

# A Legal Certainty of Dual Citizenship for Possession of Land

**Cornelia Mellavista**

Universitas Jember, Indonesia

Email: [corneliamellavista68@gmail.com](mailto:corneliamellavista68@gmail.com)

## Abstract

This research is to analyze and examine the legal certainty of children holding dual citizenship (bipatriate) from mixed marriages to have property rights on land in Indonesia, as well as future arrangements to be able to provide equality for children holding dual citizenship to have property rights to land like other Indonesian citizens. The type of research used is normative juridical research, which means studying and analyzing formal legal rules, namely laws. Following the objectives to be achieved, this thesis research uses three approaches: the statutory approach, the conceptual approach, the historical approach, and the comparative approach. After the legal materials are collected, the legal issues are analyzed based on the collected legal materials. Based on the results of a review of existing legal materials, it is concluded that the legal certainty of dual citizenship holders (bipatriate) owned by children from mixed marriages to have property rights on land is given similarities with foreigners as stipulated in Article 21 paragraph (4) of the UUPA which does not allow Indonesian citizens have dual citizenship (bipatriate) to have property rights over land in Indonesia. Ownership rights are hereditary, strongest, and most complete rights that can be owned by people on land, keeping in mind the provisions in Article 6 of the UUPA can only be owned by Indonesian citizens who do not hold other citizenships such as dual citizenship owned by children from mixed marriages. Children holding dual citizenship (bipatriate) can have ownership rights to land based on inheritance and only a time limit of 1 (one) year for them to be released to other people as stipulated in Article 21 paragraph (3) of the UUPA, which has been equated with provisions for foreigners.

**Keywords:** Legal Certainty, Property Rights on Land, Nationality Principle, Dual Citizenship (Bipatriate).



## A. INTRODUCTION

The land is a unity with a country and in human life. In Indonesia, land is the primary natural resource with deep inner ties. The relationship between the nation and the land is an eternal relationship that cannot be separated from any power to release that relationship as long as the Indonesian state is still bound by the nation's ties (Habibullah et al., 2022).

The constitutional basis of the land development policy comes from the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (from now on referred to as the 1945 Constitution of the Republic of Indonesia). With the enactment of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (from now on referred to as UUPA), the natural resources contained therein are managed by the state and used for the greatest prosperity of the people (Listiyani & Said, 2018). The UUPA is an implementation of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which is explained in the provisions of Article 1 paragraph (1) of the UUPA "to become a

unitary homeland for all Indonesians who are united as the Indonesian nation." Paragraph (2) states that "all the earth, water, and space are not limited to the natural wealth contained therein as a gift from God Almighty is the wealth of the nation," and in paragraph (3) that "the relationship referred to in paragraph (2) is an eternal relationship (Respatiromo et al., 2022).

The UUPA, the juridical basis for land, contains basic rules on the obligations of the holder of land rights. The land is part of the earth's surface in the agricultural sphere. The land in question does not regulate land in all aspects but only regulates one aspect, namely land in a juridical sense called rights (Hidayanti et al., 2021).

Kartini Muljadi and Gunawan Widjaja stated that "as is the basis for the right to control from the state, there are provisions regarding types of land rights, which can be granted and owned by individuals, both individually and in groups as well as legal entities as stipulated in Article 4 paragraph (1) of the UUPA. The rights to the land give authority to the person concerned to use it, as stated in Article 4, paragraph (2) of the UUPA". The various kinds of land rights referred to have been regulated in the provisions of Article 16 paragraph (1) of the UUPA, one of which is the Ownership Right to the land as referred to in Article 4 paragraph (1) (Hapsari et al., 2021).

The UUPA has also determined who has the right to obtain and have rights to the land, as stipulated in Article 9 paragraph (1) of the UUPA, which states that "only Indonesian citizens have the right to have full relations with the earth, water, and space as stipulated in Articles 1 and 2". In paragraph (2), "both men and women have the same opportunity to be able to have land rights" (Sudiarto, 2021). Thus, every Indonesian citizen (from now on referred to as WNI) has the same opportunity and position to be able to own and obtain a land right, as in the legal relationship between an individual and land, which has an eternal relationship and cannot be separated from any power, namely the form of the principle of nationality contained in the UUPA. However, in the provisions of Article 21 paragraph (4) of the UUPA, it is stated that "a person who in addition to having Indonesian citizenship already has another citizenship or dual citizenship (bipatride) then cannot have property rights over land as stipulated in paragraph 3 of this Article", so that dual citizenship (bipatride) in Indonesia cannot have ownership rights over land in Indonesia (Upik, 2021).

Dual citizenship (bipatride) in Indonesia is not clearly stated. However, in the General Elucidation of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia (from now on referred to as the Citizenship Law), it is stated that dual citizenship (bipatride) owned by children from mixed marriages is a form of exception called the principle of limited dual citizenship. Marriage between Indonesian citizens and foreign nationals (from now on referred to as WNA) or what is often referred to as mixed marriage is regulated in the provisions of Article 56 paragraph (1) of Law Number 1 of 1974 concerning marriage as amended by Law Number 16 of 2019 concerning Changes Based on Law Number 1 of 1974 concerning marriage (from now on referred to as the Marriage Law) that "a marriage carried out by two people, one of whom is an Indonesian citizen, is valid if it is carried out based on the applicable law where the marriage took place, and does not violate the provisions of this law"

(Nurmawati & Suantra, 2020). Thus, a mixed marriage is valid as long as the parties have carried out the wedding registration as stipulated by applicable law so that the marriage is valid with all the legal consequences. The legal results are children's status, marital property, and inheritance (Nisa, 2018).

With this recognition, children who hold dual citizenship (bipatride) can also have ownership rights to land as a form of the eternal relationship between land and the Indonesian people as stipulated in Article 1 paragraphs (1), (2), and (3) of the UUPA which cannot be separated with any power. However, the provisions of Article 21 paragraph (4) of the UUPA it does not provide that the eternal relationship remains, which means that dual citizenship (bipatride) owned by children from mixed marriages cannot have Ownership Rights on land for more than 1 (one) year as stipulated in Article 21 paragraph (3) of the UUPA. Even though those who have dual citizenship status (bipatride) are minors, it is not impossible to obtain land ownership rights from inheritance law events (Arwinilita et al., 2021).

Thus, in Article 21, paragraphs (3) and (4) of the UUPA, a bilateral conflict of norms creates legal uncertainty. In Article 1, paragraphs (1), (2), and (3) of the UUPA, the principle of nationality is the eternal relationship between the Indonesian people and the land, which any circumstances or power cannot separate, and dual citizenship (bipatride) owned by children from mixed marriages is a citizenship that is recognized and treated the same as other Indonesian citizens (Joesoef & Sugiyono, 2019).

In normative terms, there is a problem of bilateral conflict of norms, which creates uncertainty in the regulation of ownership of land ownership rights owned by children holding dual citizenship (bipatride), in which there is an eternal relationship between all Indonesian people and the earth, water and space that cannot be separated from any other power, while in other provisions there is a prohibition for Indonesian citizens who also have other citizenships or dual citizenship (bipatride) to have property rights over land (Arumbinang et al., 2021). Shouldn't children who hold dual citizenship (bipatride) also have the authority to have property rights over land in Indonesia as a form of the principle of nationality in the UUPA, although only until the age limit of 18 (eighteen) years as the opportunity given to him by the Citizenship Law to then choose the nationality of his choice.

## B. LITERATURE REVIEW

### 1. The Concept of Land Ownership

According to L. J. Van Apeldoorn, the right understands that rights are laws associated with a particular human or legal subject and thus transform into power and a right that arises when the law begins to move. There are 3 (three) implications of the definition of rights, namely: 1) Rights are a power, namely a power to modify the situation (a state of affairs); 2) Rights are guarantees given by law as a good thing and all the consequences; and 3) The use of rights results in a state of affairs that is directly related to the interests of the rights owner (Koburtay et al., 2020).

In this regard, legal rights are interrelated matters. So that legal products in the form of written regulations contained in various laws and regulations will provide

legal certainty guarantees for one's rights, especially land ownership rights (Ramadhani & Lubis, 2021).

Article 20, paragraph (1) of the UUPA, explains that property rights are hereditary, the strongest and most whole rights people can have on land, keeping in mind the provisions in Article 6 of the UUPA. The meaning of "strongest and most complete" in the UUPA is explained to distinguish it from other land rights, namely HGU, HGB, Use Rights, and other rights regulated in laws and regulations. Where shows that the rights to land that people can own have the "ter" (that is, the most) strong and fullest (Butar-Butar & Turisno, 2022).

## **2. Concept of Determination of Citizenship Status**

The firmness of who the original Indonesians are as regulated in Article 2 of the Citizenship Law along with its explanation which has clarified and confirmed the position and legal certainty for every Indonesian citizen who, since his birth in the territory of the Republic of Indonesia, has never received another citizenship of his own free will is in line with the firmness regulated in the provisions of Article 26 paragraph (1) and Article 6 paragraph (1) of the 1945 Constitution which is an integral part of Law Number 3 of 1946 concerning Citizens and Residents of Citizens so that at the constitutional juridical level the interpretation of the meaning of "Original" becomes clearer (Christianto, 2020). The principles adopted in the General Elucidation of the Citizenship Law are emphasized as follows: 1) The *ius sanguinis* (law of the blood) principle is the principle that determines a person's citizenship based on descent, not based on the country of birth; 2) The principle *ius soli* (law of the soil) principle is the principle that determines a person's nationality based on the country of birth, which is limited to children following the provisions stipulated in this law; 3) The principle of single citizenship is the principle that determines one citizenship for each person; and 4) The principle of limited dual citizenship is the principle that determines dual citizenship for children following the provisions stipulated in this law (Oonk, 2021).

## **3. Dual Citizenship Concept**

Everyone has the right to marry, form a happy household, and continue offspring, including taking actions categorized as mixed marriages. God Almighty created humans to know each other and not to distinguish between ethnicity, religion, race, and between groups. The provisions of Article 57 of Law Number 1 of 1974 concerning marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning marriage (from now on referred to as the Marriage Law) provide an understanding of mixed marriage, namely "marriages carried out between two people which in Indonesia are subject to different laws, because of differences in citizenship and one of the parties is an Indonesian citizen" (Letiecq, 2019).

The provisions in Article 57 of the Marriage Law it has narrowed the definition of mixed marriage by limiting it only to marriages between an Indonesian citizen and

a foreigner, rather than the definition of mixed marriage which so far, both according to legal science and jurisprudence regarding mixed marriages before the enactment of the Marriage Law (Bakti & Rivai, 2019). Thus, marriages between fellow Indonesian citizens who are subject to different laws are not included in the formulation of Article 57 of the Marriage Law. This is in line with the view of the Indonesian government, which only recognizes the division of the population into citizens and non-citizens, and is also in line with the ideals of legal unification as outlined in the provisions of these laws (Lasori, 2020).

#### **4. Land Ownership Theory**

Land ownership, which initially came from the word "owned". Weir argues that ownership has 2 (two) meanings: property, which means every object that can be owned and transferred by legal subjects, and property, which is the legal relationship between legal subjects and objects. For example, a person who owns the land. Bentham argues that property is a basis of hope to obtain certain benefits from the things we are said to have as a result of the relationship in which we stand to them (Mirzal et al., 2021).

Property birth consists of 2 (two) views, namely positivism and naturalism. The view of positivism put forward by Bentham explains that, according to him, property and law are born simultaneously and die together. Property which is a creation of law, makes property born after the law or collectively, which is not natural ownership but exists because the state gives it. Property, from the view of naturalism or natural law proposed by John Locke, is the reason for all the needs as a guide to understanding the institution of property in property ownership (Stepanov, 2020).

According to John Locke, a state's task is to enforce natural laws and not make new laws. This is different from the view of positivism, which according to natural law, is a natural right as a matter of fundamental justice that is free from the government. Natural law/natural itself, which according to Hart, is the right of all people as human beings, and free from unique relationships or voluntary actions. In this view, the government or the state does not create property but only protects and enforcement of property (Schmidt Passos, 2019).

The object of ownership is in the form of objects with the main elements as permanent elements and elements of physical unity. Objects are objects of control or ownership by someone. Property can also end from the control of the holder or be lost, which includes: 1) Property that is lost or ends, namely the absence of property because the object of ownership has been lost or destroyed; 2) Property is not lost but property changes hands, which is said to be lost when viewed from the first owner. Here, what happens is that the property is not lost or destroyed, but the property has been transferred to someone else as the next owner (McCarthy, 2020); and 3) The property is not lost, but the owner of the property can no longer use his property. What is meant is that it is true that property is not lost, property is still there as it was, nor does it change ownership or change. But the holder of the property legally can no

longer use his property as before. For example, property owned by a person under custody (Hossain, 2021).

### C. METHOD

This research uses normative juridical research. The types of legal sources used are primary legal sources, secondary legal sources, and non-legal sources (tertiary materials). The primary legal sources in this study consist of 1) Law Number 5 of 1960 concerning Basic Agrarian Regulations; 2) Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia; 3) Law Number 1 of 1974 concerning marriage as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage; and 4) Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration. Secondary legal sources in this study come from articles and scientific journals on the law that contain legal issues in specific fields and legal developments so that they can add information. At the same time, non-legal sources consist of books, journals, reports, or other literature in the non-legal field.

The collection of legal sources in this study uses a literature study method to find a coherent truth or provide as accurate data as possible about the object of research by providing a solution from library data, namely concepts, theories, legal principles, and legal regulations related to legal issues. This study uses three kinds of research approaches, namely: the Statute Approach, Conceptual Approach, and Historical Approach. The analysis of legal materials in this study consists of the following steps: 1) Identifying relevant facts or material facts; 2) Identifying legal issues; 3) Finding legal sources that regulate the content of the law under study; 4) Conducting legal analysis; and 5) applying the research results to the facts.

### D. RESULT AND DISCUSSION

#### 1. Ratio Legis Arrangement of Dual Citizenship (Bipatride) Children from Mixed Marriages

The Legis Ratio of Dual Citizenship Regulations (Bipatride) of Children from Mixed Marriages consists of several parts, including:

##### a. Arrangement of Dual Nationality (Bipatride) Children of Mixed Marriage

Individual status is derived from the Italian school, which divides the rules of International Civil Law into 3 (three) groups, among others: First, the Statute of personnel included in the group of rules that follow a person wherever the individual goes. Second, the Statute realia is a group of rules governing fixed objects. Third, the Statute of mixta (mixed) is a group of laws that regulate the form of a legal act.

Based on the explanation of the Citizenship Law, that Citizenship Law takes into account several principles in it, both the principles of general citizenship and the principle of universal citizenship, while these principles include the following: 1) The principle of ius sanguinis (law of the blood) is the principle that determines a person's citizenship is based on descent, not based on the

country of birth; 2) The principle *ius soli* (law of the soil) principle is the principle that determines a person's nationality based on the country of birth, which is limited to children following the provisions stipulated in this law; 4) The principle of single citizenship is the principle that determines one citizenship for each person; and 5) The principle of limited dual citizenship is the principle that determines dual citizenship for children following the provisions stipulated in this law. The Citizenship Law basically does not recognize the existence of dual citizenship (bipatriate) or stateless, also known as apatriate. Dual citizenship granted to children in mixed marriages is an exception to this law.

In the laws and regulations in Indonesia, mixed marriage has the meaning in Article 57 of Law Number 1 of 1974 concerning marriage as amended by Law Number 16 of 2019 regarding Amendments to Law Number 1 of 1974 concerning marriage (from now on referred to as the Marriage Law) it is stated that "a marriage between two people which in Indonesia is subject to different laws, due to differences in nationality and one of the parties is an Indonesian citizen". For almost half a century, the regulation of citizenship in mixed marriages between Indonesian citizens and foreigners refers to the provisions of the old Citizenship Law, namely Law Number 62 of 1958 concerning Citizenship; and with time, the law is considered no longer able to accommodate the interests of the parties in mixed marriages, especially in terms of protection for wives and children born from mixed marriages.

b. Citizenship of Children of Mixed Marriages According to Law Number 62 of 1958 concerning Citizenship of the Republic of Indonesia

In Law Number 62 of 1958 concerning the Citizenship of the Republic of Indonesia (from now on referred to as the Old Citizenship Law), the principle of single citizenship has been adopted. Where the nationality of children born from mixed marriages follows the citizenship of their fathers as in the provisions of Article 13, paragraph (1) of the Old Citizenship Law, which states that "children who are not yet 18 (eighteen) years old and who are not married who have fathers with foreign citizenship and have not obtained Indonesian citizenship, then the child becomes stateless or foreigner".

Based on the provisions of the Old Citizenship Law, children born from mixed marriages can become Indonesian citizens and can become foreigners but cannot have more than one citizenship, which means that only single citizenship applies even though the child is born from a mixed marriage between parents of different nationalities. If a child is born from a mixed marriage, as in the provisions of Article 1 letter b of the Old Citizenship Law, the citizenship of the child follows the citizenship of his father, but if the child obtains citizenship from his mother or a foreigner, the Indonesian citizenship that the child has will automatically disappear, and vice versa.

c. Citizenship of Children of Mixed Marriages According to Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia

On August 1, 2006, Law Number 12 of 2006 concerning the Citizenship of the Republic of Indonesia (from now on referred to as the New Citizenship Law) was enacted to replace the Old Citizenship Law. The presence of the New Citizenship Law has been enthusiastically welcomed by the perpetrators, especially those of mixed marriages, because then children born from mixed marriages have recognition as Indonesian citizens in addition to having foreign citizenship who has followed their father's citizenship or also children from mixed marriages can obtain dual citizenship/dual citizenship (bipatride).

Article 4 letter c of the New Citizenship Law states that "Indonesian citizens are children born from legal marriages of an Indonesian father and a foreign mother" and vice versa, as contained in Article 4 letter d. Furthermore, in the provisions of Article 6 paragraph (1) of the New Citizenship Law, which states that "against children as described in Article 4 letter c, letter d, letter h, letter i and as well as Article 5 which results in the child having dual citizenship, and after the age of 18 (eighteen) years or has been married, the child must declare choosing one nationality". In this provision, what is meant by the principle of limited citizenship, is the principle that determines dual citizenship (bipatride) for children following the provisions stipulated in this law.

Thus, from Article 6 paragraph (1) of the New Citizenship Law, the limited dual citizenship possessed by children from mixed marriages is restricted until the child is 18 (eighteen) years old, and then given 3 (three) years for choosing their nationality whether they are Indonesian citizens or foreigners.

Children who hold dual citizenship (bipatride) themselves have several criteria, namely: 1) children born from legal marriages to an Indonesian father and a foreign mother; 2) a child born from a legal marriage to a foreign father and an Indonesian mother; 3) a child born out of legal marriage to a foreign mother who an Indonesian father recognizes as his child and the acknowledgment is made before the child is 18 (eighteen) years old or unmarried; 4) a child born outside the territory of the Republic of Indonesia to an Indonesian father and mother who due to the provisions of the country where the child was born gives citizenship to the child concerned; 5) a child of an Indonesian citizen born outside a legal marriage, not yet 18 (eighteen) years old or not yet married, who is legally recognized by his father who is a foreign national; and 6) a child of an Indonesian citizen who is not yet 5 (five) years old is legally adopted as a child by a foreigner based on a court order.

d. The Civil Rights of Children with Dual Nationality (Bipatride) as Legal Subjects

The latest Citizenship Law does not define what is meant by a child, but in Article 6 paragraph (1) of the Citizenship Law, it is explained that a child who holds dual citizenship (bipatride) after being 18 (eighteen) years old or married, then the child is must choose a nationality. As in the provisions of Article 6 paragraph (1), where the age limit for a child is 18 (eighteen) years, or if before 18 (eighteen) years the child is married, then at that age is considered an adult and is required to choose one of his nationalities.

In the provisions of Article 47 paragraph (1) of the Marriage Law, it is also emphasized that the age limit for a child is 18 (eighteen) years. The provisions in the article state that "children who have not reached the age of 18 (eighteen) years or have never been married, then the child is still under the control of his parents, as long as they are not or have not been revoked from their power". Therefore, in line with the provisions on the age limit of 18 (eighteen) years for a child, and the requirements of Law Number 23 of 2002 concerning Child Protection, as amended by Law Number 35 of 2014 concerning Amendments to 23 of 2002 concerning Child Protection (from now on referred to as the Child Protection Law) provides a more precise definition of children as regulated in the provisions of Article 1 number 1 that "Child is someone who has not yet reached the age of 18 (eighteen) years and includes children who are still in the womb". Based on these provisions, it can be concluded that the age limit of a person who is considered a child in Indonesia is 18 (eighteen) years or has been married.

In Indonesian Civil Law, a person has the status of a legal subject since he was born, except as stipulated in Article 2 of the Civil Code (from now on referred to as the Civil Code), which states that "a child who is still in the womb can become a legal subject if there is an interest that wants it and has been born alive". A person as a legal subject means that someone has the right and obligation to carry out legal actions, while the child is a supporter of rights and responsibilities. As long as the child is immature or unmarried, children only have rights and do not yet have obligations, so they get more benefits due to their dual citizenship (bipatride).

## **2. Legal Certainty of Land Ownership for Children with Dual Citizenship (Bipatride)**

The legal certainty of land ownership for children with dual citizenship consists of several parts, including:

a. Land Rights contained in the UUPA

As a state of law, the agricultural state of Indonesia attaches great importance to the renewal of the land law political system, which is increasing in the Republic of Indonesia. Because the land issue is central to implementing national development, most of the Indonesian population are farmers. The LoGaA is a manifestation of the ideals of national independence, namely to create the welfare of all the people, which is the essence or essence of Pancasila and the 1945 Constitution of the Republic of Indonesia, especially in the provisions of Article 33 paragraph (3) which states that "earth, water and natural resources contained therein shall be controlled by the state and used for the greatest benefit and prosperity of the people".

The law only lists the basics in the form of fundamental principles and provisions as the basis for drafting laws and other regulations. Where

according to the preamble, it must be the embodiment of Pancasila, as explained that the UUPA must embody the embodiment of the provisions of Belief in One God, Humanity, Nationality, Democracy, and Social Justice, as the spiritual principle of the nation as stated in the requirements of the opening of the 1945 Constitution of the Republic of Indonesia.

Agricultural history in Indonesia recognizes land ownership by both kings and individuals long before the arrival of the British and Dutch colonialists. According to customary law, land and customary law communities have a close relationship with one another in the land tenure system. The legal relationship between customary law communities and their land creates rights that give the community as a legal group, the right to use the land for the benefit of the community is the original and primary right in customary land law which includes all land within the traditional law community, which is also considered as other sources of land rights within the customary law community and can be owned by all members of the customary law community.

The source of national agrarian law, apart from Pancasila and the 1945 Constitution of the Republic of Indonesia, is also contained in customary law, which is the law of the original people as explained in Article 5 of the 1945 Constitution of the Republic of Indonesia. Before the enactment of the UUPA, the community used Agrarische Wet in 1870 as the primary basis for the agricultural political system of the Dutch colonial government. Dutch agrarian law was more concerned with liberal and feudal individual rights, which in practice benefited the interests of the Dutch government, and harmed the interests of the Indonesian people. So that the UUPA officially revoked Agrarische Wet in 1870 so that the provisions in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia could be realized. The UUPA aims to eliminate dualism in the old agricultural law system of colonial legal politics and also aims to create a new agrarian law, which is modernized and has been adapted to national and state interests laws

**b. The Position of the Principle of Nationality in the UUPA**

The dualism of the law governing land in Indonesia before the enactment of the UUPA was subject to Dutch law (BW), and indigenous peoples were subject to customary law. At that time, the Dutch East Indies population was divided into 3 (three) groups, namely the European, Chinese, Eastern, Foreign and Native. The dualism of law and the classification of the population were deliberately created for the benefit of the Dutch economy only. The Foreign East group was treated as a marketing force for Dutch products, which were drained from Indonesian soil and then sold abroad, while the indigenous group was left in their customary law, so they could not interfere with the land law made by the Dutch.

The situation detrimental to the Indonesian nation was why the government took legal action by issuing the UUPA. The enactment of the UUPA, which

contains the principle of nationality, is intended to protect the Indonesian people from injustice and arbitrary actions by the Dutch colonialists. The UUPA, as stipulated in Article 1, states that the entire territory of Indonesia is a unitary land and water from the entire territory of Indonesia, which is united as the Indonesian nation. The whole earth, water, and space, including the natural wealth contained therein, is a gift from the Almighty God. The relationship between the Indonesian people and the earth, water, and space is eternal, as stipulated in Article 1, paragraph (3) of the UUPA.

The provisions regarding the principle of nationality are contained in the conditions of Articles 1, 2, 9, 20 paragraphs (1), 21 paragraphs (2), 30 paragraphs (1), and 46 paragraphs (1) of the UUPA. An understanding of the principle of nationality can be seen in Article 9 of the UUPA, which states that only Indonesian citizens can have an entire relationship with the earth, water, and space. Every Indonesian citizen has the same opportunity and position to obtain land rights and benefits and results, without any exceptions. The provisions in Article 9 of the UUPA are a form of a statement that only Indonesian citizens can and have the right to have land rights in Indonesia, while foreigners or foreign legal entities can have land rights but are only limited in nature, such as Right to Use and Right to Rent. Representatives of foreign companies in Indonesia can only have limited land rights, and as long as the interests of Indonesian citizens are not disturbed and the foreign company is needed for the interests of the Indonesian state as a component and, if necessary, as stipulated in Article 5 of the UUPA, the interests of Indonesian citizens are above all, both in terms of economic, social and even political.

c. Legal Certainty of Land Ownership Rights by Children with Dual Nationality (Bipatride) from Mixed Marriages

Certainty is a particular thing or condition, definite provisions, or provisions. "certainty" is widely used in referring to external, physical, or objective security, which is a feeling of security and protection from external threats such as violence, crime, or pain. Where Humberto Avila gives some understanding of certainty, namely protecting private or collective property, such as life, health, freedom, or property ownership. Certainty, in this case, refers to the avoidance of threats to law and order.

Legal certainty of land ownership, ownership which initially came from the word "owned". Like Bentham, who argues that property is a basis for an expectation to obtain certain benefits from the things we are said to have due to the relationship in which we stand to them. Therefore, the right of ownership to land owned by each individual has a strong connection where the individual, as a legal subject, gets the benefit of the right of ownership and requires a guarantee of certainty over the request of the right to his land. Property birth consists of 2 (two) views, namely positivism and naturalism. The view of positivism put forward by Bentham explains that, according to him, property and law are born simultaneously and die together. Property which is a creation

of law, makes property born after the law or collectively, which is not natural ownership but exists because the state gives it. From the view of naturalism or natural law put forward by John Locke, the property is the reason for all the needs as a guide to understanding the institution of property in property ownership.

Look at the property with a positivist view, where property and law are born simultaneously. A property with the individual will not have an inner bond as in the provisions of Article 1 paragraph (3) of the UUPA, where the principle of the nationality of land law states that the relationship between land and the Indonesian people is an eternal relationship that any provisions or any rules cannot separate. Suppose you look at property provisions from the view of naturalism or natural law. In that case, the law only functions as a protector or only as an affirmation of the law of ownership of property rights owned by each individual. Because property rights have existed since before the law's birth, a form of a natural right inherent in every individual. Every individual, namely an Indonesian citizen, should have an inner bond with Hak Milik land without exception, both men and women, as stipulated in Article 1 paragraph (3) of the UUPA.

### **3. Legal Certainty Arrangements for the Ownership of Land Ownership Rights by Children with Dual Citizens**

Regulations with legal certainty over the ownership of land rights by children with dual citizenship consist of several parts, including:

- a. The Principle of Nationality in Agrarian Law and Its Implications for the Lives of Indonesian Citizens

The principle of nationality is a principle that requires that only the Indonesian nation can fully own the earth, water, space, and natural resources contained therein, or with meaning that the principle of nationality is the principle that requires that only Indonesian citizens have ownership of, especially in the status of property rights, or who can have a lasting relationship with the earth and space which does not distinguish between men and women and fellow Indonesian citizens both native or hereditary. The principle of nationality in agrarian law has been followed by some major countries such as the Philippines, Vietnam, Thailand, Malaysia, Indonesia, Egypt, Pakistan, and others. The principle of nationality is often found in developing countries, as mentioned above.

Article 1, paragraph (1) of the UUPA states that "the entire territory of Indonesia is a unitary homeland of all Indonesian people who are united as the Indonesian nation". Then Article 1 paragraph (2) of the UUPA states that "all earth, water and space including the natural resources contained within the territory of the Republic of Indonesia constitute national wealth". Thus, the earth, water, and space are the rights of the Indonesian people, so they do not automatically become the rights of the owner alone. Likewise, the lands within

the region and the existing islands are not only the rights of the native people of the region or island in question but also belong to the Indonesian people. In Article 1, paragraph (3) of the UUPA, it is explained that "the relationship between the Indonesian people and the earth, water, and space, including those referred to in paragraph (2) of this Article, is an eternal relationship", so that as long as the Indonesian people who are united to become the Indonesian nation still exist and as long as the earth, water and space are still under the authority of Indonesia, under no circumstances will any power be able to sever or nullify this relationship. Therefore, all of the earth, water, space, and natural resources contained therein become the rights of the entire Indonesian nation in an eternal relationship.

With the principle of nationality, there is a guarantee regarding the rights of Indonesian citizens to land ownership in Indonesia. Foreigners or legal entities cannot have land ownership with *Hak Milik* status in Indonesia as stipulated in the UUPA. It can also be seen that the rights and obligations of foreigners and foreign legal entities that have representatives in Indonesia have been broadly regulated in Articles 41 and 42 of the UUPA and further regulated in PP 18/2021.

Based on these laws and regulations, foreigners, as well as foreign legal entities that have representatives in Indonesia, are only given land ownership with the status of use rights. Thus, it is not justified for foreigners and foreign legal entities to own land and buildings in Indonesia with the status of property rights. The legal relationship between Indonesian citizens and foreigners and legal actions regarding land in Indonesia is regulated in the UUPA as contained in Article 9 of the UUPA, which states that "only Indonesian citizens can have a full relationship with the earth, water, and space in Indonesia". Therefore, in the explanation, only Indonesian citizens can have Ownership Rights on land.

b. Ownership of Land Ownership for Children with Dual Citizenship (Bipatride) in the UUPA

Dual citizenship (bipatride) of children from mixed marriages is a form of exception, as explained in the general explanation of the Citizenship Law. Where it is in the Citizenship Law is called the principle of limited dual citizenship, namely "limited" in this case means only to the extent that the child is 18 (eighteen) years old. As explained in the provisions of Article 6 paragraph (1) of the Citizenship Law, which states that a child with dual citizenship (bipatride), after being 18 (eighteen) years old or married, then the child must choose one of his nationalities. With the provisions of Article 6 paragraph (1), where the age limit for a child is 18 (eighteen) years, or if before 18 (eighteen) years the child is married, then at that age is considered an adult and is required to choose one of his nationalities.

Ownership of land ownership rights owned by children holding dual citizenship (bipatride) is still a question, where in the provisions of the Citizenship Law, holders of dual citizenship (bipatride) children from mixed

marriages have been recognized as Indonesian citizens as other Indonesian citizens, which means they have the same rights and obligations as other Indonesian citizens. Children who hold dual citizenship (bipatride) should have the same justice, rights, and positions as other Indonesian citizens to have property rights on land, as in the provisions of Article 9 of the UUPA in paragraph (1) it states that "only Indonesian citizens can have a full relationship with the earth, water, and space in Indonesia" and in paragraph (2) that "Every Indonesian citizen, both male, and female, has the same opportunity to have this relationship without exception". Thus, it can be seen by the word "only," which is a form of exception to the sole or specific relationship between land and Indonesian citizens, is intended for Indonesian citizens only, cannot be owned by other than Indonesian citizens, and the following explanation states there are no exceptions or special provisions for man or woman in the relationship. Therefore, every male and female Indonesian citizen can have a legal relationship with the land without exception for children holding dual citizenship (bipatride). Because basically, children who hold dual citizenship (bipatride) from mixed marriages have also been recognized by applicable law in Indonesia as citizens like other Indonesian citizens.

The provisions of Article 21 paragraph (1) of the UUPA explain that "only Indonesian citizens can have property rights over land in Indonesia". However, suppose you look at the provisions of Article 21, paragraph (4) of the UUPA. In that case, it states that Indonesian citizens who, besides having Indonesian citizenship, have other citizenships cannot have land ownership rights with the provisions referred to in paragraph (3) of this Article. Thus, the land regulations in Indonesia, namely the UUPA, stipulate that dual citizenship (bipatride) owned by children from mixed marriages can have property rights on land but provided that the acquisition comes from a legal event, namely the inheritance of their parents for a certain period. The period in the provisions of Article 21 paragraph (3) of the UUPA states that only within a maximum limit of 1 (one) year after the Ownership Rights on the land are obtained, with sanctions if the ownership rights on the land are not transferred or sold to other parties, the ownership rights on the land will be nullified by law and will fall to the state.

Thus, dual citizenship (bipatride) is owned by children from mixed marriages even though the Citizenship Law has recognized other Indonesian citizens with the same rights, obligations, and positions. However, in the provisions of the UUPA, land ownership rights are distinguished as in Article 21 paragraph (3) junction (4) of the UUPA, which has the same provisions as foreigners. Thus, the requirements regarding land ownership for children holding dual citizenship (bipatride) still refer to the conditions of the UUPA, namely as the law governing land in Indonesia.

- c. Regulation of Ownership of Land Ownership Rights by Children with Dual Citizens with Legal Certainty

Observing the above provisions, a child with dual citizenship status (bipatriate) born from a mixed marriage may not own land with Hak Milik status, except because of inheritance which is limited to 1 (one) year, and after that, it is obligatory to make a transfer so that the land does not fall to the state as stipulated in the UUPA. However, if you look at the principle of nationality contained in the UUPA Article 1 paragraph (1), (2), and (3), where the relationship between land and the Indonesian nation is eternal, the connection cannot be separated by any provisions or powers.

Therefore, these regulations need to be adapted to the interests and needs of today's society, as well as regulatory developments such as the Citizenship Law, considering that the UUPA, which was created in 1960, would certainly not be able to anticipate the development of society decades later. Especially for children born from mixed marriages from the marriage of both parents who have different nationalities, the child should be able to have land with Hak Milik or HGB status as other Indonesian citizens because the child is also an Indonesian citizen who has been recognized by the state as stipulated in the Citizenship Law even though it is limited to only 18 (eighteen) years of age or has been married. Thus, the ownership of Hak Milik land should also apply, namely up to the age limit of 18 (eighteen) years or have been married to enjoy what they already have. The child also has rights and obligations as other Indonesian citizens and has the same authority and position.

The government is only a protector of the presence of the right of ownership for each individual. As in the theory of naturalism of property rights, the property is present naturally/inner, which means the property is current when the individual is born. Every individual is present, so the property is attached to each individual, the law is only a protector to provide legal certainty and legal guarantee itself. As is the case, a country created from a collection of humans forms a government that unites the territory of each of its possessions as a form of embodiment or becomes a territory of a country later.

Everyone has the right to marry, form a happy household, and continue offspring, including taking actions categorized as mixed marriages. In the provisions of Article 57 of the Marriage Law, it has also recognized the existence of mixed marriages, namely "a marriage that is legal and recognized by the state carried out between two people which in Indonesia is subject to different laws, because of differences in citizenship and one of the parties is an Indonesian citizen".

A mixed marriage will lead to the position and status of the child born as a result of the mixed marriage. In the provisions of the Citizenship Law, specifically for children born to mixed/mixed marriage couples, they are given the freedom to have dual citizenship until the child is 18 years old or until they are married. After 18 years of age or married, the child must choose one of his nationalities by giving a statement. The statement is written and submitted to the office by attaching the documents specified in the legislation. At the latest,

the information to choose the citizenship must be made a maximum of 3 years after the child turns 18 years old (i.e., at the latest, at the age of 21) or has been married.

## **E. CONCLUSION**

Law Number 16 of 2006, concerning the Citizenship of the Republic of Indonesia, shows a severe attitude toward providing protection and interests for women and children. This is because in consideration of the formation of the Citizenship Law, in addition to considering the results of the amendments to the 1945 Constitution of the Republic of Indonesia, which is full of protection of Human Rights (HAM), especially those related to discriminatory meanings that the Indonesian state has ratified. The Citizenship Law adheres to the principle of single citizenship because a person only has one citizenship. However, this law does not rule out the use of the dual citizenship principle, which allows a person to have more than one nationality. It's just that its use is limited, namely in children from mixed marriages. The limited dual citizenship possessed by children from mixed marriages is limited to 18 (eighteen) years of age, and then given 3 (three) years to choose their citizenship whether to become Indonesian citizens or foreigners as stipulated in Article 6 paragraph (1) of the Citizenship Law.

Then children who hold dual citizenship (bipatride) from mixed marriages cannot have ownership rights to land as Indonesian citizens, according to the provisions in Article 21 paragraph (4) of the UUPA, except in the case of ownership of land ownership rights from the inheritance which is limited to only 1 (one) year is stated in Article 21 paragraph (3) of the UUPA. Although the Citizenship Law has recognized children holding dual citizenship (bipatride) as Indonesian citizens and other Indonesian citizens, the provisions on land ownership still refer to the UUPA. Likewise, the provisions of the principle of nationality contained in the UUPA are applied explicitly to property rights on land that have material properties (zakelijk character), so naturally, property rights are only provided for Indonesian citizens. The principle of nationality in the UUPA emphasizes that only Indonesian citizens have a full relationship with the earth, water, and space. The UUPA makes children with dual citizenship (bipatride) foreigners, so the land ownership provisions apply to foreigners.

Furthermore, the UUPA needs to be adjusted to the interests and needs of today's society, as well as the development of regulations such as the Citizenship Law, considering that the UUPA, which was created in 1960, is certainly not able to anticipate the development of society decades later. Especially for children born from mixed marriages and holders of dual citizenship (bipatride). Children with dual citizenship (bipatride) should be able to own land with property rights like other Indonesian citizens because, in the provisions of the Citizenship Law, they have been recognized and given the same rights as Indonesian citizens, even though they are limited to 18 (eighteen) years old or married. Thus, the ownership of the right of

ownership also applies, namely up to the age limit of 18 (eighteen) years or having been married to enjoy what they already have.

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