

The Lost Of Citizenship Rights And Own Land Rights For Perperators Of Mixed Marriages And Limited Dual Citizenship Children

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ABSTRACT

This research discusses the loss of citizenship rights and also ownership of land rights in Indonesia for mixed marriages and limited Dual Citizenship children, according to Law Number 05 of 1960 concerning Agrarian Principles (UUPA) linked to Law Number 12 of 2006 Regarding Citizenship of the Republic of Indonesia. This study also aims to describe and analyze the regulation of rights that are lost, nullified or limited by legislation on ownership of land rights and citizenship rights regulated in Indonesian laws and regulations which seem half-hearted to provide legal protection for legal subjects perpetrators mixed marriages and for limited dual citizenship children, who should still be treated as Indonesian citizens unless he relinquishes his rights and chooses another citizenship.

Keywords : The Lost Of Citizenship Rights And Land Ownership Rights

A. Introduction

Globalization makes the meaning of marriage wider, because it crosses the boundaries of state sovereignty, thus requiring International Civil Law (hereinafter abbreviated as HPI) for law enforcement. Marriages that cross the boundaries of state sovereignty are often also called mixed marriages, which are marriages that involve races between nations, therefore this marriage is also subject to the principles that apply in HPI.¹

Mixed marriages in this research are regulated in Law Number 1 of 1974 concerning Marriage, hereinafter referred to as UUUP 1/1974 Article 57 is a marriage between two people who in Indonesia are subject to different laws, due to differences in citizenship and one of the parties is an Indonesian citizen (hereinafter abbreviated as WNI) from the marriage, it is a legal event that has legal consequences that will lead to inheritance relationships, family relationships, guardianship relationships and other relationships related to the birth of new legal subjects into the world with all their status and position in the eyes of the law.

Citizenship Law No. 12/2006 according to Articles 4 and 6 against children born from mixed marriages of an Indonesian woman with a foreign man (hereinafter abbreviated as WNA), as well as children born from the marriage of a foreign woman to a man Indonesian citizens are both recognized as Indonesian citizens, the child will have dual citizenship, and after the child is 18 (eighteen) years old or married, he must make his choice.

¹Sudargo Gautama, *Hukum Perdata Internasional*, (Bandung: Alumni, 1994), P. 109.

The statement to choose must be submitted no later than 3 (three) years after the child turns 18 (eighteen) years old or after he gets married

For the perpetrators of intermarriage themselves, of course, many problems are faced, especially the issue of citizenship and ownership of land rights due to the principle of Nationality in Indonesia or what was later called the principle of nationality 5/1960 concerning Basic Regulations on Agrarian Principles (hereinafter abbreviated as UUPA) paragraph 1:

"That **only Indonesian citizens can have a full legal relationship with the earth**, water and space within the limits of the provisions of Articles 1 and 2". Article 1, namely: "The entire territory of Indonesia is the unitary homeland of all the people of Indonesia who are united as the Indonesian nation" and Article 2 is: "All the earth, water and space, including the natural resources contained therein within the territory of the Republic of Indonesia, as a gift from God Almighty. The Almighty is the earth, water and space of the Indonesian people and is a national wealth."

In Indonesia, the *Ius Constitutum* against children born from mixed marriages, although the Law of the Republic of Indonesia Number 12 of 2006 (hereinafter referred to as UUK 12/2006) states that children born from mixed marriages can be treated as Indonesian citizens, but the problem of land ownership still refer to UUPA. The government seems half-hearted to admit that children with limited dual citizenship can be treated as Indonesian citizens.

The *Ius Constitutum* is clearly not in accordance with the increasingly modern era, many perpetrators of mixed marriages really want new legal rules, the *Ius Constituendum* that is expected from Indonesia is that the Government immediately regulates specifically regarding mixed marriages and legal consequences, both to the perpetrators of mixed marriages themselves and their children. dual citizenship is limited, because of the complexity of the problems caused by mixed marriages and their legal consequences. Ideally, Indonesian citizens who intermarry can still have the highest rights to the land, either with or without separation of assets.

The *Ius Constituendum* that is highly coveted by the perpetrators of mixed marriages is The perpetrators of mixed marriages (with or without separation of assets) can have land ownership in Indonesia and from this ownership can be given to children with citizenship as their descendants and legal heirs.

B. Research Purposes

Research Objectives in Academic Theoretical Use is related to the particular contribution of conducting research to the development of theory and science and the world of academia. Meanwhile, practical use relates to the practical contribution made by conducting research on the object of research, either individually, in groups, or in organizations.

C. Methodology

This research is normative juridical empirical, namely research on legislation related to land law. The author conducted library research with a statutory approach (Statue Approach). Analysis of legal materials with interpretation methods, which results in explanatory research. In conducting research using library research which is juridical normative empirical. The purpose of using this method is intended to obtain theories and concepts related to data problems resulting from research.

1. Primary Legal Material

Primary legal materials, namely legal materials sourced from legislation relevant to research, binding laws such as:

- The 1945 Constitution of the Republic of Indonesia
- Constitutional Court Decision No. 69/PUU-VIII/2015
- Islamic Law Compilation
- Civil Procedure Code
- Law Number 5 of 1960 concerning Basic Agrarian Regulations.
- Law Number 1 of 1974 concerning Marriage
- Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia
- Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage.
- Government Regulation Number 103 of 2015 concerning the ownership of a residence or residence by a foreigner domiciled in Indonesia
- As well as other laws and regulations relating to this writing and which are interrelated.

2. Secondary Legal Material

Secondary data is data obtained from library materials that are considered supportive in this research. Secondary legal materials also provide an explanation of primary legal materials, such as papers on the results of seminars or other scientific meetings,

magazines, scientific journals, articles, articles free from internet media, as long as they contain information related to the discussion of this writing.

3. Tertiary Law Material

Tertiary legal materials are legal dictionaries, language dictionaries and other written texts that can clarify, complement and support primary and secondary legal materials. provide instructions, understanding, meaning and explanations of primary and secondary legal materials to avoid confusion in the meaning of a word described in this study These materials include legal dictionaries, Indonesian language dictionaries and legal encyclopedias, these include letters newspapers, journals, internet, legal dictionaries, and major Indonesian dictionaries, as well as academic texts related to this research which are used to complement or support research data.

D. Finding & Discussion

1. The Loss Of Citizenship Rights For Mixed Marriages Perperators And Limited Dual Citizenship Children .

The issue of citizenship was one that underwent major changes during the reform period, with the enactment of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. This law replaces the previous law which was considered discriminatory and irrelevant to the development of the Indonesian state administration. Among the positive developments in the new citizenship law are related to women's equality in citizenship issues and dual citizenship rights for children resulting from marriages between Indonesian citizens and foreigners.

The progress of the Citizenship Law shows the intention to adapt to various legal and democratic developments as well as the needs of society, which makes it easier to interact with the outside world. In addition to giving Indonesian women the right to inherit citizenship, the Citizenship Law also provides limited dual citizenship rights for children resulting from mixed marriages.

a. Citizenship Rights for Mixed Marriage Perpetrators

The perpetrators of mixed marriages are actually the object and at the same time the subject of the Citizenship Law, including the children of the perpetrators of mixed marriages. It is said to be an object and subject to the citizenship law, because as a result of mixed marriages, a mixed marriage perpetrators may gain or lose Indonesian citizenship, as stipulated in Article 26 of Law Number 12 of 2006 concerning Indonesian Citizenship.

According to Article 58 of the Marriage Law, people of different nationalities who engage in mixed marriages can obtain citizenship from their husband/wife and may also lose citizenship according to the methods stipulated in the applicable Citizenship Law of the Republic of Indonesia.

Based on these provisions, we need to refer to the provisions of the current Indonesian citizenship law, namely Law no. 12 of 2006 concerning Citizenship of the Republic of Indonesia (“Citizenship Law”). About status citizenship in mixed marriages, this is regulated in Article 26 of the Citizenship Law, which reads:

- 1) Indonesian citizen Women who marries a foreign men, national loses Indonesian citizenship **if according to the law of her husband's country of origin**, the wife's citizenship follows the husband's citizenship as a result of the marriage.
- 2) Indonesian citizen men who marries foreign Women, national loses his Indonesian citizenship **if according to the law of his wife's country of origin**, the husband's citizenship follows the wife's citizenship as a result of the marriage.
- 3) Women as referred to in paragraph (1) or men as referred to in paragraph (2) **if they wish to remain Indonesian citizens may submit a statement** regarding their wishes to the Official or Representative of the Republic of Indonesia whose territory includes the residence of women or men. the man, unless the application results in dual citizenship.
- 4) The statement as referred to in paragraph (3) **may be submitted by a woman** as referred to in paragraph (1) or a man as referred to in paragraph (2) **after 3 (three) years from the date of the marriage.**

So, if we look at the provisions of Article 26 paragraph (1) and paragraph (3) of the Citizenship Law, it can be seen that if the law of the husband's country of origin grants citizenship to his partner due to a mixed marriage, the wife who is an Indonesian citizen can lose Indonesian citizenship, unless she submits statement to remain an Indonesian citizen.

b. Children With Dual Citizenship Are Required To Give Up One Of Their Nationalities At The Age Of 18 Or Have Been Married And Given The Opportunity To Reach 21 Years.

The Directorate General of General Legal Administration (Ditjen AHU) of the Ministry of Law and Human Rights (Kemenkumham) ensures that Citizenship Status for children resulting from mixed marriages is regulated in Article 41 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia.

This provision provides Indonesian citizenship for children of mixed-marriage perpetrators, as long as the child has been registered by the parents or guardians to the Minister of Law and Human Rights (Menkumham). If obtaining Indonesian citizenship does not result in the loss of foreign citizenship, the child will result in dual citizenship. Children with dual citizenship at the age of 18 years or already married must declare choosing one of their nationalities, and the opportunity to choose that nationality is given until the child is 21 years old.

Likewise, children who are involved in mixed marriages can result in dual citizenship. The problem of citizenship for children of mixed marriages, especially for children born before the enactment of the Citizenship Law, considering that the registration deadline has ended on August 1, 2010, so for children who are not registered with the Minister, foreign provisions will apply.

The state has an obligation to provide legal protection and certainty for children resulting from mixed marriages as regulated in the explanation of Law Number 12 of 2006 concerning Indonesian Citizenship that Indonesia adheres to the principle of maximum protection and the principle of recognition and respect for human rights Law Number 12 of 2006 concerning Indonesian Citizenship is, of course, expected to be a kind of transitional justice product for the restoration of the citizenship status of discriminated groups.

It is interesting to explore, before a child of mixed marriage determines his nationality, with dual citizenship, the child will be subject to two legal jurisdictions. According to UUK no. 12/2006 Article 4, which are included in the category of Indonesian citizens with dual citizenship are those included in the following points:

- a. Everyone who is based on statutory regulations and/or based on an agreement between the Government of the Republic of Indonesia with other countries before this Law comes into effect has become an Indonesian citizen;
- b. Children born from a legal marriage of an Indonesian father and mother;
- c. Children born from a legal marriage of a foreign father and an Indonesian mother;

- d. Children born from a legal marriage of an Indonesian father and a foreign mother;
- e. A child born from a legal marriage to an Indonesian mother, but the father does not have the legal citizenship of the country of origin, the father does not grant citizenship to the child;
- f. A child born within a grace period of 300 (three hundred) days after his father died from a legal marriage and his father is an Indonesian citizen;
- g. Children born outside the legal marriage of a person are Indonesian citizens;
- h. A child born outside a legal marriage to a foreign mother who is recognized by an Indonesian father as his child and the acknowledgment is made before the child is 18 (eighteen) years old or unmarried; Children born in the territory of the Republic of Indonesia who at the time of birth the citizenship status of the father and mother was not clear;

Among the citizenship problems that have appeared in the past 15 years include the process of citizenship of children who escape the obligation to register themselves within 4 years after the enactment of the Citizenship Law, as regulated in Article 4.

Another problem is the case of the birth of Indonesian citizens in the *ius country. soli*, the period of choosing nationality for children with dual citizenship is limited, and the citizenship of former children with dual citizenship is limited.

The loss of Indonesian citizenship includes obtaining other citizenships of his own accord, not refusing or giving up other citizenships, while the person concerned has the opportunity to do so, is declared lost citizenship by the President at his own request, the person concerned is 18 years old or married, resides abroad and by being declared a loss of citizenship the Republic of Indonesia does not become stateless.

Entry into the service of a foreign army without prior permission from the President, voluntarily enter the service of a foreign country, whose positions in such services in Indonesia in accordance with the provisions of laws and regulations can only be held by Indonesian citizens, voluntarily take an oath or make promises loyal to a foreign country or part of a foreign country, are not required but participate in the election of something of a constitutional nature for a foreign country, have a passport or a letter that is a passport from a foreign country or a letter that can be interpreted as a valid citizenship sign from the country another person in his name, residing outside

the territory of the Republic of Indonesia for 5 (five consecutive years not in the context of state service, without valid reasons.

Deliberately not stating his desire to remain an Indonesian citizen before the 5 (five) year period ends and every 5 (five) years the person concerned does not submit a statement that he wants to remain an Indonesian citizen to the representative of the Republic of Indonesia whose working area includes the place of residence concerned even though the representative of the Republic of Indonesia has notified the person concerned in writing not to be stateless.

2. Loss Of Land Rights For Mixed Marriage Perperators And Limited Dual Citizenship Childrsn.

a. For Mixed Marriage Perpetrators

For Indonesian citizens who are married to foreigners, if they do not have a marriage agreement, the land rights ownership purchased will become joint assets. This resulted in mixed-married couples owning half of the ownership rights to the land and buildings (houses) because of the mixing of assets. Meanwhile, referring to the provisions of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles ("Agrarian Law"), only Indonesian citizens can have property rights. So Indonesian citizens who married with foreigners cannot have property rights. This resulted in not being able to own the right of ownership because the land and house purchased in marriage (without a marriage agreement) would become joint property.

Indonesian citizens who are involved in mixed marriages cannot simply transfer ownership of land ownership rights to their children. This is due, among other things, to the fact that children have dual citizenship due to mixed marriages of their parents. The sale and purchase of property rights cannot be carried out with a citizen who in addition to his Indonesian citizenship has foreign citizenship. is that you can make a marriage agreement with your wife before buying the land.

In marriage, there are property whose ownership is regulated in Article 35 to Article 37 of the UUP, which states that property acquired during marriage becomes joint property. To determine otherwise, the prospective husband and wife can enter into a marriage agreement which is made in writing and ratified by the VAT before the marriage takes place. This agreement can be made as long as it does not harm third parties as stipulated in Article 29 of the UUP.

Pay attention to the provisions of Article 6 of the UUPA, which states: "All land rights have a social function."

- a) **Only Indonesian citizens can have property rights;**
- b) Foreigners who after the enactment of this law obtain property rights due to inheritance without a will or mixing of assets due to marriage, as well as Indonesian citizens who have property rights and after the enactment of this law **loses their citizenship are obliged to relinquish those rights** within a period of time. one year from the acquisition of the right or the loss of citizenship. If after this period of time the ownership rights are not relinquished, then the **rights are nullified by law and the land belongs to the state**, provided that the rights of other parties that burden it continue to exist.
- c) As for children with dual citizenship, paragraph (3) applies, namely as long as a person besides his Indonesian citizenship has foreign citizenship, **he cannot own land with property rights.**

It can be seen that basically land ownership rights can only be owned by a single Indonesian citizen, and cannot be owned by foreigners and legal entities, both those established in Indonesia and those established abroad with the exception of certain legal entities as regulated in the law PP No. 38/1963.

UUPA considers that a person who has dual citizenship (dual citizenship/bipatriide) is a foreigner as stated in Article 21 paragraph (4) of the UUPA. Legal events that cause the transfer of property rights to unauthorized parties as property rights holders, such as foreigners, are still recognized/allowed by the UUPA on the condition that the foreigner may not hold the property for more than one year and must transfer it to a qualified party.

As a right, property rights certainly have an economic function. The economic function of property rights can be seen from the permitting of property rights to be used as collateral for debts with encumbrances as regulated in Article 25 of the UUPA, "Property rights can be used as collateral for debts with encumbrances of mortgages".

The persons mentioned in Article 21 paragraph (3) and paragraph (4) of the UUPA are obliged to relinquish their property rights within a period of one year from the acquisition of such rights or the loss of citizenship. Thus, the right is nullified because the law and the land fall to the state, provided that the rights of other parties that burden it continue to exist.

b. For Limited Dual Citizenship Children

Against marriage agreements that have been made either before or after the decision of the Constitutional Court No. 69/PUU-XIII/2015. Although the UUK against children born from mixed marriages can be treated as Indonesian citizens, the issue of land ownership still refers to the UUPA, where in article 21 paragraph (4) it reads:

"As long as a person besides his Indonesian citizenship has foreign citizenship, then he cannot own land with property rights and for him the provisions in paragraph 3 of this article apply." due to inheritance without a will or mixing of assets due to marriage, as well as Indonesian citizens who have property rights and after the enactment of this law loses their citizenship, are obliged to relinquish that right within 1 (one) year from the acquisition of said right or loss of citizenship. If after this period of time the property rights are not released, then the rights are nullified by law and the land falls to the State, provided that the rights of other parties that burden it continue to exist.

Observing the above provisions, the children with dual citizenship status are not allowed to own the land with the status of property rights, even though they have the status of property rights because both parents have made a separation agreement, both prenuptial agreement and postnuptial agreement, except for inheritance which is limited for 1 year one year.

For Indonesian citizens, ownership rights to a plot of land can occur based on customary law or government regulations. In addition, ownership rights to land can also be obtained based on buying and selling transactions, exchanges, grants, wills, gifts according to custom, and other actions intended to transfer property rights. These transactions can only be carried out between Indonesian citizens so that if they are carried out with foreigners, the transaction is null and void².

The state as the ruler of land that exists throughout the territory of the Republic of Indonesia has the authority to give, as well as revoke property rights that have been given to its citizens. In addition to the revocation of property rights to land caused by public interest, for intermarriage actors and children with limited dual citizenship, property rights to a land can also be abolished for certain reasons as stipulated in Article 27 of the UUPA which stipulates that land falls to the state due to: The provisions of Article 21 paragraph (3) of the UUPA which states that people who are foreign nationals or have other nationalities other than Indonesian citizenship are not entitled to property rights;

²Ibid, hlm. 8.

The provisions of Article 26 paragraph (2) of the UUPA which states that every sale and purchase, exchange, gift, gift by will, and other acts intended to directly or indirectly transfer property rights to a foreigner, to a citizen who in addition to his Indonesian citizenship have foreign citizenship or to a legal entity, except those stipulated by the government as referred to in Article 21 paragraph (2) of the UUPA, are null and void, and the land falls to the state, provided that the rights of other parties which burdens him continues and all payments that have been received by the owner cannot be claimed back; and the own land is destroyed.

E. Conclusion

Perpetrators of mixed marriages can gain or lose Indonesian citizenship, for people of different nationalities who perform mixed marriages can obtain citizenship from their husband/wife and may also lose citizenship according to the methods stipulated in the Citizenship Law of the Republic of Indonesia. apply. And for children of mixed marriages, if obtaining Indonesian citizenship does not result in the loss of foreign citizenship, the child will result in dual citizenship. Children with dual citizenship at the age of 18 years or already married must declare choosing one of their nationalities, and the opportunity to choose that nationality is given until the child is 21 years old.

For Indonesian citizens who are married to foreigners, if they do not have a marriage agreement, the ownership rights to the land purchased will become joint assets. This resulted in mixed-married couples owning half of the ownership rights to the land and buildings (houses) because of the mixing of assets. And for children with dual citizenship who inherit without a will, the UUPA Article 21 paragraph 3 and Article 26 paragraph 2 shall apply, which is obliged to relinquish their property rights within one year so that the property rights are null and void and the land falls to the state or loses its citizenship.

F. Suggestion

The government, in this case the Ministry of Law and Human Rights, should not be able to simply apply the citizenship of an Indonesian citizen who marries a foreigner, unless the Indonesian citizen gives up his Indonesian citizenship by choosing his foreign citizenship, as well as children with dual citizenship, they should be treated like good Indonesian citizens. citizenship rights and land rights in Indonesia.

Especially for children resulting from mixed marriages, the author proposes children resulting from mixed marriages can own land with the status of Hak Milik or Hak Guna

Bangunan, because he must be treated as an Indonesian citizen, until he is 18 (eighteen) years old, later if he releases his Indonesian citizen then his land certificate is invalid, and falls on the State.

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