



Is It Possible for Children with Dual Citizenship to Get Inheritance Rights in Indonesia?

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Abstract: This study aims to determine and analyze how the legal settlement process in Indonesia is related to the inheritance rights of children with dual nationality. Researchers use normative juridical research. The analysis technique used is descriptive analysis, namely by analyzing by describing the regulations related to the position of inheritance rights of children with dual nationality. The results of this study are that Indonesia does not yet have special rules regarding the Inheritance Rights of Children with Dual Nationality, especially in International Civil Law which explains that the regulation of inheritance law follows the national law of the heir. Therefore, couples who enter into a mixed marriage must pay more attention to what impacts will be faced in the future if this event occurs because Law Number 12 of 2006 concerning Citizenship also only regulates the status of children from mixed marriages, namely children will be given the privilege of having limited dual citizenship and then when they are 18 years old the child is free to choose whether to follow the citizenship of the father or mother, regarding other rights the law in Indonesia has not regulated clearly.

Keywords: Inheritance Rights; Children with Dual Citizenship; Mixed Marriage.

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1. Introduction

Indonesia is the highest agreement of the state's formers, even though it has experienced a constitutional test when the 1945 Constitution was amended into the Constitution of the United Republic of Indonesia in 1949, even so the recognition of the regions under the auspices of the State of Indonesia is still

recognized.¹ The constitution as the highest law regulates the administration of the state based on democratic principles, and one of the functions of the constitution is to protect human rights guaranteed in the constitution so that they become the constitutional rights of citizens.² Everyone else, including the government, must heed it, making laws on the basis of natural rights itself.³ As said by Prof. Fenty Puluhawa also wrote in his writing that the Government through the law has provided a starting point for justice, which is carried out for the sake of justice based on Belief in the One and Only God.⁴ Quoting as said by Suwitno Yutye Imran that justice serves as a guideline to distinguish between just and unfair actions, elements of the aspect of justice can be contained in the substance.⁵

Inheritance law (*erfrecht*) is a set of norms/rules governing the transfer or transfer of rights and obligations (wealth) from a deceased person (heir) to a living person (heir) who is entitled to receive it. Or in other words, the law of inheritance, namely the rules governing the transfer of the assets of a deceased person to one or several other people.⁶ Article 830 of the Civil Code regulates inheritance upon death. Furthermore, article 832 of the Civil Code explains that those who are entitled to become heirs are blood relatives, both legal according to the law and those outside of marriage, and the husband or wife who has lived the longest. According to the Civil Code, inheritance law is a set of rules governing the wealth of the deceased, namely the transfer of assets left behind to heirs and to people who are related by kinship.⁷ Problems regarding inheritance like this do not only often occur in marriages between Indonesian citizens, but problems regarding inheritance also become difficult for Indonesian citizens who marry foreign nationals. In Indonesia in Law no. 5 of 1960 concerning Basic Agrarian Regulations Article 21 paragraph 1 states that:

"Only Indonesian Citizens can have Property Rights."

Then in the same article paragraph 3 says that:

¹ Novendri M Nggilu, "Tinjauan Yuridis Pengaturan Sanksi Pidana Dalam Peraturan Daerah Provinsi Gorontalo," *LamLaj* 5, no. 2 (September 2020): 110.

² Ahmad and Novendri M. Nggilu, "Denyut Nadi Amandemen Kelima UUD 1945 Melalui Pelibatan Mahkamah Konstitusi Sebagai Prinsip the Guardian of the Constitution," *Jurnal Konstitusi* 16, no. 4 (2020): 785, <https://doi.org/10.31078/jk1646>.

³ Dolot Alhasni, "Determinasi Perlindungan Hukum Pemegang Hak Atas Neighboring Right " Determination of The Legal Protection of Right-Holders To," *Jambura Law Review* 2, no. 01 (2020): 65-82.

⁴ Fenty Puluhawa dan Lusiana M. Tijouw, "Penerapan Asas Keadilan, Kepastian Hukum Dan Kemanfaatan Dalam Putusan Hakim Tindak Pidana Korupsi," *Gorontalo Law Review* 3, no. 2 (2020): 173.

⁵ Suwitno Yutye Imran, "The Urgency of Regulation of the Ultra Qui Judicat Principle in Criminal Judgments," 2021.

⁶ Darwis and Rampay, "Hak Waris Anak Dalam Perkawinan Campuran Berdasarkan Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan," *Jurnal Morality* 2, no. 2 (2015).

⁷ Taufika Hidayati and Yusuf Hanafi Pasaribu, "Pewarisan Hak Atas Tanah Dalam Perkawinan Antar Negara," *ADLIYA: Jurnal Hukum Dan Kemanusiaan* 15, no. 2 (2021): 31-46, <https://doi.org/10.15575/adliya.v15i2.13494>.

"Foreigners who after the enactment of this law acquire property rights due to inheritance without a will or mix of assets due to marriage, as well as Indonesian citizens who have property rights and after the enactment of this law lose their citizenship are obliged to relinquish these rights within one year of obtaining them. that right or the loss of that nationality. If after the said period has passed, the ownership rights are not relinquished, then these rights are null and void because the law and the land falls on the State, provided that the rights of other parties burdening them continue."

In other words, this law emphasizes that foreign nationals who acquire property rights in Indonesia, even if they are hereditary assets, must relinquish these rights because only Indonesian citizens may own property rights in Indonesia. This then becomes a problem for children with dual citizenship status. If one day the father or mother who is an Indonesian citizen dies and leaves an inheritance in the form of land in Indonesia, on the other hand, the child as the heir does not have citizenship because he is not yet 18 years old, then the question will arise whether the child with dual citizenship can obtain right to inherit the land? while we know clearly that it is contrary to Article 852 KHUPer.

Law Number 12 of 2006 Concerning Citizenship has indeed given dual citizenship status to children from mixed marriages, but there are still many regulations in Indonesia that limit the rights of a child who has dual citizenship, especially the right of a child to inheritance. legacy of his parents, One of them is Article 21 paragraph 1 of Law Number 5 of 1960 concerning Basic Agrarian Regulations which states that only Indonesian citizens can have property rights.

Based on the background of the problem, the formulation of the problem in this paper is how to regulate the acquisition of inheritance rights for children with dual nationality in Indonesia in the perspective of private international law. Dual Citizenship in Indonesia in the Perspective of Private International Law.

2. Method

The research method used by the author is the normative juridical method where researchers will conduct discussions related to existing problems by looking at the provisions of laws and regulations relating to the position of inheritance rights of children with dual nationality. Normative research is legal research that places the law as a system of norms. The system of norms in question is about principles, norms, rules, from laws and regulations, court decisions, agreements and doctrines (teachings). In this research there is an approach used by the author of the statute approach and case approach. ⁸

⁸ Muhaimin, *Metode Penelitian Hukum* (Mataram: Mataram University, 2020).

3. Arrangements for the Acquisition of Inheritance Rights for Children with Dual Citizenship in Indonesia in the Perspective of International Private Law

A. Preliminary Issues of Children with Dual Citizenship

In International Civil Law, the determination of the status of a child with dual citizenship and the relationship between the child and the parents needs to be seen before the marriage of the parents as a preliminary matter, whether the marriage of the parents is valid so that the child has a legal relationship with the father, or the marriage is not valid, so the child is considered as a child. out of wedlock who only has a legal relationship with his mother. Children born from illegitimate marriages between Indonesian citizens and foreign nationals are said to be children with dual citizenship only if their father recognizes them, that is why it is important to know in advance the problems of both parents.⁹ Law Number 1 of 1974 concerning Marriage explains that marriage between two people of different nationalities in the territory of Indonesia can be carried out if both partners have fulfilled the conditions that apply to each party as evidenced by a statement letter that both of them have fulfilled the requirements. Applicable. If all the conditions have been fulfilled then the marriage can be said to be valid.

Furthermore, if a couple of Indonesian citizens and foreign nationals enter into a marriage outside the territory of Indonesia, then based on article 56 of Law Number 1 of 1974 concerning Marriage it explains that: "A marriage held outside Indonesia is between two Indonesian citizens or an Indonesian citizen with Foreign citizens are legal if they are carried out according to the law in force in the country where the marriage took place and for Indonesian citizens, it does not violate the provisions of this law.¹⁰ And if the couple has returned to Indonesia, both are given 1 year to register their marriage at the local Civil Registry Office, otherwise the marriage is said to be invalid according to Indonesian law.

The legality of the marriage of a husband and wife with different nationalities will be a preliminary consideration for their children so that the child will obtain special status as a child with dual citizenship. Children born out of wedlock must first obtain recognition from their father before they turn 18 years old, only then will the child receive special privileges, namely dual citizenship status.

A preliminary issue is a legal issue/problem that must be resolved/determined before a final decision on an HPI case faced by a

⁹ Yulia, *Hukum Perdata Internasional* (Aceh: Unimal Press, 2016).

¹⁰ "Undang Undang Nomor 1 Tahun 1974 Tentang Perkawinan" (n.d.).

judge can be made. Cheshire believes that:¹¹ It may be that in a case involving private international law, there is not only a main question before the court but also some further subsidiary issues. After the law to govern the main question has been ascertained by the application of the relevant rule for the choice of law, a further choice of law rule may be required to answer the subsidiary question affecting the main issue". (It is possible that in cases involving private international law, there may be not only the main question before the court but also some further additional issues. Once the law governing the main question has been ascertained by the application of the relevant rules for the choice of law, further choice of rule of law may be needed to answer additional questions that affect the main problem).

In HPI theory there are 3 views on how to solve preliminary problems, namely:

1. absorption

In principle, through the absorption *lex causae* sought and determined through the application of HPI principles to regulate the main issue, it will also be used to answer preliminary questions. So, after the *lex causae* for the main problem is determined through the application of the *lex fori* HPI rule, the preliminary problem will be subject to the same *lex causae*, this method is sometimes called a solution method based on *lex causae*.

2. Repartition

Basically, through repartition, the judge must determine the *lex causae* for preliminary matters specifically and does not need to determine the *lex causae* of the main problem first. By ignoring which law will be the *lex causae* to answer the main problem, the judge will qualify based on the *lex fori* and use the relevant HPI principles specifically to determine the *lex causae* of the preliminary problem (*zelfstandige aanknopng*), this method is called a *lex fori* settlement.

3. Case By Case Approach

There is a view that argues that the determination of *lex causae* for preliminary issues or incidental questions must be carried out with a casuistic approach, taking into account the nature and nature of the case or the policies and interests of the forum adjudicating the case. According to Cheshire, most of the judge's decisions in incidental question cases are resolved through absorption. However, Cheshire tends to use the third approach (case-by-case approach) by paying attention to the class of the type of case being faced. Preliminary issues may appear more than once in a given series of events. In matters of inheritance, it is necessary to determine beforehand whether the position of the heir or the position of the child is valid or not (preliminary problem of the first stage). But to

¹¹Op. Cit.Yulia, *Hukum Perdata Internasional*.

determine this, it must first be determined whether the marriage of the child's parents is valid (preliminary question stage two). If one of the child's parents has been married before, then it is also necessary to determine whether the divorce from the previous marriage is valid (preliminary question stage three).

It is clear that the issue of inheritance is quite complicated, especially if there are foreign elements in it. In order to obtain an inheritance for a child with dual citizenship, it is necessary to pay attention in advance to the origins of the marriage of the parents, whether the marriage is valid according to the regulations applicable in the implementation of marriages from different countries. If the marriage of both parents is valid then the child is clearly the legal heir and has the right to inherit from his parents. But if the marriage of both parents is invalid then according to law the child is also invalid or does not have a family relationship with his father and only has a blood relationship with his mother, unless he gets recognition from the father.

If the child's preliminary issues have been resolved and his position as heir has been legally recognized, the next step is to determine the inheritance rights for the child with dual citizenship.

B. Arrangement of Inheritance Rights According to National Civil Law

Arrangements regarding inheritance law are regulated in the second book of the Civil Code (KUHPperdata), namely related to property law. Basically, everyone can become an heir and has the right to receive an equal amount of inheritance, regardless of nationality or gender. The law provides for restrictions on the freedom of the heir for the benefit of the heirs who are very close to him, which aims to protect their interests. This limitation in civil inheritance is called *Legitieme Portie*. *Legitieme Portie* is a certain part or an absolute part for the heirs in a straight line which cannot be set aside by the heir. Because this absolute part is closely related to the grant given by the testator, namely the limitation on the heir's freedom to make a will,¹²

In Inheritance Law according to *Burgerlijk Wetboek* there are 2 ways to obtain inheritance, namely; (1) *Ab Intestato* inheritance, namely inheritance according to the law and, (2) *Testamentary* inheritance, namely inheritance because it is designated in a will.¹³

Inheritance under the Law is a form of inheritance in which blood relations are the main determining factor in the heir relationship between

¹² Biondi Firmansyah, *Hukum Waris Dalam Hukum Antar Tata Hukum Internasional Dan Hukum Antar Tata Hukum Eksternal* (Universitas Indonesia, 2012).

¹³Op. Cit, Yulia, *Hukum Perdata Internasional..*

the heir and the heir. Inheritance family members are divided into 4 groups. If family members who are included in the first group are still alive, then jointly they have the right to inherit the entire inheritance and other family members do not get anything. If there are no family members of the first group then members of the second group appear as heirs. The same goes for other family members.¹⁴

Furthermore, regarding inheritance based on a will. According to Article 874 BW, the inheritance of a deceased person belongs to the heir according to the Law, as long as the heir does not specify another heir in a will. It is possible that the estate is inherited based on a will made by the testator before he dies.¹⁵

Heirs with a will can deviate from the provisions contained in the law. However, heirs in a straight line either up or down cannot be excluded. According to the law, they are guaranteed by the Legitieme Portie (absolute part). This testamentary method can also be used as an option in solving inheritance problems for children with dual citizenship so that the child can get full rights to his inheritance, especially for children who are not yet 18 years old and have not yet chosen their nationality. Parents of children can use a testamentary system made directly by the testator. All of his wealth will be handed over to the child when the child is 18 years old and has chosen Indonesian citizenship because only Indonesian citizens can have ownership in Indonesian territory. In the will it can be explained that the inheritance of the heir is temporarily handed over to the closest family or guardian of the child who is also an Indonesian citizen and will be handed back to the heir, namely the child of the heir if he is deemed to have legally owned the property.¹⁶

The Complication of Islamic Law also regulates inheritance. Article 171 letter c explains that: Heirs are people who at the time of death have blood relations or marital relations with the heir, are Muslim and are not hindered by law from becoming heirs. In Article 171 letter c this is explained in the sentence "a person who dies at the time of death", this sentence clearly provides an understanding that death must occur to the heir because inheritance can only occur if there is death, meaning that an heir will only get his inheritance if the heir have died.¹⁷

According to Islamic inheritance law, the size of each relative's share of inheritance is based on their degree of kinship. Therefore, the more

¹⁴ Yulia, *Buku Ajar Hukum Perdata* (Aceh: Biena Edukasi, 2015).

¹⁵ Firmansyah, *Hukum Waris Dalam Hukum Antar Tata Hukum Internasional Dan Hukum Antar Tata Hukum Eksternal*.

¹⁶ Ridna Iclasia Irawan, *Pendaftaran Peralihan Hak Milik Atas Tanah Karena Pewarisan Untuk Orang Asing Di Sumatera Barat* (Universitas Andalas, 2019).

¹⁷ Naskur, *Ahli Waris Dalam Komplekasi Hukum Islam*, (Journal IAIN Manado: 2016)

powerful relatives get a bigger share. In fact, not all relatives will receive the inheritance, because the rights owned by some relatives will arise if there are certain relatives. This has been clearly regulated in the Koran and as-Sunnah. In Islamic inheritance law, before the inheritance is distributed, the inheritance is issued first which has been used for maintenance/burial expenses, paying off the debts of the heir, and carrying out the will made by the heir.¹⁸

C. Inheritance Law Arrangements According to International Civil Law

According to International Private Law, in this case, Indonesian National Civil Code, to determine which law applies, of course, requires clear arrangements. The general principles of international private law which are the principles of General International Private Law are:¹⁹

- 1) Article 16 Algemeen Bepalingen van Wetgeving. (Statuta Personalia) This article regulates the status and authority of a person's personal law regulated by the national law of each person. In this case the national law of the citizen concerned (the principle of *lex patriae*) applies.
- 2) Article 17 Algemeen Bepalingen van Wetgeving. (Realia Statutes) This article regulates fixed objects, the applicable principle, namely (*lex resitae*) applies the law of the country where the object moves.
- 3) Article 18 Algemeen Bepalingen van Wetgeving. (Lex Loci Actus) This article regulates regarding the law that should be applied in determining the status and legitimacy of legal acts or relations (which contain foreign elements). *Loci Actum*).

The process of inheritance in International Private Law can occur by itself, without the legal actions of the heir. Namely through a legal act carried out by the heir while still alive, namely by making a testament or will. In Article 830 of the Civil Code, it also states the same thing that inheritance only occurs when there is death. Every human being has the right to inherit, as for the elements of inheritance, namely; there is an heir, there is an heir, and there is an inheritance. Regarding heirs, those who can be said to be heirs are people who are entitled to receive the heir's inheritance, either because of a family relationship or because of a will. In the case of inheritance in the form of land, A foreign national hereinafter referred to as a foreigner, can inherit land rights in Indonesia due to the first two reasons, foreign nationals born in mixed marriages. And both foreign citizens as a result of naturalization, naturalization can be understood as a change in the citizenship status of Indonesian residents to foreigners and vice versa.

¹⁸ Nur Mohamad Kasim, "*Studi Komparatif Waris Menurut Hukum Islam dan Hukum Adat*". Gorontalo: tptt (2009).

¹⁹Ridna Iclasia Irawan, Op.Cit

This is in accordance with the provisions of Article 852 of the Indonesian Civil Code, namely: "Children or all of their offspring, even if they are born from other marriages, inherit from both parents, grandparents, or all their next blood relatives. in a straight line upwards, with no distinction between male or female and no distinction based on first birth." From the above article it can be concluded that there is a difference in nationality between the heir and the heir, this does not cause death or loss or prevent someone from getting the right to inherit someone as the heir of the heir.²⁰

D. Inheritance Objects in International Civil Law and National Civil Law

In International Civil Law, inheritance is entirely governed by the law of the person who left the property (heir), both regarding movable and immovable objects, regarding parts of inheritance (erfportie), regarding legitimacy, splitting and distribution and so on. There are several principles of Private International Law to determine the applicable law in matters of inheritance, including:²¹

- a) It is generally accepted that in the event that objects that are objects of inheritance are permanent objects, the inheritance process for such objects must be regulated based on the law of the place where the objects are located, based on the principle of *lex rei sitae* or *lex site*;
- b) If the objects that are the objects of inheritance are movable objects, then the process of inheriting these objects can be subject to the rules of inheritance law from the place where the heir becomes a citizen (*lex patriae*) or permanent resident (*lex domicilii*) at the time he die;
- c) The law of the place where the heir is domiciled or becomes a citizen at the time the testament is made.
- d) The law from where the heir is domiciled or becomes a citizen when he dies.

This means that land has its own status in International Civil Law. The law on this land remains unchanged if the land is held by people who are generally subject to other laws. This is also in line with Indonesian national law, the Civil Code, which relates to the law of property, known as the principle (*droit de suite*), namely always following the object (*droit de suite*), that the right to the object follows the object, in the hands of whomever the object is.²²

²⁰ Amandeo Tito Sebastian, "Hak Ahli Waris Warga Negara Asing Atas Obyek Waris Berupa Saham Perseroan Terbatas Penanaman Modal Dalam Negeri," *Jurnal Hukum* 10, no. 2 (2018): 21–28.

²¹ Irawan, *Pendaftaran Peralihan Hak Milik Atas Tanah Karena Pewarisan Untuk Orang Asing Di Sumatera Barat*.

²² Irawan.

The land is an inherited property that is classified as immovable property. The process of ownership or transfer of land rights acquired by inheritance in the community often creates disputes. With regard to land as an object of inheritance, in general land rights are differentiated on the type of utilization and on the legal subject who will become the owner. It can be classified as follows:²³

- 1) Freehold rights, which are the fullest and most powerful land rights, are hereditary in nature, and can only be granted to single Indonesian citizens, with the exception of certain legal entities, whose use can be adjusted according to the allotment of the land in the area where the land is located;
- 2) Cultivation Right, which is the right to cultivate land directly controlled by the state, for a certain period of time, which can be granted either to a Single Indonesian Citizen or an Indonesian Legal Entity (which is established according to Indonesian law and domiciled in Indonesia);
- 3) Hak Guna Bangunan, which is the right to construct and own a building on land that is not their own, for a certain period of time, which can be owned by either a single Indonesian citizen or an Indonesian Legal Entity (which is established according to Indonesian law and domiciled in Indonesia);
- 4) Right to Use, which is the right to use land or collect yields and land belonging to other people on land directly controlled by the state, which is not a lease or cultivation of land, which can be given for a certain period of time to a single Indonesian Citizen, Indonesian Legal Entity (those established under Indonesian law and domiciled in Indonesia), foreign nationals domiciled in Indonesia, and foreign legal entities that have representatives in Indonesia.

There are no specific regulations that regulate the overall rights of children with dual citizenship, especially in terms of inheritance which will certainly be passed. Children who are not yet 18 years old and do not have citizenship are referred to as foreigners and may not have ownership in the territory of Indonesia, this has been clearly stated in the Basic Agrarian Law. If a child with dual citizenship inherits land rights in the form of property rights, then the child must wait until he is 18 years old and he must become an Indonesian citizen then he can realize his rights in accordance with applicable regulations. This is because property rights are the most powerful rights and cannot be erased in a

²³ Irawan.

short period of time. Regarding the use of buildings due to a limited period of time,²⁴

There are several types of land rights that are directly granted by the state to individuals or legal entities that need land. The lands referred to are ownership rights, usufructuary rights, building use rights, and usufructuary rights. If in the portion of the inheritance of a child with foreign citizenship, there is land or a building, then the ownership rights (rights of ownership) on the inherited land/building are annulled. This is referred to in Article 21 paragraph (3) of the Basic Agrarian Law Number 5 of 1960 which states:

"Foreigners who after the enactment of this law acquire ownership rights due to inheritance without a will or mixing of assets due to marriage, as well as Indonesian citizens who have property rights and after the enactment of this law lose their citizenship are obliged to relinquish these rights within a period of 1 (one) year since the acquisition of said right or loss of citizenship. If after that period of time, the ownership rights are released, then these rights are nullified by law and the land belongs to the state, provided that the rights of other parties that burden them continue."

From this article, it can be concluded that what is lost is only the right of ownership, not the right of inheritance so that the child can still obtain his rights as an heir. In this case, the child releases his rights to other heirs or other people who are Indonesian citizens and get compensation in the form of movable property. Cultivation rights (HGU) and building use rights (HGB) can be granted to foreign nationals through a foreign investment (PMA) mechanism.²⁵

E. Transfer/Transfer of Land Inheritance Rights

The process of transferring land rights from heirs to their heirs who are foreign citizens has restrictions regarding the transfer of land rights, namely limitations regarding the ability to have rights in this case, namely citizenship. According to Article 9 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations, it is stated that only Indonesian Citizens (WNI) can have full relations with the earth, water, and space. This is further strengthened in Article 21 paragraph 1 according to the UUPA only Indonesian citizens can have property rights. Whereas foreigners domiciled in Indonesia are only given the

²⁴ Utami, "Implikasi Yuridis Perkawinan Campuran Terhadap Pewarisan Tanah Bagi Anak," *Sarana Komunikasi Dosen Dan Mahasiswa* 5, no. 15 (2021).

²⁵Ibid.

Right to Use as stated in Article 42 of Law Number 5 of 1960 concerning Basic Agrarian Regulations.²⁶

When viewed from the perspective of inheritance in Indonesian civil law, every heir has the right to what has been inherited from him regardless of his citizenship status. This is in accordance with the provisions of Article 852 of the Indonesian Civil Code, namely "Children or all of their descendants, even if they are born from other marriages, inherit from both parents, grandparents, or all of their blood relatives hereafter in a straight line upwards, with no difference between men or women and no difference based on first birth. transfer of land rights due to inheritance, then for the registration of the transfer of rights due to inheritance regarding land parcels of rights that have been registered, it must be submitted by those who receive the rights to the land or ownership rights to the plots concerned as an inheritance to the Land Office, as stated in Article 42 of Government Regulation Number 24 of 1997. Accompanied with the certificate of the rights concerned, the death certificate of the person whose name is recorded as the holder of the rights and the certificate of proof as an heir, in which the certificate of proof as an heir is proven by a deed drawn up by and before the sub-district head or a notary or the Probate Court, based on population group. Whereas the registration of transfer of rights due to inheritance regarding land parcels of rights that have not been registered, is then carried out by way of land registration for the first time sporadically. On the other hand, this shows that Government Regulation Number 24 of 1997 concerning Land Registration requires registration of transfer of rights due to inheritance in order to provide legal protection to heirs and for the sake of order in the administration of land registration so that the data stored and presented is always up to date.²⁷

There are no specific regulations that regulate the overall rights of children with dual citizenship, especially in terms of inheritance which will certainly be passed. Children who are not yet 18 years old and do not have citizenship are referred to as foreigners and may not have ownership in Indonesian territory, this has been clearly stated in the Basic Agrarian Law. If a child with dual citizenship inherits land rights in the form of property rights, then the child must wait until he is 18 years old and he must become an Indonesian citizen before he can realize his rights according to applicable regulations. This is because property rights are the most powerful rights and cannot be erased in a short period of time. Regarding the use of buildings due to a limited period of time,

²⁶ Irma Devita Purnamasari, *Kiat-Kiat Cerdas, Mudah Dan Bijak Memahami Masalah Hukum Waris* (Bandung, 2014).

²⁷Op. Cit, Irawan.

There are several types of land rights that are directly granted by the state to individuals or legal entities that need land. The lands referred to are ownership rights, usufructuary rights, building use rights, and usufructuary rights. If in the portion of the inheritance of a child with foreign citizenship, there is land or a building, then the ownership rights (rights of ownership) on the inherited land/building are annulled. This is referred to in Article 21 paragraph (3) of the Basic Agrarian Law Number 5 of 1960 which states:

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From this article, it can be concluded that what is lost is only the right of ownership, not the right of inheritance so that the child can still obtain his rights as an heir. In this case, the child releases his rights to other heirs or other people who are Indonesian citizens and get compensation in the form of movable property. Cultivation rights (HGU) and building use rights (HGB) can be granted to foreign nationals through a foreign investment (PMA) mechanism. Even so, the right holder through this mechanism is not based on the ownership of an individual legal subject but through a right holder mechanism in the form of a legal entity. Therefore the application for usufructuary rights and building usufructuary rights is carried out through an application accompanied by establishing a foreign investment company (PMA) which has received approval from the Investment Coordinating Board (BKPM).

With regard to usufructuary rights for individual foreign nationals who receive land and buildings on them, this usufructuary institution provides ownership opportunities for a certain period of time. Use rights for foreign nationals are based on Government Regulation Number 41 of 1996 concerning Ownership of Residential or Residential Houses by Foreigners who are domiciled in Indonesia. In Article 1 paragraph (1) of this Government Regulation, it is stated that foreigners can own a house for residence or occupancy with certain land rights. The land rights in question are usufructuary rights with certain agreements. The term of ownership of the usufructuary rights for foreign nationals is a maximum of 25 (twenty-five) years, provided that the foreign nationals are still domiciled in Indonesia. So, if an inheritance is in the form of freehold

land, the right to obtain the rights is not only through the replacement of money but also through the reduction of rights to usufructuary rights. However, in practice, this method is rarely used.

Children born as a result of mixed marriages of different nationalities are born from legal marriages so that the position of child is considered a legitimate child in accordance with Article 42 of the Marriage Law which states that a legitimate child is a child born as a result of a legal marriage. So that children born as a result of mixed marriages even though they are foreign citizens have their inheritance rights still in accordance with the provisions of a legitimate child as stated in Article 852 of the Civil Code. Children born as a result of mixed marriages of different nationalities are born from legal marriages so that the position child is considered a legitimate child in accordance with Article 42 of the Marriage Law which states that a legitimate child is a child born as a result of a legal marriage. So that children born as a result of mixed marriages even though they are foreign citizens have their inheritance rights still in accordance with the provisions of a legitimate child as stated in Article 852 of the Civil Code. Children born as a result of mixed marriages of different nationalities are born from legal marriages so that the position child is considered a legitimate child in accordance with Article 42 of the Marriage Law which states that a legitimate child is a child born as a result of a legal marriage. So that children born as a result of mixed marriages even though they are foreign citizens have their inheritance rights still in accordance with the provisions of a legitimate child as stated in Article 852 of the Civil Code.

Provisions on inheritance rights for a legitimate child even though they have a different nationality from their parents still have a civil relationship with these parents. So that the child still has inheritance rights from both parents. So, as explained, a child born to a father/mother who is an Indonesian citizen and a father/mother who is a foreign citizen has dual citizenship and after 18 years of age the child chooses the citizenship of the father/mother who is a foreign citizen, so the child still has a civil relationship with father/mother who is an Indonesian citizen in accordance with Indonesian civil law. Therefore, children with foreign citizenship status still have inheritance rights from their fathers/mothers who are Indonesian citizens in accordance with the provisions of Indonesian civil law. Parents or couples who will carry out marriages from different countries are expected to be able to think more about the future impact on their families, especially for children's rights. Parents can enter into a prenuptial agreement before actually carrying out mixed marriages and discuss clearly what to do in the future in the event of a divorce or death. In this way matters such as obtaining inheritance or other matters related to children can be resolved properly. Parents can enter into a prenuptial agreement before actually carrying

out mixed marriages and discuss clearly what to do in the future in the event of a divorce or death. In this way matters such as obtaining inheritance or other matters related to children can be resolved properly. Parents can enter into a prenuptial agreement before actually carrying out mixed marriages and discuss clearly what to do in the future in the event of a divorce or death. In this way matters such as obtaining inheritance or other matters related to children can be resolved properly.

4. Conclusion

Based on the results of the research and discussion that has been done previously, the conclusions in this study are: Indonesia does not yet have specific rules regarding the Inheritance Rights of Children with Dual Citizenship, especially in International Private Law explaining that the arrangements regarding inheritance law follow the national law of the heir. Therefore, couples who enter into mixed marriages must pay more attention to what impacts will be faced in the future if this event occurs because Law Number 12 of 2006 concerning Citizenship also only regulates the status of children from mixed marriages, namely children will be given the privilege of having limited dual citizenship and then when he is 18 years old the child is free to choose whether he wants to follow the nationality of his father or mother, regarding other rights the law in Indonesia has not clearly regulated.

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