

## **Warrants of Foreign Citizens after Interracial Marriage in Managing Evaluation of the 1945 Constitution**

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### **Abstract**

Marriages between two people who are bound to disparate laws in Indonesia due to differences in citizenship and one of the couples is an Indonesian citizen have been acknowledged as interracial marriages under the Marriage Law, specified that they are conducted in accordance with the law that is in effect in that nation and are registered with the marriage admission institution. According to the first sentence of article 28D, each individual has the right to acceptance, warranties, safety, and legal certainty that is equal and equitable under the law". Therefore, each deserves to be guaranteed their rights, particularly the right to request a judicial review of a law that violates the Republic of Indonesia's Constitution, despite the fact that they are foreign citizens. As stated in Article 27 paragraph 1 and Article 28D of the 1945 Constitution as well as Article 3 paragraph 2 and Article 5 paragraph 1 of Law No. 39 of 1999 concerning Human Rights, which essentially describes fairness of rights and status of all individuals prior to the law relating to the purpose defined by the premise of equality before the law, this legal shielding is provided to "all individuals," and not only Indonesian citizens.

**Keywords:** Interracial Marriage; Judicial Review; Human Rights.

### **A. Introduction**

Marriage-related agreements have evolved over time in the notion of positive law; in the present day, Indonesia has agreements that have been formalized and are enforceable on all societal levels. Marriage is defined as an inner and outer relationship between a man and a woman as husband and wife with the goal of creating a joyful and everlasting spouses (home) based on a faith in The One and Only God in Article 1 of Law Number 1 of 1974 governing marriage.

Marriage complications are becoming far more tricky and tough as society develops. Since marriage is an enforceable agreement that results in cause and effect between the spouses involved, discussing the many different marital varieties of

issues becomes more and more exciting.<sup>1</sup> Currently, interracial marriages include partners of many nationalities in addition to those of various religions. This demonstrates that the practice of interracial marriages has evolved and no longer reflects the traditional viewpoint, which has the tendency to imply that interracial marriages are only permitted when there are religious and racial distinctions.

According to Article 28B, paragraph 1 of the 1945 Constitution, which states that all individuals have the right to start a family and have children through a valid marriage, marriage is in theory a human right. According to Article 57 of Law Number 1 of 1974 involving Marriage, which is based on living positive law, a marriage within a pair of individuals who are bound to disparate laws in Indonesia because of disparities in nationality and one Indonesian citizen is considered to be an interracial marriage.<sup>2</sup> According to this article, marriages involving (two) citizens of distinct nations are regarded as valid as long as they take place in Indonesia and at least one of the parties is an Indonesian citizen.

The provisions of Article 56, paragraphs 1 and 2, which state that “a marriage held outside Indonesia is between 2 (two) Indonesian citizens”, may apply to interracial marriages that are performed elsewhere the unified nation of the Republic of Indonesia in certain circumstances. or an Indonesian citizen with a foreign national is lawful if it occurs out in accordance with the statutes in effect in the state where the marriage took location, and for Indonesian citizens it does not contravene the rules of this legislation. The document went on to stipulate that "their document of marital must be documented at the marriage record bureau in which they live within 1 (one) year when both of them arrive to Indonesian jurisdiction.

According to Law Number 12 of 2006 governing Nationality of the Republic of Indonesia, a foreigner who marries an Indonesian citizenship does not immediately gain an Indonesian citizen, even if he stays there. This indicates that, in terms of an

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<sup>1</sup> Nur Asiah, “Kajian Hukum Terhadap Perkawinan Beda Agama Menurut Undang-Undang Perkawinan dan Hukum Islam,” dalam *Jurnal Hukum Samudra Keadilan*, Vol. 10 No. 2 (Juli-Desember 2015), 206.

<sup>2</sup> Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan.

individual's rights as well as responsibilities before the law in Indonesia, marriage does not convert someone into an Indonesian citizen. Every person is ensured their rights, so having a citizenship from another country does not imply that a person loses those rights. This is especially true if someone has married an Indonesian citizen, in which case they must fulfil all the requirements set forth by the country's laws governing a marriage and people.

Therefore, it requires further research to determine whether or not foreign nationals who have been in interracial marriages have the right to examine the law. John Salmond argues that rights in the sense of becoming independent, particularly when discussing the definition of rights, are rights that grant a person the right to do, acquire, and hold anything, particularly in the instance of submitting a legal review of a statute.<sup>3</sup> The in issue overseas citizenship is a person who stays and carries on life in another nation but is neither a native of that nation neither is he officially recognized as its resident. In some instances, the concerned foreign citizen became a foreign citizen after being married to a foreigner in Indonesia. A process wherein the legal system compares less regulations and legislation to higher laws and regulations is known as judicial review or review of laws.<sup>4</sup>

The aforementioned foreign citizens are individuals who reside and settle in a specific country but are not originally from that country and are also not officially registered as citizens. However, in different cases, such a foreign citizen occurs after entering into a mixed marriage in Indonesia. Meanwhile, Judicial review, or the examination of laws, is the process of testing lower-level regulations against higher-level legislation carried out by judicial institutions.<sup>5</sup>

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<sup>3</sup> Jimly Asshidiqie, *Hukum Acara Pengujian Undang-undang*, 2<sup>nd</sup> ed (Jakarta: Sinar Grafika, 2010), 23.

<sup>4</sup> DOI: <https://doi.org/10.14710/hp.8.1.1-14>. Wulandari. Kedudukan Moralitas Dalam Ilmu Hukum. Vol. 8 No. 1. E-journal.undip.ac.id. 2020, 1-14.

<sup>5</sup> DOI: <https://doi.org/10.31078/jk1544>. Yusa. Komang. Nyoman. Bagus. Gagasan Pemberian Legal standing WARGA NEGARA ASING dalam Constitutional Review. Jurnal Konstitusi. Volume 15 Nomor 4 Tahun 2018, 752-773.

The research method employed is the Normative legal research method, in which this research method utilizes Laws and other regulations as the primary sources of research. Subsequently, the researcher conducts analysis and study, as well as legal interpretation, by considering several example cases existing within society.<sup>6</sup>

## **B. Discussion**

### **1. Foreigners' Constitutional Status Rights in Indonesia When Evaluating the Law**

Indonesia is one of the countries that highly upholds the rights of every individual, as evidenced by the inclusion of these rights in the Constitution of the Republic of Indonesia. One of these instances is in Article 28D, paragraph 1, as well as the enactment of Law No. 39 of 1999 concerning Human Rights. The testing of laws against the Constitution of the Republic of Indonesia by Foreign Citizens is not something new. Based on Article 28D, paragraph 1, "Every person has the right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law." Therefore, every individual should rightfully be granted their rights, including the right to file a judicial review of laws against the Constitution of the Republic of Indonesia, even if they are a Foreign Citizen, especially if that foreign citizen has subjected themselves to the laws of marriage in Indonesia. On a different note, the Citizenship Law also regulates that children who were born before this law was enacted and are not yet 18 years old and unmarried are considered Indonesian citizens, provided they register themselves with the Minister through an official or representative of the Republic of Indonesia within four years after the enactment of this Citizenship Law.<sup>7</sup>

Given that the Republic of Indonesia's Constitutional Court was originally entrusted with protecting the law, it is only fitting to give foreigners the ability to

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<sup>6</sup> Sitti Mawar. "Metode Penemuan Hukum (Interpretasi dan Konstruksi) dalam Rangka Harmonisasi Hukum". *Jurnal Justisia* 1, no. 1 (2016), 5.

<sup>7</sup> Libertus Jehanis dan Atanasius Harpen, *Hukum Kewarganegaraan*, (Bandung: Citra Adytia Bakti, 2006), 8.

challenge legislation that conflict with the Republic of Indonesia's 1945 Constitution. We support the giving of rights to foreign nationals in examining a law that conflicts with the Republic of Indonesia's 1945 Constitution for two main reasons:

- a. The factual realities remained of a conceptual kind when the judges of the Indonesian Constitutional Court considered whether the candidate had constitutional authority. In its decisions on cases 006/PUU-III/2005 and 010/PUU-III/2005, the Constitutional Court articulated the presence of five requirements for the applicant's constitutional rights more stringently.<sup>8</sup> However, the specific case at hand will ultimately determine how the court judges it. Interestingly, often it remains unknown until the validation procedure is finished with reference to these five points.
- b. In contrast, despite the fact that those at issue are foreign nationals following interracial marriages, the existence of restrictions on their rights cannot be a reflection of advantages and legal fairness. Because this is inconsistent with the first sentence of Article 28 D of the Republic of Indonesia's 1945 Constitution, which states that "Everyone has the right to recognition, guarantees, protection, and just legal certainty as well as equal standing before the law." The Constitutional Court is the protector of the constitution, as it has already stated.

in relation the opinions of the scholar, considering these factors, the candidates, who are in this case overseas resident after obtaining a mixed marriage, are qualified or called to have the constitutional right to submit a request for a reconsideration of a law that is in violation of the Constitution of the Republic of Indonesia. As a result, the primary points of the petition they have sent in require to

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<sup>8</sup> Putusan Perkara Mahkamah Konstitusi No. 006/PUU-III/2005. <https://www.mkri.id/public/content/persidangan/putusan/Putusan006PUUIII2005tg1310505ttgPilkada.pdf>. Diakses pada tanggal 1 Juni 2023

be taken into account so that it reflects legal benefits and fairness even though the granting of these rights has not yet been realised.<sup>9</sup>

However, there is a fact that during the examination by the Judges of the Assembly of the Constitutional Court of the Republic of Indonesia to determine whether the petitioner has legal standing, sometimes this can only be determined after the Constitutional Court Judges examine the evidence presented during the trial. Alternatively, the legal standing status of the petitioner can sometimes be established at the outset before the examination, as can be seen from the legal standing of the petitioner in Verdict No. 137/PUU/XII/2014<sup>10</sup>, which stated that foreign citizens within the territory of Indonesia cannot have legal standing to conduct an examination of laws in the Constitutional Court of the Republic of Indonesia. However, Former Constitutional Judge/Constitutional Court Dr. Harjono, SH<sup>9</sup> conducted a study/gave a differing opinion on the Legal Standing of Foreign Citizens; "that the foreigner's lack of legal standing is not due to their foreign status, so they don't have legal standing.<sup>11</sup> As long as the foreigner has guaranteed rights, they also have legal standing in Indonesia. However, if they file a lawsuit based on the fact that they are foreigners, this is not possible because they are bound by the sovereignty of Indonesia."<sup>12</sup>

## **2. Overseas nationals' rights to evaluate statutes as a kind of human rights**

According to the author's research, restricting overseas citizens' rights to evaluate laws that violate the Constitution of the Republic of Indonesia will result in a variety of issues, so it is logical to avoid this constraint. This is further supported by the legal fact that there were 4 (four) dissenting opinions in the Constitutional Court

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<sup>9</sup> Maissy Subardiah, *Legal Standing Pemohon Dalam Pengujian Undang-Undang (Judicial Review) Pada Mahkamah Konstitusi, Mappi*. (Jakarta: FHUI, 2007), 7.

<sup>10</sup> Dodi Haryono. "Metode Tafsir Putusan Mahkamah Konstitusi dalam Pengujian Konstitusional Undang-Undang Cipta Kerja", *Jurnal Konstitusi* 18, no. 4 (2021), 776.

<sup>11</sup> Maruarar Siahaan, *Hukum Acara Mahkamah Konstitusi Republik Indonesia*, (Jakarta: Konstitusi Press, 2005), 83.

<sup>12</sup> Bambang Indra. "Urgensi Kedudukan Hukum (Legal Standing) Dalam Pengajuan Undang-Undang Oleh WNA", *Jurnal Lex Justitia* 1, (2019).

Decision Number 2-3/PUU-V/2007, specifically by Constitutional Justices, Harjono, Achmad Roestand, M. Laica Marzuki serta Maruarar Siahaan.<sup>13</sup>

The imposition of legislation, particularly those meant for Indonesian people but also intended for foreign citizens, must be subject to restrictions as a result of this legal fact.<sup>14</sup> Given that the ruling of the constitutional court is *physis omnes*, an evaluation of the placement of these borders unquestionably possesses distinct features.<sup>15</sup> The Constitutional Court may grant legitimate status by applying a broad interpretation of Article 51 paragraph (1) of the UUMK rather than granting the petitioner's request to declare that paragraph to be in conflict with the 1945 Constitution.<sup>16</sup>

In the opinion of the writer, there are three advantages, which are:

- a. Partition and limitation of legislation will result in precise and explicit lawful processes in terms of statutory assurance.
- b. This system will adhere to the ideals of good governance with regard to constitutional necessity.
- c. Because the linked concerns are dealt with through proper legal channels, candidates continue to get administrative equality and actual equity as a result of this process.<sup>17</sup>

We are unable to provide safety depending merely on nationality, ethnicity, or religion in accordance with the idea of human rights, which holds that all persons in this world possess similar fundamental rights. Even in the 1945 Constitution, every

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<sup>13</sup> **Majalah KONSTITUSI No. 96, Edisi Februari 2015, 64-67. Diakses tgl 1 Juni 2023**

<sup>14</sup> Defani Putri, "Perkawinan Campuran Di Indonesia Ditinjau Dari Hukum Islam dan Positif", *Jurnal Masadir* 1, no. 2 (2022), 156-175.

<sup>15</sup> Galang Fauzan Prawinda, Arjie Sukmawijaya Arpian Putra. "Flats for Foreigner After the Issuance of the Omnibus Law in Indonesia", *Jurnal UWKS* 18, no. 1 (2021), 13.

<sup>16</sup> I Dewa Gede Palguna, *Pengaduan Konstitusional; Upaya Hukum Terhadap Pelanggaran Hak-Hak Konstitusional Warga Negara*, (Jakarta: Sinar Grafika, 2013).

<sup>17</sup> Janedri M. Gaffar, "Peran Mahkamah Konstitusi dalam Perlindungan Hak Asasi Manusia", *Jurnal Konstitusi* 10, no. 1 (2013), (Jakarta, Mahkamah Konstitusi), 13.

person<sup>18</sup> is afforded legal assistance, not just Indonesian citizens, as stated in Article 27 paragraph 1 and Article 28D of the 1945 Constitution as well as Article 3 paragraph 2 and Article 5 paragraph 1 of Law No. 39 of 1999 concerning Human Rights, which essentially describes the equality of rights and status of all individuals before the law in accordance with the meaning stated in the concept of Equal opportunity ahead of the law.<sup>19</sup>

When, as indicated in its decisions 2-3/PUU-V/2007 and 137/PUU-XII/2014, the Constitutional Court of the Republic of Indonesia barred overseas residents from requesting a judicial review of the 1945 Constitution on the grounds that they lacked constitutional status.<sup>20</sup> The 1945 Constitution, the Law on Human Rights, and the provisions of the International Covenant on Civil and Political Rights of Every Person have all been violated, according to our interpretation of this judgement.<sup>21</sup> Because, as stated in Article 28I Paragraph (1) of the 1945 Constitution, the right to justice and equal treatment under the law is one of the fundamental freedoms that cannot be violated as in article 16 (ICCPR).

### C. Conclusion

1. In spite of the fact that they were infringing on the principles of human rights outlined in the 1945 Constitution, the Law About Human Rights, and the provisions of the International Covenant on Civil and Political Rights of Everyone, the Constitutional Court of the Republic of Indonesia refused to allow overseas residents to request judicial review of the 1945 Constitution

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<sup>18</sup> Wasis Susetio, “Disharmoni Peraturan Perundang-Undangan di Bidang Agraria”, *Jurnal Lex Jurnalica* 10, no. 3 (2013), 145.

<sup>19</sup> Kompas <https://integritylawfirms.com/indonesia/wp-content/uploads/Denny-Indrayana-Negara-antara-Ada-dan-Tiada.pdf>. Diakses pada 2 Juni 2023.

<sup>20</sup> Jum Anggriani, “Penerapan Asas Nasionalitas Dalam Perundang-Undangan Agraria Indonesia (Studi Kasus PP Nomor 40 Tahun 1996)”, *Jurnal Dinamika Hukum* 12, no. 1 (2012), 173.

<sup>21</sup> Soekanto. Soerjono. Mamuji. Sri Penelitian hukum normatif seperti ini biasanya meneliti dalam hal; penelitian terhadap asas-asas hukum, penelitian terhadap sistemik hukum, penelitian terhadap taraf sinkronisasi vertikal dan horizontal, perbandingan hukum, dan sejarah hukum. Penelitian hukum normatif, Suatu tinjauan singkat, 6<sup>th</sup> ed, (Jakarta: RajaGrafindo Persada, 2003), 14.



because they were considered to lack constitutional legitimacy. Because the fundamental human right to equality and fair justice under the law.

2. After performing a mixed marriage in Indonesia, there became numerous practises surrounding the review of a legal document from an overseas citizen in this circumstance. When a law is passed, it violates their fundamental rights because those rights are now extended to all foreigners living in their nation rather than just its native residents.

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