

COMMUNITY PROPERTY SEPARATION ON MIX MARRIAGE ACCORDING TO INDONESIAN LAW

Mix marriage (different nationality) is not a new diction in society, especially in Indonesia. The law even has adapting and regulating the mix marriage since a long time ago. In Indonesia, one of the regulation regarding mix marriage (different nationality) is regulated in Indonesian Law Number 1 year 1974 regarding Marriage (Marital Law), especially in article 57, which stated as follows:

“The definition about mix marriage in this Law is the marriage between two person in Indonesia, in which such persons subjected into different law, because of nationality difference and one of such person is Indonesian.”

According to article 35 Marital Law, all the properties resulted after the marriage become community property (owned by both husband and wife jointly, and divided only upon divorce, annulment, or death). This community property status will burdensome the mix marriage couple to have an assets (land and/or building, house, apartment) in Indonesia with Freehold title. To accomodating the desire of such mix marriage couple to have assets in Indonesia, then before the marriage, it is suggested that they make a property separation agreement or as known as prenuptial agreement.

Prenuptial Agreement must be made before the marriage, in which basically agreeing upon communal property and debts separation between the husband and wife, in which resulted before or on the marriage. The prenuptial agreement made on the notary deed and



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must be registered into the marriage register office before such marriage conducted.

By separating the communal property between the husband and wife, the Indonesian who is in the in mix marriage could have an assets in Indonesia with Freehold title. It is because such assets will be the Indonesian totally, and the foreigner has no legal rights at all to own such property owned by the Indonesia. Or in other words, if the Indonesian has desire to divert the legal rights of such assets (by selling, grants, etc), then the Indonesian does not need approval from their foreigners spouse.

Another positive legal effects that are important by having a community property separation agreement is that it is more than just about the property, but also about the debts. Since the mix marriage couple made a prenuptial agreement, then the debts between them (resulted both marriage or on the marriage) will be separated automatically. So all of husband's debts become husband obligations, and all wife's debts become wife obligations. And for example, if the husband has debts with collateral debt, then the property that can be as collateral debt is only husband's property (with documents evidence which proof that such assets is under the nam of the husband). So if in the future the husband is unable to settle his debts and cause the assets forfeiture to settle such debts, then only husband's properties that can be forfeited by the authorize to settle such debts. Meanwhile, wife's properties are secure and are not allowed by the law to be forfeited. So the family financial will

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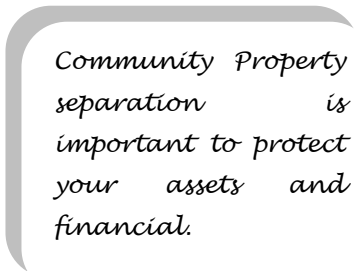
remain stable and the family can continue their life. Then it is clear that benefits of prenuptial agreement is more than just for property ownership in Indonesia, but also to protect the family financial and assets.

Then how about the mix marriage couple which already married but have not made the prenuptial agreement and has desires to have a communal property separation? Practically in Indonesia, there was a communal property separation after the marriage, this is as stated on East Jakarta District Court Decree Number 207/Pdt/P/2005/PN.Jak.Tim, regarding Decree of Marital Agreement between Syam Lal Uttam with Kavita Uttam by East Jakarta Judge, and East Jakarta District Court Decree Number 459/Pdt/P/2007/PN.Jkt.Tim regarding Decree of Marital Agreement between Dubagunta Ramesh with Selvia Setiawan by East Jakarta District Court. These are legal reasons to submit proposal regarding decree of marital agreement after the marriage:

1. Such mix marriage couple did not aware about the regulation regarding community property separation agreement shall made before the marriage;
2. There is a serious consent about the community property in relation with their job, that can bring legal obligations up to the personal property such mix marriage couple;
3. The desires of Indonesian spous to own assets in Indonesia with Freehold Title.

It is possible to separate community property between husband and wife in mix marriage, both before or during the marriage.

In other words, the community property separation between husband and wife on mix marriage can be done both before or during the marriage, it is just the matter of different legal products. If the community property separation be done before the marriage, then it is manifested in prenuptial agreement. If the community property separation be done after the marriage, then it is manifested in district court decree.



Community Property separation is important to protect your assets and financial.