty"*. Using Gustav Radbruch's theory as a foundation, this study examines how marriage agreements drafted as notary deeds contribute to the notion of

¹⁸ Muhammad Bintang Firdaus, 'The Dialectic of Justice, Certainty, Utility of Law in the Perspective of Gustav Radbruch on Indonesian Law', *Journal of Law and Public Policy Studies*, 3.1 (2025), 357–67.

¹⁹ Febrina Andarina Zaharnika, 'The Legality of Marriage Agreements (Huwdelijkse Voorwaarden) on Property Is Linked to the Principle of Legal Certainty', *Codification*, 4.1 (2022), 37–90.

marital wealth security. The results of the study concluded that the agreement provides perfect evidentiary power and presents concrete legal protection for the parties.

The previous studies above have provided a strong foundation regarding the legal consequences of mixed marriage on the status of Property Rights, AJB disability, and the function of *the Postnuptial Agreement*. Although it has a slice of theme, the research conducted by the author has fundamental differences and novelty (*novelty*).

If previous research only discussed the cancellation of AJB (Ibrahim, 2025) or the function of *Postnuptial Agreement* in general (Simorangkir, 2024; Zaharnika, 2022), the author's research synthesizes the two specifically. The novelty of the study lies in a comprehensive analysis of the position of *the Postnuptial Agreement* as a retroactive *legal remedy* instrument for AJB that is already legally flawed. Furthermore, the author specifically dissects this issue using the analytical knife of Gustav Radbruch's Theory of Legal Certainty, to test whether the *retroactive* implementation of *the Postnuptial Agreement* really gives birth to legal certainty in its entirety—both civilly before the Notary, and administratively at the registration of rights at the National Land Agency (BPN)—without harming the rights of third parties.

METHODS

Types of Research

Research that focuses more on the concept of law as a rule is known as a type of doctrinal research²⁰. The study of nominative law primarily seeks to analyze legal norms or provisions because the main emphasis of this system is on normative rules or regulations²¹. Using doctrinal research, this study is expected to examine the juridical consequences on the validity of the transfer of rights document due to the clash of two different legal regimes.

Research Approach

²⁰ Ronny H.S, *Legal Research Methodology and Jurimetry* (Semarang: Ghalia, 1990). Regarding the doctrinal approach, Bambang Waluyo explained that the doctrinal approach referred to here is the same as normative legal research or literature research. He explained that it is called doctrinal law research because its main focus is to study written regulations and other legal sources. It is called literature research or document research, because the data source used is only secondary data in the form of legal materials (see Bambang Waluyo, *Legal Research in Practice*, Jakarta: Sinar Grafika, 1996, page 13).

²¹ Ranuhandoko, *Legal Terminology* (Jakarta: Grafika, 2003). Law is understood to be no longer just an ideal (*utopia*), but as a system that has been institutionalized and concretely manifested in various norms, principles, and legal institutions (see Saefullah Wiradipradja, *Practical Guide to Research Methods and Writing Legal Scientific Papers*, Bandung: Keni Media, 2015, page 5).

Five methods are commonly used in doctrinal studies, as described by Peter Mahmud Marzuki ²². Specifically, this study uses legal methods and conceptual approaches in its investigation ²³.

The approach of laws and regulations was chosen to examine positive legal provisions relevant to the status of land ownership for perpetrators of mixed marriages. This approach allows researchers to examine the contradictions between the UUPA and the implications of the Constitutional Court Decision No. 69/PUU-XIII/2015.

Source of Legal Materials

Normative (doctrinal) research, the term "data" is defined by Sudek as legal elements, not real knowledge ²⁴. The reason for this is that doctrinal studies rely only on secondary data derived from literary studies, which can be categorized as primary, secondary, or tertiary legal studies ²⁵.

Primary Legal Materials are used to explore the norms and rules that govern land ownership and marriage so that it can be analyzed whether the regulations have provided legal certainty and justice. Constitutional Court Decision No. 69/PUU-XIII/2015, Law No. 2 of 2014 concerning the Position of Notaries, Law No. 1 of 1974 concerning Marriage as amended by Law No. 16 of 2019, Law No. 5 of 1960 concerning UUPA, and the Constitution The Republic of Indonesia in 1945 is all part of this collection of documents.

Secondary legal materials can strengthen the argument and support the foundation of a theoretical framework as well as analysis that helps in interpreting how existing regulations can be applied or need to be reconstructed to ensure the protection of the civil rights of Indonesian citizens. Among them are literature books that discuss agrarian law, marriage law,

²² Peter Mahmud Marzuki, *Legal Research* (Jakarta: Prenada Media Group, 2009). Johnny Ibrahim added that the approach in normative legal research can be divided into seven types, namely legislative, conceptual, analytical, comparative, historical, philosophical, and case approaches (see *Normative Legal Research Theory and Methods*, Malang: Bayumedia, 2005, page 300).

²³ Vicky Srivastava, *Legal Research Methods Textbook* (Yogyakarta: Publika Global Media, 2024). Wiwik Sri Widiarty explained that the legislative approach views law as a closed system that is logically arranged and interrelated between its parts. Meanwhile, the conceptual approach is based on various views and doctrines in law to find answers to the legal problems studied in the research (see *Legal Research Methods Textbook*, Yogyakarta: Publika Global Media, 2024, page 120).

²⁴ Suteki and Galang Taufani, *Legal Research Methodology (Philosophy, Theory, and Practice)* (Depok: Rajawali Pers, 2020).

²⁵ Soerjono Soekanto and Sri Mamudji, *Normative Law Research: A Brief Review* (Jakarta: Raja Grafindo Persada, 2015).

and notary, as well as scientific articles used to explore new perspectives on the issue of the validity of AJB and marriage agreements in mixed marriages.

Tertiary Legal Materials provide additional information to delve deeper into primary and secondary legal materials ²⁶. One of them is a legal dictionary that explains the meaning of words used in laws related to marriage and property.

Legal Material Analysis

Doctrinal law research, analysis of primary, secondary, and tertiary legal materials. The data obtained is normative text, not numbers or statistics, so the analysis techniques used are qualitative ²⁷. The study of legal principles, legal systematics, synchronization and harmonization, comparative law, and legal history are the five areas proposed by Soerjono Soekanto and Sri Mamudji as areas of doctrinal research²⁸.

Based on this scope, this study focuses on the analysis of legal synchronization, both vertical and horizontal, used to test whether a legal regulation is already in line with other regulations in a higher or equivalent legal system ²⁹. If a conflict is found between one rule and another, it will be studied through legal harmonization with the aim of ensuring the integration between various applicable legal regulations ³⁰.

²⁶ "Your Excellency, Your Excellency, *Legal Research Methodology* (Jakarta: Raja Grafindo Persada, 1998).

²⁷ Soerjono Soekanto, *Normative Law Research: A Brief Review* (Jakarta: Raja Grafindo Persada, 2001). Afrizal in his book entitled *Qualitative Research Methods*, (Jakarta: RajaGrafindo Persada, 2014), page 16, says that the nature of data collected in this type of qualitative research is in the form of words, pictures/writings, or an action without being poured into the form of numbers. With its qualitative nature, it does not mean that this doctrinal research is a qualitative research. Doctrinal research remains normative legal research, because the object of its study is the legal norm itself, not empirical symptoms or social behavior. Therefore, the so-called "qualitative" analytical technique in doctrinal research refers to textual and conceptual approaches that are interpretive, not to qualitative methodological approaches in the sense of empirical research (see Zuchri Abdussamad, *Qualitative Research Methods*, Makassar: Syakir Media Press, 2021, page 32).

²⁸ Soekanto and Mamudji. *Op.cit*, page 14.

²⁹ Muhaimin, *Legal Research Methods* (Mataram: Mataram University Press, 2020).

³⁰ Ida Surya and Abdul Wahab, 'HARMONIZATION OF LAWS AND REGULATIONS IN REALIZING GOOD GOVERNANCE', *Journal of Legal Compilation*, 8.2 (2023), 0–9.

DISCUSSION

Validity of AJB Land in Mixed Marriage without a Marriage Agreement

The transfer of land rights from the seller to the buyer must be carried out through the creation of an AJB. The creation of AJB is a manifestation of civil law acts that are subject to the law of engagement. Therefore, the validity of an AJB must absolutely be tested using the parameters of the conditions for the validity of the agreement regulated in Article 1320 of the Civil Code ³¹. Subjective terms (the will of the parties and the ability to make legally binding agreements) and objective terms (a specific thing and valid reason) are the two main categories that this article uses to classify the four prerequisites mentioned above. Failure to meet these conditions will have a fatal impact on the fate and existence of the AJB. For legal subjects who are bound by a mixed marriage without a marriage agreement, the fulfillment of the parameters of Article 1320 of the Civil Code becomes a very complex juridical problem ³².

The assessment of the fulfillment of the subjective conditions in a land rights transfer transaction must be drawn from the civil position of the parties concerned. The State of the Republic of Indonesia protects the human right of every individual to build a family with a legal marital bond. Dynamic interactions between humans due to globalization often lead to the occurrence of intermarriage. Law Number 1 of 1974 concerning Marriage states that mixed marriage in Article 57 with a bond is carried out by two people who comply with legal norms that collide due to differences in nationality, namely between Indonesian citizens (WNI) and foreign citizens (WNA). This difference gives birth to severe juridical consequences with respect to the property regime.

Unless expressly agreed upon by the parties before the marriage, all property in marriage in Indonesia must remain in the hands of both husband and wife. Every property obtained by one of the spouses during marriage is considered joint property in accordance with Article 35 paragraph (1) of Law Number 1 of 1974. Article 119 of the Civil Code stipulates that without any special provision in the marriage agreement, all joint property must be considered as joint property of the husband and wife from the date of marriage. This clause is based on such law.

³¹ Ibrahim and Suharto. *Op. Cit.* p. 411.

³² An'nisa Al Aufia, 'The Role of Notaries in the Ratification of Prenuptial Agreements', *Journal of Legal Publications*, 2.2 (2024), 141–50.

People who are married but do not want to create legal documents to divide their property must consolidate this property³³.

The absence of a *prenuptial agreement* results in all assets purchased or obtained during the marriage becoming inseparable joint property, regardless of whose name the assets are registered. When an Indonesian citizen who is a mixed marriage person buys a property or property, the right to the goods is automatically divided and attached to his partner who has the status of a foreigner³⁴. This mixing of ownership rights is not a problem if the object is in the form of a movable object, but becomes crucial when the object is a immovable object in the form of land rights in Indonesia³⁵.

This condition of mixing assets directly attacks the essence of the subjective requirements in Article 1320 of the Civil Code, especially the element of "proficiency". The ability to act in a civil contract is not simply interpreted as maturity, age, or sanity of mind. Legal competence also includes the authority to act (*bevoegdheid*) over a certain object³⁶. Indonesian citizens who are intermarried whose property has been united with foreigners legally have a defect in the authority to act (*onbevoegdheid*) to become the sole subject of the buyer of land Property Rights³⁷. Although physically and administratively he is an Indonesian citizen, materially he has lost his status as a "single Indonesian citizen".

For the sale and purchase of land rights, an original deed made before a Notary or PPAT is required. The Law on the Notary Position expressly requires every Notary to implement the prudential *principle* at the stage of forming a deed, which requires the Notary to thoroughly identify, verify, and validate client data³⁸.

This normative analysis of subjective proficiency is strongly confirmed based on the results of interviews with key informants that practice in the field proves that the application of Article 1320 of the Civil Code regarding proficiency and authority to act is a Standard Operating Procedure (SOP) that must be carried out by Notaries. Notaries are obliged to verify the completeness of identity and specifically ask about the client's marital status. If the client

³³ Aina Mulia Rizky and others, 'Legal Consequences of the Absence of a Marriage Agreement on Property in Marriage According to the Civil Code: The Application of the Property Union System by Default', *JURRISH: Journal of Research in the Social, Political and Humanities*, 4.3 (2025), 26–37.

³⁴ Angela Kezia and Andryawan, 'JURIDICAL REVIEW OF MARITAL PROPERTY IN THE FORM OF PROPERTY IN MIXED MARITAL DIVORCE', *Serina Journal of Social Humanities*, 1.1 (2023), 73–82.

³⁵ Simorangkir, Franciska, and Marniati. *Op. Cit.* p. 72

³⁶ Al Aufia. *Op. Cit.* p. 148

³⁷ Ibrahim and Suharto. *Op. Cit.* p. 411

³⁸ Hatta Isnaini Wahyu Utomo and Hendry Dwicahyo Wanda, 'The Principle of Prudence of Land Deed Making Officials in the Transfer of Uncertified Land', *Ius Quia Law Journal*, 24.3 (2018), 467–87 <<https://doi.org/10.20885/iustum.vol24.iss3.art7>>.

is proven to be bound in a mixed marriage, the Notary is required by law to request a deed of marriage agreement or separation of property before processing the AJB Hak Milik. Without attaching the instrument of separation of assets, Indonesian citizens do not meet the subjective requirements of proficiency³⁹. If the Notary neglects to verify this, or deliberately passes the making of the AJB, then the Notary commits a serious violation of his position because it facilitates the occurrence of legal⁴⁰ defects.

If the subjective condition is closely related to the subject of the perpetrator, then the objective condition depends on the substance of the legal act and its object. The most fatal essential condition violated by the perpetrator of mixed marriage without a marriage agreement is the objective condition in the form of a "halal cause" (*permissible causa*). An act is considered unlawful if the act is unlawful, immoral, or disturbs public order (Article 1337 of the Civil Code).⁴¹

Indonesia's national agrarian law is built on a very strict foundation of protection of state sovereignty and people's prosperity [12]. Law No. 5 of 1960 concerning the Basic Regulations of the UUPA adopts the principle of closed nationality [12]. The UUPA expressly states this in Article 21 paragraph 1, which stipulates that land ownership rights can only be owned by Indonesian citizens. To avoid a repeat of foreign domination over land management as in the colonial era, this clause is a necessary regulation. Based on this principle, foreign citizens are absolutely prohibited from owning land with the status of Property Rights and Building Rights (HGB).

When Indonesian citizens who commit mixed marriages without a marriage agreement force themselves to carry out transactions to purchase land through the AJB, there is automatically a very hard clash between the principle of property unity of Law Number 1 of 1974 and the principle of nationality of the UUPA⁴². The transfer of rights facilitated through the AJB in such conditions is essentially a form of legal smuggling (*fraus legis*), where the subject of the law uses an agreement instrument that seems to be valid to circumvent or break through the prohibition of the law that prohibits "foreign elements" from infiltrating the Property Rights. This is in stark violation of the parameter of "halal cause" in Article 1320 juncto Article 1337 of the Civil Code.

³⁹ Ary Karelina, Personal Interview with a Notary in Cirebon City. Cirebon, February 24, 2026.

⁴⁰ Utomo and Wanda. *Op. Cit.* p. 153

⁴¹ Al Aufia. *Op. Cit.* p. 148

⁴² Salim Saputra, Wira Franciska, and Amelia Nur Widyanti, 'RESPONSIBILITY OF TEMPORARY LAND DEED MAKING OFFICIALS (PPATS) DUE TO NEGLIGENCE IN MAKING LAND AJB FOR THE TRANSFER OF LAND RIGHTS.', *SENTRI: Journal of Scientific Research*, 3.3 (2024), 1760–69.

If the element of "legitimate cause" is not met, the agreement is considered invalid because the objective conditions relate to the essence and purpose of the legal action. Although subjective circumstances may make an agreement only "voidable", a void and invalid agreement is considered to have never existed and has never resulted in legal implications since its signing. Worse, the UUPA has taken steps to prevent the mixing of assets that violate this objective criterion in Article 21 paragraph 3, by requiring Indonesian citizens who obtain ownership rights as a result of the mixing of assets in marriage to release them within one year. They risk having their land rights revoked and the property transferred to the state unless they relinquish it ⁴³.

From the state administration side, this objective ban and the threat of nullity and law are in line with the results of the researcher's interview with the Cirebon City National Land Agency (BPN). BPN affirms its position as an agency that is fully subject to the principle of nationality Article 21 of the UUPA. In the process of registering the transfer of Property Rights, BPN stipulates an absolute requirement that the applicant must have the status of an Indonesian citizen as evidenced by an Indonesian ID card, while foreigners cannot absolutely be registered as individual Property Rights holders. BPN emphasized that if it is revealed that there is a fact of mixing foreign property in a Property Rights due to the absence of a marriage agreement, the registration and certificate of land rights can be canceled immediately because the basis of the transfer deed is proven to be materially defective from the beginning ⁴⁴.

Postnuptial Agreement in Mixed Marriage as a Legal Effort to Overcome the Defect in the Validity of the AJB

The extraordinary legal tension between the loss of civil rights of Indonesian citizens who have lost their capacity (subjective conditions) and the strict prohibition of legal smuggling of the UUPA (objective conditions) has finally found a bright spot for settlement through *the Postnuptial Agreement* instrument . Before this breakthrough, Article 29 of Law Number 1 of 1974 provided a very restrictive rule that a property separation agreement could only be made at the time or before the marriage took place (*prenuptial agreement*). These rigid

⁴³ Zahra Maulida Aulia and Gunawan Djajaputra, 'Legal Regulation of Land Rights in Mixed Marriages According to the Basic Agrarian Law', *UNES Law Review*, 6.4 (2024), 10873–79.

⁴⁴ Ary Kareliana, Personal Interview with Officials/Officers of the Cirebon City Land Office (BPN) related to the Practice of Registration of Rights and the Application of the Principle of Nationality, Cirebon, March 10, 2026. Ary Kareliana

rules cause Indonesian citizens who are intermarried to be permanently trapped in the joint property regime and lose their absolute ability to have property rights⁴⁵.

The solution and definitive solution are present through the Decision of the Constitutional Court of the Republic of Indonesia Number 69/PUU-XIII/2015. The Constitutional Court reinterpreted Article 29 of Law Number 1 of 1974 and stipulated that marriage agreements are also valid to be made "as long as they are in a marriage bond".⁴⁶ Based on the results of interviews with key informants, this decision provides complete material protection because it has a binding nature that applies retroactively. This means that even though the property separation agreement was only made many years after the marriage took place, the agreement was pulled back and binding from the beginning of the marriage, as long as it did not harm a third party.

For Indonesian citizens who have signed the AJB Hak Milik in a condition without a marriage agreement, the making of a *Postnuptial Agreement* serves as a comprehensive healing legal (curative) legal means. Through an authentic deed of separation of assets made before a Notary, foreigners' assets are legally separated and excluded from the assets of Indonesian citizens⁴⁷. The notary emphasized that this separation automatically clears the "element of foreign ownership", so that the Indonesian citizen fully recovers his capacity and authority to act (*bevoegdheid*) as the subject of a "single Indonesian citizen". This capacity restoration directly revalidates the existence of AJB which was previously threatened with cancellation, because the subjective and objective requirements in Article 1320 of the Civil Code have now been legally fulfilled again⁴⁸.

Although doctrinally civil there has been a healing of the validity of the AJB, this curative solution cannot stand alone. The retroactive implications of the *Postnuptial Agreement* require a harmonious synchronization with land administration law. BPN as the spearhead of land registration acts purely on the principle of rigid formal legality. The existence of a deed of separation of assets that has been signed before a Notary does not necessarily abort administrative obligations at the BPN counter.

Based on the results of the researcher's interview with the Cirebon City National Land Agency (BPN), BPN does not have the authority to interpret the material validity of a marriage agreement, but only submits to authentic written evidence that reflects the principle of

⁴⁵ Aulia and Djajaputra. *Op. Cit.* p. 10877

⁴⁶ Simorangkir, Franciska, and Marniati. *Op. Cit.* p. 68

⁴⁷ Kezia and Andryawan. *Op. Cit.* p. 75

⁴⁸ Al Aufia. *Op. Cit.* p. 144

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publicity. *The Postnuptial Agreement* must be administratively proven and must be published or officially recorded with the authorized government agency, namely the Population and Civil Registration Office (for non-Muslims) or the Office of Religious Affairs (for Muslims). Without this official registration, the property separation agreement is only applied to married couples and does not have binding legal force for third parties, including the state⁴⁹.

Often, to avoid the complexity of the administrative procedure of registration, some mixed marriage couples take shortcuts by using a *Nominee Agreement* or a name loan agreement. This practice generally involves using the identity of other Indonesian citizens (third parties) as if they were buyers, in order to hide the involvement of foreign parties behind the ownership of the land. Although it is often considered an instant solution to secure assets, a name loan agreement is essentially a form of pseudo-ownership that leads to legal smuggling, because it gets around the principle of nationality which is strictly regulated in Article 21 of the UUPA⁵⁰.

The fundamental difference between these two instruments must be underlined so that there is no confusion in solving the problem. If *the nominee agreement* creates a shadow ownership status that is legally flawed and prone to cancellation lawsuits at any time, then *the Postnuptial Agreement* is a legal path that restores the pure right of Indonesian citizens to act as subjects of the Property Rights holder without having to borrow someone else's name. Considering this, *the Postnuptial Agreement* purely functions as an instrument of legal *remedy*, while the *nominee agreement* is still classified as a violation of the law (*fraus legis*) which carries the fatal risk of expungement of land rights⁵¹.

The absence of a marriage agreement for the perpetrator of a mixed marriage does damage the subjective and objective requirements for the validity of an AJB Hak Pilik, turning it into a legally defective document and null and void. However, the defect can be saved completely. The preparation of *Postnuptial Agreements* accompanied by education to accelerate administrative recording in civil agencies is an absolute legal solution. *Postnuptial Agreement Registration* at the Population and Civil Registration Office or KUA is the life of the validity of the document. With the fulfillment of civil and state administrative rules at the same time, Indonesian citizens can safely execute the transfer of Property Rights in BPN, save

⁴⁹ A. Kareliana, BPN Interview, *Op. Cit.*

⁵⁰ Dwi Tiara Febrina and Amad Sudiro, 'Legal Certainty of Ownership of Land Rights After Nominee Arrangement Agreement is Considered Null and Void', *UNES Law Review*, 6.4 (2024), 9898–9903.

⁵¹ Linda Vianty Mala Takko I Nyoman Putu Budiarta and Anak Agung Sagu, 'NOMINEE AGREEMENT AND ITS LEGAL CONSEQUENCES ACCORDING TO THE INDONESIAN POSITIVE LEGAL SYSTEM', *Journal of Legal Preferences* |, 2.2 (2021), 365–70.

their land assets from falling to the State, and obtain essential legal certainty over the AJB that they have made.

Legal Certainty of Postnuptial Agreement According to Gustav Radbruch

As described in the previous discussion, the absence of a marriage agreement in a mixed marriage bond directly results in the unanimous mixing of property (*communio bonorum*). This condition has a fatal impact on the loss of the authority to act (*onbevoegdheid*) of Indonesian citizens (WNI) as the subject of the sole right holder. The juridical implication is that the AJB on land with the status of Property Rights signed by Indonesian citizens becomes legally defective and threatened *with null and void* because it violates the objective requirements in Article 1320 of the Civil Code (KUHPperdata) juncto the principle of nationality in Article 21 of the UUPA⁵². In order to unravel the impasse, the implementation of the *Postnuptial Agreement* after the Constitutional Court Decision Number 69/PUU-XIII/2015 functions as a curative *legal remedy* instrument to separate assets, restore the legal capacity of Indonesian citizens, and revalidate the validity of the transfer of rights.

Although present as a healing instrument, the validity of the *Postnuptial Agreement* gives rise to an essential discourse about its ability to present empirical legal certainty in the field. Examined from the perspective of Gustav Radbruch's theory of legal certainty (*Rechtssicherheit*), a positive law is required to ensure clarity, apply consistently, and provide predictability to protect society from arbitrary actions⁵³. The legal certainty of the *Postnuptial Agreement instrument* is not necessarily realized only through contractual consensus between husband and wife. Radbruch's conception requires that this instrument be tested through the fulfillment of formal legality, compliance with the principle of publicity, and rationality of applying the principle of retroactive application that does not harm the rights of third parties or the rule of public law⁵⁴. Based on the synchronization analysis of law and jurisprudence, the legal certainty of the *Postnuptial Agreement* in the framework of AJB recovery can be constructed into the following dimensions:

The Realization of Legal Certainty Through Authentic Notary Deeds and the Principle of Publicity

⁵² Ibrahim and Suharto. Op.Cit. p. 411

⁵³ Adiansyah and others. Op.Cit. p. 186

⁵⁴ Nurul Jinan and Daly Erni, 'BASIC VALIDITY APPLIES RETROACTIVELY IN POSTNUPTIAL AGREEMENTS IN RELATION TO PROTECTION FOR THIRD PARTIES', *Indonesian Notary*, 5.4 (2024), 122–42 <<https://doi.org/10.21143/notary.vol5.no4.122>>.

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Absolute legal certainty demands the formulation of clear and written norms to prevent doubts in the future. In an effort to cure subjective and objective defects in the AJB Hak Milik, legal acts in the form of separation of assets must be outlined in an official letter formed in front of a public official, namely the Notary⁵⁵. The legality of this authentic deed guarantees legal certainty through three dimensions of perfect proof, namely outward, formal, and material proof⁵⁶. Through this proof, the Notary provides certainty that the will to separate the assets is done consciously without coercion, and the objects of the separated property—including the AJB to be saved—have been verified for their validity based on the *prudential principle*⁵⁷.

Although the civil bond has been valid through a notary deed product, the civil validity is not sufficient to lock legal certainty publicly. In order for the principle of legal certainty to operate in bringing stability to the country's administrative system, *the Postnuptial Agreement* must absolutely meet the principle of publicity. This property separation agreement must be officially recorded with the authorized government agency, namely the Population and Civil Registration Office or the Office of Religious Affairs. In the absence of a state registration instrument, the agreement is only internally binding for married couples and loses its binding force on third parties. This is in line with the view of legal positivism that is intertwined with Radbruch's theory, where legal certainty refers to the imposition of rules that are recognized in reality by the administrative order⁵⁸. This recording is the epicenter of the legality of *the Postnuptial Agreement* so that it can be accommodated by the National Land Agency (BPN), which is subject to very strict formal legality principles.

The Collapse of Legal Certainty Due to Defect of Will and Legal Smuggling (Study of the Decision of the Denpasar District Court Number 1308/Pdt.G/2019/PN Dps)

The legal certainty sought through the *Postnuptial Agreement* proves to be very vulnerable to destruction if the instrument is engineered from the beginning of its formation. This argument is strongly confirmed in the consideration of the Denpasar District Court Decision Number 1308/Pdt.G/2019/PN Dps. In the decision, the panel of judges canceled a mixed marriage agreement because it conclusively contained a fatal juridical defect, both in terms of subjective and objective requirements according to Article 1320 of the Civil Code⁵⁹.

⁵⁵ Utomo and Wanda. *Op. Cit.* p. 482

⁵⁶ Zaharnika. *Op. Cit.* p. 63

⁵⁷ Utomo and Wanda. *Op. Cit.*

⁵⁸ Hotta. *Op. Cit.* p. 27

⁵⁹ Putu Davis Justin Thenata and Catherine Susantio, 'Legal Certainty of Land Ownership in Mixed Marriages After the Annulment of the Marriage Agreement', *Indonesian Printing Journal (JII)*, 5.1 (2026), 326–44.

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First, it was found that there was a defect in the will because the foreigner did not understand the substance of the deed in Indonesian, where the Notary actually neglected to carry out the obligation of his position to translate the clause transparently. Second, the deed contains a causal defect because it is substantially engineered to hand over full land ownership to the Indonesian citizen in order to avoid the prohibition of foreign ownership in Article 21 of the UUPA. The contradiction of the clauses in the deed directly destroys the parameters of clarity and predictability that are at the heart of Radbruch's legal certainty ⁶⁰.

Referring to the Radbruch Formula, a legal product that is in extreme conflict with the principles of justice and moral propriety is no longer entitled to be held as a valid law ⁶¹. The decision to annul the judge is a manifestation of substantive justice. However, from the dimension of land legal certainty, this cancellation actually gave birth to a new impasse. With the cancellation of the property separation agreement, the status of assets instantly blends back into the common property regime. The collapse of this separation resulted in the repurchased land mixed with elements of foreign ownership, violating the principle of nationality of the UUPA, and triggering sanctions for the relinquishment of rights within one year before finally falling to the State. This fact teaches a lesson that *the Postnuptial Agreement* will never produce legal certainty to save the validity of the AJB if it is designed from the beginning as a means of legal smuggling ⁶².

Critical Test of Legal Certainty on the Retroactive Nature (Study of the Determination of the South Jakarta District Court Number 269/Pdt.P/2021/PN. Jkt.Sel)

A crucial dynamic related to Gustav Radbruch's discourse of legal certainty is the emergence of normative contradictions due to the application of the retroactive principle in the formulation of *the Postnuptial Agreement*. This empirical reality can be analyzed through the South Jakarta District Court's Determination Number 269/Pdt.P/2021/PN. Jkt.Sel, where a married couple who got married in 1985 only submitted an application for determination in 2021 to ratify *the postnuptial agreement* with retroactive power, with the aim of separating a piece of land Property Rights obtained in the past⁶³.

Based on the Radbruch doctrine of legal certainty, which emphasizes the protection of the public from arbitrary actions and the legal necessity of maintaining stability, the ratification

⁶⁰ Thenata and Susantio. *Ibid*.

⁶¹ Anisyaniawati and others. *Op. Cit.* p. 8

⁶² Thenata and Susantio. *Op. Cit.* p. 332

⁶³ Jinan and Erni. *Op. Cit.* p. 124

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of such *retrospective Postnuptial Agreements* risks giving birth to the "illusion of legal certainty". The unilateral application of the retroactive principle tends to disrupt the national legal system because it breaks through two absolute limits:

a. Threats to the Certainty and Protection of Third Parties (Creditors)

Legal certainty is required to maintain harmony in the midst of social traffic, not solely to secure the internal assets of husband and wife. Before the *postnuptial agreement* is made and enforced backwards, all of the couple's assets are joint property which *de jure* becomes collateral or general guarantee for all engagements with third parties (creditors) as mandated by Article 1131 of the Civil Code. If the agreement is allowed to take effect retroactively, the property that was previously common collateral is engineered into separate property. The absence of a mandatory notification mechanism to third parties will open up a *space for moral hazard* to get around the execution of creditors. This practice directly violates the principle *of privity of contract* in Article 1340 of the Civil Code and reduces the provisions of Article 29 paragraph (4) of Law Number 1 of 1974. Law cannot be said to be definite and just if it allows room for the occurrence of hidden losses for other subjects of law in good faith⁶⁴.

b. Illegal Legitimacy of the Defect of the Object of Agrarian Law

Legal certainty expects a rational order and is free from manipulative constructions. The retroactive recovery of AJB for land assets purchased long before the issuance of the Constitutional Court Decision 69/2015 is a simplification step that endangers the supremacy of agrarian law. Property rights obtained when there is no property separation agreement have been mixed with foreign elements. Referring to the absoluteness of Article 21 paragraph (3) of the UUPA, the obligation to release the right to mix the property is limited to one year. Imposing the application of the retroactive principle to revive the legality of Property Rights whose validity period has expired in public law does not produce legal certainty at all. This step actually has the potential to produce civil documents whose causes are fictitious and flawed in state administrative law.

A Critical Synthesis of the Reactualization of the Legal Values of Gustav Radbruch

As a conclusion from the above analysis, a clear dialectic can be formulated: the validity of the AJB Hak Milik in the mixed marriage bond can be normatively saved through the instrument of recovery of *the Postnuptial Agreement*. However, by borrowing the optics of

⁶⁴ Jinan and Erni. *Ibid.*

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Gustav Radbruch' s Rechtssicherheit *analysis*, the *Postnuptial Agreement* only emits a real value of legal certainty if it meets a series of conditions that are accumulative.

First, the agreement must be formalized into the Notary Authentic Deed and recorded at the population agency (Disdukcapil/KUA) in order to fulfill the principle of administrative publicity. *Second*, the manufacturing process must be clean from defects of will and not based on bad faith to smuggle the ban on foreign ownership regulated in the UUPA. *Third*, retroactive applicability must be applied very strictly and restrictively; this instrument is strictly prohibited from being used as a tool to validate the object of Property Rights that have exceeded the limit of relinquishment of rights according to Article 21 paragraph (3) of the UUPA, and it is not allowed to amputate the rights of third parties (creditors) in the past. Only by careful monitoring of these parameters can the *Postnuptial Agreement* be avoided from mere formalities, and is able to transform into a true *legal remedy* instrument that brings substantive certainty, order, and justice to the national legal system⁶⁵.

⁶⁵ Jinan and Erni. *Ibid*.

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CONCLUSION

Based on the results of the study and discussion, it can be affirmed that:

1. The validity of the AJB of land in a mixed marriage not with a marriage agreement is basically not achieved and results in legal defects. This is due to the non-fulfillment of subjective requirements in the form of ability to act due to the mixing of assets with foreigners, as well as the non-fulfillment of objective requirements in the form of halal causa because it is contrary to the principle of nationality of the UUPA. As a result, the AJB has the potential to be null and void for the sake of the law and with the assumption that it never existed in the first place. In addition, there is a risk of losing land rights and falling to the state.
2. Postnuptial agreements in mixed marriages serve as a curative legal remedy to overcome the defects in the validity of the AJB. Through the separation of assets made in an authentic deed, the element of foreign ownership can be separated so as to restore the acting authority of Indonesian citizens as the sole subject. The recovery has an impact on the fulfillment of the subjective and objective requirements in Article 1320 of the data. However, its effectiveness requires official registration to have legal force against third parties.
3. The legal certainty of the Postnuptial Agreement according to Gustav Radbruch's perspective is conditional and not automatically fulfilled. Legal certainty is only realized if the agreement is made in the form of an authentic deed, meets the principle of publicity, and is free from defects of will and legal smuggling. In addition, the application of the retroactive principle must be carried out in a limited manner so as not to harm third parties and not violate the provisions of agrarian law. Without the fulfillment of these conditions, the Postnuptial Agreement is unable to provide real legal certainty.

Suggestions

1. Notaries/PPAT need to actively use the principle of prudence by verifying marital status and the existence of the marriage agreement before making an AJB. In addition, BPN also needs to strengthen administrative checks that are integrated with marital status, by ensuring that there is a legal separation of assets before processing the registration of land rights.
2. Notaries are not only responsible for making official letters, but also actively direct and ensure that clients immediately record to Disdukcapil/KUA to provide legal force to third parties (publicity principle).

3. People who will or have carried out mixed marriages need to proactively make a prenuptial or postnuptial agreement so that they are not constrained in buying and selling, especially land and/or buildings.

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