

Legal Status Of Underage Children With Dual Citizenship Related To Inheritance

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Abstract.

The purpose of this study is to analyze the legal status of an immature child with dual citizenship. This type of research that is used is normative law research that investigates the systematics of law. This systematic research of law is carried out against the regulations of laws or laws written according to the topic that has been raised. The results of the research show that the legal status of a minor child with dual citizenship in connection with inheritance is to remain entitled to inherit the property of land in Indonesia without interference from others even though the status of the child still has 2 (two) citizenships and still has not been able to choose one of the nationalities between Indonesia or another country. Therefore, basically any citizen of the child/s descendants cannot prevent or remove the child's inheritance.

Keywords: *Legal Status, Minor Child, Dual Citizenship and Inheritance.*

I. INTRODUCTION

A person's citizenship is a very important thing in a nation's life. Citizenship itself plays an important role in the role of public law where, in a relationship between states and individuals, it shows how important a person's citizenship status is. In the life of a big country the consequences of someone who includes a citizen or a foreigner. Citizenship itself is a sign of membership in a country. Therefore a nation shall have a member, and a member of that country shall be called a citizen.[1]. The determination of a person's nationality can be divided into two (ius soli and also ius sanguinis). Ius soli is a citizenship obtained on the basis of a person's place of birth, whereas for ius sanguinis it is acquired by descent. If a person resides in a state whose determination is based on ius soli and then is in a country which has a determination according to ius sanguinis, a problem arises if the person has children or descendants.[2]. As information evolves, education, technology, and transportation are not becoming obstacles for individual citizens to interact with other individuals. Such interactions can be open without any restrictions that allow interstate interactions to take place.

One of the interactions that's happening right now is that marriages between couples of different nationalities are happening nowadays. [3]. Marriages in general will have problems in legal matters, of course in marriages of different nationalities will also have problems on their journey, such problems could be in terms of divorce or death. Of course some of them will leave a legacy in the inheritance system. In its development it is possible for Indonesian citizens to have foreign nationals (WNA) heirs, it considers several ways in the acquisition of property rights that can not only occur through sale, grants, exchange, giving with a will, as a result of the occurrence of marriage, but there are also those that occur as a consequence of inheritance without a will. The question that may arise when a marriage of different nationality occurs is when one of the parents of the citizen of Indonesia dies and leaves inheritance to the heir who is not Indonesian citizen or has dual citizenship who is still under age or under maturity in the form of an immovable legacy (in this case is the land).[4]. Based on the background as described above, the author is interested in raising and putting the problem into the writing of the journal entitled “**LEGAL STATUS OF UNDERAGE CHILDREN WITH DUAL CITIZENSHIP RELATED TO INHERITANCE**”.

II. METHODS

Normative law research can be called doctrinal law research, because this research is carried out or aimed only at written regulations or other legal materials. [5]. In the writing of this journal, the author uses normative law research that investigates the systematics of law. This systematic research of law is carried out against the regulations of laws or laws written according to the topic that has been raised. In solving legal issues in this paper, the author uses primary and secondary legal material. All of this legal material is obtained through the study of the library. These legal materials are drawn up and used as a support in finding answers to legal issues to be resolved. The objective of this paper is to be able to test the quality of a substance or a legal norm, so the properties of the analysis used are qualitative. Qualitative analysis in legal research means that the formulation of justification is based on the quality of the opinions of legal experts, doctrines, theories, or the formula of the legal norm itself. [6].

III. RESULT AND DISCUSSION

Citizenship of a person is an identity in the life of a nation in a state that is obligatory to possess and is a sign of membership in a country. Along with the development of information, education, technology, and transportation are no obstacles for individual citizens to interact with other individuals. One of the most frequent interactions we've seen lately is the occurrence of marriages between couples of different nationalities, which is driven by the opening up of interactions through information technology that is easily accessible across countries without borders. Marriages between couples of different nationalities or commonly referred to as transnational marriages. To enter into a marriage to form a family is a right of every person, as provided for in article 28 B, paragraph (1) of the Basic Law of 1945, which states that every person has the right to establish a family and to continue offspring through a legal marriage. Self-mixed marriage was previously enacted in Act No. 1 of 1974, regulated in the Koninklijk Besluit of December 29, 1896 No. 23.27 This Regulation is called the Regeling op de Gemengde Huwelijken which is better known by the term Mixed Marriage Regulation, with the abbreviation G.H.R which is often referred to as the Regulation of Mixed Matrimony. According to G.H.R (Staatsblad) Article 1, a mixed marriage is a marriage entered into between persons who are in Indonesia subject to different laws [7]. According to the opinion of legal experts and jurisprudence it is explained that the marriage mixed is marriage between a man and a woman who are generally subject to a different law. The National Marriage Act, the Law No. 1 of 1974 on Marriage, consisting of six articles, begins with Articles 57 to 62.

In Article 57 it explains the meaning of mixed marriage, that is, marriage between two persons who are in Indonesia subject to different laws, because of the difference of nationality and one of the parties is a foreign national and one is an Indonesian national. [8]. The process of marriage in general is also included in the mixed marriage of course will eventually produce a child who will have dual citizenship resulting from the marriage mixed or different nationality of the parents. The Citizenship Act specifies that a child born from a mixed marriage of a parent of different nationalities can be a citizen of Indonesia or a foreigner [9]. A child is a legal subject who has not yet been able to perform his or her own acts of law, so that he or she has to be assisted in his/her legal acts by a parent or a guardian who has been legally competent. The Citizenship Act No. 12 of 2006 in article 21, paragraph (1) states that a child who is not 18 (eighteen) years of age or has not been married, is and resides in the territory of the Republic of Indonesia of the father or mother who acquired the citizenship of the republic of Indonesia by himself is a citizen of the Republik of Indonesia [10]. According to the provisions of the Citizenship Act, a child who is under the age of 18 or who is not married still has the possibility of having dual citizenship. (bipatride). Children born from a mixed marriage have fathers and mothers of different nationalities so that they are subject to two different legal jurisdictions. The general explanation in the Citizenship Act explicitly states that a child with dual citizenship who has attained the age of 18 (eighteen) years is required to choose the status of Indonesian citizen or become a purely foreign citizen [11].

In the Citizenship Act No. 12 of 2006 adopted the principles of general or universal citizenship, namely:

1) The *Ius Sanguinis* (law of the blood), this basis determines a person's citizenship by heritage, not by birthplace.

2) The *Ius Soli* (law of the soil), which determines a person's nationality based on the country of birth, is applicable to children in accordance with the provisions laid down in this law.

3) A single citizenship foundation, this foundation defines one nationality for each person.

4) The basis of limited dual citizenship, the basis which determines dual nationality for children in accordance with the provisions laid down in this law.

The basis for determining the status of the acquisition of citizenship may vary from one State to another, which may raise the possibility of the question of whether a child from a mixed marriage can have two citizenships (*bipatriide*), that is, the condition where a person has two nationalities, which occurs when a child whose country of the parents is based on *Ius Sanguinis* was born in the country which is the basis of *Ius Soli*, then both States consider that the child is the citizen of their country. Or there is even a possibility that someone born of a mixed marriage does not have a nationality (*apatride*) [12]. The Citizenship Act basically does not recognize a person's dual citizenship (*bipatriide*) nor does it have a nationality. (*apatride*). The existence of the child's dual citizenship in the law is an exception. In the case of the loss of dual citizenship, when the father or mother's citizenry is lost (when there is no legal relationship with the father) the child's nationality is not automatically lost. A child born from the marriage of an Indonesian citizen with a foreign citizen or otherwise, is equally recognized as a citizen of Indonesia. The child who has achieved the age of 18 (eighteen) years or is married shall determine the choice of such nationality and shall be submitted no later than 3 (three) years after the child has attained the age or has been married. The regulation of the status and status of children from mixed marriages in the Citizenship Act provides a fairly positive change, due to the granting of limited dual citizenship to children of mixed Marriages.

The International Conventional Law theory regulates the status of a child born from a marriage of a parent of different nationalities, basically in order to be able to determine the child's status and the relationship between the child and the parent, it is necessary to look first at his or her parents' marriage as a preliminary. This is to see whether the marriage between the parents is valid so that the child has a legal relationship with the father, or that such marriage is invalid, so that he or she is considered to be an out-of-marriage child who has only a legal relation with the mother. [13]. The Law No. 12 of 2006 on Citizenship in general aims to provide legal protection to women citizens of Indonesia who are married to men of foreign nationals, so that women of Indonesia do not automatically lose their right as Indonesian citizens but retain the right of option to maintain their citizenship status, whether to remain as citizen of Indonesia or to vote as a foreign citizen. The Law also provides legal certainty of the status of the nationality of the Republic of Indonesia to the child resulting from the marriage of a mother of Indonesia citizen with a father of a foreign nation until the age of 18 (eighteen years) or has been married and after that is obliged to be able to determine and choose one of the citizens' status and must be submitted no later than 3 (three) years after the child is 18 (eighteen) years old. [14].

The process of inheritance is the step of transfer or operation of the estate, whether tangible or intangible. The inheritance is made by an heir to his heir according to what has been determined. The process of inheritance is not exempt from the law that governs the law of heirship. The law of inheritance is one of the smallest parts of the civil law, and is the least part of the family law. It is a part of human life, which will not be exempt from the process of heredity, because every human being will surely experience a legal event called death, which causes problems regarding the settlement of rights and obligations, as has been regulated in the Second Book of the Convention on Truth and also in the law of the inheritors of Islam, as well as in the customary law of heirship. [15]. The law of inheritance (*erfrecht*) is a set of rules that regulate the transfer of the rights and obligations of the property of the deceased to the surviving heir who is entitled to receive it in accordance with the provisions of the law. In the explanation of the law of inheritance there are 3 (three) things that are the elements of an inherited property:

1. The deceased / Heirs / Erflater

An heir is a deceased person who leaves rights and obligations to others who are entitled to receive them. According to article 830 of the Covenant, inheritance can only be enforced if there is a death event. According to article 874 of the Covenant, every inheritance of a deceased is the property of his heirs according to the law only against it with a will not taken after a valid decree. According to this article, I regulate two kinds of legacy laws: the law of heirs *ab intestato* (without a will) and the law the heirs will or *testamentair erfrecht*. The heir is a living person who is given by law the right to receive the rights and obligations left by the heir. According to Article 2 of the Convention, a child in the womb is deemed to have been born when the need of the child is desired. Thus, a child who is in the womb, even if he is not born, may inherit, for in this section the law considers it as if a child had been born. The heir himself is essentially composed of:

a. Heirs according to the law (*ab intestato*)

This heir is based on a blood bond with the heir himself or with his family. The heirs are made up of four groups. Group I, consisting of sons, husbands, widows, parents, brothers and sisters of the inheritors; Group III, consists of the family of the father or mother straight upwards (grandparents or grandmothers, either line or line of the parent) (uncle,aunt).

b. Heirs by will (*testamentair erfrecht*)

The heir is based on the will set forth in Section 874 of the Convention, which explains that every person who is legally given a will by the heir consists of a testamentary erfgenaam, i.e. a heir who receives a will containing a erfstelling (the appointment of one or more heirs to obtain all or part of the inheritance).

2. Inheritance

The inheritable things that come from the heirs, in essence, can be inherited only rights and obligations in the field of wealth. The right and obligation shall be an asset which means a number of things that are clearly in existence and or a bill or debt to a third party, except that it may be an intellectual property such as copyright. The successor's debt to the third party or other liabilities. Thus, the rights and obligations arising from the family law cannot be inherited. The provisions of the material law concerning the spouses whose citizenship is Indonesian concerning property are governed by the law of the spouse, namely the Marriage Act. But if there is no marriage agreement concerning the marriage property, the property shall be subject to article 35, which states that the property acquired during marriage shall be joint, the inheritance of each husband, and the property obtained as gifts or inherits shall be in each other's possession, as long as the parties do not decide otherwise. [16]. The birth of the new Citizenship Act, Act No. 12 of 2006 on citizenship, provides greater legal certainty and justice for the underage child born from a marriage of his or her parents of a different nationality by granting limited dual nationality to such underaged child. Human beings are, in essence, legal subjects, considered from birth, regulated by civil law. Human being as a legal subject naturally has the right and duty in performing legal acts, but there is someone who does not speak in committing legal actions, it is regulated in Article 1330 of the Covenant, i.e. someone who is underage, someone put under power, women who have been prescribed by law, and in general someone to whom the law has prohibited.

Accordingly, a child is a subject of law who is not speaking because he is not mature and must be represented by his or her parents or guardians in the conduct of legal acts. Children born from a mixed marriage have different parents of nationality who are subject to two different legal jurisdictions. The Act No. 12 of 2006 on Citizenship stipulates that a child born in the marriage of an Indonesian citizen with a foreign national, as well as a foreign citizen woman with a citizen of Indonesia, is equal – equally recognized as an Indonesia citizen. A person's hereditary status has long been recognized as a personal status. (*statuta personalia* merupakan kelompok kaidah yang mengikuti kemana seseorang itu pergi). In matters of inheritance generally used is the personal law of the father as the head of the family (*pater familias*), it is for the unity of the law in the family and for the benefit of family, for the stability and honor of the wife and her marital rights. Provisions in the law of inheritance themselves are based on the *Burgerlijk Wetboek* in the provisions of the division of heritage. It may be concluded that, when the parent of the heir or the father of the child dies, the division of the inheritance shall be divided according to the provisions of the *Burgerlijk*

Wetboek. In this case, the child arising from a mixed marriage of different nationalities shall remain subject to the law contained in the burgerlijk wetboek. The only child in this case is a minor child who is entitled to inheritance because he belongs to the class I on the basis of the line straight down to the direct descendants of the parent who leaves the property as heirs of the property left by his parents.

Article 852 of the Burgerlijk Wetboek explains that children or their descendants, whether born from other marriages, inherit from both parents, grandparents, grandmothers, or all their subsequent conscious families in a straight up line, without distinction between male or female and without difference according to the first birth. They inherit heads after heads, when they are associated with the deceased in a degree to one, and each one has a right for himself, they may inherit scale by scale, if all of them or only a part of them act as a substitute. Provisions concerning the inheritance of a foreigner or marriage between two persons of different nationality whose one died specifically do not exist and are not regulated by law. According to the jurisprudence of International Civil Procedure Law in both the Netherlands and Indonesia, the law applicable to inheritance is the national law of the heir. With regard to the dual citizenship of the child of the result of a mixed marriage, if one of his parents is his mother who is a citizen of Indonesia or his father who is an Indonesian citizen has died, of course the children are the heirs of his mother or father who are a citizens of Indonesia.

Therefore, it is clear that the provision stipulates that children, even if born from other marriages, inherit from both parents. The provision does not regulate the status of a child's nationality in order to inherit from both parents. It may be understood that any citizen of the child/inheritance cannot prevent or remove the right to inherit the child from both parents. Thus, if based in this study the position of a minor child with dual citizenship in relation to inheritance, then when based on the International Code of Procedure and the law of succession in force in Indonesia the child born from such a mixed marriage remains entitled to be able to be inherited with the record that the child is the legal child of his parents that can be proven by the valid marriage letters and other documents supporting the act of such marriage. If it is associated with the case in this study where one of his parents who is Indonesian citizen died and left inheritance in the form of land located in Indonesia, then the minor child remains entitled to inherit on the property of land in Indonesia without interference from anyone else, it is absolute and has been in accordance with the rules of the law inheriting in the Burgerlijk Wetboek and includes the class I consisting of children and descendants below it, even though the status of the child still has 2 (two) citizenship and still has not been able to choose one of the citizenships between Indonesia or another State so that the rights of such minor child remain absolute, and cannot be interfered by anyone else.

IV. CONCLUSION

Thus, the legal status of a minor child with dual citizenship in connection with inheritance is to remain entitled to inherit the property of land in Indonesia without interference from anyone else even though the status of the child still has 2 (two) citizenships and still has not been able to choose one of the nationalities between Indonesia or another country, therefore, in principle, any citizen the child / descendants cannot block or remove the right of inheriting the child from both parents.

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REFERENCES

- [1] H. Herdiawanto, *Kewarganegaraan Dan Masyarakat Madani*. Jakarta: Kencana, 2019.
- [2] F. Munandar, *Aspek Hukum Kewarganegaraan (Tinjauan Uu Kewarganegaraan)*. Jakarta: Aneka Ilmu, 2007.
- [3] A. Achmad, *Menguak Tabir Hukum (Suatu Kajian Filosofis Dan Sosiologis)* Jakarta: Toko Gunung Agung, 2002.
- [4] R. S. Darusalam, *Hukum Perkawinan Dan Perceraian Akibat Perkawinan Campuran*. Bandung: Pt. Citra Aditya Bakti, 2006.

- [5] B. Waluyo, *Penelitian Hukum Dalam Praktek*. Sinar Grafika, 2008.
- [6] H. Budiono, *Ajaran Umum Hukum Perjanjian*. Bandung: Pt Citra Aditya Bakti, 2005.
- [7] M. Lidwina, *Perkawinan Campuran*. Bandung: Alumni, 1999.
- [8] Hazairin, *Tinjauan Mengenai Undang-Undang Nomor 1 Tahun 1974*. Jakarta: Tirtamas, 1996.
- [9] S. Koerniatmanto, *Hukum Kewarganegaraan Dan Keimigrasian Indonesia*. Jakarta: Pt. Gramedia Pustaka Utama, 1996.
- [10] M. Fadhil, *Aspek Hukum Kewarganegaraan (Tinjauan Tentang Uu Kewarganegaraan)*. Jakarta: Aneka Ilmu, 2007.
- [11] F. Rahmat, "Dampak Perkawinan Campuran Terhadap Status Kewarganegaraan Anak Menurut Hukum Positif Indonesia". Vol. 1, No. 1, 2018.
- [12] R. Syahrani, *Seluk – Beluk Dan Asas-Asas Hukum Perdata*. Bandung: Alumni, 1985.
- [13] P. Purnadi, *Sendi-Sendi Hukum Perdata Internasional*. Jakarta: Raja Grafindo Persada, 1997.
- [14] H. Hadikusuma, *Hukum Perkawinan Indonesia*. Bandung: Mandar Maju. 1990.
- [15] Soedharyo, *Hukum Orang Dan Keluarga*, Jakarta: Sinar Grafika. 2004.
- [16] D. L. Rampay, "Hak Waris Dalam Perkawinan Campuran Berdasarkan Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan". Vol. 2, No.2, 2015.