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Indonesian Legal Efforts to Prevent Statelessness in Children Resulting from Unregistered Mixed Marriages

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Abstract: Indonesia's legal efforts to prevent statelessness in children born to unregistered mixed marriages between Indonesian citizens (WNI) and foreign nationals (WNA) are an important concern because the unclear status of the marriage causes children to lose the administrative basis for obtaining citizenship. The research method used is normative juridical with a legislative and case approach, one of which is the case of Efa Maulidiyah in Malaysia. The results of the study show that children of Indonesian mothers still have civil relations based on Article 43 paragraph (1) of Law Number 1 of 1974 and Constitutional Court Decision Number 46/PUU-VIII/2010, so they are entitled to Indonesian citizenship based on the principle of *ius sanguinis* in accordance with Article 4 letter (d) of Law Number 12 of 2006. To overcome administrative obstacles, the Indonesian government implemented Permenkumham Number 6 of 2025 as a mechanism for confirming the citizenship status of children born to mixed marriages and strengthening legal protection for Indonesian children abroad.

Keyword: Citizenship, Mixed Marriage, Statelessness.

INTRODUCTION

Under Article 26 of the Civil Code (KUHPerdata), “Marriage is viewed solely as a civil relationship that regulates the legal aspects between two parties” (Bahasan, 2015). To be recognized as a legally valid marriage, the marriage must meet the formal requirements set forth in the Civil Code. These requirements include registration procedures, the consent of the parties concerned, and compliance with applicable legal norms. The Civil Code's approach to marriage emphasizes the importance of legal certainty in interpersonal relationships. Marriage is not only seen as an emotional or social bond, but also as a binding legal contract with clear rights and obligations for both parties.

Globalization in the fields of information, economics, education, and transportation has removed barriers between countries, facilitating cross-border interactions. As a result, marriages between citizens from different parts of the world are on the rise in almost every corner of the globe (Dewi & Syafitri, 2022). Inter-marriage, or mixed marriage, is a marriage

between two individuals with different cultural, religious, ethnic, or national backgrounds, a phenomenon that is increasingly common in the era of globalization. Factors such as international migration, cross-border education, and communication technology have made it easier for individuals from different backgrounds to meet. However, mixed marriages face many challenges, such as differences in cultural values, religious conflicts, legal barriers, or social stigma from families and communities. Mixed marriages are considered to have an impact on welfare (Karso, 2021).

Mixed marriages are regulated in Article 57 of the Marriage Law, which defines “A mixed marriage as a marriage between two people in Indonesia who are subject to different laws due to differences in nationality, where one party is an Indonesian citizen (WNI)”. This difference in nationality gives rise to foreign elements, which is one aspect of international civil law (Sari, 2022). Therefore, the implementation of marriages involving differences in nationality must take into account the principles applicable in international civil law (Al Amin, 2017).

From this mixed marriage, a child with dual citizenship was born. Law No. 12 of 2006 on Indonesian Citizenship stipulates provisions regarding citizenship status, how to acquire and lose citizenship, and principles such as *ius sanguinis* (descent) and *ius soli* (place of birth), which are applied on a limited basis. When the child reaches the age of 18, he or she has the right to determine his or her own citizenship (Meliala, 2024).

Marriages between Indonesian citizens (WNI) and foreign nationals (WNA) conducted abroad are considered valid if they are carried out in accordance with the laws applicable in the country where the marriage takes place (Arisa, 2021). Article 56 paragraph (1) of the Marriage Law states: “A marriage in Indonesia between two Indonesian citizens or between an Indonesian citizen and a foreign citizen is valid if it is conducted in accordance with the laws applicable in the country where the marriage is held and does not violate the provisions of this Law for Indonesian citizens.”

However, in practice, mixed marriages often encounter problems (Karso, 2021). Not all mixed marriages comply with the applicable laws, both in Indonesia and in the country of the foreign spouse. When such marriages are not officially registered, various legal issues arise regarding the civil status and citizenship of children born from these marriages, putting the children at risk of becoming stateless. Statelessness itself is defined as a condition in which a person is not recognized as a citizen by any country (Nugroho et al., 2023).

One case that illustrates this problem is that of Efa Maulidiyah, a child born to an unregistered mixed marriage between an Indonesian citizen (WNI) who is an illegal immigrant from Kerinci, Jambi, and a Malaysian citizen (Priyatno Utomo, 2020). Efa's parents were unable to register their marriage because Efa's mother (an Indonesian citizen) did not have official documents, such as a passport, residence permit, work permit, or Indonesian identity card. As a result, Efa Maulidiyah's birth certificate could not be registered due to these document constraints. Efa Maulidiyah is one of hundreds of thousands of children born in Malaysia without citizenship status (Bonasir, 2020). Efa Maulidiyah is considered stateless because she does not have citizenship from either her mother (WNI) or her father (WNA).

Through this research, the author will analyze the legal position of children born from mixed marriages that are not registered in the Indonesian legal system, which can be used as a basis for obtaining Indonesian citizenship, as well as Indonesia's legal efforts to prevent and overcome statelessness in children and what can be done to prove such civil relations. This study will also examine the administrative steps that need to be taken by the state to prevent statelessness.

METHOD

This study uses a normative juridical method with a library research approach that focuses on analyzing legislation, legal principles, and doctrines related (Zed, 2008) to the citizenship of children born to unregistered mixed marriages. The research subject is the case of a stateless child born to an Indonesian mother and a foreign father in Malaysia, which reflects the current problem of potential statelessness due to the absence of marriage registration and valid administrative documents. The research was conducted in 2024 through a review of relevant literature, regulations, and legal sources from both Indonesia and Malaysia to gain a comprehensive understanding of the issue of citizenship of children in the context of international civil law.

The research data is sourced entirely from written legal materials consisting of primary, secondary, and tertiary legal materials. Primary legal materials include the Civil Code, Law Number 1 of 1974 concerning Marriage, Law Number 12 of 2006 concerning Citizenship, as well as Malaysian legal provisions such as the Law Reform (Marriage and Divorce) Act 1976 and the Federal Constitution of Malaysia. Secondary legal materials include journals, literature, and scientific articles, while tertiary materials include legal dictionaries and encyclopedias. The analysis technique used is descriptive qualitative, interpreting legal data to find relationships between relevant legal norms and principles. The research procedure involves the systematic collection, classification, and analysis of legal materials to produce legal arguments regarding the protection and legal certainty for children of mixed marriages who are potentially stateless.

RESULTS AND DISCUSSION

The Legal Status of Children Born from Unregistered Mixed Marriages in the Indonesian Legal System

Law Number 23 of 2006 concerning Population Administration, which was later amended by Law Number 24 of 2013, stipulates that every marriage, including mixed marriages, must be reported and recorded in accordance with the provisions of the applicable laws and regulations, as stated in Article 2 paragraph (2) of the Marriage Law (Azhari et al., 2025). Marriage between a foreign national and an Indonesian citizen certainly has an impact on the citizenship status of children born from such a relationship (Kurniawan et al., 2025). This status refers to a person's legal position in relation to their personal identity and citizenship (Mungawanah, 2025).

Unregistered mixed marriages have no civil or administrative legal force, so children born from such relationships are considered illegitimate. Article 43 paragraph (1) of Law No. 1 of 1974 states that "Illegitimate children only have civil relations with their mother and her family". Legal protection for children born out of wedlock has evolved following the issuance of Constitutional Court Decision No. 46/PUU-VIII/2010, which broadens the definition of civil relations so that children born out of wedlock can have legal relations not only with their mother but also with their biological father.

Unregistered mixed marriages between Indonesian citizens (WNI) who have migrated and foreign nationals (WNA) from Malaysia are a clear example of the complexity of cross-border law in civil and citizenship law. Indonesian migrants who have obtained Malaysian citizenship or hold a Red IC (long-term residence permit) can generally live and work in Malaysia with rights that are almost equal to those of local citizens. However, there are also groups of migrant workers who work with official permits, and others who are illegal because they do not have valid immigration documents. Various factors explain why some migrants choose to remain in Malaysia without permission, including health issues, failure to pass the visa application or work permit renewal process, and economic considerations that make them reluctant to return to Indonesia despite the risks to their legal status and protection (Musli et al., 2023).

Efa Maulidiyah is one of the children born to a mixed marriage between an Indonesian citizen and a Malaysian citizen. Her mother is an immigrant from Jambi, Indonesia. The marriage between Efa Maulidiyah's parents took place in Malaysia, but was never officially registered by either the Malaysian authorities or the Indonesian representative in that country. As a result of the lack of official registration, the marriage has no legal force and is therefore not recognized administratively by either country. The reason for the lack of registration is that Efa Maulidiyah's mother is an illegal immigrant and therefore does not have the formal documents required to apply for administrative registration of the marriage.

Indonesia adheres to the principle of *ius sanguinis*, which is the principle that a person's citizenship is determined based on the blood or lineage of their parents if one of them is an Indonesian citizen (WNI) (Hidayat & Laia, 2025) as stipulated in Article 4 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. "Children born from mixed marriages (between an Indonesian citizen and a foreign national) may have limited dual citizenship until they reach the age of 18 to 21 or get married", at which point they must declare their choice of citizenship (Rofiq & Suprapti, 2023), as stipulated in Article 6 paragraph (1) of Law Number 12 of 2006. In the case of Efa Maulidiyah, even though her parents' marriage was not officially registered in either Indonesia or Malaysia, the child still has a civil relationship with her mother and is considered an illegitimate child. Therefore, Efa Maulidiyah is entitled to Indonesian citizenship based on her mother's lineage, even though she was born outside of Indonesia, namely in Malaysia.

This right cannot be realized because her mother is an illegal immigrant who does not have official documents, so Efa Maulidiyah's birth could not be registered with the Indonesian Embassy in Malaysia. Migrants often live without clear legal status in the countries where they settle, so children born to parents in such circumstances are often neglected (Rahmah et al., 2025). As a result, Efa Maulidiyah is not legally registered as an Indonesian citizen due to her parents' negligence.

In the Malaysian legal system, the determination of citizenship is based on the principle of *ius sanguinis*, as stipulated in the Federal Constitution of Malaysia, Second Schedule, Part II and Part III (Attorney General's Chambers of Malaysia, 2010). However, Malaysia applies the principle that a child can only obtain the citizenship of his or her father if born from a legally valid marriage. Based on the Second Schedule, Part III, Section 17 of the Federal Constitution of Malaysia (Attorney General's Chambers of Malaysia, 2010), a child born out of wedlock is considered to have a legal relationship only with his or her mother. The Malaysian citizenship system emphasizes paternal descent or the principle of the father's lineage, making it more difficult to inherit citizenship if the mother is a Malaysian citizen and the father is a foreign national (Azkia & Bahri, 2025). Thus, if a child is born to a Malaysian father but the parents' marriage is not valid or registered, the child is still not entitled to the father's citizenship.

In this case, even though her father is a Malaysian citizen, Efa Maulidiyah does not qualify for Malaysian citizenship because her parents' marriage was not legally registered. Malaysian law only recognizes legitimate children from marriages that meet the formal requirements and are registered under the Law Reform (Marriage and Divorce) Act 1976 (JAFBASE, n.d.). As a result, Malaysia did not grant citizenship to Efa Maulidiyah. On the other hand, Efa Maulidiyah also did not obtain Indonesian citizenship because her mother was an illegal immigrant who did not have official documents and failed to report her child's birth to the Indonesian Embassy in Malaysia. The combination of these two legal systems, namely Malaysia's provision rejecting the recognition of children born out of wedlock to foreign fathers of Malaysian origin and the administrative failure of the Indonesian authorities, has resulted in Efa Maulidiyah being stateless even though she is biologically related to her Indonesian mother.

The legal position of Efa Maulidiyah shows a fundamental difference in the recognition of the legal status of children born from unregistered mixed marriages. Under Indonesian law, Efa Maulidiyah can have a legal civil relationship with her mother as an Indonesian citizen (WNI) in accordance with Article 43 paragraph (1) of Law -Law Number 1 of 1974 and reinforced by Constitutional Court Decision Number 46/PUU-VIII/2010, so that substantively she is entitled to obtain Indonesian citizenship based on the principle of *ius sanguinis* as stipulated in Article 4 of Law Number 12 of 2006. However, this right cannot be realized due to administrative obstacles, namely his mother's inability to report the birth to the Indonesian representative due to her status as an illegal immigrant. Therefore, the position of the child in this case from the perspective of both countries shows an imbalance in legal protection, where Indonesia recognizes the substantive civil relationship but requires administrative proof of recognition, while Malaysia refuses legal recognition because the parents' marriage is not valid, making Efa Maulidiyah stateless both *de facto* and *de jure*.

Indonesia's Legal Efforts to Prevent and Address Statelessness in Children from Mixed Marriages

Regulated in Article 280 of the Civil Code, which states that “The recognition of a child born out of wedlock creates a civil relationship between the child and his or her father or mother”. Article 4 letter (d) of Law Number 12 of 2006 states that “Indonesian citizens are children born from a legal marriage or from an illegal marriage of an Indonesian citizen mother.” This means that even if a child is born outside of a legal marriage, a civil relationship between the child and the mother arises automatically through birth without the need for special recognition. This regulation is reinforced in Constitutional Court Decision Number 46/PUU-VIII/2010. These civil rights include the right to be recognized as a legitimate child by the mother, the right to obtain a birth certificate, and the right to citizenship that follows the legal status of the mother as an Indonesian citizen (WNI) (Baihaki, 2023).

The government has an obligation to provide full and special protection to every Indonesian citizen, both at home and abroad, in accordance with the principle of maximum protection for its citizens (Kurnia, 2013). The state has an obligation to guarantee the rights of every child to citizenship as stipulated in Article 28D paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which states that “Every person has the right to recognition, security, protection, and legal certainty, including citizenship”. Therefore, the Indonesian government, through its citizenship and population administration laws, has established mechanisms to prevent statelessness. The handling of statelessness issues must be carried out by prioritizing a humanitarian approach and ensuring the protection of the human rights of every individual affected (Ichsan, Kurniati, & Pranadita, 2025).

The issuance of Regulation of the Minister of Law and Human Rights (Permenkumham) Number 6 of 2025 as the implementation of Article 41 of Law Law No. 12 of 2006 concerning the Confirmation of Indonesian Citizenship Status is a progressive step by the government in providing legal protection to Indonesian citizens living abroad, including those who have lost their documents or do not have a clear citizenship status (SIP Law Firm, 2025). This regulation allows the Ministry of Law and Human Rights (HAM), through the Directorate General of General Legal Administration (Ditjen AHU), to accept confirmation requests from Indonesian citizens (WNI) residing abroad, either directly or through Indonesian representatives (KBRI/KJRI).

The case of Efa Maulidiyah, a child born in Malaysia to an Indonesian mother and a Malaysian father, faced administrative obstacles because her mother did not have official documents such as an ID card, passport, or proof of citizenship. In this situation, the first step that must be taken is to regulate the mother's identity documents as an Indonesian citizen (WNI). According to the explanation of the Head of Consular Affairs at the Indonesian

Embassy in Kuala Lumpur, similar cases can still be resolved through an interview with the biological mother to confirm her citizenship status and the legal relationship between mother and child before further administrative steps are taken (Tribun Jateng, 2020).

Mrs. Efa can apply for confirmation of her citizenship status by attaching supporting evidence such as a certificate of origin from the local government in Indonesia, family witnesses, or a certificate from the Indonesian Embassy in Kuala Lumpur confirming her identity and citizenship origin. Through this process, the Ministry of Law and Human Rights can reaffirm Efa's citizenship status as an Indonesian citizen based on the principle of *ius sanguinis*, which states that a person's citizenship is determined (Kusnardi & Ibrahim, 2018) based on lineage as stipulated in Article 4 letter (d) of Law Number 12 of 2006. After the verification and administrative review process is complete, the results will be submitted to the Ministry of Law and Human Rights as the basis for issuing a citizenship confirmation letter.

Furthermore, Efa Maulidiyah needs to take two main administrative steps to obtain Indonesian citizenship after proving her legal relationship with her mother. First, she must submit an application for confirmation and registration of citizenship to the Ministry of Law and Human Rights (Kemenkumham) through the Indonesian Embassy (KBRI Kuala Lumpur). This process aims to obtain a Presidential Decree on the granting of Indonesian citizenship, as stipulated in Article 43 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia and Permenkumham Number 6 of 2025. Second, after obtaining the decision, Efa Maulidiyah is required to register her citizenship status at the Population and Civil Registry Office (Dukcapil) for the issuance of a Population Registration Number (NIK), Resident Identity Card (KTP), Family Card (KK), and Indonesian birth certificate as official proof of the state's recognition of her citizenship status. This stage is an administrative confirmation that Efa Maulidiyah has been legally recognized as an Indonesian citizen, while also ensuring the fulfillment of her civil rights and legal protection.

Thus, the legal steps taken by Efa Maulidiyah reflect Indonesia's commitment to guaranteeing children's rights to citizenship as stipulated in the Convention on the Rights of the Child (CRC), which was ratified through Presidential Decree No. 36 of 1990. The state is not only normatively obligated through legislation, but also factually obligated through the provision of access and administrative facilitation for citizens affected by social, economic, and legal conditions abroad. The implementation of Permenkumham No. 6 of 2025 together with Law No. 12 of 2006 and Law No. 24 of 2013 concerning Population Administration is a tangible form of synergy between legal protection and humanity. Therefore, the resolution of cases such as Efa's should serve as an important precedent for the government to strengthen the data collection and protection system for Indonesian citizens abroad so that no more children of mixed marriages lose their citizenship rights.

CONCLUSION

In conclusion, the issue of statelessness in children resulting from unregistered mixed marriages is a consequence of the lack of synchronization between citizenship laws and the implementation of cross-border population administration. In the context of national law, children of Indonesian mothers still have a legal basis for obtaining Indonesian citizenship based on the principle of *ius sanguinis* as stipulated in Article 4 letter (d) of Law Number 12 of 2006, which is reinforced by Constitutional Court Decision Number 46/PUU-VIII/2010. However, administrative obstacles such as the absence of documents and failure to report births often hinder the realization of these citizenship rights. This highlights the importance of synchronization between the national legal system and administrative mechanisms in providing substantive legal protection for children of mixed marriages so that they do not lose their citizenship.

Improvements made in the legal field show significant progress in protecting children's rights and strengthening the citizenship administration system. The issuance of Minister of Law and Human Rights Regulation Number 6 of 2025 concerning Confirmation of Citizenship Status is a progressive step in improving law enforcement practices in Indonesia, particularly in the context of preventing statelessness. This regulation expands access for Indonesian citizens abroad to obtain confirmation of citizenship status through a simpler, more transparent, and fairer mechanism. Thus, this research contributes to the development of legal science and public policy in the field of citizenship, while strengthening Indonesia's position in guaranteeing the protection of children's rights in accordance with the principle of the best interests of the child and the mandate of Article 28D paragraph (4) of the 1945 Constitution.

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