

# Legal Certainty of Determination of Dual Citizenship for Children of Mixed Marriages

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<p><b>Article history</b> Received: 12 May 2024 Revised: 20 June 2024 Accepted: 25 July 2024</p> <p><b>Keywords</b> <i>Dual Citizenship, Mixed Marriage, Legal Certainty</i></p>	<p><b>Abstract</b> Dual citizenship is an increasingly common phenomenon in the era of globalization, especially in the context of mixed marriages between Indonesian citizens and foreign citizens. However, the issue of dual citizenship for children resulting from mixed marriages is still a challenge in the Indonesian legal system. Even though there are regulations governing dual citizenship, their implementation in practice often faces various obstacles, including different legal interpretations as well as a lack of legal certainty for children from mixed marriages. This research aims to analyze legal certainty in determining dual citizenship for children resulting from mixed marriages, as well as examine the factors that influence the determination process. This research is important for providing policy recommendations that can improve legal protection for children with dual citizenship in Indonesia. The research method used is a normative method with a statutory approach, which is supported by a review of literature related to citizenship and family law. The research results show that although regulations regarding dual citizenship already exist, implementation in the field still requires improvement to ensure legal certainty and protect the rights of children resulting from mixed marriages.</p>
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## 1. Introduction

The citizenship system is a fundamental concept in constitutional law that defines the legal relationship between individuals and the state. This relationship includes the rights and obligations held by citizens towards the state and vice versa. In a legal context, citizenship not only reflects a person's legal status as a full member of a country, but also regulates the mechanism for determining and recognizing that status through applicable laws and regulations. This system plays a central role in determining a person's political rights, legal protection, and national identity, and is the basis for the legitimacy of an individual's involvement in national life. The meaning contained in the citizenship system includes aspects of legitimacy and protection of human rights under the auspices of national law. Citizenship, in this sense, is a manifestation of the principles of state sovereignty that affirm the exclusivity and legal protection of each of its citizens, including the regulation of the right to obtain citizenship, the right to maintain citizenship, and the right to change citizenship. Within this framework, the citizenship system also aims to maintain national integrity and security by ensuring that only individuals who have a clear legal attachment and loyalty to the state can enjoy these citizenship rights.<sup>1</sup>

Dual citizenship is a legal status in which an individual is simultaneously recognized as a citizen of more than one country. In the context of international and national law, dual citizenship raises various complex legal implications, because each

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<sup>1</sup> Yogi Prabowo dan Taufiqurrohman Syahuri, *Kewarganegaraan Dalam Perspektif Keimigrasian (Citizenship In Immigration Perspective)*, Journal Of Law And Border Protection, Vol. 4, No. 2, 2022, 51

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country has the sovereignty to determine the terms and conditions of citizenship for individuals under its jurisdiction. This concept usually occurs due to various factors, such as birth from parents with different citizenships (Jus Sanguinis), birth in a country with the principle of citizenship based on place of birth (Jus Soli), mixed marriage, or naturalization in another country without losing the original citizenship.<sup>2</sup>

Dual Citizenship in Indonesia is implicitly regulated in Article 4 letter d of Law Number 12 of 2006 concerning Citizenship, which stipulates that children born from a legal marriage between a father who is a foreign citizen and a mother who is an Indonesian Citizen (WNI) automatically obtain Indonesian citizenship status. This provision reflects the principle of Jus Sanguinis in the Indonesian citizenship system, where citizenship can be passed down based on the mother's lineage who has WNI status, even though the child's father is a foreign citizen, but in fact in the field children who are not yet 18 years old can have dual citizenship from the country of their father and mother. However, in the provisions of Article 6 it is explained that children who have dual citizenship status, either as regulated in Article 4 letters c, d, h, l, or Article 5 are given the option to determine their citizenship after reaching the age of 18 or after they are married. The child is required to choose one of the citizenships, either Indonesian citizenship or the foreign citizenship that they also hold. This provision aims to avoid long-term dual citizenship, which can give rise to legal problems and dual obligations among countries that recognize the child's citizenship status.

The Indonesian citizenship legal system, the basic principle adopted is the principle of single nationality, which means that an individual is only allowed to hold one citizenship, namely Indonesian citizenship. This is reflected in the provisions of Article 6 of Law Number 12 of 2006 concerning Citizenship, which expressly stipulates that children born with dual citizenship status must choose one of their citizenships when they reach the age of 18 or after they are married. Although children born from a legal marriage between a foreign citizen father and an Indonesian citizen (WNI) mother automatically obtain Indonesian citizenship as stipulated in Article 4 letter d, the dual citizenship status obtained by the child is temporary. Basically, Indonesian law does not recognize dual citizenship in the long term because it can cause legal and administrative complications, such as jurisdictional conflicts, military obligations, political rights, and diplomatic protection. Therefore, in order to avoid dual citizenship that has the potential to harm state sovereignty and create legal uncertainty, Article 6 provides a time limit for children with dual citizenship status to make a firm choice regarding their citizenship. At the age of 18 or after marriage, they are required to choose whether to remain Indonesian citizens or choose the foreign citizenship that they also hold.<sup>3</sup>

The implementation of the provisions of Article 6 of Law Number 12 of 2006 concerning Citizenship faces various problems, especially related to the awareness and readiness of individuals to choose one of their citizenships at the age of 18 or after marriage. Many children with dual citizenship status do not fully understand the legal implications of their choice, or may feel emotionally and socially attached to both countries, making it difficult to make a decision. In addition, complex administrative

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<sup>2</sup> Femmie Cynthia, *Status Kewarganegaraan Ganda Di Indonesia*, Jurnal Hukum Adigama, Vol. 4, No. 2, 2021, 2225

<sup>3</sup> Chelsea Chesya Bernanda, *Pemberian Kewarganegaraan Indonesia Terhadap Arcandra Tahar Ditinjau Dari Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia*, Jurnal Pendidikan, Sosial dan Keagamaan, Vol. 18, No. 1, 2020, 204

procedures and the lack of adequate socialization from the government often cause confusion or delays in the citizenship selection process. This condition can create a situation where the individual still holds dual citizenship De Facto even though De Jure Indonesia does not recognize dual citizenship. Ultimately this can create legal problems, namely the automatic loss of Indonesian citizenship status or becoming stateless.<sup>4</sup>

## 2. Method

The type of research used is Normative Juridical, Normative Juridical research is a type of research conducted to analyze and understand applicable legal regulations and norms. This approach focuses on the analysis of legal sources, such as laws, regulations, court decisions, and other legal documents.<sup>5</sup> This research aims to understand, interpret, and apply applicable legal regulations in a particular context. Normative legal research involves collecting data from relevant legal sources, both primary and secondary. Primary sources are legal regulations that apply directly, such as laws and government regulations. Meanwhile, secondary sources are written works, articles, books, and other studies that interpret and analyze legal regulations.<sup>6</sup>

## 3. Result and Discussion

### 3.1. Dual Citizenship Regulations for Children from Mixed Marriages

Mixed marriages involving couples with different nationalities have a status that is recognized and protected by law in Indonesia. This recognition is a manifestation of respect for human rights, especially the right to marry and form a family, and as a form of implementing the principle of state sovereignty in regulating the legal status of its citizens. In the context of Indonesian law, the regulation regarding mixed marriages is stated in Article 56 paragraph (1) of Law Number 1 of 1974 concerning Marriage (Marriage Law). This article emphasizes that a mixed marriage is considered valid if it is carried out in accordance with the laws in force in the country where the marriage is held, and for Indonesian citizens, the marriage must not conflict with the provisions stipulated in the Marriage Law.<sup>7</sup> The provisions of Article 56 paragraph (1) of the Marriage Law indicate that the Indonesian legal system respects and recognizes the legal validity of the jurisdiction of other countries in the case of mixed marriages. A marriage conducted outside the territory of Indonesia and in accordance with local law will be recognized as valid by Indonesian law, as long as it does not violate the provisions specifically regulated for Indonesian citizens in the Marriage Law. This regulation shows a balance between respect for the legal sovereignty of foreign countries and protection of the legal interests of Indonesian citizens involved in mixed marriages.

Recognition of mixed marriages in the Indonesian legal system also aims to provide legal certainty for the parties involved. This legal certainty is important to protect the legal rights arising from the marriage, such as the right to joint property,

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<sup>4</sup> Adila Putri Maulana, dkk, *Permasalahan Kewarganegaraan Ganda Di Indonesia*, Indigenous Knowledge, Vol. 2, No. 6, 2023, 467

<sup>5</sup> Kristiawanto, *Memahami Penelitian Hukum Normatif*, (Jakarta: Prenada, 2022), 4

<sup>6</sup> Agung Hidayat, *Critical Review Buku 'Penelitian Hukum' Peter Mahmud Marzuki Penelitian Hukum Ad Quementang Norma*, Yustisia Merdeka : Jurnal Ilmiah Hukum, Vol. 7, No. 2, 2021, 118-119

<sup>7</sup> <https://www.hukumonline.com/klinik/a/aturan-kewarganegaraan-ganda-di-indonesia-cl822/>. Diakses tanggal 12/08/2024 Pukul 12.04 WIB.

inheritance rights, and other rights regulated by civil law. The validity of the Indonesian legal system for couples who enter into mixed marriages obtains equal legal protection as couples who are both Indonesian citizens. However, even though mixed marriages are recognized, their implementation is not free from certain challenges and requirements. One of the main requirements is that the marriage must not violate the provisions stipulated in the Marriage Law, especially those relating to the basic principles of marriage, such as monogamy, and the prohibition of marriage within certain bloodlines. In addition, mixed marriages must also meet certain administrative provisions stipulated in Indonesian law, such as marriage registration at the Civil Registry Office for Indonesian citizens who marry abroad.<sup>8</sup>

Mixed marriages, that is, marriages between two individuals who have different citizenships, often create a situation of dual citizenship for children born from the marriage.<sup>9</sup> In the citizenship law system, a child's citizenship is usually determined based on two main principles, namely *Jus Sanguinis* (citizenship based on descent) and *Jus Soli* (citizenship based on place of birth). In many countries, including Indonesia, a child's citizenship is automatically inherited from their parents through the *Jus Sanguinis* principle. In the context of mixed marriages, if the father is a foreign citizen and the mother is an Indonesian citizen (WNI), the child born from the marriage can inherit the citizenship of both parents. For example, based on Indonesian law that adopts the *Jus Sanguinis* principle, a child from a mother with WNI status will automatically obtain Indonesian citizenship, in accordance with the provisions of Article 4 of Law Number 12 of 2006 concerning Citizenship. However, if the law of the father's country of origin also grants citizenship to the child through the *Jus Sanguinis* principle, then the child will have dual citizenship, namely Indonesian citizenship from the mother and foreign citizenship from the father.

The Indonesian legal system for recognizing dual citizenship status has strict limitations, especially when the individual has reached adulthood. Indonesia adheres to the principle of single nationality, which means that an individual is only allowed to have one citizenship.<sup>10</sup> This provision becomes very important in the context of children born from mixed marriages, where one parent is an Indonesian citizen (WNI) and the other is a foreign citizen. When a child born from a mixed marriage reaches the age of 18, he/she is required to determine his/her citizenship status, whether to follow the citizenship of his/her father or mother. This provision is regulated in Article 6 paragraph (1) of Law Number 12 of 2006 concerning Citizenship, which states that in the case of dual citizenship status in children as referred to in Article 4, the child must choose one citizenship after the age of 18 or after marriage. In other words, the Indonesian state provides an opportunity for the child to consider citizenship options, but does not allow dual citizenship status to remain in effect after he/she reaches adulthood. This is done to maintain the consistency of national law and avoid legal and administrative complications that can arise from dual citizenship in the long term.

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<sup>8</sup> Laurensius Arliman S, *Peran Lembaga Catatan Sipil Terhadap Perkawinan Campuran Berdasarkan Undang-Undang Perkawinan*, Jurnal Cendekia Hukum, Vol. 4, No. 2, 2019, 291

<sup>9</sup> Widasari, dkk, *Penetapan Anak dari Perkawinan Campuran Ditinjau dari Undang-Undang Perkawinan*, Unes Law Review, Vol. 6, No. 3, 2024, 9338

<sup>10</sup> Zendy Wulan Ayu Widhi Prameswari, *Ratio Legis Dan Dampak Pengaturan Kewarganegaraan Ganda Dalam Undang-Undang Kewarganegaraan Republik Indonesia*, Core, Vol. 13, No. 3, 2019, 374

The provisions regarding dual citizenship for children from mixed marriages are not only regulated in Article 6 of Law Number 12 of 2006 concerning Citizenship, but are also emphasized in Article 21 paragraph (3) of the same law. This article emphasizes that children who obtain dual citizenship status must state their choice regarding which citizenship they will hold when they reach the age of 18 or after marriage. Article 21 paragraph (3) specifically emphasizes the importance of the child making a firm decision regarding their citizenship, in accordance with the provisions of Article 6. This regulation is part of the Indonesian government's efforts to ensure that every citizen has one clear and legitimate citizenship according to Indonesian law. Therefore, children who previously had dual citizenship status must determine their choice, either to remain Indonesian Citizens (WNI) or to choose the foreign citizenship that they also hold. This step is taken to avoid situations that can cause legal uncertainty and jurisdictional conflicts that may arise due to dual citizenship.

### **3.2. Obstacles Faced in Protecting the Rights of Children with Dual Citizenship**

Protection of the rights of children with dual citizenship in Indonesia faces a number of obstacles, both in terms of legal and implementation. Although the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) Article 28B paragraph (2) explicitly states that "Every child has the right to survive, grow, and develop and has the right to protection from violence and discrimination," legal and social realities show that there are challenges in guaranteeing these rights for children with dual citizenship. These obstacles mainly arise from three main aspects: legal uncertainty, limited administrative access, and international jurisdictional conflicts. Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia regulates that children born from mixed marriages, namely between an Indonesian citizen (WNI) and a foreign citizen (WNA), automatically have dual citizenship status until they reach the age of 18 or are married. Article 6 paragraph (1) of the Citizenship Law states that after that age, children are required to choose one citizenship. Furthermore, Article 21 paragraph (3) of the same Law emphasizes that children with dual citizenship must declare their choice in accordance with the provisions in Article 6. This provision creates legal uncertainty for the children concerned, especially when they do not have adequate awareness or understanding of this obligation. Children are often unaware that they must choose their citizenship when they reach adulthood, and this can result in the automatic loss of their citizenship status. This legal uncertainty can result in children losing their basic rights as citizens, such as the right to education, health, and legal protection.

Limited administrative access and lack of socialization from the government regarding citizenship determination procedures. The administrative process for determining or changing citizenship status is often complicated, requiring various documents and bureaucratic procedures that can be confusing for children and their parents. Lack of socialization regarding the obligation to choose citizenship, as well as the steps that must be taken, often causes delays or ignorance, which can ultimately result in the loss of the child's citizenship. Meanwhile, Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees that everyone has the right to recognition, guarantees, protection, and certainty of fair law and equal treatment before the law. However, in practice, these limited administrative access actually hinder the implementation of these rights, especially for children who are in a state of dual citizenship. Children who were born and raised abroad, for example, often have

difficulty accessing administrative services in Indonesia, which exacerbates the legal uncertainty they face.<sup>11</sup>

International jurisdiction issues also become an obstacle in protecting the rights of children with dual citizenship. Each country has the sovereignty to determine the requirements for citizenship in its territory, and this can lead to jurisdictional conflicts when children with dual citizenship must comply with the laws of two different countries. In some cases, foreign countries may not recognize the obligation for children to choose one citizenship at a certain age, or may have different provisions regarding dual citizenship. These jurisdictional conflicts can have a direct impact on children's rights, such as the right to remain in a country, the right to education, and the right to obtain legal protection. For example, if a child chooses Indonesian citizenship but continues to live in a foreign country, they may lose certain rights in their country of residence, or vice versa. This can also lead to a situation where the child becomes stateless, which directly violates the principles of child protection set out in international conventions such as the Convention on the Rights of the Child which has been ratified by Indonesia.<sup>12</sup>

Protection of the rights of children with dual citizenship in Indonesia faces various obstacles, both in terms of legal, administrative, and social aspects. Legal uncertainty, limited administrative access, and international jurisdictional conflicts are the main challenges that must be overcome to ensure that children's rights are respected and protected effectively. Although Indonesia has a clear legal framework, as stipulated in the 1945 Constitution of the Republic of Indonesia and the Citizenship Law, more effective implementation and socialization are needed to overcome these obstacles. The government, through more comprehensive policies and better coordination between institutions, needs to ensure that children with dual citizenship can enjoy their rights without facing legal uncertainty and other obstacles.

#### 4. Conclusion

Dual citizenship regulations for children from mixed marriages in Indonesia are recognized and protected by law as regulated in Article 4 of Law Number 12 of 2006 concerning Citizenship. However, Indonesia adheres to the principle of single citizenship which limits individuals to having one citizenship after reaching adulthood. Article 6 paragraph (1) of the Citizenship Law requires children with dual citizenship to choose one citizenship at the age of 18 or after marriage, which is reinforced by Article 21 paragraph (3) of the same Law. This provision is to maintain the consistency of national law and prevent legal complications from dual citizenship. Therefore, children must make a firm decision regarding their citizenship to avoid legal uncertainty and jurisdictional conflicts.

Protection of the rights of children with dual citizenship in Indonesia faces several major obstacles, namely legal uncertainty, limited administrative access, and conflicts over international jurisdiction. The reality on the ground shows that lack of understanding, complicated administrative access, and inconsistencies between national

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<sup>11</sup> Glery Lazuardi, *Status Kewarganegaraan Ganda Dilihat Dari Perspektif Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Republik Indonesia*, Sign Jurnal Hukum, Vol. 2, No. 1. 2020, 51

<sup>12</sup> Supriyadi A Arief, *Mengurai Kewarganegaraan Ganda (Dual Citizenship) Di Indonesia Dalam Perspektif Hak Asasi Manusia Dan Negara Kesejahteraan*, Sasi, Vol. 26, No. 4, 2020, 4

and international laws often hinder the protection of these rights. Limited socialization regarding citizenship procedures and potential conflicts with the laws of other countries also contribute to these challenges. Therefore, further efforts are needed from the government to improve socialization, simplify administrative procedures, and ensure legal harmonization so that children with dual citizenship can enjoy their rights effectively without being hampered by uncertainty and other obstacles.

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