

Implementation of Private International Law in Mixed Marriage Divorce Cases: A Case Study of Decision Number 313/Pdt.G/2021/PA.Dps.

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Abstract. This study examines the application of Private International Law principles in mixed marriage divorce cases in Indonesia, with a particular focus on Decision Number 313/Pdt.G/2021/PA.Dps rendered by the Denpasar Religious Court. Using a normative legal research method with a statutory and case approach, this research analyzes how Indonesian courts determine applicable law and jurisdiction in divorce disputes involving Indonesian citizens and foreign nationals. The findings show that the court applied the principles of *lex fori* and *lex loci celebrationis*, thereby prioritizing Indonesian national law due to the place of marriage registration and the domicile of the parties. Indonesian legal instruments, including Law Number 1 of 1974 on Marriage, Law Number 7 of 1989 on Religious Courts, and the Compilation of Islamic Law, were comprehensively used as the legal basis for adjudication. The study concludes that Indonesian law has dominant authority in resolving mixed marriage divorce cases conducted and registered within Indonesian territory, ensuring legal certainty, justice, and protection of the parties' rights within the national legal system.

Keywords: Private International Law; Mixed Marriage; Divorce; Religious Court; Indonesian Law

INTRODUCTION

The development of globalization has encouraged human mobility across countries, including in the aspect of marital relationships between Indonesian citizens and foreign nationals. This phenomenon of mixed marriage is a consequence of increasingly strong social, educational, and economic interactions between nations. However, behind this development lies complex legal issues when divorce occurs. This complexity arises due to the variations in legal systems governing marriage and divorce between two different countries, thereby creating questions regarding which law should be applied and which court has jurisdiction to resolve the dispute (Aminati et al., 2024).

In Indonesian law, mixed marriages are regulated under Article 57 of Law Number 1 of 1974 concerning Marriage, which stipulates that a marriage between two individuals subject to different legal systems shall also be governed by the respective laws of each party. In Indonesia, cross-border divorce issues are regulated within the framework of Private International Law, which functions to determine which law shall apply. When a divorce occurs, new issues arise concerning the application of the principles of private international law, such as *lex loci celebrationis* (the law of the place of marriage), *lex domicilii* (the law of domicile), *lex patriae* (the law of nationality), and *lex fori* (the law of the court). The implementation of these principles often creates challenges, as they do not always align with the interests of each party or with the principle of legal certainty (Kahramandika et al., 2024).

One example that illustrates this issue is what inside the Decision Number 313/Pdt.G/2021/PA.Dps, which involves the separation between an Indonesian citizen and a foreign nationals. This case is particularly interesting to analyze as it demonstrates how the Denpasar Religious Court applied national law in handling an international divorce case. In its implementation, the court is required to analyze the

principles of private international law in order to determine the applicable law and the validity of the decision, as well as to ensure the protection of the rights of all parties involved. This reflects a strong interrelation between the sovereignty of national law and the universal principles of private international law (Fachrina et al., 2023).

The main issue that arises concerns how the principles of private international law are applied in divorce cases between Indonesian citizens and foreign nationals that occur abroad, as well as how Indonesian law is implemented in resolving such cases. The implementation of private international law principles is crucial to ensure legal certainty, justice, and legal protection for all parties, particularly for Indonesian citizens who marry abroad and face diverse legal systems. Divorce judgments rendered in foreign countries are not necessarily recognized in other jurisdictions, especially in Indonesia. This situation creates serious legal problems concerning the

legal status of the parties involved and subsequently affects other civil rights, such as inheritance, child custody, and the legal status of future marriages.

Therefore, this study aims to analyze the application of international legal principles in divorce cases between Indonesian citizens and foreign nationals, as reflected in Decision Number 313/Pdt.G/2021/PA.Dps, as well as to examine the legal basis used by Indonesian courts in handling such cases. Theoretically, the findings of this study are expected to deepen the discourse on private international law, particularly in the context of cross-border marriage and divorce.

RESEARCH METHOD

The research method employed in this study is a normative legal research method, which examines legal concepts, theories, principles, and regulations related to Private International Law. The approach used in this research is the statute approach, or legislative approach. Data were obtained through a literature study using relevant primary and secondary legal materials concerning divorce issues arising from mixed marriages within the scope of Private International Law. The collected data were analyzed using a descriptive-analytical method, providing an explanation of the application of principles in Private International Law to determine the appropriate legal resolution for Decision Number 313/Pdt.G/2021/PA.Dps, in accordance with the principles of Indonesian law.

DISCUSSION

The Application of Private International Law Principles in Decision Number 313/Pdt.G/2021/PA.Dps.

The case in Decision Number 313/Pdt.G/2021/PA.Dps. is closely related to Private International Law, as it concerns a divorce arising from a mixed marriage. A mixed marriage refers to a marriage conducted between two individuals of different nationalities. In this case, the Defendant is an Indonesian citizen, while the Plaintiff is a foreign national. Therefore, the marital relationship between the Plaintiff and the Defendant can be categorized as a mixed marriage. Pursuant to Article 57 of Law Number 1 of 1974, as amended by Law Number 16 of 2019, a mixed marriage is defined as a marriage between two individuals of different nationalities in Indonesia, in which one of the parties is an Indonesian citizen. Following the marriage ceremony, the Plaintiff and the Defendant resided and settled at Jalan Tukad Balian, Gang Ketapang Sari, Renon, South Denpasar.

The resolution of a case involving Private International Law must begin with an analysis of the legal event by first determining the primary connecting factor, or point of attachment, which serves to indicate whether the case falls within the scope of Private International Law. One of the main connecting factors is the nationality of the parties. In this case, the parties hold different nationalities, with the Plaintiff being a citizen of the United Kingdom and the Defendant an Indonesian citizen. Therefore, this case falls under the domain of Private International Law as it involves two distinct nationalities. After identifying the primary connecting factor, it is necessary to further qualify the facts of the case in order to determine the *lex fori* (the law of the court). This qualification process uses the concept known as *status personalia*. The scope of *status personalia* encompasses various aspects, including legal capacity, capacity to act, protection of individual interests, family relations, marital relations, parental authority, guardianship, family law, marriage, divorce, child legitimization, and others (Alvessya, 2025:534). There are two main schools of thought in this regard: the principle of personality, which relates to nationality, and the principle of territoriality, which relates to domicile. The Plaintiff, a British national, adheres to the principle of territoriality. The Plaintiff voluntarily chose to reside in Indonesia, specifically in Denpasar. This is evidenced by the existence of an Electronic Limited Stay Permit, Niora: 27AUAA05438, dated 15 September 2020, in the name of the Plaintiff. Furthermore, there is a Certificate of Foreign Residency, Number: 472/021/VIII/2021, dated 24 August 2021, also in the name of the Plaintiff, issued by the Head of Padangsambian Village, West Denpasar District, Denpasar City. Therefore, based on the principle of territoriality, the Plaintiff, as a foreign national residing in Indonesia, is subject to the laws and regulations applicable in Indonesia.

Next, it is necessary to identify the secondary connecting factor, or the determining point of attachment, which serves as an indicator for determining which law should be applied in resolving a Private International Law case. In this case, the appropriate secondary connecting factor is *lex loci celebrationis*. This concept explains that the applicable law is the law of the place where the marriage was solemnized. In this case, the marriage between the Plaintiff and the Defendant was conducted in East Nusa Tenggara, Indonesia, and was officially registered under Marriage Certificate Number 039/006/VIII/2018, dated August 28, 2018, issued by the Head of the Office of Religious Affairs of Oebobo District, Kupang City, East Nusa Tenggara Province. This is reinforced by Article 18 of the *Algemene Bepalingen van Wetgeving*, which stipulates that any legal act shall be determined by the court in accordance with the law of the place where the act was performed. Therefore, any dispute arising from this marriage shall be resolved under Indonesian law.

1. Settlement of the Case in Decision Number 313/Pdt.G/2021/PA.Dps. Using Indonesian Law

The laws governing mixed marriages and divorces in Indonesia are contained in Law No. 1 of 1974 concerning Marriage and Law No. 7 of 1989. In case No. 313/Pdt.G/2021/PA.Dps, Indonesian law was predominantly used to resolve cross- border legal conflicts through court rules based on Article 39 Paragraph (1) of the Marriage Law, which stipulates that divorce can only be granted in court after reconciliation efforts have failed. In this case, the judge also referred to government regulations stating that a divorce must be in accordance with Article 19 of Government Regulation No. 9 of 1975 and Article 116 letter (f) of the Compilation of Islamic Law, which states that the grounds for divorce are continuous disputes or incompatibility between husband and wife and no hope of reconciliation in the household. In addition to court regulations, there are also regulations in the Compilation of Islamic Law whereby cases involving Muslim parties are examined by the Religious Court. The Compilation of Islamic Law is used to regulate the procedures for lawsuits, mediation, and the determination of divorce or separation as substantive law. The judge ruled based on Indonesian Islamic law, not the religious or customary law of the foreign national. The judge confirmed that the divorce was carried out with a ba'in sughra divorce based on Article 119 of the Compilation of Islamic Law, after it was proven that the household was not harmonious, the husband did not provide financial support, there was infidelity, and there was no desire to reconcile. The judge cited verse 21 of Surah Ar-Rum and the fiqh rule: "Avoiding harm is more important than seeking benefit," to emphasize that divorce is justified in order to avoid greater harm.

In mixed divorces between Indonesian citizens and foreign nationals, Indonesian law is applied in full because the legal events (marriage and divorce) took place in Indonesian territory and are subject to Indonesian law. This is emphasized in Article 65 of the Marriage Law, which states that if the marriage is registered in Indonesia, the divorce is governed by Indonesian law. In this case, it is clear that the marriage between the Plaintiff and the Defendant was officially registered in Indonesia, as evidenced by Marriage Certificate Number: 0039/006/VIII/2018, dated August 28, 2018, issued by the Oebobo Subdistrict Religious Affairs Office. This gives the Religious Court absolute jurisdiction in the divorce settlement between the Plaintiff and the Defendant. Meanwhile, the Denpasar Religious Court has relative jurisdiction in the divorce settlement of this case based on the Plaintiff's domicile, as stipulated in Article 73 paragraph (1) of Law -Law Number 7 of 1989, which states that a divorce lawsuit filed by a wife must be submitted to the court where the Plaintiff resides, unless the Plaintiff has deliberately left the residence without the husband's permission. Thus, the application of Indonesian law in the

settlement of mixed marriage disputes shows that foreign law has no binding legal force in Indonesia if it conflicts with the basic principles of national law and Islamic law. Divorce decrees issued by Indonesian courts are only legally valid in Indonesia. If you want them to be recognized in the foreign national's country of origin, you must go through a legalization or recognition process in accordance with the laws of that country. The verdict in this case is to grant the plaintiff's claim in absentia, to issue a ba'in sughra divorce from the defendant to the plaintiff, and to charge the plaintiff with court costs of Rp370,000.

CONCLUSION

Application of the Principle of Private International Law Number 313/Pdt.G/2021/PA.Dps., the case in question is Private International Civil Law because it involves two citizens of different nationalities. The Indonesian court applies the principle of *lex fori*, whereby Indonesian law forms the basis for dispute resolution. Furthermore, *lex loci* is used to assess the validity of marriages conducted in Indonesia. Thus, the principle of Private International Law indicates that in mixed marriages, the relevant and applicable law still refers to national law as long as the case is examined by the Indonesian judicial system.

Indonesian law was applied comprehensively in this case throughout the examination process until the divorce decree was issued. The legal basis used includes Law No. 1 of 1974 concerning Marriage, Law No. 7 of 1989, the Compilation of Islamic Law, and Indonesian Civil Procedure Law. Absolute and relative jurisdiction in this case lies with the Denpasar Religious Court in accordance with the domicile of the Plaintiff. The court's decision confirms that Indonesian national law has jurisdiction over mixed marriage disputes that occur in Indonesian territory. Indonesian law is used as the main basis for resolving cases, both in terms of procedure and substance, because the case was filed in Indonesia and concerns Indonesian citizens, so national law takes priority in the application of cross-border divorce law.

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