

Penerapan Prinsip *Best Interest of Child* Terhadap Penentuan Hak Asuh Anak pada Kasus Perceraian Warga Negara Asing (WNA) di Indonesia (Studi Kasus Putusan Pengadilan Negeri Denpasar Nomor 41/Pdt.G/2024/PN Dps)

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INTISARI

Penelitian hukum ini bertujuan untuk mengetahui dan menganalisis penerapan prinsip Hukum Perdata Internasional (HPI) serta prinsip *Best Interest of Child* dalam penetapan hak asuh anak berkewarganegaraan asing melalui pertimbangan majelis hakim pada kasus perceraian perkawinan Warga Negara Asing (WNA) di Indonesia berdasarkan (Studi Kasus Putusan Pengadilan Negeri Denpasar Nomor 41/Pdt.G/2024/PN Dps).

Penelitian ini merupakan penelitian hukum berjenis yuridis normatif yang bersifat deskriptif untuk menggambarkan dan memberikan solusi terkait dengan isu hukum yang diangkat dalam kasus. Penelitian dilakukan terhadap bahan pustaka primer, sekunder, dan tersier serta menggunakan metode *case study approach* yang kemudian dianalisis secara kualitatif untuk mengetahui dasar pertimbangan hukum yang digunakan oleh majelis hakim dalam putusan.

Hasil penelitian menunjukkan bahwa majelis hakim menetapkan status personal subjek hukum berdasarkan asas domisili disebabkan oleh para pihak yang dianggap telah menundukkan dirinya pada hukum Indonesia, serta selaras dengan sistem hukum Selandia Baru. Hal tersebut turut didukung dengan logika berpikir majelis hakim yang mempertimbangkan keberadaan faktual para pihak berdasarkan aktivitas sehari-harinya di Indonesia sebagai *center of gravity* subjek hukum. Penerapan prinsip *Best Interest of the Child* yang digunakan oleh majelis hakim untuk menetapkan hak asuh anak, mencerminkan pendekatan progresif dengan mengadopsi nilai-nilai dari hasil ratifikasi terhadap *Convention on the Rights of the Child* (CRC) 1989. Dikarenakan hingga saat ini penentuan status personal dan penerapan prinsip *Best Interest of the Child* belum mempunyai peraturan khusus di Indonesia, perlu segera dilakukan pengesahan terhadap *draft* akademik, berupa Peraturan Perundang-undangan HPI Nasional untuk menggantikan peraturan perundang-undangan sejak masa penjajahan Belanda yang masih diberlakukan.

Kata kunci: Hak Asuh, Perceraian WNA, Asas Domisili, Kepentingan Terbaik Anak, Hukum Perdata Internasional

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Application of the Principle of Best Interest of Child towards Determination of Child Custody in Divorce Cases of Foreign Citizens (WNA) in Indonesia (Case Study of Denpasar District Court Decision Number 41/Pdt.G/2024/PN Dps)

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ABSTRACT

This legal research aims to examine and analyze the application of the principles of International Civil Law (HPI) and the principle of Best Interest of Child in determining the custody of children with foreign nationality through the consideration of the panel of judges in cases of divorce from marriages of foreign nationals (WNA) in Indonesia based on (Case Study of Denpasar District Court Decision Number 41/Pdt.G/2024/PN Dps).

This research adopts a normative juridical approach with a descriptive analysis method to describe and propose solutions related to the legal issues raised in the case. The research was conducted on library materials such as primary, secondary, and tertiary literature while also adopted a case study approach method which was then analysed qualitatively to determine the basis of legal considerations used by the panel of judges in the decision.

The research findings show that the panel of judges determined the personal status of legal subjects based on the domicile principle because the parties were considered to have subjected themselves to Indonesian law, and in line with the New Zealand legal system. This was also supported by the logic of thinking of the panel of judges who considered the factual existence of the parties based on their daily activities in Indonesia as the center of gravity of the legal subject. The application of the Best Interest of the Child principle used by the panel of judges to determine child custody reflects a progressive approach by adopting values from the ratification of the Convention on the Rights of the Child (CRC) 1989. Since the determination of personal status and the application of the principle of Best Interest of the Child do not yet have specific regulations in Indonesia, it is necessary to immediately ratify the academic draft, in the form of National HPI Legislation to replace legislation from the Dutch colonial period that is still in force.

Keywords: *Custody Rights, Divorce of Foreign Nationals, Principle of Domicile, Best Interest of the Child, International Civil Law*

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