

Implementation of Dual Citizenship as a Result of Mixed Marriages from a Human Rights Perspective in Indonesia

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Abstract

The issue of determining dual citizenship for children from mixed marriages is still often debated as a matter of human rights and also justice for the parties involved. This research uses normative juridical methods. The results of the analysis show that children from mixed marriages have dual citizenship up to the age of 18 with limited registration mechanisms. Ownership of dual citizenship actually needs to be protected by each country. Indonesia itself recognizes dual citizenship up to the age of 18 years plus an extension of the legal period until the age of 21 years. For the protection of human rights, the author recommends that regular socialization and citizenship services be carried out for children from mixed marriages in a thorough and comprehensive manner.

Keywords: Dual Citizenship, Mixed Marriage, Human Rights



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INTRODUCTION

The era of globalization not only has an impact on public interactions, but also has an impact on the private interactions of society, such as marriages which in the current era of globalization can occur not only between citizens of the same country, but can also occur between couples of different nationalities. commonly referred to as mixed marriages.¹ Specifically relating to mixed marriages, Article 57 of the UUP states that: "Mixed marriages are marriages between two people who in Indonesia are subject to different laws, because of differences in nationality and one of the parties is an Indonesian citizen."² Regarding mixed marriages, it is also necessary to pay special attention to the relationship between parents and children from mixed marriages. Especially with regard to the citizenship status of children born from mixed marriages. Because the legal consequences of marriage not only impact the couple concerned, but are also related to the citizenship status of the children born from the marriage. In relation to a person's citizenship status in Law Number 12 of 2006 concerning Citizenship for children born from mixed marriages in the Citizenship Law, it is stated in detail as follows:

- a. Article 4 letter c of the Citizenship Law states "children born from a legal marriage of an Indonesian citizen father and a foreign citizen mother;" ; And
- b. Article 4 letter d "children born from a legal marriage of a foreign citizen father and an Indonesian citizen mother;" is an Indonesian citizen.

The principle of citizenship is the basic guideline for a country to determine who is its citizen.³ The principles of citizenship adopted in Indonesia are::

- a. *The principle of jus sanguinis (law of the blood) is the principle that determines a person's citizenship based on descent, not based on the country of birth.*

¹ Rahmat Fauzi, Dampak Perkawinan Campuran Terhadap Status Kewarganegaraan Anak Menurut Hukum Positif di Indonesia, Soumatara Law Review, Volume 1 No.1 2018 hal 154

² Sudarsono, Hukum Perkawinan Nasional, Jakarta: PT. Rineka Cipta, 2005. Hal 6

³ Koerniatmanto Soetoprawiro, Hukum Kewarganegaraan dan Keimigrasian di Indonesia, Jakarta: PT Gramedia Pustaka Utama, 1996. Hal 9

- b. *The principle of ius soli (law of the soil) is limited, namely the principle that determines a person's citizenship based on the country of birth, which applies to children in accordance with the provisions regulated by law.*
- c. *The principle of single citizenship, namely the principle that determines one citizenship for each person.*
- d. *The principle of dual citizenship for children is in accordance with the provisions regulated in law.*

Based on the rules above, it is clear that there is a principle of dual citizenship for children in accordance with the provisions regulated in the Citizenship Law, including children born to an Indonesian citizen father and a foreign citizen mother and children born to an Indonesian citizen mother and a foreign citizen father. In connection with this limited dual citizenship, in fact if we look at the opinion of Peter J. Spiro, he states that "Dual Citizenship as Human Rightst."⁴ So here we can see that children are legal subjects who have rights as well as obligations from and towards the state. Every citizen has rights that must be recognized by the state and must be respected, protected and facilitated and fulfilled in full by the state. On the other hand, citizens also have obligations to the state. which are state rights which must also be recognized, respected and obeyed or fulfilled by every citizen.⁵ In this article, we will briefly examine whether dual citizenship can be implemented in Indonesia. So the author raised a paper entitled: "A Brief Study of the Implementation of Dual Citizenship as a Human Right in Indonesia." Based on the background as previously described, the author will examine: How is Dual Citizenship Implemented as a Human Right in Indonesia?

RESEARCH METHODS

As a normative legal research, data use in this researc are secondary data, that are collected through literature review. The main data are primary legal source, that consisted of law and secondary legal sources that consisted of text books. The main regulation in this research are Law no. 12 of 2006 concerning Citizenship and Law no. 39 of 1999 concerning Human Rights. Data obtained are analysed using qualitative method. Discussions are made to understand the conception the aim of the researchers to the human rights for children from mixed marriages who have dual citizenship and what is the role of the government in upholding these human rights.

RESEARCH RESULTS AND DISCUSSION

Ownership of dual citizenship in Indonesia is only limited to children born from mixed marriages as the principle of dual citizenship for children is in accordance with the provisions regulated in law contained in Law Number 12 of 2006 concerning Citizenship as explained that "dual citizenship "for children in accordance with the provisions regulated in the Citizenship Law, these include children born to Indonesian citizen fathers and foreign citizen mothers and children born to Indonesian citizen mothers and foreign citizen fathers." This happens because the Citizenship Law in Indonesia itself actually adheres to the principle of single citizenship status.⁶ Dual citizenship status is limited to children born from mixed marriages, because in reality legal politics in Indonesia still views the existence of dual citizenship status as two blades that have positive and negative impacts simultaneously. So the presence of dual citizenship is

⁴ Peter J. Spiro, Dual Citizenship as Human Right, Oxford University Press and New York University School of Law Journal, Volume 8. No. 1 , 2010 page 111

⁵ Jimly Asshiddiqie, Pengantar Ilmu Hukum Tata Negara, Jilid II, Jakarta: Sekretariat Jenderal Mahkamah Konstitusi Republik Indonesia, 2014. Hal 383

⁶ May Lim Charity, Urgensi Pengaturan Kewarganegaraan Ganda Bagi Diaspora Indonesia, Jurnal Konstitusi Volume 13 No.4, 2016 hal. 821

only limited to children born from mixed marriages. Peter J. Spiro in his writing in a journal entitled "Dual Citizenship as Human Right" in the Oxford University Press and New York University School of Law Journal stated that⁷: "Dual citizenship has become an unexceptional status in the era of globalization, however dual citizenship should be protected as a human right. Because dual citizenship will give rise to stable bilateral relations and is also justified in history."

The author agrees that in the era of globalization dual citizenship is no longer inevitable because when mixed marriages occur, children born may have the condition of having dual citizenship status or even statelessness at all.⁸ So this policy is implemented in Indonesia to provide limited dual citizenship to children born from mixed marriages, and does not provide unlimited double citizenship to children born from mixed marriages. Peter J. Spiro further said that the application of dual citizenship unfairly hampers the implementation of political rights.⁹ The author views the implementation of the right to have dual citizenship in Indonesia as having been implemented fairly, where based on the Citizenship Law a period of time is given to choose one's citizenship before the age of 18. This grass period process is applied to 17 year old children who are adults and have the right to individually choose their own citizenship. Then, Peter J. Spiro in this article highlights several things, namely the growing argument which states that dual citizenship violates the norm of equality as long as only some people gain status. In fact, in this case Peter's view is not that someone obtains citizenship freely, but rather that people can obtain the right to obtain and/or retain additional citizenship if they fulfill certain requirements..¹⁰

This theory from Peter J. Spiro is based on the conception that citizenship as an identity and as a form of association is described as needing refinement as a political right from government policy itself.¹¹ In Indonesia itself, the Indonesian legal framework recognizes three procedures for obtaining citizenship status, including: (a) Citizenship by birth; (b) Citizenship through citizenship (by naturalization) and (c) citizenship through regular registration (by registration).¹² Second, in this case, it does not receive support from the constitution as a result of social and cultural characteristics, but if traced as a cognitive shift, not as a shift in norms, this dual citizenship needs to be established as a human right.¹³ Of course, Indonesia as a country that protects human rights protects all Indonesian people regarding human rights, but specifically for citizenship, up to now Indonesia still adheres to one citizenship.¹⁴ So it is true that dual citizenship in Indonesia is not supported by the constitution and applicable statutory provisions.

Peter J. also stated that dual citizenship as a human right has been normalized as a result of globalization. However, some states will continue to prevent individuals from having Ganad citizenship. This is related to the policies and interests of the country itself. So far, to frame the maintenance of dual citizenship status as a right still implies the autonomy of the individual and the government itself. Because in reality having dual citizenship does not constitute a substantial threat to the interests of the state and must be justified and universally accepted as a human right.¹⁵ The discourse on regulating dual citizenship status in Indonesia is quite developed and there are pros and cons. Supporters of this discourse view that there are many

⁷ Peter J. Spiro Loc.cit.

⁸ May Lim Charity, Op.Cit. 811

⁹ Peter J. Loc.Cit.

¹⁰ *Op.cit* page 112

¹¹ *Op.cit* page 118

¹² Ramly Hutabarat, Laporan Akhir Pengkajian Hukum Tentang Masalah Hukum Dwi Kewarganegaraan, Jakarta: Badan Pembinaan Hukum Nasional, 2004) hal 5.

¹³ Loc.Cit.

¹⁴ Rokilah, Implikasi Kewarganegaraan Ganda Bagi Warga Negara Indonesia, Jurnal Ajudikasi, Volumen 1 No.2 2017 hal.59

¹⁵ *Ibid.* 130

advantages to the presence of unlimited dual citizenship status, such as: First, it can improve economic relations between two countries, second, expand the economic base, third, encourage the development of trade and investment which opens up employment opportunities, Fourth, holder Dual citizenship influences economic and political decisions in the country they live in and later, etc. which logically seems to provide significant benefits for the Indonesian people.¹⁶ However, this dual citizenship is still widely disputed because it is feared that this concept will cause problems related to loyalty to the state, issues of nationalism, political rights and other rights. So up to now the policy of having dual citizenship as a human right is still limited to children born from mixed marriages and limited to 21 years of age.

CONCLUSION

The existence of dual citizenship actually has implications for the values of a country's government. Obtaining and maintaining dual citizenship has implications for dual citizenship status whose rights must also be protected by each country. Indonesia itself recognizes dual citizenship up to the age of 18 years plus an extension of the legal period until the age of 21 years. And views the same thing that dual citizenship is a human right, but as per the restrictions in the constitution itself, there is a limitation, namely only for children born from mixed marriages and intended until the age of 21 years.

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¹⁶ May Lim Charity, Op.Cit hal 819