



Mixed Marriages In Indonesia Citizenship Issues: a Call for Dual Citizenship Reform for Children From Mixed Marriages

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Abstract: Law No. 1 of 1974 on Marriage Article 57 defines mixed marriages as marriage between two persons who in Indonesia are subject to different laws, due to differences in citizenship and one of the parties is a foreign national and one of the parties is an Indonesian national. While mixed marriages have occurred widely in Indonesia involving two people of different origins, religious beliefs, or ethics, the issue of citizenship arises when married couples involve two people of different nationalities. Some countries in the world allow instant citizenship by marriage. The State Republic of Indonesia acknowledges single citizenship under Law No. 12 of 2006 concerning Citizenship. The main idea of this journal is to highlight the issues of citizenship of offspring from mixed marriages. While children of mixed marriages may have dual citizenship until the age of 18, what are the implications for their citizenship in the future? In the context of the state, how does the government see this as the nation's future generation?

Keywords : Marriage, Mixed Marriages, Citizenship, Dual Citizenship

Introduction

The Unitary State of the Republic of Indonesia is a very heterogeneous archipelago consisting of various tribes, races or ethnicities, religions, and customs. Intercultural marriages in Indonesia have long occurred with community interactions between tribes, races, religions, and customs. On the other hand, with the development of community interaction with the international world in the fields of social, education, culture, and business, the phenomenon of international intercultural marriage is increasing.

Marriage is the right of every citizen by human rights as stipulated in UUD RI 1945 Article 28B (1) - the Constitution of the Republic of Indonesia: "Every person has the right to form a family and continue offspring through legal marriage." The

legal provisions regarding marriage are contained in the Law of the Republic of Indonesia No. 1 of 1974 concerning Marriage.

All marriages involve challenges and the discovery of and conversation about differences. However, intercultural marriages often involve additional challenges stemming from the need to reconcile conflicting expectations of two cultures, such as differing cultural norms, and views on extended family, religion, and child-rearing. For instance, couples may need to decide which religious holidays to celebrate, how to communicate expectations and negotiate their relational identity given their different cultural backgrounds, how to incorporate (or not) extended family into their family life, or which parenting styles to adopt. In addition, couples in intercultural marriages also face challenges outside of their relationship, such as expectations from family and friends, or societal norms, such as negative stereotypes, discrimination, or rejection. Therefore, the union of individuals from two diverse cultures is bound to lead to conflicting expectations of the relationship. Thus, further investigation into these challenges is worthwhile.¹

There are many challenges and problems faced by couples in intercultural marriages regarding language, religion, customs, nationality, and others. Does the Law of the Republic of Indonesia No. 1 of 1974 concerning Marriage already cover the entire legal provisions covering all aspects of marriage that occur in Indonesia?

In this paper, the writer would like to raise the citizenship aspect of the issues faced by couples and the children of mixed marriages in terms of the legal provisions applicable in Indonesia. The writer would like to highlight some areas that may be a discussion topic regarding the citizenship issues of married couples of different nationalities and children from mixed marriages, and how these issues could impact the future generation of the nation.

The writer uses the normative judicial approach method for this paper mainly using material from books, laws and regulations, and other documents available on the internet related to the topic.

¹ Machette, Antony T. Cionea, and Ionea A., "In-Laws, Communication, and Other Frustrations: The Challenges of Intercultural Marriages," *Interpersona* 17, no. 1 (2023): 1–18, <https://doi.org/10.5964/ijpr.8047>.

Background of the Issue

Intercultural marriage is defined as a marriage involving two people with diverse and different ethnic, linguistic, religious, and national backgrounds.

Intercultural marriages can be distinguished as follows:

- a. Inter-ethnic marriages where both parties come from different tribes such as between the Dayak tribe and the Javanese tribe for example.
- b. Inter-religious marriage where one partner embraces a different religion or faith from the other partner;
- c. Marriage between an Indonesian and a foreign citizen is commonly referred to as mixed marriage.

Intercultural marriages may be challenging in many ways. Differences in language, customs, and religion or beliefs in a mixed marriage may lead to misunderstandings, clashes, or conflicts by prohibitions related to customs or religious norms of one of the parties or even within the bigger family circle.

Of course, the gravity of the issues and how to overcome them depends on each partner in bridging these problems. While some differences such as language, culture, and mindset can be overcome by tolerance and understanding, the issue of religion and citizenship seems to have a more sensitive if not serious impact on the family. Article 2 para (1) of Law No. 1 of 1974 on Marriage stipulates that marriage may only be valid if conducted according to the respective law of the religion or belief. This means that inter-faith marriage is not acknowledged in Indonesia. In terms of the difference in nationality, on the other hand, creates a more complex issue impacting the foreign couple and their children as Indonesia adopts dual citizenship only on a limited scale.

Citizenship Issues

1. Indonesian Citizenship Law

The Unitary State of the Republic of Indonesia does not recognize dual citizenship or bipartite, according to Law of the Republic of Indonesia No. 12 of 2006 on Citizenship. Children of mixed marriages residing in Indonesia shall automatically resume Indonesian citizenship as per Article 4 c. and 4 d., and by law may hold dual citizenship until they reach the age of 18 or if already married as stipulated in Article 6 with a grace period of 3 (three) years.

2. Citizenship by Marriage

If mixed marriages are conducted in Indonesia, then Law No. 1 of 1974 concerning Marriage Article 58 stipulates that those who conduct mixed marriages may obtain citizenship of the spouse and/or lose their citizenship under the applicable law on citizenship in Indonesia.

If the marriage is conducted overseas, then based on Law No. 12 of 2006 concerning Citizenship Article 26 section (1) stipulates: "Female citizens of the Republic of Indonesia who marry male citizens of foreign nationality will automatically lose their Indonesian citizenship if by law of her husband's country, the citizenship of the wife will follow that of the husband as a result of their union."

In addition, an Indonesian male citizen who marries a foreign female citizen loses his Indonesian citizenship if, according to the law of the wife's country of origin, the husband's citizenship follows the wife's citizenship as a result of the marriage.

However, if he or she wishes to remain an Indonesian citizen, he or she may submit a letter stating their preference to the Official or to the Embassy of the Republic of Indonesia whose jurisdiction covers the domicile of the said women or men above unless such statements will result in dual citizenship.

Some countries in the world grant instant citizenship to foreigners who marry their citizens, such as Cap Verde and Colombia, while other countries that allow citizenship after marriage such as France, Italy, and Switzerland may take a few years until the spouse can be automatically granted citizenship or obtain citizenship by naturalization of the foreign country. But then again due to the single citizenship system applied in Indonesia, the Indonesian partner may lose their citizenship unless he or she applies to reinstate his or her Indonesian citizenship to the government.

The ratification of Law No. 6 of 2011 concerning Immigration provided a relief to the mixed marriage community allowing foreign nationals involved in mixed marriages in Indonesia to obtain permanent residency status. The law also stipulates that this permanent residency status will remain in force with a divorce or death of the Indonesian partner, as long as the marriage has lasted more than 10 years.

3. Citizenship of Children from Mixed Marriages

Before the ratification of Law No. 12 of 2006 concerning Citizenship, children from mixed marriages will automatically assume the citizenship of the father who is a

foreign national. Nowadays, children of mixed marriages may have dual citizenship until they reach the age of 18 or less if they are married. The grace period for deciding the nationality they wish to adopt is 3 (three) years. According to Law No. 22 of 2012 of the Minister of Law and Human Rights, children with dual citizenship must be registered by their parents or their guardians with the civil registry, whether they reside in Indonesia or overseas.

Some legal aspects related to the single citizenship system adopted by Indonesia could prove to be problematic for children of mixed marriages, among others:

- a. When having to decide its citizenship;
- b. If the benefit of higher education is more favorable in the foreign country when adopting the foreign country's citizenship;
- c. If the parents are residing in Indonesia but would like to still keep their foreign citizenship even though they would like to work or contribute to the development of Indonesia.

For example, if an offspring of a mixed marriage has concluded its education overseas and would like to stay in Indonesia while still holding its foreign citizenship, due to the benefits of social security, free education, and government support, but would like to work in Indonesia and contribute to the economic and development of Indonesia. They will have to obtain a KITAS to be able to work officially, which requires a sponsor and involves costs for obtaining the KITAS.

Research Results

A survey was made on mixed-marriage couples, from the following nationalities, with one respondent living in Faroe Island.

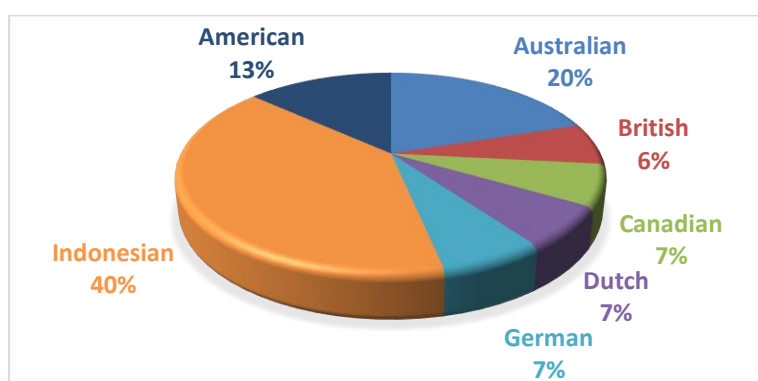


Chart 1 – Respondents by Nationality

5 Respondents who married before 2006 were unaware of Law No. 12 of 2006 on Citizenship when passed.

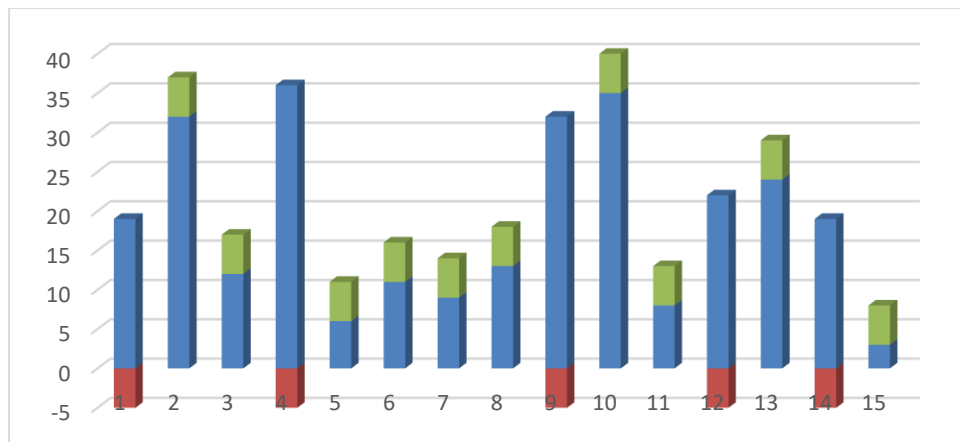


Chart 2 - Respondent awareness of Law No. 12 of 2006

The following feedback was received related to the citizenship of the respondent's children:

- 3 out of 5 respondents who have children do not have citizenship issues as their children live overseas.
- Some couples with children under the age of 18 do not have problems with obtaining dual citizenship for their children born in Indonesia, although the process could be rather complicated and challenging when dealing with the authorities.
- Some respondents with children over the age of 18 have given up their Indonesian passports and adopted foreign citizenship living overseas.
- The Indonesian passport and birth certificate of 1 respondent's child were taken away as he had a foreign passport at the age of 10.
- One respondent missed the opportunity of obtaining dual citizenship for their child due to non-information and/or misinformation about the Law when passed while residing overseas and moving to Indonesia in 2014.

A major issue with this single-citizenship regulation proves to be difficult for young adults to have to decide which citizenship to adopt when they reach the age of 18.

Needless to say, these children who have 50% Indonesian blood have to give up their Indonesian citizenship although they were born and raised in Indonesia, which by nature is a violation of human rights as one commented, while other parents feel

saddened that they have to part with their children who chose to adopt foreign citizenship and are regarded foreigners when they enter the country.

On the other hand, what are the issues related to the spouses of foreign nationality? Some respondents comment that dual citizenship for spouses and adult children should be permitted. Issues highlighted among others are:

- Permit to enter and stay in Indonesia;
- Permanent residency status does not allow the holder to be employed without a separate work permit;
- Inheritance and property ownership rights;
- Permanent residency holders cannot start up a company on their own unless it is a foreign investment company.

Association & Forums

Issues and concerns of Indonesian citizens related to mixed marriages can be channeled through the Association of Mixed Marriages Indonesia.

Perkumpulan Masyarakat Perkawinan Campuran Indonesia (PerCa Indonesia) was established in 2008, with Notarial Deed Soetjipto, SH. No. 182, dated April 29, 2008, based in Jakarta. PerCa Indonesia is a civil society organization registered at the Directorate General of AHU, Ministry of Law and Human Rights of the Republic of Indonesia. The Association's main mission is to address the Civil Rights and Constitutional Rights of Indonesian mixed-marriage communities worldwide. PerCa Indonesia's main activities comprise of Advocacy, Socialization, and Consultation, with a total membership of more than 8,000 people.

Conclusion

It would be a pity if the younger generations from mixed marriages face difficulties in living in the country of origin of one of their parents when they would like to work and contribute to the development of the country itself. There are countries in the world with a sinking number of young generations who offer migration of young talents to their countries with special treatment such as Australia, Japan, and Singapore. According to data from the Directorate General of Immigration – as cited

by some news articles, it was mentioned that nearly 4,000 Indonesians became Singaporean citizens between 2019 to 2022, most of them students aged 25 to 33.²

Some recent incidents for example call for the implementation of dual citizenship for young adults from mixed marriages in Indonesia. What happened in 2016 involving Arcandra Tahar, and Gloria Natapraja Hamel are examples that a legal reformation needs to take place to answer the issue of dual citizenship and retain the nation's talents and skills contributing to its development. Arcandra Tahar's appointment as Energy And Mining Minister was removed after less than a month on the job following reports that he held US and Indonesian passports³, whereas Gloria Natapraja Hamel, holding Indonesian and French passports was banned as an official member of a prestigious flag raising team – which turned out to be a misunderstanding as she was still below the age of 18.⁴

A spark of hope comes to light, when the Coordinating Minister of Maritime Affairs and Investment Luhut Panjaitan announced on 30th April 2024, that the government plans to give dual citizenship to former Indonesian citizens living overseas. Flexibility over dual citizenship requires further study of national security and citizens' loyalty to Indonesia. Adopting India's OCI⁵ model for Indonesia's citizenship policies could provide ample opportunities for this country's citizens with foreign status to continue enjoying and accessing their rights in Indonesia, except in the political field. This measure subsequently would be a step forward to adapting citizenship regulations to globalization while still paying attention to the nationalism concern.⁶

² Sebastian Strangio, "Indonesia Mulling Dual Citizenship In a Bid to Reverse Brain Drain," THE DIPLOMAT, 2024, <https://thediplomat.com/2024/05/indonesia-mulling-dual-citizenship-in-a-bid-to-reverse-brain-drain/#:~:text=Indonesia currently does not recognize,to register their preferred citizenship.>

³ Reuters, "Indonesia May Offer Dual Citizenship to Attract Overseas Workers, Minister Says," The Jakarta Post, 2024, <https://www.thejakartapost.com/indonesia/2024/04/30/indonesia-may-offer-dual-citizenship-to-attract-overseas-workers-minister-says.html>.

⁴ Ina Parlina and Fadli, "Dual Citizenship Brings Problems in Society," The Jakarta Post, 2016, <https://www.thejakartapost.com/news/2016/08/18/dual-citizenship-brings-problems-in-society.html>.

⁵ Faqs on OCI, "A Multiple Entry, Multi-Purpose Life-Long Visa for Visiting India. Exemption from Registration with Local Police Authority for Any Length of Stay in India," Consulate General of India San Francisco, California, 2024, <https://www.cgisf.gov.in/page/faq-s-on-oci/>.

⁶ Reyka Widia Nugraha⁴ Antikowati¹, Muhammad Bahrul Ulum^{2*}, Iwan Rachmad Soetijono³, "Globalisation and Indonesia's Demand for Dual Citizenship: Problems and Alternatives," *LEGALITY: JURNAL ILMIAH HUKUM* 31, no. 1 (2023): 42–58, <https://ejournal.umm.ac.id/index.php/legality/article/view/24683/12189>.

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