



The Legal Implications of Indonesian Positive Law On The Rights and Obligations of Husband and Wife in Mixed Marriage

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Abstract: Marriage is a legal event that establishes a physical and spiritual bond between husband and wife with the aim of creating a harmonious family. Law Number 1 of 1974 affirms marriage as a union founded upon the belief in the Almighty God, thereby emphasizing that it is not only a social institution but also a religious one. This provision further underscores that the rights and obligations of husband and wife are a direct consequence of marriage. The regulation of spousal rights and obligations is stipulated in Articles 30–36 of Law Number 1 of 1974 and reaffirmed in the Compilation of Islamic Law. In the context of mixed marriage, specific provisions are found in Articles 57–62, which govern matters of citizenship and marital validity. However, the findings of this study indicate that there are no fundamental differences between the rights and obligations of spouses in ordinary marriages and those in mixed marriages. Consequently, couples entering into mixed marriages remain subject to Indonesian positive law, which guarantees equality of rights and obligations for both parties. Thus, national law functions to reinforce the balance of roles between husband and wife within the household, while simultaneously ensuring legal certainty for couples with different nationalities.

Keywords: Legal Implications; Positive Law; Mixed Marriage; Rights; Obligations.

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1. Introduction

The discussion on the reform of Indonesia's civil law cannot be detached from the historical legacy of the colonial legal system implemented during the Dutch administration. During that period, the legal order in the Dutch East Indies was not unified but rather pluralistic, applying different sets of laws to distinct population groups based on ethnic and social classifications. The European population was governed by the *Burgerlijk Wetboek* (BW) or the Dutch Civil Code, while indigenous Indonesians (*Bumiputera*) continued to be subject to diverse customary laws rooted in local traditions and customs. Meanwhile, people of East Asian descent were categorized separately: the Chinese community was partly governed by the BW and partly by customary law, whereas other non-Chinese Asian foreigners generally adhered to the customary laws of their respective regions¹.

Such pluralism continued even after Indonesia gained independence, despite being incompatible with the ideals of a sovereign nation that upholds equality before the law. The remnants of colonial legal pluralism including the fragmented regulations on marriage were contrary to the aspiration of developing a unified national legal system founded on the principles of Pancasila and the 1945 Constitution.² Consequently, one of the primary post-independence objectives was to establish a national legal framework that reflects Indonesia's cultural identity while ensuring fairness and inclusivity for all citizens, regardless of ethnicity or social background.³

Within this historical trajectory, the promulgation of Law Number 1 of 1974 on Marriage marked a pivotal moment in the unification of Indonesia's family law. The law introduced a transformative paradigm that highlights gender equality and balance of rights and obligations between husband and wife. It replaced patriarchal dominance with a principle of mutual partnership, positioning both spouses as equal subjects of law. Entering into marriage thus signifies not only a moral and emotional

¹ Putu Devi Yustisia Utami et al., "Sistem Hukum Dalam Penyelesaian Perkara Perceraian Pada Perkawinan Campuran Di Indonesia," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 7, no. 1 (2022): 189, <https://doi.org/10.17977/um019v7i1p189-197>.

² Ahmad Ahmad and Novendri M. Nggilu, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution," *Jurnal Konstitusi* 16, no. 4 (2019): 4, <https://doi.org/10.31078/jk1646>; Ahmad Ahmad, "Analysis of Abuse of Authority by Government Apparatus in the State Administrative Legal System," *International Journal of Constitutional and Administrative Law* 1, no. 1 (2025): 1, <https://ijcal.profesionallegal.com/index.php/ijcal/article/view/4>; Ahmad Ahmad and Novendri M. Nggilu, *Constitutional Dialogue: Menguatkan Intraksi Menekan Dominasi (Konvergensi Terhadap Pengujian Norma Di Mahkamah Konstitusi)* (UII Press, 2023); Ahmad et al., *Hukum Konstitusi (Menyongsong Fajar Perubahan Konstitusi Indonesia Melalui Pelibatan Mahkamah Konstitusi)* (UII Press, 2020); Ahmad Ahmad et al., "Convergence of Constitutional Interpretation to the Test of Laws Through a Constitutional Dialogue Approach: Konvergensi Penafsiran Konstitusional Terhadap Pengujian Undang-Undang Melalui Pendekatan Constitutional Dialogue," *Jurnal Konstitusi* 20, no. 3 (2023): 3, <https://doi.org/10.31078/jk2038>; Yovita Arie Mangesti et al., "Term Limitation of Indonesian Parliamentarians Seen from Constitutionalism," *Revista de Investigações Constitucionais* 11 (November 2024): e263, <https://doi.org/10.5380/rinc.v11i2.91104>.

³ Kadek Januarsa Adi Sudharma and Ni Kadek MeiIy Adhyaksa, "Kedudukan Hukum Perjanjian Perkawinan Yang Dibuat Setelah Perkawinan Berlangsung Bagi Perkawinan Campuran Di Indonesia," *Jurnal Panorama Hukum* 8, no. 1 (2023), <https://doi.org/10.21067/jph.v8i1.8172>.

commitment but also a legal agreement to abide by national regulations governing marital relations, property rights, and responsibilities toward children born within the marriage.⁴

Furthermore, the dissolution of marriage is no longer a matter that either spouse can determine unilaterally. Both parties remain bound by state-sanctioned procedures and legal norms, reflecting that marriage is not merely a private contract but also a social institution imbued with public interest. It carries both legal and moral dimensions, encompassing the protection of family integrity, societal order, and the welfare of children.⁵

From the perspective of Indonesia's national legal philosophy, marriage is understood not merely as a physical union but as a spiritual partnership grounded in religious and ethical values. It embodies a shared vision between husband and wife, sustained by mutual faith and moral conviction. Religion, in this context, serves as a foundational guide—not only governing worship but also shaping spousal relations, child-rearing, and the broader purpose of family life.⁶

Nevertheless, in an era of globalization and increased cross-border interaction, mixed marriages between Indonesian citizens and foreign nationals have emerged as a complex legal phenomenon. While Law No. 1 of 1974 aspires to guarantee equality between spouses, its implementation in mixed marriages often reveals significant challenges. In practice, instances still occur where one party frequently Indonesian wives married to foreign husbands faces legal or administrative discrimination, particularly regarding property ownership, residence permits, citizenship of children, and recognition of marriage validity abroad. Moreover, such unions frequently give rise to conflicts of law between Indonesia's legal system and that of the foreign spouse's country, particularly concerning issues like inheritance, child custody, and divorce proceedings. These conflicts highlight the limits of Indonesia's marriage law in ensuring true equality within transnational contexts. Another contemporary issue is the dual citizenship status of children born from mixed marriages, which continues to generate uncertainty over their civil rights, inheritance, and familial identity despite recent legal reforms allowing limited dual nationality. Therefore, the issue of equality in mixed marriages deserves critical examination because it reflects the ongoing tension between the ideals of national legal unification and the practical realities of globalized family relations. It exposes the gaps in Indonesia's positive law regarding the fair treatment of both spouses and the protection of their offspring within cross-border legal frameworks

⁴ Mutiara. D. C. Oratmangun and Benediktus Akel A. Terwarat, "Akibat Hukum Putusnya Perkawinan Campuran Ditinjau Dari Hukum Positif Di Indonesia," *Jurnal Sosial Sains* 2, no. 3 (2022): 450–56, <https://doi.org/10.36418/sosains.v2i3.372>.

⁵ Siti Nurul Wahdatun Nafiah and Reno Kuncoro, "Perlindungan Hak Asasi Anak Dari Perkawinan Sedarah (Incest) Dalam Tata Hukum Indonesia," *MAQASIDI: Jurnal Syariah Dan Hukum*, ahead of print, 2023, <https://doi.org/10.47498/maqasidi.v3i2.2285>.

⁶ Afifah Tasya Miladya et al., "Perlindungan Hukum Bagi Korban Perkawinan Siri Sesama Jenis Yang Terjadi Karena Pemalsuan Identitas Salah Satu Pihak," *COMSERVA : Jurnal Penelitian Dan Pengabdian Masyarakat* 3, no. 06 (2023), <https://doi.org/10.59141/comserva.v3i06.991>.

In this regard, the reform of marriage law through Law Number 1 of 1974 represents not merely a codification effort but also a reflection of Indonesia's determination to establish a just and nationally oriented legal system. Modern Indonesian marriage law seeks to transcend colonial dualism by unifying all citizens under one coherent legal order grounded in equality and social justice. Nonetheless, the application of this law in the realm of mixed marriages continues to raise pressing legal questions. Hence, this study focuses on addressing the central research problem: "What are the implications of Indonesian positive law for ensuring equality in the rights and obligations of husband and wife within mixed marriages between Indonesian citizens and foreign nationals?"

2. Method

The research conducted in this study adopts a normative legal research design, which centers on the analysis of legal norms, doctrines, and statutory provisions to understand how the law should be applied to a specific issue. This approach is appropriate because the research seeks to examine the regulation of rights and obligations between husband and wife in mixed marriages within the framework of Indonesian positive law. The normative method provides a strong foundation for exploring the consistency and coherence of Indonesia's legal system in governing such relationships. However, this study does not limit itself to doctrinal analysis alone. Recognizing that mixed marriages also involve cultural, social, and transnational dimensions, this research integrates an interdisciplinary orientation, combining the study of legal norms with an understanding of the social realities in which the law operates.

Although the research remains primarily normative, it also employs contextual and descriptive approaches to ensure that the discussion reflects actual legal and societal conditions. The contextual approach allows legal norms to be analyzed in light of concrete issues arising from practice, such as questions of land ownership by foreign spouses, the citizenship status of children born in mixed marriages, and the challenges of divorce across jurisdictions. Through this combination, the study not only interprets legal texts but also evaluates how these norms function in the lived experiences of individuals, thereby offering a more comprehensive understanding of law in action.

In developing its analytical framework, the study utilizes qualitative and prescriptive methods. The qualitative aspect focuses on interpreting laws, court decisions, and legal commentaries, while the prescriptive component aims to formulate normative arguments and propose legal improvements where necessary. This method ensures that the research does not merely describe legal provisions but also evaluates their adequacy in achieving the principles of justice and equality within the marital relationship. By combining interpretation with critical evaluation, the analysis seeks to contribute to both academic understanding and policy development in the field of family law.

While mixed marriages inherently involve elements of private international law, this study intentionally refrains from adopting a conflict of laws approach as its primary framework. The decision stems from the main objective of the research, which is to analyze the implications of Indonesian positive law – particularly Law Number 1 of 1974 on Marriage – on the equality of rights and obligations between spouses. Private international law serves only as a supporting analytical tool to contextualize cases that involve cross-border legal issues, such as dual nationality or jurisdictional conflicts, but it does not dominate the legal reasoning in this research. This methodological choice ensures that the focus remains on Indonesia’s internal legal policy while still acknowledging the relevance of transnational legal contexts.

The data used in this study are primarily library based and consist of both primary and secondary legal materials. Primary legal materials include statutory regulations such as the 1945 Constitution, Law Number 1 of 1974 on Marriage, Law Number 12 of 2006 on Citizenship, and other relevant legal instruments. Secondary materials comprise academic literature, journal articles, expert opinions, and previous research that discusses mixed marriages and family law. Additionally, tertiary materials such as legal dictionaries, encyclopedias, and online legal databases are used to support the interpretation of legal terminology and principles. All collected materials are analyzed qualitatively to generate a prescriptive understanding of the legal framework, with the ultimate aim of identifying the strengths and weaknesses of current regulations governing mixed marriages under Indonesian law.

3. Analysis And Discussion

3.1. Definition of Marriage

Article 1 of Law Number 1 of 1974 explicitly defines marriage as a physical and spiritual bond between a man and a woman as husband and wife, with the aim of forming a happy and prosperous family founded upon the belief in the Almighty God. This formulation shows that marriage is not merely understood as a formal relationship between two individuals but also carries a spiritual meaning that emphasizes religious and moral values. Marriage is viewed as a union that brings together two persons within a household expected to foster balance, harmony, and peace in life. By nature, human beings as social creatures have a tendency to live in pairs. A man and a woman naturally have an attraction to complement one another, whether biologically, emotionally, or socially. This natural attraction gives rise to the desire to live together in a legitimate bond, which is not only socially recognized but also protected by law. Through marriage, the relationship between a man and a woman obtains legal legitimacy and moral responsibility to establish a household in an orderly manner in accordance with legal, customary, and religious norms.⁷

The meaning of the term physical and spiritual bond in marriage is that a marriage cannot be based on one aspect alone but must integrate both in their entirety. The

⁷ Muhammad Amin, “Perkawinan Campuran Dalam Kajian Perkembangan Hukum: Antara Perkawinan Beda Agama Dan Perkawinan Beda Kewarganegaraan Di Indonesia,” *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 2 (2017), <https://doi.org/10.14421/ahwal.2016.09206>.

physical bond refers to the tangible aspect that can be visibly witnessed, namely the formal relationship binding a man and a woman to live together as husband and wife. This bond may also be referred to as a formal relationship since its existence can be legally proven, both for the couple themselves and for the wider society. Through the physical bond, marriage gains social recognition and legal legitimacy, ensuring that the relationship is valid under the prevailing law. Meanwhile, the spiritual bond carries a different dimension, namely a non-formal connection that cannot be directly observed. This bond represents the union of souls arising from the will, sincerity, and deep commitment between a man and a woman to build a shared life as husband and wife. The spiritual bond emphasizes emotional, psychological, and spiritual aspects, which serve as a crucial foundation for the creation of a harmonious household. With the presence of a spiritual bond, marriage is not merely a legal contract but also carries moral and religious significance that strengthens the physical bond itself.⁸

The spiritual bond in marriage begins with the consent of both prospective spouses and is later reflected in the harmonious life of husband and wife. The union of physical and spiritual bonds serves as the foundation for establishing a happy and enduring family. This is affirmed in the definition of marriage, which states that the purpose of forming a prosperous family must be grounded in the belief in the Almighty God. Accordingly, Article 2 paragraph (1) of Law Number 1 of 1974 stipulates that a marriage is valid only if conducted in accordance with the religion and belief of the parties concerned. This provision demonstrates that marriage in Indonesia is closely connected with religious values and spirituality, so that in addition to its physical element, it also contains a spiritual dimension essential to household harmony.⁹

However, it is important to note that Law Number 1 of 1974 does not classify differences in religion as a basis for mixed marriage. This legal interpretation often raises a normative tension between the principle of equality between husband and wife as set forth in Article 31 of the same law and the prohibition of interfaith marriage as regulated under Islamic Law Compilation (KHI) Articles 40 and 44. The recognition of equality before the law ideally implies that both husband and wife possess equal legal standing regardless of religious background, yet religious norms particularly within Islamic law impose doctrinal limitations that restrict marriage between individuals of different faiths.

This tension reveals an unresolved dichotomy in Indonesia's marriage regulation framework: on one hand, the law upholds equality and mutual respect as core marital values, while on the other, it maintains religious conformity as a fundamental requirement for marriage validity. Such a contradiction underscores the complex relationship between national legal principles and religious doctrines, demonstrating that the regulation of marriage in Indonesia operates within a pluralistic legal

⁸ Siti Yuli Yanna, "Perlindungan Hukum Perolehan Hak Milik Atas Tanah Bagi Warga Negara Indonesia Yang Terikat Perkawinan Campuran," *Jurnal Multidisiplin Indonesia* 2, no. 8 (2023), <https://doi.org/10.58344/jmi.v2i8.451>.

⁹ Putu Devi Yustisia Utami, "Implikasi Yuridis Perkawinan Campuran Terhadap Pewarisan Tanah Bagi Anak," *Kertha Wicaksana* 15, no. 1 (2021), <https://doi.org/10.22225/kw.15.1.1843.80-89>.

environment that attempts to balance individual rights, religious values, and state interests.

3.2. Principles of Marriage and the Purpose of Marriage

Marriage, in essence, is a perpetual physical and spiritual bond between a man and a woman as husband and wife. This bond is not merely understood as a formal relationship visible from the outside, but also involves emotional and spiritual dimensions founded upon love, mutual respect, and loyalty between both parties. With the presence of love and reciprocal respect, marriage becomes a means for the formation of a harmonious and prosperous family capable of fulfilling its social functions within society. Law Number 1 of 1974 concerning Marriage explicitly stipulates that the validity of a marriage requires the consent of both prospective spouses. Such consent must not be treated as a mere formality but must genuinely reflect the free will of each individual to enter into the marital bond. This provision demonstrates that the state safeguards every person's fundamental right to choose their life partner and rejects all forms of coercion in the institution of marriage.¹⁰

The elucidation of Law Number 1 of 1974 affirms several fundamental principles of marriage. First, the validity of marriage is determined by the parties' respective religious laws and must be registered in accordance with statutory regulations. Second, the purpose of marriage is to establish a happy and lasting family, which requires husband and wife to understand one another, provide mutual support, and develop their personalities for the sake of shared well-being. Third, the law upholds the principle of monogamy, although it allows polygamy under strict conditions and with the court's approval. Fourth, prospective spouses must be physically and psychologically mature, with a minimum age of 19 years for men and 16 years for women. Fifth, divorce is deliberately made difficult so that it does not occur arbitrarily, and it may only be carried out on legitimate grounds before a court. Sixth, the positions of husband and wife are regarded as equal, both within household life and in social interactions.¹¹

3.3. Definition of Mixed Marriage

Law Number 1 of 1974 concerning Marriage also specifically regulates mixed marriages, as stipulated in Articles 57 to 62. The term *mixed marriage* in this law is not identical to the definition previously recognized under the *Regeling op de Gemengde Huwelijken* (GHR) Stb. 1898 No. 158. Article 57 of Law Number 1 of 1974 states that a mixed marriage is a marriage between an Indonesian citizen and a foreign national, or in other words, a marriage conducted between two parties subject to different legal systems due to differences in nationality.¹²

¹⁰ Yoga Nasa Prastyawan, "Penyelesaian Sengketa Hak Milik Atas Tanah Dalam Perkawinan Campuran Di Indonesia," *Media of Law and Sharia* 2, no. 4 (2021), <https://doi.org/10.18196/mls.v2i4.12813>.

¹¹ Vety Regina Pramesty and H.R. Adiando Mardijono, "Pemenuhan Prosedur Perkawinan Beda Agama Di Luar Negeri Oleh Warga Negara Indonesia," *Conference on Innovation and Application of Science and Technology (CIASTECH)* 6, no. 1 (2023): 275, <https://doi.org/10.31328/ciastech.v6i1.5270>.

¹² Muhammad Tigas Pradoto, "Aspek Yuridis Pembagian Harta Bersama Dalam Perkawinan (Tinjauan Hukum Islam Dan Hukum Perdata)," *Jurnal Jurisprudence* 4, no. 2 (2017): 85-91, <https://doi.org/10.23917/jurisprudence.v4i2.4208>.

In contrast, Article 1 of the GHR defines a mixed marriage as a marriage entered into by individuals subject to different legal systems in Indonesia, without limiting it to the aspect of nationality. This means that the definition of mixed marriage under the GHR is broader than that provided by Law Number 1 of 1974. The difference is clear: the modern marriage law focuses solely on differences in nationality between the parties to a marriage, whereas the GHR also took into account differences in other legal backgrounds, such as religion, social class, or ethnicity. With this restriction, in practice, a marriage between two individuals of different religions or social groups, but both holding Indonesian citizenship, is not categorized as a mixed marriage under Law Number 1 of 1974. Conversely, under the GHR, such a marriage would still fall within the category of a mixed marriage. This demonstrates that the concept of mixed marriage under the current law is narrower than that regulated under colonial law.¹³

A concrete example of a mixed marriage according to Law Number 1 of 1974 can be found in two main situations: first, when an Indonesian man marries a foreign woman, and second, when an Indonesian woman marries a foreign man. These scenarios underscore that a mixed marriage is recognized only when there is a difference in nationality between husband and wife. Thus, differences in religion or customs alone are insufficient to classify a marriage as a mixed marriage under this law.¹⁴

3.4. Rights and Obligations of Husband and Wife in Marriage According to the Provisions of Positive Law in Indonesia

The term *recht* in Dutch, *Recht* in German, and *droit* in French carries two meanings, namely law and right. Therefore, in those legal systems, a distinction is made between *objectief recht* (objective law), referring to a set of rules that apply generally, and *subjectief recht* (subjective law), meaning the rights arising from legal rules in relation to a specific individual. Meanwhile, in English as well as in Indonesian, the terms *law* and *right* are already clearly differentiated. Hence, there is no further need for the terms objective law and subjective law.¹⁵

Several definitions of rights are as follows:

1. Rudolf von Ihering argues that a right is an interest that receives legal protection (Apeldoorn, 2001: 46).
2. Bernhard Windscheid states that a right is authority established by the legal order (Apeldoorn, 2001: 46).
3. According to L.J. van Apeldoorn (2001: 46), the distinction as to whether a right is an interest or authority is not significant. Within an interest safeguarded by

¹³ Tantri Naratama and Ayu Trisna Dewi, "Perceraian Pada Perkawinan Campuran Di Indonesia Dalam Perspektif Hukum Perdata Internasional," *Warta Dharmawangsa* 17, no. 3 (2023): 1283-94, <https://doi.org/10.46576/wdw.v17i3.3582>.

¹⁴ Erni Djun'astuti et al., "Studi Komparatif Larangan Perkawinan Antara Hukum Adat, Hukum Perdata Dan Hukum Islam," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 4, no. 2 (2022): 119-28, <https://doi.org/10.37680/almanhaj.v4i2.1574>.

¹⁵ Bella Fitria Ariyanti, "Perkawinan Campuran WNA Dan WNI Tanpa Perjanjian Nikah Mengenai Hak Atas Penjualan Tanah," *Jurnal Hukum Dan HAM Wara Sains* 2, no. 04 (2023): 313-19, <https://doi.org/10.58812/jhhws.v2i04.299>.

law lies an element of authority, since protection reflects power; while within authority granted by law lies an element of interest, as such authority is intended to protect an interest. Thus, for Apeldoorn, a right constitutes both an interest and authority.

Meanwhile, a legal obligation (*rechtsplicht*) constitutes the counterpart of another party's right. In other words, when a person possesses a right, others are obliged to respect or fulfill it. In legal studies, rights are classified into several categories. L.J. van Apeldoorn distinguishes rights into two, one of which is the absolute right (*absolut recht*). This type of right grants general authority to act, and is therefore also referred to as *onpersoonlijk recht*, since it applies to every individual without exception, not merely to specific parties. Consequently, all individuals are bound by the duty not to infringe upon such rights.¹⁶

Absolute rights encompass several aspects. First, public rights, namely rights derived from public law in the objective sense. These rights are enshrined in the Constitution, including fundamental human rights. In the 1945 Constitution, provisions on human rights are contained in Articles 27, 28, and Articles 28A through 28I. For example, Article 28A stipulates that every person has the right to live and to defend his or her life.¹⁷

Second, civil rights, which arise from civil law in the objective sense. These include various categories, one of which is personality rights (*persoonlijkheidsrechten*), namely an individual's rights over themselves. An example is the right to claim compensation if a family member dies due to the intentional act or negligence of another. This is regulated in Article 1370 of the Civil Code, which grants the spouse, children, or parents of the victim the right to claim damages, the amount of which is adjusted to the socio-economic conditions of both parties.¹⁸

In addition, the law also grants the right to claim compensation for injuries or physical disabilities. Under Article 1371 of the Civil Code, any party who causes injury or disability, whether intentionally or negligently, is obliged to cover medical expenses as well as compensate for losses arising from the condition.¹⁹

Another category of rights includes family rights (*familierechten*) derived from kinship relations. For example, Article 47 paragraph (2) of Law No. 1 of 1974 on Marriage stipulates that parents have the authority to represent their children under the age of 18 in legal matters. In the sphere of property rights, certain rights carry economic value. Among these are *rights in rem* (*zakelijke rechten*), which provide direct control

¹⁶ Putu Devi Yustisia Utami, "Implikasi Yuridis Perkawinan Campuran Terhadap Pewarisan Tanah Bagi Anak," *Kertha Wicaksana* 15, no. 1 (2021), <https://doi.org/10.22225/kw.15.1.1843.80-89>.

¹⁷ Luh Suryatni, "Undang – Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia Dalam Melindungi Hak Perempuan Dan Anak (Perspektif: Perkawinan Antara Warga Negara Indonesia Dan Warga Negara Asing)," *Jurnal Ilmiah Hukum Dirgantara* 10, no. 2 (2020), <https://doi.org/10.35968/jh.v10i2.461>.

¹⁸ Anak Agung Sri Sanjiwani and Tience Debora Valentina, "Kepuasan Perkawinan Pasangan Pada Gelahang," *Jurnal Psikologi Udayana* 4, no. 1 (2017), <https://doi.org/10.24843/JPU.2017.v04.i01.p19>.

¹⁹ Lisa Wage Nurdiyanawati and Siti Hamidah, "Batasan Perjanjian Perkawinan Yang Tidak Melanggar Hukum, Agama, Dan Kesusilaan," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 1 (2019), <https://doi.org/10.17977/um019v4i1p101-108>.

over an object, such as land ownership. There are also rights over intangible property, namely rights that arise from human creativity or ideas, such as copyright.²⁰

Furthermore, there are relative rights, which entitle a person to demand another party to perform a specific act. These rights are also referred to as *persoonlijk rechten* because they apply only to certain individuals, often in the form of claims or debts. For instance, the right to demand repayment of a loan falls within this category.²¹

Within the context of marriage, the rights and obligations of husband and wife emerge as a legal consequence of the marital bond. These are regulated in Articles 30 to 36 of Law No. 1 of 1974. Article 30 emphasizes that husband and wife bear a noble duty to build a household as the cornerstone of society. Hence, marriage creates reciprocal rights and obligations: the husband holds specific rights and responsibilities, and the wife equally possesses balanced rights and duties.²²

The core obligations of spouses include loyalty, mutual assistance, and cooperation to sustain a harmonious household. To achieve such a family life, it is essential to understand the limits of each party's rights and obligations. Rights must always be exercised in balance with the duties attached to them, and misuse must be avoided. In essence, every right inherently carries a proportional obligation.²³

Article 31 of the Marriage Law affirms that the rights and status of wives are equal to those of husbands, both in domestic life and in social relations. Each party also has the right to engage in legal acts. Nevertheless, the law designates the husband as the head of the family and the wife as the homemaker. This formulation, however, reveals a normative inconsistency between the principle of equality stipulated in paragraph (1) and the traditional division of roles in paragraph (3). While the law seeks to promote gender equality within marriage, it simultaneously reinforces patriarchal norms by assigning leadership exclusively to the husband. This contradiction indicates a structural weakness in the implementation of equality before the law, as it preserves traditional gender hierarchies within the household rather than eliminating them.²⁴

In this regard, the provision of Article 31(3) has often been criticized for undermining the egalitarian spirit intended by the 1974 Marriage Law itself. Although equality between spouses is recognized in principle, the continued reference to the husband as "head of the family" and the wife as "homemaker" reflects the persistence of socio-cultural constructs that constrain women's autonomy in marital and social relations. This shows that the legal framework, while progressive in its formulation, remains

²⁰ Khansa Mufida, "Tinjauan Terhadap Penetapan Pengadilan Negeri Sampit No.14PDT.P/2020/Pn.Spt Mengenai Pengesahan Perkawinan Yang Dilaksanakan Secara Adat Hindu Kaharingan," *Jurnal Sosial Dan Sains* 3, no. 9 (2023), <https://doi.org/10.59188/jurnalsosains.v3i9.1008>.

²¹ Rahmat Budiyanto Hiola et al., "Implementasi Uu No 16 Tahun 2019 Tentang Pembatalan Perkawinan Akibat Salah Sangka Yang Terdapat Unsur Penipuan Mengenai Diri Pasangan," *Journal of Comprehensive Science (JCS)* 2, no. 5 (2023), <https://doi.org/10.59188/jcs.v2i5.335>.

²² Rahmat Fauzi, "Perkawinan Campuran Dan Dampak Terhadap Kewarganegaraan Dan Status Anak Menurut Undang-Undang Di Indonesia," *Soumatra Law Review* 1, no. 1 (2018): 153, <https://doi.org/10.22216/soumlaw.v1i1.3395>.

²³ Liky Faisal, "Pencatatan Perkawinan Dalam Konsep Negara Hukum Pancasila," *Asas* 11, no. 01 (2019), <https://doi.org/10.24042/asas.v11i01.4645>.

²⁴ Alfian Andri Wijaya, "Perlindungan Hukum Terhadap Pelaku Perkawinan Campuran Atas Status Hak Atas Tanahnya Di Indonesia," *Jurnal Rechtens* 11, no. 1 (2022), <https://doi.org/10.56013/rechtens.v11i1.1156>.

partially bound by patriarchal assumptions embedded in Indonesia's socio-legal context.

The use of marital property must be based on mutual consent between husband and wife, with equal standing both in the household and in society. The husband is positioned as the head of the family with duties to lead, protect, and provide, while the wife as homemaker is responsible for managing daily needs and respecting the husband's leadership.²⁵

Article 34 of Law No. 1 of 1974 further provides: (1) The husband is obliged to protect and support the household in accordance with his capacity; (2) The wife is obliged to manage the household properly; (3) If either party neglects their duties, the other may bring the matter before the court. Thus, the maintenance and housing provided by the husband must be adjusted to his economic condition.²⁶

Under Article 32 of the same law, spouses are required to establish a permanent residence, the determination of which must be based on mutual agreement. If the available residence is deemed uninhabitable, the wife is entitled to determine or propose a more suitable dwelling to ensure the family's comfort. As the head of the family, the husband bears the primary duty of protecting his wife, which includes responsibility for her physical and personal safety. Such protection extends beyond physical security to encompass guidance and leadership so that the wife does not deviate from the purposes of marriage and maintains her dignity in society. Accordingly, the husband's obligations go beyond providing material support; they also include creating a harmonious, safe, and affectionate household as the embodiment of the objectives of marriage.²⁷

Furthermore, Article 34 paragraph (2) of the Marriage Law stipulates that the wife is obliged to manage the household to the best of her ability. This includes planning daily needs, managing the household economy, and educating children to grow into a generation useful for the nation. A wise wife is not only involved in domestic affairs but also participates in maintaining family harmony. If the husband neglects his obligations, the court may enforce the fulfillment of the wife's rights. Conversely, if the wife leaves the home without a legitimate reason, she forfeits her right to receive financial support from her husband. The Law explicitly provides that if either party neglects their obligations, both the husband and the wife are entitled to file a lawsuit in court as a means of protecting their respective rights within the marriage.²⁸

²⁵ Herni Widanarti et al., "Kendala Pelaksanaan Jual Beli Properti Bagi Pasangan Perkawinan Campuran," *Masalah-Masalah Hukum* 51, no. 2 (2022), <https://doi.org/10.14710/mmh.51.2.2022.153-161>.

²⁶ Bing Waluyo, "Sahnya Perkawinan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Jurnal Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan* 2, no. 1 (2020): 193-99, <https://doi.org/10.23887/jmppkn.v2i1.135>.

²⁷ Vinsensius Florianus Dalu Sogen, "Persoalan Perkawinan Terdahulu Dan Proses Pembatalan Dalam Gereja Katolik Berdasarkan Kitab Hukum Kanonik," *In Theos : Jurnal Pendidikan Dan Theologi* 4, no. 3 (2024), <https://doi.org/10.56393/intheos.v4i3.2004>.

²⁸ Elfirda Ade Putri, "Keabsahan Perkawinan Berdasarkan Perspektif Hukum Positif Di Indonesia," *Krtha Bhayangkara* 15, no. 1 (2021), <https://doi.org/10.31599/krtha.v15i1.541>.

3.5. The Implications of Indonesian Positive Law on the Rights and Obligations of Husband and Wife in Mixed Marriages

The enactment of Law Number 1 of 1974 concerning Marriage marked a fundamental transformation in Indonesia's legal framework governing mixed marriages. Prior to this law, the issue was regulated through three colonial-era instruments: the Civil Code (*Burgerlijk Wetboek*), the Indonesian Christian Marriage Ordinance (HOCl) Staatsblad 1933 Number 74, and the Mixed Marriage Regulation (*Regeling op de Gemengde Huwelijken*) Staatsblad 1898 Number 158. Following the adoption of the 1974 Marriage Law, these earlier provisions were repealed in accordance with the legal maxim that a newer law overrides older conflicting regulations. The Marriage Law explicitly defines mixed marriage in Article 57 as a union between an Indonesian citizen and a foreign national who are subject to different legal systems due to differences in nationality. This definition places emphasis on nationality as the main determinant, rather than religion or ethnicity, thereby narrowing the scope of mixed marriages under Indonesian law.²⁹

Subsequent articles, particularly Articles 58 through 62, outline the legal consequences of such marriages, including potential changes in nationality, the determination of applicable law, and procedural requirements such as registration and certification. These provisions aim to ensure legal certainty and administrative order in cross-national unions. However, although the Marriage Law appears to provide a uniform framework, the assumption that there is "no fundamental difference" between mixed and ordinary marriages is overly simplistic. In practice, mixed couples face tangible legal and administrative obstacles. For example, foreign spouses are prohibited from owning land under the Basic Agrarian Law; children born from mixed marriages may risk losing Indonesian citizenship pursuant to Law Number 12 of 2006; and additional administrative procedures, such as obtaining foreign authority certificates, often complicate the process. These challenges demonstrate that mixed marriages, while legally recognized, remain subject to structural limitations within Indonesia's dual legal system.³⁰

From the perspective of Islamic law, mixed marriage – particularly interfaith unions – is considered invalid. The Qur'an, in Surah Al-Baqarah verse 221, prohibits marriage between Muslims and non-Muslims, a position reinforced by the Indonesian Ulema Council's (MUI) 1986 Fatwa and the Compilation of Islamic Law (Presidential Instruction No. 1 of 1991), especially Articles 40 and 44. The Marriage Law aligns with this stance through Article 2 paragraph (1), which declares that a marriage is valid only if conducted according to the laws of each party's religion and belief. Consequently, interfaith marriages are effectively excluded from legal recognition. Nevertheless, the Marriage Law does not critically address the normative tension between the principle of equality between husband and wife, as guaranteed in Article 31, and the religious prohibition of interfaith marriage under Islamic law. This

²⁹ Puspa Fitriyah, "PERLINDUNGAN HUKUM HARTA BAWAAN DEBITUR PASCA PERCERAIAN," *Jurnal Cakrawala Ilmiah* 1, no. 3 (2021): 279–94, <https://doi.org/10.53625/jcijurnalcakrawalaindonesia.v1i3.609>.

³⁰ Mambaul Ngadimah, "Formulasi Perjanjian Perkawinan Pasca Putusan MK No. 69/PUU-XIII/2015," *Kodifikasi* 11, no. 1 (2017): 94, <https://doi.org/10.21154/kodifikasi.v11i1.1139>.

unresolved contradiction reflects a deeper ambiguity in Indonesia's approach to harmonizing constitutional rights with religious norms.³¹

the analysis of mixed marriages should not be confined to national legal frameworks alone, as it also intersects with international human rights law. The United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Indonesia is a state party, obligates the state to guarantee women's rights in cross-national marriages, including equal treatment, nationality rights, and protection against discrimination. The Marriage Law, however, does not explicitly incorporate these international obligations, leaving room for gender-based legal vulnerability, particularly for Indonesian women married to foreign nationals. This omission underscores the need for harmonization between domestic legislation and international commitments to ensure equitable legal protection for all citizens regardless of marital context.³²

Finally, the existing legal framework lacks a clear mechanism for legal protection in cases where one party, especially a foreign spouse, fails to fulfill their marital obligations for instance, by abandoning the family or neglecting financial responsibilities. Although general provisions on spousal duties are contained in Articles 30–36 of Law Number 1 of 1974, their enforcement in transnational contexts remains limited due to jurisdictional constraints and the absence of bilateral legal cooperation mechanisms. Therefore, while the Marriage Law provides a structural foundation for recognizing mixed marriages, it still falls short in addressing practical and normative issues related to nationality, equality, and cross-border legal accountability. Strengthening the legal protection of mixed couples thus requires an integrative approach that combines national legislation, religious norms, and international legal instruments.³³

4. Conclusion

Based on the provisions of Indonesian positive law, the rights and obligations of husband and wife constitute juridical consequences arising from the marital bond. The regulation regarding this matter is explicitly contained in Law Number 1 of 1974, particularly in Articles 30 to 36, which stipulate the status, duties, and roles of each party in establishing a household.

Meanwhile, in the context of mixed marriages, no specific regulations are found that distinguish the rights and obligations of husband and wife from those in ordinary marriages. Both Islamic marriage law, Law Number 1 of 1974, and the Compilation of Islamic Law (Presidential Instruction Number 1 of 1991) treat the rights and obligations in mixed marriages the same as in general marriages. In the Compilation of Islamic Law, this is affirmed in Chapter XII Articles 77 to 84, which indicate that

³¹ Farida Nurun Nazah and Husnia Husnia, "Kepastian Hukum Itsbat Nikah Dalam Hukum Perkawinan," *Jurnal Hukum Replik* 6, no. 2 (2018), <https://doi.org/10.31000/jhr.v6i2.1525>.

³² Aisyah Ayu Musyafah, "Hukum Perkawinan Islam Dalam Tata Hukum Di Indonesia," *Law, Development and Justice Review* 3, no. 2 (2020): 275–95, <https://doi.org/10.14710/ldjr.v3i2.10073>.

³³ Yohanes Servatius Lon, "Tantangan Perceraian Sipil Bagi Perkawinan Katolik: Antara Hukum Ilahi Dan Hukum Manusia," *Jurnal Selat* 7, no. 2 (2020), <https://doi.org/10.31629/selat.v7i2.1519>.

there is no fundamental distinction regarding the rights and obligations of husband and wife, even though there is a difference in nationality status within the marriage.

Thus, the implications of Indonesian positive law demonstrate that the rights and obligations of husband and wife in mixed marriages remain subject to the general provisions in force, both under the Marriage Law and the Compilation of Islamic Law. In other words, the existence of a mixed marriage does not eliminate or reduce the rights and obligations of each party but remains binding as stipulated in national legal norms.

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