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The Impact of Mixed Marriage in Civil Law Review

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ABSTRACT

The article aims to reveal the complexities of mixed marriages between local people and mining workers (immigrants). The research method is a qualitative descriptive study that describes the impact of mixed marriages in mining areas in Southeast Sulawesi. The paper shows that mixed marriages are carried out in series without going through the applicable legal procedures. Mixed marriages are based on several aspects behind the legitimacy of providing a way for men (immigrants) as long as they can fulfil the traditional elements, pay for the customs, and are Muslim. Then mixed marriages took place, and it was their (women's) habit who see that immigrant workers could provide welfare. However, mixed marriage indirectly in civil terms means their marriage cannot be recognized and legalized.

A. Introduction

The complexity of mixed marriages is not only seen from differences in countries. Still, it includes differences in beliefs legitimized by custom so that their marriage does not have permanent legal force recognized by the state. Julia Moses reported that scholars extensively researched mixed marriages and discussed the

complexity of various kinds of recognition and the legitimacy of these marriage practices. Recognition of mixed marriages in terms of their complexity still needs to be detailed and explored regarding the recognition that legitimizes mixed marriages in civil law regarding the practice of cross-country marriages. Meanwhile, the Depanti Putri Utami report shows that mixed marriages of different religions and/or marriages not recognized by the state are not allowed to inherit from each other because their marital status needs to be recognized administratively.²

So far, studies on mixed marriages show three fundamental components. First, studies emphasize aspects of mixed marriages in cross-border migrant communities.³ Second, studies review related differences in beliefs.⁴ Third, a study on the legitimacy of mixed marriages in the civil aspect between parties.⁵ From this tendency, there is little to see regarding the legitimacy of mixed marriages in the aspects of regional law practised by local communities. In other words, studying mixed marriages still needs to pay more attention to customary recognition within the community.

The purpose of this paper is to respond to the practice of mixed marriages that have customary legitimacy that takes place in the civil society environment. In line with that, this paper proposes research questions that are formulated. (1) How is the

¹Julia Moses, "From faith to race? 'Mixed marriage' and the politics of difference in Imperial Germany" *History of the Family*. 24.3 (2019): 466–493.

²Defanti Putri Utami and Finza Khasif Ghifarani, "Perkawinan Campuran Di Indonesia Ditinjau Dari Hukum Islam Dan Hukum Positif," *Jurnal Hukum Islam* 1, no. 2 (2021): 156–75.

³Evi Purnama Wati, "Analisis Yuridis Status Kewarganegaraan Anak Hasil Perkawinan Campuran Menurut Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Indonesia," *Https://Medium.Com/* 17, no. 1 (2019): 42–56. *Lihat Juga*, Iren Andriani Rori, "Perkawinan Campuran Kewarganegaraan Dalam Perspektif Hukum Positif Di Indonesia," *Lex et Societatis* III, no. 3 (2015): 90–99. Lihat Juga, David Male et al., "Tinjauan Yuridis Kedudukan Anak Dalam Perkawinan Campuran Ditinjau Dari Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan," *JOM Fakultas Hukum* 5, no. 1 (2006): 1–14. Lihat Juga, A P Susilo and H W Aminah, "Aspek Asas Resiprositas Dalam Pengakuan Sahnya Perkawinan Campuran Antara Warga Negara Indonesia Dengan Warga Negara Asing," *Diponegoro Law Journal* 6, no. 1 (2017): 1–13, https://ejournal3.undip.ac.id/index.php/dlr/article/view/15665.

⁴Riyan Fitriatmoko, Sri Sudaryatmi, and Triyono, "Praktik Perkawinan Campuran Antar Masyarakat Adat Di Kota Batam Dan Akibat Hukumnya (Studi Pada Perkawinan Campuran Antara Pria Batak Dan Wanita Minangkabau Di Sungai Panas Kota Batam)," *Diponegoro Law Journal* 6, no. 2 (2017): 1–12. Lihat Juga, Mursyid Djawas and Nurzakia, "Perkawinan Campuran Di Kota Sabang (Studi Terhadap Faktor Dan Persepi Masyarakat Tentang Dampak Perkawinan Campuran)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 2, no. 2 (2018): 308–33.

⁵I Nyoman Putu Budiartha, "Dilema Penegakan Hukum Putusan MK No.69/PUU-Xii/2015 (Persoalan Perkawinan Campuran Tanpa Perjanjian Kawin)," *Jurnal Notariil* 1, no. 2 (2017): 1–12, https://doi.org/10.22225/jn.2.1.151.1-12. Lihat Juga, Rori, "Perkawinan Campuran Kewarganegaraan Dalam Perspektif Hukum Positif Di Indonesia." Lihat Juga, Srie Saadah Soepono and F.X. Tito Adonis, "Dampak Perkawinan Campuran Terhadap Tatakrama Daerah Studi Kasus Pada Komuniti Perkotaan Di Yogyakarta," 1989.

practice of mixed marriage played by the local community? (2) What factors cause the mixed marriage to take place? (3) what are the consequences of mixed marriages in the civil law approach? Thus, it is reiterated that in addition to answering these questions, articles need to look at the complexities of recognizing mixed marriages and civil relations.

Likewise, this study was constructed based on the assumption that the practice of mixed marriages occurs in the presence of customary recognition by the local community in one of the villages in South Konawe. It is assumed that the practice of mixed marriages is due to lifestyle and economic needs. In practice, they do not consider the legal status of the state and religious law as standardization of the legality of their marriage. Mixed marriages take place using an alternative route as a basis. Namely, the marriage is carried out through customary recognition and paying local customary provisions. Therefore, the emergence of the practice of mixed marriages (immigrants) that shows the complexity of the legality of their marriages is included in a civil review. It can have complex implications for local communities (women) due to marriages not being based on the legality of state law.

B. Method

The research design uses descriptive-qualitative research. This means that the descriptive design is that this research only describes the phenomenon of mixed marriages between local communities and groups of mining workers (Chinese immigrants) that take place in mining areas in Southeast Sulawesi. Likewise, this data collection was carried out based on interviews with one of the village heads and hamlet heads in the area. The data analysis technique was carried out by deductive-qualitative data analysis. This means that concluding this article only cites universal provisions related to these problems.

C. Finding and Discussion

1. Overview: Mixed Marriage (Migrant)

a. Mixed Marriage Will

Mixed marriages occur under the hand (*siri*) based on the desire or agreement between the two parties (male and female). The agreement to marry immigrant workers (China) acknowledges that this can be done by legitimizing the practice of mixed marriages, not the legitimacy of national law. Still, the customs (customs) of the local community have an essential role. Mixed marriages continue to obtain the recognition that immigrant workers have

religious motives (converts) so that they can get a stimulus for their marriage. One village head in Southeast Sulawesi stated:

"...women here and their traditional leaders trust men (Chinese immigration) if they have acknowledged being Muslim..."

Mixed marriages often occur because it is formed by social interaction and interaction regarding marriage, especially related to immigrant groups.⁶ There is social interaction related to marriage so that people's habits emerge (women deliberately marry immigrant groups without questioning the religious status of men clearly and definitely. Even though the religious status of mixed marriages in civil law (*Bulgerlijk Wetboek*) is not explained comprehensively, in the Marriage Law, it is clear that they must marry according to their respective religions. This means that marriages, whether mixed or not in harmony with religion, are still a concern because, in the future, it will have implications for offspring (children) for recognition by the state.

b. Motives of Immigrant Groups Doing Mixed Marriages

The migrant marriages developing transactionally reflects an underdeveloped region related to the economic system. Relevant institutions provide avenues and support for the legality of migrant (mixed) marriages. Mixed marriages occur due to imbalances and economic disparities between rural and urban areas, which is why women are looking for partners who are migrants with various channels that can provide legitimacy. Migrant (mixed) marriages have ideas and involvement in civil work to get what the migrant community wants.

Mixed marriages of various kinds cause complications in marriage practices. Among others, it often creates confusion about the position of mixed marriages from unilateral legitimacy. The tendency of most mixed marriages to ignore the boundaries and legal provisions regarding marriage causes problems in the practice of marriage. One of the problems is the difficulty in conceptualizing and categorizing the practice of mixed marriages because many factors need to be adapted to the characteristics of a valid marriage in the legal

⁶Julia Moses, "From Faith to Race? 'Mixed Marriage' and the Politics of Difference in Imperial Germany," *History of the Family* 24, no. 3 (2019): 466–93.

⁷Hsin Chieh Chang, "Social Participation and Support Network Patterns among Marriage Migrants in South Korea: Does Place of Residence Matter?," *Chinese Journal of Sociology* 4, no. 2 (2018): 236–61.

⁸Miri Song, "What Constitutes Intermarriage for Multiracial People in Britain?," *Annals of the American Academy of Political and Social Science* 662, no. 1 (2015): 94–111.

system in Indonesia. The practice of mixed marriages shows models for entering marriages so that migrant groups can be accepted.

"Migrant workers (China) change religions to embrace Islam (Muallaf) to legalize their marriage by valid religious teachings, but after their marriage is legal, migrant workers (China) return to embrace their religion and worship according to their religious beliefs."

Sylvie Fogiel-Bijaoui revealed that when mixed marriages occur, religion is central in providing formal legitimacy for someone who wants to enter into a marriage between countries and religions. The practice of marriage is if they have different religions, then one of them must leave his religion. However, in practice, leaving their religion for marriage, this right is only a formality because they still return to adhere to their external religion.⁹

Even though mixed marriages (migrants) have been carried out based on religion (Islam), this is only a motive to stimulate their marriage. So religion becomes a temporary alternative excuse for migrant groups so that their marriage can be accepted both religiously and according to custom. However, their marriage is legally unacceptable because it is administratively invalid and not recorded. Their marital rights do not get permanent legal legitimacy in terms of demands and long-term rights for both the wife and her future offspring because the marriages of migrant communities with local people are only carried out according to custom.

2. Factors Causing Mixed Marriages

a. The Legitimacy Factor of Traditional Institutions

Mixed marriages (Chinese immigrants) that custom has a role in legitimizing the practice of these marriages. The legitimacy of marriage that the role of adat does not consider the legal consequences that apply in the country. However, if the terms and conditions are fulfilled according to custom, the marriage can be carried out legally. Information from the hamlet heads in the Southeast Sulawesi region revealed that:

"Marriage with migrant workers (China) that if the man has fulfilled the elements required by custom, such as paying customary money and is Muslim, then their marriage can be carried out."

The ongoing practice of mixed marriages that custom provides legal legitimacy between women and migrant workers. Legitimacy is if the marriage has fulfilled the elements stipulated by custom, then the marriage can already

⁹Sylvie Fogiel-Bijaoui, "Sleeping with the 'Enemy': Mixed Marriages in the Israeli Media," *Journal of Israeli History* 36, no. 2 (2017): 213–28, https://doi.org/10.1080/13531042.2018.1545820.

be carried out, and the religious position can still be manipulated by the migrant community (China). This practice is custom because, in the long run, there are many conflicts between civil law and marriage according to the marriage law. Therefore, mixed marriages only legitimized by local custom are not strong enough to protect in the event of civil problems, both husband and wife relations and their children's rights.

b. Economic Balance Factors and Social Position

Nicola Jones revealed that various background cases drove the cause of most marriages. The background of marriage occurs because economic factors and income are difficult to cover needs. Economic needs are a factor due to dependence on prospective partners who can provide welfare after marriage. Lorraine Grimes, most mixed marriages are not a severe factor in establishing a household relationship. However, sometimes it is influenced by economic needs, so women take advantage of this opportunity even though their marriage is of a different country or religion.¹⁰

"...They (women) do marry immigrants (China) due to family economic factors...."

The practice of marriage that economic factors are often why people enter marriages illegally. The practice of marriage is carried out illegally, and the majority ignores the requirements of a legal marriage. Ignoring marriage provisions impacts civil problems related to marital rights. As a result, all of their rights are insured by the system that applies on a long-term basis.

Then mixed marriages are not only motivated by economic factors, but lifestyle is one of the triggers for mixed marriages in the mining area. Thus, the village head's statement reveals that:

"...the majority of women marry migrant workers that... think they (migrants) are rich and it is an honour if they marry foreign (immigrant) men..."

3. Civil Implications of Mixed Marriages

Mixed marriages can cause problems related to civil matters, including children's rights due to mixed marriages and demands for the wife's rights when there is a divorce from an immigrant husband. The rights to marriage with the migrant group have increased and will impact civil issues.¹¹ Regional problems will arise, especially the status of children in the future, and so will the demands

¹⁰Xiaochen Liang, "Marriage Trafficking: Demand, Exploitation, and Conducive Contexts— A Study in China–Vietnam Border Areas," *Violence Against Women*, 2022, 1–32.

¹¹Lara Momesso, "'I Vote so I Am': Marriage Migrants' Political JJParticipation in Taiwan," *Journal of Current Chinese Affairs* 51, no. 2 (2022): 241–164.

(lawsuits) of (Indonesian) wives if there are problems with husbands (migrants). This complexity can be caused because their marriage is not recorded or even recognized by the state but is recognized according to local customs.

Ido Shahar revealed that civil problems usually result in child custody conflicts due to mixed marriages.¹² The complexity of mixed marriages is that it is necessary to identify the area (country) where they divorced in the Civil International Law of Divorce.¹³ However, this civil law can only legalize if their mixed marriage is registered and each country recognizes the position of the marriage and where they got married.

Likewise, civil problems are null and void due to factors that both husband and wife cannot fulfil. Adhitya Dimas Pratama stated that if a couple does not have a marriage agreement if there is a problem in the future, no prosecution (lawsuit) can be carried out. Applies to both components of a marriage, both written (recorded), moreover, not recorded, their rights have been obstructed administratively, and the applicable national law regulates marriage.¹⁴

a. Mixed Marriage Consequences of Civil Law

International Civil Law reveals three fundamental components related to mixed marriages: (1) a person's marital status is based on their respective national laws. So mixed marriages, without exception, must follow the rules of the game in that country. (2) the form of legal action is carried out where the law applies in each country or locus regit actum. Thus, mixed marriages can only be legally recognised if legitimized by state (national) law and applicable provisions. Other local legal instruments (common law) cannot provide concrete reinforcement because the law only applies to themselves (the group), not to the universal (country).

I Nyoman Putu Budiartha revealed that to anticipate the impact of mixed marriages in the future, marriage agreements are significant and can benefit parties who marry across countries. So the marriage agreement should have been made before marriage by the conditions that will be required.15 However, this practice can only be carried out if the marriage is carried out

¹²Ido Shahar, "When 'Mixed' Marriages Fall ApaPrt: A Socio-Legal Perspective," *Journal of Israeli History* 36, no. 2 (2017): 313–29, https://doi.org/10.1080/13531042.2018.1541650.

¹³Herni Widanarti, "Akibat Hukum Perkawinan Campuran Terhadap Harta Perkawinan," *Diponegoro Private Law Review* 2, no. 563 (2018): 161–169.

¹⁴Adhitya Dimas Pratama, "Kedudukan Kepemilikan Hak Atas Tanah Dalam Perkawinan Campuran Tanpa Adanya Perjanjian Pisah Harta," *Jurnal Panorama Hukum* 3, no. 2 (2018): 247–63, https://doi.org/10.21067/jph.v3i2.2828.

¹⁵Budiartha, "Dilema Penegakan Hukum Putusan MK No.69/PUU-Xii/2015 (Persoalan Perkawinan Campuran Tanpa Perjanjian Kawin)."

legally at related institutions such as the Office of Religious Affairs and Office of Civil Registry Service so that the agreement has legal force, both their agreement and their marriage.

The consequences of mixed marriages in article 83 of the Civil Code if the marriage is carried out in Indonesia, the provisions for the marriage are based on the Indonesian state, and vice versa, that marriage is included in different laws. That means that every person who marries in a different country must comply with the statutory provisions of that country. Likewise, Article 84 BW in the Civil Code states that every time a person is married, male or female, it is mandatory to show a marriage certificate from the registration at the institution that carries out particular marriages.

Therefore, if the marriage is carried out in a series of ways, whether it is a mixed marriage, to obtain recognition for their marriage, it is necessary to prove it administratively so that the state does not suspend their rights. So mixed marriages, marriages must be recorded following applicable legal provisions.

b. Status of Children from Mixed Marriages in Civil Issues

In mixed marriages, if they already have children, the child's status legally follows the father's country, as explained in Article 1 letter b Law Number 62 of 1958. Thus the child's status must follow the father's country, so unregistered mixed marriages can cause problems for children's rights due to mixed marriages (siri). However, changes to the citizenship law state that the child's position due to mixed marriages means that the child can choose citizenship after turning 18.17

However, the status of children as a result of mixed marriages that are not recorded administratively has implications for the position of children. Because children are born as a result of mixed marriages (siri), the child is declared as a child born out of wedlock.18 So that these children's rights cannot be given legitimacy to fulfil any access rights because civil relations are declared to disappear automatically as a result of mixed marriages in a mixed marriage.

¹⁶Wati, "Analisis Yuridis Status Kewarganegaraan Anak Hasil Perkawinan Campuran Menurut Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Indonesia."

¹⁷Julio Césas Arrias, Diana Alvarado, and Manuel Calderón, "Akibat Hukum Perkawinan Campuran Terhadap Status Anak Yang Memiliki Kewarganegaraan Ganda Pasca Lahirnya UU No, 12 Tahun 2006 Tentang Kewarganegaraan," *Jurnal Mahasiswaa*, no. 12 (2019): 5–10.

¹⁸ Arrias, Alvarado, and Calderón.

The complexity of mixed marriages regarding the rights obtained by the couple can only be justified if their marriage is carried out according to custom, meeting the legal standards of the Civil Code and marriage law. Novitasari Kusuma Dewi et al. state that a child is considered legitimate and can have dual citizenship if the child's marriage is carried out legally and follows the written legal rules of that country. Because giving the position of the child legally must also be proven legally valid marriage. That means that the state does not recognize mixed marriages, so that the consequences will have an impact in the future, including the status of good children and problems with their rights.

D. Conclusion

Mixed marriages practiced by communities in mining areas show that as a result of their marriage, when viewed under civil law, their marital status cannot be recognized as well as their offspring and claims for their rights in the future. Mixed marriages of traditional roles significantly affect and provide legality as long as the man (immigrant) has acknowledged having converted to Islam. Mixed marriages are customary as long as the man fulfils customary provisions and pays customary money, which has been determined locally.

The weakness of this article is that it only reveals and describes the problems of the practice of mixed marriages in a series and has not explicitly reviewed the practice. So this article recommends following up the discussion regarding the status of children and the impact of children due to mixed marriages.

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¹⁹Novitasari Kusuma Dewi, Anak Agung Sagung Laksmi Dewi, and Luh Putu Suryani, "Pendaftaran Kewarganegaraan Anak Hasil Perkawinan Campuran," *Jurnal Interpretasi* ... 3, no. 2 (2022): 275–81, https://doi.org/10.22225/juinhum.3.2.5064.275-281.

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