



## Legal Protection of Children from Mixed Marriage Living in Indonesia

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### ABSTRACT

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Marriage is a legal bond between a man and a woman for a long time. Mixed marriages are marriages between two people in Indonesia subject to different laws, due to differences in citizenship and one of the parties is a citizen of Indonesia. The research entitled Legal Protection of Children from Mixed Marriages Living in Indonesia was conducted to know how the status of children born from mixed marriages according to Law Number 1 of 1974 concerning Marriage and Legal Protection for children about civil rights as a result of mixed marriages according to Law Number 1 of 1974 concerning Marriage and Law Number 12 of 2016 concerning Citizenship. This study uses a normative juridical research method, which concludes that children born from mixed marriages get guaranteed legal certainty according to Law Number 12 of 2016 concerning Citizenship in terms of citizenship status because they have lived in Indonesia for at least 5 (five) consecutive years come along. Then the child also gets his civil rights, namely the right to know his origin, the right to get maintenance and education from his parents, the right to be represented in all legal actions inside and outside the court, and the right to take care of the child's property, as well as the right to inherit. The results of this study are expected to provide legal protection for children about civil rights resulting from mixed marriages.

### Keywords:

Protection, Marriage, Children.

### INTRODUCTION

Marriage according to Law Number 1 of 1974 is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal household (household) based on the one and only God. According to Law No. 1 of 1974, the maturity of the age of marriage is measured based on the maturity of the soul and body, which is said to have matured in mind and body to marry when they are 21 years old. This provision is contained in Chapter II article 7 paragraph (1) which states that marriage is only permitted if the man has reached the age of 19 years and the woman has reached the age of 16 years.

Marriage according to KHI (Compilation of Islamic Law) is a very strong contract *mitsaaqan gholidon* to obey Allah's commands and carry them out in worship. This marriage is declared valid if it is carried out according to each religion and belief. Marriage according to Law No. 16 of 2019 amendments to Law No. 1 of 1974 is that marriage is only permitted if a man and a woman have reached the age of 19 (nineteen) years in Article 7 paragraph (1).

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Marriage is one of the regular cultures that follow the development of human culture in people's lives. In a simple society, the marriage culture is simple, narrow, and closed, in modern society, the marriage culture is advanced, broad, and open.

Marriage culture and its rules that apply to a society or a nation cannot be separated from the influence of culture and the environment in which the community is located and the association of the community. In Article 1 of Law No. 1 of 1974, it is stated that:

Marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the one and only God. Marriage according to the law is a bond between a man and a woman, meaning marriage is the same as an engagement (*verbindtenis*).

Considering that in a mixed marriage, the prospective bride and groom are subject to different laws, the question of which law will be applied (applicable law) will arise. To solve the problem of which law applies to mixed marriages, based on Article 2 jo. 6 *Gemengde Huwelijken Regeling*, essentially the applicable law is the law of prospective husbands (Isnaini, 2016: 16).

Mixed marriages are regulated in Article 57 to Article 62 of Law no. 1 of 1974 concerning Marriage. Based

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on Article 57 of Law no. 1 of 1974 concerning Marriage, it is stated that mixed marriages are "marriages between two people who in Indonesia are subject to different laws, due to differences in nationality and one of the parties is an Indonesian citizen." Mixing here is in the form of mixing different nationalities, not religious differences, concretely as follows (Ernaningsih, 2016: 14):

1. An Indonesian citizen man marries a foreign woman, or
2. A foreign man marries an Indonesian woman.

Further provisions on mixed marriages are contained in Articles 58 to 62 of the Marriage Law. First, it is regulated regarding the acquisition of citizenship which stipulates that people of different nationalities who perform mixed marriages, they can obtain citizenship from their husband/wife and may also lose their citizenship, according to the methods stipulated in the applicable Citizenship Law of the Republic of Indonesia. Second, it regulates the consequences of citizenship obtained in mixed marriages:

1. The citizenship obtained as a result of marriage or the dissolution of marriage determines the applicable law, both regarding public law and civil law. Civil law includes marriage law, inheritance law, contract law, commercial law, and civil international law. While public law includes criminal law, constitutional law, administrative law, public international law, environmental law, and socio-economic law (Satjipto, 2014: 75).

2. Mixed marriages performed in Indonesia are carried out according to this Marriage Law (Sudarsono, 2005: 197).

In Indonesia, mixed marriages occurred can take two forms Indonesian citizen women (here in after referred to as WNI) with foreign men (here in after referred to as foreigners) and Indonesian men with foreign women. The factor of differences in citizenship is what makes a difference between mixed marriages and internal marriages.

The issue of legitimate children is regulated in Law no. 1 of 1974 concerning Marriage in Article 42, Article 43, and Article 44. Regarding the regulation of the status and position of children from mixed marriages (different nationalities) in the new Citizenship Law, namely Law no. 12 of 2006 gave positive changes, especially in the relationship between children and their mothers because they provide limited dual citizenship for children from mixed marriages (different nationalities). Based on the provisions of Article 45 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it is stated that "Both parents are obliged to maintain and educate their children as well as possible." In the provisions of Article 45 paragraph (2) of Law Number 1 of 1974, it is stated that "The obligations of parents as referred to in paragraph (1) of this article are valid until the child marries or can stand alone, which obligations continue even if the marriage is between the two persons. old break up." So parents care for and educate their children until they marry and can stand on their own. This also means that even if the

child is married if it cannot stand alone, parents still should take care of their children, wives and grandchildren (Hilman, 2007: 132). In the provisions of Article 46 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it reads, "Children are obliged to respect their parents and obey their goodwill." In the provisions of Article 46 paragraph (2) it is stated that "If a child is an adult, he is obliged to maintain according to his ability, parents and family in a straight line upwards, if they need their help." In Indonesian legislation, it should be regulated regarding children resulting from mixed marriages so that there is no discrimination in rights against children from mixed marriages in Indonesia. Where the law regulates the rights of children resulting from mixed marriages, especially in terms of children's civil rights.

Based on the background of the problem, there are two problems: What is the status of children born from mixed marriages according to Law Number 1 of 1974 concerning Marriage? And how is the legal protection for children regarding civil rights resulting from mixed marriages according to Law Number 1 of 1974 concerning Marriage and Law Number 12 of 2006 concerning Citizenship?

### RESEARCH AND DISCUSSION

In Article 1 of Law Number 1 of 1974 concerning Marriage, it is stated that "Marriage is an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family or household based on the One Godhead." According to Sajuti Talib, marriage is a sacred agreement that forms a family between a man and a woman. The element of the agreement is here to show the gap aspect of marriage and show it to the public. While the sacred act for the statement of the religious aspect of a marriage. Based on Article 57 of Law no. 1 of 1974 concerning Marriage, it is stated that mixed marriages are "marriages between two people who in Indonesia are subject to different laws, because of differences in citizenship and one of the parties is an Indonesian citizen."

Legal protection is to protect human rights that are harmed by others and legal protection is given to the community so that they can enjoy all the rights granted by law (Satjipto, 2014: 53). Legal protection for children as stated by Arif Gosta that child protection is a field of national development. Protecting children is protecting people, that is, protecting the whole person. Ignoring the issue of child protection will not stabilize national development. A result of the absence of child protection will cause various social problems that can disrupt order, security, and national development. This means that child protection must be sought if we want to seek satisfactory national development (Turatmiyah, 2013: 3458).

Civil rights are part of absolute rights and relative rights. Civil rights which are part of absolute rights consist of human rights, absolute family rights. Meanwhile, civil rights are part of relative rights which include relative property rights. Civil rights can be granted by law and

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agreements. Children's civil rights are rights inherent in every child recognized by law in a legal relationship with parents and their parents' families, including the right to know their origins, the right to receive care and education from their parents, the right to be represented in all legal actions in, out of court and the right to manage children's property, as well as the right to inherit (Abnan, 2015: 188).

### 1) The right to know the origin

The right to know the origin of a child is a child's civil right which is guaranteed in Article 56 paragraph (1) of Law Number 39 of 1999 concerning Human Rights and Article 7 paragraph (1) of the Child Protection Law which contains the same provisions, that every children have the right to know who their parents are (Abnan, 2015: 190). Thus, it can be seen that the fulfillment of the rights of origin of children out of wedlock in the Civil Code can be carried out by biological parents in several ways, namely:

1. With a birth certificate in the presence of a Civil Registry Officer before or in the absence of parental marriage;
2. With an authentic certificate made by a Civil Registry Officer, recorded in the birth register and recorded in the birth certificate that;
3. With the marriage certificate of his parents ratifying it;
4. With a letter of approval from the President. Hak untuk mendapatkan pemeliharaan dan pendidikan dari orang tua.

2. The right to receive care and education from parents is a child's right which is very important for every child to survive normally and develop his/her potential. Children by nature, physically, psychologically, socially, and economically, are very dependent and need attention from other parties, especially their parents to accompany and maintain themselves as best they can until adulthood.

3. The right to be represented in all legal actions inside, and outside the court and the right to manage his property

Guardianship a regulated in Law Number 1 of 1974 concerning Marriage in Articles 50 to 54 :

a. Article 50 paragraph (1): "Children who have not reached the age of 18 (eighteen) years or have never been married, who are not under the authority of their parents, are under the authority of a guardian." Article 50 paragraph (2): "Guardianship is about the person of the child in question and his property."

b. Article 51 to Article 54 regulates the appointment of a guardian, the obligations of a guardian, and responsibilities as a guardian.

### 4. Right to inherit

In the provisions of Article 2 of the Civil Code it is stated that: "A child in the womb of a woman is considered as having been born, if the interests of the child so desire. Died when he was born, it is presumed that he never existed." Therefore, the provisions of Article 2 relate to guardianship

(Article 348 of the Civil Code), receiving grants (Article 1679 of the Civil Code) or will grants (Article 899 of the Civil Code), and inheritance (Article 836 of the Civil Code). In which Article 836 of the Civil Code states that: "In order to act as an heir, a person must be present at the time the inheritance is opened, with due regard to the provisions in Article 2 of this Law." In addition to civil rights related to parents, there are also civil rights relating to other people such as relative property rights which are rights in the law of engagement or agreement, such as buying and selling.

The making of Law Number 23 of 2002 concerning Child Protection was motivated by the ratification of the Convention on the Rights of the Child by Indonesia in 1990 after this convention was adopted by the United Nations General Assembly in order to regulate the issue of the fulfillment of children's rights. In addition, Indonesia also adopted a law on human rights in 1999 (UU No. 39/1999). Although there are already a number of laws relating to child protection, such as the Child Welfare Law, the Juvenile Court Law, and so on, there is no law that can fully address children's problems. Child Protection Act no. 23 of 2002 can be seen as one of the products of the Convention on the Rights of the Child which is expected to improve the condition of children in relation to efforts to fulfill children's rights so as to reduce violations of children's rights, whether committed by parents in the context of family, community or state. The Child Protection Act is based on four CRC principles:

- a. Non-discrimination
- b. Best interests of children
- c. Right to live
- d. Survive and thrive
- e. And the right of children to participate.

This embodiment has been reflected in legal regulations that are discriminatory in nature, do not guarantee the fulfillment of human rights and equality between citizens and provide less protection for women and children.<sup>30</sup> Based on the Citizenship Law of 1958 in Article 8 Paragraph (1), it is stipulated that a woman who is an Indonesian citizen who intermarries, will lose her citizenship. Likewise, children born from marriages between Indonesian women and foreign men automatically follow their father's citizenship. The realization of the democratization of the state in the new Citizenship Law is reflected in its responsive legal products, namely in the form of equal treatment and position of citizens before the law as well as gender equality and justice.

In Article 2 of the 2006 Citizenship Law, it is stated that a native Indonesian citizen is an Indonesian who has been an Indonesian citizen since his birth and has never received another citizenship of his own free will. This article eliminates the cornering of certain ethnic groups. This law implies the rejection of the concept of discrimination in the acquisition of citizenship on the basis of race, ethnicity, and gender, as well as discrimination based on marital status. In another article, it is also stated that Indonesian citizens who marry foreign men are no longer considered to automatically

follow the citizenship of their husbands, but are given a grace period of three years to determine whether to remain an Indonesian citizen or leave him. In addition, if the wife decides to remain an Indonesian citizen or during the three-year grace period, she can sponsor her husband's residence permit in Indonesia.

The most important part of this new law is the adoption of the *Ius Sanguinis* - *Ius Solli* mixed principle and recognizing dual citizenship in children of mixed-married couples and children born and living abroad until the age of 18 years. This means that until the child is 18 years old, he is allowed to have two nationalities. After reaching that age plus a grace period of three years, then the child is required to choose one of them. This provision avoids the occurrence of stateless. Observing the contents of the new citizenship law, it seems that it is more of an accommodation for a society that has been in touch with international relations. This law seems to philosophically want to say that cultural acculturation through the media of citizenship becomes something that is unavoidable.

Law as social engineering or social engineering functions. It's just that the penetration of the values contained in it, as a result of mixed marriages, for example, is outside the context of the law. The state, which has succeeded in producing this progressive law, must also provide a comprehensive understanding to a group of people who strictly maintain customary and religious values, and who reject the tradition of intermarriage because it is thickly charged with *Sara*. So that the legal product that we are very proud of becomes more acceptable. Mixed marriages have penetrated all corners of the country and all levels of society. The globalization of information, economy, education, and transportation has dispelled the stigma that mixed marriages are marriages between wealthy expatriates and Indonesians. According to the results of an online survey conducted by Indo-MC in 2002, of the 574 respondents who were netted, 95.19% were Indonesian women who were married to foreign men. The largest number is introductions via the internet, then former work/business friends, acquaintances while on vacation, former school friends and pen-pals. Mixed marriages occur between Indonesian workers with workers from other countries. On the other hand, the DKI Jakarta Civil Registry Office (KCS) recorded 878 marriages from 2002 to 2004 and 94.4 per cent of them were Indonesian women who married foreign men (829 marriages). This figure does not include marriages at KUA which are not registered at KCS and throughout Indonesia.

## **METHODOLOGY**

The type of research used in solving the problem is normative law. Normative law research uses normative case studies in the form of products of legal behavior, for example reviewing laws. The subject of the study is the law which is conceptualized as a norm or rule that applies in society and becomes a reference for everyone's behavior. So that

normative legal research focuses on an inventory of positive law, legal principles and doctrines, legal discovery in cases in concreto, legal systems, synchronization levels, legal comparisons and legal history (Abdulkadir, 2002: 52). The collection of legal materials is carried out by means of a literature study which includes primary sources, namely legislation that is relevant to the problem; secondary sources, namely legal science literature books and other legal writings that are relevant to the problem. The literature study was carried out through the stages of identifying the sources of legal materials, identifying the required legal materials, and taking an inventory of the required legal materials (data). (Abdulkadir, 2002: 192). Conclusions to answer the problems studied are carried out using a deductive method, namely by thinking by drawing conclusions from general legal materials to specific legal materials (Bahder, 2008: 35). The duties and responsibilities of the research chairperson are to make research plans, to carry out research, to compile reports and to compile articles.

## **CONCLUSION**

Legal status for children born from mixed marriages in terms of Law Number 62 of 1958 concerning citizenship is that from birth the legal position of the child follows the citizenship of his father automatically, if the father is a foreigner the child becomes a foreigner, as well as if the father is an Indonesian citizen, the legal status of the child being an Indonesian citizen, from here the role of the mother becomes neglected. However, when viewed from Law No. 12 of 2006 since the birth of the child has been recognized as an Indonesian citizen, the child will be able to take part in the citizenship of the father and the mother. Because the law provides an opportunity for children to choose their nationality until the age of 18 years or already married. However, for children born before Law Number 12 of 2006 concerning citizenship was made and registered too late, the consequence is that they must follow the father's citizenship (WNA) and be treated as foreigners.

Legal protection for children born from mixed marriages is the emergence of option rights obtained by the child. Dual citizenship granted to children under this Act before the age of 18 is an exception. so that every child has the right to survive, grow and develop, participate and have the right to protection from acts of violence and discrimination as well as civil rights and freedoms. Because, it is related to the future of the child, before the age of 18 the child is considered unable to take a stand, and is still dependent on others, as well as protection for the mother who has been pregnant, it is clear that there is a deep psychological relationship between the child and the child. mother. The explanation above is in accordance with the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection and the Convention on the Rights of the Child.

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