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International Civil Law Aspects of International Marriage: A Comparative Perspective of Indonesian and Japanese Law

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Abstract

International marriage is a marriage between two parties with different nationalities. As every country has its own civil law that regulates marriage, international marriage involves aspects of international civil law. This study raises two key issues: first, the determination of applicable laws related the material and formal conditions of marriage; and second, the citizenship of spouses as well as children in an international marriage. The discussion adopts a comparative perspective, focusing on Indonesian and Japanese legal systems. This study employs normative legal research, utilizing a statutory and comparative approach, analyzing primary, secondary, and tertiary legal materials through qualitative methods and inductive conclusions. Results of the study indicate conceptual similarities between Indonesian and Japanese law in the area under study. First, material conditions of international/mixed marriage are determined based on the principle of lex patriae, while formal conditions are based on the lex loci celebration. principle Second, international marriage does not cause the spouses to automatically lose their own or obtain the citizenship of their spouse but can only obtain the citizenship of their spouse through a naturalization application. Children born in international marriages obtain citizenship based on the principle of ius sanguinis, and if this leads to dual citizenship, within a certain period of time the child must choose one of the nationalities. The existing literature concerning international marriage indicates that there is a gap of research with comparative approach between Indonesian and Japanese law. Thus, in addition to enriching the study of law related to international marriage, the results of this study can be used as educational materials for the Indonesian diaspora in Japan and vice versa.

1. Introduction

Marriage is a legal act which has the legal consequences of creating rights and obligations for the parties who enter into the bond of marriage. The marriage bond can be entered into by parties of different nationalities, known as mixed marriage. Thus, the distinguishing factor between mixed marriage and marriage between spouses of the same nationality is the difference in the parties' nationality. In Indonesia, mixed marriage is defined in Article 57 of Law of the Republic of Indonesia No. 1 of 1974 concerning Marriage ["Law No.1/1974"], namely "marriage between two persons in Indonesia who are subject to different laws due to difference in nationality whereby one of the parties is an Indonesian citizen".

The term used to refer to marriage of couples with different nationalities varies from country to country. In Indonesia, it is referred to under the term 'mixed marriage'. Singapore uses the terms 'international marriage' and 'transnational marriage', while Taiwan, South Korea and Hong Kong use the term 'cross border marriage'.[1] At the same time, Japan uses the term 'international marriage' or '*kokusei kekkon*'[2]. In line with the understanding of Article 57 of Law No.1/1974, the term 'international marriage' is used in this research.

From the perspective of international civil law, at least two legal issues arise in the context of international marriage. First, in international marriage there is a linkage between two legal systems due to the difference in nationality which raises an international civil law issue, namely determination of the law applicable to the international marriage concerned. This is of utmost importance, as the applicable law sets forth conditions for the validity of marriage. An invalid marriage will be considered to have never existed or to be void, meaning that a married couple whose marriage is annulled is considered to have never been in the position of husband and wife.

[1] Wei-Jun Jean Yeung Shuya Lu, "The Rise in Cross-national Marriages and the Emergent Inequalities in East and Southeast Asia," *Sociology Compass* 18, no. 5 (2024): 2, https://doi.org/10.1111/soc4.13219.
[2] Geraldine Carney, *International Parental Child Abduction and the Law: The Case of Japan*, 1st ed. (New York: Routledge, 2024).

Article 56 (1) of Law No.1/1974 sets out two conditions for the validity of international marriage. First, the marriage must be conducted in accordance with the applicable law in the country where it is conducted; second, in view of Indonesian citizens, the marriage must not violate the provisions of the Marriage Law. In this provision, the law applicable to material conditions is reflected in the phrase "[it] does not violate the provisions of this law"[3]. The regulation is related to the principle of international civil law, namely *lex patriae* which means that a person's personal status is associated with his/her national law, hence Indonesian citizens, wherever they may be, are subject to Indonesian law, as provided for in Article 16 of the *Algemene Bepalingan van wetgeving* ["*AB*"].

Meanwhile, the formal requirement is evident in the phrase "[it shall be] carried out according to the law applicable in the country in which the marriage is conducted"[4]. This provision is in line with the principle of international civil law, namely *lex loci celebration* which means that the validity of the marriage must be determined based on the legal rules at the place where the marriage is conducted[5], this is set out in Article 18 of the *AB*. If the *lex loci celebration* is outside the jurisdiction of Indonesia, according to Article 56 (2) of Law No.1/1974, within one year after the married couple returns to Indonesia, their marriage certificate issued overseas must be registered at the Marriage Registration Office at their place of residence. Without marriage registration, international marriages conducted overseas are not recognized as valid marriage under Indonesian law and do not have legal force. Hence it is quite possible that while a marriage is formally legal in the country where it was conducted, it may not be legally valid according to Indonesian law. Research on this matter has been conducted by Arianto, among others, by analysing the marriage case between Sharon Lee Mee Chyang, a foreign citizen, and Benyamin Simorangkir, an Indonesian citizen, who got married in Singapore, but did not register their marriage in Indonesia[6].

[3] Moh. Zeinudin, *Hukum Perkawinan Beda Agama Di Indonesia: Perkembangan Norma Dan Praktik*, 1st ed. (Jakarta: Damera Press, 2023).
[4] Zeinudin.
[5] Esti Royani, *Buku Ajar Hukum Perdata Internasional*, 1st ed. (Yogyakarta: Zahir Publishing, 2023).
[6] Totok Arianto, "Analisis Yuridis Pendaftaran Perkawinan Bagi Warga Negara Indonesia Yang Melangsungkan Perkawinan Dengan Warga Negara Asing Berdasarkan Sistem Administrasi

Second, the citizenship status of the parties and the citizenship status of their offspring are also issues that need to be considered. Citizenship status is a sign of legal relationship between an individual and the state, and it forms the legal basis for civil rights and obligations of citizens.[7] Based on Article 58 of Law No.1/1974, there are two possibilities related to the citizenship status of the parties in an international marriage.[8] A foreign citizen who marries an Indonesian citizen can attain Indonesian citizenship and vice versa or may lose the citizenship of his or her home country by choosing Indonesian citizenship and vice versa, in line with the procedure specified in the Citizenship Law. Research on this matter has been conducted by Rahman, among others, by analysing the case of Ike Farida, an Indonesian citizen, and her husband, a Japanese citizen. In this case the sale and purchase contract for an apartment entered into by the couple was unilaterally cancelled by the developer on the grounds that Ike Farida's husband is a foreign citizen while they do not have a marriage agreement. [9]

The citizenship of children born to international marriage couples also raises international civil law issues because they can have dual citizenship due to being born to parents of different nationalities. This is particularly the case when the parents come from countries that adhere to different citizenship principles, namely the principle of *ius soli* (citizenship based on place of birth) or the principle *of ius sanguinis* (citizenship based on descent).[10] In this case, Indonesia adheres to the principle *of ius sanguinis*, whereby Article 4 sub-articles c and d of Law No. 12 of 2006 concerning Citizenship

Kependudukan Di Indonesia," *Sibatik Journal* 2, no. 7 (2023): 1990, https://doi.org/10.54443/sibatik.v2i7.1067.

[7] Nunning Hallet, "Perempuan Dan Kewarganegaraan: Status Kewarganegaraan Perempuan Dalam Perkawinan Campur," in *Perempuan Dan Hukum: Menuju Hukum Yang Berperspektif Kesetaraan Dan Keadilan*, ed. Sulistiyowati Irianto, 2nd ed. (Jakarta: Yayasan Obor Indonesia, 2008), 402.

[8] Vitra Fitria Makalawo Koniyo, "Analisis Sosio Yuridis Terhadap Penetapan Asal Usul Anak Pernikahan Sirih Untuk Kepentingan Pemenuhan Hak Anak," *JURNAL LEGALITAS* 13, no. 02 (October 28, 2020): 94–102, https://doi.org/10.33756/jelta.v13i02.7683; M. Hasyim Syamhudi, "Konstruksi Sosial Pernikahan Beda Agama Dikalangan Muslim Tionghoa Di Probolinggo," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 11, no. 2 (December 31, 2011): 127, https://doi.org/10.18326/ijtihad.v11i2.127-143; Aulia Mubarak, M. Adli, and Iman Jauhari, "Implementation of Marriage Itsbat in Aceh," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 21, no. 1 (June 30, 2021): 119–34, https://doi.org/10.18326/ijtihad.v21i1.119-134.

[9] Rahmia Rachman, Erlan Ardiansyah, and Sahrul, "A Juridical Review Towards The Land Rights Ownership In Mixed Marriage," *Jambura Law Review* 3, no. 1 (2021): 8–9, https://doi.org/10.33756/jlr.v3i1.6857.

[10] Syukran Yamin Lubis and Faisal Riza, *Buku Ajar Hukum Perdata Internasional*, ed. Fausi Anzari Sibarani and Muhammad Arifin, 1st ed. (Medan: Umsu Press, 2021).

["Law No. 12/2006"] provides that a child born from a legal marriage of an Indonesian citizen father and a foreign citizen mother and vice versa, shall obtain Indonesian citizenship. Research on this issue has been carried out by Ayu and Anggraeny as well as Hermanto, among others; they analyse the case of Gloria E Mairering, of Indonesian-French descent, who was removed from the list of troops raising the Sacred Red and White Heirloom Flag at the State Palace in August 2016 due to her dual citizenship.[11]

Based on the foregoing, this research looks into international civil law issues related to international marriage in view of determining the applicable law and citizenship status, both for spouses as well as children born in international marriage. The study has been conducted by comparing the relevant areas of Indonesian and Japanese law, respectively. The Japanese law has been chosen for comparison based on two principal considerations. First, the need for knowledge about legal aspects of international marriage for the Indonesian diaspora in Japan, as stated in a legal counselling event for the Indonesian diaspora, members of the Indonesian Community House in Japan (RUMI Japan).[12] Second, the assumption that the increasing interaction between Indonesian and Japanese citizens due to the flow of Indonesian citizens to Japan and vice versa is bound to increase the chances of marital relationship occurring between Indonesian and Japanese citizens. As Lu and Yeung state, increased mobility allows for more interaction between individuals from different backgrounds, thus increasing the chances of international marriage.[13]

[11] Hanuring Ayu and Paramitha Setia Anggraeny, "Kasus Gloria E Mairering Perkara Kewarganegaraan Ganda Dalam Perkawinan Campuran," *Jurnal Ius Constituendum* 4, no. 1 (2019): 9–10, https://doi.org/10.26623/jic.v4i1.1530; Bagus Hermanto, "Quo Vadis Pengaturan Perkawinan Campuran Dalam Bingkai Pembenahan Hukum Kewarganegaraan Indonesia: Analisis Putusan Mahkamah Konstitusi Nomor 80/PUU-XIV/2016 Dan Nomor 69/PUU-XIII/2015; Putusan Nomor 279/Pdt.G/2006/PA.Jpr; Nomor 297/Pdt/2009/PT.Smg; Dan N," *Jurnal Yudisial* 17, no. 2 (2024): 177, https://doi.org/doi.org/10.29123/jy.v17i2.703.

[12] Sharda Abrianti et al., "Meningkatkan Pemahaman Tentang Aspek Hukum Perkawinan Campuran Beda Kewarganegaraan: Berdasarkan Hukum Indonesia Dan Jepang," *Jurnal Akal: Abdimas Dan Kearifan Lokal* 5, no. 2 (2024): 212, https://doi.org/10.25105/akal.v5i2.19824.

[13] Shuya Lu and Wei-Jun Jean Yeung, "The Rise in Cross-national Marriages and the Emergent Inequalities in East and Southeast Asia," *Sociology Compass* 18, no. 5 (2024): 5, https://doi.org/10.1111/soc4.13219; Agus Anwar Pahutar et al., "Perkawinan Campuran Dalam Dampak Globalisasi Pada Hukum Keluarga," *Jurnal El-Qanuniy* 10, no. 1 (2024): 54, https://doi.org/10.24952/el-qanuniy.v10i1.10979.

Increased mobilization of Indonesian citizens to Japan is illustrated by Japanese immigration data, indicating that as of December 2022 the number of Indonesian citizens residing in Japan reached 98,865 people,[14] and as of December 2023 this number increased by 278.5 percent, with Indonesian citizens constituting 1.7% of all foreigners in Japan.[15] On the other hand, the number of Japanese citizens in Indonesia as of 2024 is in the second top position after China, namely a total of 11,381 persons.[16]

The novelty this research provides is the comparative study of Indonesian vis-à-vis Japanese law in the area of international/mixed marriage. Such legal comparative approach distinguishes it from the research conducted by, among others, Yunus *et al*., which focuses on the interaction of cultural differences between Indonesian mothers and Japanese fathers in maintaining family harmony.[17]

2. Problem Statement

The following two problems are raised in this research: first, how to determine the applicable law in marriage between Indonesian and Japanese citizens; second, what is the citizenship status of spouses and children in international marriages between Indonesian and Japanese citizens?

3. Methods

This study is normative legal research, with statutory approach,[18] because the researchers intend to examine the legal norms that apply in international marriage

[14] Luki Aulia, "Satu Hati Dalam 65 Tahun Hubungan Diplomatik Indonesia-Jepang," Kompas.id, 2023, https://www.kompas.id/baca/internasional/2023/10/03/satu-hati-dalam-65-tahun-hubungan-diplomatik-indonesia-jepang.
[15] Dewi Agustina, "WNI Di Jepang Terus Bertambah, Per 31 Desember 2023 Jumlahnya 401.876 Orang," Tribunnews.com, 2024, https://www.tribunnews.com/internasional/2024/03/23/wni-di-jepang-terus-bertambah-per-31-desember-2023-jumlahnya-401876-orang?page=all.
[16] Hapsari Kusumastuti, "Data Tenaga Kerja Asing Di Indonesia 2024: Inilah 10 Negara Yang Warganya Bekerja Di Indonesia," Data.goodstats.id, 2024, https://data.goodstats.id/statistic/data-tenaga-kerja-asing-di-indonesia-2024-inilah-10-negara-yang-warganya-bekerja-di-indonesia-EkoiN.
[17] Ulani Yunus et al., "Keeping Harmony of Indonesian-Japanese Intercultural Marriage Interactions," *International Journal of Organization Business Excellence* 1, no. 1 (2021): 41, https://doi.org/10.21512/ijobex.v1i1.7159.
[18] I Made Budi Arsika, I Nyoman Suyatna, and Sagung Putri M.E Purwani, "Towards a Recognised Right to a Shared Culture at the Regional Level: How Will Asean Address Diversity?," *Jurisdictie: Jurnal Hukum Dan Syariah* 15, no. 1 (2024): 73–116; Yenny Eta Widyanti, "Human Rights and Indonesian Legal Protection of Traditional Cultural Expressions: A Comparative Study in Kenya and South Africa," *Jurisdictie: Jurnal Hukum Dan Syariah* 14, no. 2 (January 10, 2024): 315–34, https://doi.org/10.18860/j.v14i2.24318.

between Indonesian and Japanese citizens as well as the citizenship status of spouses and children based on Indonesian and Japanese laws, respectively.

By taking the statutory approach, primary legal materials are used in the form of Law No. 1/1974, Indonesian civil law procedures provided for in *AB*, Law No. 12/2006, The Japanese Civil Code, Act on the General Rules of Application of Laws (AGRAL), and The Japanese Nationality Law. To explain the primary legal material, secondary legal materials are used, namely literature that discusses international marriage both in Indonesia as well as in Japan. Meanwhile, the results of online searches are used as tertiary legal materials to support primary and secondary legal materials.

In order to identify and describe the differences and similarities in legal norms that govern international marriage, a comparative legal approach is adopted. It is conducted by micro comparison,[19] comparing international marriage legal institutions under Japanese and Indonesian law respectively, solely to identify the similarities and differences.[20] The results of such statutory comparison are qualitatively linked with secondary and tertiary legal materials to provide comprehensive description of the law applicable to international marriage, the citizenship status of spouses and children born out of such marriages.

4. Determination of laws applicable to marriage between Indonesian and Japanese citizens

Rules that determine which country's law is applicable to a civil event involving foreign elements are referred to as choice of law rules or conflict of laws rules.[21] The discussion of this section answers the first research problem, namely how Indonesian and Japanese laws determine the law applicable law to international marriage.

[19] K. Zweigert and H. Kötz, *An Introduction to Comparative Law*, 3rd ed. (New York: Oxford University Press, 1998).
[20] Peter De Cruz, *Comparative Law in a Changing Word*, 3rd ed. (London: Routledge, 2007).
[21] Afifah Kusumadara, "Pemakaian Hukum Asing Dalam Hukum Perdata Internasional: Kewajiban Dan Pelaksanaannya Di Pengadilan Indonesia," *Arena Hukum* 15, no. 3 (2022): 444, 449, 450, https://doi.org/10.21776/ub.arenahukum.2022.01503.1.

4.1. Law applicable to material conditions

In Indonesia, Article 16 *AB* stipulates that the fulfilment of the material conditions of marriage, namely the conditions inherent in the parties intending to conduct marriage,[22] is based on the principle *of lex patriae*, whereby a person's personal status is determined based on the law of that person's citizenship. Therefore, an Indonesian citizen who happens to be overseas, in view of matters related to his/her personal status he/she is still subject to Indonesian law, namely Law No.1/1974. Thus, Indonesian citizens must comply with the provisions of Articles 6 to 12 of Law No.1/1974 which regulate the material conditions of marriage.

In Japan, international civil law is regulated in the Japanese conflict of law called *Horei*: Act No. 10 of 1898. After the most recent amendment of June 21, 2006, *Horei* was given a new title, namely *Hō no Tekiyō ni Kansuru Tsūsokuhō*: Act No. 78, of June 21, 2006, on the General Rules of Application of Laws ["AGRAL"].[23] In Article 24 (1) of AGRAL, it is provided that for the formation of marriage, the national law of each party (*lex patriae)* applies, hence the law that regulates the material conditions of marriage is the national law concerned. Thus, Japanese citizens are subject to the material conditions of marriage set out in Japanese Civil Code (*Minpō*), Act No. 89 of 1896, last amend: Act No. 78 of 2006, Articles 731-741 of the *Minpō*.

4.2. Law applicable to formal conditions

After the material requirements are fulfilled, formal requirements also need to be met in order to conduct the marriage. Such formal conditions of marriage are related to the ordinance or procedure for conducting marriage.[24] The discussion on what law applies to the formal conditions of marriage depends on where the marriage takes place.

First, if it is assumed that the marriage is conducted in Indonesia, the Indonesian International Civil Law Rules refer to Article 18 of the *AB* as being applicable to the formal requirements of international marriage. The article provides that the formal

[22] Beby Sendy, Vita Cita Emia Tarigan, and and Lydia Ramadhani, *Kedudukan Hukum Anak: Perkawinan Tidak Dicatat*, 1st ed. (Yogyakarta: Jejak Pustaka, 2022).
[23] Kazuaki Nishioka and Yuko Nishitani, *Japanese Private International Law*, 1st ed. (United Kingdom: Bloomsbury Publishing, 2021).
[24] Sendy, Tarigan, and Ramadhani, *Kedudukan Hukum Anak: Perkawinan Tidak Dicatat*.

requirements for marriage are determined based on the principle of *lex loci celebration,* which is to follow the law at the place where the marriage is conducted.[25] If the marriage takes place in Indonesia, based on Article 59 (2) of Law No. 1/1974, international marriages conducted in Indonesia must be conducted according to Law No. 1/1974.

The provisions of Article 2 (1) of Law No. 1/1974 set out that marriage is valid if it is conducted according to the law of the parties' respective religion and belief.[26] This provision can be interpreted as a legal prohibition against marriage between adherents of two different religions.[27] Thus, in the context of international marriage it can be considered as an additional "challenge" if the parties are not only of different nationalities, but also of different religions. Namely, if the marriage is not conducted according to religious procedures, it is bound face an obstacle in recording the marriage, whereas Article 2(2) of Law No. 1/1974 requires that every marriage be recorded in accordance with applicable laws and regulations. It is emphasized in Article 60 of Law No. 1/1974 that an international marriage cannot be conducted until it is proven that the conditions of marriage determined by the law applicable to each party have been met. Research on this matter has been conducted by Hidayat *et al*, as well as Kisworo and Kharisma discussing the case of annulment of marriage between Jessika Iskandar and Ludwig Franz Willibald, a German citizen who, although they got married in Indonesia, had never solemnized their marriage according to their religion.[28]

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[25] Kusumadara, "Pemakaian Hukum Asing Dalam Hukum Perdata Internasional: Kewajiban Dan Pelaksanaannya Di Pengadilan Indonesia,."

[26] Nurul Miqat et al., "The Development of Indonesian Marriage Law in Contemporary Era," *De Jure: Jurnal Hukum Dan Syar'iah* 15, no. 1 (July 4, 2023): 54–66, https://doi.org/10.18860/j-fsh.v15i1.17461; Nor Salam et al., "Interfaith Marriage from the Perspective of Rationality: Theocentrism in Islamic Law and Anthropocentrism in Human Rights Law," *De Jure: Jurnal Hukum Dan Syar'iah* 16, no. 1 (June 30, 2024): 179–96, https://doi.org/10.18860/j-fsh.v16i1.23989.

[27] Zaidah Nur Rosidah, Lego Karjoko, and Mohd Rizal Palil, "The Government's Role in Interfaith Marriage Rights Protection: A Case Study of Adjustment and Social Integration," *Journal of Human Rights, Culture and Legal System* 3, no. 2 (2023): 266, https://doi.org/10.53955/jhcls.v3i2.105.

[28] Rizza Nafaani Hidayat, Rahtami Susanti, and Ika Ariani Kartini, "Akibat Hukum Pemalsuan Dokumen Perkawinan Campuran Di Indonesia (Studi Kasus Jessica Iskandar Dan Ludwig Franz Willibald)," *UMPurwokerto Law Review* 4, no. 1 (2023): 41–42, https://doi.org/10.30595/umplr.v4i1.11633; Rosa Kisworo and Dona Budi Kharisma, "Problematika Hukum Perkawinan Campuran Berdasarkan Kasus Pernikahan Jessica Iskandar Dengan Ludwig Frans Willibald Dalam Perspektif Hukum Perdata Internasional," *Jurnal Privat Law* 7, no. 1 (2019): 45, https://doi.org/10.20961/privat.v7i1.30096.

The provisions of Article 2(1) of Law No. 1/1974 have been affirmed in Supreme Court Circular Letter No. 2 of 2023 concerning Instructions for Judges in Adjudicating Cases of Marriage Registration Applications Between Persons of Different Religions and Beliefs ["SEMA No. 2/2023"]. SEMA No. 2/2023 prohibits judges from granting applications for recording a marriage between individuals of different religions. Research on the implementation of SEMA No. 2/2023 has been conducted by Arifin *et al*, concluding, among other things, that SEMA No. 2/2023 does not have a major standing in the hierarchy of laws and regulations. The judicial determination of interfaith marriage still depends on the judge's judgment as an independent enforcer of the law. Judges must render decisions that are in accordance with the principles of law and justice.[29]

Japan's marriage law, *Minpō*, does not regulate the formalities of international marriages that take place outside of Japan. Article 741 of the *Minpō* only provides for marriages between two Japanese citizens married outside of Japan. According to this article, two Japanese citizens living in a foreign country can register their marriage with the Japanese Ambassador, the Minister of the Japanese Embassy, or the Consul posted in the country concerned.

According to the researchers, the law applicable to international marriages conducted outside of Japan can be determined by analogy based on provisions concerning application of the law to legal acts provided for in Articles 7 and 8 of the AGRAL. Article 7 provides that the formation and consequences of a legal act are governed by the law of the place elected by the parties at the time the act is undertaken. If there is no choice of law, Article 8 applies, namely applying the law of the place which has the closest relation to the legal act concerned. By analogy, marriage between an Indonesian citizen and a Japanese citizen conducted in Indonesia is subject to Indonesian law, namely the place that is most closely related to the legal act of marriage.

Second, assuming that the marriage is conducted in Japan, the Japanese International Civil Law Rules refer to Article 24 (2) of the AGRAL so that the principle of *lex loci*

[29] Zainal Arifin, Naufal Ghany Bayhaqi, and David Pradhan, "Urgency Supreme Court Circular Letter No. 2 of 2023 in the Judicial Process of Interfaith Marriage Registration," *Journal of Law and Legal Reform* 5, no. 1 (2024): 169, https://doi.org/10.15294/jllr.vol5i1.2101.

celebration is applicable. Based on such principle, Indonesian and Japanese citizen couples who get married in Japan must fulfil the formalities of marriage at the place where the marriage is conducted, namely Japan. In order to reduce the application of *lex loci celebration*, Article 24 (3) of the AGRAL can be applied which provides that, notwithstanding the principle of *lex loci celebration*, the formality of marriage under the national law of one of the parties shall apply, unless the marriage is conducted in Japan and one of the parties is a Japanese citizen.[30] According to Yokoyama, specific provisions regarding the formalities of legal acts related to family relations can also be applied, namely Article 34 (1) of AGRAL. This article provides that the formality of a legal act concerning family relations is determined by the law at the place of the legal act concerned.[31] Thus, under Articles 24 (2), 24 (3) or 34 (1) of AGRAL, the same determination of the law applies, namely marriage between an Indonesian citizen and a Japanese citizen conducted in Japan must meet formal requirements under Japanese law. With Japanese law being applicable, it is necessary to consider the provisions of Article 739 (1) *Jo.* 740 of the *Minpō* setting forth that the marriage must be recorded in the Family Registrar (*Koseki)* in accordance with the provisions of the Family Register Act.

The Family Register Act (*Koseki-ho*) No. 224 of 1947, most recently amended by Act No. 35 of 2007, provides for two groups of marriage records, namely Japanese citizens and foreign nationals. The registration of Japanese citizens is provided for in the Family Registration Act (*Koseki-ho*), while the registration of foreign nationals is set forth in the Foreigner Registration Act. Thus, families consisting of Japanese and non-Japanese citizens are registered separately[32].

From the viewpoint of the rules of Indonesian International Civil Law, namely Article 18 of the *AB*, the formal requirements of marriage are regulated based on the *lex loci celebration* principle. Thus, the formality of marriage between an Indonesian citizen

[30] Nishioka and Nishitani, *Japanese Private International Law*.
[31] Jun Yokoyama, *Private International Law in Japan*, 2nd ed. (The Netherlands: Kluwer Law International B.V., 2019).
[32] Tomoko Nakamatsu, "International Marriage Through Introductions Agencies: Social and Legal Realities of 'Asian' Wives of Japanese Man," in *Wife or Worker?: Asian Women and Migration*, 1st ed. (United States of America: Rowman & Littlefield Publisher, Inc, 2003), 195.

and a Japanese citizen conducted in Japan is subject to Japanese law as the place where the marriage takes place. This is also in line with Article 56 (1) of Law No. 1/1974 which states that a marriage conducted outside of Indonesia between two Indonesian citizens or an Indonesian citizen and a foreign citizen is valid if it is carried out according to the applicable law in the country where the marriage takes place and for Indonesian citizens it does not violate Law No. 1/1974.

If the marriage is conducted outside of Indonesia, namely in Japan, with reference to Article 2 (2) *Jo*. Article 56 (2) of Law No. 1/1974, within a period of one year from the couple's return to Indonesia, the proof of their marriage must be registered at the Marriage Registration Office at their place of domicile. The objective is to ensure that the marriage is recognized and recorded in accordance with applicable laws in Indonesia. The use of the term "recorded" appears to imply procedural formality rather than a substantive order. The Marriage Registrar in Indonesia can verify the validity of marriage of an Indonesian citizen overseas or simply record it as an administrative obligation at the place of residence. [33]

In contrast to Indonesian law, religious procession is treated as a separate matter unrelated to the marriage law in Japan. Religion is considered to be a personal matter which is never indicated in the documents required for marriage.[34] In the research conducted by Kshetry,[35] Takeshita,[36] Akiko[37] it is stated that if a Japanese woman marries a non-Japanese man who is a Muslim, the wife is likely to convert to Islam. However, as stated above, as far as Japanese law is concerned, this is considered as a personal matter and as such it is not indicated in marriage related documents issued in Japan.

[33] Sri Wahyuni et al., "The Registration Policy of Interfaith Marriage Overseas for Indonesian Citizen," *Bestuur* 10, no. 1 (2022): 16, https://doi.org/10.20961/bestuur.v10i1.64330.
[34] Ayako Kobayashi, "Menikah Dengan Orang Jepang Prosedur Dan Syarat Administrasinya," Eonet.ne.jp, 2010, https://www.eonet.ne.jp/~limadaki/budaya/jepang/artikel/utama/menikah_prosedur.html.
[35] Gopal Kshetry, *Foreigners in Japan a Historical Perspective* (United Stated: Xlibris Corporation LLC, 2008).
[36] Shuko Takeshita, "Intermarriage and Japanese Identity," in *Creating Social Cohesion in an Interdependent World Experiences of Australia and Japan*, ed. Dharmalingam Arunachalam, E. Healy, and Tetsuo Mizukami, 1st ed. (New York: Palgrave Macmillan, 2016), 182.
[37] Komura Akiko, "Islam," in *The Bloomsbury Handbook of Japanese Religions*, ed. Andrea Castiglioni, Erica Baffelli, and Fabio Rambelli, 1st ed. (New York: Bloomsbury Publishing, 2021), 115.

5. Citizenship Status in International Marriage between Indonesian and Japanese Citizens

The status as citizen means being subject to the authority of the state concerned, thus creating a nexus for the rights and obligations of the state and its citizens. This section discusses the second research problem, namely the citizenship status of spouses and children born to parents of different nationalities.

5.1. Citizenship status of the parties

In view of the provisions of Indonesian international civil law, Article 16 *AB* sets forth that the law applicable to a person's personal status is the law of citizenship or national law. Therefore, persons with Indonesian nationality are subject to the provisions of Article 58 of Law No. 1/1974 which stipulates that "persons of different nationalities who enter into international marriage can obtain the citizenship of their spouse and can also lose their citizenship, according to the procedures set forth in the applicable Citizenship Law of the Republic of Indonesia".[38] The currently applicable Indonesian Citizenship Law is Law No. 12 of 2006 concerning Citizenship ["Law No. 12/2006"]. Provisions that specifically set forth international marriage can be found in Article 19 (1) *Jo.* (2) and Article 26 (1) to (3).

Article 19 (1) *Jo.* (2) of Law No. 12/2006 provides that a foreign citizen legally married to an Indonesian citizen can obtain citizenship of the Republic of Indonesia by submitting a declaration of citizenship before an Official. A statement to choose Indonesian citizenship can be submitted provided that the person concerned has resided in the territory of Indonesia for not less than 5 consecutive years or not less than 10 non-consecutive years. While the provisions of Article 19 (2) of Law No. 12/2006 only emphasize the requirement for the length of stay in Indonesia, the researchers are of the view that it would be necessary to add the words "married to an Indonesian citizen and having lived in Indonesia ...". The addition of the words "married

[38] Sri Hariati, Moh. Jamin, and Adi Sulistiyono, "The Legal Status of Marriage (Merariq) Implementation Within The Indigenous People of Sasak Lombok," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 2 (August 30, 2024): 406–22, https://doi.org/10.29303/ius.v12i2.1475; Jovita Irawati, Angie Andiani, and Anthony Wijaya, "Access to Justice: Protecting Spousal Health from Sexually Transmitted Diseases Transmission Within Marriage," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 2 (August 27, 2024): 249–63, https://doi.org/10.29303/ius.v12i2.1440.

to an Indonesian citizen" needs to be included to emphasize that the naturalization application was made in connection with the marriage of the foreign citizen applicant to an Indonesian citizen. To avoid dual citizenship, Article 9 of Law No. 12/2006 requires that by obtaining Indonesian citizenship, the applicant must renounce other citizenship. This provision indicates that foreign citizen women who marry Indonesian citizen men, and vice versa, do not automatically acquire Indonesian citizenship.

Another provision that needs to be considered is Article 26 (1) to (3) of Law No. 12/2006 providing that an Indonesian citizen woman or man can lose her/his citizenship if her/his spouse's country of origin requires her/his nationality to follow the citizenship of her/his spouse. However, in the event that following the marriage, the Indonesian citizen intends to retain his/her citizenship, within 3 years after the date of marriage, they must submit a letter stating their choice to an Indonesian official or Indonesian Embassy. This provision indicates that the citizenship held prior to the marriage remains unchanged and does not automatically change. The provisions of Article 26 (1) to (3) are in line with Article 23 of Law No. 12/2006, which provides that an Indonesian citizen will only lose his or her citizenship if he or she acquires another citizenship of his/her own volition, and he/she does not refuse or does not renounce the other citizenship, while he/she has been given the opportunity to do so.

On the other hand, Article 24 (1) of the AGRAL set forth that the law applicable to a person's personal status is the law of citizenship or their national law. Therefore, Japanese nationals are subject to the Japanese Nationality Law: Act No. 147 of 1950, most recently amended by Act No. 88 of 2008 ["Japanese Nationality Law"]. The provisions of the Japanese Nationality Law closely related to citizenship status due to international marriage are Articles 4, 5, 7 and 11. These provisions provide several basic principles. First, based on Article 4 *Jo.* Article 5 (1), a non-Japanese citizen can obtain Japanese citizenship through naturalization and in order to avoid dual citizenship, the applicant must be willing to renounce the other citizenship. Second, under Article 7, the Minister of Justice can grant naturalization to a non-Japanese citizen who has been married to a Japanese citizen for more than three years and has lived in Japan for one year or more consecutively. Third, Article 11 provides that a

Japanese citizen will only lose their citizenship if they voluntarily choose to obtain the citizenship of a foreign country.

Based on Articles 23, 26 (1) to (3) of Law No. 12/2006 *Jo.* Articles 4, 5, 7 and 11 of the Japanese Nationality Law, the citizenship status of the parties in an international marriage between Indonesian and Japanese citizen and vice versa is as follows:

a. International marriage does not automatically result in either Indonesian or Japanese citizen obtaning the citizenship of their spouse.
b. An Indonesian citizen woman who marries an Japanese citizen man, and vice versa, can only obtain their spouse's citizenship by applying for naturalization.
c. An Indonesain citizen woman who marries a Japanese citizen man, and vice versa, will only lose their citizenship at their own choice.
d. An Indoensian citizen who chooses Japanese citizenship and vice versa, must renounce their original citizenship.

5.2. Child's citizenship status

Provisions regarding the citizenship of children from international marriages refer to Law No. 12/2006 which determines a person's nationality based on descent (the principle of *ius sanguinis*), rather than based on the country of birth (the principle of *ius soli*). The principle of *ius soli* is only applied in a limited manner, namely only for children. The consideration is to prevent a situation where a person is stateless, so that all children born in Indonesia will get Indonesian citizenship. [39] Article 6 (1) of Law No. 12/2006 provides for several conditions which can result in a child having dual citizenship, namely:

a. A child born from a legal marriage to an Indonesian citizen father and a foreign citizen mother (Article 4 sub-article c).
b. A child born from a legal marriage to a foreign citizen father and an Indonesian citizen mother (Article 4 sub-article d).
c. A child born out of a legal marriage to a foreign citizen mother who is recognized by an Indonesian citizen father as his child and such recognition is

[39] Andi Agus Salim, Rizaldy Anggriawan, and Mohammad Hazyar Arumbinang, "Dilemma of Dual Citizenship Issues In Indonesia: A Legal And Political Perspective," *JILS (Journal of Indonesian Legal Studies)* 7, no. 1 (2022): 125, https://doi.org/10.15294/jils.v7i1.53503.

made before the child reaches the age of 18 or is still unmarried (Article 4 sub-article h).

d. A child born in the territory of the Republic of Indonesia whereby at the time of birth the citizenship status of the child's father and mother is unclear (Article 4 sub-article i).
e. An Indonesian citizen child born out of wedlock, who has not reached the age of 18 and is not married and is legally recognized by their father who is a foreign citizen, will be still recognized as Indonesian citizen. Similarly, an Indonesian citizen child who is not yet 5 years old legally adopted as a child by a foreign citizen based on a court stipulation will still be recognized as an Indonesian citizen (Article 5).

In line with the principle of single citizenship, Article 6 paragraph (2) and (3) of Law No. 12/2006 provide that in the event that a child has dual citizenship, after turning 18 years old or is married, the child must declare that he or she chooses one of the citizenships. The statement to choose citizenship is submitted in writing by no later than 3 years after the child turns 18 years old or is married, to the relevant Official, accompanied by the required documents. If their desire to remain an Indonesian citizen is not notified to the Directorate of Immigration or the Indonesian government, they will lose their Indonesian citizenship and shall be automatically considered a foreign citizen. In view of the resistance to dual citizenship, the researchers are of the view that it is necessary to amend the provisions of Article 6 of Law No. 12/2006 by extending the time limit at least until the age of 21 in accordance with the criteria for legal competence (Article 330 of the Civil Code). In addition, to reaffirm the prohibition of dual citizenship, in Article 6 of Law No. 12/2006 it is necessary to add a special paragraph that provides for the legal consequences if the time limit has been exceeded while the party concerned has not provided a statement regarding the choice of Indonesian citizenship.

Similar to Indonesia, Japanese law adheres to the principle of *ius sanguinis*, which determines a person's citizenship based on descent. Article 2 paragraphs (1) and (2) of the Japanese Nationality Law states that a child shall be considered a citizen of Japan if at the time of birth, the father or mother was a Japanese citizen, and/or when the father

who died before the birth of the child was a Japanese citizen at the time of his death. In contrast to the previous paragraph, Article 2(3) of the Japanese Nationality Law provides that a child will obtain Japanese citizenship if the child is born in Japan and both parents are unknown or have no nationality, and/or the child's nationality cannot be determined. This provision reflects the application of the *ius soli* principle, which grants citizenship based on place of birth, however based on one condition, namely if the nationality of both parents of a child born in Japan is a child from having dual citizenship, Article 12 of the Japanese Nationality Law provides that if a child of Japanese nationality is born outside of Japan and acquires citizenship based on their place of birth in a country under the principle of *ius soli*, the child's Japanese nationality will be retroactively lost from the moment of his/her birth, unless he/she explicitly expresses his/her desire to retain his / her citizenship.

As a continuation of the provisions of Article 12, Article 14 of the Japanese Nationality Law also applies providing that a Japanese citizen with dual citizenship must choose one of the citizenships before the age of 20. If they acquire dual citizenship after turning 20, they must choose within 2 years of acquiring dual citizenship, but before turning 22. If they choose to obtain Japanese citizenship, they must renounce their foreign citizenship and make a declaration of choice in accordance with the Japanese Family Register Act.

Accordingly, following are several principles concerning citizenship of a child born to an Indonesiean citizen and Japanese citizen couple, by birtue of Article 6 of Law No. 12/2006 *Jo.* Articles 2, 12, 14 of the Japanese Nationality Law, namely as follows:

a. Indonesian and Japanese law both adopt the single citizenship principle.
b. Indonesian and Japanese law both adopt the *ius sanguinis* principle, hence a child born to an Indonesian citizen and Japanese citizen couple will obtain Indonesian as well as Japanese citizenship.
c. Within the specified period of time, the child holding dual citizenship must choose one out of the two citizenships.

5. Conclusion

The legal provisions for international marriage between Indonesian and Japanese citizens provide basically the same basis for determining the applicable law, the citizenship status of spouse and the citizenship of the child.

In order to further ensure legal certainty, several provisions in the Indonesian Citizenship Law No. 12/2006 require revisions: first, regarding the requirements for applying to choose to become an Indonesian citizen, Article 19 (2) needs to be amplified with the additional words "married to an Indonesian citizen and having lived in Indonesia ...". Second, regarding the time limit for children to choose citizenship under Article 6, it needs to be adjusted to the criteria of legal competence, namely 21 years with provisions for sanctions/legal consequences if the time limit is exceeded while the party concerned has not provided a statement regarding the choice of Indonesian citizenship.

Theoretically, the results of this study provide important contribution to legal education which is usually limited to studying national law. Thus, new dimensions are offered to law students, namely understanding how international marriage is regulated in Japanese law. In addition to being able to understand their own national laws better, students also learn how other nations manage the same legal problems. Practically, the results of this study also contribute to the diaspora of Indonesian and Japanese communities, particularly in terms of providing legal certainty in view of the similarities in the area of international marriage provisions under Indonesian and Japanese law, respectively, thus, strengthening harmonious transnational relations, particularly among members of the two respective diasporas.

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