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Regulating The Acquisition Of Inheritance Rights To Land For Children With Dual Nationality From Mixed Marriages Without A Marriage Agreement

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Abstract

Marriage is an important event in human life. A legal marriage means that the marriage complies with the law, religion and state. So all types of marriage are legal, as long as they follow the applicable rules, including mixed marriages. In general, mixed marriages make a pre-marital agreement with the purpose of avoiding the mixing of joint assets during the marriage period. Problems that often arise in mixed marriages areproblems related to the nationality of children born from the marriage who have dual citizenship. This will certainly affect the determination of heirs regarding ownership of land and buildings in Indonesia. This research usesa normative juridical research method using two approach methods, namelythe statutory approach and the conceptual approach. The research results show that the urgency of regulating the inheritance of land rights for children who have dual citizenship from the marriage of their parents is to provide legal certainty. Appropriate arrangements regarding the inheritanceof land and/or buildings for children with dual citizenship in Indonesia, namely children who have foreigner status still have the right If you receive an inheritance, it will still not be the case that the property has ownership rights.

Keywords: Inheritance, Mixed Marriage, Dual Citizenship

INTRODUCTION

Humans as social creatures always live in society and interact with each other in social life. Human interaction in society gives rise to relationships that are both individual and collective. One of the individual human relationships is the relationship between a man and a woman in marriage. Humans in their life journey experience 3 (three) important events, namely when they are born, when they marry, and when they die. One individual human relationship is the relationship between a man and a woman in a marriage bond.

Marriage is an important event in human life with various legal consequences, therefore the law regulates this marriage issue in detail. This is regulated in Article 28B paragraph (1) of the 1945 Constitution. Then Indonesia has regulated the procedures for marriage in Law Number 1 of 1974 concerning Marriage, Marriage aims to regulate perfect, happy and eternal social relationships in a household in order to create a sense of affection and mutual love in the family.

Legal marriage means that the marriage complies with the law, religion and state. So all types of marriage are legal, that is, as long as they follow the rules that have been implemented, including mixed marriages. Mixed marriages have spread to all corners of Indonesia, with many mixed marriages occurring in Indonesia, it is the government's obligation to provide legal protection for the parties in these mixed marriages, implemented properly in accordance with Indonesian legislation. Mixedmarriages in the Marriage Law are regulated in the provisions of Article 57 which states that: "*What is meant by mixed marriage in this Law is a marriage between 2 (two) people in Indonesia who are subject to different laws, due to differences in nationality and one of the parties. Indonesiancitizen."*

It is basically possible for husband and wife couples who enter into a mixed marriage according to Indonesian law to enter into a marriage agreement. This marriage agreement is regulated in Article 29 paragraph (1) of the Marriage Law. This written agreement has become known as a marriage agreement, which is interpreted to be similar in meaning to the provisions

in Article 139 of the Civil Code, namely agreement on the separation of assets during marriage. With the existence of a marriage agreement, there will be a separation of assets obtained during the marriagebetween husband and wife, resulting in no mixing of assets. In mixed marriages, if a marriage agreement is made during the marriage, this will result in the husband or wife having the status of an Indonesian citizen being able to purchase ownership rights to land and/or buildings in Indonesia. This is due to the separation of assets obtained at the time of marriage so that ownership rights to the land and/or building only have legality as assets of the married couple who have the status of Indonesian citizens.

Problems that often arise in mixed marriages are problems related to the nationality of children born from the marriage. Law number 62 of 1958 concerning Citizenship adheres to the principle of single citizenship, so thatchildren resulting from mixed marriages can only have one citizenship,which stipulates that the nationality of the father must be followed. This arrangement creates problems if in the future the parents' marriage breaks up due to divorce or death, of course one of the parents will have difficulty getting custody of their child who is a foreign citizen and the child's position in inheritance assets. With the new citizenship law, namely Law Number 12 of 2006 concerning Citizenship, State Gazette of 2006 Number 63, Supplement to State Gazette Number 4634, currently children born frommixed marriages no longer automatically follow the citizenship of theirfather, but the child can become an Indonesian citizen. This is because Law no. 12 of 2006 concerning Citizenship (hereinafter referred to as the Citizenship Law) adheres to the principle that when the child is born, he or she becomes an Indonesian citizen with limited citizenship, meaning that a child aged 18 (eighteen) years has the right to determine his or her citizenship by submitting an application to the president through the Ministry of Law and Human Rights.

The position of a child who has dual citizenship will be difficult to determine in managing the land inheritance because basically onlyIndonesian citizens can have ownership rights to land in accordance with the principle of nationality stipulated in Article 9 of Law no. 5 of 1960 concerning Basic Agrarian Law. However, Basic Agrarian Law does not completely exclude the opportunity for foreign citizens and foreign legal entities to have rights to land in Indonesia. Foreigners can have rights to land in Indonesia, but only in a limited way, that is, they are only permitted with the status of user right, not other types of rights. So that from this principle of nationality it becomes clearer that the interests of Indonesian citizens are above all else, both from an economic, social, political perspective and even from a national defense and security perspective.

The legal problem as the researcher previously explained in a concrete example is: A, a male Indonesian citizen, married B, a femaleforeigner in 2010 (two thousand and ten), during this marriage, A gave birthto a boy named C in 2011 (two thousand eleven), then in 2018 (two thousandand eighteen) A died due to illness. By leaving heirs, namely B and C, with inheritances, one of which is ownership rights to land. Based on the provisions of Article 21 paragraph (3) Basic Agrarian Law of B, there is an obligation to release ownership rights to the land within a period of 1 (one) year. Thus, in 2019 (two thousand and nineteen) B must have relinquished ownership rights to the land. Meanwhile, on the other hand, C in 2019 (two thousand and nineteen) is still 7 (seven years old) so according to Article 6 paragraphs (1) and (3) of the Citizenship Law he still does not have the obligation to choose his citizenship. So that when C has reached the age of 18 (eighteen) years or is married, he still has the right to choose Indonesian citizenship. Thus, in 2019 (two thousand and nineteen) C basically still has ownership rights to the land obtained by inheritance from A until C is 18 (eighteen) years old or is married and chooses to be a foreign citizen so that he has the status of a foreigner. In addition, based on the provisions in Article 48 of Law Number 1 of 1974 concerning Marriage, it is clear that B does not have the right to transfer ownership rights to the land because C is also A's heir and is entitled to the ownership rights. Based on the background description above, it is known that there are

incomplete legal norms regarding the application of the 1 (one) year time limit for relinquishing property rights by foreigners to children with dual citizenship who are underage. This is the background for the author to conduct research in the field of marriage law with the title: Arrangements for the Acquisition of Land Rights for Children with Dual Citizenship from Mixed Marriages of Both Parents Without Having a Marriage Agreement. Theresearch method used in this research is normative juridical using 2 approach methods (legislative approach and conceptual approach).

RESEARCH METHODS

This research uses a normative juridical research method using two approach methods, namely *the statute approach* and *the conceptual approach*. The Statute Approach is used to collect laws and regulations related to the problem of the position of children with dual nationality born from mixed marriages of their parents in Indonesian inheritance law and the proper regulation of inheritance of property rights for children with dual nationality, to analyze the issue based on other laws and regulations in a higher or lower position.

The conceptual approach is used by researchers to make or create new concepts, especially regarding the right legal arrangements in the future to regulate the inheritance of property rights for children with dual nationality in Indonesia, not yet 18 (eighteen) years old and not yet in marriage, not yet required to choose their nationality. This concept is expected to be used as an appropriate reference to provide legal certainty related to the right to inherit property owned by children with dual nationality who are not yet allowed to choose their nationality.

RESULT AND DISCUSSION

The Urgency of Inheritance Arrangements for Children with Dual Citizenship Regarding Inheritance Rights of Ownership of Land and Property

Marriage not only unites two people, but is a sacred event. Religious factors still play an important role in the continuity of a marriage in Indonesia, therefore there are several requirements for the validity of amarriage. This is different from the rules written in the Civil Code, wherethe Civil Law only views marriage from a civil perspective, while religion views marriage from various other things. Article 26 of the Civil Code does not provide an in-depth understanding of marriage, while Law Number 1 of 1974 provides an understanding that marriage is considered valid if it meets the requirements according to the religion and beliefs held by those who wish to enter into marriage. So it can be concluded that marriage based on Law Number 1 of 1974 emphasizes aspects of religion and belief, while the Civil Code only looks at it from a civil perspective.

In line with the rapid progress of science, technology, innovation and mobilization, interactions between fellow humans not only occur in the same environment and country but also occur in different regions of the country. Furthermore, this interaction gives birth to various relationships, both personal and group. One of the human relationships is the attractionof a man and a woman in a marriage bond, hereinafter called Inter-State Marriage (Mixed Marriage). As Article 57 of Law Number 1 of 1974 states that a mixed marriage is a marriage that occurs between two people of different nationalities, one of whom is an Indonesian citizen. Meanwhile, according to international civil law, it is a marriage between people from different jurisdictions and subject to their respective laws or a marriage that occurs between people of different nationalities. With the presence of these provisions, it can be concluded that marriages between non-Indonesian citizens are justified as long as they fulfill the requirements set out in the applicable laws and regulations. The elements contained in a mixed marriage are: (1) marriage,

(2) different legal rules, (3) differences in citizenship (4) one of the parties is an Indonesian citizen.

For Couples which is from different countries who marry must understand the legal rules and consequences in the future. Considering thatthe number of cases of mixed marriages in Indonesia is increasing. Problems that arise from this marriage usually revolve around the citizenship status of the child and the wealth obtained during the marriage because it involves different laws between the two. Various phenomena regarding mixed marriages have a major influence on the citizenship status of children born. Law Number 12 of 2006 concerning Citizenship on July 11 2006, with its legal formulation permits restrictions on dual citizenship, apart from that it can also provide new provisions in overcoming problems that arise due to marriages that occur between countries (mixed). Hilman Hadikusuma is of the opinion that legally Law Number 12 of 2006 concerning Citizenship has the aim of protecting the citizenship status of Indonesian women when they marry foreign men, so that they still have the ability to maintain their Indonesian citizenship and guarantee strong legality for children whose mothers and fathers are Indonesian citizens. Foreigners up to 18 (eighteen) years old. Next, the child can make a choice to choose one of the nationalities of both parents. Bayu Sudarmawan explained that before the government passed Law Number 12 of 2006, children who were born and then resided in Indonesia until the law came into force, then on August 1 (one) 2010 (two thousand and ten) parents or guardians were obliged to register the status of the child to the Ministry of Human Rights and Human Rights Services. If born after law enforcement is enforced, the child will automatically have dual citizenship status and will be given an immigration certificate with a foreign passport. In terms of international civil law, dual citizenship of children in mixed marriages has quite serious issues which involve personal status based on the principle of nationality.

The citizenship status of children of mixed marriages according to Law Number 62 of 1958 regulates the principle of single citizenship. Indonesia adheres to the principle of single citizenship, where the child's citizenship status follows that of the father, in accordance with Article 13 paragraph (1) of Law No. 62 of 1958: *"children who are not yet 18 (eighteen) years old and are not married have a legal family relationship with the father before the father obtains citizenship of the Republic of Indonesia, also obtainscitizenship of the Republic of Indonesia after he resides and resides in Indonesia." "The information about residing and being in Indonesia does not apply to his children because their father obtained citizenship of the Republic of Indonesia and became stateless."* From a legal perspective, the birth of legal provisions in Law Number 12 of 2006 concerning Citizenship aims to provide legal protection for Indonesian women who marry foreign citizens, so that they do not automatically lose their rights as Indonesian citizens butrather they are given the option to maintain their citizenship status, as Indonesian citizen or following the citizenship of her husband who is a foreigner, and to provide legal certainty in the form of citizenship status of the Republic of Indonesia for children resulting from mixed marriages of an Indonesian citizen mother and a foreigner father until the age of 18 years or are already married and after that they are required to choose one of their citizenship statuses.

From a social perspective, the background to the regulation of limited dual citizenship status for children resulting from mixed marriages in Law Number 12 of 2006 is the discriminatory treatment of children resulting from legal mixed marriages from Indonesian citizens and foreignerfathers, children born outside of mixed marriages. those born outside of a legal marriage with a foreigner father, that is, there is no guarantee of legal certainty as a foreigner. Limited dual citizenship status for children resulting from mixed marriages is regulated by: Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia Article 4, Article 5 and Article 6; Republic of Indonesia Government Regulation Number 2 of 2007 concerning Procedures for Obtaining, Losing, Cancelling and Regaining Citizenship of the

Republic of Indonesia Article 59 and Article 60; andRegulation of the Minister of Law and Human Rights, Number M.80- HL.04.01 of 2007 concerning Procedures for Registration, Recording and Providing Immigration Facilities as Indonesian Citizens with Dual Citizenship. Based on the law, children born from the marriage of an Indonesian woman and a foreign man, as well as children born from the marriage of a foreign woman and an Indonesian man, are both recognizedas Indonesian citizens. The child has dual citizenship, and once the child is 18 years old or married, he must make his choice. The statement to choose must be submitted no later than 3 (three) years after the child turns 18 yearsor after marriage. The granting of dual citizenship is a positive new breakthrough for children resulting from mixed marriages. However, it is necessary to examine whether granting citizenship will cause new problems in the future or not. Having dual citizenship means being subject to two jurisdictions. Inheritance law is one part of civil law as a whole and is the smallest part of family law. Inheritance law is closely related to the scope of human life, because humans will experience a legal event called death resulting in problems regarding how to resolve their rights and obligations.

The problem of mixed marriage assets is that if the husband is an Indonesian citizen, then there is no problem, because it is based on the husband's law, namely the Marriage Law. Meanwhile, if the wife is an Indonesian citizen and the husband is a foreign national, then the provisions of Article 2 and Article 6 paragraph (1) of the Gumengde Huwelijken Regeling (GHR) can be adhered to, namely the husband's law applies. However, because the GHR is a product regulation of the Dutch era,it is best to regulate this issue in National Law, which is adapted to current developments. In Indonesia, up to now, it is still plural in nature, apart from the application of customary inheritance law which has various systems andalso the application of inheritance regulated in the Civil Code and Islamic inheritance law. So regarding mixed marriages, there is no separate regulation regarding inheritance issues, which allows problems to occur. This inheritance problem is because Indonesia does not yet have national legislation, so inheritance still refers to customary law, Islamic law and the Civil Code. Therefore, inheritance related to a mixed marriage is handed over to each husband and wife concerned. Based on this description, it can be seen that basically the principles of inheritance for children with dual citizenship are: Inheritance property is only open (can be inherited to another party) if there is a death, there is a blood relationship between the heir and the heir, except for the husband or wife of the heir, one of the parties who is the heir is someone who has dual citizenship who is the result of a mixed marriage between his parents. The heir can choose Indonesian citizenship, therefore the heir has the right to receive the inheritance.

Legal Arrangements Regarding Inheritance of Property Rights for Children Who Are Not Yet Required to Choose Their Citizenship

In Indonesia, inheritance law recognizes several types of inheritance systems, namely: "**a.** Hereditary system, this system is divided into three types, namely the patrilineal system based on the father's lineage, the matrilineal system based on the mother's lineage, and the bilateral system, namely the system based on the lineage of both parents. **b.** Individualsystem, based on this system, each heir gets or owns the inheritance according to their respective shares. In general, this system is applied to communities that adhere to a bilateral social system such as Java and Batak. **c.** Collective system, based on this system, the heirs receive inherited assets as one unit whose control or ownership is not divided and each heir has the right to use or obtain the proceeds from these assets. An example is heirloom items in a certain society. **d.** Majorat system, in the majorat system inheritance assets are transferred as one undivided unit with controlrights delegated to the children. For example, the eldest child serves as the family leader, replacing the father or mother as head of the family, such as Bali and Lampung. Inheritance is delegated to the eldest son and in South Sumatra to the eldest daughter. The position of illegitimate children in patrilineal relationships is different from that of legitimate children. Patrilineal illegitimate children only have the right to inherit from their mother's inheritance. "In

the Minangkabau area, which adheres to the matrilineal system, if the husband dies, the children are not heirs, because the children are members of the mother's family while the father is not."

Civil inheritance law adheres to an individual system where each heirobtains or owns inheritance according to their respective share." Before the child is 18 years old, the child is not yet competent to take legal action onthe inheritance obtained. That juridical maturity always implies the existence of a person's authority to carry out legal actions on their own without the assistance of other parties, whether they are themselves, the child's parents or the child's guardian. So a person is an adult if that person is recognized by law to carry out his own legal acts, with his own responsibility for what he does. It is clear that here there is a person's authority to independently carry out a legal act. Elements of maturity include: “1. The main indicator for determining legal maturity is a person's authority to carry out legal actions on their own, without the help of parents or guardians; 2. A person who is an adult can be burdened with responsibility for all legal actions he performs; 3. The age limit must be a regulation for legal actions in general, not for specific legal actions only."

In Article 26 paragraph (2) there is a prohibition on transferring property rights to foreigners and legal entities. In general, land control by foreigners in Articles 41 and 42 of the Basic Agrarian Law is further regulated in Government Regulation Number 40 of 1996 concerning: Business Use Rights, Building Use Rights and Land Use Rights. The legal basis for the provisions in Article 42 of Basic Agrarian Law is Article 33 paragraph (3) of the 1954 Constitution. Based on the authority obtainedfrom the state's right to control to regulate the legal relationship between legal subjects and land, the government can determine various rights to land. Foreigners domiciled in Indonesia and foreign legal entities that have representatives in Indonesia can be granted the Right to Use. As explained above, for the granting of Use Rights, although not specified in the Basic Agrarian Law, in practice of National Land Agency generally provides a period of 10 (ten) years. This time period is considered very short among foreign investors. For Indonesian citizens who change citizenship, or foreigners who by inheritance obtain one of the rights outside of the Use Right, for one year since the transfer of citizenship, or since the right was obtained, then the right must be transferred, or if the land rights are not transferred, it will result in rights if the land falls to the state, the transfer of land rights is null and void, according to the provisions stipulated in Article 21 paragraph (2) jo. Article 30 paragraph (2) and Article 36 paragraph (2) of Basic Agrarian Law. So, for foreigners there is absolutely no possibility of obtaining rights to land under the land law system except for use right.

Meanwhile, Article 21 paragraph (4) prohibits Indonesian residents apart from having Indonesian citizenship and foreign citizenship, so they cannot own land with property rights and for them the provisions in Article 21 paragraph (3) apply. Thus, residents with dual citizenship also do not have the possibility of having ownership rights to land in Indonesia. This of course also applies to children from marriages of different nationalities, because Article 21 paragraph (4) does not regulate age limits. Regarding the restrictions on the rights of someone who has dual citizenship, and on the other hand, the Citizenship Law recognizes the existence of a child withdual citizenship status, so for a child resulting from a marriage of different nationalities it is difficult to realize his or her right to inherit, if one of the parents is Indonesian citizen dies and inherits ownership of the land. The implications that occur when a child with dual citizenship chooses one of the citizenships when the child is 18 (eighteen) years old or is married, chooses to have a foreign citizenship, because Indonesia adheres to the principle of single citizenship. This results in the inheritance rights of children with dual citizenship who have chosen foreign citizenship to be hampered by the right to inherit immovable property.

Heirs who have dual citizenship status choose foreign nationals who receive the inheritance, including inheritance of buildings and land. It is stated in Article 21 paragraph 1 that Law Number 5 of 1960 on the Basic Agrarian Law states that: *"only Indonesian citizens can*

have property rights", while foreign nationals cannot have property rights, only limited to use rights. What needs to be emphasized here is that the heirs are foreign nationals, this refers to the provisions of Article 21 paragraph (3) of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations which states that foreigners after the enactment of this Law acquire property rights. due to inheritance without a will or mixing of assets due to marriage, it is mandatory to relinquish that right within one year of the acquisition of that right or the loss of citizenship. If after this period of time the ownership rights have not been released, then these rights are extinguished by law and the land falls to the State, provided that the rights of other parties encumbering them continue. This is also in line with the provisions of Article 837 of the Civil Code that foreign heirs cannot obtain ownership rights to objects that are objects of inheritance. However, those with foreigncitizen status can still inherit. They still have the right to inherit, but not to own it. He only has the right to take the same value or price for the items that are part of his inheritance. As a result, the provision of inheritance in the form of land to heirs who are foreign citizens is null and void by law

CONCLUSION

1. The urgency of regulating the inheritance of land rights for children who have dual citizenship as a result of the marriage of their parents is: to provide legal certainty that the principle of inheritance, namely inheritance, is only open (can be inherited to another party) if there isa death, there is a blood relationship in the family. between the heir and heirs, except for the husband or wife of the heir, one of the parties who is the heir is someone who has dual citizenship which is the result of a mixed marriage between the two parents, the heir can choose Indonesian citizenship therefore the heir has the right to receive the inheritance.
2. Appropriate arrangements regarding the inheritance of land and/or buildings for children with dual citizenship in Indonesia, namely children with foreigner status still have the right to receive inheritance, this will not be the case for objects which have ownershiprights. This is in line with article 21 of Law No. 5 of 1960 UUPA which stipulates that only people with Indonesian citizenship status canobtain ownership rights to land. Based on the provisions in article 21 paragraph (3) of Law Number 5 of 1960 UUPA must release or transferthe land or house within a period of 1 (one) year to someone who has the status of an Indonesian citizen.

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