

THE RIGHT TO PERSONAL DATA OF CHILDREN WITH DUAL CITIZENSHIP AS LEGAL SUBJECT

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Abstract: The development of information technology is one of the reasons for the occurrence of mixed marriages in Indonesia. With the advancement of this technology, there are no longer societal boundaries for establishing relationships with anyone in all countries. Given the increasing number of mixed marriages occurring in Indonesia today, legal protection for these mixed marriages should be adequately accommodated within the legislation in Indonesia. The issues examined in this writing are the citizenship status of children in mixed marriages and the civil rights of children with dual citizenship concerning the personal status of children as legal subjects. This research employs a normative legal research method with a legislative and library approach. In determining citizenship based on the aspect of birth, two principles are recognized, namely the principle of *ius soli* and *ius sanguinis*. In addition to the aspect of birth, the determination of citizenship can also be based on the aspect of marriage, which includes the principle of legal unity and the principle of equality of degree. The civil rights of children with dual citizenship regarding the personal status of the child as a legal subject consist of two rights: the child's rights in the field of marriage law and the rights of children with dual citizenship as heirs. The regulation of the legal status of children resulting from mixed marriages in the new Citizenship Law, namely Law No. 12 of 2006 concerning Citizenship, provides positive enlightenment, especially in the relationship between the child and the mother, as the new law allows for limited dual citizenship for children resulting from mixed marriages.

Keywords: Society, Mixed Marriage, Children's Rights

I. INTRODUCTION

Marriage is a common topic of discussion among Indonesian society, where every individual is expected to have a life partner and to have offspring to continue their lineage. The globalization of information, economy, education, and transportation does not serve as a limitation or barrier to interaction. All societies around the world can communicate with each other due to the advancements in technology today, one of which is interaction through social media. This has resulted in an increase in inter-ethnic marriages occurring almost worldwide. The most common way for couples of different nationalities to meet is through introductions via the internet, work colleagues or business associates, meeting while on vacation, former school or university friends, and pen pals.(Tocqiu, 2019)

The number of mixed marriages that occur in Indonesia indicates that legal protection for these mixed marriages should be adequately accommodated within the legislation in Indonesia. In Indonesia, mixed marriages can be categorized into two forms: First, an Indonesian citizen woman (hereinafter referred to as WNI) marrying a foreign national man (hereinafter referred to as WNA), and Second, an Indonesian citizen man marrying a foreign national woman. The factor of differing nationalities among the parties is what distinguishes a mixed marriage from an internal marriage.(Dewi & Syafitri, 2022) The difference in citizenship does not occur at the beginning of a mixed marriage, but rather continues after the formation of a mixed marriage family.

Along with the attachment of limited dual citizenship to children resulting from mixed marriages, such children are subject to the two jurisdictions of the two countries related to the citizenship of both parents, thereby creating legal issues in the field of International Civil Law, namely which country's law applies to their personal status. If the child has dual citizenship, then the marriage requirements of the child are subject to the laws of which country, whether the laws of Indonesia or foreign laws. Based on this issue, the problem examined in this writing is how the citizenship status of a child in a mixed marriage and the civil rights of a child with dual citizenship in terms of the personal status of the child as a legal subject.

II. RESEARCH METHOD

This research method employs a normative legal research approach by tracing, examining, and analyzing secondary data related to the research material. This study utilizes a legislative approach by reviewing regulations and literature aimed at examining secondary data in the form of primary, secondary, and tertiary legal materials. All obtained data will be analyzed, and the results will be presented descriptively in this research.

III. RESEARCH RESULTS

A. Status of Citizenship of Children in Mixed Marriages

Mixed marriages have permeated all corners of the homeland and social classes. The globalization of information, economy, education, and transportation has dispelled the notion that mixed marriages are unions between wealthy foreigners and Indonesians.(Muhammad Schinggyt Tryan P*, 2015) According to a survey conducted by the Mixed Couple Club, the avenues for introducing couples of different nationalities who marry include introductions through the internet, work/business acquaintances, meeting while on vacation, school/university friends, and pen pals. Mixed marriages also occur between Indonesian workers and workers from other countries.(Tjahjani, 2013) The number of mixed marriages that occur in Indonesia should have legal protection for these mixed marriages adequately accommodated within the legislation in Indonesia.

In the legislation in Indonesia, mixed marriage is defined in Law No.1 of 1974 concerning Marriage, article 57: "what is meant by mixed marriage in this law is a marriage between two persons who are subject to different laws in Indonesia, due to differences in nationality and one party being an Indonesian citizen." For almost half a century, the regulation of nationality in mixed marriages between Indonesian citizens and foreign nationals refers to the Citizenship Law No.62 of 1958. As time goes by, this law is deemed no longer capable of accommodating the interests of the parties involved in mixed marriages, particularly the protection of the wife and children. According to international civil law theory, to determine the status of the child and the relationship between the child and the parents, it is necessary to first examine the marriage of the parents as a preliminary issue, whether the marriage of the parents is valid so that the child has a legal relationship with the father, or if the marriage is invalid, thus the child is considered an illegitimate child who only has a legal relationship with the mother.(Fitriana, 2014)

In the Indonesian legal system, Prof. Sudargo Gautama expresses his inclination towards the legal system of the father for the sake of legal unity within the family, stating that all children in the family, regarding the specific authority of parents over their children (*ouderlijke macht*), are subject to the same law. This inclination aligns with the principle in Law on Citizenship No. 62 of 1958.(Yoga Pratama Widiyanto (1) Zainuri (2, 2022) The inclination towards the father's legal system for the sake of legal unity has a good purpose, namely unity within the family; however, in terms of citizenship, the mother's differs from the father's, leading to a division in the marriage, which makes it difficult for the mother to care for and raise her children who have different citizenship, especially if the children are still minors.(Magister et al., 2022) On July 11, 2006, the House of Representatives officially enacted the new Citizenship Law, namely Law No. 12 of 2006 concerning Citizenship.

The enactment of Law No. 12 of 2006 was positively welcomed by a group of people married to foreign nationals, although there are still pros and cons, the new law allowing limited dual citizenship has generally provided new insights in addressing issues arising from mixed marriages. A vulnerable and frequently arising issue in mixed marriages is the citizenship of children. The old citizenship law adhered to the principle of single citizenship, so that children born from mixed marriages could only have one citizenship, which in that law was determined to follow the father's citizenship. This regulation raises issues if, in the future, the parents' marriage breaks down, as the mother will certainly face difficulties in obtaining custody of her child who is a foreign citizen.(Dimas Pratama & Wahyuningsih, 2023)

With the enactment of the new Citizenship Law, it is very interesting to examine how the emergence of this law affects the legal status of children from mixed marriages. The definition of a child in Article 1, paragraph 1 of Law No. 23 of 2002 concerning Child Protection is: "A child is someone who has not yet reached the age of 18 (eighteen) years, including a child who is still in the womb." In civil law, it is known that a person has the status of a legal subject from the moment of birth. Article 2 of the Criminal Code provides an exception that a child still in the womb can become a legal subject if there is an interest that requires it and is born alive. A person as a legal subject means that the person has rights and obligations in legal transactions. However, this does not mean that all individuals are competent to act in legal transactions.(Puspitarini, 2017)

Individuals who do not possess the authority or capability to perform legal acts are represented by others. Thus, a child can be categorized as a legal subject who is incapable of performing legal acts. A person who is incapable due to being a minor is represented by their parents or guardians in performing legal acts. A child born from a mixed marriage has the possibility that their parents hold different nationalities, thereby being subject to two different

legal jurisdictions. Based on the old Citizenship Law, a child only follows the citizenship of the father; however, under the new Citizenship Law, a child will have dual citizenship. This is interesting to study because with dual citizenship, the child will be subject to two legal jurisdictions.(Faridy et al., 2021)

When a child under the age of 18 wishes to marry, they must fulfill both of the specified requirements. The material requirement must comply with Indonesian law, while the formal requirement must adhere to the law of the location where the marriage takes place. For instance, if the child intends to marry their own uncle (a direct blood relation), according to the material requirements of Indonesian law, this is prohibited (Article 8 of Law No. 1 of 1974). However, based on the laws of another country that grants citizenship, this may be permitted. Which regulation should they follow. In determining a person's citizenship, there are known principles of citizenship based on birth and principles of citizenship based on marriage.(Widanarti, 2019)

In determining citizenship, two principles are recognized based on the aspect of birth, namely the principle of *ius soli* and *ius sanguinis*. *Ius* means law or principle. *Soli* comes from the word *solum* which means country or land. *Sanguinis* comes from the word *sanguis* which means blood. The principle of *Ius Soli* states that a person's citizenship is determined by the place where the person is born. The principle of *Ius Sanguinis* states that a person's citizenship is determined based on the descent of that person.(Mazmur Parima, 2021)

Aside from the aspect of birth, the determination of citizenship can be based on the aspect of marriage which includes the principle of legal unity and the principle of equality of status. The principle of legal equality is based on the view that husband and wife form an unbreakable bond as the core of society. In conducting a shared life, husband and wife need to reflect a complete unity, including in matters of citizenship.(Nahdhah et al., 2022) Based on this principle, it is sought that the citizenship status of husband and wife is the same and unified.

The determination of citizenship that varies by each country can create citizenship problems for an individual. In summary, citizenship problems refer to the emergence of statelessness and dual citizenship. Statelessness is a term for individuals who do not possess citizenship. Dual citizenship is a term for individuals who hold dual nationality. Furthermore, multiple citizenship can arise, which is a term for individuals who possess multiple nationalities (more than two).

The law that regulates citizenship is Law No. 12 of 2006 concerning the Citizenship of the Republic of Indonesia. Naturalization is the procedure for foreigners to obtain citizenship of the Republic of Indonesia through application.

It is stated in the Law that citizenship of the Republic of Indonesia can also be obtained through naturalization. Applications for naturalization may be submitted by applicants who meet the following requirements: have reached the age of 18 (eighteen) years or are married, at the time of application have resided in the territory of the Republic of Indonesia for at least 5 (five) consecutive years or at least 10 (ten) non-consecutive years, are physically and mentally healthy, can speak Indonesian, and acknowledge the state ideology of Pancasila and the 1945 Constitution of the Republic of Indonesia, have never been convicted of a crime punishable by imprisonment for 1 (one) year, if obtaining Indonesian citizenship does not result in dual citizenship, have a job and/or a stable income, and pay the naturalization fee to the State Treasury.

The loss of Indonesian citizenship includes: acquiring another citizenship at one's own will, not rejecting or relinquishing another citizenship when the individual has the opportunity to do so, being declared to have lost citizenship by the President upon their own request, the individual being at least 18 years old or married, residing abroad and being

declared to have lost Indonesian citizenship does not result in statelessness, entering foreign military service without prior permission from the President, voluntarily entering foreign state service, The position in such a service in Indonesia, in accordance with the provisions of the legislation, can only be held by Indonesian citizens who voluntarily take an oath or declare loyalty to a foreign country or part of that foreign country, are not required but participate in the election of something that is constitutional for a foreign country, possess a passport or a document that functions as a passport from a foreign country or a document that can be interpreted as a valid proof of citizenship from another country in their name, reside outside the territory of the Republic of Indonesia for 5 (five) consecutive years not in the context of state service, without valid reasons and intentionally do not express their desire to remain an Indonesian citizen before the 5 (five) year period ends and every 5 (five) years the next party did not submit a request to remain a citizen of Indonesia to the representative of the Republic of Indonesia whose area of work includes the residence of the party, even though the representative of the Republic of Indonesia had informed the party in writing that they would not become stateless.(Firdausi, 2020)

B. Rights of Children with Dual Citizenship in Terms of Personal Status of Children as Legal Subjects

The New Citizenship Law does not provide a definition of what is meant by a child, however, Article 6 paragraph 1 states that a child with dual citizenship, after reaching the age of 18 (eighteen) years or having married, must choose one of their citizenships.

Based on the provisions of Article 6 paragraph 1 mentioned above, the age limit for a child is 18 years; if the child has married before reaching 18 years, for example at the age of 14, they are considered to be an adult. Article 47 paragraph 1 of the Child Protection Law also emphasizes that the age limit for a child is 18 years. This article states, "A child who has not yet reached the age of 18 (eighteen) years or has never been married is under the authority of their parents, as long as they have not been or are not removed from that authority." In line with the age provision of 18 years for a child, Law No. 23 of 2002 concerning Child Protection provides a clearer definition of a child as regulated in Article 1 number 1 as follows: "A child is someone who has not yet reached the age of 18 (eighteen) years, including a child who is still in the womb."

Based on the aforementioned provisions, the conclusion that can be drawn is that the age limit for a person considered a child in Indonesia is 18 (eighteen) years or if they are married. In Civil Law, a person has the status of a legal subject from the moment of birth, except as stipulated in Article 2 of the Civil Code, which states that a child still in the womb can become a legal subject if there is an interest that requires it and is born alive. A person as a legal subject means that they have rights and obligations in legal transactions; however, for children as supporters of rights and obligations, as long as the child is not of legal age or not married, generally, children only have rights and do not have obligations, thus they benefit more from dual citizenship.(Putra, 2022) Therefore, when they have reached adulthood or are married, they must choose one of the dual citizenships of children in mixed marriages. If they do not choose one of their two citizenships, they will be considered as foreigners.

Rights of Children in the Field of Marriage Law

When a girl with dual citizenship wishes to marry at the age of 16 or 17, she is subject to the marriage requirements of which country, whether the marriage requirements according to Indonesian law as stated in the Marriage Law or the marriage requirements according to the law of the foreign country corresponding to her dual citizenship. Indeed, in International Civil Law, dual citizenship is an issue faced by countries that adhere to the principle of

nationality or citizenship in determining the applicable law regarding an individual's personal status.(Hafizah et al., 2024)

In the literature of International Civil Law, there are many opinions regarding the solutions to the issue of dual citizenship faced by countries that adhere to the principle of nationality or citizenship to determine the applicable law on an individual's personal status as follows:(Ohrqurud et al., n.d.)

1. Writers such as van Brakel, Hijmans, and Kusters agree on the use of "lex fori," which is the law of the forum of the judge where the case is submitted, as the judge is more familiar with their own law.
2. Another opinion comes from Makarov and Murad Ferid as well as De Groot, according to them the use of "lex fori" is prioritized in the field of public law, and in the field of International Civil Law they tend to seek what is called "effective nationality".

Therefore, the duty of the judge here is to ascertain the individuals who possess dual citizenship, which citizenship is most effective or relevant for the person concerned. The law of domicile is used to determine the personal status of someone with dual citizenship. In International Civil Law, a person's residence at an address in a certain city is not important, as the measure of domicile as a place of residence is the country in which they are domiciled. Based on the domicile in that country, the law of that country applies to their personal status. The law of domicile coinciding with one of their nationalities. According to several authors such as Koster, Van Brakel, and Wolff, domicile coinciding with one of the nationalities is considered concrete evidence of effective nationality.

A kid with dual citizenship who wants to get married in Indonesia has to meet the marriage requirements according to the laws in Indonesia, which are the Marriage Law and its implementing regulations.(Ohrqurud et al., n.d.) In Indonesia, when an individual intends to conduct a marriage, their desire must be communicated to the registrar at the location where the marriage will take place, in accordance with the religion adhered to. The notification can be made either verbally or in writing by the prospective bride or groom, their parents, or their representatives. The notification regarding the execution of the marriage must include the names, ages, religions or beliefs, occupations, and residences of the prospective bride and groom. To verify the age of the prospective bride or groom, a copy of the birth certificate or a birth registration certificate must be provided; if such documents are unavailable, a letter from the village head or sub-district head stating the age and background of the prospective bride or groom may be used. In addition to information about the prospective bride and groom, details regarding their parents are also required, including the names of the parents, their religions or beliefs, occupations, and/or residences of the prospective bride and groom's parents.

The prospective bridegroom resides abroad, therefore there must be a statement from the Indonesian Representative in the country of residence confirming that the prospective bridegroom has no impediments to marriage. Consequently, if a child with dual citizenship wishes to marry in Indonesia, and if they reside or have habitual residence in Indonesia, then Indonesian law applies to them. However, if the child with dual citizenship has habitual residence abroad, they will be treated as a foreign national. In the understanding of International Civil Law, a person with habitual residence is someone who factually resides in a country, which can be evidenced by a home or a place of employment in that country. However, because minors or unmarried individuals generally reside with their parents, if their parents' residence is in Indonesia, then the habitual residence of the child is in Indonesia. The resolution of the personal status issues of a child with dual citizenship as a result of the implementation of the New Citizenship Law aligns with the opinions of Koster, Van Brakel, and Wolff, which state that the law of domicile applicable to them corresponds with one of

their nationalities. This serves as clear evidence of effective nationality as applied in the *Nottebohm* and *Noorse Echtscheiding* cases in the Netherlands.

C. Child with Dual Citizenship as Heir

According to the theory of International Civil Law, to determine the status of a child in the relationship between the child and the parents, it is necessary to first examine the marriage of the parents as a preliminary issue, whether the marriage of the parents is valid, so that the child has a legal relationship with the father; if the marriage of the parents is invalid, then the child only has a legal relationship with the mother. In the inheritance law applicable in Indonesia, a child is an heir, with the note that under Islamic inheritance law, the child in question must have a blood relationship with the parents. Based on the Old Citizenship Law, a child born from a mixed marriage, if the father is a foreign national and the mother is an Indonesian citizen, then the child's status becomes a foreign national following the father in accordance with Article 13.(Putri, 2023) After the enactment of the New Citizenship Law, children acquire limited dual citizenship. Before the New Citizenship Law was ratified, during the discussion of the bill at the level of the House of Representatives, many inputs were received from individuals involved in mixed marriages regarding the hardships they experienced under the Old Citizenship Law.

In Indonesia, the rights to land are restricted for foreigners, including: ownership rights and building use rights cannot be owned by foreigners in accordance with the UUPA and its implementing regulations. Along with the enactment of dual citizenship for children resulting from mixed marriages, where one of the citizenships is as Indonesian citizens, the issue arises whether children with dual citizenship can realize their rights in the field of land law.(Ningtias, 2022) In Indonesia, since the enactment of the UUPA, Article 21 paragraph 2 prohibits foreign nationals from acquiring ownership rights over land, and paragraph 3 prohibits individuals with dual citizenship from obtaining ownership rights. Meanwhile, regarding Building Use Rights, in accordance with Article 36 of the UUPA in conjunction with Article 19 of Government Regulation No. 40 of 1996, it is stated that building use rights are only granted to Indonesian citizens. The rights to land that can be owned by foreign nationals are limited to usage rights.

After the enactment of the New Citizenship Law, the regulations in the agrarian sector have not changed, making it difficult for children with dual citizenship to realize their rights, in the sense of having rights to land left by one of their parents who holds Indonesian citizenship. If a child with dual citizenship inherits land ownership from one of their parents, their rights will certainly not be extinguished. However, they must wait until they reach the age of 18 (eighteen) years, and then choose to become an Indonesian citizen before they can exercise their rights in accordance with the applicable regulations. Another alternative that can be pursued by children with dual citizenship is through the transfer of rights, for example from ownership rights to usage rights, but in practice, this method is rarely used.(Ningtias, 2022)

IV. CONCLUSION

Children are legal subjects who are not yet competent to perform legal acts on their own, thus requiring assistance from legally competent individuals, namely their parents or guardians. The regulation of the legal status of children resulting from mixed marriages in the new Citizenship Law, namely Law No. 12 of 2006, provides positive implications for Indonesian society, particularly in the relationship between children and their mothers, as this law permits limited dual citizenship only for children born from mixed marriages. The dual citizenship of children in mixed marriages, as a result of the enactment of Law No. 12 of

2006, has implications regarding the personal status of children subject to the laws of the country in international civil law. In Indonesia, a person's citizenship determines the applicable law regarding their personal status. Having a passport as a citizen of Indonesia, which is held by children with dual citizenship, is not sufficient to confer personal status as a citizen of Indonesia. A child with dual citizenship has their personal status governed by the law of domicile, namely the habitual residence of the child, which coincides with Indonesian citizenship. There is a need to establish legislation in the field of International Civil Law that can be enforced in Indonesia to provide legal certainty related to issues of International Civil Law in Indonesia, serving as a guide for law enforcement in Indonesia, as well as unifying regulations in resolving issues related to International Civil Law.

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