

LEGAL CONSEQUENCES FOR PERPETRATORS OF MIXED MARRIAGES OF CITIZENSHIP ACCORDING TO LAW NUMBER 1 OF 1974 CONCERNING MARRIAGE

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Keywords:

Mixed Marriage, Legality, citizen

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Abstract: The development of society from day to day causes marriages to occur between people who have different legal systems. This marriage is called mixed marriage. The attitude of people who are increasingly open to cultures that come from outside their environment has an impact on the occurrence of mixed marriages of different nationalities. This study aims to find out what the legality of mixed marriages is, what are the requirements and documents and what are the legal consequences of having mixed marriages based on Law No. 1 of 1974. The research method used is a type of normative juridical legal approach with primary legal material, namely laws law, secondary legal material which provides an explanation of primary legal material, then performs data processing with a literature survey and further processed qualitatively. The results of the study are that mixed marriages are legal if they are carried out according to the laws of each religion and belief and are registered at the KUA or Civil Office. By completing the requirements as stipulated in Article 6 of Law Number 1 of 1974. As well as the consequences for perpetrators of mixed marriages, namely the determination of citizenship which is regulated in Law Number 12 of 2006.

INTRODUCTION

The development of society from day to day led to the occurrence of marriages among different people, these marriages are called mixed marriages. (Yulianie 2012) Mixed marriages of different nationalities are increasingly occurring due to the increasingly open attitude of society towards cultures that come from outside their environment, both in remote areas and in cities. Moreover, technological advances in all fields have made the relationship between the Indonesian people and the outside world closer than before.

This has a strong impact on the occurrence of mixed marriages of different nationalities. (ibid n.d.) According to the Reglement op de Gemengde Huwelijken (GHR), article 1 reads: " What is meant by mixed marriage is marriage

between people subject to different laws in Indonesia. This includes marriages of different religions, different nationalities and different ethnic groups. (Prof.Dr.S.Gautama 1996) " Marriage is called 'nikah' in Arabic meaning al-nikah, al-wathi' and al-dammu wa al-tadakhul. (Yunus 1973) It is sometimes called al-dammu wa al-jam'u or similar to "an al-wath wa al-'aqd", which means copulation, assembly, or contract. (Amiur Nuruddin 2004) According to Law Number 1 of 1974 concerning Marriage article 57, what is meant by mixed marriage is a marriage between two people of different nationalities who are subject to different laws in Indonesia and one of the parties is an Indonesian citizen. (Undang-undang Republik Indonesia 1974) A Marriage is a legal event whose consequences are regulated by law, or an event that has legal consequences.

Article 58 of Law No. 1 of 1974 concerning marriage, a husband or wife who is married to a foreigner can lose their citizenship, this is in accordance with the rules of law of the country of origin. In addition, according to article 26 of the Citizenship Law, women or men who are married to foreigners may lose their citizenship if the legal rules of their spouse's country require this. If you want to remain an Indonesian citizen, you must submit the wish at the Indonesian representative office where he lives, unless the application results in dual citizenship.

Mixed marriages in the Marriage Law only emphasize marriages between Indonesian citizens and foreign nationals. The Citizenship Law is contained in Law Number 3 of 1946 concerning the citizenship of the Republic of Indonesia, Law No. 62 of 1958 concerning Citizenship of the Republic of Indonesia and Law No. 12 of 2006 concerning the Citizenship of the Republic of Indonesia and Presidential Decree No. 2 of 2007 concerning obtaining citizenship, termination of citizenship, cancellation and regaining citizenship. (Wulansari 2010)

THEORETICAL STUDY

The type of approach that the author uses is Normative Law. Literature studies where the legal approach is carried out using secondary data and is also called literature research. (Ronny Hanitijo Soemitro 1990) Normative legal research is a scientific research procedure to find truth based on scientific logic from its normative side. (Ibrahim 2013)

RESEARCH METHODS

The data source used in this study is a secondary data source. Secondary data consists of primary legal interests, (Marzuki 2009) secondary legal interests and tertiary legal interests. Secondary data is data obtained or collected by researchers from existing sources. (Hasan 2002) It is carried out through the recording and exploration of books, book citations, laws, the internet and regulations related to the issues discussed, or various legal materials based on research. After the data is

collected, researchers analyze the data obtained with qualitative analysis techniques. (Bambang sunggono, S.H. 2020)

DISCUSSION AND RESEARCH RESULTS

1. Legality of Citizenship Mixed Marriage according to Law Number 1 of 1974

Mixed marriage is a marriage between two Indonesians subject to different laws due to differences in nationality (Retnowulan Sutantio 1979). Marriages of different races in Indonesia must be in accordance with Article 2 of Law Number 1 of 1974 concerning Marriage: (1) Marriage is valid if it is carried out according to the law of any religion or belief. (2). All marriages are recorded in accordance with applicable legal regulations (ibid n.d.).

If those conditions are met, the prospective husband and wife will request a certificate of eligibility from the Registrar and there is no obstruction in the marriage. As for the legality of mixed marriage, there are no special provisions, so it is common in practice, and to make it easier to marry based on their respective religions, but after marriage is legalized again to their respective beliefs.

Some couples marry abroad and are then registered in Indonesia. On that basis, the problem of mixed marriages cannot be eliminated. For reasons of legal certainty, it is best to regulate the validity of mixed marriages (Drs. H. Nawawi. N n.d.). Marriages must be registered because marriages are not only viewed from a formal aspect but also from a religious perspective (BAPPENAS RI 2020). A marriage is invalid if it is only carried out according to the provisions of the law without regard to religious elements. Conversely, if the marriage is carried out only paying attention to the elements of religious law and ignoring the law, then the marriage is also not considered valid (ibid n.d.).

2. Requirements and Equipment of Documents required to perform Mixed Marriage in Indonesia

Basically, the legal requirement for mixed marriage is the same as that of marriage in general, that is, marriage is carried out according to their respective laws. each religion and belief of both parties and must be registered with the KUA or the Civil Service. In article 59 of Law Number 1 of 1974, it is said that mixed marriages carried out in Indonesia are carried out according to Law Number 1 of 1974. However, in article 60 of Law Number 1 of 1974, it is said that mixed marriages cannot be carried out until it is proven that the conditions of marriage prescribed by the law applicable to each party have been met (Brotosusilo 1983). In article 2 paragraphs (1) and (2) of Law Number 1 of 1974, it is affirmed that: (1) Marriage is valid if it is carried out according to the laws of each religion and belief; (2) Each marriage is recorded in accordance with applicable laws and regulations (SUBEKTI, R., TJITROSUDIBIO 1992).

The terms of mixed marriage have also been expressly stated in article 60 paragraphs (1), (2), (3), (4), and (5) of Law Number 1 of 1974. The conditions that must be attached to the registration of mixed marriages are:

1. Birth Certificate
2. Passport
3. SBPOA, SP, STP
4. STMD, SKK
5. Lurah Certificate that has been signed by the Lurah and must be explained about the status concerned, already or unmarried.
6. 3x4 photo passes of 4 sheets each.
7. A valid Family Card
8. Witnesses (2) two people who are 21 years of age or older or have married
9. Proof of Payment of Foreign Nations Tax until the time of the implementation of marriage registration
10. Divorce / Death Certificate for those who have divorced or died.
11. Birth Certificate of the child to be recognized and endorsed by them.
12. Map 1 piece
13. Tetanus Texsoit Injection (Bride) (ibid n.d.)

3. Legal Consequences for perpetrators of Mixed Marriages in terms of Law Number 1 of 1974

Based on Article 19 of Law Number 12 of 2006 (Clarke 2006), a foreign national who is married to an Indonesian citizen is declared an Indonesian citizen if that person has lived in the territory of the Republic for at least (5) five consecutive years. Indonesians live more than (10) ten years, unless dual citizenship occurs with the acquisition of citizenship. In Law Number 1 of 1974 and Law Number 12 of 2006, it is said that people who perform mixed marriages have the right to freely determine their nationality. However, the existence of freedom for the parties in terms of determining their nationality can cause possible difficulties in determining the law that must be used in the event of a legal event, because based on Article 59 paragraph (1) of Law Number 1 of 1974 it is determined that citizenship obtained as a result of mixed marriage and as a result of the breakup of marriage determines the law that applies to them both regarding public law and civil law (Bakry 1978).

The principles of citizenship determination accepted in this UUK are;

1. The principle of *ius sanguinis* (law of the blood) is the principle that determines a person's nationality by descent.
2. The principle of *ius soli* (law of the soil) determines a person's nationality based on the country of birth.

3. The *ius soli* qualification criterion (Land Law) is a criterion for determining a person's nationality based on the country of birth and is restricted by law to children.
4. The principle of single citizenship is the principle that establishes one citizenship for each person.
5. The principle of limited nationality is the principle that establishes the dual citizenship of a child according to law.

If one of the parties (husband or wife) retains his or her original nationality due to marriage, one of the issues that may arise regarding citizenship is regarding the determination of the nationality of the child. Law Number 1 of 1974 does not expressly regulate the nationality of children whose parents have different nationalities. Based on Article 4 of Law Number 12 of 2006, if one of the parties (husband or wife) is an Indonesian citizen and the other party (wife or husband) is a foreigner, then the child has the following status: Designated Indonesian citizen. Based on Article 6 of Law Number 12 of 2006, a child can have dual nationality if the nationality of the husband and wife is different due to marriage, but after the child reaches the age of (18) eighteen years, or if married, the child must declare that they have chosen citizenship. This declaration of choice of citizenship is made after the child reaches the age of 18 years or within three years of marriage.

Citizenship is a procedure for foreigners to obtain Indonesian citizenship through an application. An Indonesian citizen is a person who became an Indonesian citizen before the enactment of Law Number 12 of 2006 concerning Indonesian Citizenship, a legal child or a legally recognized Indonesian citizen, and a child born in the territory of the Republic of Indonesia. did not acquire citizenship from his parents. Non-Indonesian citizens are treated as foreigners. Foreigners can obtain Indonesian citizenship by filling out an application approved by the President, making a statement, and including the child with his parents. Obtaining Indonesian citizenship with a statement letter is only valid for foreigners who are married to Indonesian citizens (Nurul Istiqomah Condrokirono 2020). In accordance with Permenkumham 36/2016, foreigners who wish to become Indonesian citizens submit an electronic application to the Minister through the official website of the Directorate General of AHU (<https://panduan.ahu.go.id/doku.php> n.d.) .

CONCLUSION

1. A marriage that is carried out legally as regulated in Article 2 of Law Number 1 of 1974, is a marriage that is carried out according to the laws of each religion and belief and is recorded in the applicable laws and regulations.

2. Each country has its own rules in the administrative terms and conditions required to perform Mixed Marriage in Indonesia. A mixed marriage cannot take place until it is proved that the conditions of marriage prescribed by the law applicable to the respective parties have been met.

3. Mixed marriages performed between Indonesian citizens and foreign nationals do not cause legal consequences that require the wife to follow the husband's citizenship, and vice versa.

SUGGESTION

a. For couples who will perform marriages of different citizens to find clear information in preparing the documents needed to carry out the marriage later. Because this mixed marriage will have its own consequences, namely the enactment of the rules of each legal stelsel that applies to each of the parties involved.

b. The government should make a legal product that regulates in detail related to mixed marriages of different citizens, provides clear information to perpetrators of mixed marriages, guarantees legal certainty and provides protection for perpetrators of interstate marriages from changes in laws and regulations.

c. For other researchers, they can examine various views on the legal consequences for perpetrators of mixed marriages of citizenship according to law number 1 of 1974.

REFERENCES

- Amiur Nuruddin, Azhari Akmal Tarigan. 2004. *Hukum Perdata Islam Di Indonesia, Studi Kritis Perkembangan Hukum Islam Dan Fikih, UU No. 1/1974 Sampai KHI*. Jakarta: Prenada Media.
- Bakry, Hasbullah. 1978. *Kumpulan Lengkap Undang-Undang Dan Peraturan Perkawinan Di Indonesia*. Jakarta: Djambatan.
- Bambang sunggono, S.H., M.S. 2020. *Metodologi Penelitian Hukum*. Jakarta: Pt Raja Grafindo Persad.
- BAPPENAS RI. 2020. "Presiden Republik Indonesia Peraturan Presiden Republik Indonesia." *Demographic Research*: 4–7.
- Brotosusilo, Purbacaraka &. 1983. *Sendi-Sendi Hukum Perdata Internasional Suatu Orientasi*. Jakarta: CV. Rajawali.
- Clarke, Braun &. 2006. "UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 12 TAHUN 2006." *Lex Administratum* 3: 5–65.
- Drs. H. Nawawi. N, M.Pd.I Dkk. "Artikel Jurnal Perkawinan Campuran (Problematika Dan Solusinya)."

- Hasan, M. Iqbal. 2002. *Pokok-Pokok Materi Metodologi Penelitian Dan Aplikasinya*. ed. 2014. A B. Takko. Jakarta: Penerbit Ghalia Indonesia.
“<https://Panduan.Ahu.Go.Id/Doku.Php>.” <https://ahu.go.id/>.
Ibid.
- Ibrahim, Johnny. 2013. *Teori Dan Metodologi Penelitian Hukum Normatif*. Malang: Bayumedia.
- Marzuki, Peter Mahmud. 2009. *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group.
- Nurul Istiqomah Condrokirono. 2020. *Pewarganegaraan Berdasarkan Perkawinan Campuran, Teknis Substantif Bidang Tata Negara*. Kementerian Hukum Dan Hak Asasi Manusia Republik Indonesia.
- Prof.Dr.S.Gautama, S.H. 1996. *Segi Segi Hukum Peraturan Perkawinan Campuran*. Bandung: Pt. Citra Aditya Bakti.
- Retnowulan Sutantio, S.H. 1979. *Hukum Acara Perdata Dalam Teori Dan Praktek*. Bandung: CV Mandar Maju.
- Ronny Hanitijo Soemitro, S.H. 1990. *Metodologi Penelitian Hukum Dan Jurimetri*. Jakarta: Ghalia Indonesia.
- SUBEKTI, R., TJITROSUDIBIO, R. 1992. *KITAB UNDANG-UNDANG HUKUM PERDATA: Dengan Tambahan Undang-Undang Pokok Agraria Dan Undang-Undang Perkawinan*. Manado: Pradnya Paramita.
http://digilib.unikadelasalle.ac.id//index.php?p=show_detail&id=491.
- Undang-undang Republik Indonesia. 1974. *Undang-Undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan*.
- Wulansari, E. M. 2010. “Konsep Kewarganegaraan Ganda Tidak Terbatas (Dual Nasionality) Dalam Sistem Kewarganegaraan Di Indonesia,.” 3.
- Yulianie, Novie. 2012. *Upaya Perlindungan Hukum Bagi Istri Warga Negara Indonesia Yang Melangsungkan Perkawinan Campuran*. Jakarta: Universitas Indonesia.
- Yunus, Mahmud. 1973. *Kamus Arab Indonesia, Yayasan Penyelenggara Penterjemah/ Pentafsiran Al-Qur'an*. Jakarta.