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Inheritance Rights to Freehold Land for Children with Dual Citizenship Outside of Mixed Marriage

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ABSTRACT: Inheritance is a legal consequence of a legal event in the form of death, which is explained in Article 830 of the Criminal Code. It is also explained that every person who has the right to inherit without distinction of male or female, or who was first born with the same amount for each heir, is stated in Article 852 Paragraphs (1) and (2) of the Criminal Code. In addition, if the child obtains the status of an Indonesian citizen from the Ius Sanguinis principle and obtains the status of a foreigner from the Ius Soli principle, it does not cause the child to become a dual nationality child because the Citizenship Law does not recognize the existence of dual citizenship as stated in the general explanation. However, the Citizenship Law provides an exception for children with dual citizenship. The granting of an exception to dual citizenship lasts until the child has chosen a nationality. The election of citizenship is at the age of 18 years or has been married and an extension of time for 3 years based on Article 6 of the Citizenship Law. Dual citizenship status does not abolish the right to inherit children from both parents, but there are restrictions on the right to inherit in the form of property rights. Legal protection for children with dual citizenship status in their inheritance rights can be assisted in the management by a guardian. The purpose of this study is as one of the requirements for obtaining a Masters of Notary degree at the Postgraduate Notary Masters Study Program at Warmadewa University. This thesis research method uses normative legal research, which uses two types of approaches, namely the statutory approach, and the conceptual approach.

KEYWORDS : Dual Citizenship, Property Rights, Inheritance, Transfer of Land Rights.

1. INTRODUCTION

There are two types of citizenship status, namely, ius soli and ius sanguinis. The principle of ius soli is the principle of place of birth, meaning that a person's citizenship status is determined by his place of birth. The principle of ius sanguinis is the principle of heredity or blood relations, meaning that a person's citizenship is determined by his parents.[1]

Rules regarding citizenship status are very important, because it should not happen that an individual has Apatride or Bipatride status. Apatride has the understanding that a person does not have citizenship, while Bipatride is someone who has 2 (two) citizenships experienced by people born to parents whose country adheres to the ius sanguinis principle in the territory of a country that adheres to the ius soli principle.

The citizenship status has an influence on the inheritance status that applies in Indonesia as an heir. The factor that causes a person to have dual citizenship is that parents have mixed marriages where an Indonesian citizen marries someone who is a foreign national. The occurrence of dual citizenship status of a child does not only occur because of mixed marriages. The dual citizenship status of a child can also occur because of a marriage between 2 (two) Indonesian citizens. These two Indonesian citizens married according to Indonesian law, but when they had children, the child was born in a country that adheres to ius soli, for example America.

The United States adheres to ius soli, namely a person's citizenship status is determined by his or her place of birth, while the Indonesian state adheres to ius sanguinis, namely a person's citizenship is determined by blood or ancestry. This causes the child to have dual citizenship, namely an Indonesian citizen and an American citizen.

The child with dual citizenship can inherit the assets of his parents who are Indonesian citizens, namely land ownership rights, then at the 18-year time limit the child must choose to become an Indonesian citizen in order to have his rights in accordance with the legal provisions in force in Indonesia.[2] If both parents have died when the child is not yet 18 (eighteen) years

[1] Ani Sri Rahayu, 2015, *Pendidikan Pancasila dan Kewarganegaraan*, Bumi Aksara, Jakarta, hal. 110.

[2] I Putu Gede Bayu Sudarmawan, I Gusti Bagus Suryawan dan Luh Putu Suryani, 2020, *Status Kewarganegaraan Anak Hasil Perkawinan Campuran yang Lahir Pasca berlakunya Undang-Undang Nomor 12 Tahun 2006 tentang Kewarganegaraan*

old, it is possible to obtain restrictions on obtaining property rights until the age of 18 (eighteen) years or have married to determine citizenship.

There is a conflict of norms regarding inheritance in the form of property rights for children with dual citizenship who are not yet 18 (eighteen) years old by referring to the applicable laws and regulations, namely Article 21 paragraph (4) prohibiting someone who has foreign citizenship in addition to Indonesian citizenship or dual citizenship. to own land with property rights, while Article 6 paragraph (1) and paragraph (3) of the Citizenship Law stipulates that a person who has foreign citizenship besides Indonesian citizenship or dual citizenship can relinquish his foreign citizenship after being 18 (eighteen) years old or married.

There is legal uncertainty for children with dual citizenship in obtaining property rights inheritance. This is because the child is faced with 2 (two) choices of citizenship so that there is an opportunity or possibility for the child to choose a foreign citizenship. Based on the UUPA, if the child chooses a foreign citizenship, namely the United States, the child cannot maintain an inheritance in the form of property rights. As someone who cannot be the subject of Property Rights, the child must transfer the Property Rights in the form of land and/or buildings obtained from the inheritance of his parents.

Based on the description, there are 2 (two) problem formulations. How is the legal certainty of the transfer of property rights to land for children with dual citizenship status in terms of inheritance? What is the legal protection for children with dual citizenship status in terms of their inheritance?The purpose of the research is to contribute ideas in the form of concepts, principles, and theories related to inheritance rights to land ownership rights for children with dual citizenship status. The theoretical benefit is to analyze juridically regarding the legal certainty of inheritance rights to land for children with dual citizenship status. The practical benefit is to provide answers based on the thoughts of researchers regarding the legal certainty of inheritance rights over land for children with dual citizenship.

2. METHODS

The research method used is normative juridical, namely research based on library materials or secondary materials as the basic material to be studied by tracing the laws and regulations related to the issues discussed. The approach in research is a statute approach, and a conceptual approach. The statute approach is an approach that is based on statutory provisions to understand the hierarchy, and the principles in statutory regulations. The conceptual approach is based on the views and doctrines based on the opinions of experts and legal experts which are implemented on the problems being studied. The conceptual approach does not move from positive legal regulations.

The legal materials used are primary legal materials and secondary legal materials. Primary legal materials are binding legal materials consisting of applicable laws and regulations and other regulations that support research, while secondary legal materials are legal materials in the form of literature books, scientific notes, scientific works and various applicable print media. and is related to the issue under discussion.

The technique of collecting legal materials is by means of library research, namely through library research in the form of determining secondary data sources, identifying secondary data by quoting or recording and then analyzing the legal materials obtained in order to determine relevance to the problem formulation. This study takes place in a library or a place where various sources of legal data are needed.

The theory used is legal certainty is a guarantee for children with dual citizenship to obtain inheritance rights in the form of property rights, the importance of legal certainty theory for children with dual citizenship to maintain inheritance rights, so it is supported by the theory of legal protection and the theory of legal certainty. Legal protection is a protection given to children with dual citizenship to maintain their inheritance rights. Then the theory of legal justice related to justice for children with dual citizenship to be entitled to inheritance rights in the form of property rights.

3. RESULT AND DISCUSSION

LEGAL ASSURANCE OF TRANSFER OF PROPERTY RIGHTS TO LAND FOR CHILDREN OF DWI CITIZENSHIP IN THE MATTER OF INSTRUCTION

Article 1 of Law Number 1 of 1974 concerning Marriage (Marriage Law) defines marriage as an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the One Godhead. The construction of the Marriage Law provides provisions for the possibility of marriages being carried out outside Indonesia as stated in Article 56 of the Marriage Law. On the other hand, the Marriage Law also provides provisions for mixed marriages according to Article 57 of the Marriage Law which emphasizes the subject of marriage. Mixed marriages are marriages

Republik Indonesia, (online), Jurnal Analogi Hukum, Volume 2, Nomor 1, hal. 91, (https://www.ejournal.warmadewa.ac.id/index.php/analogihukum/article/view/1629, diakses pada 10 Juni 2021).

between 2 (two) people who in Indonesia are subject to different laws, due to differences in citizenship because one party is a foreign citizen, and one party is an Indonesian citizen.

Marriage outside Indonesia or within Indonesia of 2 (two) Indonesian Citizens (WNI) can give birth to a child with dual citizenship status if the child is born in a country that adheres to the principle of Ius Soli citizenship. Ius Soli as a principle based on place of birth even though the parents are Indonesian Citizens (WNI) who adhere to Ius Sanguinis, causing the child to have dual citizenship. The dual citizenship position can make it difficult to carry out birth registration for children, granting constitutional rights by both countries, and obstacles related to legal protection in obtaining inheritance when the testator has died.

Historically, the idea of citizenship (citizenship) comes from the civilization of Ancient Greece, the Roman Republic. The terms polis, polites, and politeia are translated as state, citizen, and constitution which cannot be separated from one another. It is said that "to understand what a constitution (politeia) is, we must inquire into the nature of the city (polis); and to understand that since the city is a body of citizens (politeia) we must examine the nature of citizenship".[3]

Derek Heater defines citizenship as a form of social political identity (a form of social political identity) of a person whose existence is related to developing time.[4] Di samping itu, dalam buku III yang berjudul *The Theory of* Citizenships *and Constitutions,* Aristoteles menerangkan bahwa "*citizenship is not determined by residence, or by merely having access to the courts of law. Rather a citizen is one who permanently shares in the administration of justice and the holding of office*".[5]

Article 1 number 2 of the Citizenship Law defines citizenship as all matters relating to citizens. In line with this, Article 1 point 1 of the Citizenship Law defines a citizen as a citizen of a country that is determined based on statutory regulations. The existence of citizenship is quite important as an individual identity, but in practice it is possible for a person to have dual citizenship (bipatride) or have no citizenship (apatride).[6] Dual citizenship can be caused by the principles adopted by a country in determining citizenship. Each country has the authority to determine the principle of citizenship. The principle of citizenship is divided into 2 (two), namely:[7]

1. The principle of birth (Ius Soli or law of the blood) is the determination of citizenship status based on a person's place or area of birth. This principle is the principle that was first recognized with the assumption that someone born in a country area automatically and logically becomes a citizen of that country.
2. The principle of descent (Ius Sanguinis or law of the soil) is a guideline for citizenship based on region or descent.

The principle of citizenship can give birth to citizenship status problems, including:[8]

1. Apatride, ie a person does not get citizenship because the person was born in a country that adheres to Ius Sanguinis;
2. Bipatride, namely a person will get dual citizenship if he comes from parents whose country adheres to Ius Sanguinis, while being born in a country that adheres to Ius Soli;
3. Multipratide, namely someone who has more than 2 (two) citizenships, namely a person (resident) who lives on the border of two countries.

Article 4 letter l of the Citizenship Law regulates that Indonesian citizens are children born outside the territory of the Republic of Indonesia to an Indonesian citizen father and mother who because of descent from the country where the child was born gives citizenship to the child concerned, it is concluded that the child is a citizen of the Republic of Indonesia. Indonesia. Furthermore, the general explanation states explicitly that basically the Citizenship Law does not recognize dual citizenship (bipatride) or statelessness (apatride).

The statement basically in the quote sentence is an exception as a manifestation of the principle of limited dual citizenship. With this exception, children with dual citizenship have the opportunity to determine their choice of citizenship in accordance with Article 6 paragraph (1) of the Citizenship Law. When a child is 18 (eighteen) years old or has been married, it is obligatory to determine his nationality. Freedom of choice in Article 6 paragraph (1) of the Citizenship Law with an age limit of 18 (eighteen) years or already married is a form of legal certainty and justice. In this case, it does not cause the loss of state constitutional rights, so that the child still has constitutional rights of citizenship foreign.

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[3]Winarno, 2015, *Pemikiran Aristoteles Tentang Kewarganegaraan dan Konstitusi*, (Online), Vol. 21, No. 1, (https://media.neliti.com/media/publications/5100-ID-pemikiran-aristoteles-tentang-kewarganegaraan-dan-konstitusi.pdf, diakses 9 Juli 2021)

[4] *Ibid.*

[5] Mukhamad Murdiono, 2018, *Pendidikan Kewarganegaraan Global: Membangun Kompetensi Global Warga Negara Muda*, Uny Press, Yogyakarta, (Online), (http://staffnew.uny.ac.id/upload/132304487/penelitian/PKN%202.pdf), hal. 1.

[6] Rokilah, 2017*, Implikasi Kewarganegaraan Ganda Bagi Warga Negara Indonesia,* (Online), Vol. 1, No. 2, (https://e-jurnal.lppmunsera.org/index.php/ajudikasi/article/download/497/559/, diakses pada 9 Juli 2021).

[7] *Ibid*.

[8] *Ibid.*

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Land in a juridical sense according to the UUPA is the surface of the earth, while land rights are rights to the earth's surface, which are limited, with two dimensions in length and width. Land rights are rights that authorize the holder of the right to use the land and/or take benefits from the land he is entitled to.[9] Land rights can be granted to individuals or legal entities. Individual rights to land are rights that authorize the holder of the right to use, in the sense of controlling, using, and/or taking certain land benefits.[10] The basis for granting land rights is contained in Article 4 paragraph (1) of the UUPA, namely "On the basis of the right of control from the state as referred to in Article 2, it is determined that there are various types of rights on the surface of the earth, called land, which can be given to and owned by people. -people, either alone or together with other people and legal entities".

Types of land rights are regulated in Article 16 of the LoGA, Article 53 of the LoGA, and in Government Regulation No. 40 of 1996 concerning Cultivation Rights, Building Use Rights, and Land Use Rights. There are various types of land rights, namely Ownership Rights, Business Use Rights (HGU), Building Use Rights (HGB), Use Rights (HP), Rental Rights for Buildings, Land Clearing Rights, Forest Products Collecting Rights, Pawn Rights (Pledged Rights). Land), Profit Sharing Business Rights (Profit Sharing Agreement).

Based on Article 21 of the UUPA, those who can control Property Rights are Indonesian Citizens (WNI), so that Foreign Citizens (WNA) cannot have Property Rights within the territory of the State of Indonesia. This creates legal problems if a dual nationality child who is not yet 18 years old or unmarried gets an inheritance in the form of property rights. Bearing in mind that Article 6 paragraph (1) and paragraph (3) of the Citizenship Law provides the authority to choose one nationality with a certain age limit.

The transfer of ownership rights based on Article 20 paragraph (2) of the BAL can be transferred and transferred to another party. Switching means the transfer of ownership rights to land from the owner to another party due to a legal event.[11] Legal events can be in the form of birth, marriage, and death so that in this case what is meant is a legal event in the form of death. With the death of the property rights can be transferred from the heir to the heirs.

Transferred or transfer of rights means the transfer of ownership rights on land from the owner to another party because there is a legal action. Legal actions can be in the form of buying and selling, leasing, exchanging, grants, and others. The party entitled to take legal action is the rightful owner of the holder of land rights.

Article 830 of the Criminal Code states that inheritance only takes place due to death. Death as a legal event is an attempt to obtain inheritance from the heir to the heirs. There are 3 (three) elements of inheritance in the Criminal Code as an absolute requirement for an inheritance event to occur. Elements of inheritance include heirs (erflater), namely heirs or people who die and leave property to others, heirs or heirs, namely people who replace the heir in his position of inheritance, either in whole or in part, and inheritance (nalatenschap). namely all the assets left by the heir left by the heir in the form of all his debts.[12]

The requirement to become an heir is to have the right to the inheritance of the testator as a legal child or child out of wedlock (hereinafter referred to as ALK) is regulated in Article 832 of the Criminal Code, heirs have existed since the testator died according to Article 2 in conjunction with Article 836 of the Criminal Code, and the heirs are not included in the person who is declared undeserved, incompetent or refuses inheritance.[13] Based on this, the child has fulfilled the element as an heir, but in the case of inheritance in the form of property rights, the inheritance of the child is in conflict with the provisions of Article 21 of the UUPA. The UUPA stipulates that only Indonesian citizens and Indonesian legal entities may be subject to Property Rights holders. If the child is 18 (eighteen) years old or has married during the dual citizenship period and has not yet chosen his citizenship, then based on Article 21 paragraph (4) of the UUPA, the child must immediately choose or within 1 (one) year the land becomes state land. .The Citizenship Law which regulates dual citizenship is in conflict with Article 21 paragraph (4) of the UUPA that children with dual citizenship cannot have property rights. In addition to the child being incapable of obtaining property rights, the child also cannot be the subject of the property rights holder for citizenship status. The prohibition norm in Article 21 paragraph (4) of the LoGA expressly prohibits foreigners and dual citizenship from controlling property rights which is a reflection of the principle of nationality in the LoGA. If you choose to become a foreign citizen, it has become clear that you cannot obtain land with the status of property rights based on Article 21 paragraph (1) and Article 21 paragraph (3) of the BAL.

[9] Urip Santoso, 2012, *Hukum Agraria: Kajian Komprehensif*, Jakarta, Kencana, hal. 84.

[10] *Ibid,* hal. 83.

[11] *Ibid,* hal. 93.

[12] Ellyne Dwi Poespasari, Soelistyowati, Erni Agustin, Oemar Moechthar, 2020, *Kapita Selekta Hukum Waris Indonesia,* Prenadamedia Group, Jakarta, hal. 13.

[13] *Ibid*, hal. 19.

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Dual citizenship status does not abolish the right to inherit children from both parents, but there are restrictions on the right to inherit in the form of property rights. The certainty of obtaining inheritance for children is regulated based on Article 852 of the Criminal Code, so that even though they have dual citizenship status, they are still entitled to inherit. This is a form of certainty and justice for children with dual citizenship to continue to inherit even though it is limited to obtaining inheritance in the form of property rights.

Children with dual citizenship who are not yet 18 (eighteen) years old or not yet married, are subjects who cannot obtain property rights due to dual citizenship status and incompetence due to age. For the child's incompetence, all legal actions need to be carried out with the appointment of a guardian in accordance with Article 51 of the Marriage Law. The existence of a guardian to carry out legal actions initially is to obtain a Certificate of Inheritance (SKW). Certificate of Inheritance is a strong evidence of the existence of a transfer of rights to an inheritance from the heir to the heirs, meaning that there has been a transfer of ownership of the inheritance from the ownership of the heir to the joint ownership of the heirs in accordance with the number of heirs.[14]

Based on Article 111 paragraph (1) letter c of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Government Implementation Provisions Number 24 of 1997 concerning Land Registration, it stipulates that proof of inheritance for Indonesian citizens of Chinese descent is a certificate of inheritance rights. from Notary.

In needing the services of a Notary for the sake of a Certificate of Inheritance, based on Article 39 paragraph (1) of Law Number 30 of 2004 concerning the Position of a Notary (hereinafter referred to as UUJN) it stipulates that the appearer must be at least 18 (eighteen) years old or married. This means that incompetent children cannot appear before a Notary, so they need a guardian. The guardian can be appointed and determined by the Court.

The purpose of the guardian is to be responsible for the child's personal and property, so that in the management of the guardian he can take all legal actions against the child's inheritance. In this case the guardian is responsible for the inheritance of the child until he is 18 (eighteen) years old or has married. Furthermore, if the child is capable and can carry out legal actions, then the control of the property is with the child.

After a child with dual citizenship can choose a citizen, either an Indonesian citizen (WNI) or a foreign citizen (WNA), the legal consequences for the chosen citizenship will apply. If you choose to be an Indonesian citizen, you can inherit the right to land with the status of Hak Milik because it has fulfilled the requirements as a right holder, while if you choose a foreign citizenship, you are still entitled to inherit from your parents, but cannot control the Hak Milik.

The limitation of property rights is a manifestation of the principle of nationality of the UUPA as stated in Article 21 paragraph (1) vide Article 1 paragraph (2) of the UUPA as legal certainty that only Indonesian citizens (WNI) can have property rights over land in Indonesia, whether earth, water, or land. and space of the Indonesian nation and as a national wealth.

Legal protection for children who choose foreign citizenship in terms of inheritance can take legal actions against inheritance. Based on Article 21 paragraph (3) of the BAL, it is stated that foreigners who obtain property rights due to inheritance are obliged to relinquish the rights within 1 (one) year from obtaining the rights, but if within that time they are not released then by law it becomes state land. Legal actions that can be carried out within 1 (one) year of ownership of the Property Rights can be by buying and selling. Buying and selling is an effort to transfer rights from the holder of the Property Rights to the prospective holder so as to eliminate the rights of the old holder. The sale and purchase has the legal consequence of annihilating the ownership of the old holder to become the new owner, so that apart from a transfer in the form of a sale and purchase, a dual nationality child who has inherited a Hak Milik can make an inheritance by going to a Notary with the assistance of a guardian and changing the Ownership Rights into Hak Guna Usaha.

In the theory of justice, justice is a value, because it is abstract so it has many meanings and connotations. In relation to the concept of justice, it can be interpreted as follows:[15]

A. To be righteous and honest;
B. Impartiality, a fair representation of the facts
C. Be true (correct, right)

Article 27 of the LoGA stipulates that property rights can be annulled if:

a. The land falls to the State:
   1. Due to the revocation of rights under Article 18;

[14] J. Satrio, 1998, *Waris Tentang Pemisahan Boedel*, Citra Aditya Bakti, Bandung, hal. 227.

[15] Farkhani, Elviandri, Sigit Sapto Nugroho, Moch. Juli Pudjioo, 2018, *Filsafat Hukum; Merangkai Paradigma Berfikir Hukum Post Modernisme*, Kafilah, Solo, hal 101.

2. Due to voluntary surrender by the owner;
3. Due to neglect;
4. Due to the provisions of Article 21 paragraph (3) and Article 26 paragraph (2);

b. The land is destroyed.

In this case, Article 27 of the LoGA does not explicitly state that based on the child's dual citizenship status, the Property Rights can be abolished, but the construction of the abolition of Property Rights can be traced based on Article 21 paragraph (4) of the UUPA which states that a person other than an Indonesian citizen or has a foreign nationality (in this includes dual citizenship) then cannot have property rights and Article 21 paragraph (3) of the LoGA applies. It should be noted that Article 21 paragraph (3) of the BAL provides a stipulation that if a foreigner owns land with the status of Hak Milik and is not transferred, it will be deleted and become state land. It is also concluded that the property rights for children with dual citizenship will be removed as state land in accordance with the provisions of the UUPA.

LEGAL PROTECTION AGAINST CHILDREN DUAL CITIZENSHIP IN THE EVENT OF INHERITANCE OWNED

Legal actions are actions of legal subjects that are carried out intentionally to give rise to rights and obligations, these actions also cause consequences that are regulated by law and these consequences are desired by the legal subject.[16] A new legal act can be said to occur if there is a statement of will. Statements of will that cause legal consequences as regulated in laws and regulations are not bound to a certain form because they can be stated expressly through writing, speech, or gestures (gerben).

Basically, legal actions are divided into 2 (two) namely unilateral legal actions where it is carried out by only 1 (one) legal subject, such as Article 875 of the Criminal Code which regulates wills or Article 1666 of the Criminal Code which regulates grants. The next is a legal act carried out by two or more parties where the parties have an equal portion of legal rights and obligations (reciprocal relationship) as Article 1457 of the Criminal Code concerning buying and selling.[17]

In addition, there are also actions that are not legal acts, as explained above, the statement of will is a limitation for legal actions to occur. So if the act is not desired by the legal subject, then it can be said that it is not a legal act.[18]

What is not a legal act is divided into 2, namely those that are not prohibited, such as "Zaakwaarneming" which is an act of taking care of the interests of others without being asked as regulated in Article 1354 of the Criminal Code, or "Onverschuldigde" namely people who pay debts to other people because they think they have debts that are too high. actually nothing is regulated in Article 1359 of the Criminal Code. The second is not a prohibited legal act (Onrechtmatige daad), namely, an act that causes harm to another person so that the guilty actor is obliged to provide compensation for the consequences, which are regulated in Article 1365 to Article 1380 of the Criminal Code. Acts against the law are not only acts that are prohibited by legislation but are also prohibited by unwritten laws that apply in society.[19]

A legal act is based on the validity as the element of the validity of the agreement refers to Article 1320 of the Criminal Code with one element of competence. A person who is incompetent for a certain legal action has legal consequences that can be canceled, so that one party can demand the cancellation of the agreement and cause loss to one of the parties. Therefore, an incompetent child needs a guardian to represent all legal actions carried out. Guardianship (Voogdij) comes from the word guardian which means another person as a substitute for parents who are legally required to carry out supervision and represent children who are not yet mature or have reached puberty. So that guardianship can be interpreted as a substitute parent for a child who is not yet capable of carrying out a legal act.

In line with this, Indonesian law defines guardianship as the authority to carry out legal actions for the interests and rights of children whose biological parents have died or are unable to take legal actions or are also interpreted as legal protection given to a child who is not yet an adult or has never been born. marriages that are not under parental control.[20]

In general, there is only one guardianship except in the case that a mother with widow status remarries, her husband is called medevogd.[21] Guardianship in law is when one of the parents of a child who is not yet an adult dies and then based on the law the other parent who has lived the longest automatically acts as the sole guardian of the child.

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[16] R.Soeroso, 2011, *Pengantar Ilmu Hukum*, Sinar Grafika, Jakarta, hal. 35.

[17] *Ibid.*

[18] *Ibid,* hal. 293 .

[19] *Ibid*, hal. 294.

[20] Elita Savira, Sihabuddin, Abdul Rachmad Budiono, *Penetapan Perwalian Anak Yang Diminta PPAT Sebagai Syarat Pembuatan Akta Jual Beli Hak Atas Tanah*, 2017, (Online), http://hukum.studentjournal.ub.ac.id/index.php/hukum/article/view/2190/1400, diakses pada 3 Agustus 2021.

[21] *Ibid.*

In practice, it is possible for a person to have neither parents nor guardians, so the judge can appoint through a court order a guardian at the request of certain parties who have an interest. The exception in this case is if the parents during their lifetime have made a will (testament) to appoint or appoint a guardian for their child, it is called guardianship through a will.[22] Based on the description of the case, the family of the heirs can apply for the determination of guardianship of minors (child custody). The appointment of a guardian is something that cannot be missed because the guardian is obliged to take care of the child who is under his guardianship and manage the child's property as well as possible by respecting the religion and belief of the child. The guardian has the obligation to maintain all property belonging to the child, including property resulting from parental inheritance as stated in Article 51 paragraph (3) and (5) of the Marriage Law.

Article 50 of the Marriage Law as a provision that regulates the competence of a person with the article "(1) Children who have not reached the age of 18 (eighteen) years or have never been married, who are not under the authority of parents, are under the authority of a guardian. (2) The guardianship concerns the person of the child concerned and his or her property." So it is concluded that children who are not yet 18 (eighteen) years old are incompetent and are under the authority of a guardian. The guardian can take care of the inheritance for the benefit and will of the child and if it causes a loss due to an error or negligence, the guardian is obliged to be responsible according to Article 51 paragraph (5) of the Marriage Law.

Article 330 paragraph (3) of the Criminal Code states, "Those who are not yet mature and are not under parental control, are under guardianship on the basis and method as regular in the third, fourth, fifth and sixth parts of this chapter". The guardianship is established to assist the inability of the person who is the object of the guardianship in expressing himself. Therefore, the basis for holding a guardianship is to prevent a vacancy (vacuum), because the parental vacancy has been revoked for the child or children who still need it.[23]

Those who are entitled to become guardians under the Criminal Code, the appointment of guardians of minors must be based on the consent of both parents. However, since in this case the child's parents are dead, this agreement can be suspended. Usually, the appointment of a guardian will be based on the contents of the will of the parents. This condition is in accordance with Article 355 paragraph (1) of the Criminal Code which states that "Each parent, exercising parental authority or guardianship for a child or more has the right to appoint a guardian for the children, if the guardianship is after his death. the world for the sake of law or because of the Judge's determination according to the last paragraph of Article 353, it does not have to be done by the other parent."

That way, each parent has the right to appoint one guardian for the child as long as the position is still open, and the final guardianship decision will be determined by the judge. Basically, all relatives, or people appointed by the child's parents have the right to be the guardian of the child. Even so, this appointment can still be suspended if the appointed guardian does not meet the guardianship requirements. As in Article 332b (1) of the Criminal Code which reads, "Women with husbands may not receive guardianship without the help and written permission of their husbands".

Although it looks easy, in fact the Marriage Law also regulates the prohibition and authority of child guardians. Seen in Article 51 Paragraph (3) of the Marriage Law which states that the guardian is obliged to take care of the child under his control and his property in the best possible way by respecting the religion and belief of the child.

In addition, it is explained in Article 51 paragraph (4) of the Marriage Law, the Guardian is obliged to make the property of the child under his control at the time of starting office and record all changes in the property of the child. In Article 51 paragraph (5) the guardian is responsible for the property of the child under his guardianship as well as the losses incurred due to his mistake or negligence.

Based on this explanation, it can be interpreted that temporarily the land rights that are inherited to the child are transferred to the guardian, so that if the status of the land is property rights and the guardian is an Indonesian citizen (WNI) then the status of the Property Rights is not lost until it is returned to the child if the the child is legally capable and in accordance with Article 6 paragraph (1) of the Citizenship Law, the child can choose his or her own nationality.

In addition, there are other ways so that children can enjoy the inheritance that is blocked because the LoGA does not allow Foreign Citizens (WNA) or people who have citizenship other than Indonesia to own land with Hak Milik status. This is by selling the land. The act of selling land is possible and permissible as long as the heir or guardian has a Child Guardianship Determination Letter that has been legalized by the local District Court. However, in this case, the condition of the child has the right to inherit as an Indonesian citizen (WNI) and as an heir. The sale of land before the child turns 18 (eighteen) years is required if it is in the interests of the child, whether for education, health or living needs. Furthermore, the guardian must apply for a permit

[22] *Ibid*.

[23] Muhammad Jawad Mughniyah, 2001, *Fiqih Lima* Mazhab *(Ja'fari, Hanafi, Maliki, Syafii, Hambali)*, Lentera, Jakarta, hal. 696.

to sell property belonging to a foster child who is still underage. In accordance with Article 362 of the Criminal Code which states that "The guardian is in charge as soon as his guardianship comes into force, under the hands of the Heritage Hall, takes an oath, that he will carry out the guardianship entrusted to him with a good and sincere heart."

Then there will be a notification letter along with a letter of approval to pledge the property in the name of the child. If the heir or guardian of the child wants to sell the land or property belonging to the child, the main requirement that must be owned is the original Certificate of Inheritance (SKW) from the child's parents or the beneficiary party. In making a SKW before a Notary, those who can appear are capable persons, namely 18 (eighteen) years old or married. In this case, those who can appear are the guardians of the children whose court decisions have been made. If the court does not approve or allow the sale of the child's property, the guardian still cannot sell the inheritance. Likewise, the change of Ownership Rights to Use Rights for the benefit of children with dual citizenship, guardians need permission to change rights, including the management process. In conducting sales transactions against property, the guardian does not only bring a Certificate of Inheritance from the testator. Especially if the heirs are underage (not yet competent). In order for the process of selling objects in the form of land to take place without obstacles, a Letter of Determination from the District Court is required in accordance with Article 309 in conjunction with Article 393 of the Criminal Code which states that the transfer of property rights from children who are under the age category must be based on the determination of the local District Court. In the event of obtaining this determination, the guardian must submit an application for guardianship along with all the files and documents required for either the guardian or the child.

There are many parties who do not comply with this regulation because the Marriage Law does not mention that the transfer of property rights from minors must go through a decision from the District Court. However, the land office requires a decision from the District Court or in essence refers to procedural validity in accordance with statutory regulations. As in this case it refers to the Criminal Code because when referring to the Marriage Law there is no legal construction that regulates (legal void). The application of the Criminal Code in the guardianship of dual citizenship children is a manifestation of the theory of legal protection so that children as heirs can get their inheritance rights.

4. CONCLUSION

1. Children with dual citizenship have the right to inherit according to Article 852 of the Civil Code, so that dual citizenship status does not eliminate the right to inherit, but there are restrictions on obtaining property rights based on Article 21 paragraph (4) of the UUPA. This limitation is a manifestation of the principle of nationality in the LoGA, so the solution that can be done is to change the Property Rights to Use Rights.
2. In a legal event, the child can inherit, but in the case of a legal action because the child is incompetent, it requires the appointment of a guardian based on a court decision. The guardian will act like a parent and take care of the child's inheritance, including appearing before a Notary, making changes to Property Rights into Use Rights. Until the age of 18, the child has the Right of Use, and if he decides to become an Indonesian citizen, he can change the Right of Use to become Hak Milik again.

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