



Study of Supreme Court Decision Number 2580 K/Pdt/2016 on Divorce from Mixed Marriage between Indonesian and French Citizen

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Abstract: *This research examines the legal aspects related to divorce in mixed marriages between Indonesian citizens (WNI) and foreign nationals (WNA). In the context of marriage, which is a fundamental event in human life, the issue of mixed marriage is becoming increasingly relevant as interactions between countries increase. This research focuses on analyzing the Supreme Court's decision in Decision Number 2580 K/Pdt/2016, which dealt with a divorce between an Indonesian citizen and a foreigner from France. Using normative legal methods, this research explores the legal norms governing divorce in mixed marriages and assesses the consistency of the applicable law in Indonesia. The findings show that there are legal complexities at hand, especially regarding jurisdiction and children's rights, where the Supreme Court's decision has the potential to influence the handling of similar cases in the future. This research is expected to provide insight into the challenges of the Indonesian judicial system in dealing with international divorces as well as the legal implications resulting from the decision.*

Keywords: *Mixed Marriage, Divorce, Supreme Court, Cassation Decision*

Introduction

In the era of growing globalization, interactions between countries are increasing, creating new dynamics in social and legal relations, including in the aspect of marriage. Mixed marriages not only involve differences in nationality, but also often touch on the diversity of different cultures, values and legal systems. This presents complex legal challenges, especially when divorce occurs, which can affect children's rights, property division and citizenship status.

Basically, marriage is something fundamental in human life. Humans are social creatures who cannot live alone and cannot be separated from their members. It is human nature to coexist and interact with other people. besides that, in order to continue their offspring, which can be carried out using marriage (Dewi & Syafitri, 2022). (Dewi and Syafitri 2022). Marriage according to Subekti, is a legal relationship between a man and a woman for a long time.(Arief 2017)

Establishing a legal relationship and binding physical and mental ties is very important to build a happy, harmonious and long-lasting family. Marriages are not only made between Indonesian citizens and the same foreigner, but also between Indonesian

citizens and foreigners. In such cases, one of the parties is a foreign national. Marriage only involves people who are of the same religion and have the same nationality in essence. From different beliefs and nationalities, there are many things to consider in a mixed marriage. Human Rights and Democracy encourage mixed marriages and remove the rules that must be followed. (Yayang Nuraini Zulfani 2022)

Article 57 of Law Number 1 Year 1974 on Marriage, now known as the Marriage Law, states that a mixed marriage is a marriage between two people who are subject to different laws in Indonesia due to differences in citizenship, where one party is an Indonesian citizen and the other is a foreigner, which of course results in differences in the applicable marriage law. Unfortunately, the Marriage Law does not provide clear and strong provisions on the consequences that may arise from mixed marriages. Article 59 paragraph (1) states that the citizenship acquired will determine the applicable law, but Article 62 discusses the legal consequences of the marriage.

The Supreme Court decision in this case, Decision 2580 K/Pdt/2016, is an important reference in dealing with issues arising from mixed marriages between Indonesian citizens and French citizens. To address the complexities of divorce proceedings involving people from different countries, a deep understanding of the domestic and international laws governing these couples' relationships is required.

The purpose of this research is to specifically study how the Supreme Court's decision impacts future law in mixed marriage divorce cases, as well as whether Indonesian courts have the authority to resolve divorces involving foreign nationals. With an increasingly globalized world and more communication across the globe, it is important to understand how the Indonesian legal system adapts to cases such as these. The decision made by the Supreme Court not only affects the fate of the people involved in the case, but can also be used as a reference for similar cases in the future. As a result, a thorough examination of this decision will provide a significant understanding of the court's role and responsibilities in dealing with complex and cross-border legal issues.

It is hoped that this research will increase understanding of the difficulties that the Indonesian judicial system will face in dealing with international divorce matters as well as the implementation of the laws that have been established by the Supreme Court.

Methodology

In this research we use normative legal research, the method used focuses on relevant legislation, legal doctrine, and previous court decisions. The purpose of this research is to find and analyze legal norms governing divorce in mixed divorce cases, assessing the consistency and coherence of various legal rules applicable in Indonesia related to divorce and citizenship. The sources of this research are Supreme Court decisions, laws and online journals. Through this research, it is hoped that an in-depth understanding of the challenges and solutions arising from mixed marriages can be obtained.

Result and Discussion

International Civil Law was created to regulate legal relationships involving *foreign elements*. In Indonesia, the rules regarding international civil law are generally regulated in

the *Algemene Bepalinge*. In the definition of International Civil Law, there are two main elements contained therein. These elements include aspects that are relevant to legal interactions between countries and how the law is established in the context of relationships that cross national borders, including:

1. Internationality, which requires civil law to be applicable worldwide or among several countries.
2. Nationality, where each country has its own civil law.

International Civil Law is not a legal system that has been codified and applies throughout the world, but is a law that is codified in each country involved in international relations. (Siahaan 2019)

A. Definition of mixed marriage

Article 57 of the Marriage Law states that a mixed marriage is a marriage between two people of different nationalities. This statement can be broken down into four main elements of a mixed marriage, namely:

- a. A marriage between two people, a man and a woman;
- b. Indonesia is subject to different rules;
- c. The consequences of different nationalities;
- d. One of the parties is an Indonesian national.

The first element refers to the principle of monogamy in marriage, while the second element indicates the different laws that apply when a woman and a man enter into a marriage. This legal difference is caused by differences in nationality, not religion, ethnicity or class. Where one of them is someone who is a citizen of Indonesia. (Siahaan 2019)

B. Principles of mixed marriage

In international civil law, there are several basic principles that govern the material validity of marriage, such as

- a. The principle of *lex loci celebrationis*, which says that the law of the country where the marriage is performed should determine its validity and formality. This means that all legal aspects of the marriage will be governed by the law of the place where the marriage is celebrated.
- b. The principle that the material validity of a marriage is determined by the legal system of the country of origin of each party before the marriage took place.
- c. The principle stating that the material validity of marriage must be determined based on the legal system where each party resides.
- d. This principle states that the material validity of a marriage must be determined by the legal system in the location where the marriage takes place, taking into account the requirements of marriage that apply in the legal system of each party before the marriage takes place.

In short, it is local law that governs all matters concerning the material validity of a marriage. (Ii, Hukum, and Campuran n.d.)

C. Divorce Procedure

Article 66 paragraph (1) regarding divorce procedures for plaintiffs and defendants living abroad, among others:

- a. If the plaintiff and the defendant are outside the country, but the marriage process is carried out in Indonesia, then an application can be made to the Religious District Court in accordance with the area where the marriage took place or to the Central Jakarta Religious Court.
- b. If the plaintiff and defendant are located abroad, and the marriage was solemnized abroad, evidence of the marriage must be registered with the Office of Religious Affairs in the area where the couple resides.
- c. Divorce applications can be submitted to the Central Jakarta Religious Court on the condition that the plaintiff and defendant are outside the country and the marriage has not been registered at the Religious Affairs Office in the area where the couple lives. (Naratama et al. 2023)
- d. The plaintiff must file a petition for divorce with the Religious Court (for Muslims) or the District Court (for non-Muslims) in accordance with the law applicable to each party.
- e. Submission of evidence, in the trial process the plaintiff is obliged to submit evidence that supports that the defendant is not responsible.
- f. Mediation, usually before a judgment is issued the court will conduct mediation to reconcile the two parties.
- g. Court decision, if mediation fails and the evidence received is strong enough then the court will make a decision on divorce.

D. Legal Effects of Divorce

After a successful divorce, there are several legal consequences that need to be considered, including:

- a. Position of children: if the divorcing couple has children, the position of the children will be determined based on the applicable law. Children born from mixed marriages may have two nationalities or may follow the nationality of one of the parents.
- b. Joint property: if a person has joint property during the marriage, the property will be divided according to the applicable law, but if there is no prenuptial agreement, the property will be divided based on the principle of justice.
- c. Citizenship: once the divorce is finalized, the citizenship status of each party may also be affected, especially for foreigners. They may need to fulfill certain conditions to remain in Indonesia. (Mandelker 1974)

E. Case Analysis

The divorce case between an Indonesian citizen (WNI) and a French citizen (WNF) decided by the Supreme Court through Decision Number 2580 K/Pdt/2016 provides an illustration of the complex laws and regulations on mixed marriages. With increasing global mobility, cross-border marriages are becoming more common, but this also raises unique legal issues related to jurisdiction, applicable law and children's rights.

This study focuses on the marriage of an Indonesian citizen and a foreigner from France, which was conducted according to Hindu custom on July 19, 2004 at Banyar Pegesangan, Temesi Village, District, and Gianyar Regency. The marriage resulted in the birth of three children, according to Marriage Deed Number 16/KC/2004 issued by the Gianyar Regency Population and Civil Registry Office on July 9, 2004. issued by the Gianyar Regency Population and Civil Registry Office.(Putusan et al. n.d.)

That in accordance with Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the implementation of Law Number 1 of the Year concerning marriage in Article 20 paragraph (1) which states:

"A divorce suit is filed by the husband or wife or their attorney to the Court whose jurisdiction covers the residence of the defendant"

In the case *a quo* the plaintiff domiciled in Jember district where the existence of the plaintiff is known to the defendant but the defendant's lawsuit actually states that the plaintiff's address is not known with certainty and continue the lawsuit to the District Court of Gianyar, which is not in accordance with Article 20 paragraph (1) in the provisions of Government Regulation No. 9 of 1975 which should be filed in the place of residence of the plaintiff, namely in the Court of Jember, so that the defendant's lawsuit should be declared inadmissible (*niet ontvankelijke verklaard*).

What triggered the divorce was the Respondent's bad and abusive behavior. In addition, the examination results of Dr. IB Yudha Prasista also showed that the Defendant had a severe psychiatric illness (Psychotest) and should continue to be treated by a doctor until he recovered. However, after leaving Bali, the Defendant never went to the psychiatric hospital again. This led him to get involved again at will, and when the husband was mentally ill, his children and wife had to go home to their parents. This happened repeatedly until the Complainant finally sued the Respondent for divorce.

That with regard to Article 24 of the Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the implementation of Law Number 1 of 1975 that the Complainant respectfully requests to grant the request for divorce and provide for the children and himself. But unfortunately, this divorce application was rejected by the Gianyar District Court that the Gianyar District Court did not have the authority to hear this case, because the location of the domicile changed which was contrary to Government Regulation of the Republic of Indonesia Number 9 of 1975 concerning the implementation of Law Number 1 of the Year concerning marriage Article 20 paragraph (1). Punish the plaintiff to pay court costs in the amount of Rp476,000.00.

Conclusion

Court Decision Case Number 2580 K/Pdt/2016 focuses on a divorce petition filed by one of the parties. In this decision, the court rejected the divorce petition because the location of the applicant's domicile was not in accordance with the provisions stipulated in Government Regulation Number 9 of 1975 concerning the implementation of Law Number 1 of 1975 concerning marriage. The court rejected the applicant's appeal and ordered the applicant to pay court costs of Rp476,000. Thus, this decision emphasizes the importance of

compliance with the applicable legal procedures in applying for divorce, as well as the need for clarity regarding the domicile of the parties involved.

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