



## Law on Property Relations in Illegal Marriage

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### ABSTRACTS:

In order to thoroughly resolve the consequences of illegal marriages, it is necessary to determine the law governing the two groups of property rights and personal rights. Determining the law governing leads to different consequences from the principle of determination to the agreement regimes. In principle, illegal marriages have no legal value, so they cannot be subject to the regulation of the Law on Marriage and Family. However, the parties in illegal marriages, due to the problem of limited understanding, self-establish marital rights and obligations towards each other from the time of registration with the competent authority, on that basis there is a differentiation in the responsibilities of each person in building a family, creating the products of a marriage. Therefore, when separated from the regulation of the Law on Marriage and Family, the legitimate rights and interests of the parties may not be guaranteed. Within the scope of the article, the group of authors focuses on studying legal regulations related to illegal marriage from establishment to arising consequences, at the same time providing viewpoints on assessment and analysis of methods for determining the governing law, which is a premise for perfecting the institution of illegal marriage in the Law on Marriage and Family, both ensuring the interests of the parties and respecting the principles of the Law on Marriage and Family.

**Keywords:** *Property relations, Personal relations, Illegal marriage*

### 1. Problem statement

Marriage is the establishment of a marital relationship between 01 man and 01 woman recognized and protected by law when all legal conditions are met and no legal prohibitions are violated. Accordingly, the legal value of a marriage only arises when the conditions for marriage are complied with, which is the basis for the arising of the rights and obligations of the parties regulated by the provisions of the Law on Marriage and Family (Yen Chi, 2014). However, although illegal marriages are not recognized and protected in principle, it means that there is no arising of rights between husband and wife in reality. However, illegal marriages according to the definition of the Law on Marriage and Family 2014 are still conducted at competent authorities even though there are not enough legal conditions to recognize the marital relationship. Therefore, when the competent authority carries out the procedure to register an illegal marriage, it is entirely possible that it occurs due to a lack of understanding of legal regulations. In this case, the person whose marriage is registered implicitly acknowledges and establishes marital rights and obligations towards each other, giving rise to property relations and personal relations. Accordingly, in this case, it is necessary to determine that the adjustment of marital relations and property relations in the process from the time of arising to the termination of the illegal marriage is to have an optimal solution to ensure fairness in the rights and legitimate interests of the parties from the time of establishment to the time the Court issues a decision to annul or recognize the illegal marriage, including the principles of determining property and the agreed regimes between husband and wife according to the provisions of the 2014 Law on Marriage and Family.

### 2. Legal status of property relations in illegal marriage

Pursuant to Article 3 Law on Marriage and Family 2014 “ *Illegal marriage is when a man and a woman have registered their marriage at a competent state agency but one or both parties violate the marriage conditions prescribed in Article 8 of this Law*”. According to the above provisions, it can be understood that a marriage relationship established by registration procedures at a competent state agency, however, one or both parties do not satisfy the marriage conditions prescribed by law, is considered an illegal marriage.

Accordingly, an illegal marriage will be annulled upon request by those who have the right to request the annulment of the illegal marriage in Article 10 of the Law on Marriage and Family. However, not all illegal marriages will be annulled upon request, but according to the provisions of Clause 2, Article 11 of the Law on Marriage and Family 2014: “ *In the case where at the time the Court resolves the request to annul the illegal marriage, both parties to the marriage have met all the conditions for marriage as prescribed in Article 8 of this Law and both parties request recognition of the marriage, the Court shall recognize that marriage. In this case, the marriage is established from the time the parties meet the conditions for marriage as prescribed in this Law*”. Accordingly, according to the provisions of Article 10 of the Law on Marriage and Family, in addition to the subject forced into an illegal marriage, there are other subjects allowed to request the competent authority to annul the illegal marriage, but for the request to recognize an illegal marriage relationship, only the two parties in that relationship who meet all the conditions for marriage have the right to request and the marriage

relationship when recognized will be established from the time the parties meet the conditions for marriage according to the provisions of this Law (Minh Minh, 2016).

However, although the principle is that an illegal marriage will not be recognized and will be annulled according to the provisions of law. But that issue only arises when there is a request to annul an illegal marriage. In fact, when the marriage relationship is established at a competent authority, the parties consider each other as husband and wife and exercise the rights and obligations according to the provisions of the Law on Marriage and Family, including the agreement to establish the property regime of the spouses, specifically in Article 47 of the Law on Marriage and Family, which stipulates: "In case the two parties to the marriage choose the property regime according to the agreement, this agreement must be made before the marriage, in the form of a notarized or certified document. The property regime of the spouses according to the agreement is established from the date of marriage registration". Accordingly, when there is an agreement on the property regime, this agreement takes effect from the time of marriage registration and throughout the marital relationship of the spouses. In other words, if the marriage relationship is not formed and established, the agreement on the property regime under Article 47 of the Law on Marriage and Family will not be valid. On that basis, the author finds two specific remaining issues:

*Firstly*, when an illegal marriage is requested to be annulled by a competent authority and the parties do not request recognition of that marriage, the question arises whether the two parties have an agreement on the property regime under Article 47 of the 2014 Law on Marriage and Family. Because the annulment of an illegal marriage means the abolition of a marriage (this marriage is considered as never having been formed because it does not satisfy the conditions for marriage) (Le Thi Thanh Truc, 2017). This issue is also recognized in many countries around the world regarding the legal consequences of annulling a marriage. For example, Article 27 paragraph (2) of the Marriage Law and Article 72 paragraph (2) of the Compilation of Islamic Law stipulate that a husband or wife may file for annulment if the marriage is illegal and the annulled marriage is a marriage that is considered to have never existed (Nurunnisa, Rahmida Erliyani, 2023). This procedure is completely different from terminating a marriage relationship through divorce proceedings, although the marriage relationship is terminated by a court decision and judgment, these marriage relationships have actually been established, the property relationship and the personal relationship of the spouses are formed and maintained from the time of registration until the court's judgment or decision for divorce (Sulkhan Zainuri, 2019). If we consider the nature of the agreement on the property regime of spouses regulated by the Law on Marriage and Family, it can only be applied to the marital relationship between husband and wife, and is only effective when the marriage is registered, which means that the illegal annulment of the marriage will invalidate the agreement on the property regime.

However, if we consider the agreement on the property regime in a marriage relationship as a civil agreement, if that agreement does not violate the prohibition of the law, the purpose is to recognize the efforts of each person for unspecified tasks during the time of cohabitation. Because the law on marriage and family stipulates that, as long as they do not fall under the cases specified in Clause 2, Article 5 of the Law on Marriage and Family, men and women have the right to live together, then the agreement of the two parties is completely valid when resolving the division of property when the illegal relationship is annulled. On the other hand, the recognition of the property regime of the parties to an illegal marriage relationship is also evidence to help the Court thoroughly resolve a marriage case, because the nature of the agreement on the property regime of the husband and wife must ensure the principle of equality in the property relationship between the husband and wife, the principle of ensuring the essential needs of the family and the principle of ensuring the legitimate interests of the husband, wife, other family members and others to be recognized (Nguyen Thi Thu Thuy, 2015).

*Second*, when an illegal marriage is requested to be annulled by a competent authority and the parties request recognition of that marriage when all the conditions for marriage are met according to the Law, the Court will recognize that marriage and that marriage is established from the time the parties meet the conditions for marriage according to the provisions of the Law on Marriage and Family. In other words, at the time of the Court's recognition decision, the marriage relationship of the two parties is officially established, the rights and obligations between husband and wife according to the Law on Marriage and Family are applied to govern the relationship of both parties. The problem is that for an illegal marriage according to the provisions of Clause 6, Article 3 of the Law on Marriage and Family, the man and woman have registered their marriage at a competent state agency but one or both parties violate the conditions for marriage according to the provisions of Article 8 of this Law. Thus, the two parties in an illegal marriage still proceed to register their marriage at a competent authority. Compared with the provisions of Article 47, in case the two parties have an agreement on the property regime, the agreement will be established from the date of marriage registration and the law does not exclude the case where the marriage relationship established after marriage registration is illegal, therefore, although the illegal marriage relationship is officially recognized only when there is a decision of the Court, the agreement on the property regime according to Article 47 of the Law on Marriage and Family is still effective from the time the parties carry out the registration.

On the other hand, the agreement on the property regime under Article 47 is an agreement on the control of the division of property between spouses. This is the difference from the agreement on the division of property in ordinary civil relations regulated by the Civil Code. Therefore, when there is no recognition decision by the Court, the relationship between spouses has not been established, so the agreement on the property regime under Article 47 is essentially not applicable to both parties from the time of registration until before the time of the recognition decision by the Court, in other words, this agreement can only be implemented from the time of the Court's decision to recognize the illegal marriage.

*Third*, the settlement of property relations when an illegal marriage is annulled is applied according to the provisions of Article 16 of the Law on Marriage and Family on the settlement of property relations, obligations and contracts of men and women living together as husband and wife without registering their marriage, accordingly: "*Property relations, obligations and contracts of men and women living together as husband and wife without registering their marriage shall be settled by agreement between the parties; in case there is no agreement, it shall be settled according to the provisions of the Civil Code and other relevant provisions of law*". It can be seen that when settling property relations for illegal marriages, it is still based first of all on the agreement between the parties and the provisions of the Civil Code. However, the case of men and women living together as husband and wife without registering their marriage and that of illegal marriage are not the same in nature. In the case of men and women living together as husband and wife

without registering their marriage, the parties basically do not have any legal obligations in the marital relationship according to the provisions of law, and at the same time, it also determines the perception and behavior of the parties during the time of cohabitation, so the relationships arising when living together as husband and wife are still normal civil relationships, applying the provisions of the Civil Code to resolve property relations is reasonable, but for illegal marriages, the parties still carry out registration with the competent authority. As analyzed above, the annulment of an illegal marriage is only required when requested by the entitled subjects. During that time, the parties still determine that the relationship between the two parties is a marriage relationship regulated by the law on marriage and family. Therefore, the application of the provisions of the Civil Code to resolve property relations according to Article 16 of the Law on Marriage and Family, the author believes, does not ensure the rights and interests of the parties when the Court annuls an illegal marriage.

The author believes that marriage is a special civil relationship, regulated by law on personal relationships and separate property relationships compared to normal civil relationships according to the law on marriage and family to absolutely ensure the interests of the parties in the marriage relationship, recognizing the contributions between husband and wife in building and nurturing the family. On the other hand, the agreement on the property regime of husband and wife only regulates the ownership relationships of both parties or the property relationship between husband and wife towards the third party, the issue of common property and separate property of both parties, and does not affect the maintenance or inheritance of property. In other words, the agreement on property only aims to resolve the property issue arising from the rights and obligations of husband and wife from the time of registration until the marriage ends according to the wishes of both parties (Nguyen Thi Lan, 2023). Therefore, the author believes that when dealing with illegal marriages, the main purpose is to end the personal relationship of the two parties, the parties are not recognized as husband and wife and of course do not have the same rights and obligations as husband and wife towards each other. Regarding property relations when annulling illegal marriages, it is also necessary to acknowledge the contributions of the parties, ensuring the rights and interests of the parties from the time of registration at the competent authority, therefore, applying the Law on Marriage and Family to resolve property relations when annulling illegal marriages is appropriate, optimizing the interests of the parties when the Court annuls illegal marriages.

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### 3. Conclude

Characterized as a special law in the civil field. The Law on Marriage regulates separately the group of social relationships between family members, including personal relationships and property relationships. The group of marital relationships is relatively separated from the scope of the Civil Code, and is directly governed by the Law on Marriage and Family. Thereby, it can be affirmed that marital relationships have distinct characteristics, which are made up of rights and obligations, behavior and responsibilities of family members towards each other. In an illegal marital relationship, although not legal, from the time of carrying out procedures at the competent authority, the parties naturally recognize each other as husband and wife, self-establishing marital rights and obligations towards each other. From there, deciding on behavior, assigning tasks leads to the formation of natural consequences of a marriage.

An illegal marriage ends when the Court issues a decision to annul or recognize that relationship when all the conditions for marriage have been met. However, the issue of resolving personal and financial relationships from the time before the illegal marriage ends needs to be studied and specifically determined to reasonably meet the rights and legitimate interests of the parties while still ensuring the principles of the law on marriage and family.

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