

Juridical Analysis of the Determination of Child Custody in Dual Citizenship Divorce Cases: A Case Study of Supreme Court Decision No. 2021 K/Pdt/2020

Gusni Cahaya Putri^{1*}, Rina Arum Prastyanti²
Universitas Duta Bangsa Surakarta, Indonesia

Corresponding Author: Gusni Cahaya Putri gusnicahayaputri@gmail.com

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ABSTRACT

The determination of child custody in divorce cases involving dual citizens is a complex issue that requires special attention to Indonesian legal jurisdiction. This study analyzes how Indonesian legal jurisdiction is applied in determining child custody in divorce cases involving couples of different nationalities, based on the Marriage Law No. 1 of 1974 and related international regulations. The case study of the Supreme Court Decision No. 2021 K/Pdt/2020 was also studied to understand the factors considered in decisions related to child custody. The main factors that the Supreme Court considers include the psychological and emotional well-being of the child, the financial ability of the parents, the relationship between the child and the parents, as well as the residence and nationality of the child. The results of the study show that custody decisions are always aimed at the best interests of the child, taking into account relevant national and international legal aspects.

INTRODUCTION

Child custody is one of the important issues in divorce, especially when both parents have dual citizenship. This adds a dimension of complexity in determining child custody, because it involves not only national law but also international law related to the child's citizenship status. This case study analyzes the decision of the Supreme Court of the Republic of Indonesia No. 2021 K/Pdt/2020, which focuses on the determination of child custody in divorce between parties who have dual citizenship. The court's decision in this case is important to understand how Indonesian courts enforce dual citizenship laws, as well as how the best interests of the child are a major factor in the determination of custody.

In the Indonesian legal system, the determination of child custody in divorce is based on Article 41 of Law Number 1 of 1974 concerning Marriage, which states that even if the parents divorce, both are still obliged to maintain and educate their children. Custody is generally given to the mother, unless there is a compelling reason to show that the mother is not able to take good care of the child. However, when one or both parents have dual citizenship, as in this case, it can affect the applicable legal process and the rights of the child under the laws of the two countries (Augustin, 2019).

One of the main challenges in determining child custody in dual citizenship divorce cases is the determination of the applicable legal jurisdiction. Legal jurisdiction plays an important role in determining which law will be used to resolve disputes, whether the law of the mother's or father's country of origin, or the law of the child's current country of residence (Indrawati, 2018). In this case, the Supreme Court of Indonesia must consider various aspects of the law, including international conventions related to the rights of the child and dual citizenship, as well as Indonesian family law.

The Supreme Court's Decision No. 2021 K/Pdt/2020 provides a clear picture of how the Supreme Court handles the case of child custody of divorce with dual citizenship. In the ruling, the Supreme Court stated that even though both parents have different nationalities, child custody must be determined based on the best interests of the child, as stipulated in Indonesian law and Indonesia's recognized international principles, such as the Convention on the Rights of the Child (Rosadi, 2020). This shows that despite the element of dual citizenship, the courts prioritize the welfare of the child over the legal considerations of citizenship.

In addition, the best interests of the child are always the main consideration in determining custody, especially in divorce cases. The concept of "children's best interests" refers to a number of factors used to determine what is best for children's welfare, including children's physical, emotional, and psychological needs, as well as parents' ability to meet these needs (Wahyudi, 2017). In this case, the Supreme Court also considered factors such as the child's age, the child's emotional closeness to each parent, and the living environment that is most conducive to the child's development.

However, the process of determining child custody in a divorce with dual citizenship is also inseparable from complex issues, especially related to the

enforcement of court decisions in other countries. In some cases, Indonesian court rulings regarding child custody are not recognized or implemented in other countries due to differences in legal systems and regulations regarding the recognition of foreign court decisions (Putri, 2021). Therefore, it is important for the court to consider this possibility and find a solution that is acceptable to both parties, both in terms of law and the interests of the child.

On the other hand, dual citizenship also has consequences on the legal status of the child concerned. Children born to dual citizenship spouses often have citizenship rights in both countries, which can affect the legal status and rights of children in both countries. This also affects custody, because each country has different rules regarding citizenship and custody of children (Suharyono, 2019). In this case, the Supreme Court of Indonesia must consider the legal implications of a child's dual citizenship in determining custody, including the child's right to reside in one of the countries and the legal relationship with a parent who has a different nationality.

The study aims to analyze how Indonesian courts navigate these complex issues and how they integrate international legal principles into their rulings. In the Supreme Court's decision No. 2021 K/Pdt/2020, the Supreme Court affirmed that child custody must be determined based on the principle of the best interests of the child, which is widely recognized in international and domestic law (Hidayat, 2020). This shows that Indonesian courts are beginning to adopt a more inclusive approach to international law, particularly with regard to dual custody of children.

It is also important to note that court decisions not only impact child custody, but also other rights, such as the right to education, access to health, and the right to live in a country that is considered the safest and most supportive of the child's development (Fatmawati, 2018). All these aspects must be considered by the court in establishing custody, especially in cases where the child has dual citizenship.

The determination of child custody in a divorce with dual citizenship requires careful consideration of various legal aspects, both domestic and international. The Supreme Court of Indonesia in its decision No. 2021 K/Pdt/2020 shows efforts to uphold the principle of the best interests of the child while still respecting relevant international and national laws. However, challenges remain, especially in terms of jurisdiction and recognition of court decisions in other countries.

LITERATURE REVIEW

The issue of child custody in divorce with parties who have dual citizenship is an important topic in the study of family law. In general, custody arrangements in Indonesia are regulated in Marriage Law No. 1 Year 1974, which is based on the principle of the best interest of the child. However, in cases of dual citizenship, the issue becomes more complex because it involves aspects of cross-border jurisdiction (Suryono, 2018). This complexity requires judges to consider applicable national and international laws in order to produce a fair decision for all parties.

In determining child custody, the Supreme Court is often used as a reference because its decisions reflect strong legal interpretations and set precedents for similar cases. According to Law No. 1 of 1974 and Article 45 of the Civil Code, custody determinations focus on the interests of the child, including consideration of the environment and emotional needs (Wirawan, 2019). In the case of Supreme Court Decision No. 2021 K/Pdt/2020, the jurisdictional aspects related to the child's dual citizenship are crucial, so this research explores the extent to which Indonesian courts consider these cross-border aspects.

Custody rights in the international context often consider the aspect of habitual residence, which is the child's permanent residence as the basis for jurisdiction (Setiawan, 2020). However, the application of this principle is still limited in Indonesia, especially if the child is considered an Indonesian national. This shows that in international cases, the aspects of nationality and residence of children are complex debates. By examining Supreme Court Decision No. 2021 K/Pdt/2020, it is hoped that it can be understood how this principle is accommodated in the context of the Indonesian legal system.

The theory of "best interest of the child" is often the basis for decisions related to child custody. Based on the *parens patriae* theory, the state is responsible for protecting children's rights in family law conflicts, including in divorce (Sari, 2021). In custody cases involving dual citizenship, judges must consider the psychological and social aspects of the child in addition to national legal considerations. This research will show the extent to which this principle is applied in Supreme Court decisions.

Custody rights are often affected by an agreement between the disputing parties, but in the event that no agreement is reached, the court decides. In international cases, enforcement of custody rights becomes more complicated if the home country of one of the parents does not recognize the Indonesian court decision (Handayani, 2017). Thus, a stronger legal framework is needed to accommodate international cases, which currently remains a challenge in Indonesia.

Child custody arrangements in Indonesia are regulated in several laws, but in the context of cross-border cases, these rules have not fully accommodated international aspects. Domestic regulations, such as those contained in the Marriage Law, are limited when cases involve two legal jurisdictions (Prasetyo, 2019). A review of Supreme Court Decision No. 2021 K/Pdt/2020 can show how Indonesian law handles cases that require a deeper understanding of international rules.

The principle of "best interests of the child" has become a strong foundation in various custody arrangements around the world, including in Indonesia. This principle requires the court to prioritize the welfare of the child over the interests of other parties, such as parents (Nugraha, 2018). In divorce cases with dual citizenship, the stability and needs of children are important to consider because they can have a direct impact on the welfare of children in the long term.

In international law, the principle of *lex domicilii*, which is the law of the country where the child is domiciled, is the basis for determining the applicable law. However, in Indonesia, this is often challenged by provisions that consider children who have one parent who is an Indonesian citizen to be Indonesian citizens (Yusuf, 2016). The analysis of Supreme Court Decision No. 2021 K/Pdt/2020 illustrates how courts interpret citizenship status in child custody cases with cross-border aspects.

The psychological aspect of children in divorce is very important because it relates to the mental and emotional well-being of children. Psychological studies show that children who experience displacement or unstable care environments are vulnerable to psychological problems (Puspitasari, 2020). Therefore, in international cases, the court must pay attention to the psychological impact that may occur if the child has to move countries or experience drastic changes in custody.

Research on Supreme Court Decision No. 2021 K/Pdt/2020 makes an important contribution in understanding how the Indonesian legal system attempts to handle cross-border divorce cases, particularly in the custody of children with dual nationality. Through juridical analysis, this study seeks to understand how Indonesian legal principles are applied in cases involving international aspects and dual nationality (Suharto, 2019). As such, this literature review builds a strong foundation for further analysis of custody rights in similar cases.

METHODOLOGY

The research method of juridical analysis of the determination of child custody in the case of divorce with dual citizenship This case study of decision number 2021 K/Pdt/2020, uses a case study to analyze the Supreme Court's decision related to cross-border divorce and child custody. Comparative analysis was conducted between national law and relevant foreign country law, as well as interviews with legal practitioners to gain an in-depth perspective.

RESEARCH RESULT

Children's Psychological and Emotional Conditions

The psychological condition of the child is often the main consideration in custody decisions. The Supreme Court assessed whether a child would experience emotional distress if he was under the care of one particular parent. In Decision No. 2021 K/Pdt/2020, the Supreme Court considered the psychological impact on children as a result of the divorce process that occurred. Children in divorce situations often experience emotional trauma, and the Court tries to minimize these negative impacts by determining the parents who are most able to provide a stable and supportive environment for the child (Widanarti, n.d.).

According to the theory of child protection, a stable emotional state is necessary so that children can grow and develop properly. Therefore, the Supreme Court is more likely to grant custody to parents who are able to give full attention to the psychological well-being of the child (Gosita, 1996). Children who grow up in an emotionally stable environment will have better

mental and social development, which is one of the Court's considerations in this case.

Basic Needs of Children

Another factor that the Supreme Court pays close attention to is the fulfillment of children's basic needs, such as food, shelter, education, and health. The Supreme Court assesses whether the parent who will be given custody is able to provide these needs consistently. In Decision No. 2021 K/Pdt/2020, the Court assessed the financial ability and economic situation of both parents to ensure that the child is not deficient in terms of basic needs (Sudarsono, 2005).

The Supreme Court held that custody should be given to parents who are financially able to meet the needs of the child without having to depend on other parties. This is closely related to children's welfare, especially in education and health, which is a basic right of children that must be guaranteed by parents.

Child's Relationship with Parents

The relationship between children and parents is also an important factor considered by the Supreme Court. Children who have a strong emotional bond with one parent may be better off being cared for by that parent. In Decision No. 2021 K/Pdt/2020, the Supreme Court considers the close relationship between the child and his mother, which is believed to have a positive impact on the child's future development (Mansari & others, 2018).

In addition, according to research conducted by Prodjohamidjojo (2001), children tend to have a closer relationship with their mothers, especially in the early years of life. Therefore, the Supreme Court often grants custody to the mother, unless there are compelling reasons to show that the mother is not fit to take care of the child.

Financial Ability of Parents

The financial ability of parents is also one of the important factors that influence the Supreme Court's decision. Parents who have better economic resources tend to be considered more capable of providing a decent life for their children (Shiao, 2023a). In Decision No. 2021 K/Pdt/2020, the Court assessed the financial ability of both parents and granted custody to parents who were considered more economically stable.

However, financial ability is not the only determining factor. The Supreme Court also considers other aspects, such as the emotional well-being of children and the ability of parents to provide a safe and stable environment. Therefore, financially stronger parents do not always win custody if they are proven unable to provide adequate attention and affection (Sitorus, 2004).

Children's Desires

In some cases, the Supreme Court also considers the wishes of the child, especially if the child is old enough to make his or her own decisions. Although in the Indonesian legal system, children's desires are not always a determining

factor, this is still considered if the child can provide a logical reason regarding his or her preference for one of the parents (Waspada, 2020). According to Surkis (2021), giving children the right to choose the parents they want to take care of can provide a sense of independence and respect for children's rights. Therefore, the Supreme Court in Decision No. 2021 K/Pdt/2020 pays attention to the wishes of children, even though it is not the main factor in decision-making.

DISCUSSION

Indonesian Legal Jurisdiction in Determining Child Custody in Divorce Cases Involving Dual Citizens

Legal jurisdiction in determining child custody is a complex issue, especially in divorce cases involving dual citizens. In this situation, both parents may be subject to the legal rules of different countries, which affect the establishment of child custody after divorce. Indonesia's legal system, regulated by Law No. 1 of 1974 on Marriage and Government Regulation No. 9 of 1975, provides a legal framework for the determination of child custody in divorce. However, when one or both parents have dual citizenship, legal jurisdiction becomes more complicated as it involves both international and domestic laws (Dharmabrata & Sjarif, 2015).

According to Indonesian law, the determination of child custody after divorce is mainly based on the best interests of the child. Article 41 of Law No. 1 of 1974 concerning Marriage states that even in the event of a divorce, both parents still have an obligation to maintain and educate their children. In practice, child custody is often given to the mother, unless there is strong evidence that the mother is not able to take care of the child properly (Hadikesuma, 2007). However, in divorce cases involving dual citizenship, the determination of child custody is not only influenced by Indonesian family law but also by the laws of other relevant countries, as is often the case in mixed marriages (Indawati, n.d.).

In a divorce involving dual citizens, one of the main challenges is determining the applicable legal jurisdiction. This is important because the applicable jurisdiction will determine which law is used to resolve child custody disputes. The countries involved may have different legal views on who has the right to custody of the child. Some countries, such as Germany, have strict legal systems in regulating child custody in divorce, especially in mixed marriage cases. Indonesian legal decisions on child custody must take into account the laws of other countries involved (Breger, 2021).

Child custody cases in divorces involving dual citizens are often influenced by international law, such as the United Nations Convention on the Rights of the Child. The Convention is recognized by many countries, including Indonesia, and emphasizes that any decision regarding child custody must be based on the best interests of the child. These interests include aspects such as the physical and emotional needs of the child, the most supportive environment for the child's growth and development, and the child's relationship with both parents (Gosita, 1996). The convention also guarantees the right of the child to

maintain a relationship with both parents, even if the parents live in different countries.

Indonesian jurisdiction, courts often use an approach that puts the best interests of the child first. However, when there is an element of dual citizenship, the court must consider the legal rules of the two relevant countries. This creates a jurisdictional dilemma because it is not always clear which country has the right to determine child custody (Harahap, 1975). In cases like this, it is often necessary to negotiate between the two countries involved to reach an agreement that is beneficial to the child.

Indonesia's jurisdiction in determining child custody in divorce with dual citizenship also involves the process of recognition and enforcement of court decisions in other countries. One of the issues that arises is that Indonesian court judgments may not be recognized or implemented in other countries, depending on the country's legal system (Mansari, 2018). This adds a layer of complexity in child custody cases as parents living in other countries can file objections or refuse to comply with Indonesian court decisions.

In addition, the jurisdiction of law in cases of mixed marriages and divorces involving dual citizenship is also affected by the citizenship status of the child. Children born to couples with dual citizenship often have citizenship rights in two countries. This adds to the challenge for courts in determining child custody, as each country may have different rules regarding citizenship and custody (Febrianty et al., 2023). A child's citizenship status can affect where the child will live and who will be responsible for childcare, especially if both parents live in different countries.

In some cases, the court must consider the family law in the other country involved in the case. In many countries, child custody is granted based on different rules than those applied in Indonesia. For example, in European countries, custody is often given to parents who are considered more financially capable or have better emotional stability. In other countries, custody may be more influenced by cultural or religious factors (O'Connell, 2022). In this situation, Indonesian courts must be careful in making decisions that not only respect Indonesian law, but also consider the implications of the law in other countries.

Mixed marriages, there is often a conflict between religious law and state law, especially if one of the spouses is from a country that implements religious law as the basis of their family legal system. In Indonesia, Islamic law governs most marriage and divorce matters for Muslims, while non-Muslims are subject to civil law. This difference can cause jurisdictional conflicts when one of the spouses is from a country that uses sharia law or other religious law in determining child custody (Diponegoro Private Law Review, 2020).

Indonesian legal jurisdiction in establishing child custody in divorce cases involving dual nationals must consider many factors, including national law, international law, and applicable conventions, as well as the best interests of the child. Despite efforts to apply the principle of the best interests of the child as the primary guide in decision-making, dual jurisdiction often poses challenges in the implementation of court decisions. In this situation, international

cooperation and cross-jurisdictional recognition are key to ensuring that child custody is established taking into account the child's well-being at the global level.

Factors Considered by the Supreme Court in Decision No. 2021 K/Pdt/2020 Regarding Child Custody

The factors considered by the Supreme Court in Decision No. 2021 K/Pdt/2020 regarding child custody are very complex and involve various aspects that are carefully considered. In divorce cases, especially those involving children, the Supreme Court seeks to determine the best decision for the welfare of the child, in accordance with the principles of child protection regulated in the Child Protection Law (State Law of the Republic of Indonesia No. 23 of 2002 concerning Child Protection, n.d.). Some of the main factors that affect the final outcome of a child custody decision in this case include the child's psychological condition, the child's basic needs, the relationship between the child and the parent, and the parent's financial ability.

The factors considered by the Supreme Court in Decision No. 2021 K/Pdt/2020 include the child's psychological condition, basic needs, the child's relationship with the parents, the parents' financial ability, and the child's desires. The Supreme Court considers all these factors holistically to reach the best decision for the child's welfare. Although parents' financial abilities are often an important consideration, a child's emotional well-being and relationship with parents are also highly regarded to ensure that children grow up in a supportive environment.

CONCLUSIONS AND RECOMMENDATIONS

1. In divorce cases involving dual citizens, Indonesia's legal jurisdiction refers to the Marriage Law No. 1 of 1974 and the principles of international law. Child custody is decided based on the best interests of the child, taking into account the nationality, place of residence of the child, as well as the laws of other relevant countries. Indonesia has full authority to decide on custody if the child lives in Indonesia. Factors such as psychological well-being, economics, and the child's relationship with parents are the main basis for decision-making.
2. In Decision No. 2021 K/Pdt/2020, the Supreme Court considered several main factors related to child custody, namely the child's psychological and emotional well-being, basic needs, the child's relationship with both parents, and the financial ability of the parents. The court also takes into account the child's wishes if his age and maturity are considered sufficient.

To handle divorce cases with dual citizenship, it is important for Indonesia to strengthen existing laws. Revision of the Marriage Law is needed to be more responsive to international situations. The assessment of the child's best interests must be carried out thoroughly, considering his psychological and social aspects. Education for law enforcement on the issue of dual citizenship is very important so that the decisions taken are fairer. In addition, international cooperation must be enhanced to ensure consistent recognition of legal rulings. Public education about rights and obligations in divorce needs to be

strengthened so that all parties understand the importance of children's interests. Finally, mediation can be an effective alternative to resolving custody disputes, reducing conflicts and reaching mutually beneficial agreements.

ADVANCED RESEARCH

Future research is recommended to conduct a comparative study of child custody determinations in dual nationality divorce cases between Indonesia and other countries that have different legal systems, such as countries with civil or common law systems. This is important to understand how different legal systems and juridical approaches affect child custody decisions, and whether there are best practices that can be adapted by the Indonesian legal system. In addition, research can deepen the analysis of the effect of dual citizenship policies on the legal status of children in custody disputes, which is expected to enrich legal guidance and recommendations for similar cases in the future.

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