

## Pelaksanaan undang-undang nomor 1 tahun 1974 tentang perkawinan terhadap perceraian pada perkawinan campuran (analisis kasus putusan No. 020/Pdt/G/1990/PN/Jkt.Sel)

Yudie Reza Haryansyah, author

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### Abstrak

Menjelang era globalisasi, membuka kemungkinan terjadi suatu perkawinan campuran. Menurut Undang-Undang Nomor 1 Tahun 1974 perkawinan campuran adalah perkawinan antara seorang warga negara Indonesia dengan seorang warga Negara Asing. Dalam setiap perkawinan, ada saja kemungkinan timbul suatu kesalahpahaman sehingga mengakibatkan putusnya suatu perkawinan. Untuk pasangan yang berbeda warga negara terjadi suatu masalah mengenai hukum mana yang akan diberlakukan dalam menyelesaikannya. Sehingga pokok permasalahan yang timbul adalah bagaimanakah pelaksanaan perceraian pada perkawinan campuran menurut Undang-Undang Nomor 1 tahun 1974 serta penyelesaian akibat hukum yang timbul karena perceraian pada perkawinan campuran terhadap kewarganegaraan, harta bersama, nafkah istri, perwalian atau kekuasaan orang tua serta biaya pemeliharaan anak. Untuk memecah permasalahan ini digunakan metode penelitian normative atau library research, yaitu penelitian untuk memperoleh data-data sekunder. Data yang diperoleh tersebut kemudian dianalisa secara kualitatif, yaitu data yang diperoleh disusun secara sistematis untuk menyajikan pemahaman dan untuk mencapai kejelasan masalah yang akan dibahas. Sehingga dapat ditarik kesimpulan bahwa menurut Undang-Undang Nomor 1 tahun 1974, perceraian pada perkawinan campuran dibedakan antara formil dan hukum materilnya. Hukum formil yang harus ditetapkan adalah mengikuti asas lex fori, dimana dalam hukum acara perdata hakim harus tunduk pada hukum negaranya sendiri. Sedangkan mengenai hukum materil yang harus diterapkan untuk menyelesaikan perkara perceraian tersebut, jika tidak ada pilihan hukum, maka hakim harus menentukan sendiri hukum yang akan diterapkan berdasarkan faktor-faktor dan keadaan-keadaan yang menentukan berlakunya suatu sistem hukum tertentu. Akibat perceraian pada perkawinan campuran mengenai kewarganegaraan, dapat menyebabkan perubahan status personil seseorang. Hal ini dimungkinkan berdasarkan ketentuan dalam Undang-Undang Kewarganegaraan Indonesianya. Dalam perceraian pada perkawinan campuran dimana istri/suami tersebut tetap mempertahankan kewarganegaraan asli mereka. Akibat perceraian pada perkawinan campuran terhadap nafkah istri, perwalian dan biaya pemeliharaan atas anak diselesaikan dengan memperhatikan ketentuan dalam Pasal 41 Undang-Undang Nomor 1 Tahun 1974. mengenai harta bersama diatur terpisah dari perkara perceraian.

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The ongoing process of globalization has brought about more opportunities to a couple from different nationalities to get married. According to the Law No. 1 Year 1974, a mixed marriage defined as a marriage happens between an Indonesian citizens with a foreign citizen. As we know, in a marriage, there are always possibilities of any problem occurs, particularly due to the misunderstanding between the couple, which eventually could lead to a divorce. In case of a mixed marriage, the problem occurs when it has to be decided which law should be applied to then. Thus, in the case of this research, the primary problem is to figure out how is the execution of a divorce on a mixed marriage according to the Law No. 1 Year 1974 should be performed, as well as how to handle and proceed the occurring legal implication caused by the

divorce happening in such a marriage, regarding to the nationality, the assets the couple earned during their marriage life period, the money for the wife, guardian right, as well as the sum of money needed to finance the child/children's life expense. In order to answer this problem, the writer applies the normative research method, or library research, defined as a research to collect the secondary data. The collected data then is to be analyzed qualitatively, that is, the collected data is arranged systematically to provide an understanding and to make the problem discussed clear. Thus, it can be drawn to a conclusion that a divorce happens in a mixed marriage can be taken care of in to means, that is, either in accordance with the formal law or the material law. The formal law means that the law that should be applied is the one which is in accordance with the *lex fori* principles, in which the judge should conform to the civil law of his own country. Meanwhile, as for the material law, in a situation where there is no other chaise, then the judge should decide by himself the law to be applied by considering all the factors and situation that have significance to determine the applicability of a certain law. One of the effects raised as a consequence of a divorce in a mixed marriage is the shifting of the person's status, which is made possible by the applicable law in Indonesia, in case each party of the couple (both the husband an wife) decides to retain their respective nationality. The consequences of a divorce happens in mixed marriage regarding the money that should be given to the wife (as consequence of a divorce), guardian right and the amount needed to finance the child/children's life expense will be proceeded with respect to the Article 41 Law No. 1 Year 1974, while as for the assets earned during the marriage period will be arranged separately from the divorce process.