Legal Status and Rights of Children from Mixed Marriages Abroad that are not Registered in the Indonesian Civil Registry

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Abstract
This study aims to analyze (1) the registration of mixed marriages conducted abroad in the Indonesian Civil Registry and (2) the rights and legal status of children from mixed marriages abroad who are not registered with the Indonesian Civil Registry. Technology development has increased interactions between citizens of different countries, resulting in mixed marriages. The prospective husband and wife from various nationalities are subject to the laws of their respective countries. In the international realm, there are differences between Indonesian marriage laws and those of other countries, both in material and procedural aspects. The research method used is normative juridical. The findings of this study indicate that mixed marriages conducted abroad can be registered in Indonesia by fulfilling administrative requirements. Children from mixed marriages abroad who are not registered in Indonesia are considered Indonesian citizens and have rights as children born out of wedlock unless acknowledged by their father or it can be proven that the child has a blood relationship with the father.

I. Introduction

With the increasing ease of access to travel, study, and work abroad, it has become easier for people from different parts of the world to meet (Romli, Luth, Sulistyarini, & Hamidah, 2020). This trend is supported by the rapid development of technology through social media, which facilitates online interactions. One of the popular means is through dating apps, where users can meet and build romantic relationships with others online (Puspitasari & Aprilia, 2022). Popular dating apps like Tinder, Bumble, and Coffee Meets Bagel have become part of daily life for many people worldwide. These apps have allowed many to find partners from diverse backgrounds they might not have met in everyday life. This not only increases the number of mixed marriages but also helps create a more inclusive and diverse society.

Broadly speaking, there are several factors influencing the occurrence of mixed marriages. These factors are classified into 2 (two) major categories: internal and external factors. Internal factors include (1) Financial or Economic Aspects: This factor covers the economic conditions of individuals who may seek financial stability through mixed marriages; (2) Intimacy in Social Interaction: This can occur due to close relationships formed through professional or shared activities; (3) Socio-Cultural Influences: Certain cultural values and social norms that encourage or permit mixed marriages. Meanwhile, external factors include (1) Attraction to Local Residents: The attraction of foreigners to Indonesians; (2) Career and Business Development: The motivation to expand career or business opportunities; (3) The Desire to Improve Life: The drive to seek a better and more decent life (Djawas & Nurzakia, 2019).

Currently, mixed marriages have become widespread, including in Indonesia (Riyanto, Aryanto, & Cholil, 2018). In principle, marriage is a human right guaranteed by Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Furthermore, Article 57 of the Republic of Indonesia Law No. 1 of 1974 on Marriage, as amended by the Republic of Indonesia Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage (hereinafter referred to as the Marriage Law), defines mixed marriage as "a marriage between two people in Indonesia who are subject to different laws, due to differences in nationality and one party being an Indonesian citizen." According to this provision, mixed marriages in Indonesia can occur in two forms: (1) an Indonesian woman marrying a foreign man, and (2) an Indonesian man marrying a foreign woman (Dewi &

Syafitri, 2022). The difference in nationality between the parties distinguishes mixed marriages from internal marriages. This nationality difference does not only occur at the beginning of the mixed marriage but can also continue after the formation of a family from the mixed marriage (Bakarbessy & Handajani, 2012).

The phenomenon of mixed marriages conducted abroad by Indonesian and foreign partners has become a hot topic of discussion among the public. It includes celebrities, artists, government officials, and ordinary citizens (Arliman, 2019). There are still some debates regarding the implementation of mixed marriages, particularly about the registration and legal consequences of such marriages (Muhsin, 2022). Therefore, the research questions this study aims to address are: (1) Can mixed marriages conducted abroad be registered with the Indonesian civil registry? (2) What are the rights and legal status of children from mixed marriages abroad who are not registered with the Indonesian civil registry.

2. Research Method

According to Soekanto & Mamudji (2015), research is a scientific activity based on specific methods, systematics, and thinking, aimed at studying one or more legal phenomena through analysis. This study uses normative legal research methods, which aim to collect and analyze secondary data. This secondary data can be classified into three levels: (1) primary legal materials, such as the 1945 Constitution of the Republic of Indonesia, the Indonesian Civil Code, and the Republic of Indonesia Law No. 1 of 1974 on Marriage, as amended by the Republic of Indonesia Law No. 16 of 2019 on Amendments to Law No. 1 of 1974 on Marriage, the Republic of Indonesia Law No. 23 of 2006 on Population Administration, as amended by the Republic of Indonesia Law No. 24 of 2013 on Amendments to Law No. 23 of 2006 on Population Administration, and Presidential Regulation No. 96 of 2018 on the Requirements and Procedures for Population Registration and Civil Registration; (2) secondary legal materials, such as books and journals; and (3) tertiary legal materials, such as websites and other sources

3. Results and Discussion

Registration of Mixed Marriages conducted Abroad

Article 1 of the Marriage Law defines marriage as "a physical and spiritual bond between a man and a woman as husband and wife to form a happy and eternal family (household) based on the belief in God Almighty." Marriage is a sacred event in human life (Fauzi, 2018), affecting not only the lives of the bride and groom but also their families and society (Marsella, 2015). Certain requirements must be met when conducting a marriage, as stipulated in the Marriage Law (Indradewi, Achmad, & Sugianto, 2024). Some of these include that the marriage must be based on the consent of both prospective spouses. For individuals who have not reached the age of 21 (twenty-one), parental consent is required. If one of the parents is deceased or unable to give consent, permission must be obtained from the surviving parent or a guardian. If both parents are deceased or unable to express their wishes, permission must be obtained from a guardian, caretaker, or relatives who are direct descendants, as long as they are still alive and able to express their wishes.

Marriages conducted abroad must be registered with the Indonesian civil registry according to Article 56 of the Marriage Law, which states:

1. A marriage conducted abroad between two Indonesian citizens or between an Indonesian citizen and a foreign national is valid if conducted according to the laws in the country where the marriage took place and does not violate the provisions of this law for Indonesian citizens.
2. Within one year after returning to Indonesia, the marriage certificate must be registered at the local Marriage Registry Office.

Furthermore, it is regulated in Article 37 of the Republic of Indonesia Law No. 23 of 2006 on Population Administration, as amended by Republic of Indonesia Law No. 24 of 2013 on Amendments to Law No. 23 of 2006 on Population Administration (hereinafter referred to as the Population Administration Law), that:

1. Marriages of Indonesian citizens outside the territory of the Republic of Indonesia must be registered with the relevant local authority and reported to the Indonesian Representative Office.
2. If the local country does not provide marriage registration services for foreigners, the registration is done at the nearest Indonesian

Representative Office.

3. The Indonesian Representative Office will register the marriage in the Marriage Certificate Register and issue a Marriage Certificate Extract.
4. The marriage registration must be reported to the local implementing agency within 30 days of the couple's return to Indonesia.

According to Article 39 of Presidential Regulation No. 96 of 2018 concerning Requirements and Procedures for Population Registration and Civil Registration, marriages of Indonesian citizens outside the territory of the Republic of Indonesia must be reported to the local civil registry office or the District/City Population and Civil Registration Office at the place of residence, along with Proof of marriage report from the Indonesian Representative Office and a copy of the marriage certificate.

According to these regulations, a mixed marriage conducted abroad by an Indonesian citizen and a foreign national must be registered with the Indonesian Civil Registry by submitting a marriage certificate and proof of reporting the marriage certificate to the Indonesian Representative Office (Embassy or Consulate General of the Republic of Indonesia) in the country where the marriage took place. If the local country does not provide marriage registration services for foreigners, the registration can be done at the nearest Indonesian Representative Office. The Representative Office will record the marriage event in the Marriage Certificate Register and issue a Marriage Certificate Extract (Ratnaningsih, 2018). Couples who conduct marriages abroad must report and register their marriages with the local Civil Registry Office within 30 (thirty) days of returning to Indonesia.

The law does not explicitly regulate the legal consequences if a mixed marriage conducted abroad is not registered with the Indonesian civil registry. The Marriage Law does not specify any penalties for non-registration. However, Article 83 of the Indonesian Civil Code states that "Marriages conducted abroad, whether between Indonesian citizens or between Indonesian citizens and foreigners, are valid if conducted according to the customary practices of the country where the marriage takes place and do not violate the provisions in Part I of this Chapter for Indonesian citizens." Article 84 of the Indonesian Civil Code further states that "Within one year after returning to Indonesia, the marriage certificate from abroad must be registered in the general marriage register at their place of residence."

If the marriage certificate is not registered, the marriage is still considered valid as there is no penalty. However, if registered, it is considered recognized by the public in Indonesia Prawirohamidjojo & Pohan (2000, p. 32). On the other hand, a Supreme Court Circular contains a provision stating that "in the case of a marriage conducted abroad that is not registered at the Indonesian Marriage Registry Office, the marriage is considered to have never occurred." However, a Supreme Court Circular is not a legislative regulation but a policy that must be followed by the judiciary. Therefore, it can be concluded that there is a legal risk that unregistered marriages in Indonesia are considered to have never existed.

Regarding this, the consequences of a valid marriage include:

- Rights and Obligations of Husband and Wife: the rights and obligations of husband and wife are regulated in Articles 30-34 of the Marriage Law and Articles 103-118 of the Indonesian Civil Code, including the husband's obligation to provide for the household according to his abilities and the wife's obligation to manage the household.
- Joint Property: Property acquired during the marriage is regulated in Articles 35-37 of the Marriage Law. Article 35 of the Marriage Law states: that assets acquired during the marriage become joint property. Property brought into the marriage by each spouse and property obtained as a gift or inheritance are under the control of each spouse unless otherwise agreed upon.

This means that assets (including liabilities) acquired after the marriage are considered joint property, even if registered in the name of only one spouse. Assets obtained gratuitously (gifts/inheritances) and assets owned before the marriage remain the personal property of each spouse (Chaerunnisa & Hartati, 2024).

Spouses can agree to have their property governed according to the Marriage Law or differently. If they wish to arrange their property differently, such as completely separate property, they must make a prenuptial or postnuptial agreement (Fajriyanti, Sulistyo, & Chalim, 2018). This agreement is made by a notary deed and registered with the Civil Registry to be recorded on the marriage certificate. Prenuptial agreements are regulated in Article 29 of the Marriage Law and Articles 139-167 of the Civil Code.

The Legal Impacts of Abroad Mixed Marriages on Children

Mixed marriages not only affect the married couple but also their children (Widanarti, 2019). According to the Republic of Indonesia Law No. 12 of 2006 on

Citizenship, especially regarding the citizenship status of children from mixed marriages, these children will have dual citizenship. However, this status is only valid until the child reaches 18 (eighteen) years of age.

Article 42 of the Marriage Law states, "A legitimate child is a child born within or as a result of a lawful marriage." The strongest legal relationship between parents and their offspring is between a legitimate child and their parents (Prawirohamidjojo, 1994). The scope of subjects with dual citizenship includes (Yogyakarta Imigration, 2022):

- A child from the lawful marriage of an Indonesian father and a foreign mother.
- A child from the lawful marriage of a foreign father and an Indonesian mother.
- An illegitimate child of a foreign mother recognized by an Indonesian father before the child is 18 (eighteen) years old or married.
- A child born outside Indonesian territory to Indonesian parents where the country of birth grants citizenship to the child.
- An illegitimate child lawfully recognized by a foreign father before the child is 18 (eighteen) years old and unmarried.
- An Indonesian child under 5 (five) years old is legally adopted by a foreigner based on a court decision.

Legally, legitimate children and parents have reciprocal rights and obligations (Timomor & Lolong, 2023). The rights and obligations between children and parents are regulated in Articles 45-49 of the Marriage Law and Articles 298-329 of the Indonesian Civil Code, including the parents' obligation to care for and educate their child (Article 45 paragraph (1) of the Marriage Law) and the child's obligation to care for their parents if needed (Article 46 paragraph (2) of the Marriage Law).

In *a contrario* or conversely, if the marriage is considered non-existent:

1. There are no obligations between husband and wife.
2. There is no joint property between husband and wife.
3. There are no legitimate descendants. A child born in such a situation is referred to as an illegitimate child.

Article 43 of the Marriage Law, as amended by Constitutional Court Decision No. 46/PUU-VIII/2010, states: "A child born outside of marriage has a civil relationship with their mother and their mother's family, as well as with a man as their father if it can be proven by science and technology or other legal evidence

that there is a blood relationship, including a civil relationship with the father's family."

Illegitimate children can be categorized as:

- Proven to have a blood relationship with their father. In practice, this proof is established in court, resulting in a Court Decision/Determination (Pusat Penelitian dan Pengkajian Perkara dan Pengelolaan Perpustakaan, 2018). Rights and obligations toward the father include: using the father's family name, the right to be cared for, and inheritance rights (Achmad & Indradewi, 2023), which are proportionate according to the Indonesian Civil Code (Budiono, 2015, p. 71).
- Not proven to have a blood relationship with their father, further divided into (1) illegitimate children recognized by their father, and (2) illegitimate children not recognized by their father.

If not proven to have a blood relationship with their father but recognized by their father, the rights and obligations toward the father include: using the father's family name, the right to receive maintenance and care from the father, and the obligation to care for the father if needed (Prawirohamidjojo & Pohan, 2000, pp. 184–185). Recognition of an illegitimate child does not establish a legal relationship between the child and the father's family. Inheritance rights are only granted if recognition is made before the father enters into marriage with another person. The inheritance share of a recognized illegitimate child is not as large as that of a legitimate child (Perangin, 1999, pp. 61–64). According to Article 49 of the Population Administration Law, "Recognition of a child only applies to children whose parents have performed a lawful marriage according to religious law but not yet legally according to state law."

On the other hand, if not proven to have a blood relationship with their father and are not recognized by their father, there is no civil relationship between the father and the father's family. The father has no rights or obligations toward the child, and the child has no rights or obligations toward the father. For example, the father has no legal obligation to maintain and care for the child, and the child is not entitled to inherit from the father.

4. Conclusion

The conclusion drawn from the analysis and discussion is that a mixed marriage conducted abroad can be registered in Indonesia. The registration of a mixed marriage is done at two institutions: first, at the Indonesian representative office in the respective country; and second, at the Population and Civil Registration Office in Indonesia after the parties return to Indonesia. According to the Presidential Regulation of the Republic of Indonesia No. 96 of 2018 on the Requirements and Procedures for Population Registration and Civil Registration, the examination for the registration of a mixed marriage conducted abroad is purely administrative. A child born from a mixed marriage abroad who is not registered in Indonesia obtains Indonesian citizenship. The child is considered an illegitimate child and has the rights of an illegitimate child unless legally recognized by the father or it can be proven that the child has a blood relationship with the father.

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