

Legal Protection of Foreign-National Wives' Inheritance Rights in Indonesian Mixed Marriages: Justice, Legal Certainty, and Agrarian Nationality

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Abstract	The legal protection of foreign-national wives' inheritance rights in Indonesian mixed marriages raises fundamental questions concerning substantive justice, legal certainty, and agrarian nationality. This study examines the recognition and enforcement of inheritance entitlements under Indonesian positive law, particularly when inherited assets are subject to nationality-based land ownership restrictions. Normative juridical research employing statutory, conceptual, and case approaches provides the basis for analyzing relevant legal provisions and doctrines. The findings reveal that foreign-national wives may possess legitimate inheritance entitlements despite restrictions on retaining inherited land. Legal uncertainty, administrative complexities, and insufficient institutional coordination may nevertheless hinder the realization of their economic rights. Effective protection requires coherent legal interpretation, predictable administrative procedures, and enforceable mechanisms for safeguarding inheritance interests without compromising agrarian nationality. The study contributes to legal theory and socio-legal scholarship by distinguishing inheritance entitlement, ownership eligibility, and economic realization as interconnected dimensions of legal protection, demonstrating how justice and legal certainty can coexist with national land ownership restrictions.
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INTRODUCTION

The increasing prevalence of marriages between individuals of different nationalities has generated complex legal challenges concerning the intersection of family relationships, inheritance rights, property ownership, and state sovereignty. Mixed marriages establish legally recognized relationships between spouses who may remain subject to different nationality-based regulations, particularly regarding the acquisition and ownership of property. These legal complexities become increasingly significant following the death of an Indonesian spouse, when the surviving foreign-national wife must navigate inheritance provisions alongside restrictions

imposed by national agrarian legislation.¹ Indonesian law recognizes marriage as a legal institution that establishes reciprocal rights and obligations between spouses. However, the recognition of marital status does not necessarily guarantee unrestricted access to inherited property, especially when the estate includes land subject to nationality-based ownership limitations. This situation raises fundamental questions concerning the extent to which legal protection can ensure justice and legal certainty for foreign-national wives while preserving the nationality principle governing land ownership in Indonesia.

The legal consequences of mixed marriages are regulated primarily through Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019. Article 57 defines mixed marriage as a marriage between two individuals who are subject to different laws in Indonesia because of their nationality, where one spouse holds Indonesian citizenship. Such marriages create legal relationships encompassing matrimonial property, inheritance entitlements, and the legal status of surviving spouses.² Under Article 35, property acquired during marriage generally constitutes joint matrimonial property, whereas property owned before marriage or acquired individually through gifts or inheritance remains separate unless otherwise determined by the parties. These distinctions become particularly important following the death of one spouse because the surviving wife's entitlement to matrimonial property must be distinguished from her potential entitlement as an heir.³ Consequently, the legal position of a foreign-national wife cannot be adequately assessed solely through inheritance provisions without examining the broader relationship between matrimonial property arrangements and applicable property ownership restrictions.

Indonesia's inheritance system is characterized by the coexistence of civil, Islamic, and customary legal traditions, each of which establishes particular requirements concerning heirship and the distribution of estates. Under the applicable legal framework, a surviving foreign-national wife may be recognized as a legitimate heir based on her marital relationship with the deceased Indonesian husband, provided that the relevant succession requirements are satisfied. Her foreign nationality does not automatically eliminate the possibility of acquiring inheritance entitlements. Nevertheless, difficulties arise when inherited assets include land classified under ownership rights reserved exclusively for Indonesian citizens.⁴ The distinction between legal recognition as

¹ Lynda Chayadi, "Implikasi Hukum Atas Kedudukan Warga Negara Asing Sebagai Ahli Waris Untuk Hak Milik Atas Tanah," *Jurnal Ilmiah Penegakan Hukum* 7, no. 2 (2020): 159–68, <https://doi.org/10.31289/jiph.v7i2.3977>.

² Muhammad Setya Ady Syarifuddin, "Kedudukan Hukum Dan Keabsahan Kepemilikan Hak Atas Tanah Warga Negara Asing Yang Berasal Dari Pewarisan," *Notaire* 4, no. 3 (2021): 373–98, <https://doi.org/10.20473/ntr.v4i3.27056>.

³ Christine Martha Rinauly Sibarani, Wira Franciska, and Felicitas Sri Marniati, "Legal Protection for Foreign Nationals in the Distribution of Inheritance Rights Related to Land Ownership Rights in Indonesia," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 5, no. 1 (2024): 131–52, <https://doi.org/10.24252/shautuna.v5i1.43450>.

⁴ Evita Nuraini Rahmawan and Benny Djaja, "Effectiveness of the Mechanisms for Transferring Inherited Land to Heirs Who Are Foreign Nationals," *Jurnal Ilmu Hukum Kyadiren* 7, no. 2 (2025): 958–70, <https://doi.org/10.46924/jihk.v7i2.356>.

an heir and eligibility to retain a particular inherited asset creates a significant challenge for the implementation of inheritance protection. Accordingly, the central issue extends beyond determining whether a foreign-national wife possesses inheritance rights to examining whether those rights can be effectively exercised under the existing legal framework.

The nationality principle embedded in Law Number 5 of 1960 concerning Basic Agrarian Principles establishes a fundamental limitation on foreign ownership of Indonesian land. Article 21 paragraph (1) provides that only Indonesian citizens may hold *Hak Milik*, representing the strongest form of individual land ownership recognized under Indonesian agrarian law. Article 21 paragraph (3) further regulates circumstances in which foreign nationals acquire such rights through intestate inheritance or matrimonial property arrangements, requiring the relinquishment of ownership within one year after acquisition. Failure to fulfill this obligation results in the termination of ownership rights by operation of law, with the land reverting to the state while existing third-party rights remain protected. These provisions reflect Indonesia's commitment to maintaining national control over land resources and preventing unrestricted foreign ownership.⁵ However, their application to inheritance involving foreign-national wives creates a normative tension between the recognition of private inheritance entitlements and the restrictions established through agrarian nationality. Although the nationality principle serves legitimate public interests, its implementation must also be evaluated against the requirement to protect the economic interests of legally recognized heirs.

The relationship between inheritance protection and agrarian nationality presents a significant theoretical issue concerning justice and the limits of state regulation over individual property rights. The principle of substantive justice requires legal protection to extend beyond formal recognition toward the meaningful realization of legitimate entitlements. Aristotelian distributive justice emphasizes the allocation of rights according to legally relevant relationships and entitlements, while John Rawls's theory of justice as fairness provides a conceptual foundation for evaluating institutional arrangements that may place particular individuals in comparatively disadvantaged positions.⁶ Applied to mixed-marriage inheritance, these principles suggest that foreign-national wives should receive meaningful protection for legally established inheritance interests, even when nationality-based restrictions prevent them from retaining certain categories of property. Justice does not necessarily require identical property ownership rights for citizens and foreign nationals, but it does require careful consideration of whether ownership restrictions disproportionately obstruct the realization of legitimate economic claims.

⁵ I Gusti Made Oka Mahendra and Dewa Gede Pradnyana Yustiawan, "Legal Validity of Land Tenure by Foreigners through Mixed Marriages Obtained from Inheritance from the UUPA Perspective," *Policy, Law, Notary and Regulatory Issues* 2, no. 2 (2023): 187–97, <https://doi.org/10.55047/polri.v2i2.619>.

⁶ Sonia Amelia and Al Qodar Purwo Sulisty, "Kedudukan Hak Waris Anak Yang Berkewarganegaraan Asing Atas Hak Kepemilikan Tanah Di Indonesia," *Reformasi Hukum* 27, no. 2 (2023): 108–15, <https://doi.org/10.46257/jrh.v27i2.617>.

The central theoretical challenge therefore concerns the reconciliation of substantive justice with the state's authority to regulate land ownership according to nationality.⁷

Legal certainty represents another essential dimension of inheritance protection because the effectiveness of legally recognized rights depends on clear, consistent, and predictable rules governing their exercise. Foreign-national wives may encounter uncertainty concerning the determination of inheritance shares, the classification of matrimonial property, the legal procedures for transferring inherited land, and the consequences of failing to comply with statutory ownership restrictions. Although Indonesian agrarian law establishes clear limitations on foreign ownership, the relationship between those limitations and the procedures for realizing inheritance entitlements requires further examination. Legal certainty must encompass not only the existence of statutory rules but also their consistent interpretation and administration by relevant institutions. The interaction between inheritance law and agrarian law consequently illustrates how separate legal regimes may produce uncertainty when their implementation is insufficiently coordinated.⁸ From a jurisprudential standpoint, this tension raises questions concerning legal coherence, the predictability of administrative decisions, and the extent to which legal systems provide effective remedies for recognized rights.

Beyond its normative dimensions, inheritance protection in mixed marriages constitutes an important socio-legal issue involving institutional practices, family relationships, and societal perceptions of foreign nationals. The realization of inheritance entitlements frequently requires interaction with notaries, Land Deed Officials (*Pejabat Pembuat Akta Tanah* or PPAT), courts, and the National Land Agency (*Badan Pertanahan Nasional* or BPN). These institutions perform different functions in verifying legal status, documenting inheritance arrangements, resolving disputes, and administering property transfers. Differences in institutional interpretation or administrative requirements may create obstacles for foreign-national heirs seeking to realize their legally recognized interests.⁹ Family disputes may further complicate the distribution of inherited assets, particularly when other heirs question the foreign spouse's entitlement or oppose the transfer of property interests. Social perceptions concerning foreign participation in family property ownership may also influence the willingness of relatives to recognize legitimate inheritance claims. These factors demonstrate that legal protection cannot be evaluated exclusively through statutory provisions, since the effectiveness of rights also depends on institutional accessibility, procedural consistency, and the social conditions affecting their implementation.

⁷ Alfian Andri Wijaya, "Perlindungan Hukum Terhadap Pelaku Perkawinan Campuran Atas Status Hak Atas Tanahnya Di Indonesia," *Jurnal Rechtsens* 11, no. 1 (2022): 17–34, <https://doi.org/10.56013/rechtsens.v11i1.1156>.

⁸ Elit Iga Dewi, James Alexsandro Ricardo, and Bhim Prakoso, "Pertanggungjawaban Notaris Terhadap Pemindahan Hak Milik Atas Tanah Secara Kewarisan Kepada WNA," *Unes Law Review* 6, no. 4 (2024): 9876–88, <https://doi.org/10.31933/unesrev.v6i4.1837>.

⁹ Agnes Geraldine Olga Supriyana, I Nyoman Putu Budiarta, and I Ketut Sukadana, "Status Hukum Tanah Hak Milik Bagi Ahli Waris Yang Pindah Kewarganegaraan Menjadi Warga Negara Asing," *Jurnal Interpretasi Hukum* 1, no. 2 (2020): 7–11, <https://doi.org/10.22225/juinhum.1.2.2419.7-11>.

Existing legal scholarship has examined various consequences of mixed marriages, particularly the relationship between nationality, inheritance, matrimonial property, and land ownership. Previous studies have addressed the legal consequences of mixed marriages for inheritance and testamentary arrangements, the inheritance rights of children with different or dual nationality statuses, and restrictions affecting foreign nationals who acquire Indonesian land through succession.¹⁰ Other scholarly discussions have emphasized the importance of matrimonial property agreements in determining the ownership and distribution of assets between Indonesian and foreign spouses. These contributions have advanced understanding of the regulatory complexities associated with cross-national family relationships. However, much of the existing discussion concentrates on the general consequences of mixed marriages, the position of children as heirs, or the formal restrictions imposed on foreign land ownership. Comparatively limited attention has been given to the specific legal position of foreign-national wives as surviving spouses whose inheritance entitlements must be reconciled with nationality-based property restrictions and the practical requirements of inheritance administration.

This limitation reveals a research gap concerning the conceptual relationship between the recognition of inheritance rights, legal eligibility to retain inherited property, and the effective realization of the economic value of an estate. Previous legal analyses have generally examined inheritance entitlements and foreign land ownership restrictions as related but analytically separate issues. Such approaches may explain the legal status of foreign heirs without fully addressing whether existing mechanisms provide meaningful protection when the inherited property cannot be retained. A comprehensive examination requires distinguishing three dimensions of legal protection: the recognition of the surviving spouse as a legitimate heir, the limitations imposed on her ability to hold particular forms of inherited property, and the availability of lawful procedures through which her economic entitlements may be realized.¹¹ This distinction is particularly significant because formal recognition of inheritance rights does not necessarily ensure substantive justice when administrative difficulties, competing family interests, or uncertainty over property transfers prevent beneficiaries from obtaining the economic value of their inheritance. The absence of an integrated conceptual analysis of these dimensions limits scholarly understanding of how justice, legal certainty, and agrarian nationality should interact within Indonesian inheritance law.¹²

The relationship between these three principles also reveals a broader jurisprudential question concerning the boundaries between legitimate state restrictions and the effective protection of private-law entitlements. Agrarian nationality reflects Indonesia's sovereign

¹⁰ Suryani Sappe, Adonia Ivone Latturete, and Novyta Uktolseja, "Hak Pakai Atas Tanah Hak Milik Dan Penyelesaian Sengketa," *Batulis Civil Law Review* 2, no. 1 (2021): 78–92, <https://doi.org/10.47268/ballrev.v2i1.560>.

¹¹ Ainul Masruroh and Arum Widiastuti, "Hak Waris Tanah Bagi Anak Yang Lahir Dari Perkawinan Campuran Menurut Hukum Perdata Internasional Dan Hukum Islam," *Jurnal Hukum Dan Kenotariatan* 6, no. 3 (2022): 1423–41, <https://doi.org/10.33474/hukeno.v6i3.16472>.

¹² Ega Permatadani and Anang Dony Irawan, "Kepemilikan Tanah Bagi Warga Negara Asing Ditinjau Dari Hukum Tanah Indonesia," *Khatulistiwa Law Review* 2, no. 2 (2021): 348–59, <https://doi.org/10.24260/klr.v2i2.356>.

authority to regulate ownership of land resources, whereas inheritance law recognizes certain private interests arising from legally established family relationships. These regulatory objectives are not inherently incompatible.¹³ Nevertheless, their simultaneous operation may produce outcomes that undermine the practical effectiveness of inheritance protection unless appropriate legal and administrative mechanisms are available. The challenge is therefore not simply to determine which legal principle should prevail, but to identify an interpretation that preserves the legitimate objectives of agrarian regulation while preventing unnecessary impairment of recognized inheritance entitlements. Such an interpretation requires examining the proportional relationship between public regulatory interests and private economic rights, together with the institutional procedures necessary to translate formal legal recognition into meaningful protection.

Against this background, the present study addresses two interconnected research questions. First, how does Indonesian positive law provide legal protection for the inheritance rights of foreign-national wives in mixed marriages when the principles of justice, legal certainty, and agrarian nationality are considered together? Second, what normative, administrative, institutional, and socio-legal obstacles affect the effective realization of those rights? The study seeks to examine the legal status of foreign-national wives under the applicable inheritance and matrimonial property frameworks, evaluate the consequences of nationality-based land ownership restrictions, and identify legal mechanisms capable of protecting legitimate inheritance interests. Particular attention is devoted to the interaction between the Indonesian Civil Code, marriage legislation, agrarian law, and the institutional arrangements responsible for inheritance administration.

The original contribution of this study lies in developing an integrated conceptual framework for evaluating the protection of foreign-national wives' inheritance rights through the interrelationship between substantive justice, legal certainty, and agrarian nationality. Rather than interpreting restrictions on foreign land ownership as an automatic denial of inheritance entitlements, the study distinguishes between recognition of heirship, eligibility for property ownership, and the enforceable realization of inheritance-related economic interests. This approach provides a basis for examining whether Indonesia's existing legal framework achieves an appropriate balance between protecting legitimate private rights and maintaining national control over land resources. The study further argues that effective legal protection requires coherent statutory interpretation, predictable administrative procedures, and accessible mechanisms for realizing inheritance entitlements without violating nationality-based ownership restrictions. Its contribution to legal theory consists of clarifying the distinction between formal recognition and substantive realization of rights, while its socio-legal relevance lies in explaining how institutional practices and social relationships may influence the effectiveness of inheritance protection. Through this analysis, the study seeks to advance a more coherent understanding of

¹³ Putu Ayu Sriasih Wesna and Josephine Carene Andrea, "Inheritance Rights to Freehold Land for Children with Dual Citizenship Outside of Mixed Marriage," *International Journal of Multidisciplinary Research and Analysis* 6, no. 7 (2023): 3373–81, <https://doi.org/10.47191/ijmra/v6-i7-68>.

the relationship between law, justice, citizenship, and property rights in Indonesian mixed marriages.

METHODS

This study employs a normative juridical research method using statutory, conceptual, and case approaches to examine the legal protection of foreign-national wives' inheritance rights in Indonesian mixed marriages.¹⁴ The research focuses on the legal status of foreign-national wives as heirs, the recognition of their inheritance entitlements, and nationality-based restrictions on land ownership. The analysis is guided by three interconnected principles: substantive justice, legal certainty, and agrarian nationality, which provide the theoretical framework for evaluating the relationship between private inheritance rights and state regulation of land ownership.

The research relies on secondary data consisting of primary, secondary, and tertiary legal materials.¹⁵ Primary legal materials include the Indonesian Civil Code, Law Number 1 of 1974 concerning Marriage as amended by Law Number 16 of 2019, Law Number 5 of 1960 concerning Basic Agrarian Principles, Law Number 12 of 2006 concerning Citizenship, and relevant judicial decisions. Secondary materials comprise scholarly books, peer-reviewed journal articles, and previous legal studies, while tertiary materials include legal dictionaries and encyclopedias. Data are collected through library research and systematic documentary examination.

The research procedure involves identifying relevant legal provisions, examining the relationship between inheritance law and agrarian restrictions, and evaluating the resulting normative tensions through the selected theoretical principles.¹⁶ Legal materials are analyzed qualitatively using descriptive, systematic, and conceptual interpretation supported by deductive legal reasoning. Particular attention is given to distinguishing the recognition of inheritance rights from the legal eligibility to retain inherited land and the realization of its economic value. The study is limited to normative analysis of Indonesian positive law and does not involve interviews, surveys, or direct field observations. Its findings therefore address legal coherence and normative protection rather than empirically measured institutional practices.

RESULTS AND DISCUSSION

A. Recognized as an Heir, Restricted as an Owner: Justice and Agrarian Nationality

The legal protection of foreign-national wives in Indonesian mixed marriages reveals a fundamental tension between inheritance entitlement and nationality-based property ownership restrictions. Indonesian inheritance law recognizes the surviving spouse as a potential legal heir, whereas agrarian legislation limits foreign nationals' eligibility to retain certain

¹⁴ Teguh Arya Samudra Negara, "Normative Legal Research in Indonesia: Its Origins and Approaches," *Audito Comparative Law Journal* 4, no. 1 (2023): 1–15, <https://doi.org/10.22219/audito.v4i1.24855>.

¹⁵ David Tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 8, no. 8 (2021): 2463–78, <https://jurnal.um-tapsel.ac.id/index.php/nusantara/article/view/5601>.

¹⁶ Yulia Audina Sukmawan and Dwi Damayanti, "Metode Penelitian Hukum Normatif Dan Empiris Sebagai Strategi Penguatan Perspektif Kajian Ilmu Hukum," *Notary Law Journal* 4, no. 3 (2025), <https://notarylaw.journal.ulm.ac.id/index.php/nolaj/article/view/116>.

categories of land rights. This distinction demonstrates that the legal capacity to inherit does not necessarily confer unrestricted authority to own inherited property. The central problem therefore concerns the extent to which inheritance rights remain substantively protected when their realization is constrained by another legal regime.¹⁷ Examining this relationship requires distinguishing the recognition of legitimate succession interests from the conditions governing ownership and the enjoyment of inherited assets.

Indonesia's pluralistic inheritance system further complicates the determination of succession rights in mixed marriages. The Indonesian Civil Code, Islamic inheritance law, and customary inheritance traditions establish different requirements concerning heirship, estate distribution, and family relationships. Although these systems differ in their substantive rules, foreign nationality alone does not necessarily eliminate a surviving wife's inheritance entitlement. Her legal standing depends on the applicable succession regime, the validity of the marriage, and the fulfillment of relevant inheritance requirements.¹⁸ This qualification is important because equal protection cannot be interpreted as an unconditional right to inherit under every legal system. Legal analysis must first establish the applicable inheritance framework before assessing whether nationality-based property restrictions interfere with an otherwise valid entitlement.

The distinction between matrimonial property and inherited property constitutes another essential dimension of legal protection. Article 35 of Law Number 1 of 1974 concerning Marriage recognizes property acquired during marriage as joint matrimonial property, while individually owned assets remain subject to separate legal treatment. Upon the husband's death, the surviving wife's entitlement to joint property must be determined before identifying the estate available for distribution. This separation prevents matrimonial property interests from being incorrectly classified as inheritance entitlements. A foreign-national wife may consequently possess two legally distinct claims: an interest arising from the marital property regime and an inheritance entitlement arising from succession. Failure to distinguish these interests may distort estate calculations and weaken the legal protection available to the surviving spouse.

Matrimonial property agreements also influence the legal position of foreign-national wives, particularly when the deceased spouse leaves land acquired during marriage. Agreements establishing separation of property may clarify individual ownership and reduce uncertainty concerning the composition of the inheritance estate. However, such agreements do not automatically eliminate inheritance entitlements or exempt foreign spouses from nationality-based restrictions on land ownership.¹⁹ Their principal function is to determine the matrimonial property regime rather than override mandatory agrarian provisions. Accordingly, legal

¹⁷ Willy Wijaya et al., "Tinjauan Yuridis Hak Milik Atas Tanah Karena Pewarisan Dalam Perkawinan Campuran," *Jurnal Ilmu Hukum, Humaniora Dan Politik* 4, no. 6 (2024): 2480–89, <https://doi.org/10.38035/jihhp.v4i6.2788>.

¹⁸ Anak Agung Gede Krisna and I Gusti Agung Mas Rwa Jayantiari, "Pewarisan Anak Yang Lahir Dari Perkawinan Campuran Dalam Perspektif Hukum Adat Bali," *Acta Comitatus: Jurnal Hukum Kenotariatan* 8, no. 3 (2023): 536–48, <https://doi.org/10.24843/AC.2023.v08.i03.p11>.

¹⁹ Ni Putu Sayuri Dewi, M Sofyan Pulungan, and Meliyana Yustikarini, "Inheritance Rights of Children Born in Mixed Marriages Reviewed from the Civil Code and Balinese Customary Law," *Journal of Law, Politics and Humanities* 5, no. 4 (2025): 2539–49, <https://doi.org/10.38035/jlph.v5i4.1429>.

protection cannot depend exclusively on whether the spouses established a property separation agreement. The decisive consideration remains the relationship between the surviving wife's legally recognized interests, the ownership status of inherited assets, and the applicable statutory limitations.

The nationality principle under Law Number 5 of 1960 concerning Basic Agrarian Principles establishes the primary restriction affecting inherited land. Article 21(1) reserves *Hak Milik* exclusively for Indonesian citizens, reflecting the legislative intention to preserve national ownership of land resources. Article 21(3) further requires foreign nationals who acquire such rights through intestate succession or matrimonial property arrangements to relinquish them within one year. Failure to comply results in the termination of the ownership right by operation of law, with the land reverting to the state, subject to existing third-party rights.²⁰ These provisions demonstrate that foreign nationality does not necessarily invalidate an inheritance entitlement but limits the beneficiary's ability to retain ownership of land governed by the nationality principle.

The legal consequences of Article 21(3) must nevertheless be distinguished from the broader restrictions governing other categories of land rights. The one-year relinquishment provision specifically concerns *Hak Milik* acquired under the circumstances identified by the statute and should not automatically be extended to every category of inherited land. Foreign nationals are also subject to eligibility restrictions concerning other land rights, while *Hak Pakai* may be available under applicable regulatory requirements.²¹ Such distinctions are significant because different property classifications may require different legal procedures. Treating every form of inherited land as legally identical risks producing inaccurate interpretations and unnecessary administrative obstacles. Legal certainty therefore requires precise identification of the inherited asset, its ownership classification, and the statutory consequences applicable to the beneficiary.

The relationship between inheritance law and agrarian law should not automatically be characterized as an irreconcilable normative contradiction. Inheritance law principally determines who may succeed to an estate and the corresponding legal entitlements, while agrarian law determines which persons may hold particular land rights. Both regimes consequently regulate different dimensions of property relations.²² The difficulty emerges when their simultaneous application leaves insufficient clarity concerning how a recognized inheritance interest may be lawfully realized. This distinction shifts the analysis away from an apparent conflict between legal

²⁰ Irma Bandiyah and Abraham Ferry Rosando, "Kepemilikan Hak Atas Tanah Warga Negara Indonesia Yang Melaksanakan Perkawinan Campuran," *DiH: Jurnal Ilmu Hukum* 13, no. 25 (2017): 105–23, <https://doi.org/10.30996/dih.v13i25.2225>.

²¹ Gregory Ariel Cahya Antareksa and Cokorda Dalem Dahana, "Analysis of Judge's Decision Related to the Transfer of Land Rights for Foreign Nationals Based on Testament: Literature Review of Supreme Court Decision Number 1134K/PDT/2009," *Policy, Law, Notary and Regulatory Issues* 1, no. 3 (2022): 99–104, <https://doi.org/10.55047/polri.v1i3.226>.

²² Beatrix Benni, Kurniawarman, and Anisa Rahman, "Pembuatan Akta Pembagian Hak Bersama Dalam Peralihan Tanah Karena Pewarisan Di Kota Bukittinggi," *Jurnal Cendekia Hukum* 5, no. 1 (2019): 65–76, <https://doi.org/10.33760/jch.v5i1.175>.

provisions toward a question of regulatory coordination. The weakness of legal protection lies not necessarily in the coexistence of different rules, but in their capacity to operate coherently when applied to the same inheritance.

Distributive justice requires that foreign-national wives receive their legally recognized inheritance entitlements under the applicable legal regime without arbitrary exclusion based solely on citizenship status. Aristotelian justice emphasizes the allocation of rights according to relevant legal relationships, suggesting that legally recognized spousal interests deserve protection proportionate to their established entitlement. However, this principle does not necessarily require identical land ownership rights for Indonesian citizens and foreign nationals. Different legal treatment may be justified when grounded in legitimate regulatory objectives.²³ The relevant question is whether nationality-based restrictions affect only the permissible form of property ownership or also undermine the economic substance of an inheritance entitlement that the legal system otherwise recognizes as valid.

Rawls's conception of justice as fairness offers a further basis for evaluating the institutional consequences of nationality-based restrictions. The principle of fairness directs attention toward legal arrangements that may place individuals at a structural disadvantage despite formal recognition of their rights.²⁴ Foreign-national wives may encounter particular vulnerabilities when their inheritance interests depend on property transfers, cooperation among multiple heirs, or unfamiliar administrative procedures. Although citizenship distinctions may serve legitimate public purposes, their implementation should not impose unnecessary burdens that deprive beneficiaries of their lawful economic interests. Substantive justice consequently requires evaluating not only the legitimacy of ownership restrictions but also whether the available procedures adequately protect affected individuals against disproportionate economic disadvantage.

The preservation of inheritance-related economic interests becomes particularly significant when foreign-national wives cannot lawfully retain inherited *Hak Milik* land. Lawful transfer arrangements may enable beneficiaries to realize the economic value corresponding to their inheritance entitlement without violating agrarian nationality. Nevertheless, the availability of a transfer mechanism does not automatically guarantee adequate protection. Disagreements among heirs, difficulties establishing property value, and delays in completing legal documentation may affect the amount or accessibility of the proceeds. A legally enforceable inheritance entitlement therefore requires procedures capable of protecting the beneficiary's economic interest throughout the transfer process. Without sufficient safeguards, formal recognition may coexist with substantial economic vulnerability, weakening the practical meaning of inheritance protection.

²³ Yosephira Natania and Nyoman Satyayudha Dananjaya, "Perlindungan Hukum Hak Milik Atas Tanah Dalam Perkawinan Campuran Di Indonesia: Studi Kasus Penyelesaian Sengketa Melalui Judicial Review," *Kertha Wicara: Journal Ilmu Hukum* 14, no. 12 (2025): 621–31, <https://doi.org/10.24843/KW.2025.v14.i12.p1>.

²⁴ Taradita Nindyawati, Rachmi Sulistyorini, and Hanif Nur Widhiyanti, "Regulating the Acquisition of Inheritance Rights to Land for Children with Dual Nationality from Mixed Marriages without a Marriage Agreement," *International Journal of Humanities Education and Social Sciences* 4, no. 3 (2024): 1689–96, <https://doi.org/10.55227/ijhess.v4i3.1409>.

These findings support a conceptual distinction between three dimensions of legal protection: inheritance entitlement, ownership eligibility, and economic realization. Inheritance entitlement establishes whether the surviving wife possesses a legitimate claim under the applicable succession regime. Ownership eligibility determines whether the beneficiary may lawfully retain a particular inherited asset under agrarian legislation. Economic realization concerns the mechanisms through which the recognized entitlement can produce an enforceable financial benefit when direct ownership is restricted. These dimensions should be evaluated separately because the failure of one does not necessarily invalidate the others. Their integration provides a coherent framework for assessing whether Indonesian law protects foreign-national wives substantively rather than merely recognizing their legal status as heirs.

The central theoretical implication is that substantive justice and agrarian nationality are not inherently incompatible, but their reconciliation depends on the effectiveness of legal mechanisms protecting recognized economic interests. Indonesia may legitimately maintain nationality-based restrictions on land ownership while ensuring that foreign-national wives can exercise valid inheritance entitlements through lawful and predictable arrangements. The decisive measure of protection is therefore not unrestricted access to inherited land, but the ability to obtain the economic value legally attributable to the beneficiary without arbitrary deprivation or procedural uncertainty. This interpretation advances an integrated understanding of inheritance protection by distinguishing legitimate restrictions on ownership from unjustified obstacles to realizing private-law rights. It also establishes the basis for examining legal certainty and institutional effectiveness in the subsequent discussion.

B. Beyond Formal Recognition: Legal Certainty and the Effective Protection of Inheritance Rights

Legal certainty constitutes an essential foundation for protecting foreign-national wives' inheritance rights because statutory recognition does not automatically ensure enforceable legal entitlements. Indonesian inheritance law provides a basis for recognizing surviving spouses as heirs, while agrarian legislation establishes nationality-based restrictions on land ownership. The interaction between these legal regimes creates uncertainty when recognized inheritance interests involve assets that foreign nationals cannot permanently retain. Such uncertainty concerns the determination of inheritance shares, the classification of property, the transfer of restricted assets, and the distribution of economic proceeds. Effective legal protection consequently requires more than clearly formulated statutory provisions. Legal certainty must also ensure coherence between substantive rights, administrative obligations, and accessible mechanisms for realizing legitimate inheritance interests.²⁵

The normative relationship between inheritance law and agrarian regulation reveals a structural limitation affecting the implementation of foreign-national wives' rights. The Indonesian Civil Code recognizes succession entitlements according to the applicable inheritance framework, whereas the Basic Agrarian Law establishes eligibility requirements for holding

²⁵ Aliya Sandra Dewi, Dian Fitriana, and Elvira, "Penerapan Hukum Waris Perdata Di Indonesia," *The Juris: Jurnal Ilmu Hukum* 8, no. 1 (2024): 105–12, <https://doi.org/10.56301/juris.v8i1.1242>.

particular land rights. Article 21(3) regulates the relinquishment of *Hak Milik* acquired by foreign nationals through specified legal circumstances, including intestate succession, within one year. The provision establishes a definite ownership restriction but does not independently regulate every procedural aspect of inheritance settlement. Property valuation, agreement among heirs, and distribution of transfer proceeds remain subject to other applicable legal arrangements.²⁶ This regulatory separation creates a need for coordinated interpretation to prevent legally recognized interests from becoming procedurally ineffective.

The statutory relinquishment period presents a particularly significant issue concerning the relationship between legal certainty and substantive justice. Article 21(3) establishes a clear temporal limitation, yet compliance may depend on completing inheritance documentation, identifying beneficiaries, resolving ownership disputes, and arranging lawful property transfers. These requirements may become difficult when several heirs possess competing claims or refuse to cooperate. The legal consequences of non-compliance are substantial because the relevant ownership right may terminate by operation of law.²⁷ A definite statutory deadline therefore provides formal predictability without necessarily ensuring that affected beneficiaries possess sufficient procedural opportunities to protect their interests. Effective legal certainty requires examining whether administrative arrangements enable compliance before the statutory period expires.

The determination of matrimonial property represents another source of legal complexity because a surviving wife's proprietary entitlement must be distinguished from her inheritance share. Article 35 of the Marriage Law establishes the general classification of joint and separate matrimonial property, while applicable matrimonial agreements may alter the relevant property arrangements. Estate administration must identify the surviving spouse's existing property interests before distributing assets attributable to the deceased. Errors concerning this distinction may reduce the wife's legitimate entitlement or improperly enlarge the inheritance estate available to other beneficiaries.²⁸ Foreign nationality adds further complexity when matrimonial property includes land subject to ownership restrictions. Legal certainty consequently depends on accurate asset classification, legally supported estate calculations, and documentation that distinguishes matrimonial property claims from succession entitlements.

Notaries and Land Deed Officials perform significant functions in securing the legal documentation necessary for inheritance administration and property transfers. Notarial instruments may establish relevant agreements, document legal declarations, and provide evidentiary support for determining the parties' respective property interests. Land Deed Officials facilitate transactions requiring authorized land deeds according to applicable agrarian

²⁶ Aditya Putera Ardhana and Ida Bagus Yoga Raditya, "Kepemilikan Hak Milik Atas Tanah Akibat Terjadinya Perkawinan Campuran," *Acta Comitas: Jurnal Hukum Kenotariatan* 10, no. 2 (2025): 386–98, <https://doi.org/10.24843/AC.2025.v10.i02.p11>.

²⁷ Rahmia Rachman, Erlan Ardiansyah, and Sahrul, "A Juridical Review towards the Land Rights Ownership in Mixed Marriage," *Jambura Law Review* 3, no. 1 (2021): 1–18, <https://doi.org/10.33756/jlr.v3i1.6857>.

²⁸ Dian Aries Mujiburohman et al., "The Issues of Land Tenure in Mixed Marriage," *Jurnal Ilmiah Peuradeun* 11, no. 1 (2023): 19–38, <https://doi.org/10.26811/peuradeun.v11i1.818>.

regulations. The effectiveness of these functions depends on accurate verification of citizenship, marital status, inheritance documentation, and the classification of land rights. Incomplete documentation or inconsistent interpretation may delay lawful transfers and increase the likelihood of disputes.²⁹ Clear technical standards are therefore essential to ensure that documentary requirements protect legitimate inheritance interests without imposing unnecessary administrative burdens on foreign-national beneficiaries.

The National Land Agency occupies a central position in implementing nationality-based restrictions through land registration and related administrative procedures. Its responsibilities concern the legal status of land rights, registration requirements, and compliance with applicable ownership eligibility rules. Foreign-national wives cannot obtain unrestricted registration of *Hak Milik* merely because their inheritance entitlements have been established. Administrative procedures must therefore distinguish recognition of succession interests from eligibility for registration as a land-right holder.³⁰ Uncertainty may arise when inheritance documentation identifies a foreign beneficiary but the requested registration conflicts with statutory ownership requirements. A coherent administrative framework should provide clear procedural guidance concerning permissible transfers, documentary verification, and compliance with relinquishment obligations without disregarding the beneficiary's legitimate economic interests.

Judicial protection provides an additional mechanism for resolving disputes concerning heirship, matrimonial property, and inheritance distribution. Courts possessing jurisdiction under the applicable legal regime may determine disputed inheritance entitlements and adjudicate competing claims among beneficiaries. Judicial intervention becomes particularly relevant when other heirs contest the foreign-national wife's legal standing or refuse to cooperate in distributing inherited assets.³¹ Nevertheless, a judicial determination of inheritance rights does not automatically remove restrictions imposed by agrarian legislation. The effectiveness of judicial protection therefore depends on the relationship between the judgment, the legal status of inherited property, and subsequent administrative implementation. Legal certainty requires judicial remedies capable of clarifying enforceable economic entitlements while respecting mandatory restrictions on land ownership.

Institutional fragmentation constitutes a significant risk when inheritance settlement requires decisions involving notaries, Land Deed Officials, courts, and land administration authorities. Each institution operates according to distinct legal responsibilities, yet the resolution of inheritance involving restricted land depends on their coordinated application. Different

²⁹ Stefanie Hartanto and Mohammad Ahmad Eko Susilo, "Legal Implications of Mixed Marriage without a Prenuptial Agreement on Land Ownership: Case Study of Supreme Court Decision Number 539 K/AG/2021," *Jurnal Civics: Media Kajian Kewarganegaraan* 22, no. 2 (2025): 267–77, <https://doi.org/10.21831/jc.v22i2.88539>.

³⁰ Bella Fitria Ariyanti, "Perkawinan Campuran WNA Dan WNI Tanpa Perjanjian Nikah Mengenai Hak Atas Penjualan Tanah," *Jurnal Hukum Dan HAM Wara Sains* 2, no. 4 (2023): 313–19, <https://doi.org/10.58812/jhhws.v2i04.299>.

³¹ Abida Zulira Irfani and Zil Aidi, "Kepastian Hukum Kepemilikan Tanah WNI Dalam Perkawinan Campuran Tanpa Perjanjian Kawin," *Notarius* 19, no. 1 (2026): 128–45, <https://doi.org/10.14710/nts.v19i1.78798>.

interpretations concerning documentary requirements, ownership eligibility, or permissible transfer procedures may produce inconsistent administrative outcomes. The normative analysis identifies this fragmentation as a potential weakness rather than an empirically established pattern across institutions.³² The absence of coordinated procedural guidance may nevertheless increase transaction costs and prolong the settlement of legitimate inheritance claims. Legal certainty requires institutional consistency that enables beneficiaries to anticipate applicable requirements and complete lawful inheritance procedures without avoidable uncertainty.

Family relationships introduce additional challenges when inherited property carries substantial economic value or particular social significance. Disagreements concerning inheritance shares, property valuation, and asset distribution may become more difficult when a surviving spouse holds foreign citizenship. Other beneficiaries may misunderstand nationality-based ownership restrictions as grounds for denying the foreign wife's inheritance entitlement altogether. Such interpretations would incorrectly equate restrictions on retaining land ownership with the absence of a valid succession claim.³³ Social perceptions regarding foreign participation in family property ownership may further intensify disputes and obstruct voluntary settlement. The socio-legal significance of these concerns lies in the possibility that legally recognized interests remain ineffective when family cooperation, accessible legal information, and dispute-resolution mechanisms are insufficient.

The economic realization of inheritance rights represents the decisive measure of effective legal protection when direct ownership of inherited land is restricted. Lawful property transfers may allow foreign-national beneficiaries to obtain the financial value corresponding to their recognized inheritance shares. The availability of this mechanism, however, does not independently guarantee a fair outcome. Disputed valuations, delayed transactions, competing claims, and unequal bargaining positions may affect the proceeds ultimately received. Statutory restrictions should not be interpreted as authorizing other heirs to appropriate economic benefits belonging to the foreign-national wife. Effective protection requires reliable documentation of inheritance shares, defensible valuation procedures, and enforceable arrangements governing the distribution of proceeds. These safeguards would preserve legitimate private-law interests without expanding foreign land ownership.

The reconciliation of legal certainty and agrarian nationality requires procedural improvements rather than the elimination of citizenship-based ownership restrictions. Technical guidelines should clarify the relationship between inheritance documentation, land-right eligibility, statutory relinquishment periods, and lawful property transfers. Standardized procedures could improve coordination among notaries, Land Deed Officials, courts, and land administration authorities while reducing inconsistent legal interpretations. Transparent

³² Reynaldi Alexandro Monoarfa, Monica Sortalina Silalahi, and Stefanie Hartanto, "Perjanjian Perkawinan Pemisahan Harta Dalam Perkawinan Campuran Sebagai Sarana Perlindungan Harta Perkawinan Berupa Hak Milik Atas Tanah," *Notary Journal* 3, no. 2 (2023): 147–62, <https://doi.org/10.19166/nj.v3i2.6963>.

³³ Fara Diva Arrum Clarisa Putri and Baidhowi, "Postnuptial Agreement as an Instrument for Protecting the Land Rights of Indonesian Citizens in Mixed Marriages," *Law Research Review Quarterly* 12, no. 1 (2026): 331–53, <https://doi.org/10.15294/llrq.v12i1.41890>.

valuation arrangements and documented agreements among heirs could strengthen protection against economically disadvantageous settlements. Accessible legal assistance and dispute-resolution procedures would also help beneficiaries understand their rights and obligations before statutory deadlines become critical. Such improvements would reinforce the practical enforceability of inheritance entitlements while maintaining the nationality principle established under Indonesian agrarian law.

The theoretical significance of these findings lies in distinguishing formal legal certainty from the effective realization of legally recognized rights. Formal certainty concerns the clarity of statutory provisions, while effective certainty requires predictable procedures, consistent institutional interpretation, and accessible legal remedies. Substantive justice establishes the normative justification for protecting legitimate inheritance interests, whereas agrarian nationality defines the permissible boundaries of land ownership. These principles can operate coherently when ownership restrictions do not eliminate the practical economic value of otherwise valid inheritance entitlements. The analysis establishes that effective protection depends on integrating inheritance entitlement, property-holding eligibility, and economic realization into a consistent legal framework. Indonesian inheritance protection can therefore preserve national agrarian interests while strengthening justice and legal certainty for foreign-national wives in mixed marriages.

CONCLUSION

The study demonstrates that Indonesian positive law recognizes foreign-national wives' inheritance rights in mixed marriages, although nationality-based restrictions limit their eligibility to own inherited land. The principal challenge lies in ensuring that these restrictions do not undermine legally recognized economic entitlements. Normative inconsistencies, administrative uncertainty, institutional fragmentation, and potential family disputes may weaken effective legal protection. The findings establish that substantive justice, legal certainty, and agrarian nationality are not inherently contradictory but require coherent legal interpretation and coordinated implementation. The study contributes to legal theory by distinguishing inheritance entitlement, ownership eligibility, and economic realization as three essential dimensions of legal protection. Strengthening procedural clarity, institutional coordination, and enforceable economic safeguards is necessary to protect foreign-national wives without compromising Indonesia's agrarian nationality principle. Future empirical research should examine how these protections operate through judicial decisions and land administration practices.

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