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LEGAL ANALYSIS OF DUAL CITIZENSHIP RULE IN INDONESIA

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Abstract: Globalization has transformed the perception of national borders as barriers to human interaction, resulting in an increase in mixed marriages. Issues often arise, particularly concerning the citizenship status of a spouse married to a foreigner and their children resulting from such mixed marriages. The method employed in this study is normative juridical, thereby analyzing legal issues within the framework of applicable laws and legal theories. The findings of this research reveal that mixed marriages frequently face disputes regarding the citizenship status of children, as exemplified by the case under study, which involves the marriage between Marcellina, an Indonesian citizen from Surabaya, and John, a citizen of the United States. Meanwhile, according to the prevailing national law, children from mixed marriages will hold dual citizenship until the age of 18 or upon marriage. This research emphasizes the importance of understanding the relevant legal provisions and complying with the procedures established by the Indonesian government concerning mixed marriages. The objective is to maintain clarity and the validity of the citizenship status of both the spouses and the children involved in mixed marriages.

Keywords: Legal Analysis, Citizenship Right, Marriage.

INTRODUCTION

Marriage is a way for a pair of humans to form a special relationship. When a man or woman who is old enough or mature has found a partner and is ready mentally and financially. then it is good for the marriage to take place immediately. According to the law, a person who is considered an adult is someone who is over 19 years of age. Then, Article 1 of Law No. 1 of 1974, explains that "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the belief in the Almighty God."

As times progress and globalization in the fields of information, transportation, economics and education, national borders are no longer an obstacle for individuals to be able to interact with many people. A person will easily meet many other people who are different in terms of race, religion, place of residence, or nationality. This is the background to the occurrence of mixed marriages. In 1 of 1974 concerning Law no. marriage in Article 57, explains the meaning of mixed marriage is a marriage between two people who in Indonesia are subject to different laws due to differences in nationality. Based on this article, there is an element of "subject to different laws" meaning that the legal differences for the couple are not due to differences in race, religion, ethnicity and class in Indonesia, but because of differences in nationality. one of which is an Indonesian citizen. Because of these differences nationality, the applicable laws are also different.

However, before the enactment of Law no. 1 of 1974 concerning marriage, previously mixed marriage was defined by GHR (Regeling op de Gemengde Huwelijken) Staatsblad 1898 No. 158 as a marriage between people who in Indonesia are subject to different laws, this includes international marriages, marriages between groups, inter-place/traditional marriage, inter-religious marriage.

Mixed marriages can be implemented in Indonesia or outside Indonesia. If it is held in Indonesia, it must follow the conditions and implementation of the Marriage Law. The conditions for carrying out a mixed marriage must be fulfilled in accordance with marriage requirements according to the law of each party. The marriage law for the Indonesian nation is guaranteed to remain in force as clearly stated in Law no. 1 of 1974 concerning marriage, Article 2(1), which states that marriage is valid if it is carried out according to the laws of each religion and belief. If the person is Muslim, the marriage contract must be carried out, but according to Islamic religious law, the condition for a valid marriage is that both parties must be Muslim.

Juridical problems in mixed marriages often occur, especially related to determining citizenship status. The issue of citizenship will of course bring consequences regarding the adopted law and even more so regarding marital assets. In addition, after they have babies or children, this group of children from mixed marriages is vulnerable, and special treatment is needed. Because each country has different principles in determining citizenship, it is this citizenship that will determine their rights and obligations as citizens. This is in accordance with the many problems concerning the difficulties for Indonesian women who marry foreign men in obtaining their

children's residence permits. Applying for mixed marriages is too difficult because there are many stages that must be passed. This is the main attraction of this research to discuss in its application a lot of civil cases involving the citizenship status of children from mixed marriages in divorce, distribution of marital assets. Regarding the citizenship status of children result of as а mixed marriages, it is also regulated in International Civil Code which states that the status of the child and the relationship between the child and his parents needs to be seen whether the marriage of his parents is valid or not. because if it is not legal, then the child's status will have a legal relationship with his mother, and if legitimate, then the child has a legal relationship with his father. The marriage law does not explicitly regulate the legal consequences arising from mixed marriages

This happened to an Indonesian citizen from Surabaya named Marsellina, in July 2003 she returned to Indonesia with her children, Sonia and Julian. In 2001 she married a man from the United States, John in the state of Ohio. This marriage was registered at the local Indonesian Consulate General. His children are registered as American citizens, in accordance with the Jus Soli adopted by America. When there was a problem in her marriage that finally made her determined to bring her children back to Indonesia without her husband's knowledge, to Jakarta in July 2003. She brought her children without a passport. To be able to let his children go, he asked the local Indonesian Embassy to make travel documents like a passport. When he arrived in Indonesia he registered his

marriage and the birth of his child. Problems arose when he had to apply for limited stay permit cards for his the **Immigration** Office children. refused because his two children did not have passports. Therefore the Embassy asks both parents to be present, or one of the parents who cannot attend to provide a letter of permission for passport renewal. However, this was prevented by her husband. So Marcelina's children were declared stateless. Based on these facts, the researcher is interested in conducting research on a person's citizenship rights as a result of mixed marriages.

MAIN PROBLEM

Therefore, according to the description above, the problem in this Scientific Article is

- 1. What are the regulations regarding mixed marriages in Indonesia?
- 2. How can someone who carries out a mixed marriage in Indonesia obtain Indonesian citizenship rights?
- 3. What is the citizenship status for a husband/wife who is in a mixed marriage and children resulting from a mixed marriage?

METHOD OF RESEARCH

In this research, the type of research used in this study is the normative juridical method or often known as doctrinal. Doctrinal research is usually in the form of document studies that use legal materials in the form of statutory regulations, decisions, legal theories, and expert opinions. In normative type research, the norm system is the object of study and examines positive law in a country.

Research was carried out by examining library materials. Library studv bibliographic study or written information reviewing widely originating from published sources, for example law books, legal journals and court products, namely primary materials such as the Civil Code, Law no. 1 of 1974 concerning marriage, Law Number 12 of 2006 concerning Citizenship and other related laws. Secondary legal materials are legal materials that provide explanations of primary legal materials obtained from literature studies in the form of literature related to the problem, study. In this case the author uses literature such as journals, law books, theses, dissertations and articles. Then, in using tertiary materials the author uses materials such as foreign language dictionaries, legal dictionaries, the Internet, and the KBBI.

The approach used in this research is a legislative approach by examining statutory regulations and regulations related to the legal issue being studied. The statute approach views law as a closed system and has a comprehensive nature as norms that are related to each other. All-inclusive, the collection of norms is sufficient and there will be no shortage of law. Systematic means that the law is arranged systematically.

The data analysis technique in this research is by researching and looking for laws and regulations related to the legal issue at hand. In data analysis the author uses qualitative research. According to qualitative research theory, in order for the research to be of quality, the data collected must be complete, namely primary data and secondary data. The existing data is then analyzed interpretively using existing theories or positive laws and expressed deductively, namely from general to specific and conclusions are drawn to answer existing problems. Data processing techniques are carried out using legal interpretation/interpretation methods to build a legal argument as a conclusion.

RESEARCH RESULT AND DISCUSSION

1. Review of mixed marriages

According the language. to marriage means collecting, combining, matchmaking, whereas according to the KBBI, marriage is an agreement between a man and a woman to officially marry a wife. In Islam, marriage is a contract or agreement that contains the permissibility of having intercourse using lafadz nikāh or tazwij, with the provisions that this marriage has a positive goal building a Sakinah household, getting peace of life, keeping away adultery, with the aim of worshiping Allah SWT. Article 26 of the Civil Code states that marriage is a legal relationship between a man and a woman for a long time. Through the Civil Code it is known that marriage in this case is only based on civility, so that in Article 1 of the Marriage Law it is explained that marriage is not only about civility but also an inner relationship and an engagement based on the one and only God. There are several principles contained in the Marriage Law No. 1 of 1974 concerning marriage, namely:

- The principle of the one and only God. This means that marriage must be based on the laws of each religion and belief
- The principle of recording must be in front of the marriage registration officer and registered at the

- religious affairs office if he is Muslim. The aim is to provide legal certainty for those concerned
- The principle of balance of rights and obligations every husband and wife have rights and obligations and are equal before the law. Husband and wife have balance in the household and in society
- 4. The principle of maturity of the soul according to the law, an adult is 21 years old. This shows maturity and maturity of the soul and readiness to marry. For those who have reached adulthood, they no longer need permission from their parents if they marry.
- Polygamy is strictly restricte marriage is actually monogamous, but if the law and religion in question permits, a husband can have more than one wife if various conditions are met.
- Divorce is complicated in divorce there must be certain reasons and it must be done in court.

As times progress, inter-country marriages or mixed marriages often occur. According to Staatblad 1896 No. 158 during the Colonial Government of Beslit Kingdom No. 23 Staatsblad 1896/158 GHR Mixed marriages are marriages of people who in Indonesia are under different laws. Meanwhile, in Article 57 of Law No. 1 of 1974 concerning marriage. mixed marriage is a marriage between 2 people who are in Indonesia with different laws, this is due to differences in nationality and one of them is an Indonesian citizen. The supporting factor is the ease of acquaintanceship via the Internet, co-workers, business friends, acquaintances on holidays, friends from school or college, this also happens to Indonesian workers with

workers from other countries bringing partners of different nationalities to marry. Thus, with the rise of these events, legal certainty and legal protection in mixed marriages must be properly regulated in legislation.

Based on Article 16 AB (Algemeene Bepalingen), Indonesia adheres to the principle of nationality for the personal status of its citizens. This means that a person's national law still applies and follows wherever that person goes. This principle does not only apply to Indonesian citizens who are abroad but also foreigners who are Indonesia. So the principle of nationality applies both ways.

1. Mixed marriages will be legal if they are carried out according to the law in force in the country where the marriage takes place. So summary, if someone marries using Singapore law, they still have to pay attention to the provisions existing marriage laws in Indonesia national law. These things include, among other things, the obligation for each mixed marriage couple to report to the Population and Civil Registry Service within one year of the marriage taking place and if after that time they must submit a report to the district court according to the domicile question. In accordance with Article 107 of Presidential Regulation No. 25 of 2008 concerning Requirements and Procedures for Population Registration and Civil Registration, there are sanctions for couples who do not report their marriage within 1 year of the marriage, namely administrative into fines taking account the provisions of the law and the conditions of society their in respective regions. respectively.

2. Arrangements concerning Mixed Marriages in Indonesia

- a. Mixed Marriage Terms
 - According to Article 2 of law No. 1 of 1974 a marriage is considered valid if it is carried out according to the laws of each religion and belief of the parties. Marriage is registered when the marriage has been done. Mixed marriages can be carried out in Indonesia or outside Indonesia.
 - a) a) Mixed marriage in Indonesia
 - b) Prior to marriage, a husband or wife who has another nationality must fulfill documentation or a letter from his country of origin through the embassy of his country of origin in Indonesia stating that he is eligible and can marry an Indonesian citizen, as well as complete identity in the form of:
 - c) 1) Photocopy of identity (KTP/passport);
 - d) 2) Copy of birth certificate;
 - e) 3) Certificate that he is not currently married; or
 - f) 4) Divorce certificate if you have been married before:
 - g) 5) Wife's death certificate if the wife dies
 Also, the marriage must be reported at least 60 days after

reported at least 60 days after the marriage to the implementing agency where the marriage took place. For example KUA (Office Religious Affairs) if he is a Muslim, and the civil registry office if he comes from another religion. Meanwhile, Indonesian citizens must also fulfill the marriage requirements according to Article 6 of the Marriage Law, namely:

- 1) Must be based on the agreement of the two prospective bride and groom
- 2) For a person under 21 years of age, the consent of both parents, one or guardian must be obtained.
- 3) In the event that there are differences of opinion between the people mentioned above or one or more of them do not express an opinion, then the court in the jurisdiction where the person who will issue the permit resides, after hearing the said people first on; And
- 4) The provisions mentioned above apply as long as the laws of each religion and the beliefs of those concerned do not specify otherwise.

An example is a marriage that went viral several years ago, namely the mixed marriage of Indonesian YouTuber Tara Erin and Jeong Sangwon or Woni, a Korean descendant with South Korean nationality. Because Woni has converted to Islam and is officially a Muslim, the marriage was carried out using Islamic law. Apart from that, it is known that the weddina took place Banjarmasin, South Kalimantan. So, based on the provisions of Article 2 of the Marriage Law, marriages are valid because they have been carried out according to the laws of each religion and belief and then registered at the local Religious Affairs Office (KUA). However, after the marriage, this immediately status was not recognized in Woni's home country, South Korea because they still had to process several documents at the South Korean

embassy, including husband and wife's passports, Jakarta domicile certificate, Indonesian and Korean family cards.

- 2. b) Mixed Marriage Abroad
- 3. If a mixed marriage takes place outside Indonesia, must it registered at the competent authority in the local country and reported to the Indonesian Embassy in the country the marriage took place. where Registration of marriage events will be carried out by the local Indonesian Embassy. If the local country does not hold marriages for foreigners, the registration will be carried out in the marriage certificate register book and issue an extract from the marriage certificate. Marriage registration must be carried out by a married couple at the civil registry office no later than 30 days after the couple returns to Indonesia.
 - b. Legal Consequences of Mixed Marriages

A legally valid marriage will give rise to legal consequences, which basically involve the following aspects:

- a. The emergence of a relationship between husband and wife
- b. The emergence of property in marriage
- c. The emergence of a relationship between parents and children

The most common thing is that the result of marriage is the existence of rights and obligations between husband and wife, this is regulated in Articles 30-34 of Law no. 1 of 1974 which is short: Couples must bear the noble obligation uphold to household which is the basis of the structure of society, The rights and position of husband and wife are equal, husband and wife have the right to carry out legal actions, husband and wife respectively as head and housewife, the husband is obliged to provide for the necessities of life according to his ability and the wife is obliged to manage the household as well as possible, the husband and wife are obliged to love, respect, be loyal to each other, provide physical and spiritual assistance to each other, husband and wife must have a residence determined together.

Furthermore, the property of husband and wife is regulated in Articles 35-37 of the Marriage Law, namely, assets acquired during marriage are joint assets, respective assets and assets obtained as gifts or inheritance under the control of each as long as the parties do not specify other.

One of the purposes of marriage is to produce offspring in the family, this is one of the legal consequences of marriage. Where children born from marriage will give rise to reciprocal rights and obligations between the two parents and the child. Parents are obliged to care for and educate their children until they marry and stand on their own, this continues even if the marriage breaks parents' marriage that breaks up due to divorce or a court decision at the request of the husband/wife the court will hand over to a party who has good intentions to be educated properly, well, children who are not yet 18 years old and have never been married are still borne and supervised by their parents, parents have the right to transfer the property or pawn the property of children who are not yet 18 years old or have never been married, a parent's authority over the child can be revoked at the request of another person (family of children in a straight line upwards). Apart from that, the most common legal

consequence of mixed marriages is the citizenship status of the child.

Obtain Indonesian citizenship

To obtain Indonesian citizenship rights, a person must fulfill several conditions. This includes foreigners who are legally married to Indonesian citizens, foreigners who have made significant contributions to Indonesian state, children who have citizenship. and Indonesian citizens who have lost their citizenship status but wish to regain that status. In accordance with applicable laws and regulations, each applicant must meet requirements the specified and criteria.

1) There are several requirements that must be met before being able to obtain Indonesian citizenship. First. the applicant must be married or 18 years old. In addition, the applicant must have lived in the Republic of Indonesia for a minimum of 5 consecutive vears or 10 non-consecutive years before submitting the application. One of the conditions that must be met is physical and spiritual health. In addition, candidates must be fluent in Indonesian and recognize the 1945 Constitution of the Republic of Indonesia and Pancasila as the basis of the state. The applicant also may not have been sentenced to imprisonment one year or more committing a previous crime. In addition, if they become citizens of the Republic of Indonesia, the applicant may not have dual citizenship. The applicant must also have a steady job and income. In addition, the applicant must pay the citizen's money to the State Treasury. To meet these

requirements, the procedure may vary depending on the cases mentioned. For example, to obtain Indonesian citizenship, a child with dual citizenship must be sent to the relevant official. At a minimum. the application must be made in writing in Indonesian on sufficient stamped paper and contain information such as full name, date of birth, gender, marital status. residence address. occupation and nationality origin.

The application file is then submitted to the Ministry of Law and Human Rights (Kemenkumham), either through the Indonesian Embassy (Embassy) in the applicant's country of origin, or the local Court Office

Within a maximum of 14 days from the date of receipt of the application, officials from the Ministry of Law and Human Rights will check the completeness of the application documents and carry out a substantial all the inspection. lf required documents are complete, they will be sent back to the Minister of Law and Human Rights within 7 days after a substantial inspection. Furthermore, within a maximum of 45 days from the receipt of the request, the Minister of Law and Human Rights will conduct an additional examination and submit the results to the President consideration. After the examination is complete. request will the be forwarded to the President, who, within 45 days from the receipt of the request, will grant or reject it. The applicant will receive a copy of the Presidential Decree and a copy of the Ministry of Law and Human Rights after the application is granted.

Furthermore, they will be asked to take an oath or pledge of allegiance before officials and in the presence of two witnesses within a specified time. Within no more than fourteen days from the date of taking the oath or pledge of allegiance, the applicant must return the immigration documents or papers in his name to the immigration office whose working area covers the applicant's place of residence. After the minutes of taking the oath or pledge of allegiance are received, the minister will announce the names of individuals who have obtained Indonesian citizenship in the State Gazette of the Republic of Indonesia.

Until the child reaches the age of 18 or is married, the right to dual citizenship is regulated in Article 6 of the Citizenship Law. This question should be asked no later than three years after coming of age or marriage. The Citizenship Law also states that Indonesian citizens are children who were born before the 2006 law was passed and are not yet 18 years old or married.

2 categories There are children who must choose citizenship status. Firstly, those who already have Minister of Law and Security decision letter regarding citizenship, namely children born before 1 August 2006. Second, for children born after 1 August 2006, they have an affidavit or immigration letter attached to their passport. foreigner who contains information as a child with dual citizenship, the benefit obtained by the holder of this affidavit is immigration facilities when leaving and entering Indonesia.

There is an exception for children resulting from mixed marriages whose father is a foreign citizen and does not

give citizenship to the child born so that the child is stateless or stateless. as previously explained that Indonesia does not recognize the existence of children without citizenship. Therefore, the mother can submit an application to the District Court so that the child can become an Indonesian citizen and follow the mother's citizenship. This can also apply if the marriage is terminated. In Article 3 of Law no. 62 of 1958, it is possible for a mother to request Indonesian citizenship for her child from the Minister of Justice District Court through the representatives of the Republic of Indonesia 1 year after the child in question turns 18 years old. Basically, children who are not yet 18 years old and unmarried can follow their parents' residence permit and are given a limited residence permit in accordance with PP No.32 of 1994.

Dual citizenship for children of mixed marriages seems to have a positive impact, this is intended to protect the interests of the child, and parents do not need to bother arranging residence permits in Indonesia for their children. In addition, children with dual nationality are required to have birth certificates in Indonesia or a foreign country of origin of one of the parents.

CONCLUSION

 Mixed marriages are marriages between Indonesian citizens and foreign nationals. Mixed marriages between Indonesian citizens and foreign nationals are regulated in Article 57 of Law No. 1 of 1974 concerning marriage, what is meant by mixed marriage is marriage between two people who in Indonesia are subject to different laws because of differences in

nationality and one of the parties is an Indonesian citizen. However. prior to Law No. 1, according to GHR (Regeling op de Gemengde Huwelijken) Staatsblad 1898 No 158. mixed marriages are marriages between people who in Indonesia are subject to different laws, this includes international marriages, inter-group marriages, places marriage between customs, marriage between religions. Mixed marriages can be carried out in Indonesia or abroad. but must be in accordance with the laws of that country, in the marriage accordance with requirements in the applicable laws of the country. Couples who wish to enter into a mixed marriage must and meet administrative. age kinship requirements. Mixed marriages allow a person to take the nationality of his wife or husband or lose his nationality in accordance with applicable law. A person can apply to the competent authorities if they wish to obtain Indonesian citizenship.

- 2. For a foreign citizen who enters into mixed marriage with Indonesian, in order to become an Indonesian citizen, he must fulfill the requirements stipulated in Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia (Citizenship Law). Several ways to obtain Indonesian citizenship include birth, having children. marriage, naturalization.
- 3. In cases of mixed marriages where foreign citizen marries Indonesian citizen, the foreign citizen remains a citizen of his of origin while the country Indonesian citizen remains an

Indonesian citizen. Meanwhile, the child is born, there are several processes that must be fulfilled. However, in the Indonesian context, children born from marriages between Indonesian citizens and foreigners are usually considered to Indonesian citizens automatically, regardless of their place of birth. In the Indonesian legal system, this is referred to as ius sanguinis, or citizenship by accordance blood. In Indonesian citizenship law, children born from mixed marriages are entitled to dual citizenship until they are 18 years old or married. Meanwhile, once the child is 18 vears old or married, the child must choose which nationality they will choose.

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