



## Post-Divorce Child Custody Rights in Mixed Marriages: Analysis of Supreme Court Decision Number 804K/Pdt/2016

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**Abstract:** The purpose of this study is to help regulate child custody after divorce between couples where one is an Indonesian Citizen (WNI) and the other is a Foreign Citizen (WNA). This study involves juridical to conduct normative legal research. Legislation, court decisions, and related literature are used as data sources. Reviewing, describing, and interpreting the collected data is how qualitative data analysis is carried out. The results of the study indicate that the problems that arise in mixed marriages include the place of divorce lawsuits, child custody disputes, and child citizenship. Indonesian judges use Indonesian national law to resolve child custody issues from mixed divorces. Judges rely on the most important needs of the child.

**Keyword:** Mixed Marriage, Mixed Divorce, Child Custody, Dual Citizenship.

### INTRODUCTION

In recent decades, mixed marriages between Indonesian Citizens (WNI) and Foreign Citizens (WNA) have increased. In addition to increasing the diversity of Indonesian culture and ethnicity, this phenomenon also raises legal issues that need to be addressed, especially those related to divorce. Children from mixed marriages face a dilemma in determining their legal status and national identity, so that the issue of child custody becomes the center of attention amid this phenomenon.

Divorce in mixed marriages has national and domestic legal consequences. Children born from mixed marriages often have dual citizenship, which makes the process of determining their custody and citizenship very sensitive and difficult.

Child custody in mixed marriage divorces is discussed in the Supreme Court decision Number 804K/Pdt/2016. This decision provides guidelines for how Indonesian judges handle child custody issues from mixed marriages by prioritizing the best needs of the children and meeting the needs of the children's limited dual citizenship.

This study aims to study the Supreme Court decision Number 804K/Pdt/2016, which regulates child custody after divorce in mixed marriages. This study uses a normative legal research approach with juridical. Legislation, court decisions, and related literature are used as data sources. Reviewing, describing, and interpreting the collected data is how qualitative data analysis is carried out.

As a result, this study is expected to help understand and develop more inclusive and flexible laws that address the difficulties of mixed marriages and divorces involving children. In addition, the findings of this study can also help judges, advocates, and other stakeholders in the process of resolving similar cases to be more efficient and fair for all parties involved.

Divorce in mixed marriages often results in many problems, especially related to child custody. Supreme Court Decision Number 804K / Pdt / 2016 is one of the important decisions that can be used as

an example when examining this issue. When determining child custody, differences in culture, citizenship, and legal systems between the two parents must be considered.

Case number 804K / Pdt / 2016 relates to the decision of the Supreme Court of the Republic of Indonesia on child custody in a divorce case between an Indonesian citizen and a Filipino citizen. In this decision, the father received custody of the child because the mother was considered to have neglected her role as a wife and mother. This decision was made after an appeal and cassation process in which the Supreme Court rejected the mother's application for custody on July 26, 2016.

## **METHOD**

Legislation, court decisions, and related literature are used as data sources for this normative legal research. Data are analyzed qualitatively by reviewing, describing, and interpreting.

By using a normative legal approach, normative legal research aims to obtain a more inclusive and flexible understanding and development of law in dealing with the complexity of existing law. This method focuses on the inventory of positive law, legal principles, in-concreto legal discovery, legal systematics, level of synchronization, comparative law, and legal history.

## **RESULTS AND DISCUSSION**

Supreme Court Decision Number 804K/Pdt/2016 is an important legal decision in terms of regulating child custody in divorces carried out by mixed marriage couples. This decision was made in a divorce case between a husband and wife, one of whom is an Indonesian Citizen (WNI) and the other is a Foreign Citizen (WNA). The child's custody and citizenship were seized.

In cases of child custody from mixed divorces, Indonesian judges use Indonesian national law. They tend to give custody to children to choose who will care for them, prioritizing the needs of the child. Children born from mixed marriages cannot have dual citizenship status if they are under 18 years old or before marriage. If the child is 18 years old or married, they must choose one of their parents' citizenships.

Supreme Court Decision Number 804K/Pdt/2016 emphasizes how important the child's needs are when choosing a caregiver. Judges prioritize the child's needs to make the best decision for the child. Children born from mixed marriages cannot receive dual citizenship until they are 18 years old or before they get married. After that, they must choose one of their parents' countries to live in. This helps them make an informed decision about what their national identity is.

This decision is very important to ensure that child custody is regulated fairly and transparently by prioritizing the needs of the child. This decision also improves the quality of post-divorce care and provides adequate protection for children in difficult situations such as mixed divorces.

In addition, as a result of this decision, we better understand the international legal regulations relating to the citizenship of children born from mixed marriages. Therefore, the Supreme Court Decision Number 804K/Pdt/2016 is the basis for considering similar cases in the future. This decision shows how important it is to prioritize the needs of the child in post-divorce custody arrangements in mixed marriages and to freeze the citizenship status of the children.

The analysis of the Supreme Court Decision Number 804K/Pdt/2016 shows how Indonesian law handles child custody in the context of divorces carried out by couples with mixed family relationships. This decision was made in a situation where a divorce between an Indonesian Citizen (WNI) and a Foreign Citizen (WNA) occurred, which often raises complicated legal issues, especially regarding child custody. By using Lex Fori, the court applies Indonesian national law by prioritizing the best interests of the child.

According to Law No. 35 of 2014 concerning Child Protection, both parents are entitled to child custody; however, based on the evidence and circumstances, the court chooses the more appropriate party. Since the mother was proven to have abandoned the child, the father has custody of the child. The needs and welfare of the child are the main priority in this decision. Supreme Court Decision Number 804K/Pdt/2016 provides important guidelines for child custody arrangements after divorce in mixed marriages, emphasizing the best interests of the child and providing flexibility regarding citizenship status.

Child custody in the context of mixed marriage divorce is regulated in Supreme Court Decision Number 804K/Pdt/2016, with several important points:

- 1) In this decision, Indonesian law is used to resolve child custody disputes.
- 2) In accordance with Law No. 35 of 2014 concerning Child Protection, both parents are entitled to the right to care for their children; however, the court has the authority to choose the party that is more suitable to care for a particular child.

- 3) Since the defendant (mother) was proven to have neglected the child, the plaintiff (father) is entitled to custody of the child in this case. This decision shows that the court prioritizes the interests of the child.
- 4) This decision also considers the child's citizenship status. Children from mixed marriages cannot have dual citizenship until they are 18 years old or before they get married.

Thus, the Supreme Court decision Number 804K/Pdt/2016 provides clear guidelines on how child custody is regulated in mixed marriage divorces. The decision emphasizes how important it is to consider the needs and welfare of the child when making decisions.

In the Supreme Court decision Number 804K/Pdt/2016, the court awarded custody of the child to the father based on several important considerations. The court emphasized that decisions must be made in the best interests of the child. In this case, the judges considered that the father could create a more stable and safe environment for the child to grow up, and they considered the father's ability to provide the education, protection, and attention needed by the child.

The main factor in the custody decision is whether the father is proven to be able to meet the emotional and physical needs of the child. However, if the mother shows inappropriate or unworthy behavior in raising the child, such as traveling without paying attention to the child or detrimental behavior, then the court will grant custody to the father. The judge also considers the emotional stability of the child. This decision takes into account the fact that the child feels more comfortable and calm with his father. This decision also takes into account the previous ruling of the Supreme Court which stated that the father can receive custody if there is evidence that the mother is unable to raise the child properly. Therefore, the court's decision to grant custody to the father depends on the child's best needs, the ability of each parent to care for the child, and the behavior and emotional stability that each party can offer.

In the long term, the Supreme Court's decision Number 804K/Pdt/2016 on children from mixed marriages has several important consequences, including:

- 1) This decision provides legal certainty regarding child custody rights in divorces carried out by mixed marriage couples. Children born from mixed marriages now have a clear legal basis to determine who has the right to care for them, taking into account the child's best needs.
- 2) Children born from mixed marriages can have dual citizenship only until they are 18 years old. This allows them to adapt to their future needs and situations when choosing a national affiliation.
- 3) This decision confirms that the child's right to choose where to live after a divorce is of utmost importance. This creates a safer and more supportive environment for children so that they can develop well even though their parents are divorced.
- 4) Decisions that prioritize the child's best interests can reduce children's stress and anxiety after their parents' divorce. This has the potential to improve their psychological and emotional well-being.
- 5) This decision can encourage changes in public policy related to the protection of children in mixed marriages, so that more attention is paid to children's rights in family law.
- 6) This decision can also increase public awareness of the importance of legal protection for children in divorce, especially in cases of mixed marriages.

In accordance with Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, children from mixed marriages have the right to choose citizenship. Supreme Court Decision Number 804K/Pdt/2016 does not explicitly discuss the right of children to obtain dual citizenship, but this does not affect the right of children born from mixed marriages to obtain dual citizenship.

However, it is important to remember that the basic principles of international and national law governing the status and nationality of a person are often related to the application of citizenship laws for children born from mixed marriages. Therefore, when considering child custody in the context of dual citizenship, factors such as the priority of the child's interests, future flexibility, and the impact of international law must be considered comprehensively.

## CONCLUSION

This study found that Supreme Court Decision Number 804K/Pdt/2016 has a significant impact on how post-divorce child custody is decided in mixed marriages. Indonesian judges successfully resolved legal issues arising from mixed divorces by using Indonesian national law and prioritizing the needs of the children. Children from mixed marriages have limited dual citizenship status, which gives them flexibility in the future.

This study can help legal experts, judges, advocates, and other stakeholders understand and address the legal issues arising from mixed divorces. Therefore, this study makes a significant contribution to building a more open and responsive legal system, especially in the context of divorce and mixed marriages involving children.

Thus, this study shows how important the implementation of Supreme Court Decision Number 804K/Pdt/2016 is in helping the process of legalizing child custody in mixed divorce cases and increasing transparency and accountability in the citizenship environment of the children.

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