



# The Implementation of the Marriage Abuse License of Foreign Citizens with Indonesian Citizens in Business Transaction

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**Abstract.** The misuse of marriage documents by foreigners in Indonesia to facilitate business operations has resulted in detrimental consequences for genuine business transactions and the Indonesian community. Addressing this concern requires the government's dedicated focus on eradicating the exploitation of marriage documents among foreigners married to Indonesians, ensuring these documents do not serve as a means of monopolizing business in Indonesia. This study employs a qualitative descriptive method to analyze the relevant legal framework and proposes legislative measures aimed at regulating business activities for foreigners married to Indonesians under the Foreign Investment law (PMA). Drawing on legal protection and legal certainty theories, the research delves into the challenges posed by the misuse of marriage licenses and the enforcement of foreign investment regulations. Through a comprehensive examination of relevant laws and regulations, the study emphasizes the importance of stringent law enforcement, community education, and counseling to protect the interests of local businesses, particularly micro, small, and medium enterprises (MSMEs). The findings highlight the need for greater scrutiny and oversight in the application of immigration regulations, emphasizing the significance of adherence to legal frameworks and the protection of Indonesian citizens' rights and interests.

**Keywords:** Marriage Abuse License, Foreign Citizens, Business Transaction.

## 1 Introduction

### 1.1 Background of the Study

The misuse of marriage documents by foreigners with the mode to run a business in Indonesia is a public secret that causes many problems in a real business transaction process and not marriage. The issue of marriage documents with foreigners with a Permanent Residence Permit Card (KITAP) needs serious attention from the government in order to eradicate the misuse of marriage documents for foreigners married to Indonesians and so that these marriage documents are not for the purpose

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of monopolizing business in Indonesia but still make Indonesians "the first citizen" in their own country.

The main purpose of this paper is creating laws to apply to foreigners married to Indonesians, in terms of business still subject to the Foreign Investment law (PMA). This research method uses a qualitative descriptive method and analyses the application of relevant laws, for marriage laws in Indonesia. In order to overcome this problem, a good contribution is needed by the government, providing education to the community through counselling, supervision and strict action by law enforcement so that the realization of protection for business actors, both micro, small and medium enterprises (MSMEs).

## 1.2 Problem Foundation

The Research Problems are:

1. What are the rules in the law of marriage between Indonesian citizens and foreigners?
2. How is foreign investment regulated in Indonesia?
3. How is the implementation of the abuse of marriage licenses between Indonesian citizens and foreign citizens in a running business?

## 2 Theoretical Framework

### 2.1 Legal Protection Theory

#### Definition of Legal Protection

Aristotle said that humans are "zoon politicon", social creatures or creatures of society, because each member of society has a relationship between one another. As a social being, consciously or unconsciously humans always perform legal acts (*rechtshandeling*) and legal relations (*rechtsbetrekkingen*) [1].

Legal protection is a governmental measure or intervention provided to individuals with legal standing, in accordance with their rights and responsibilities as prescribed by the positive law of Indonesia. Legal protection is derived from the existence of a legal relationship. Legal relations refer to the interactions between entities that possess legal significance or give rise to legal ramifications, such as the establishment of rights and responsibilities [13].

#### Various Forms of Legal Protection

The concept of legal protection represents a constriction of the broader notion of protection, wherein protection is exclusively conferred through legal means. The legal protection afforded to individuals is intricately tied to the existence of rights and

obligations. These rights and obligations are attributed to human beings as legal objects, governing their relationships with one another.

In the realm of law, individuals possess certain entitlements and responsibilities that empower them to engage in lawful pursuits [3]. With government action as the center point, two kinds of legal protection are distinguished, namely:

1. Pre-emptive legal protection.

This process affords individuals the chance to express complaints or comments prior to the finalization of a governmental decision. This protective measure is implemented with the objective of mitigating and averting conflicts.

2. The concept of repressive legal protection refers to the implementation of legal measures that restrict or limit certain rights and freedoms in a manner that is perceived as oppressive or authoritarian. The primary objective of this endeavor is to effectively address and settle conflicts or disagreements.

## 2.2 Legal Certainty Theory

Legal certainty comes from the word "certain", which means that it is certainly fixed, cannot be not, a certain thing [17]. According to Gustav Radbruch, a German legal philosopher, there are three basic ideas of law which many legal experts and philosophers interpret as the three objectives of law, including justice, benefit and legal certainty [1].

## 3 Theoretical Foundation

1. Definition of *KITAS* / *KITAP* (Permanent Residence Permit Card), Permanent Residence Permit Card, the application for *KITAS* and *KITAP* is submitted to the Head of the Immigration Office or a designated Immigration Officer whose working area covers the residence of Foreigners [5].
2. Mixed marriage according to Law No.1/1974 on Marriage is a marriage between an Indonesian citizen and a foreign citizen (Article 57). Because of different nationalities, the laws that apply to them are also different [6].
3. Foreign Direct Investment (FDI) is a flow of capital originating from abroad that flows into the private sector either through direct investment or indirect investment in the form of a portfolio. Direct investment is an investment that involves the investor directly in the business operations carried out, so that the business dynamics concerning the company's policies set, the goals to be achieved, cannot be separated from interested parties (foreign investors) [15].
4. The first Citizen means that Indonesian citizens are prioritized by the government, not foreigners.
5. The term "illegal" refers to actions or behaviors that are prohibited or forbidden by law, and so are not in accordance with the legal framework established by a governing authority. The concept of "business is legal" might be understood as

the antithesis of legality. An act or thing may be deemed illegal if it lacks justification according to the relevant laws and regulations. Legal position has an understanding that where a legal subject or legal object is located [7].

6. Micro business refers to a sort of economic activity undertaken by individuals on a small scale. It is characterized by its traditional and informal nature, as it lacks registration, documentation, and incorporation. The business's yearly sales revenue does not exceed IDR 100,000,000 and is under the ownership of an Indonesian citizen [12].

## 4 Methodology

This study uses a research sample of foreign nationals in Indonesia aged 40 - 59 years using data analysis from many online and offline literature for 29 days, from June 13 to July 12, 2023, in the Kemang area - South Jakarta which since the 1980s the area has been dominated by expatriates, suggesting the definition of data analysis as "an effort to systematically search and organize records of observations, interviews, and others to improve the researcher's understanding of the case under study and present it as a finding for others." [4]. In order to enhance comprehension, further investigation is required to ascertain significance." Case Studies come from the English translation "A Case Study" or "Case Studies". The word "Case" is taken from the word "Case" which according to the Oxford Advanced Learner's Dictionary of Current English 3 (1989; 173), is defined as 1). "instance or example of the occurrence of sth., 2). "actual state of affairs; situation", and 3). "circumstances or special conditions relating to a person or thing". In order, this means 1). an instance of something happening, 2). the actual conditions of a situation or state, and 3). the circumstances or special conditions concerning a person or thing.

## 5 Discussion

### 5.1 Rules in the Law of Marriage between Indonesia Citizens and Foreign Citizens

#### Marriage Law in Indonesia

The Article 29 of the 1945 Constitution is the basis of marriage law in Indonesia. The Marriage Law (UU) is a manifestation of the Indonesian state as a state of law as stated in Article 1 paragraph (3) of the 1945 Constitution and a state based on God Almighty as stated in Article 29 paragraph (1) of the 1945 Constitution. Therefore, in the life of Indonesian society, it is obligatory to implement Islamic law for Muslims, Christian law for Christians, and Hindu law for Hindus. To carry out the sharia, the mediation of state power is needed. Thus, in the Marriage Law, the legal basis used is none other than Article 29 of the 1945 Constitution, so that every article in a norm must be imbued with and must not contradict the provisions of Article 29 of the 1945 Constitution. This means that all provisions (including marriage) must be in

accordance with Article 29 of the 1945 Constitution, which is an absolute requirement [10].

In the judicial review of Law No. 1 of 1974 concerning Marriage (Marriage Law) as amended by Law No.16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage. Article 7 paragraph (1) of Law Number 1 Year 1974 states that marriage is only permitted if the man reaches the age of 19 (nineteen) years and the woman has reached the age of 16 (sixteen) years. So, this provision was amended through Law Number 16 of 2019. The law regulates the minimum age limit for men and women to marry is 19 years old [8].

Marriage is actually an agreement or holy binding between a man and a woman. A marriage between a man and a woman is based on mutual love for each other, mutual consent and willingness between the two parties. So that there is no compulsion one to the other. The sacred covenant in a marriage is expressed in an *ijab* and *qobul* that must be carried out between the prospective man and woman, both of whom have the right to themselves. If they are insane or underage, their legal guardians can act for them<sup>15</sup>.

According to Abu Zahrah, marriage can legalize biological relations between men and women, with this marriage, men and women have obligations and rights that must be fulfilled by each other according to Islamic law. Marriage comes from the basic word "marriage" which means the meeting of male genitals and female genitals, both of which have legal and halal legal rules so that they can multiply offspring. As written in the Word of Allah SWT: "And among the signs of His power is that He created for you wives of your own kind, so that you tend and feel at ease with them, and He made between you a sense of love and affection. Indeed, in such things there are signs for those who think." (QS. Ar-Rum verse 21) Marriage is a very strong contract or *mitsaqan ghaliza* to obey Allah's commands to carry it out as worship and to carry out the Sunnah of the Rosul in accordance with Article 2 of the Compilation of Islamic Law (KHI). So it can be concluded that the marriage is a very strong holy agreement between a man and a woman on the basis of willingness and mutual consent carried out by the guardian according to the nature and conditions [11]. So that it can legalize the biological needs between the two and can continue the lineage.

Mixed marriages in laws and regulations. 1. According to Staatblad 1896 N0. 158. The definition of mixed marriage during the colonial government period Beslit Kingdom December 29, 1896 No. 23 Staatsblad 1896/158 (Regeling op de gemengde huwelijken", hereinafter abbreviated as GHR) provides the following definition: Marriage of persons who are under different laws in Indonesia (Article 1). According to Article 1 of the GHR, what falls within the scope of mixed marriages are: a. International mixed marriages, namely between citizens and native people, between foreigners with different laws, and marriages that take place abroad. b. Mixed marriages between places, for example, such as the marriage between a Batak and a Sundanese woman, a Javanese man and a Lampung woman, between an Arab from Sumbawa and an Arab from Medan and so on due to differences in place. c. Mixed marriages between groups (intergentiel). The existence of mixed marriages between groups is due to the division of population groups by the Colonial Government into 3 (three) groups, namely: (1) European group; (2) Foreign Eastern group; (3) Bumi Putera

(native) group so that marriages made between those of different groups are called mixed intergroup marriages. For example: (1) between Europeans and Indonesians; (2) between Europeans and Chinese; (3) between Europeans and Arabs; (4) between Europeans and Easterners; (5) between Indonesians and Arabs; (6) between Indonesians and Chinese; (7) between Indonesians and Easterners; (8) between Chinese and Arabs. d. Mixed Marriage Between Religions Mixed Interfaith Marriage Marriage for those with different religions is also called mixed marriage. The existence of interfaith marriages in the colonial marriage law system was due to the Dutch East Indies Government overriding religious laws and provisions in terms of marriage. Inter-religious marriages were contradicted in practice and many marriages from the community and the religious community were maintained by the colonial government, even in 1901. It was deemed necessary to add to the GHR with the provisions of article 7 paragraph (2) which stipulated that "Religious differences cannot be used as an obstacle to a mixed marriage." The addition of paragraph 2 to article 7 of the GHR was a result of the influence of the Conference on International Law at The Hague in 1900.

## 5.2 Regulations on Foreign Investment in Indonesia

Foreign Direct Investment (PMA) is the distribution of funds for investment purposes by foreign investors (from outside Indonesia). The investment is made as a first step to conduct a business or business in Indonesian territory. According to the Law No.25 Year 2007 on Investment, foreign investment is an investment activity to conduct business in the territory of the Republic of Indonesia conducted by foreign investors, either using foreign capital. And, according to the Law No. 25/2007 on Investment, foreign investment is an investment activity to conduct business in the territory of the Republic of Indonesia carried out by foreign investors, both those who use foreign capital entirely or in partnership with domestic investors. These investors can be in the form of individuals or business entities that must meet certain requirements.

One of the requirements that must be owned before investing is to obtain a Principle License granted by the Investment Coordinating Board (*BKPM*). Investment is organized based on several principles as stipulated in Article 3 paragraph (1) of Law No. 25 Year 2007. These principles are legal certainty, openness, accountability, equal treatment, togetherness, equitable efficiency, sustainability, environmental insight, independence, and balance and national economic unity [9]. By adhering to the investment rules outlined in Presidential Regulation No. 44 of 2016, which pertains to the compilation of business sectors that are restricted and business sectors that are open with certain requirements in the investment domain. Foreign investors seeking to invest in Indonesia are obligated to establish a firm that aligns with the business sectors specified in the *KBLI* (Indonesian Standard Business Field Classification). The foreign company is structured as a PT (Limited Liability Company) and is owned by a minimum of two shareholders, who can be either individuals or entities. In the event that the business sector is not included in the *KBLI* list, it is permissible for foreign entities to possess full ownership, up to 100%. The minimal threshold for foreign investment in Indonesia is set at IDR 10 billion, with the exclusion of land and build-

ing costs. In Indonesia, the regulatory requirement mandates a minimum paid-up capital of IDR 2.5 billion for banks [14].

What is meant by foreign investment are: Direct foreign investment through BKPM, Indirect investment which is done through the purchase of shares in the capital market, Foreign Investment through loans; such as with offshore loans, purchase of Bonds, Notes, Commercial Paper and so on; Contractual Foreign Investment, such as management assistance and / or technical assistance, licenses, agencies and others. PMA permits are as follows: Establishment/expansion permit of the FDI company itself; IMB, Nuisance Law Permit, except for industries subject to AMDAL, Location permit, IUT, Work permit with the title of Work Permit for Foreigners (KTA) issued by the Chairman of BKPM on behalf of the Minister of Manpower, Settling permit (KIMS) and so on.

In principle, the regulation of foreign investment has been quite competitive with other countries, although the law on foreign investment here and there still needs to be modified in line with technological developments and the ideals of the nation, namely the welfare of the people based on the fifth principle of Pancasila, just and prosperous. The changes are more towards improving the previous policy, with the current developments in Indonesia with the opening of 100 percent investment by foreigners has been enforced since "the birth of the Job Creation Law has an influence on foreign investment in Indonesia, where all business fields are open to foreigners with 100 percent foreign capital unless otherwise determined by laws and regulations." The government released Presidential Regulation No. 10 of 2021 on Investment Business Entities (Perpres No.10 of 2021) and Presidential Regulation No. 49 of 2021 on Amendments to Presidential Regulation No. 10 of 2021 on Investment Business Fields (Perpres No.49 of 2021) in February 2021. Both regulations are derived from Law No. 11 of 2020, which is commonly referred to as the Job Creation Law. What is expected with this convenience is of course, so that the PMA sector is not misused by foreign investors by going against the applicable legal provisions in Indonesia.

Legal development as a means of renewal can be seen from two main points, namely first, updating the supporting legislation products and second, giving direction to the development itself and giving direction to the social attitudes of the community.

### **5.3 Implementation of the Abuse of Marriage Licenses between Indonesian Citizens and Foreigners in Running a Business**

Abuse is practicing something that is not as it should be. This matter is often attempted by foreigners by violating the provisions of the time limit on residence permits (overstay). Immigration law enforcement in this matter must be strictly enforced so that this matter does not take place again. According to the Law No. 6 of 2011 on Immigration, to deter the abuse of residence permits and to enforce the law against foreign nationals who violate the conditions of residence permits, it is necessary to supervise the administrative completeness of foreigners who enter Indonesian territory and take administrative actions as well as legal remedies through the process of judges.

Abuse of immigration stay permits by foreigners often occurs. This is the basis that immigration law enforcement must be stricter based on the standardization of applicable laws and regulations. The arrival of foreigners in Indonesia affects immigration regulations and policies. Everyone is facilitated to carry out expeditions, from one country to another. Advances in technology and human resources that continue to grow rapidly, and the development of facilities and infrastructure in the fields of transportation and communication lead to the continued increase in the flow of international citizen traffic [2]. For foreign investment, the main requirement is to have a clear limited stay visa in accordance with Article 39 of the Law of the Republic of Indonesia Year 2011.

## 6 Conclusion

Based on the results of the analysis and discussion, the following conclusions can be concluded here:

1. The Marriage Law (UU) in Indonesia serves as an embodiment of the country's commitment to becoming a legal state, as outlined in Article 1 paragraph (3) of the 1945 Constitution. Additionally, it reflects Indonesia's status as a state founded on the belief in God, as expressed in Article 29 paragraph (1) of the 1945 Constitution. Hence, within the Indonesian societal context, the imperative arises to enforce Islamic law for adherents of Islam, Christian law for followers of Christianity, and Hindu law for practitioners of Hinduism. In order to implement the principles of sharia, the involvement of state authority is necessary. Therefore, the legal foundation employed in the context of the Marriage Law is Article 29 of the 1945 Constitution. Consequently, all laws within the normative framework must align with and not contravene the stipulations outlined in Article 29 of the 1945 Constitution. It is imperative that all laws, including marriage, adhere strictly to the stipulations outlined in Article 29 of the 1945 Constitution. This need is fundamental and non-negotiable.
2. One of the requirements that must be owned before investing is to obtain a Principle License granted by the Investment Coordinating Board (BKPM). Investment is organized based on several principles stipulated in Article 3 paragraph (1) of Law No. 25 Year 2007. These principles are legal certainty, openness, accountability, equal treatment, togetherness, equitable efficiency, sustainability, environmental insight, independence, and balance and national economic unity. Of course, by following the investment guidelines contained in Presidential Regulation No. 44 of 2016 concerning the List of Business Fields that are Closed and Business Fields that are Open with Requirements in the Investment Sector. For foreign investors who want to invest in Indonesia, they are required to establish a company based on the business fields listed in the KBLI (Indonesian Standard Business Field Classification).
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enced immigration regulations and policies. Everyone is facilitated to carry out expeditions, from one country to another. Advances in technology and human resources that continue to grow rapidly, and the development of facilities and infrastructure in the fields of transportation and communication lead to the continued increase in the flow of international citizen traffic.

## References

1. Achmad Ali, *Revealing Legal Theory & Judicialprudence including legislation (Legisprudence) Volume I Initial Understanding*, Kencana Prenada Media Group, Jakarta 2010, p. 288. 288.
2. Aisyah Nurannisa Muhlisa and Kholis Roisah, "Immigration Law Enforcement Against Abuse of Overstay Visit Stay Permit Visas for Foreign Nationals," *Indonesian Journal of Legal Development*.
3. CST. Kansil 1989. *Introduction to Indonesian Law and Legal System*. Balai Pustaka Jakarta. Page. 117.
4. (Fahmi, 2011) *Noeng Muhadjir (1998: 104)*
5. *Hukum Online.com*, what is KITAS/KITAP and how to arrange it.
6. *Kemlu.go.id*, The legality of mixed marriages in the eyes of Indonesian law.
7. *Kemenkumham.go.id*, confusion of legal terms
8. Law No.16 Th.2019, concerning amendments to Law No.1 Th.1974, *bpk.go.id*
9. *Law online.com*, investment principles.
10. *Mkri.id*, Article 29 of the 1945 Constitution
11. Santoso, "The Nature of Marriage According to the Marriage Law, Islamic Law and Customary Law", *Yudisia*, Vol 7, No 2, 2016, pp 412-434. 4 M Khoiruddin, 'Wali Mujbir According to Imam Syafi'i (A Review of Maqâshid Al- Shari'ah)', *Al- Fikra: Islamic Scientific Journal*, Vol 18, No 2, 2019, pp 257-84, <https://doi.org/10.24014/af.v18.i2.8760>. Marriage in the Philosophical Perspective of Islamic Law *Crepido Journal*, Volume 02, Number 02, November 2020, pages 111-122 114
12. *Semarangkota.go.id*, *umkm criteria (micro, small and medium enterprises)*
13. Soeroso, 2006, *Introduction to the Science of Law*, Eighth Edition, Surya Grafika Publisher, Jakarta, pp. 49.
14. The Standard Business Classification refers to data from the Central Bureau of Statistics updated in 2020.
15. *Uajy.ac.id*, 16 CHAPTER II, Literature Review
16. **15** *Undip.ac.id*, Marriage in a legal philosophical perspective
17. W.J.S. Poerwadarminta, *General Indonesian Dictionary Third Edition*, Balai Pustaka, 2006. Page. 847.

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