

Research Article

# Legal Review of Unregistered Marriages Relating to Transfer of Rights to Property Obtained During Marriage for the Chinese Group

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**Abstract:** According to Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage, a marriage is considered valid if it is conducted according to the laws of the respective religion and beliefs. Marriage is not merely a physical union but also an emotional bond, and fundamentally follows the principle of monogamy. In the legal framework of marriage, state protection—particularly for wives and future children—can only be guaranteed if the marriage is consciously conducted in accordance with Law Number 1 of 1974, which includes the requirement that the marriage be officially registered under applicable laws and regulations. If a marriage is not registered, the state cannot provide legal protection concerning marital status, joint property, inheritance, and other rights arising from the marriage. To establish a wife's rights, it must first be proven that a legal marriage exists between her and her husband. One legal consequence of an unregistered marriage is that neither the wife nor any children from the marriage have the right to claim support or inheritance from the husband. Islamic inheritance laws allocate shares specifically to blood relatives. Unregistered marriages—often called *sirri*, *kiyai*, or *syar'i* marriages—are conducted according to religious rules or customs but are not registered with the Marriage Registrar. In Chinese customary law, property acquired during marriage is influenced by a patrilineal kinship system, where the wife's status is governed by the husband's family law. Generally, the husband, as head of the household, controls all marital property and has absolute rights to use it without needing the wife's consent, including in transferring joint property.

**Keywords:** Chinese; Joint Property; Unregistered Marriage.

## 1. Introduction

The provisions of the law genuinely legitimize Indonesia as a nation founded on and upon it of Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter abbreviated as the 1945 Constitution of the Republic of Indonesia). A country based on law is a country that runs its government based on the power of law (supremacy of law) and aims to organize legal order. The purpose of the law is to obtain legal certainty including in family law traffic. One of the family law regulations to obtain legal certainty is the legal regulation governing marriage and other matters to regulate family affairs, so the government formed and stipulated The Marriage Law Number 1 of 1974. As per the provisions of Law Number 1 of 1974 regarding Article 1 defines marriage as both a physical and spiritual union between a man and a woman as husband and wife, with the purpose of creating a happy and everlasting family (household) founded upon the belief in the One Almighty God.

The provisions in Law Number 1 of 1974 concerning Marriage are generally mandatory (*dwingend recht*), but some articles are regulatory (*regelend recht*), such as those governing marital property found in Article 29, which addresses marriage agreements, and Article 35, which covers marital assets.

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The legal foundation for marriage is outlined in Article 28B Paragraph (1) of the 1945 Constitution, which states that "Everyone has the right to form a family and continue their lineage through a legal marriage." Additionally, Article 2 paragraph (1) of Law Number 1 of 1974 specifies that if a marriage is performed in accordance with the rules of the individual faith and belief, it becomes valid.

Article 1 of Law Number 1 of 1974 defines marriage as a physical and spiritual connection between a man and a woman as husband and wife, with the goal of forming a joyful and everlasting family grounded in faith in the Almighty God. This definition highlights that marriage is not only a physical union but also a spiritual connection, fundamentally adhering to the principle of monogamy. The purpose of marriage is to build a joyful and everlasting family grounded in faith.

Marriage practices in Indonesia vary, ranging from those conducted through the Religious Affairs Office (KUA), to elopement marriages, and the commonly known "underhand" marriages. Unregistered marriages, often called *sirri*, *kiyai*, or *syar'i* marriages, are those performed based on religious or customary rules but not registered with the Marriage Registrar (KUA for Muslims and Civil Registry Office for non-Muslims).

Marriage in Indonesia is influenced by diverse factors including local customs and religions such as Hinduism, Buddhism, Christianity, and Islam. These influences affect family life, kinship, and individual wealth within the community.

A valid marriage under Law Number 1 of 1974 and the Compilation of Islamic Law is one that complies with the respective religious laws, meaning in Islam it must fulfill all the essential pillars and requirements of marriage. Marriage law is part of Islamic Law that contains provisions on matters of marriage, namely how the process and procedures towards the formation of a marriage bond, how to organize a marriage contract according to law, how to maintain the physical and spiritual bond that has been declared.

The Christian marriage system adheres to a monogamous system. The Christian Church refers to it in the story of the creation of Adam and Eve. Eve was created from one of Adam's ribs, although there were many other options. This shows that God wants marriage to be monogamous and one-time in the Christian Church.

In traditional Chinese weddings, several rituals are performed, including presenting betrothal gifts, engagement ceremonies, exchanging presents, hairstyling, overcoming obstacles, bowing to heaven and earth, the tea ceremony, the wedding celebration, teasing the newlyweds in the bridal chamber, wedding wine rituals, tying a lock of hair, and returning to the bride's childhood home. This tradition, known as *ciotau*, is now rarely practiced in modern times. The *ciotau* ceremony is typically performed only once in a person's lifetime, meaning widowers or widows are not permitted to participate. The ritual is observed not only by Peranakan Chinese who maintain their cultural heritage but also forms part of the broader Chinese marriage customs, classifying it as an underhand marriage.

According to Law Number 1 of 1974, an underhand marriage is one conducted without complying with Article 2 Paragraph (2) of the Law and Articles 2 Paragraphs (1) and (2) of Government Regulation Number 9 of 1975, which regulates the implementation of the Marriage Law. In other words, an underhand marriage is one that does not follow the official marriage registration procedures mandated by Number 9 of the Government Regulations of 1975, especially for those marrying according to Islamic practices but who fail to register their marriage.

A marriage that is carried out only in accordance with the provisions of Article 2 Paragraph (1) is legally material, however, if the marriage does not fulfill the requirements of Article 2 Paragraph (2) at the same time, meaning that the marriage is not registered with an institution authorized to carry out registration, then the marriage does not comply with the applicable legal provisions. Only a marriage that is carried out materially and formally is said to be a legal act according to Law Number 1 of 1974.

Based on the positive law in force in Indonesia, joint property (*gono-gini*) is regulated in Law Number 1 of 1974 concerning Marriage, the Civil Code, and the Compilation of Islamic Law (KHI) legally recognize joint property (*gono-gini*), including its management, usage, and distribution. Although the division of joint property is clearly regulated by these laws, in practice, implementation remains insufficient, and disputes over joint property frequently arise during divorce proceedings. The matter of joint property is specifically addressed in Article 35 of Law Number 1 of 1974 concerning Marriage, which includes provisions such as:

"Property obtained during marriage becomes joint property. Property brought by each husband and wife and property obtained by each as a gift or inheritance, is under the control of each as long as the parties do not determine otherwise."

Under the Civil Code, all assets owned by husband and wife are considered joint property. In contrast, the Marriage Law states that only assets acquired during the marriage are joint property, while assets obtained before marriage remain the individual property of each spouse.

Before the Marriage Law was enacted, Indonesian citizens of Chinese descent were subject to the Civil Code, including its rules on marital property. According to Article 35 paragraphs (1) and (2) of the Marriage Law, prospective spouses are not required to make a marriage agreement, as the law automatically protects each spouse's personal property. This differs from the Civil Code, which requires couples to enter into a marriage agreement to safeguard their individual assets. However, despite these provisions, Law Number 1 of 1974 still contains discriminatory elements affecting many ethnic Chinese in various ways.

Chinese-Indonesians are one of the groups of people in Indonesia whose ancestors originated from China. The Chinese community also has the same inheritance object, namely land. In inheriting, the Chinese community also has the right to control the land, this is regulated in Article 4 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles.

The Chinese community in Indonesia is categorized as one of the groups governed by Article 131 of the Indonesian Civil Code; however, in practice, not all the regulations stipulated in the Civil Code are consistently observed or are sometimes disregarded. The Chinese community has integrated with the local population and experienced integration through marriage. The Chinese community adheres to customs and believes that a marriage is valid and has been recognized by both parties of the husband/wife's family if the marriage has been carried out according to Chinese customs and has undergone a series of religious rituals, then the marriage is valid, regardless of whether or not the marriage is registered according to the provisions of applicable laws and regulations.

## 2. Literature Review

This section must contain a state-of-the-art explanation. It can be explained in several ways. First, you can discuss several related papers, both about objects, methods, and their results. From there, you can explain and emphasize gaps or differences between your research and previous research. The second way is to combine theory with related literature and explain each theory in one sub-chapter.

Literature Review is an effort to determine the writing or stage of collecting literature that is related or relevant to the object or problem to be studied. This Literature Review aims to ensure that the problem to be studied and discussed has never been discussed by researchers who will be studied by researchers. Previous research is research that is related and relevant to the research to be conducted. Researchers include previous research in the literature review as supporting, complementary, comparative references and provide an initial overview of studies related to the problems in this research. Here are some previous research results that are relevant as researcher literature.

This research is entitled "Legal Review of Unregistered Marriages Relating to Transfer of Rights to Property Obtained During Marriage for The Chinese Group", after reading several research results, the author found a title that is relevant to the research title which also discusses unregistered marriages and the Chinese group, namely the one studied by Lily Andayani, Sherly M. Imam Slamet, Indah Dwiprigitaningtias, with the title "Position of Brought Property (Original Property) in the Process of Transfer of Rights According to the Perspective of Law Number 1 of 1974 Concerning Marriage".

The research results show that "the rights to property owned by a person in a marriage bond in their position as husband or wife, can be divided into two, namely property brought or original property and joint property. If property included in the original property or property brought will be transferred, then the party entitled to the property can do so themselves without having to ask for approval from the husband or wife concerned".

Previous studies have also discussed the transfer of rights to property brought into the marriage, but this study is different from previous studies, namely that previous studies focused on the transfer of rights to property brought into the marriage, while this study focuses on the transfer of rights to joint property from unregistered marriages.

Article written by Fransiska and Bambang Eko Turisno entitled "Settlement of Inheritance Distribution for Chinese Community Who do not Have a Marriage Certificate in Pontianak City". This article discusses Chinese marriage in Pontianak City begins with the implementation of a marriage according to Chinese customs consisting of a proposal, engagement, prayer as a symbol of respect for ancestors, a tea pai ceremony, blessings at a place of worship, and a reception. A marriage carried out by the Chinese community can be recognized as valid according to the laws in force in Indonesia after registering the marriage. In Chinese customary law, the distribution of inheritance is influenced by the kinship system adopted by the Chinese community, namely patrilineal. According to the patrilineal kinship system, only sons have the right to inherit in Chinese customary inheritance because sons act as successors to their family's clan.

The similarity of this article with the research conducted by the Author is that both discuss the Distribution of Inheritance of the Chinese Community who do not have a Marriage Certificate, but the difference with the previous research is that the research is specifically for the Chinese Community in Pontianak and focuses on the distribution of inheritance rights, while the research conducted by the Author is aimed at the Chinese Community in Indonesia whose marriages are not registered at the Civil Registry Office and focuses on the transfer of objects during marriages that are not registered at the Civil Registry Office.

An article written by Hasbullah entitled "Legal Analysis of Marital Status not Being Listed in The Marriage Record In The Making of an Authentic Deed". This article examines the legal implications of an authentic deed prepared by a Notary or PPAT that does not mention a person's marital status in the marriage book. Such a deed remains valid and retains its authenticity as long as it does not violate any laws or regulations. However, any legal action involving the sale or pledge of joint property requires written consent from both spouses. If the Notary or PPAT responsible for the deed is found negligent or careless in their duties, they may be held liable for damages by the affected parties.

For Indonesian citizens of Chinese descent, the division of marital assets following divorce, after the enforcement of Marriage Law No. 1 of 1974, is governed by the provisions of the Civil Code rather than the Marriage Law itself. In this division, both husband and wife are entitled to equal shares—each receiving half—since all assets, whether movable or immovable, acquired during the marriage are considered joint property. A significant challenge in this process is the failure of the parties to comply with joint agreements or court rulings that mandate the division of marital assets.

The similarity of this article with the research conducted by the Author is that both discuss the making of authentic deeds that do not include marital status when transferring property during marriage. However, the difference with the previous research is that the research is aimed at all Indonesian people and focuses on the non-listing of marital status when making authentic deeds, while the research conducted by the Author is aimed specifically at the Chinese community in Indonesia whose marriages are not registered which results in an authentic deed when transferring rights to joint property.

### 3. Proposed Method

The research method used in this study is the normative legal research method (normative legal research method). The normative legal research method is a library legal research conducted by examining library materials or secondary data alone. To resolve legal disputes, normative legal research conducts studies to identify applicable laws, principles, and doctrines by examining secondary sources and library catalogs, this type of study is also known as doctrinal research.

The data obtained will be presented in the form of a systematically arranged description, preceded by an introduction containing the background of the problem, research objectives, literature review, research methods and continued with data analysis and discussion results and ending with conclusions. While in the technical analysis. The data that has been collected from the research results is then analyzed normatively qualitatively, namely by describing and interpreting the data that will be arranged based on applicable laws and regulations or other regulations.

#### 4. Results and Discussion

Marriage in Indonesia is shaped by various factors, including local customs and major religions such as Hinduism, Buddhism, Christianity, and Islam. To establish legal certainty that governs all citizens, religious groups, and cultures across the country, Here's a paraphrased version with a more unified, smooth flow:

Law Number 1 of 1974 concerning Marriage was enacted on January 2, 1974, and published in the State Gazette of the Republic of Indonesia Number 1 of 1974. This law functions as the national marriage regulation, applicable to all communities and regions across the entire territory of the Unitary State of the Republic of Indonesia.

Marriage practices in Indonesia are diverse and include unregistered forms known by various terms such as "marriage under the hand," "sirih marriage," or "religious marriage." These marriages are conducted according to religious or customary customs but are not officially registered with the marriage registrar. Another variation is the "excursion marriage," where marriages are publicly announced through media outlets but remain unregistered at the official marriage offices, such as the KUA for Muslims or the Civil Registry Office for non-Muslims.

The General Explanation of Law Number 1 of 1974 emphasizes that the registration of births, deaths, and marriages are important social events rather than solely legal formalities. The law also lays down several fundamental principles, including:

1) The Principle of Belief in One Almighty God

All marriages performed by Indonesian citizens must be founded on faith in the Almighty God. Therefore, every marriage must adhere to the laws of the respective religion and belief system. For Muslims, this means following Islamic religious law (munakahat law), while adherents of other religions must observe the rules of their respective faiths.

2) Principles of Registration

Article 2 of the Marriage Law states that a marriage is considered valid only if it is carried out following the religious laws and beliefs of the parties involved, and that every marriage must be officially registered in accordance with applicable laws and regulations. This implies that a marriage must meet religious criteria and also be solemnized before a Marriage Registrar and registered at the District Religious Affairs Office (KUA) for Muslims. Marriages failing to meet these criteria are considered invalid. The Marriage Registrar (Penghulu) is an authorized official vested by law with the responsibility to examine and record marriages. The purpose of marriage registration includes:

- a. Provide legal certainty for the marriage in question.
- b. Become authentic evidence with the existence of a marriage book.
- c. Get legal protection, and become the basis for those concerned to sue in court if one party feels wronged.
- d. Become the implementation of orderly state administration, so that the number of Indonesian residents who carry out marriages each year can be known.

3) The Principle of Balance of Rights and Obligations means that husband and wife share equal rights and responsibilities, both within the household and in social life. Each spouse has the legal capacity to take action. The husband is recognized as the head of the family, while the wife manages the household. If there are valid legal reasons indicating that the couple cannot live harmoniously, the husband has the right to file for divorce, and similarly, the wife can initiate divorce proceedings through the court.

4) The Principle of Mental Maturity

For people who are going to get married, maturity and maturity of body and soul are required. The age of adulthood according to the Marriage Law is 21 years, for both male and female candidates. So for those who are 21 years old are considered adults to marry and are no longer required to have a marriage permit from both parents. Meanwhile, for those who are under 21 years old, if they are going to get married, there must be permission from both parents, with the provision that for men they are 19 years old and for women they are 16 years old. Then, for men who are under 19 years old and for women who are under 16 years old, the person concerned must first obtain permission/dispensation from the Court in order to marry.

5) Polygamy is strictly limited.

Marriage under this law is generally monogamous. However, a husband may have more than one wife if permitted by his religion and personal wishes. This polygamous marriage can only happen if several specific conditions are met, including: the wife is unable to fulfill her duties, the wife suffers from a physical disability or incurable illness, the wife

gives her consent, the husband can financially support all his wives and children, the husband guarantees fair treatment for his wives and children, and there is approval from the court.

6) Divorce is complicated.

Divorce, something that the wife really doesn't like, is an emergency door in overcoming the crisis. Therefore, the law determines that to allow divorce there must be certain reasons and it must be done before a court hearing

Marriage registration is a recording carried out by state officials on marriage events. Marriage registration in the past was not seen as something very important and had not been used as authentic evidence of a marriage. However, in line with the evolution of the times, with characteristics that continuing to be change, there are many changes that occur with cultural shifts as characteristics of modern society demanding the use of marriage books as authentic evidence. The community increasingly recognized the importance of marriage registration, leading to its regulation through laws such as the Marriage Law and the Compilation of Islamic Law. The purpose of marriage registration is to ensure orderly marriages within society, whether those marriages follow Islamic law or other legal frameworks. Primarily, marriage registration aims to maintain organized marriage records while also safeguarding the rights and obligations of husbands and wives. This serves as a preventive legal policy by the state to promote order and stability in social life, especially regarding marriage, which is often linked to various disputes and irregularities between spouses. Therefore, state involvement in regulating marriages through mandatory registration is essential. For the Chinese community, marriage registration is conducted through the civil registration system service and population, following procedures outlined in Government Regulation Number 9 of 1975, which implements Law Number 1 of 1974 concerning Marriage.

The legal consequences of an unregistered marriage between the bride and groom include three main points:

- 1) The marriage is deemed invalid by the state, even if it has been conducted according to religious or customary beliefs.
- 2) Particularly the mother and her family are legally related to the child born of the marriage. This is predicated on the Marriage Law's Article 43, Paragraph (1), which stipulates that children born outside of marriage have a civil relationship with their mother and her family only.
- 3) Neither the child nor the mother has rights to maintenance or inheritance from the father. As a result of an unregistered marriage, both the wife and children cannot claim financial support or inheritance from the husband/father. In Islamic law, inheritance shares are reserved for those connected by blood relations.

According to the legal rules on marriage registration, registration is considered an administrative requirement. This means that a marriage remains valid based on the religious norms of the individuals involved. However, marriage registration is mandated because without it, the marriage lacks legal recognition. Consequently, if one party fails to fulfill their obligations, the other cannot pursue legal action due to the absence of valid and official proof of the marriage. A legally recognized marriage brings about legal effects, including the rights and duties of husband and wife, ownership of marital property, parent-child relationships (nasab), child support responsibilities (hadhanah), and inheritance rights.

A deed is one of the evidences in civil and criminal procedural law as a signed letter, made to be used as evidence and to be used by the person, for whose benefit the letter was made. So it can be concluded by the author that what is meant by a deed in this discussion is a letter that is deliberately made and intended and used as evidence in court if a legal problem occurs in the future.

Marriage certificates and registration serve as evidence of a marriage's existence but are not the sole or definitive proof of its validity. The true validity of a marriage is determined by religious principles. As an official legal document, a marriage certificate holds three types of evidentiary value, which are as follows:

- 1) External evidentiary power, namely a deed that is outwardly seen as an authentic deed must be enforced as authentic until evidence to the contrary is found
- 2) Formal evidentiary power, namely as long as the information contained in the deed has been stated by the public official who made it is true that he did it in the name of his position, in this case that specifically the official's deed, the deed proves the truth of what was witnessed, namely what was seen, heard and also done by himself in the name of his

position, both concerning the legal acts described in the deed, the people, their identities, the day and date of the incident.

- 3) Material evidentiary power, namely the certainty that the contents described in the authentic deed are materially true or actually happened, unless there is evidence to the contrary.

Marriage carries legal consequences not only for the individuals involved—regarding the rights and obligations between husband and wife—but also affects their shared assets. The legal bonds of family and property are closely connected; while they can be distinguished, they cannot be separated. The family legal relationship governs the management of marital property, which is essentially family wealth law. For joint assets, both spouses have equal rights to use them for household needs, with mutual consent.

Marriage has intrinsic legal ramifications that are necessary for its legality as a legal contract. The 1945 Constitution's guarantees of constitutional rights—particularly the freedom to start a family and carry on one's family line—are embodied in Law Number 1 of 1974 on Marriage. As intended in the Preamble of the 1945 Constitution, these clauses simultaneously restrict certain rights in order to protect citizens and promote a thriving community. In order to build secure and contented families, which are the cornerstone of an equitable and prosperous Indonesian society, marriage is essential. Families that are unstable or dysfunctional hinder society's ability to prosper as a whole.

The Marriage Law complies with the constitutional mandate by not restricting anyone's right to marry. Instead, it regulates the procedures of marriage to ensure maintaining constitutional rights does not violate other people's rights.

From a legal perspective, including within Islamic law, marriage is recognized both as an action and as a legal event. The creation of a marital bond impacts not only civil issues—such as spouses' rights and obligations, joint property, children's status, and parental responsibilities—but also customary matters like inheritance, family and kinship relations, neighborhood ties, and traditional or religious ceremonies.

Article 2 of Law Number 1 of 1974 specifies the requirements for a valid marriage:

- (1) A marriage is valid if conducted in accordance with the laws of the respective religion and belief.
- (2) Every marriage must be officially recorded according to applicable laws and regulations.

This article highlights that a marriage is legally valid only when it adheres to the religious laws and beliefs of the parties involved, as specified in Article 2 of Law Number 1 of 1974, which declares that no marriage exists outside these religious frameworks. This is in accordance with Article 29 of the 1945 Constitution, which states:

- (1) The State is established upon the belief in the One Almighty God.
- (2) The State ensures every citizen's freedom to embrace and practice their religion, worshipping in accordance with their own faith and convictions.

Underhanded marriages, whether Muslim or non-Muslim, are still very common. For those who are Muslim, they can file for marriage confirmation at the Religious Court to validate their marriage, so that if a divorce occurs, joint assets can be divided according to the provisions of Islamic law. Likewise, for those who are non-Muslim, they can file for marriage validation at the District Court, then if a divorce occurs, joint assets can be divided according to applicable laws and regulations. Problems then arise when the marriage that occurs is an underhanded marriage and the husband/wife has never filed an application for marriage validation at the Religious Court or the District Court, because the marriage was conducted underhanded, then the divorce cannot be carried out officially in court. This results in unclear division of assets obtained during the marriage and results in legal uncertainty regarding the status of assets obtained during the unregistered marriage. Marital assets can be in the form of movable or immovable assets. Immovable assets in the form of land and buildings are the assets that are most often disputed by husbands/wives who are going to divorce. If the assets obtained during the marriage are to be transferred, the ownership must be obtained from one of the parties. In an unregistered marriage, the status of the acquired assets is unclear as to whether they are categorized as inherited assets, while the marriage that occurred is considered to have never existed by law. This creates legal uncertainty regarding all asset statuses and all legal acts carried out on the assets. The unclear status of assets and marital status can affect the validity of all legal acts carried out on the assets.

Within the legal framework of marriage, state protection for spouses—especially for wives and their future children—can only be guaranteed if the marriage is deliberately conducted in accordance with Law Number 1 of 1974 on Marriage. A crucial requirement is that the marriage be properly registered in line with the applicable laws and regulations.

Without registration, the state cannot ensure protection regarding marital status, shared property, inheritance, or other rights stemming from the marriage, as establishing a woman's (wife's) rights depends first on proving the legal existence of the marriage.

In an unregistered marriage, the status of the acquired assets is unclear as to whether they are categorized as inherited assets, while the marriage that occurred is considered to have never existed by law. This creates legal uncertainty regarding all asset statuses and all legal actions taken against the assets. The unclear status of assets and marital status can affect the validity of all legal actions taken against the assets. As stated by Ardhianti Prihastuti, who said that:

"In principle, as long as the marriage is considered valid, then all assets obtained in the marriage are joint marital assets. Therefore, for unregistered or unregistered marriages, it will be difficult to prove the status of joint assets because they do not have legal certainty and therefore do not receive legal protection from the state. Therefore, if you want to talk about the status of joint assets, you need to clarify the marital status first."

The legal consequences of an unregistered marriage become apparent in cases of divorce, where the wife may face significant challenges in claiming rights to the shared property if the husband refuses to grant them. Additionally, if the husband passes away leaving an inheritance, both the wife and children will likely struggle to secure their rightful shares of the inheritance. If the property obtained during the marriage is to be transferred, then the consent of one of the parties must be obtained. However, in an unregistered marriage, it will be difficult to carry out the legal act because there is no Marriage Certificate.

The Civil Code actually applies according to the principle of concordance, namely the principle that applies the same laws or rules as in the parent country (the Netherlands) to the colonies. The Civil Code itself applies to every European group living in Indonesia, while for other ethnic groups their respective customary laws apply (Article 131 paragraph 2 sub b IS). This also applies to Marriage Law according to the Civil Code. Marriage Law according to the Civil Code specifically applies to Europeans, Chinese, and does not apply to other foreign eastern groups. In Article 163, the population groups in Indonesia are divided into three groups, namely: the European group (including the Japanese); the indigenous group (Indonesia) and the Foreign Eastern group.

- 1) The population classification based on Article 163 of the Indische Staatsregeling (IS) is as follows:
- 2) The European group encompasses all Dutch people, individuals from Europe excluding the Netherlands, all Japanese, and others from different regions (excluding Dutch nationals) whose countries have family laws based on principles similar to Dutch law. This group also includes legitimate or legally recognized children and their descendants from non-Dutch European origins or Europeans born in the Dutch East Indies.
- 3) The Bumiputera group comprises the indigenous peoples of the Dutch East Indies who have remained within their original population category and have not transitioned to other groups within the Bumiputera classification. It also covers other groups that have assimilated into the Bumiputera by adopting their customs, abandoning their original laws, or through intermarriage.
- 4) The Foreign Eastern group consists of residents who do not belong to either the European or Bumiputera groups. This category is further subdivided into Chinese Foreign Easterners and Non-Chinese Foreign Easterners, including communities such as Arabs and Indians.

The regulation on population classification referring to Article 111 of Perkaban No. 3 of 1997 is still in effect today, which causes differences in handling the preparation of inheritance statements. Basically, the provisions in Perkaban No. 3 of 1997 regarding population classification refer to the 'old' regulation, namely Article 163 IS, which is a legacy regulation from the colonial era of the Dutch East Indies government that applies the principle of population classification.

The requirements for implementing marriage according to Chinese Customary Law are not regulated in writing, but are carried out according to customs that are passed down from one generation to the next continuously. However, there are no definite requirements regarding the procedures for implementing marriage according to Chinese customs. The Chinese ethnic group traces its ancestry back to China, with migration waves to Indonesia over the past few centuries. They have significantly influenced Indonesia's political, economic, social, and cultural spheres. Chinese culture has become a key element and inseparable part of the Indonesian national identity. As one of Indonesia's diverse ethnic groups, the Chinese community has been present long before independence and appears to

have integrated deeply into Indonesian society. However, their existence has also faced horizontal conflicts with indigenous groups and instances of discrimination. Their long journey and role as part of an ethnic group that participated in the independence and development of Indonesia do not seem to be a positive value for them in the eyes of other indigenous ethnic groups in Indonesia, at least in several cases of discrimination that occurred during the Dutch colonial era until the famous one during the New Order government for a long period before the birth of government reform in 1998.

The 1998 Reformation became a new chapter in the issue concerning the Chinese. Because of the demands of reform, by implementing a policy of acceptance of the Chinese community. The difference in designations is only based on ethnic diversity such as Javanese, Sundanese, Batak, Minahasa, Sanger, Bolmong and so on. The distinction of social status and class towards the Chinese, *de jure* no longer exists. The absence of this distinction of status, made Chinese Indonesians enthusiastic when the government gave equal freedom to every citizen to organize and express opinions freely.

For Chinese people, in carrying out marriages, they must be based on Chinese customs, religion, and beliefs. Couples who carry out marriages without going through the rules outlined by customs are invalid in the eyes of Chinese people. Chinese customary law is a customary practice carried out by Chinese people from generation to generation and has developed along with the development of Chinese society itself. Chinese customary law is an unwritten law and is enacted, like other laws and regulations.

The legal requirement for a marriage carried out according to custom by the Chinese community is to carry out the sacred ceremonies that have been described previously and attended by families from both parties. According to Chinese customs, as proof of marriage for couples who carry out a customary marriage is the presence of a wedding photo.

The legal consequences of Chinese customary marriage for the wife are that the wife is not a legitimate wife and therefore has no right to maintenance, inheritance, or joint property from the husband in the event of a separation. For the child, his status is that of an illegitimate child and therefore only has a civil relationship with his mother and his mother's family and at any time the father can deny the existence of the child, in addition to not having the right to maintenance, education costs, and inheritance from his father. The legal consequences that arise for property whose marriage was carried out according to Chinese customs are as follows:

- a. The husband's inherited assets that existed before the marriage took place remain under his control and are fully the husband's rights.
- b. The wife's inherited assets that existed before the marriage took place remain under control and are fully the wife's rights

The traditional marriage practices of the Chinese community often face challenges in meeting legal marriage requirements because they do not fulfill the legal criteria. Article 2 paragraph (1) of the Marriage Law states that a marriage is considered valid only if it is carried out in accordance with the religious laws and beliefs of the parties involved. Moreover, Article 2 paragraph (2) mandates that every marriage must be officially registered following the relevant laws and regulations. This means that even if a marriage meets the religious and customary requirements, its legal validity depends on state recognition through official marriage registration.

For the Chinese community, marriage registration is carried out by marriage registrars at the Population and Civil Registration Office, which issues a marriage certificate as legal proof of the marriage. The primary purpose of marriage registration is to ensure orderly administration of marriages in society, as well as to protect the rights and obligations of spouses. This registration serves as a preventive legal measure by the state to maintain order and regularity within the social system, especially in matters of marriage, which are often linked to disputes and irregularities between spouses. Therefore, state involvement in regulating marriage through registration is essential.

The consequences of marriages carried out according to Chinese customs on marital property are influenced by their customary kinship system. It is well-known that Chinese society follows a patrilineal kinship system. In such a system, the wife's status is governed by her husband's family law. Generally, all marital assets are controlled by the husband, who is the head of the household, with the wife managing the household. However, the husband predominantly controls the use of marital property, meaning the wife must obtain his permission before using any of it. Meanwhile, the husband has full rights to the property and can use it without needing the wife's consent. After marriage, the wife typically moves to her husband's residence and does not return to her parents or relatives for the rest of her life. In

the event of a divorce, if the wife leaves her husband's home, she is considered to have violated customary norms and forfeits any claim to the joint property.

Marital assets are properties acquired within the bond of marriage and can include both movable and immovable items. The transfer of rights refers to the process of passing ownership of an asset from the current owners to a new owner through certain legal actions. Such legal acts aim to transfer ownership rights to another party as the lawful owner. According to Article 36 of the Marriage Law, decisions regarding joint property must be made jointly by husband and wife or with mutual consent. However, for assets inherited individually by either spouse, each has full authority to manage and take legal actions concerning their own property. The transfer of marital assets can be executed in various ways depending on the type of asset, whether movable or immovable. A key aspect in this process is proving the ownership status of the assets to determine which party has the right to transfer them. Neglecting proper proof during the transfer process, especially for common marital property, can lead to disputes, particularly in cases of divorce or death. This may also create issues or losses for third parties who receive transferred rights in good faith.

In making a deed of transfer of rights, there are conditions that must be met by the parties, namely the condition for the transfer of rights in the deed is that there must be prior approval from the wife/husband, because the object is joint property with the wife/husband. Transfer or also called transfer is an act that has the purpose of transferring something from one person to another. With the transfer of a right, it has been seen that there is a deliberate legal act that intends to transfer its ownership rights to another person they want. Transfer as a form of transfer of ownership rights to an object or also owned by an original owner to another person as explained in Civil Law, the legal basis can be found in Article 584 of the Civil Code which states that: "Ownership rights regarding an object that cannot be obtained in other ways, namely by way of thought, because of expiration, because of attachment, or because of an heir either in the law according to a will and because of appointment or by delivery of an event related to civil law in carrying out the form of transfer of ownership rights, is carried out by a person who is very entitled to act freely against the object.

## 5. Conclusions

Article 2 paragraph (1) of the Marriage Law specifies that a marriage is valid only if conducted in accordance with the laws of the parties' respective religion and beliefs. Additionally, Article 2 paragraph (2) mandates that every marriage must be formally registered in compliance with the applicable laws and regulations. This means that once the essential requirements and pillars of marriage are fulfilled, the marriage is valid from the perspective of the religion and beliefs of the community, but its legal validity must be confirmed by the State through marriage registration.

In Chinese customary practice, joint property during marriage is shaped by a kinship system where the wife's status is governed by the husband's family law. Typically, all marital property is controlled by the husband, who serves as the head of the household, with the wife acting as the housewife. The husband predominantly manages the use of marital property, meaning the wife must seek his permission before using any of it. Meanwhile, the husband holds absolute rights over the property and can use or transfer joint property without needing the wife's consent. The process of transferring marital property can be done in various ways according to the form of the property, be it movable or immovable property. In the process of transferring property, the main thing is to prove the status of the property so that the party or parties who have the right to transfer it can be stated. The process of proof that is sometimes ignored in carrying out the process of transferring rights to marital property can usually cause problems, especially if it occurs during the termination of the marriage, either due to death or divorce. This can also cause problems/losses to third parties as recipients of the transfer of rights who act in good faith.

## References

- [1] L. S. Andayani, M. I. Slamet, dan I. Dwiprigitaningtias, "Kedudukan Harta Bawaan (Harta Asal) Dalam Proses Peralihan Hak Menurut Prespektif Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *J. Academia Praja: Ilmu Politik, Pemerintahan dan Administrasi Publik*, vol. 7, no. 1, pp. 119, 2024.
- [2] A. Armaini, Irwansyah, W. Hayati, D. Lubis, dan G. Rahmadani, "Pembuatan Perjanjian Kawin Pada Kantor Notaris Di Medan," *J. Pengabdian Masyarakat Hablum Minannas*, vol. 3, no. 2, pp. 25, 2024.
- [3] H. S. Asnawi, "Sejarah, Urgensi dan Tipologi Pencatatan Perkawinan dalam Undang-undang Keluarga Islam di Negara Muslim," *Bulletin of Community Engagement*, vol. 4, no. 2, pp. 533, 2024.
- [4] Fransiska dan B. E. Turisn, "Penyelesaian Pembagian Waris Masyarakat Tionghoa Yang Tidak Memiliki Akta Perkawinan Di Kota Pontianak," *J. Notarius*, vol. 11, no. 2, pp. 223, 2018.
- [5] M. A. Gemail, A. Borahima, dan N. Said, "Peralihan Harta Bersama dalam Perkawinan yang Tidak Dicatatkan," *Nagari Law Rev.*, vol. 3, no. 1, pp. 43, 2019.
- [6] P. Halim, *Perceraian Atas Perkawinan Yang Dilangsungkan Menurut Hukum Adat Tionghoa Dan Akibat Hukumnya*. [Online]. Available: <https://media.neliti.com/media/publications/14088-ID-perceraian-atas-perkawinan-yang-dilangsungkan-menurut-hukum-adat-tionghoa-dan-ak.pdf> [Accessed: Dec. 12, 2023].
- [7] Hasbullah, *Analisis Hukum Tidak Dicumakan Status Perkawinan Pada Buku Nikah Dalam Pembuatan Akta Autentik*, Tesis, Prodi Kenotariatan, FH Universitas Hasanuddin, 2017, p. 16.
- [8] E. Jahwa, D. P. Siregar, M. R. Harahap, I. Mubarak, dan A. Akbar, "Konsep Perkawinan Dalam Hukum Islam dan Hukum Nasional di Indonesia," *INNOVATIVE: J. of Social Sci. Res.*, vol. 4, no. 1, pp. 4, 2024.
- [9] D. Karyoso, *Pelaksanaan Pembagian Harta Perkawinan Sebagai Akibat Perceraian Bagi WNI Keturunan Tionghoa Setelah Berlakunya UU No. 1 Tahun 1974 Tentang Perkawinan Di PN Jakarta Selatan*, Tesis Magister Kenotariatan, Universitas Diponegoro, 2008, p. 5.
- [10] R. Khusnia, Yuliati, dan H. Hadisuryo, *Perlindungan Hukum Bagi Istri Dan Anak Dalam Perkawinan Tidak Dicatat Terhadap Hak Warisnya*, Magister Kenotariatan, Pascasarjana FH Universitas Brawijaya, pp. 7–8.
- [11] N. Kudus, S. S. Sanib, dan H. Yusuf, "Pembagian Harta Bersama Berupa Hak Royalti Hak Cipta dalam Hukum Perkawinan di Indonesia," *Halu Oleo Law Rev.*, vol. 8, no. 1, pp. 102, 2024.
- [12] B. Manan, *Keabsahan dan Syarat-Syarat Perkawinan antar Orang Islam Menurut UU No.1 Tahun 1974*, makalah, Seminar Nasional Mahkamah Agung RI, Hotel Redtop, 2009, p. 4.
- [13] A. Munawar, "Sahnya Perkawinan Menurut Hukum Positif Yang Berlaku Di Indonesia," *J. Al'Adl*, vol. 7, no. 13, pp. 21, 2015.
- [14] A. Mutiara, *Perkawinan Siri di Mata UU No. 1 Tahun 1974 serta Akibat Hukumnya Terhadap Isteri dan Anak*, Tesis S2, Universitas Indonesia, 2008.
- [15] *Peraturan Pemerintah No. 9 Tahun 1975 Tentang Pelaksanaan UU No. 1 Tahun 1974 Tentang Perkawinan*.
- [16] B. Prasetyo, "Analisis Akibat Hukum dari Perkawinan Dibawah Tangan," *J. Ilm. UNTAG Semarang*, vol. 7, no. 1, pp. 140, 2018.
- [17] H. Rasyid, J. N. Matheosz, dan D. Deeng, "Kehidupan Sosial Budaya Etnis Tionghoa Di Kota Manado," *J. Holistik*, vol. 14, no. 4, pp. 2–3, 2021.
- [18] T. H. Telaumbanua, D. Soeikromo, dan D. Lumintang, "Perlindungan Hukum Bagi Pengguna Media Sosial Terhadap Penyalahgunaan Data Pribadi Terkait Hak Privasi Menurut Hukum Positif," *J. FH Unsrat Lex Privatum*, vol. 13, no. 1, pp. 1, 2024.
- [19] *Undang-Undang Dasar Tahun 1945*.
- [20] *Undang-Undang No. 1 Tahun 1974 tentang Perkawinan*.
- [21] S. Wahyuni, "Kontroversi Perkawinan Beda Agama di Indonesia," *Al Risalah: J. Kajian Hukum Islam dan Sosial Kemasyarakatan*, vol. 11, no. 2, pp. 195, 2011.
- [22] A. Wasian, *Akibat Hukum Perkawinan Siri (Tidak Dicatatkan) Terhadap Kedudukan Istri, Anak dan Harta Kekayaannya: Tinjauan Hukum Islam dan UU Perkawinan*, Tesis Magister Kenotariatan, Universitas Diponegoro, 2010, p. 179.
- [23] Yoga, A. Kusumadara, dan E. S. Kawuryan, "Kewenangan Notaris dalam Pembuatan Surat Keterangan Waris untuk Warga Negara Indonesia," *J. Ilm. Pendidik. Pancasila dan Kewarganegaraan*, vol. 3, no. 2, pp. 137, 2018.