

Perjanjian perkawinan dalam perkawinan campuran yang dilangsungkan di luar negeri dan tidak didaftarkan di Indonesia: analisis kasus putusan Mahkamah Agung No: 526/PDT/G/2012.PN.Jkt.Sel = Prenuptial agreement in mixed marriage which held abroad and not registered in Indonesia case (analysis of supreme court decision No: 526/PDT/G/2012.PN.Jkt.Sel

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Abstrak

[Perkawinan campuran sebagaimana diatur dalam Undang-Undang Nomor 1 Tahun 1974 adalah perkawinan antara dua orang yang di Indonesia tunduk pada hukum yang berlainan, karena perbedaan kewarganegaraan dan salah satu pihak berkewarganegaraan Indonesia. Perkawinan campuran dapat dilaksanakan di Indonesia maupun di luar Indonesia. Dalam hal perkawinan campuran dilaksanakan di luar Indonesia adalah sah bilamana dilakukan menurut hukum yang berlaku di Negara di mana perkawinan itu dilangsungkan dan bagi Warga Negara Indonesia tidak melanggar ketentuan-ketentuan Undang-Undang Perkawinan. Dalam jangka waktu 1 (satu) tahun sejak kembalinya mereka ke Indonesia, bukti perkawinan mereka harus didaftarkan di Kantor Pencatatan perkawinan tempat tinggal mereka. Pasangan perkawinan campuran yang hendak melangsungkan perkawinan campuran di luar negeri juga dapat membuat perjanjian perkawinan. Perjanjian perkawinan adalah perjanjian tertulis yang dibuat oleh calon suami isteri sebelum atau pada saat perkawinan dilangsungkan untuk mengatur akibat-akibat perkawinan terhadap harta kekayaan mereka. Pentingnya pembuatan perjanjian perkawinan bagi pasangan yang hendak melangsungkan perkawinan campuran adalah terkait dengan perlindungan hukum terhadap hak milik atas tanah di Indonesia yang hanya dapat dimiliki oleh Warga Negara Indonesia, sebagaimana diatur dalam Undang-Undang Pokok Agraria. Penulisan tesis ini menggunakan metode yuridis normatif, yaitu dilakukan dengan menelusuri bahan hukum sekunder berupa norma-norma dari peraturan perundang-undangan yang berkaitan dengan permasalahan. Prosedur pembuatan perjanjian perkawinan dalam perkawinan campuran yang dilangsungkan di luar negeri, tetap mengacu pada ketentuan Undang-Undang Perkawinan yaitu dibuat sebelum atau pada saat perkawinan dilangsungkan dan berdasarkan pada hukum yang berlaku di Indonesia. Dalam hal setelah perkawinan dilangsungkan di luar negeri dan mereka kembali ke Indonesia namun tidak mendaftarkan perkawinannya tersebut dan kemudian mereka membuat perjanjian perkawinan, maka perjanjian perkawinan tersebut menjadi batal demi hukum karena melanggar ketentuan Undang-undang yaitu dibuat setelah perkawinan berlangsung.

.....Mixed marriage as stipulated in Law No. 1 of 1974 is a marriage between two people in Indonesia which subject to different laws, because of differences in nationality and one party is having Indonesian nationality. Mixed marriage can be implemented and held in Indonesia and outside Indonesia. In the case of mixed marriages conducted outside Indonesia is legal if carried out under the applicable law in the State where the marriage was celebrated and for Indonesian citizens do not violate the provisions of the Marriage Act. Within a period of one (1) year since upon their return to Indonesia, evidence of their marriage should be registered in the marriage registration office where they live. Mixed marriage couples who want to hold the marriage abroad can also make a prenuptial agreement. Prenuptial agreement is a written agreement

made by the prospective spouses before or at the day of the marriage took place to regulate the effects of marriage on their property. The importance of making prenuptial agreements for couples who want to have a mixed marriage is associated with legal protection of property rights over land in Indonesia that can only be owned by an Indonesian citizen, as stipulated in the Basic Agrarian Law (UUPA). This thesis using normative juridical method, which is carried out by tracing the secondary law in the form of norms of the legislation relating to the cases. The procedure of making the prenuptial agreement in mixed marriages held abroad, still have to refer to the provisions of the Marriage Act is made before or at the day of the marriage took place and according to the laws in force in Indonesia. In the event that after the marriage held abroad and they return to Indonesia but did not register the marriage and then they make a prenuptial agreement, then the prenuptial agreement becomes null and void because it violated the provisions of the Act that is made after the marriage took place. Mixed marriage as stipulated in Law No. 1 of 1974 is a marriage between two people in Indonesia which subject to different laws, because of differences in nationality and one party is having Indonesian nationality. Mixed marriage can be implemented and held in Indonesia and outside Indonesia. In the case of mixed marriages conducted outside Indonesia is legal if carried out under the applicable law in the State where the marriage was celebrated and for Indonesian citizens do not violate the provisions of the Marriage Act. Within a period of one (1) year since upon their return to Indonesia, evidence of their marriage should be registered in the marriage registration office where they live. Mixed marriage couples who want to hold the marriage abroad can also make a prenuptial agreement. Prenuptial agreement is a written agreement made by the prospective spouses before or at the day of the marriage took place to regulate the effects of marriage on their property. The importance of making prenuptial agreements for couples who want to have a mixed marriage is associated with legal protection of property rights over land in Indonesia that can only be owned by an Indonesian citizen, as stipulated in the Basic Agrarian Law (UUPA). This thesis using normative juridical method, which is carried out by tracing the secondary law in the form of norms of the legislation relating to the cases. The procedure of making the prenuptial agreement in mixed marriages held abroad, still have to refer to the provisions of the Marriage Act is made before or at the day of the marriage took place and according to the laws in force in Indonesia. In the event that after the marriage held abroad and they return to Indonesia but did not register the marriage and then they make a prenuptial agreement, then the prenuptial agreement becomes null and void because it violated the provisions of the Act that is made after the marriage took place.

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