

LEGAL STANDING OF LAND OWNERSHIP FOR MIXED-MARRIAGES BETWEEN BALINESE WIVES AND FOREIGN HUSBANDS IN BALI

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Abstract

The influx of foreign visitors to Bali has naturally led to increased interaction between foreign nationals and the local Balinese population. With mixed-marriages, there are special provisions for the nationality of the spouse, the nationality of the spouse, the nationality of the children, and property in the marriage. Therefore, awareness is needed, especially for people of mixed-marriages to understand the provisions that apply to mixed-marriage spouses. This study uses normative juridical law which is a normative legal approach. The research emphasises the need for foreign nationals to understand the special provisions and restrictions for land ownership compared to Indonesian citizens. The Basic Agrarian Law of Indonesia (UUPA) governs land ownership regulations for mixed-marriages in Bali. Foreigners in Bali can acquire the right to use land through a Right to Use (*Hak Pakai*) or enter into leasehold agreements with Indonesian citizens or legal entities following to *asas nasionalitas*. However, land ownership rights are reserved exclusively for Indonesian citizens involved in mixed-marriages. The research highlights the influence of *Hukum Adat*, Balinese customary law, on land ownership in Bali. Mixed-marriage spouses should be aware of the regulatory disparities that arise after marriage and necessitate the arrangement of asset division. The customary law in Bali is in line with the existing statutory law in Indonesia.

1. INTRODUCTION

Bali, known as the "Island of The Gods" or also called as *Pulau Dewata*, holds a special place in the hearts of travelers as one of Indonesia's most treasured destinations. This spiritual atmosphere and rich cultural heritage, combined with the island's natural beauty, has captivated visitors from around the world, earning Bali the well-deserved title of "Island of The Gods". Embraced by awe-inspiring natural landscapes, including crystal-clear turquoise waters, soft sandy beaches, majestic waterfalls, and vibrant emerald rice fields, Bali presents a mesmerizing tapestry of nature's marvels combined by rich culture has successfully gained Bali a reputation as paradise on earth.¹ In the year 2022, Bali experienced

¹ Luchman Hakim, Jae-Eun Kim, and Sun-Kee Hong, "Cultural Landscape and Ecotourism in Bali Island, Indonesia," *Journal of Ecology and Environment* 32, no. 1 (January 2009), <https://koreascience.kr/article/JAKO200911440577766.page>.

an astounding influx of visitors, with a remarkable total of 276,659 tourists gracing its shores. Among this impressive number, foreign visitors accounted for a notable 65.64 percent, translating to approximately 181,625 individuals. These figures unequivocally cement Bali's position as a coveted global hotspot, capturing the hearts and imaginations of travelers from around the world. Its irresistible allure and magnetic appeal make it a top choice among international explorers, solidifying Bali's reputation as an unparalleled destination that leaves an indelible mark on the hearts of those who visit.

Table 1. Amount of Monthly Foreign Visitors Entrance to Bali BPS

Foreign Visitor Entrance	Amount of Monthly Foreign Visitors Entrance to Bali BPS							
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug
Ngurah Rai Airport	0	1,293	14,717	58,315	115,553	1,811,545	24,642	276,627
Benoa Harbour	3	17	3	20	58	80	62	32
Total	3	1,310	14,620	58,335	115,611	181,625	246,504	276,659

Investment plays a crucial role in fostering economic growth, as the rate of investment growth is directly linked to the overall economic growth rate.² In Bali, investment is concentrated in specific sectors and areas. The tourism sector in particular attracts significant investment and is predominantly driven by foreign investors. The tourism sector in Bali has flourished, drawing a substantial number of visitors each year, with a minimum of four million tourists being attracted to the island. This impressive influx of tourists serves as a testament to the robustness and vibrancy of Bali's tourism industry. Several factors contribute to the thriving tourism in Bali, including a favourable political climate characterized by stability, an abundance of natural resources, ongoing infrastructure development initiatives, and the captivating diversity of its cultural heritage. Consequently, these factors collectively appeal not only to domestic travelers but also to international tourists from various parts of the globe, resulting in Bali's status as a sought-after destination on a global scale.³

According to the Investment Coordinating Board i.e. *Badan Koordinasi Penanaman Modal* (BKPM), as of the latest available data, investment realization in Bali Province reached IDR 9.65 trillion by December 31, 2020. This amount comprises IDR 4.22 trillion of foreign investment i.e. *Penanaman Modal Asing* (PMA) and IDR 5.43 trillion of domestic investment i.e. *Penanaman Modal Dalam Negeri* (PMDN). Foreign investment in Bali's tourism sector, specifically in hotels and restaurants, accounted for approximately 52 percent, with a value

² Jeanne G. Gobalet and Larry J. Diamond, "Effects of Investment Dependence on Economic Growth: The Role of Internal Structural Characteristics and Periods in the World Economy," *International Studies Quarterly* 23, no. 3 (September 1979), <https://www.jstor.org/stable/2600175>.

³ "4 Reasons Why Investment Tourism in Bali Keeps Thriving," Invest Indonesia, accessed June 30, 2023, <https://investindonesia.go.id/en/article-investment/detail/4-reasons-why-investment-tourism-in-bali-keeps-thriving>.

of US\$152.516 million or Rp2.19 trillion. While foreign investors have contributed significantly, it is essential to note that encouraging domestic investment is equally important for a balanced and sustainable economic growth trajectory.⁴

To achieve a populist economy and ensure that the benefits of the thriving tourism sector reach the Balinese people, the government has implemented various measures. One of the measure is by giving incentive, providing ease of investment, and workshop to enable transfer of knowledge to Balinese people. These initiatives aim to create opportunities for locals to actively participate in and benefit from the tourism industry and other industries.⁵ By diversifying investment sources and promoting a favourable investment climate, the government strives to attract both foreign and domestic investments in Bali.

Table 2. Realization of Foreign Investment in Bali Province by Regency/City (Million Rupiah) BPS

Regency/ City	Realization of Foreign Investment in Bali Province by Regency/City (Million Rupiah)			
	2020	2021	2022	Percentage 2022
Jembrana	1722	55661	107299	1.66%
Tabanan	94481	1066835	670349	10.39%
Badung	2783261	2315029	3238136	50.20%
Gianyar	234196	618811	944099	14.64%
Klungkung	273871	123249	164481	2.55%
Bangli	1352	4411	8597	0.13%
Karangasem	120010	49639 (katadata)	55008	0.85%
Buleleng	277252	1108616	126336	1.96%
Denpasar	436687	1256461	1136541	17.62%
Bali Province	4222832	6598711	6450848	

Can be inferred from the data of the table, it is clearly indicative that investment in Bali's tourism sector is currently experiencing high demand from foreign investors. The investment is especially concentrated in Badung with 50.2% of total investment followed by Denpasar with 17.32%. Consequently, it is essential to pay special attention to asset ownership in Bali to safeguard the interests of local communities and ensure they benefit from the thriving tourism industry.⁶

The influx of foreign tourists to Bali has naturally led to increased interaction between foreign nationals and the local Balinese population. This heightened interaction has resulted

⁴ Vika Azkiya Dihni, "Realisasi Investasi Indonesia Naik Terus dalam 5 Tahun Terakhir," *Databoks*, March 31, 2022, <https://databoks.katadata.co.id/datapublish/2022/03/31/realisasi-investasi-indonesia-naik-terus-dalam-5-tahun-terakhir>.

⁵ "Laporan Hasil Pemeriksaan Atas Laporan Keuangan dan Kinerja Pada Pemerintah Provinsi Bali Tahun 2021," Pemerintah Provinsi Bali, accessed June 30, 2023, <https://www.baliprov.go.id/web/wp-content/uploads/2022/06/BUKU-I-LHP-LKPD-PROVINSI-BALI-TA-2021.pdf>.

⁶ Ni Putu Eka Wiratmini, "Asing Dominasi Investasi Pariwisata di Bali," *Bisnis.com*, March 22, 2021, <https://bali.bisnis.com/read/20210322/561/1370829/asing-dominasi-investasi-pariwisata-di-bali>.

in a significant number of mixed-marriages in Bali. According to the head Immigration Ministry of Law and Human Rights (*Kemenkumham*) Bali, the number of mixed-marriage in Bali is considered substantial in Indonesia.⁷ Given the prevalence of mixed-marriages, particularly with foreign nationals in Bali, it becomes crucial to address these unions with careful attention, ensuring that they are legally binding and that the rights and conditions of both parties are appropriately protected. This necessitates the establishment of clear and binding rights and conditions for mixed-marriages, allowing for a harmonious and mutually beneficial partnership between Indonesian citizens and foreign spouses.⁸

In the Indonesian Law context, marriage is regarded as a sacred bond, both physically and spiritually, between a man and a woman. Marriage bond is aimed to form an eternal household based on Indonesia's Pancasila, Belief in One Almighty God (*Ketuhanan yang Maha Esa*).⁹ Marriage is considered as an important event for human beings that is sacred. Additionally, mixed-marriages, which involve individuals subject to different laws in Indonesia due to differences in nationality, religion, or population groups, have a unique significance in fostering cultural exchange and societal dynamics.¹⁰

Marriage regulations in Indonesia are governed by the 1945 Constitution, which upholds the Pancasila principles and emphasizes the sanctity and importance of marriage. It is important to note that there are different perspectives on marriage, including those outlined in the Marriage Law and the Civil Code. In the Civil Code, it is stated that "*Undang-undang memandang soal perkawinan hanya dalam hubungan perdata*". In which the above law can be literally interpreted as "The law views the issue of marriage only in civil relations". In civil relations, it means that a valid marriage is a marriage that fulfils the requirements set out in the Civil Code.¹¹ The Civil Code focuses solely on the civil relations aspect of marriage, defining a valid marriage as one that fulfils the requirements specified in the code.

Marriages with foreign nationals are referred to as mixed-marriages which can be defined as "the mixed marriages as unions between individuals who fall under distinct legal frameworks in Indonesia". This encompasses marriages between individuals of different faiths, nationalities, and ethnic backgrounds.¹² To put it differently, within this context, mixed-marriage can be defined according to this Law, as a marital union between two individuals who are governed by distinct legal systems in Indonesia due to disparities in nationality, where one of the parties is an Indonesian citizen.

2. METHOD

This research aims to delve into the complexities of land ownership regulations for mixed-marriage spouses in Bali, exploring the legal frameworks, rights, and limitations surrounding their acquisition of land in this coveted destination. By examining the

⁷ Berita Bali, "Bali Disebut Wilayah Paling Banyak Perkawinan Campuran," *Berita Bali*, May 20, 2021, <https://www.beritabali.com/news/read/bali-disebut-wilayah-paling-banyak-perkawinan-campuran>.

⁸ Mamahit Laurensius, "Hak dan Kewajiban Suami Isteri Akibat Perkawinan Campuran Ditinjau Dari Hukum Positif Indonesia," *Lex Privatum* 1, no. 1 (2013), <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/1011>.

⁹ Pasal 1 *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*.

¹⁰ Eka Sabrina Nuraudya, "Negosiasi Nilai Budaya Pada Pasangan Kawin Campur (Studi Deskriptif Kualitatif Negosiasi Nilai Budaya Pasangan Kawin Campur Antara Orang Indonesia Dengan Orang Barat)" (Undergraduate thesis, Universitas Muhammadiyah Surakarta, 2017), 16, UMSLibrary, <https://eprints.ums.ac.id/54303/>.

¹¹ Pasal 26 *Kitab Undang-Undang Hukum Perdata*.

¹² Pasal 57 *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*.

implementations of laws and their practical implications, we will shed light on the measures in place to safeguard the interests of mixed-marriages spouses. Additionally, we will explore the challenges faced in striking a harmonious balance between Bali's thriving tourism industry and the need for responsible land ownership practices especially for mixed-marriages spouses. Through this analysis, we seek to provide a comprehensive understanding of the legal landscape surrounding land ownership for mixed-marriage spouses in Bali. As we delve into the multifaceted aspects of land ownership regulations in Bali, it becomes evident that addressing these complexities requires a nuanced approach that upholds the principles of fairness, cultural preservation, and economic growth. By unravelling the intricacies of this topic, we hope to contribute to the ongoing dialogue aimed at shaping policies that strike the delicate balance between tourism appeal and safeguarding Bali's invaluable heritage and also discussing with the interest of mixed marriage spouses unique rights that bind them.

3. RESULTS AND DISCUSSION

3.1 Legal Standing of Mixed-Marriage Land Ownership in Bali

Bali is widely recognized as one of Indonesia's premier tourist destinations on a global scale. Consequently, the island experiences a substantial influx of foreign visitors. The presence of these foreign tourists significantly impacts Bali's tourism industry and overall economy.¹³ Despite the challenges faced by Bali in recent years, it remains a cherished destination for both Indonesian and international travelers alike. Its unique combination of cultural richness and natural beauty entices foreigners not only to visit for leisure but also to contemplate residing in Bali. It is commonplace to observe interactions between foreigners and the local Balinese community. For foreigners choosing to stay in Bali, careful consideration must be given to the decision of acquiring a house or place of residence in Indonesia.¹⁴

With the escalating influx of foreigners to Bali, it is inevitable that interactions between these individuals and local citizens will occur, potentially resulting in social relationships. Some of these relationships may evolve into special bonds that lead to marriage. In Indonesia, marriage is regarded as a sacred union grounded in Pancasila principles, with the aim of establishing a lifelong household. Marriage carries various social and legal implications for both spouses. Furthermore, the regulations surrounding marriages between foreigners and local partners are more intricate, as such mixed-marriages involve individuals subject to differing laws based on nationality, religion, or population groups. These unions hold significant importance in fostering cultural exchange and influencing societal dynamics between the mixed-marriage spouse in Bali.¹⁵

¹³ Muhammad Eko Atmojo and Helen Dian Fridayani, "An Assessment of Covid-19 Pandemic Impact on Indonesian Tourism Sector," *Journal of Governance and Public Policy* 8, no. 1 (2021): 1-9, <https://doi.org/10.18196/jgpp.811338>.

¹⁴ Handy Samot, "Rangkuman Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional No. 5 Tahun 1998 Tentang Perubahan Hak Guna Bangunan Atau Hak Pakai Atas Tanah Untuk Rumah Tinggal yang Dibebani Hak Tanggungan Menjadi Hak Milik," *HukumProperti.com*, March 10, 2010, <https://hukumproperti.com/summary-peraturan-menteri-negara-agrariakepala-badan-pertanahan-nasional-no-5-tahun-1998-tentang-perubahan-hak-guna-bangunan-atau-hak-pakai-atas-tanah-untuk-rumah-tinggal-yang-dibebani-hak-tanggung/>.

¹⁵ Valensia Tedjanegara and Suzy Azeharie, "Case Study of Mixed Marriages Between Foreigners Married to Balinese Ethnic and Converted to Hinduism" (Proceedings of the International Conference on Economics,

When embarking on the establishment of a new family unit through marriage, the choice of a place of residence becomes a critical decision. For spouses in mixed-marriages, this decision presents a complex issue, as the Indonesian government has specific provisions governing the land rights and residence of foreigners. It is imperative that both the foreign and local spouses possess a comprehensive understanding of these rights to prevent potential problems from arising in the future.

3.2 Understanding Marriage in Legal Perspective

People, as social creatures, are inherently designed to live in proximity to others. Humans, being a *zoon politicon*, cannot thrive in isolation but rather require social interaction and communal living. Consequently, this inherent social nature necessitates harmonious coexistence with fellow individuals, as individuals themselves are interdependent on one another. Additionally, marriage serves to fulfill the natural and biological urge for procreation. It represents a fundamental biological imperative to propagate one's lineage to future generations, involving the union of two individuals of opposite sexes who share a common objective.

Marriage in Indonesian legal perspective is governed by the 1974 Marriage Law (*Undang-Undang Perkawinan*) as amended by Law No. 16 of 2019. For Indonesian citizen individuals seeking to enter into matrimonial bond, are obliged to follow the requirements set by the Marriage Law. This statement is in accordance with what is attached to the law i.e., in accordance with the Pancasila philosophy and ideals for the construction of national law, it is necessary to have a Law on Marriage that applies to all citizens.¹⁶

Marriage in Indonesia, known as "*Perkawinan*" in etymology, derives its name from the Javanese word "*kawin*". The term "*kawin*" derived from Javanese means of *dibawa*, *dipikul*, *diboyong*, has the connotation of being carried, borne, or accompanied. On the other hand, in Balinese culture, marriage is referred to as "*Pawiwahan*," which originates from the term "*wiwahan*" and signifies the celebration and ceremonial aspects of a wedding. Thus, marriage itself in Indonesia emphasize the wedding ceremony as to be "carried" by the two individuals who are bind into the marriage bond.

Marriage in Indonesia is considered as a social institution, which involving a woman and man agreeing to form a bond of marriage that is inseparable with the cultural and religion aspect. Seen from a sociological point of view, Kartasapoetra argues that marriage is a form of life cooperation between men and women in the life of a society under a specific set of rules that has certain characteristics, who involve, men act as husbands, and women act as wives, and both of whom are in a bond which is valid. Marriage according to the law, is defined as i.e. "Marriage is an inner bond between a man and a woman as husband and wife with the aim of forming a happy and permanent family (household) based on Almighty God."¹⁷ If the elements of marriage are analysed from the meaning, it is found that:¹⁸

1. Existence of Born and Inner Bonds; Born and Inner Bonds are interpreted as the existence of compatibility between the heart (inner) and outer (physical) to agree to make a bond in a marriage. So it is not enough to be inner or outer only, but both

Business, Social, and Humanities (ICEBSH 2021), August 8, 2021).
<https://doi.org/10.2991/assehr.k.210805.121>.

¹⁶ *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*.

¹⁷ Pasal 1 *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*.

¹⁸ Wienarsih Imam Subekti and Sri Soesilowati Mahdi, *Hukum Perorangan dan Kekeluargaan Perdata Barat* (Jakarta: Gitama Jaya, 2005), 47.

must be tightly integrated. An inner bond is an informal relationship which is a bond that is not visible but can be felt by both parties. While the birth bond is a bond that can be seen with the naked eye that reveals the existence of a relationship between a man and a woman to live together as husband and wife.

2. Marriage is between a man and a woman. It means that marriage can only be performed between one man and one woman, not more than that and not of the same sex. This marriage in principle adheres to the principle of monogamy, that is, at the same time a man is only tied to one woman, and vice versa a woman is only tied to one man at the same time.
3. The bond formed is the Bond of Husband and Wife. The inner and outer bond developed by both parties between a man and a woman is the bond of husband and wife through a marriage performed based on the applicable laws and regulations.
4. The purpose of marriage is to form a happy and permanent family. What is meant by family is father, mother and children. Happy and eternal means a harmonious relationship in the family and occurs forever.
5. Based on the One Almighty God i.e. *Ketuhanan Yang Maha Esa* which is one of Pancasila principles. The relationship that occurs is not only based on legal regulations but must also be based on the One and Only God, therefore the validity of marriage is based on religion and belief.

Marriage is inherently intertwined with the religious beliefs of the spouses, thereby making religion a crucial aspect to be taken into account. In accordance with the Indonesian Marriage Law, religion also plays a decisive role in determining the legitimacy of the marriage itself. The precise explication derived from the Indonesian law can be formally elucidated in the following manner: "(1) Marriage is valid, when it is done according to the laws of each religion and belief; (2) Every marriage is recorded in accordance with applicable laws and regulations".

Article 10 paragraph (2) Government Regulation of the Republic of Indonesia Number 9 of 1975 on the Implementation of Law Number 1 of 1974 on Marriage, also states that: "Marriage procedures are performed according to the laws of each religion and belief". Hence, it can be inferred that for a marriage to be recognized as valid in legal terms, both parties must mutually consent to solemnize the marriage within the religious framework they adhere to, while adhering to the prescribed rules and regulations.¹⁹

Based on the relevant article of the Indonesian Marriage Law, it can be deduced that within a marriage, each spouse has the capacity to have one husband and one wife. However, the pursuit of polygamy, wherein a husband may have more than one wife, necessitates the desire for such an arrangement and the consent of the existing wife or wives or in other words by the parties concerned (approved by the previous wife) with the permission of the Court. However, many husbands are misusing the arrangement of having more than one wife by not understanding the main principle of marriage is to build a long lasting family unit. According to Zaitunah, many individuals are making their excuses to achieve their wants to polygamy.²⁰

¹⁹ Pasal 10 ayat (2) *Peraturan Pemerintah Nomor 9 Tahun 1975 tentang Pelaksanaan Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*.

²⁰ Zaitunah Subhan, *Al-Qur'an dan Perempuan: Menuju Kesetaraan Gender Dalam Penafsiran* (Jakarta: Prenada Media, 2015), 153.

The regulations governing this matter are outlined in Article 4 of the Indonesian Marriage Law Number 1 of 1974, which stipulates the following rules: “a. The wife cannot fulfill her obligations as a wife; b. The wife has a physical disability or an incurable disease; and c. a wife cannot give birth to children”. In order to register the practice of polygamy or the act of having more than one wife, the husband is obligated to fulfil certain requirements and submit them for approval by the Court, as specified in Article 5 of the Indonesian Marriage Law Number 1 of 1974 written in which: consent from the wife/wives; there is certainty that the husband is able to guarantee the necessities of life for their wives and children; and there is a guarantee that husbands will be fair to their wives and children”.²¹

Considering that marriage is regarded as an embodiment of Pancasila's principle of *Ketuhanan Maha Esa* (Belief in the One Supreme God), the Ministry of Religion, also known as *Kemenag*, underscores the significance of individual readiness when entering into marriage.²² Given the substantial and enduring obligations associated with marriage, individuals are expected to adequately prepare themselves and demonstrate emotional maturity to fulfil their respective roles as husband and wife. This assertion is further supported by the requirements imposed by the state for marriage, as delineated in the following rules written: “1. Marriage is based on the consent of both prospective bridegrooms (Article 6 paragraph (1)); 2. For people who are not yet 21 (twenty-one) years old who want to marry, they must get permission from both parents (Article 6 paragraph (2)); and 3. Marriage is only permitted both sides have reached the age of 19 (nineteen) years (Article 7 paragraph (1)). This provision can be circumvented by requesting a dispensation from the Court or other Office requested by both the male or female parents (Article 7 paragraph (2))”.²³

The significance of marriage as a pivotal life event is reinforced by its legal recognition and administration by the Civil Registry Office, also known as *Kantor Catatan Sipil*. This institution is responsible for managing Population Administration affairs, including the registration of Population Events and recording of Important Events, as stipulated in Article 8 paragraph (1) letter a of Law No. 24 of 2013. The recognition of marriage as an important life event is further emphasized in Law No. 24 of 2013, specifically in Article 1 number 17 which stipulates that “Important events are events experienced by a person including birth, death, stillbirth, marriage, divorce, acknowledgment of children, confirmation of children, adoption of children, change of name and change of citizenship status”.

Marriage is deemed a significant life event, particularly within Indonesian society, where it is widely regarded as a manifestation of Pancasila's principle of *Ketuhanan Maha Esa* (Belief in the One Supreme God). It symbolizes the pursuit of a lasting and blissful marital union. In line with the relevant laws and regulations governing marriage in Indonesia, spouses are obligated to formally register their marriage. The obligation to register a marriage in Indonesian marriage law is regulated in Article 3 of the Law of the Republic of Indonesia Number 23 of 2006 on Population Administration, which is written as follows: “Each Resident is obliged to report Population Events and Important Events he has experienced to the Implementing Agency by fulfilling the requirements required in Population Registration and Civil Registration”.

²¹ Pasal 5 *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*.

²² NH. Kurniawan and Sigit, "Kemenag Ingatkan Pentingnya Menikah di Usia Matang," *Kementerian Agama Republik Indonesia*, December 11, 2018, <https://kemenag.go.id/nasional/kemenag-ingatkan-pentingnya-menikah-di-usia-matang-4db01m>.

²³ Pasal 6-7 *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan* jo. *Undang-Undang Nomor 16 Tahun 2019 tentang Perubahan atas Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*.

Additionally, based on such reports, the Civil Registration Office is responsible for documenting the marriages in the Register of Marriage Deeds and publishing the Collection of Marriage Deeds, as stipulated in Article 34 paragraph (2) of Law No. 23 of 2006. Failure to timely report important events such as marriages may result in administrative penalties, including fines, as specified in Article 90 paragraph (1) letter b of Law No. 23 of 2006. The fine is administered to ensure the timely manner of every spouse in marriage registration. The existence of the Marriage Act serves as official documentation of marriage, as outlined in Article 11 paragraph (3) of Government Regulation No. 9 of 1975.

3.3 Mixed-Marriages in Indonesia

Marriage is a significant life event that holds both cultural and legal significance. It serves as a framework for individuals to establish a shared life with a partner, fulfilling their respective marital duties. While individuals form connections through various daily activities, they may unknowingly enter a marital union with someone from a different cultural, religious, or background. These unions, known as mixed-marriages, give rise to unique dynamics within the spousal relationship due to the differences in background and cultural heritage. As social beings, humans as *zoon politicon* rely on companionship and the company of others to lead fulfilling lives. *Zoon politicon* can be defined as the man by nature as political animal, in which is one of Aristotle's most influential and lasting assertions in the fields of medieval thought on politics, political human nature, its language and respective horizons.²⁴ Marriage acts as a vessel through which individuals forge deep bonds, sharing their lives and assuming marital responsibilities.

The decision to marry is often influenced by personal experiences, social interactions, and chance encounters. However, some of Indonesians are pressed to be married at a young age, due to marriage as vessel to as in resolving disputes; and in inequality roles of woman and men pushing women to marry early, economic issue, to protecting family honor, tradition and culture might influence of an expedited marriage in Indonesi.²⁵ Consequently, individuals may find themselves connected to partners whose background, culture, and religion differ from their own. This interconnectedness transcends societal boundaries, giving rise to the formation of mixed-marriages.

Mixed-marriages in Indonesia bring together individuals with diverse backgrounds, resulting in a fusion of cultures, traditions, and belief systems within the marital relationship. These unions introduce unique dynamics that both enrich and challenge the involved spouses. Cultural differences provide opportunities for mutual learning, growth, and the appreciation of each other's heritage. Such marriages foster an environment of cultural exchange and create space for the exploration and acceptance of diverse perspectives.²⁶

Mixed-marriages also present challenges that necessitate effective communication, understanding, and compromise. Cross cultural aspect of mixed marriages may influence the communication pattern in the family and require balancing to emphasize between

²⁴ António Rocha Martins, "The Zoon Politikon: Medieval Aristotelian Interpretations," *Revista Portuguesa de Filosofia* 75, no. 3 (2019): 1539–1574, <https://www.jstor.org/stable/26796764>.

²⁵ Riskia Nabila, Roswiyani, and Heryanti Satyadi, "A Literature Review of Factors Influencing Early Marriage Decisions in Indonesia" (Proceedings of the 3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities), <https://doi.org/10.2991/assehr.k.220404.223>, 2.

²⁶ Judith N. Martin and Thomas K. Nakayama, "Intercultural Communication and Dialectics Revisited," in *The Handbook of Critical Intercultural Communication*, ed. Thomas K. Nakayama and Rona Tamiko Halualani (Blackwell Publishing Ltd, 2010), <https://doi.org/10.1002/9781444390681.ch5>.

situations. Differences in customs, traditions, and religious practices require spouses to navigate and harmonize their beliefs and values. This process of adaptation and negotiation contributes to the development of a resilient and inclusive marital bond, founded on mutual respect and understanding.²⁷ In legal perspective, Soetojo Prawirohamidjojo also discuss the challenges found in mixed marriages are that he concludes that colonial regulation provides a more varied than the one stipulated in the current law article 57. As in GHR according to his research, the current law is excessive in which already more fully regulated than the GHR. The GHR, if examined from his research, refers to marriages between persons subject to different laws within Indonesia.²⁸

Mixed-marriages in Indonesia are not only characterized by cultural diversity but also involve legal considerations governed by the Indonesian Marriage Law No. 1 of 1974. This law governs every valid marriage in the country, providing a legal framework for the rights and obligations of married couples. It recognizes marriages conducted in accordance with both religious customs and civil registration. As stipulated by the Indonesian Marriage Law No. 1 of 1974, "What is meant by mixed-marriage in this Law is a marriage between two people who in Indonesia are subject to different laws, due to differences in nationality and one of the parties having Indonesian nationality".²⁹

From the definition described above from Article 57 of the Marriage Law, the elements of a mixed-marriage can be described as follows: marriage between a man and a woman; in Indonesia is subject to different laws; due to differences in citizenship; and one of the parties has Indonesian citizenship. In Indonesia there are mainly two types of mixed-marriage that exist: 1) Mixed-marriage between Indonesian nationality wife and foreign nationality husband; and 2) Mixed-marriage between Indonesian nationality husband and foreign nationality wife. The Indonesian Marriage Law acknowledges the concept of mixed-marriages, defined as the union between two individuals who are subject to different laws in Indonesia due to differences in nationality, with one party being an Indonesian citizen. As such, the law addresses the legal implications and requirements specific to mixed-marriages, including matters related to property ownership, inheritance, child custody, and divorce. This research will focus on marriages involving spouses from Indonesia and a foreign national.

3.4 Mixed-Marriages of Balinese Women and Foreign Husband: Factors Influencing Their Occurrence in Bali

Bali, with its captivating natural allure and diverse attractions, has garnered substantial attention from global visitors. The Indonesian Ministry of Tourism and Creative Economy has reported a consistent growth in the number of international visitors to Bali over the years. Several factors contribute to the island's popularity, including its picturesque beaches, rich traditional arts and crafts, distinctive cultural ceremonies, and renowned hospitality. These qualities have drawn visitors from various countries such as Australia, China, India, Japan, and several European nations. Australian tourists in particular have

²⁷ Ani, Aisha Nadya, and Arum Setiowati, "Cross-Cultural Marriage Family Resilience and Implications for Family Guidance and Counseling" (Proceedings of the International Seminar on Innovative and Creative Guidance and Counseling Service (ICGCS 2021), 2021), <https://doi.org/10.2991/assehr.k.220405.006>, 33.

²⁸ Soetojo Prawirohamidjojo and R. Soebijono Tjitrowinoto, *Pluralisme dalam Perundang-undangan Perkawinan di Indonesia* (Surabaya: Airlangga University Press, 1986), 77-78.

²⁹ Pasal 57 *Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan*.

historically comprised a significant portion of Bali's visitors, primarily due to the island's proximity to Australia.

It is important to recognize that tourism patterns and visitor numbers are subject to fluctuations influenced by global economic conditions, natural disasters, political situations, and pandemics. Notably, the COVID-19 pandemic significantly impacted Bali's tourism industry in 2021, resulting in a sharp decline in visitor numbers. The Ministry of Tourism of the Republic of Indonesia reported only 43 visitors in 2021. However, through strategic pandemic mitigation efforts implemented by the government and local communities, Bali's tourism sector has made a remarkable recovery. Emphasized, after the Covid-19 pandemic, Bali's reputation as a destination worth visiting is quite high. This is evident in the substantial increase observed in 2022, with a total of 2,154,045 direct foreign tourist arrivals recorded via Ngurah Rai Airport. The data highlights the resurgent appeal of Bali as a premier tourist destination, exhibiting a remarkable 5,009,036.98 percent increase in visitor numbers from 2021 until December 2022. The number of tourist visits that opened since March 2022 gradually increased, and in January 2023 the number of foreign tourist visits reached 331,912 people, or an average of 10,707 people/day.

These figures reflect the enduring allure of Bali as a destination of choice for travelers seeking natural beauty, cultural richness, and warm hospitality. It signifies the successful revitalization of the tourism sector following the challenges faced during the pandemic. While the specific figures may vary in subsequent years, the overall trend underscores the enduring popularity of Bali and its ability to bounce back from adversity.

Marriage, as a social institution, is deeply rooted in both statutory and customary laws, reflecting the cultural and legal norms of a given society. In the enchanting island of Bali, Indonesia, the interplay between statutory and customary marriage laws creates a unique legal landscape that shapes the marital relationships of its inhabitants. Marriage is an important life event that highly impact the people who are bind into the marriage. Furthermore, it is a fundamental institution that shapes society, establishes familial relationships, and governs the rights and obligations of individuals. In the context of Indonesia, a diverse and culturally rich nation, marriage holds immense significance as it brings together individuals from different backgrounds, religions, and nationalities.

World-wide visitors engage in interactions with the local citizens of Bali. Initially acquaintances in their capacity as travelers, many tourists develop profound connections as they immerse themselves in the Balinese community. Some of these relationships even progress to the point of fulfilling the innate biological urge for procreation. Marriage as social institution, creates a which is a valid relationship between a man and a woman for a long time.³⁰ The phenomenon of mixed-marriages between foreign visitors and local Balinese individuals has become increasingly prevalent in recent times. This occurrence can be attributed to a combination of external and internal factors. External factors encompass religious, educational, economic, financial, social, cultural, and environmental influences. These factors may play a role in facilitating the connection between individuals from different backgrounds and fostering a sense of compatibility.

Religious factors can serve as a motivation for mixed-marriages, as individuals with diverse religious beliefs may seek common ground in their pursuit of a harmonious marital bond. Educational opportunities in Bali, such as attending renowned institutions or participating in cultural exchange programs, can bring foreign visitors into contact with local Balinese individuals, creating opportunities for meaningful connections to develop.

³⁰ Ronald Saija and Roger F.X.V. Letsoin, *Buku Ajar Hukum Perdata* (Yogyakarta: Deepublish, 2016), 12.

Economic and financial considerations also play a role, as individuals may be attracted to Bali's economic prospects and seek to establish stable relationships with local residents. The desire for a better quality of life and improved socio-economic conditions can act as a driving force for individuals to enter into mixed-marriages. The economic driven mixed-marriage is due to marriage may provide integration of two different culture. For Balinese woman, most woman better consider financial security as their one driving factors.

Cultural factors contribute significantly to the occurrence of mixed-marriages in Bali. The rich and vibrant Balinese culture, with its unique traditions, arts, and customs, can captivate foreign visitors and foster a deep appreciation for the local way of life. The desire to immerse oneself in this cultural environment and forge connections with the Balinese community can lead to the formation of marital bonds. Environmental factors, such as the natural beauty and serene atmosphere of Bali, can serve as a catalyst for the development of romantic relationships between foreign visitors and local residents. The allure of the island's landscapes, including its picturesque beaches and lush tropical surroundings, can create a conducive environment for fostering emotional connections.

Additionally, hereditary customs, the prospect of changing citizenship, and the aspiration for personal growth and improvement can further motivate individuals to pursue mixed-marriages. The desire to embrace and carry forward cultural traditions, as well as the opportunity for personal development and advancement in a new cultural context, can contribute to the attractiveness of such unions. In summary, the increasing prevalence of mixed-marriages between foreign visitors and local Balinese individuals in Bali can be attributed to a combination of external and internal factors. These factors encompass religious, educational, economic, financial, social, cultural, and environmental influences. By recognizing and understanding these factors, we gain insight into the motivations behind mixed-marriages and the diverse dynamics that shape these marital bonds.

3.5 Customary Law and Norms of Marriage in Bali

Bali, renowned for its rich cultural heritage and steadfast adherence to customs, stands out as a unique region characterized by its distinct cultural practices. The majority of Balinese residents embrace Hinduism as their religion, which serves as a fundamental aspect of their identity. The significance of culture and local Hindu influenced values in Bali is deeply rooted in the Balinese people's adherence to the principle of *Tri Hita Karana*, which influences their daily activities and interactions. *Tri Hita Karana* encompasses the harmonious relationship between humans, nature, and the spiritual realm. It emphasizes the need for balance and harmony in all aspects of life, including social, ecological, and spiritual dimensions.³¹

This assertion of the significant of Hinduism value in Bali is substantiated by statistical data provided by the Directorate General of Population and Civil Registration (*Dukcapil*) under the Ministry of Home Affairs (*Kemendagri*), indicating that the Hindu population in Bali amounts to 3.71 million individuals, accounting for 86.8% of the total population of 4.27

³¹ I Made Budiastika, "Implementasi Ajaran Tri Hita Karana Dalam Kehidupan," *Kementerian Agama Republik Indonesia*, January 17, 2022, <https://www.kemenag.go.id/hindu/implentasi-ajaran-tri-hita-karana-dalam-kehidupan-4s9s1u>.

million people. In a national context, Bali boasts the highest proportion of Hindus.³² The prevalence of Hinduism in Bali shapes the social fabric, cultural practices, and religious customs of its inhabitants. The deeply ingrained influence of Hinduism is evident in various aspects of Balinese life, including rituals, ceremonies, arts, and governance. Balinese individuals embrace Hinduism not only as a personal faith but also as a collective identity that binds communities together. The religion provides a framework for social cohesion, moral guidance, and spiritual fulfilment, serving as a guiding force for Balinese traditions and practices.

Marriage is considered as part of religion practice for Balinese. In the Hindu, marriage is defined as *grahasta asrama* or in other words, to build a household.³³ Additionally, the *grahasta asrama* serves as the primary space for the implementation of the *panca maha yadnya* and other essential rituals. Considering these multifaceted roles and responsibilities, it becomes evident that Balinese as community especially the adolescents and young individuals, particularly those who have yet to experience the *grahasta asrama* period, should possess a deep and steadfast understanding of its significance. Thus, this marks an importance role of marriage for Balinese in general.³⁴

With its role as a customary law in Bali, *awig awig* and *pararem* is not only as a unwritten norms in the Balinese society, but it is stipulated in Bali Provincial Regulation Number 3 of 2003. As stipulated on the regulations, specifically on Bali Provincial Regulation Number 3 of 2003 Article 1 Paragraph 1, *awig awig* is defined as: "a rule made by *krama desa pakraman* and/or *krama banjar pakraman* which is used as a guide in the implementation of *Tri Hita Karana* in accordance with the *mawacara* village and *dharma agama* in the respective *pakraman/banjar pakraman villages*".

The enactment of Bali Provincial Regulation Number 3 of 2003 holds the potential to enhance the customary village system, known as *desa pakraman*, in Bali. It is recommended that the *awig awig*, the customary law of the village, be codified and documented not merely as a customary norm but as a comprehensive legal framework. This codification would facilitate uniformity and coherence among the various elements of the *awig awig*, including the object, subject, material, and system governed by it. The substance of the *awig awig* may vary based on the mutual joint agreement of the *desa pakraman* as a whole governing the norms and sanctions that governs the *desa pakraman* area. The formulation of the *awig awig* is started by the drafting process of the *pararem* which are analyzed by the *prajuru desa*. The written *pararem* should follow with the *catur dresta* which are in line with values of Bali, Hinduism, Pancasila and UUD 1945. The drafts will be later on discussed on the customary meeting which may involve *Prajuru Desa Pakraman* i.e. the customary village officials, the family heads, village chief, *pecalang*, and *pemangku* to agree on the *pararem* to be followed by the whole community.³⁵

Inter-caste marriages were not allowed in the Hindu-Bali society during the time of the kingdom due to the importance of the caste system in Bali. Inter-caste marriages are no

³² Viva Budy Kusnandar, "Persentase Pemeluk Agama Hindu di Bali Tertinggi Nasional pada Juni 2021," *Databoks*, October 28, 2021, <https://databoks.katadata.co.id/datapublish/2021/10/28/persentase-pemeluk-agama-hindu-di-bali-tertinggi-nasional-pada-juni-2021>.

³³ *Warta Hindu Dharma* No. 530 Februari 2011.

³⁴ I Putu Agus Adi Suarhawan, I Dewa Putu Merta, and Tjok. Udiana NP, "Values Of Grhasta Asrama In The Creation Of Sculpture," *Cita Kara: Jurnal Penciptaan dan Pengkajian Seni Murni* 1, no. 2 (November 2021): 15–20, <https://jurnal2.isi-dps.ac.id/index.php/citrakara/article/view/1530>.

³⁵ I Putu Ari Putra Maulana and Ida Bagus Gede Dharma Putra, "Metafora Konseptual Kasta Dalam Masyarakat Bali: Kajian Linguistik Kognitif," *Prasi* 16, no. 2 (2021): 94, <http://dx.doi.org/10.23887/prasi.v16i02.37578>.

longer regarded as illegal since 1951, according to the DPRD Decision No. 11/Year 1951, which was issued on the 12th day of that year. Despite the legal changes, certain aspects of the inter-caste marriage landscape continue to present challenges within the Hindu-Bali community. The *patiwangi* ceremony, commonly referred to as *nyerod*, remains in practice. This ceremonial tradition involves the purification of the non-*Brahmin* spouse to enable their inclusion into the *Brahmin* caste, allowing the marriage to proceed. While some individuals perceive the *patiwangi* ceremony as an essential cultural practice, others view it as discriminatory and a violation of human rights. While this legislative change represents progress, it has not fully addressed the issues that still exist in the community. Some Hindu-Bali community leaders are particularly concerned about the continued use of the *patiwangi* ceremony, also known as the *nyerod*. They consider it to be discrimination, a violation of human rights, and a contributing element to gender disparity in families, both before and after divorce.³⁶

Other form of marriage in the Balinese customary perspective is *Nyentana* which are a form a deviation from the usual patrilineal kinship system in Balinese society. *Nyentana* involves the male spouse to be adopted to be part of the wife family in order to continue the wife's family line.³⁷ *Nyentana* usually chosen by the female spouse considering that she is an only child and only descendant to continue the family line and taking care of the family, following more to the matrilineal line instead. This arrangement is usually avoided by male spouses as it is uncommon and may provide difficulties in the future as in parental blessings, marriage property, inheritance issue and the adaptation of the male spouse into the wife's family household. This difficulties mainly stems from the strong belief of Indonesian in the patrilineal line which state that the male position in the society is more prominent than female. Thus, the *Nyentana* marriage may cause some to raise their eyebrows.³⁸

4. CONCLUSION

Conclusion in this research are: First, mixed marriages in Indonesia are legally recognized. However, the regulations regarding land ownership rights after the marriage differ. Unless a specific agreement is made regarding the division of assets, the acquisition of land rights may be subject to alteration. Second, the implementation of mixed marriages, particularly between foreign grooms and Balinese brides, typically aligns with state laws. Nevertheless, in accordance with customary practices, such unions often face obstacles due to considerations of land ownership, the transfer of land rights, and the limited availability of customary land on the island of Bali.

³⁶ Made Pasek Diantha and I Gede Pasek Eka Wisanjaya, *Kasta dalam Perspektif Hukum dan HAM* (Denpasar: Udayana University Press, 2010), 56–58.

³⁷ I Gusti Ag Ayu Putu Cahyana Tamara Buana, Rachma Fitriyani Nasri, Rizka Wulan Pravitasari, and Moza Fausta. "Hak Anak Laki Laki yang Melangsungkan Perkawinan Nyentana," *Kanun Jurnal Ilmu Hukum* 21, no. 2 (August 2019): 297, <https://jurnal.usk.ac.id/kanun/article/download/13220/10781>.

³⁸ I Wayan Bhayu Eka Pratama, Ni Nengah Dhea Riska Putri Nandita, and Ni Nyoman Indah Ratnasari, "Perkawinan Nyentana Di Bali: Urgensi, Tata Cara, Dan Prospeknya Di Era Modern," *Jurnal Hukum Lex Generalis* 2, no. 6 (June 2021): 462, <https://ojs.rewangrencang.com/index.php/JHLG/article/view/78>.

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