

Legal Protection Of Children In Mixed Marriages In Indonesia

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ABSTRACT

This research aims to analyse the legal protection of children from mixed marriages in Indonesia, focusing on the issue of citizenship and basic rights of children. In the context of Indonesian law, the citizenship of children of mixed marriages is often an issue of legal uncertainty, impacting on children's inheritance rights, education, health and social welfare. Although Indonesia has a legal basis that provides for limited dual citizenship for children of mixed marriages, the implementation of the existing law still faces challenges, including unclear procedures, lack of socialisation, and uncertainty in inheritance and parenting rights. This study concludes that the government's efforts to provide legal protection have been made, but there are still legal loopholes that jeopardise children's rights. Therefore, it is recommended that the government strengthen the implementation of the law, conduct more intensive socialisation, and formulate more specific regulations to protect the rights of children in mixed marriages. This research provides a scientific contribution in understanding the dynamics of child rights protection in Indonesia, especially in the context of dual citizenship, and provides policy recommendations for improving the Indonesian legal system.

Keywords: Legal protection, children from mixed marriages, dual citizenship.

Introduction

Marriage is one of the fundamental aspects of social and cultural life that has a significant impact on the formation of families and communities. In the context of Indonesian law, the regulation of marriage is regulated in Law Number 1 Year 1974 concerning Marriage, which was later amended by Law Number 16 Year 2019. This change includes several aspects, one of which is the establishment of a minimum age for marriage, which was originally 16 years for women and 19 years for men, now equalised to 19 years for both parties. This policy was taken to protect children from the negative impacts of marriage at a young age, including the impact on physical and mental health, as well as children's basic rights (Zuhrah, 2021; Sugiarto & Sulistiyono, 2024). In addition, Article 2 Paragraph (1) of the Marriage Law states that a marriage is considered valid if it is carried out in accordance with the laws and religious beliefs of each party. This reflects the principle of individual freedom in exercising their beliefs, although in practice, this provision can potentially lead to legal problems, especially in the context of inter-religious and inter-citizen marriages. One form of marriage that requires special attention is mixed marriage, which is a marriage between an Indonesian citizen (WNI) and a foreign citizen (WNA), which often involves different nationalities and different legal systems between the couple.

According to Article 57 of the Marriage Law, a mixed marriage in Indonesia occurs when one party is an Indonesian citizen and the other party is a foreigner. This marriage creates legal complexities, both in terms of marriage registration, which varies depending on the religion of each party, and in terms of the citizenship of children born from the marriage. In terms of citizenship, Law No. 12/2006 on Citizenship regulates the principles of citizenship by adopting the *ius sanguinis* and *ius soli* principles (Rofiq & Suprapti, 2023; Awalin et al., 2024). The *ius sanguinis* principle determines a person's citizenship based on descent, while the *ius soli* principle makes the place of birth the basis for determining citizenship.

In the context of mixed marriages, children born can acquire dual citizenship - limited to the age of 18. After that, the child must choose which nationality to retain, either following the nationality of one parent, or choosing the other (Afifuddin, et al., 2024). This is problematic because in many cases, children of mixed marriages face the dilemma of choosing between the nationality of the mother or father, which may affect their future legal status and protection. In addition, changes in the Citizenship Law have significant legal implications for the citizenship status of husband and wife in mixed marriages. Based on Article 26 of the Citizenship Law, an Indonesian woman married to a foreign man can lose her Indonesian citizenship if the husband's home country adheres to the principle of citizenship that requires the wife to follow the husband's citizenship. Vice versa, an Indonesian man married to a foreign woman can lose his Indonesian citizenship if the wife's country of origin applies the same principle (Law No. 12/2006). However, this does not apply automatically, as the party wishing to change their nationality must submit an official application in accordance with the applicable provisions.

The legal problems arising from these different citizenship systems are even more complex in the context of the rights of children born from mixed marriages. Such children, who may have dual citizenship, must face a legal process that requires them to choose which citizenship to retain upon reaching the age of 18. In addition, they also face challenges in obtaining adequate legal protection from both the Indonesian state and their parents' country of origin. Therefore, it is important to further examine the legal protection of children born in mixed marriages in Indonesia, taking into account the basic rights of children as part of national development and the implementation of the state's obligation to protect each of its citizens. This paper aims to analyse the legal protection of children born in mixed marriages in Indonesia, with a focus on aspects of citizenship, children's basic rights, and the legal impact on the child's citizenship status. As a state that adheres to the principle of the rule of law, Indonesia has an obligation to provide legal protection that is not only national in nature, but also considers international norms regarding human rights, especially in the context of children's rights (Megiani, et al., 2023). Through this research, it is hoped that a deeper understanding of the legal challenges faced by children in mixed marriages and the protection efforts that can be provided by the Indonesian state can be obtained.

This research aims to analyse the legal protection of children born from mixed marriages in Indonesia, focusing on the issues of citizenship status and children's basic rights. This research also aims to identify legal loopholes that may hinder the protection of children's rights, as well as examine the extent to which the applicable regulations provide legal certainty for these children. In addition, this research is expected to provide policy recommendations to strengthen the legal protection system for children in mixed marriages in Indonesia. The hypotheses of this study are: (1) Does the citizenship status of children born from mixed marriages in Indonesia still cause legal uncertainty in the protection of children's rights? (2) How do the regulations related to citizenship and marriage in Indonesia affect the protection of the rights of children born from mixed marriages, and are there any legal loopholes that endanger the rights of these children? (3) To what extent does the Indonesian state attempt to provide effective legal protection to these children, given the different citizenship systems between the countries involved in mixed marriages? This research makes a scientific contribution by presenting a new perspective on the legal protection of children in mixed marriages in Indonesia, particularly in the context of citizenship and human rights. Practically, this research is expected to provide recommendations for policymakers to improve the Indonesian legal system, to be more responsive to the needs of children in mixed marriages, and to assist legal practitioners and child protection agencies in dealing with legal issues related to dual citizenship.

The conceptual framework of this research incorporates three main theories: (1) Legal Protection Theory, which is used to analyse how Indonesian law protects children from mixed marriages, particularly in terms of citizenship and children's fundamental rights; (2) Human Rights Theory, which is used to evaluate whether the protection of such children is in line with international standards, such as those set out in the Convention on the Rights of the Child; and (3) Mixed Marriage Theory, which focuses on the legal impact of differences in citizenship in interstate marriages and how this affects the citizenship status and rights of children born from such marriages..

The theory of legal protection, as explained by Satjipto Raharjo (Fadhila, 2021; Mauli, et al., 2023), aims to protect the rights of individuals, especially those who are in a vulnerable position both economically and juridically. This legal protection includes three main elements: first, the form of protection provided; second, the legal subjects entitled to protection; and third, the object of protection itself, which refers to the rights protected by the legal system (Fadhila, 2021; Mauli, et al., 2023). In this context, Law No. 23/2002 on Child Protection plays an important role in ensuring the fulfilment of children's rights to live, grow, develop, and be protected from all forms of violence and discrimination. Such protection is not only the responsibility of the state, but also involves families, communities, and social institutions. Furthermore, the theory of human rights proposed by John Locke (1689) provides an important foundation for this study. Locke argued that human rights are rights inherent in every individual from birth, which apply universally without requiring recognition or authorisation from the state (Simatupang, 2021; Bazary, et al., 2024). This thinking became the main basis for the recognition of natural rights recognised throughout the world and played a role in the development of international law that recognises civil, political, economic, social and cultural rights. In the context of mixed marriages, the application of human rights theory is very relevant, especially in relation to the rights of children born from marriages between Indonesian citizens and foreign citizens, which leads to the regulation of the child's citizenship in accordance with applicable law (Law No. 12/2006 on Citizenship).

Along with that, the theory of mixed marriage proposed by Sudargo Gautama (1993) explains that marriages involving couples with different laws can be classified into several categories, such as international, inter-regional, inter-place, inter-religious, and inter-group marriages (Arwina, 2021). This mixed marriage becomes relevant in the context of Indonesian law, which is regulated in Law No. 1 Year 1974 on Marriage, specifically Article 57, which states that marriage between two people who are subject to different laws, including due to differences in citizenship, constitutes a mixed marriage. In Indonesia, the law applicable to mixed marriages is based on the principle of nationality, which states that a person's personal status follows the law of his or her country of origin, both at home and abroad. In the context of child protection, the application of the mixed marriage theory has important implications, especially in relation to the citizenship of children born from mixed marriages. Article 6 of Law No. 12/2006 on Citizenship stipulates that children of mixed marriages will have dual citizenship until the age of 18, after which the child is required to choose a nationality. However, while children's citizenship is a key issue, the legal protection of children in mixed marriages also needs serious attention. Currently, Indonesian legislation, as stipulated in Article 57 to Article 62 of the Marriage Law, does not provide comprehensive legal protection for children of mixed marriages.

Methods Research

This research uses a juridical-normative method with an analytical descriptive approach, aiming to analyse legal protection for children in mixed marriages in Indonesia, especially related to dual citizenship. The legal materials used consist of primary, secondary, and tertiary legal materials, which are analysed qualitatively with a statutory approach and

conceptual approach. Primary legal materials were analysed through legal interpretation (authentic, grammatical, and systematic), while secondary legal materials were analysed by *content analysis*. This research aims to contribute to the development of clearer legal protection regulations for children in mixed marriages, especially related to dual citizenship rights in accordance with human rights principles..

Result and Discussion

In the context of Indonesian law, children's rights are regulated in various laws, which include basic rights that must be guaranteed by the state. Articles 45-49 of the Marriage Law regulate the rights and obligations of children, including the obligation of children to respect their parents and the right of parents to maintain and educate children properly. In its development, Article 7 of Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection affirms the right of every child to live, grow, develop, and participate reasonably in accordance with human dignity. In addition, the law also regulates children's right to protection from violence and discrimination, as well as the right to education, health and social services in accordance with physical, mental and social needs. The Convention on the Rights of the Child, adopted by Indonesia through Presidential Decree No. 36 of 1990 on the Convention on the Rights of the Child, requires the state to provide guarantees of citizenship, health, and welfare of children, as well as legal protection for children in and out of court. In terms of citizenship, Articles 5 and 29 of Law No. 35 of 2014 on the Amendment to Law No. 23 of 2002 on Child Protection recognise children's right to obtain citizenship status as part of their identity and legal protection. This citizenship is a fundamental right that gives children a special position as citizens, with reciprocal rights and obligations towards the state. Citizenship can be divided into two main types: subnational citizenship (e.g. citizenship within a territorial entity) and supranational citizenship (e.g. EU citizenship) which is weaker than citizenship of a state. In addition, there are also categories of citizenship that include apatride (statelessness), bipatride (dual citizenship), and multipatride (citizenship of more than two countries).

In the context of children of mixed marriages, the recognition and protection of the right to citizenship is an important issue. The state is obliged to guarantee citizenship to children born from mixed marriages, and ensure their right to identity, citizenship status, and legal protection on an equal footing with other children. The state's obligation to protect children as citizens also includes the protection of other rights, such as education, health, and social welfare, which are essential to prepare children as successors to the nation and state. In the context of determining citizenship, there are two main principles that affect a person's citizenship status, namely the *ius soli* and *ius sanguinis* principles. *Ius soli* refers to the principle that citizenship is determined based on birthplace, while *ius sanguinis* determines citizenship based on descent or blood from parents. Countries such as the United States, Australia and Canada adhere to the *ius soli* principle, which allows children of immigrants born in the country to acquire citizenship of the country. However, some other countries, such as the Netherlands and Belgium, have abandoned this principle. On the other hand, countries in Continental Europe and China favour the *ius sanguinis* principle, where the citizenship of the child is determined by the citizenship of the parents.

Regarding the citizenship status of children from mixed marriages in Indonesia, there is still significant legal uncertainty, especially regarding the protection of the children's rights. Based on Government Regulation No. 21 of 2022 on Procedures for Obtaining, Losing, Cancelling and Regaining Citizenship of the Republic of Indonesia, children born from mixed marriages are entitled to obtain Indonesian citizenship. However, the process and requirements for obtaining this citizenship are often confusing to the public, suggesting that despite efforts to provide legal certainty, socialisation of this rule is still very much needed

(Putri, 2022). In this regard, although children of mixed marriages have the right to acquire limited dual citizenship, problems arise when they have to choose their citizenship at a certain age, i.e. beyond the age of 21, which affects their rights in various aspects, such as inheritance rights and access to education and health services (Sudarmawan et al., 2020; Muliadi, 2019).

This legal uncertainty related to limited dual citizenship has an impact on the protection of children's rights, especially in relation to inheritance rights. Children with limited dual citizenship can only inherit land with the right of use, not the right of ownership, which worsens their legal position (Utami, 2021). In addition, although Law No. 12/2006 on citizenship of the Republic of Indonesia, provides a legal basis for limited dual citizenship, the implementation of this provision in practice is often inconsistent, resulting in many parents not fully understanding their children's rights (Fauzi, 2018; Prameswari, 2019). This contributes to uncertainty over citizenship status and causes challenges in the recognition of children's rights, both in the legal sphere and in everyday life (Jinoto, 2022). Furthermore, the nationality and marriage laws in Indonesia have a major influence on the protection of the rights of children born in mixed marriages. The citizenship law entitles children of mixed marriages to limited dual citizenship, allowing them to choose their nationality upon reaching the age of 18. However, the declaration of choosing citizenship must be made a maximum of 3 years after the child turns 18 years old (at the latest at the age of 21 years old) or is married. so that when the age has passed 21 years, the issue arises that the subject of the child with limited dual nationality is considered a pure foreigner. In addition, administrative arrangements related to subjects born in *Ius Soli* countries are also a problem in themselves, considering that the subject inevitably immediately gets citizenship status when he is born there, even though both parents are Indonesian citizens and have no plans to return to the *Ius Soli* country.

Even legal loopholes that endanger children's rights can also be found in the regulation of inheritance rights, where children with limited dual citizenship can only inherit land in the form of usage rights, not property rights, which could potentially harm them in the future (Utami, 2021). Furthermore, in cases of divorce, parenting rights often go to the mother, but there is a lack of clarity regarding the financial support obligations of the father, which affects the welfare of the child (Oratmangun & Terwarat, 2022). Given this, it is clear that while there is a legal basis to protect children of mixed marriages, the implementation of existing laws still faces challenges. The reformed Marriage Law still does not clearly regulate the rights of children in mixed marriages, particularly with regard to inheritance and citizenship rights (Oratmangun & Terwarat, 2022; Utami et al., 2022). This results in children from mixed marriages often not receiving adequate legal protection, which risks threatening their rights in various aspects of life, such as education, health, and access to other resources (Faridy, 2021; Suryatni, 2020).

The Indonesian state's efforts to provide legal protection to children of mixed marriages rely heavily on the implementation of existing laws. The citizenship law provides a legal basis for these children to acquire limited dual citizenship, which entitles them to choose citizenship at the age of 21 (Muliadi, 2019). However, despite the supportive legal framework, the main challenge still relates to the different citizenship systems between the countries involved in mixed marriages, leading to confusion and uncertainty in the application of the law (Mu'ala, 2023). One of the government's measures to address this issue is through Government Regulation No. 21 of 2022 on the Procedures for Obtaining Losing Cancelling and Regaining Citizenship of the Republic of Indonesia, which provides an opportunity for children with citizenship issues to obtain Indonesian citizenship status within a certain period of time (Putri, 2022). However, despite this, the biggest challenge remains the public's understanding of the procedures that must be followed to obtain adequate legal protection (Mu'ala, 2023).

In addition, legal loopholes that jeopardise the rights of children from mixed marriages also arise in terms of inheritance rights and land ownership. Children with dual citizenship are limited to inheriting land in the form of usufruct rights, which results in inequitable access to important economic resources (Utami, 2021). On the other hand, in cases of divorce, the lack of clarity regarding the father's financial support obligations often impacts on children's welfare, suggesting that the implementation of existing laws is far from perfect (Oratmangun & Terwarat, 2022). Therefore, despite the government's efforts, further measures are needed to address legal gaps and ensure that children of mixed marriages are adequately protected in all aspects of their lives. Overall, although there is a legal basis for the protection of children from mixed marriages in Indonesia, there are still a number of legal loopholes that could jeopardise their rights. Therefore, the government and relevant agencies need to increase socialisation of children's rights and strengthen law implementation and enforcement to ensure more effective protection. Furthermore, more specific regulations related to mixed marriages are needed so that children's rights can be better protected, especially in terms of citizenship, inheritance and parenting (Harefa & Sitompul, 2021).

Conclusion

This study concludes that the citizenship status of children from mixed marriages in Indonesia still creates legal uncertainty, especially in terms of protecting children's basic rights. Although there is a legal basis that regulates limited dual citizenship for these children, as stipulated in Law No. 12/2006 and Government Regulation No. 21/2002, the implementation and socialisation of limited dual citizenship is still inadequate. This has resulted in confusion among communities and parents in understanding their children's rights, particularly in relation to inheritance, education, health and land ownership. This uncertainty is also compounded by inconsistencies in the implementation of existing laws, hindering the protection of children in mixed marriages. Although the government has made efforts to provide protection, such as through regulatory changes and citizenship arrangements, there are still legal loopholes that jeopardise children's rights, especially regarding parenting, inheritance rights, and financial support after divorce. Therefore, while the legal framework is in place, strengthening the implementation of the law, more specific regulations, and increased public understanding are necessary to ensure more effective legal protection for children of mixed marriages.

Suggestion And Recommendation

Based on the findings of this study, it is recommended that the government strengthen the socialisation and implementation of existing regulations, especially those related to limited dual citizenship, so that the community and parents can clearly understand the rights of children in the context of mixed marriages. In addition, more specific regulations governing the rights of children in mixed marriages, especially in terms of citizenship, inheritance and parenting, are needed to close the existing legal loopholes. Strengthening child protection institutions, both in terms of resources and legal understanding, is also an important step to provide more optimal protection for children from mixed marriages. In addition, it is recommended that the Indonesian citizenship system be more responsive to global dynamics involving differences in citizenship between countries, so that the rights of children in mixed marriages can be better guaranteed without legal uncertainty.

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