

LEGAL PROTECTION OF CHILDREN DUE TO DIVORCE FROM MARRIAGES OF DIFFERENT CITIZENSHIP

Jiang Hailong

ABSTRACT

As stated in Law Number 1 of 1974 concerning Marriage in Article 57 which states that mixed marriages are marriages 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, in this case mixed marriages can also be called international marriage. The so-called international marriage is a marriage that contains foreign elements. The foreign element can be in the form of a bride having a different nationality from the other bride, or both the bride and groom have the same nationality but the marriage is carried out in another country or a combination of both. [6] Marriage can also end in divorce and of course it is important for the child to get "legal protection for children due to divorce from marriages of different nationalities".

Keyword : marriage, mixed marriage, divorce, legal protection

Introduction

Indonesia is a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia which guarantees legal certainty, order and legal protection for all Indonesian people. One of the obligations of the State as stated in the Preamble to the 1945 Constitution of the Fourth Amendment, in the fourth paragraph, is to promote public welfare, therefore, real action is needed from the government so that these goals can be achieved, and one of the government's efforts to This goal can be achieved through sustainable development in all fields. Development is a process of continuous change towards improvement in all areas of people's lives by relying on a set of values that they adhere to. Development should be left to the development of the potential, initiative, creative power and personality of every citizen. This process, which is essentially a process of social transformation, needs to maintain a triangular balance between change, order and justice, in a certain way that will strengthen human freedom in society.¹

Indonesia is a country that is very strategically located, and is rich in spices and has a very good natural beauty. Some areas in Indonesia are used as tourist attractions that are visited by many people and there are also many foreign nationals who visit and travel to tourist areas in Indonesia, such as the island of Bali. foreign countries who invite cooperation with Indonesia in various fields.

With this cooperative relationship, of course, many foreign citizens come to Indonesia to carry out their cooperation duties with Indonesia, with this cooperative relationship, of course there are many meetings in the working relationship between Indonesian citizens and foreign nationals in working relationships. Starting from working relationships, communicating, and meeting face-to-face, many Indonesian citizens are attracted to foreign nationals and vice versa, many foreign nationals are attracted to Indonesian citizens or people. With the mutual attraction between one another, of course there is a desire to continue to a more serious level, namely the level of marriage.

Humans as social beings need a decent life and in pairs so as to form a new next generation for the sake of a complete nation and state, and living in pairs is formed in a process of marital ties that are passed in living in pairs which will form a family and develop into relatives. which later became a society. This clearly shows that marriage is a very important element in the continuation of human life and the development of the welfare of society as a whole.

Marriage is also a very important event in human life and is considered a sacred thing, because marriage does not only involve the two prospective husband and wife personally, but also involves family and community affairs.

Marriage is a switch bond because in the marriage bond there are not only physical or physical bonds but also spiritual bonds based on the One Godhead, meaning that a marriage is not just an outward relationship, but more than that, it is a bond. or an inner and outer relationship between a man and a woman that aims to form a happy and eternal family based on the One Godhead.²

Indonesia has established a marriage law that applies to all Indonesian people, namely: Law Number 1 of 1974 concerning marriage. The Marriage Law is contained in the State Gazette of the Republic of Indonesia of 1974 Number 1 While the explanation is contained in the Supplement to the State Gazette of the Republic of Indonesia Number 3019. In the general section of the explanation several basic matters relating to marital problems have been contained.³

¹ Soedjatmoko, *Pembangunan dan Kebebasan*, Jakarta: LP3ES, 1984, pg. 19.

² Sution Usman Adji, *Kawin Lari dan Kawin Antar Agama*, Cetakan 1, Yogyakarta: Liberty, 1989, pg. 21.

³ Sudarsono, *Hukum Perkawinan Nasional*, Jakarta: Rineka Cipta, 2010, pg. 1.

In Law No. 1 of 1974 concerning Marriage is clearly stated in Article 1 regarding the definition of marriage as follows: Article 1 states that: "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household). based on God Almighty".

Along with the times and human culture that is growing with technological advances and patterns of human thought, it is possible to unite the thoughts of everyone around the world, for example through the intermediary of cyberspace. The process of globalization that forms broader and more open views and thoughts with all possibilities, many things can happen. Modern patterns of thinking often trigger a meeting between two people with different cultures, religions, races, ethnicities and perspectives, so that not a few people especially Indonesian citizens who finally decide and enter into marriage ties with foreign citizens which in Indonesia are commonly referred to as mixed marriages.

Mixed marriages have penetrated all corners of the country and social classes. The globalization of information, economy, education and transportation has dispelled the stigma that mixed marriages are marriages between wealthy expatriates and Indonesians.⁴ According to a survey conducted by the Mixed Couple Club, the paths of introduction that lead couples of different nationalities to marry include introductions via the internet, then former work/business friends, acquaintances while on vacation, former school/college friends, and first friends. Mixed marriages also occur in Indonesian workers, with workers from other countries⁵. Thus, considering the increasing number of mixed marriages of different nationalities in Indonesia, legal protection should be given to every community involved in this mixed marriage so that it can be properly accommodated in the existing legislation in Indonesia.

As stated in Law Number 1 of 1974 concerning Marriage in Article 57 which states that mixed marriages are marriages 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, in this case mixed marriages can also be called international marriage. The so-called international marriage is a marriage that contains foreign elements. The foreign element can be in the form of a bride having a different nationality from the other bride, or both the bride and groom have the same nationality but the marriage is carried out in another country or a combination of both⁶.

With the expansion of human interaction in the world, of course, it can provide opportunities for marriages between nations of different nationalities. This situation is difficult to contain because it is part of human rights for a person to choose his life partner, so there is no prohibition against marriage with other citizens, but often this causes many problems, for example the issue of child citizenship, problems with inheritance, and parenting issues.

Mixed marriages involving the citizenship status of the parties basically involve two areas of law, namely the field of marriage law (*huwelijksrecht*) and the field of citizenship law (*nationaliteitsrecht*). Citizenship is a very important issue for one's life because it involves one's daily life in the field of public law and private law.⁷

One of the problems in the implementation of law in Indonesia is the implementation of citizenship laws and regulations, therefore the issue of citizenship is a problem that is often and very interesting to discuss. Regarding citizenship, an understanding has been given of anyone who is said to be a citizen as contained in the 1945 Constitution Article 26 which reads: "Those who become citizens are the original Indonesian people and people from other nations that are ratified by law. as a citizen. The conditions regarding citizenship are stipulated by law".

Talking about citizenship, of course it crossed our mind that everyone should have a clear nationality. Everyone is obliged to register to become a member of the country he chooses in order to obtain legal protection both inside and outside the court of the country he adheres to. A problem that is vulnerable and often arises in mixed marriages is the issue of the citizenship of the child. The old Citizenship Law adhered to the principle of single citizenship, so that children born from mixed marriages could only have one nationality, which in the Law stipulated that the citizenship of the father must be followed. This arrangement raises problems if in the future the marriage of the parents is broken, of course the mother will have difficulty getting the care of her child who is a foreign citizen.⁸

Children born from mixed marriages and registered as foreign nationals will generally experience difficulties when their foreign father divorces his mother who is an Indonesian citizen because the court of the husband of another nationality will hand over the responsibilities of care to his father. Likewise, when the father dies, the child's status continues to follow the child's nationality until the child is an adult to determine his own citizenship. This of course will make the condition of the child and his mother in a difficult situation.⁹ And of course also that this will also have an unfavorable impact between the mother and her child, for example there will be a limit for children to live with their mother and get love from their mother when the marriage ends in divorce and there will also be difficulties for the child. mothers to be able to live with their children if one day the children return to their father's country of origin. The relationship between parents and children as a result of marriage should receive special attention. Moreover, the relationship between parents and children as a result of mixed marriages. The thing that needs to be considered is

⁴ Nuning Hallet, Mencermati Isi Rancangan Undang-Undang Kewarganegaraan, <http://www.Mixedcouple.com>, diakses 25Maret 2021

⁵ Sution Usman Adji, Op. Cit, pg. 4

⁶ Purnadi Purbacaraka, Agus Brotosusilo, Sendi-Sendi Hukum Perdata Internasional Suatu Orientasi, Jakarta: Raja Grafindo Persada, 1997, pg. 36.

⁷ J. C. T. Simorangkir dan Woerjono Sastropranoto, Pelajaran Hukum Indonesia, Cetakan ketiga Jakarta: Gunung Agung, 1957,pg. 9.

⁸ <http://jurnalhukum.blogspot.com/2006/status-hukum-anak-hasil-perkawinan.html>. accessed on 26, April 2021.

⁹ J. C. T. Simorangkir dan Woerjono Sastropranoto Op. Cit, pg. 10.

the issue of the citizenship of the child. Whether the child will follow his father's citizenship or his mother's citizenship. As long as there are no national differences in the family, it won't cause much trouble. However, when there are differences in nationality, this will cause problems.¹⁰

Citizens collectively are one of the important fundamentals of the existence of a country, so it is proper to get legal certainty and proper guarantee from the state. An Indonesian citizen must have guaranteed protection and legal certainty for the rights he has, as well as the obligations that are his responsibility as a citizen of a country. Citizenship or citizenship is one of the constitutive elements of the existence of a country.¹¹

In Law No. 12 of 2006 concerning the citizenship of the Republic of Indonesia, precisely in Article 5, it is also stated that those who are still recognized as Indonesian citizens are:

- a. The child of an Indonesian citizen born out of a legal marriage, not yet 18 years of age and not yet married is legally recognized by his father who is a foreign national but is still recognized as an Indonesian citizen;
- b. Indonesian citizens who are not yet 5 (five) years old are legally adopted as children by foreign citizens based on a court order, they are still recognized as Indonesian citizens.

For almost half a century the regulation of citizenship in mixed marriages between Indonesian citizens and foreign nationals, refers to the Citizenship Law no. 62 of 1958. Over time, this Law was deemed unable to accommodate the interests of the parties in mixed marriages, especially the protection for wives and children.¹² Considering the increasingly modern progress of the era, more and more people are getting married with foreign nationals, for example, Indonesian people who hold or choose their partners are foreign nationals, for example mixed marriages between Indonesian citizens and Dutch citizens.

With the increasing number of marriages of different nationalities occurring in Indonesia, of course this needs special attention from the government, to protect the rights of every Indonesian citizen who marries a foreign citizen, especially for Indonesian women who are women so that they have the opportunity to get the right to take care of their children in the event of a dispute in their household which often ends in divorce. More and more mixed marriages occur in Indonesia that are not legal which have an impact on the children born from these marriages, there are also many children who are not clear about who is responsible for the child and who is taking care of the child, and until finally the child neglected and sometimes deported or in danger of being deported, for example from the case of a child resulting from a mixed marriage between Imaniar, a singer in Indonesia who married a Singaporean man, Imaniar admitted that during his marriage he always received harsh actions from his husband, but remembering that he would be the position of her son who is a Singaporean, in order to continue to be with her child, she is willing to continue to receive harsh treatment from her husband that her husband is not providing for.

Their marriage eventually ended in divorce, of course the child would be deported to Singapore because his father was a Singapore citizen, and his father did not recognize him as an Indonesian citizen and if he was deported back to his home country, of course, his son must also be deported. , this is what makes Imaniar always silent and silent about whatever her husband does to her, from all the things that Imaniar faces, she really hopes for legal assistance and legal protection for her so that custody of her child is handed over to her.

Research methods

This research is an empirical legal research. The object of the research is legal protection for children due to divorce from marriages of different nationalities. This study uses secondary data sources, including primary legal materials, secondary legal materials and tertiary legal materials.

This research uses two approaches. The first approach is the legal approach, which is an approach that examines the legal relationship and legal protection of children in marriages of different countries. Second, research with a legal history approach is caused, among others; (a) law does not only change in space and location, but also in the course of time and time; (b) legal norms can often only be understood through legal history; (c) the understanding of legal history is essentially an important input for junior jurists to get to know culture and public order; and (d) law is laid down in its historical development and fully recognized as a historical phenomenon.

Marriage of different nationalities according to marriage law in Indonesia

To find out what is meant by a citizen (citizen) of a country and citizenship in the era of globalization as it is today, relations between countries are open, so that in the territory of a country we can find three groups of people, namely:

1. The persons of the nationals concerned;
2. Residents who are not citizens and;
3. A foreigner who happens to be in the territory of the country

¹⁰ *Ibid.*

¹¹ Bagir Manan, Hukum Kewarganegaraan Indonesia Dalam UU No. 12 Tahun 2006, Yogyakarta: FH UII Press 2009, pg.10

¹² *Ibid.*, pg. 11.

Citizens can reside in their own country or live and be in other countries, as well as residents who live in a country, can have the citizenship of the country concerned or in other countries, therefore, citizens and citizenship have different concepts from the definition of resident. and population.¹³

Article 1 letter b of Law 61/1958 states, an Indonesian citizen is a person who at the time of birth has a legal family relationship with his father, an Indonesian citizen, with the understanding that the family relationship is established before the child is 18 (eighteen) years old or before the age of 18 (eighteen) years. or before he married under 18 years. This means that Indonesia based on Law no. 62/1958 adheres to the principle of *ius sanguinis* (descendants), so that if there is a marriage between an Indonesian citizen and a foreign citizen, the children will follow their father's citizenship.

This understanding can be drawn from the problem of International Civil Law (HPI), namely the presence of foreign elements in mixed marriages. This is due to differences in nationality between husband and wife. In terms of International Civil Law, Indonesia adheres to these principles/principles based on Article 16 of *Algemene Bepaligen van Wetgeving* (AB), which states that Indonesian citizens wherever they are will apply Indonesian national law. This applies analogously to foreigners residing in Indonesia.¹⁴

The term 'original' Indonesian people and the notion of 'original Indonesian people' are experiencing developments and changes. Initially, what was meant by the original Indonesian people were people who were indigenous groups and their descendants.¹⁵ Children, are legal subjects who are not yet capable of carrying out legal actions themselves so that they must be assisted by their parents or guardians who have the skills. The regulation of the legal status of children resulting from mixed marriages in the new Citizenship Law provides positive changes, especially in the relationship between children and their mothers, because this new law allows limited dual citizenship for children from mixed marriages.¹⁶

According to the theory of international civil law, to determine the status of the child and the relationship between the child and his parents, it is necessary to first look at the marriage of his parents as a preliminary question, whether the marriage of his parents is legal so that the child has a legal relationship with his father, or the marriage is invalid, so that the child is considered as a child out of wedlock who only has a legal relationship with his mother.¹⁷

It has long been recognized that heredity is a personal status. Common law countries adhere to the principle of domicile (*ius soli*) while civil law countries adhere to the principle of nationality (*ius sanguinis*). Generally what is used is the personal law of the father as the head of the family (*pater familias*) on legal hereditary matters. This is for the sake of legal unity in the family and in the interests of the family, for the stability and honor of a wife and her marital rights. The citizenship system of the father is the most widely used in other countries, such as Germany, Greece, Italy, Switzerland and the group of socialist countries.¹⁸

In civil law, it is known that humans have the status of legal subjects since they were born. Article 2 of the Civil Code provides an exception that a child who is still in the womb can become a legal subject if there is an interest that wants and is born alive. Humans as legal subjects mean humans have rights and obligations in legal traffic. However, this does not mean that all humans are capable of acting in legal traffic. People who do not have the authority or ability to carry out legal actions are represented by other people. Based on article 1330 of the Civil Code, those who are classified as incompetent are those who are not yet mature, married women, and those who are under guardianship. Thus, children can be categorized as legal subjects who are not capable of carrying out legal actions. A person who is incompetent because he is not yet an adult is represented by his parents or guardian in carrying out legal actions. Children born from mixed marriages have the possibility that their parents have different nationalities and are therefore subject to two different legal jurisdictions.

With the permission to get dual citizenship for every child born from mixed marriages, this will still cause some problems in the future, because dual citizenship is also given on a limited basis. The meaning of "minorjarig" is not the same in various legal groups. currently applicable in Indonesia, namely Customary Law, Islamic Law, *Burgerlijk Wetboek* Law. Customary Law does not recognize a certain age to say, whether a person is not yet or is an adult. This depends on the situation, in which it is seen, whether a child is mature enough to have sex with someone of the other sex (*geslachtsrijp*), or whether a child is strong enough to earn a living by working in the fields or so on. And usually this happens at the age of 16 years.¹⁹

Islamic law according to Juynboll in his book page 272, says a person is still immature (*minderjarig*), if he is not yet 15 years old, unless he has previously shown that he is mature for intercourse (*geslachtsrijp*), but not less than 9 years old.¹⁹ The definition of a child in Article 1 paragraph 1 of Law no. 23 of 2002 concerning Child Protection is a person who is not yet 18 (eighteen) years old, including children who are still in the womb. In civil law, it is known that humans have the status of legal subjects since they

¹³ <http://www.depdagri.co.id>, accessed on 13 Mei 2021.

¹⁴ H. Zain Badjeber, *Op.Cit*, pg. 35.

¹⁵ Sudargo Gautama, *Hukum Perdata Internasional Indonesia*, B, Jilid III Bagian 1, Buku Ke 7, Bandung: PenerbitAlumni, 2010, pg. 68.

¹⁶ <http://civilizedman-kewarganegaraan.blogspot.com>. Accessed on 11 Mei 2021

¹⁷ Mulyadi, *Hukum Perkawinan Indonesia*, Semarang, Universitas Diponegoro, 2000, pg. 78.

¹⁸ http://www.asiamaya.com/konsultasi_hukum/perkawinan_umur_perkawinan.html accessed on 1 Mei 2021 ¹⁹ Purnadi Purbacaraka & Agus Brotosusilo, *Op.Cit*, pg. 28.

¹⁹ <http://keantre21.blogspot.com.asas-asas-kewarganegaraan-indonesia.html> accessed on 12 Mei 2021.

were born. Article 2 of the Civil Code provides an exception that a child who is still in the womb can become a legal subject if there is an interest that wants and is born alive.

These problems tend to be dilemmatic, which then complicates the development. The dilemma between traditions that remain strong binds society to change as the need to adapt to global developments that tend to move very quickly; the dilemma between legal diversity and the need for a unified legal system that can guarantee certainty; the rapid development of values due to the entry of new standards of living that are more economical in nature with the readiness of the people to stand up and live with these new values; and other similar issues. In a more detailed perspective, the problems of legal development faced by developing countries are first, the problem of community diversity and the diversity of customary law. Second, legal pluralism as a result of the existence of a number of colonial legal systems with legal values that are not always in accordance with the values of the local community. Third, the difficulty of the community to accept changes in the regulation of life as a result of the strong binding power and practice of customary law. urgent.[10]

According to Law Number 62 of 1958, what is meant by Indonesian citizens are:²⁰

- A. Persons who based on the laws and/or agreements and/or regulations in force since the Proclamation of August 17, 1945 are already citizens of the Republic of Indonesia;
- B. A person who at the time of his birth had a legal family relationship with his father. A citizen of the Republic of Indonesia, with the understanding that the citizenship of the Republic of Indonesia starts from the existence of a family law relationship, including, and that this family law relationship is established before the person is 18 years old or before he gets married at the age below 18 years;
- C. A child born within 300 days after the death of his father, if the father at the time of death was a citizen of the Republic of Indonesia;
- D. A person whose mother at the time of birth was a citizen of the Republic of Indonesia, if at that time he did not have a legal family relationship with his father;
- E. A person whose mother is a citizen of the Republic of Indonesia at the time of birth, if the father does not have citizenship, or as long as the citizenship of the father is unknown;
- F. A person born within the territory of the Republic of Indonesia as long as his parents are unknown;
- G. A child found in the territory of the Republic of Indonesia as long as both parents are unknown;
- H. A person born within the territory of the Republic of Indonesia, if both parents do not have citizenship or as long as the citizenship of both parents is unknown;
- I. A person born within the territory of the Republic of Indonesia who at the time of his birth did not have the citizenship of his father or mother;
- J. A person who acquires the citizenship of the Republic of Indonesia according to the provisions of this Law;

Indonesia adheres to the principle of single citizenship, where the citizenship of the child follows his father's, in accordance with Article 13 paragraph (1) of Law Number 62 of 1958:²¹

"Children who are not yet 18 years old and unmarried who have a family legal relationship with their father, before the father obtained the citizenship of the Republic of Indonesia, also acquire the citizenship of the Republic of Indonesia after he resides and is in Indonesia. The statement regarding domicile and being in Indonesia does not apply to children who because their fathers obtained the citizenship of the Republic of Indonesia are stateless."

It can be seen from the above statement that, marriages of different nationalities that occur in Indonesia, it should be noted that, who is an Indonesian citizen, whether the man or the husband, then the applicable material law in Indonesia, and if the citizen of the Republic of Indonesia is the woman or the wife, then what is used or applies is the material law of the country of origin of the husband, except that between the two parties there is an agreement that what is used is the material law of the country of origin of the wife or an Indonesian citizen.

In the Indonesian legal system, there is a tendency towards the legal system from the father for the sake of legal unity in the family, that all children in the family as long as parents have certain powers over their children (*ouderlijke macht*) are subject to the same law. This tendency is in accordance with the principles in the Citizenship Law Number 62 of 1958.²²

However, in the event that the mother's nationality is different from that of the father's, then there is a split in the marriage, it will be difficult for the mother to care for and raise her children of different nationalities, especially if the children are still underage. Based on Article 8 of Law Number 62 of 1958, an Indonesian woman who marries a foreign man, it is very likely that the Indonesian woman will lose her citizenship, if within a period of one year she states a statement for that If she loses her citizenship, the woman will become stateless.

²⁰ <http://www.depdagri.co.id>. Accessed on 13 Mei 2021.

²¹ H. Zain Badjeber, *Op.Cit*, pg. 35.

²² Sudargo Gautama, *Hukum Perdata Internasional Indonesia*, B, Jilid III Bagian 1, Buku Ke 7, Bandung: Penerbit Alumni, 2010,pg. 68.

In the provisions of this citizenship law, children born from marriages of different nationalities can become Indonesian citizens and may become foreign citizens:²³

1. Be a citizen of Indonesia

If the child is born from a marriage between a foreign woman and an Indonesian man (Article 1 letter b of Law Number 62 of 1958), then the citizenship of the child follows the father, even if the mother can give her citizenship, the child is forced to lose Indonesian citizenship. If the husband dies and the children are underage, it is not clear whether the wife can be a guardian for the children who are Indonesian citizens in Indonesia. If the husband (who is a civil servant) dies, it is not clear whether the wife can get her husband's pension (Article 15 paragraph (2) and Article 16 paragraph (1) of Law Number 62 of 1958).

2. Be a foreign citizen

If the child is born from a marriage between an Indonesian citizen and a foreign citizen. The child from birth is considered a foreign citizen so a passport must be made at the father's embassy, and a Temporary Stay Permit Card (KITAS) is made which must be continuously extended and the management fee is not cheap. In the event of a divorce, it will be difficult for the mother to take care of her child, although in Article 3 of Law Number 58 of 1958 it is possible for a divorced Indonesian mother to apply for Indonesian citizenship for her child who is under age and under his care, but in practice this is difficult.

Basically, Law Number 62 of 1958 concerning Citizenship adheres to the *ius sanguinis* principle which is contained in:²⁴

1. Article 1 letter b, that a person who at the time of birth has a legal family relationship with his father is an Indonesian citizen (WNI) with the understanding that the relationship has existed before the child is 18 years old, or is not married and is under 18 years old. Descendants and blood relations between father and child are used as the basis for determining the citizenship position of children born in marriage. A child is considered to have the citizenship status of a father, if there is a family relationship. So if a child is born from a legal marriage as stated in Article 42 of the Marriage Law Number 1 of 1974, then the citizenship of the father automatically determines the citizenship status of his child.
2. Article 1 letter c of Law Number 62 of 1958 concerning Citizenship stipulates that a child born within 300 days after the death of his father, if at the time of death his father is an Indonesian citizen, the child shall acquire an Indonesian citizen.
3. A child who is not yet 18 years of age at the time the father acquires or relinquishes his citizenship of the Republic of Indonesia and between the father and the child there is a family law relationship. If the father acquires the citizenship of the Republic of Indonesia due to naturalization, the child who is not yet 18 years old acquires the citizenship of the Republic of Indonesia and the child must reside in Indonesia (Article 14 paragraph (1) of Law Number 62 of 1958 concerning Citizenship).
4. if the father or mother loses the citizenship of the Republic of Indonesia" (Article 16 of Law Number 62 of 1958 concerning Citizenship).

Indonesia adheres to the *ius sanguinis* principle. Even though he was born in Indonesia, his citizenship status is a foreign citizen. If anything happened, they would be very vulnerable to being deported. For example, if the parents forget to extend their child's visa. Many children were deported for forgetting to extend their visas. And when divorce occurs, there are increasing issues regarding guardianship and citizenship of the child. Even though the child follows his mother who is an Indonesian citizen, his citizenship status still follows his father who is a foreign citizen even though his father is no longer living in Indonesia because Indonesia adheres to the principle of single citizenship, where the citizenship of the child follows the father, in accordance with Article 13 paragraph (1) of the Law. Number 62 of 1958, namely children who are not yet 18 years old and not yet married have a family legal relationship with their father before the father acquires Indonesian citizenship, and also acquires Indonesian citizenship after he resides and is in Indonesia. The statement regarding domicile and being in Indonesia does not apply to children who because their fathers obtained the citizenship of the Republic of Indonesia are stateless.²⁵

According to Law No. 12/2006, before Law No. 12/2006 was enacted, Indonesia was guided by the Citizenship Law No. 62/1958 which has been in force since its promulgation on August 1, 1958. Several matters are regulated in the Citizenship Law No. 62 of 1958 concerning the provisions on who is declared an Indonesian citizen, naturalized or ordinary citizen, due to citizenship, special citizenship, loss of Indonesian citizenship, and who is declared a foreigner.

With the ratification of this Citizenship Law, it is a historic moment for all Indonesian people who carry out marriages of different nationalities, especially for the Indonesian people, which for women, this Law is considered to have historical value because the old law was replaced, namely Law Number 62 1958 concerning Citizenship. With the enactment of the new Law, namely Law Number 12 of 2006 concerning Citizenship, the old Law, namely Law Number 62 of 1958 concerning Citizenship is considered no longer valid.

In addition to the principles that existed at the time of Indonesia being guided by Law Number 62 of 1958 concerning Citizenship, there are several special principles that also became the basis for the preparation of Law Number 12 of 2006, including:²⁷

²³ <http://civilizedman-kewarganegaraan.blogspot.com>. Accessed on pada 11 Mei 2021.

²⁴ Mulyadi, *Hukum Perkawinan Indonesia*, Semarang, Universitas Diponegoro, 2000, pg. 78.

²⁵ http://www.asiamaya.com/konsultasi_hukum/perkawinan/_umur_perkawinan.html Accessed on 1 Mei 2021.

²⁷ Purnadi Purbacaraka & Agus Brotosusilo, *Op.Cit.*, pg. 28.

1. The principle of national interest is that which stipulates that citizenship regulations prioritize the national interests of Indonesia, which is determined to maintain its sovereignty as a unitary state which has its own ideals and goals;
2. The principle of maximum protection is the principle that determines that the government is obliged to provide full protection to every Indonesian citizen under any circumstances both at home and abroad;
3. The principle of equality in law and government is the principle which determines that every Indonesian citizen gets equal treatment in law and government;
4. The principle of substantive truth is that the procedure for a person's citizenship is not only administrative in nature, but is also accompanied by the substance and requirements of the application for which the truth can be accounted for;
5. The principle of non-discrimination is the principle that does not differentiate treatment in all matters relating to citizens on the basis of ethnicity, religion, class, gender and gender;
6. The principle of recognition and respect for human rights is a principle which in all matters relating to citizens must guarantee, protect and glorify human rights in general and the rights of citizens in particular;
7. The principle of openness is the principle that determines that in all matters relating to citizens it must be carried out openly;
8. The principle of publicity is the principle which determines that a person who gains or loses the Citizenship of the Republic of Indonesia is announced in the State Gazette of the Republic of Indonesia so that the public knows it.

Based on the provisions of the Citizenship Law Article 4 Number 12 of 2006 what is meant by citizens are:

- a. Every person who based on laws and regulations and based on an agreement between the Government of the Republic of Indonesia with other countries before Law no. 12 of 2006 came into effect, has become an Indonesian citizen;
- b. Children born from legal marriages of Indonesian citizen fathers and mothers;
- c. Children born from a legal marriage of an Indonesian citizen father and a foreign mother;
- d. Children born from a legal marriage of a foreign citizen father and Indonesian citizen mother;
- e. A child born from a legal marriage to an Indonesian citizen mother, but the father does not have citizenship or the law of the country of origin of the father does not grant citizenship to the child;
- f. A child born within a period of 300 days after his father dies from a legal marriage and his father is an Indonesian citizen;
- g. Children born outside of a legal marriage to an Indonesian citizen mother;
- h. A child born outside a legal marriage to a foreign mother who is recognized by an Indonesian citizen father as his child and the acknowledgment is made before the child is 18 years old or not yet married;
- i. Children born in the territory of the Republic of Indonesia who at the time of birth the citizenship status of their father and mother was not clear;
- j. A newborn child found in the territory of the Republic of Indonesia as long as the father and mother are unknown;
- k. Children born in the territory of the Republic of Indonesia if their father and mother do not have citizenship or their whereabouts are not known;
- l. Children born outside the territory of the Republic of Indonesia from father and mother are Indonesian citizens who due to the provisions of the country where the child was born give citizenship to the child concerned;
- m. The child of a father or mother whose citizenship application has been granted, then the father or mother dies before taking the oath or swearing allegiance;

With the enactment of Law Number 12 of 2006, then Law Number 62 of 1958 concerning Citizenship is no longer valid. Elucidation of Law Number 12 of 2006 concerning Indonesian Citizenship states:²⁶ "To meet the demands of the community and carry out the mandate of the Basic Law as mentioned above, the Citizenship Law Number 12 of 2006 states that citizenship is all matters relating to Citizens and the new Citizenship Law are currently containing the principles of general or universal citizenship which pays attention to the principles of general or universal citizenship.

The principles adopted in this Law are as follows:

1. The principle of *ius sanguinis* (law of the blood) is the principle that determines a person's citizenship based on descent, not based on the country of birth.
2. The principle of *ius soli* (law of the soil) on a limited basis is the principle that determines a person's citizenship based on the country of birth, which is limited to children in accordance with the provisions stipulated in this Law.
3. The principle of single citizenship, is the principle that determines one citizenship for each person.
4. The principle of limited dual citizenship is the principle that determines dual citizenship for children in accordance with the provisions stipulated in the Act.

Indonesian citizens according to Law Number 12 of 2006 concerning Citizenship are based on the *ius sanguinis* principle, children born from legal marriages, for example, mothers of foreign nationals and fathers of Indonesian citizens or fathers of foreign nationals and mothers of Indonesian citizens, eat children The child still follows his father's citizenship, because based on the principle of descent, every child born from a marriage of a different nationality, the child still follows his father's citizenship.

²⁶ <http://keantre21.blogspot.com.asas-asas-kewarganegaraan-indonesia.html> Accessed on 12 Mei 2021.

Meanwhile, according to the *ius soli* principle, those who become Indonesian citizens are children born in the territory of Indonesia and the citizenship status of the father and mother is not clear. Where the newborn child is found in the territory of Indonesia as long as the father and mother are not known or it could be that the child was born in the territory of Indonesia but the whereabouts of the father and mother are unknown, then the child can be referred to as an Indonesian citizen.

The Position of Children in Marriages Born from Marriages of Different Nationalities

There are four main things that must be considered in granting credit, namely:²⁷ Children born to parents who have mixed marriages, with legal marriages are both recognized as Indonesian citizens. Before the age of 18, he follows the citizenship of his father, but if after the age of 18, the child has the right to determine his own nationality. In Article 1b of Law no. 62 of 1958 concerning Citizenship states that an Indonesian citizen is a person who at the time of birth has a legal family relationship with his father who is an Indonesian citizen, with the understanding that the family relationship is held before the child is 18 years old or before he is married under 18 years old. This means that based on the law, Indonesia adheres to the principle of *ius sanguinis* (descendants), so that if there is a marriage between an Indonesian citizen and a foreign citizen, the children will follow the citizenship of their father.²⁸

1. The Position of Children in Legislation

According to the Criminal Code, a child who is born or raised during a marriage acquires the husband as the father (Article 250). The legitimacy of a child born before the one hundred and eighty day (6 months) of marriage can be denied by the husband. (Article 251). Children out of wedlock, except those born from adultery or blasphemy, are legalized by a subsequent marriage from their father and mother, if before marriage they have made legal recognition of the child, or if the acknowledgment occurs in their own marriage certificate. 272). With the recognition of a child out of wedlock, a civil relationship is born between that child and his father or mother (Article 280).²⁹

According to Law Number 1 of 1974 concerning Marriage, it is stated that a legitimate child is a child born in or as a result of a legal marriage (Article 42). Children born out of wedlock only have a civil relationship with their mother and their mother's family (Article 42 [1]). A husband can deny the validity of the child born to his wife, if he can prove that his wife has committed adultery and the child is the result of that adultery (Article 44 [1]). The court gives a decision regarding the legality of the child at the request of the interested party.³⁰

According to the Civil Code, a child born or raised during marriage, even though the child is someone else's seed is the child of his mother's husband who is bound in marriage. Whereas in Law Number 1 of 1974 a legitimate child is a child born in or as a result of a legal marriage. So if a woman who has become pregnant because of adultery with another person, then she is legally married to a man who is not the giver of the seed of the woman's womb, then if the child is born, the child is the legal child of the woman's marriage to that man. In customary law such marriages are called 'kawin tekap malu' (Javanese: tambelan marriage) so that every child born has a father.³¹

A child born out of wedlock, for example, a woman who is pregnant and then gives birth to a child without knowing who the child's father is, then the child is an innocent child who only has a civil relationship with the mother who gave birth and or the mother's family only, and has no civil relationship with the father. the biology. According to the Criminal Code, it is forbidden to investigate who the child's father is (Article 287), while investigating who the child's mother is is allowed (Article 288).³²

According to Law Number 1 of 1974, children born out of wedlock also only have a civil relationship with their mother and their mother's family. But it doesn't mention not being able to investigate who the child's father is? And the impact is that Law Number 1 of 1974 does not justify recognition outside of marriage, as the Civil Code clearly states.³³

The husband can deny the legality of the child born to his wife because of adultery and the court will give a decision on whether the child is legal or not. The question is whether the word 'adultery' or 'adultery' in Law Number 1 of 1974 is the same as the meaning of adultery (*overspel, bermukah*) in Article 284 of the Criminal Code which is linked to Article 27 of the Civil Code (monogamy principle) or adultery according to the meaning of customary law. or religious law? If Article 44 of Law Number 1 of 1974 is linked to Article 63 concerning courts, then what is meant by adultery is based on the Civil Code for marriages of Christians or Chinese which will be resolved in the State Court, while for marriages of Hindu-Buddhist religion, adultery is defined according to the respective religious meanings and is resolved at the respective priest/pandita council or to the State Court, while for marriage according to the Islamic religion which is defined as adultery is based on Islamic law which is settled by the Religious Court.³⁶

²⁷ Naja, HR Daeng, *Hukum Kredit dan Bank Garansi*, Bandung, Citra Aditya Bakti, 2005, pg. 124

²⁸ Sudargo Gautama, *Warga Negara dan Orang Asing*, Bandung: Alumni, 1992, pg.326.

²⁹ H. Hilman Hadikusuma, *Op.Cit*, pg. 124.

³⁰ *Ibid.*

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.*

³⁶ *Ibid.*

2. The Position of Children in Customary Law

In customary law society, it is different from modern society, where the family/household of a marriage bond does not only have biological children, but also stepchildren, adopted children, foster children, confessional children and so on.³⁴ All of these children have something to do with the rights and obligations of the parents who take care of and care for them, and vice versa. The setting of the position of the children is also based on the composition of the indigenous peoples concerned and the prevailing form of parental marriage. It is not a problem about whether or not a child is legal, which is influenced by the religion adopted by the community concerned, but also important regarding the issue of heredity and inheritance.³⁸

In a society with a patrilineal kinship structure that tends to have honest forms of marriage, where the wife is generally included in the husband's kinship group, the position of the child is associated with the purpose of passing on the lineage according to the male line. So there is a possibility that a family that does not have a son or has no children at all raises a daughter in the position of a son or raises someone else's son to be the successor of a descendant who is equal to his own child.³⁵

In the example of Indonesian people who tend to marry in an honest form, it can be seen in the Batak (Karo) tribe, where it is known that, in marriage in Batak customs, the wife must enter into the kinship of the husband, and the same is the case with children / descendants who later exist or be born. In this case the child will carry the name of the father's descendant (Marga), for example the father's surname Surbakti, then the child will also carry the clan of his father. However, those who can be said to be strong descendants are sons, because in the Karo tradition, if one day they marry another tribe, the clan they carry will remain the Surbakti clan, and their children will also be Surbakti descendants.

In this case, of course, up to the number of descendants, the clan will never disappear if each descendant has a son, unlike the case with daughters it is considered that every daughter (Beru Surbakti) if married to another tribe or Karo tribe once Even so, the descendants of Surbakti will only come to him, what his children will carry later is the clan of his husband. So in the Karo tradition, most households break up due to divorce on the grounds of not having a son.

Descendants/households are patrilineal, there are various kinds of children, such as legitimate children who are not in the same position as illegitimate children, biological children who have different positions because of their different mother's position, stepchildren who can be appointed as successors to the descendants of the stepfather's adoptive father as in Rejang Bengkulu, the adopted son of his adopted father (Lampung, upright tegi) who is matrilineal like 'nyentane' in Bali; as well as levirat children (Lampung: semalang), sorarat children (Lampung, nuket; get out of bed), foster children (custodial children), confessional children and others, who differ in their positions including biological fathers, adoptive fathers, stepfathers, in-laws and so on, and in their kinship.³⁶

In a matrilineal society that tends to marry in the form of *semanda*, where the husband is included in the wife's relatives (matrilocal) or under the authority of the wife's relatives, the position of the child is associated with the continuation of the lineage according to the woman's line. So there is a possibility that a family that does not have a daughter or has no children at all adopts a son in the same position as a daughter or adopts another woman's daughter to become the successor to a descendant who is in the same position as their own child.³⁷

So in this case it is clear that in a matrilineal society, the position of the child prioritizes and respects the position of the mother rather than the position of the father, for example, in the maternal society such as the Minangkabau.

3. The Position of Children in Religious Law

In Islamic law there are no special provisions governing the position of children in the marriage bond. However, the purpose of marriage in Islam is to fulfill Allah's command in order to obtain legal offspring, so what is said to be a legitimate child is a child born from a valid marriage contract.³⁸

Among Christians, it is in line with the Criminal Code that every child who is born or raised in a marriage bond, then the father of the child is the husband of his mother. A legitimate child is a child born in the womb for at least 180 days (6 months). It is possible that the child will be illegitimate, except before the marriage, the prospective husband already knows that his future wife will / is already pregnant.

Rights and Obligations of Children Born from Marriages of Different Nationalities

A child can be said to be a legitimate child is a child who is considered to be born from a legal marriage between his father and mother. Certainty, a child who is truly his father's son is certainly very difficult to obtain. Therefore, the law stipulates the longest gestation period, which is 300 days and the shortest period of gestation, which is 180 days. A child born 300 days after the marriage

³⁴ Hilman Kadikusuma, *Hukum Perkawinan Adat*, Bandung: Mandar Maju, 1990, pg. 139. ³⁸ *Ibid*, pg. 126.

³⁵ *Ibid*, pg. 127.

³⁶ *Ibid*, pg. 126

³⁷ *Ibid*

³⁸ *Ibid*

of his parents is abolished, is an illegitimate child. The issue of legitimate children is regulated in Law no. 1 of 1974 on Articles 42, 43 and 44.

Article 42: "Legal children are children born in or as a result of a legal marriage"

Article 43:

a. Children born out of wedlock only have a civil relationship with their mother and their mother's family. b. The position of the child referred to in paragraph (1) above will then be regulated in a Government Regulation

Article 44:

a. A husband can deny the validity of the child born to his wife if he can prove that his wife has committed adultery and the child is the result of that adultery.
b. The court gives a decision on the legality of the child at the request of the interested party.
c. Indonesia adheres to the principle of single citizenship, where the citizenship of the child follows the citizenship of the father, in accordance with Article 13 paragraph (1) of Law no. 62 of 1958 concerning Citizenship:

"Children who are not yet 18 years old and unmarried who have a legal family relationship with their father before the father obtained the citizenship of the Republic of Indonesia, also acquire the citizenship of the Republic of Indonesia after he resides and is in Indonesia. The information regarding their residence and being in Indonesia does not apply to children who because their fathers obtained the citizenship of the Republic of Indonesia have become stateless."

In this provision of this citizenship law, children born from mixed marriages can become Indonesian citizens and can become foreign citizens:

1. Be a citizen of Indonesia

If the child is born from a marriage between a woman who is a foreign citizen and a man who is an Indonesian citizen (Article 1 letter b of Law No. 62 of 1958), then the citizenship of the child follows the father, even if the mother can give her citizenship, the child is forced to lose his Indonesian citizenship.

2. Being a foreign citizen

If the child is born from a marriage between an Indonesian citizen and a foreign citizen. The child from birth is considered a foreign citizen so a passport must be made at the father's embassy, and a Temporary Stay Permit Card (KITAS) is made which must be continuously extended and the management fee is not cheap. In the event of a divorce, the mother will find it difficult to take care of her child, even though Article 3 of Law no. 62 of 1958 it was possible for a mother to take care of her child.³⁹

Legal protection for children due to dissolution of marriage due to divorce

1. The Dissolution of Marriage due to Divorce of Different Nationalities in Supreme Court Decision No. 440/PK/Pdt/2002

As an example of the case in this study, the legal protection of the status and position of children due to divorce from marriages of different nationalities was terminated by the Supreme Court with Decision Number 440/PK/Pdt/2002, among others: VAN HEKKEN STEVO MARTINO, residing on Jl. Batu Belig No. 100, Kerobokan, Kuta, Denpasar, as the applicant for review first. The cassation request was formerly Plaintiff/Appellate with SANDAR MONIKA KUHON, residing at Jl. Batu Belig No. 100, Kerobokan, Kuta, Denpasar as Petitioner for Cassation/Defendant/Appeal.

The marriage which took place on September 25, 1994, the marriage between the Plaintiff as a citizen of the Netherlands and the Defendant as an Indonesian citizen, as evidently in and has been registered at the Civil Registration Office of Badung Regency, in accordance with the Marriage Certificate No. 231/1994 which is attached as evidence.

Whereas in the result of the marriage between the Plaintiff and the Defendant, they have been blessed with a daughter whose nationality follows the Plaintiff's, named: Joey Marissa Van Hekken, female, 6 years old, born in Badung, Denpasar on January 6, 1996, a Dutch citizen. The child of the Plaintiff and Defendant, namely Joey Marissa Van Hekken, is currently domiciled in Indonesia since birth until now.

That marital happiness, which all of the Plaintiffs dream of, turned out to be just wishful thinking, because a few months since the marriage took place between the Plaintiff and the Defendant there have always been constant fights where the cause is because the Defendant likes to win on his own and the Defendant's selfish nature is more visible. around August 1996, where the Defendant left the joint residence without taking his daughters named: Joey Marissa Van Hekken;

A good mother should have had time to take care of the household and devote her attention to the care of her daughter, however, as explained by the plaintiff, that the defendant could not be a good mother for their child because the Defendant often went out at

³⁹ Subekti, Op. Cit, pg. 48

night and came home early so that this made the Defendant rarely see his daughter. Although this has often happened, the Plaintiffs still insist on maintaining their marriage.

Efforts to maintain his marriage carried out by the Plaintiff were not responded to by the Defendant, even very often if the plaintiff rebuked the defendant for his behavior that he often came home late at night for work reasons, but what the defendant did to the plaintiff was getting angry and cursing the plaintiff and destroying his property. Belongings in their house, the defendant even threatened the plaintiff to notify the plaintiff's status to all leaders and co-workers of the plaintiff in his office.

With the actions and actions of the defendant who always did not behave well towards the plaintiff, the plaintiff's patience lost in dealing with the behavior of the defendant so that the plaintiff decided to end their marriage by filing a divorce suit in court. The lawsuits filed by the plaintiff to the Denpasar District Court are as follows:

1. Granted the Plaintiff's claim in its entirety
2. Stipulates the law that the only daughter of the marriage of the Plaintiff and the Defendant named Joey Marissa Van Hekken was handed over to her guardianship rights to the Plaintiff
3. Punish the Defendant to pay the costs of this case or the Plaintiff asks for a fair decision.

With the filing of a court divorce suit by the Plaintiff, the Court granted all the applications that the plaintiff had requested, along with custody of their daughter, Joey Marissa Van Hekken, which was handed over to the Plaintiff, because according to the Plaintiff's statement that the Defendant would not be able to fulfill all the needs stated in the Plaintiff, needed by their daughter, considering that in addition to her bad behavior, the Defendant also does not have a permanent job, which is sufficient to meet the daily needs of their daughter if their daughter is in the care of the Defendant. In the Denpasar District Court the Panel of Judges decided that:

- A. Partly granted the Plaintiff's claim;
- B. 231/1994 declared disbandment due to divorce;
- C. Ordered the Registrar of the Denpasar District Court or an appointed official to send a copy of this decision, which has permanent legal force to the Civil Registry Office of Dati II Badung Regency to be recorded/registered;
- D. Declare the claim of the Plaintiff other than and the remainder is unacceptable;

IN RECONVENTION

- a. Partly granted the Plaintiff's claim in the reconvention;
- b. The law states that the child born from the marriage between the Plaintiff in the Convention and the Defendant in the Convention named: Joey Marissa Van Hekken is under the guardianship/control of the Plaintiff in the Convention, who will carry out the maintenance, care and education of the child until the child can decide for himself to join his mother or father ; C. Sentencing the Defendant in the reconciliation to pay for the maintenance and education costs of the Plaintiff's children in the reconciliation and the Defendant in the reconciliation, each month amounting to Rp. 300. 000,- (three hundred thousand rupiahs), which fees are handed over to the Plaintiff of counter-convention as of the time this decision has permanent legal force;

With the issuance of the Denpasar Court's decision submitted by the Plaintiff, the Defendant objected to the court's decision so that the Defendant filed an appeal to the High Court, as for the lawsuit by the defendant against the Denpasar District Court's decision as follows:

- A. Fully granted the Plaintiff's counterclaim;
- B. 23/1994, is breaking up due to divorce with all the legal consequences;
- C. Declare as a law the child born of the marriage between the Plaintiff of counter convention and the Defendant of counter convention named: Joey Marissa Van Hekken under the guardianship and control of the Plaintiff of counter convention who will carry out the maintenance, care and education of the child;
- D. Punishing the counter-convention Defendant to pay the cost of care, maintenance and education of the children of the counter-conventional plaintiff and the counter-conventional Defendant each month in the amount of Rp. 1. 000000,- (one million rupiah) which fee is submitted at the beginning of every month from the 1st to the 5th to the counterclaim Plaintiff, starting from the time this lawsuit is filed in the case;
- E. Ordered the Civil Registry Officer to record the divorce of the Plaintiff and the Defendant;

From this decision of the High Court, it is also stated that as determined and decided in the District Court that what was previously requested by the Plaintiff, in the High Court the decision of the High Court is the same as the decision in the District Court.

Various efforts were made by the Defendant to be able to receive custody of his daughter Joey Marissa Van Hekken including making a request for cassation which in this case was represented by his attorney Putu Subada Kusuma, SH, KN. So the Supreme Court accepted the Cassation Application from the Cassation Applicant Sandra Monica Kuhon.

The decision of the Denpasar High Court No. 30/PT. PDS. April 23, 1998 are as follows:

- A. Received an appeal from the Plaintiff in the Convention/ the Defendant in the counter-appeals;

- B. Corrected the decision of the Denpasar District Court dated December 10, 1997 No. 103/Pdt. G/1997/PN.Dps. the appeal is being requested, so that the full order reads as follows:

In Convention

- A. Fully granted the Plaintiff-Appellant's claim;
- B. 231/1994 declared disbandment due to divorce;
- C. Ordered the Registrar of the Denpasar District Court or an appointed official to send a copy of this decision, which has permanent legal force, to the Civil Registry Office of Dati II Badung Regency to be registered/recorded on the ongoing divorce register;
- D. Refused the Plaintiff's claim in the counter-convention/the defendant in the appealed convention for the rest;

The Panel of Judges canceled all decisions in the Denpasar District Court as well as decisions in the High Court, so the decision of the Supreme Court of the Republic of Indonesia No. 4925/K/Pdt/1998 dated March 8, 2000 annulled all decisions of the Denpasar High Court dated April 25, 1998 No. 30/Pdt/PT. Dps.

Considering, whereas the decision of the Supreme Court of the Republic of Indonesia No. 4925 K/Pdt/1998 dated March 8, 2000 which has permanent legal force are as follows:

- A. Granting the cassation request from the cassation applicant: Sandra Monica Kuhon, who in this case is represented by her legal counsel;
- B. Canceled the decision of the Denpasar High Court dated April 25, 1998 No. 30/Pdt/1998/PT.Dps;
- C. The effort to get custody of her daughter fell into the hands of Sandra Monica Kuhon, who was originally referred to as the Defendant, this hard effort was taken by the Cassation Petitioner by being represented by his attorney until finally what the Supreme Court wanted was granted by the Supreme Court. This foster care is very limited, meaning that until the child is an adult or is able to make his own choices, namely joining the mother who is an Indonesian citizen or joining the father who is a Dutch citizen.
- D. This custody is not forever but has a time limit until the child is an adult. In this cassation decision, the Supreme Court also did not consider the child's happiness and the child's nationality, namely Joey Marissa Van Hekken. The judge was of the opinion that:
- E. That the Supreme Court judge in the cassation level did not consider the nationality of Joey Marissa Van Hekken, the result of the marriage of the Petitioner and the Respondent, who was born, who was born in Denpasar in Denpasar on January 6, 1996;
- F. That the principle of citizenship adopted by Indonesian law today is the *ius sanguinis* principle, namely based on the principle of descent; So in the Indonesian state, every child born from a legal marriage is the father's child so that he has citizenship based on his father's citizenship;
- G. That because Joey Marissa Van Hekken (hereinafter referred to as the child) was born in Indonesia from a legal marriage, legally the citizenship of the child is a Dutch citizen like the applicant's father;
- H. That everything related to the administration of the child is based on Dutch law; and the most important thing is to know that every foreigner who will stay in Indonesia must have a sponsor or supporting body that provides guarantees for that person to be able to stay in Indonesia; in this case the child can stay in Indonesia because there is a sponsor of the Petitioner as the father;
- I. That these possibilities were not considered by the Supreme Court of Justice who examined this case at the cassation level, and only gave rigid and one-sided considerations;
- J. Because in order to ensure the continuity of his residence permit in Indonesia, the child should be under the guardianship of the Petitioner as his biological father who is his sponsor to be able to remain in Indonesia;
- K. That based on the matters stated above it is proven that the decision of the Supreme Council at the Cassation level has contained a judge's error and manifest error, so that it should be annulled;

From the Supreme Court's decision, it is appropriate for their child to be cared for by Sandra Monica Kuhon, and regarding the welfare of Joey Marissa Van Hekken the judge did not consider the welfare of the child, only the judge thought that it was the one who took care of the child who considered the happiness of the child, then the welfare of the child handed over to the person who has custody of the child.

The request to consider the decision from the Plaintiff was rejected by the Supreme Court, and all costs required during the process of settling the case were entirely borne by the Plaintiff or the husband. So the Plaintiff or the husband must wait until the child is an adult and hope that his daughter decides to choose to go with him, but even so, the Plaintiff as the father remains responsible for the child and is also burdened with paying for all the needs of the child. Regarding all administrative matters concerning the child, it is based on Dutch law and the most important thing is to know that every foreigner who will stay in the State of Indonesia must have a sponsor or supporting body that provides guarantees for that person to be able to stay in Indonesia, the father has the sponsor so that their children can live in Indonesia.

Regarding the welfare of the child in the review, the Panel of Judges decided as follows:

1. That the Supreme Court of Justice in the cassation level did not consider the welfare of the child in the future;

2. That the Supreme Court Justice in the cassation level had erred in applying the law regarding child welfare, such as in applying the law concerning child welfare, as regulated in Article 41 a of Law Number 1 Year 1974 concerning Marriage which stated that: "There was a dispute (which of the parents is responsible for the care of the child, then the court will decide solely in the interests of the child";
3. That the same is true of the Jurisprudence of the Supreme Court of the Republic of Indonesia No. 906K/Sip/1973 which states that: "the interests of the child must be used as a benchmark to determine which of the parents is entrusted with the care of the child";
4. That the welfare of children is also regulated by the 1979 Declaration on Child Welfare;
5. That based on the above mentioned rules it can be concluded that if there is a dispute between husband and wife then the priority is the welfare of the child, here what must be considered is with whom the child can be guaranteed or fulfilled all the necessities of life and education;
6. In this case, the Supreme Court Judge at the cassation level should not be rigid in the application of these rules in the field and must look at the existing reality;
7. That the Respondent has not had a steady income to raise the child; while the applicant has a well-established business that can provide living and educational costs far above that of a child;
8. In this case based on the regulations governing the welfare of the child above and the well-established income of the Petitioner, then the child should be under the guardianship of the Petitioner as his biological father;
9. It can be imagined if at one time the Petitioner was not at his place, and the child had a very urgent need, while the Respondent could not fulfill it because he did not have a fixed opinion to be able to fulfill the needs of the child's life, how sad it would be

Based on the above matters, the decision of the Supreme Court of Justice at the Cassation level was very rigid, and there were judges' mistakes and obvious errors in applying the law, therefore the decision must be annulled;

Efforts made by the cassation petitioner Sandra Monica Kuhon to defend her right to take care of her child turned out to be granted by the panel of judges at the cassation level. Hekken, because in this case the judge strengthens the petitioner's claim by considering the sound of jurisprudence, which asserts that the interests of the child are the most priority, therefore considering that the reasons stated by the Reviewer: Van Hekken Stevo Martino cannot be justified, so that: in the Decision of the Panel of Judges in the Review decides and adjudicates on reasons I to III:

- A. that the reasons cannot be justified, therefore there is no judge's error or apparent error in the judex juris decision in the a quo case No. 4925 K/Pdt/1998 dated March 8, 2000, so this application for review does not meet the requirements as referred to in Article 67 letter f of Law no. 14 of 1958 as amended and supplemented by Law no. 5 of 2004;
- B. Considering whereas based on the above considerations, the application for judicial review submitted by the Petitioner for Review: Van Hekken Stevo Martino must be rejected
- C. Considering, whereas since the application for judicial review from the Petitioner for Judicial Review was rejected, the Applicant for the Judicial Review is sentenced to pay court fees in this judicial review;
- D. Taking into account the articles of Law no. 4 of 2004, Law no. 14 of 1985 as amended and supplemented by Law no. 5 of 2004 and other relevant laws and regulations;

Decision of the Panel of Judges in Review:

- A. Refused the application for judicial review from the Petitioner for Judicial Review: Van Hekken Stevo Martino;
- B. Sentencing the Petitioner for Judicial Review to pay court fees in this judicial review of Rp. 500,000, - (five hundred thousand rupiah);
- C. From the decision of the Supreme Court, the author strongly agrees with the decision because from the decision it is clear that the rights of women or Indonesian society, especially women who choose to marry foreign nationals have been protected by the government because in this case the Court decided that the child is cared for by the mother until the child reaches adulthood and has the right to make his choice to join his father's citizenship or his mother's citizenship.

Children also in this case, every child has the right to get love from a mother, especially children who are still underage, of course, really need love from their parents, especially their mothers, even though both parents have separated due to divorce, the interests of the child must be prioritized in order to prevent something that is not good from the environment especially in an era that is increasingly developing, of course there are many new things that can poison the mind and behavior of the child if there is no supervision and special attention from his parents, for example, will be affected by the development of increasingly developing technology, Of course, there are many negative impacts of technological developments, for that it is necessary for every child to get special supervision and attention from their parents.

Legal Protection of the Status and Position of Children due to Divorce from Marriages of Different Nationalities

The Jurisprudence of the Supreme Court of the Republic of Indonesia No. 906K/Sip/1973 which states that: "it is the interests of the child that must be used as a benchmark to determine which of the parents is entrusted with the care of the child" regarding the welfare of this child is also regulated by the Children's Declaration in 1959 which triggered the birth of Law no. 4 of 1979 concerning child welfare.

Regarding the welfare of the child, even though in the decision analyzed, the Supreme Court did not consider it, but still referred to the existing laws and regulations which clearly stated that if there was a dispute between husband and wife in each household, then the interests of the child would be the one to take care of. must take precedence.

This Supreme Court decision also does not take into account the behavior of the Judicial Review, because the Supreme Court thinks that every human being will certainly have mistakes and every human being of course will not always behave badly, of course there will be changes for the better so that the arguments regarding the behavior The conduct of the judicial review that has been examined through witnesses in the trial, the judge ignores and does not consider it.

Child protection also refers to the principle of legal protection and the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection in Article 2 as follows: The principle of child protection here is in accordance with the main principles contained in the Convention on the Rights of the Child. What is meant by the principle of the best interests of children is that in all actions involving children carried out by the government, society, legislative bodies and judicial bodies, the best interests of children must be the main consideration.

What is meant by the principle of the right to life, survival, and development is the most basic human right for children which is protected by the state, government, community, family, and parents. What is meant by the principle of respect for children's opinions is respect for children's rights to participate and express their opinions in decision making, especially when it comes to matters that affect their lives.

Legal protection for children in this case is very clear that children's rights are highly protected by legal regulations in force in Indonesia, so that although many marriages break up due to divorce from mixed marriages, with the existence of Law in Indonesia, it is likely that the child will become a child. neglected children will decrease because every child will get protection from the state, government, legislative and judicial institutions, society, family to parents.

Thus, in accordance with the sound of Jurisprudence, which states that whatever happens in a household, whether it is breaking up due to divorce or other things, which will have a negative impact on children, the priority is regarding the welfare and interests of the child. the child, because the child is a gift from God whose rights and obligations must be protected, every parent is also encouraged to first eliminate his selfishness in the household so that every problem in the household can be resolved properly for the benefit of the children.

Regarding child protection, we can see for ourselves from the case of a child who is being questioned in the mass media, namely Anggeline, in this case it is clear that there is no legal protection for the child, even though when her parents adopted Anggeline as their child, the mother did not know and ignoring the conditions for adopting a child, but every human being has the right to get proper legal protection from the country of residence.

Regarding whether or not the adoption of a child was carried out by Margaret, but every child's rights must be protected, not only for children, we see that Indonesia has many regulations regarding child welfare, so whatever the reason that says that Anggelin is being cared for illegally by the mother adopted, but still their rights must be protected, as written in the Law on Child Protection, in Article 1 lift 2, which reads: Child protection is all activities to guarantee and protect children and their rights so that they can live, grow and develop. , develop, and participate optimally in accordance with human dignity and dignity, as well as obtain human dignity and protection, (Article 1 point 2). In this law it is clearly stated that every child has the right to legal protection so that the child can live, grow and develop, meaning in this case that all children have the right to get legal protection even though the child is only an adopted child or stepson, must The child's rights must be protected.

Conclusion

In civil law, it is known that humans have the status of legal subjects since they were born. Article 2 of the Civil Code provides an exception that a child who is still in the womb can become a legal subject if there is an interest that wants and is born alive. Humans as legal subjects mean humans have rights and obligations in legal traffic. However, this does not mean that all humans are capable of acting in legal traffic. People who do not have the authority or ability to carry out legal actions are represented by other people. Based on article 1330 of the Civil Code, those who are classified as incompetent are those who are not yet mature, married women, and those who are under guardianship. Thus, children can be categorized as legal subjects who are not capable of carrying out legal actions. A person who is incompetent because he is not yet an adult is represented by his parents or guardian in carrying out legal actions. Children born from mixed marriages have the possibility that their parents have different nationalities and are therefore subject to two different legal jurisdictions.

Suggestion

Based on the conclusions above can take the following steps:

1. Based on the theory of international civil law, to determine the status of the child and the relationship between the child and the parents, it is necessary to first look at the marriage of the parents as a preliminary question, whether the marriage of the parents is legal so that the child has a legal relationship with the father, or the marriage is invalid, so that children are considered as illegitimate children who only have a legal relationship with their mother.[5]
2. The position of the child can not only be assessed from one side but can also be assessed based on:
 - a. The position of the child in the legislation

- b. The position of the child in customary law
 - c. The position of the child in religious law
3. Child protection needs to refer to the principle of legal protection and the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection in Article 2 are as follows: The principle of child protection here is in accordance with the main principles contained in the Convention on the Rights of the Child, What is meant by the principle of the best interests of children is that in all actions involving children carried out by the government, society, legislative bodies and judicial bodies, the best interests of children must be the main consideration.

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