
The Legal Aspect of The Implementation of Dual Citizenship In Indonesia: Demands Of The Diaspora

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Abstract

The demand of the Diaspora for the enactment of dual citizenship has not been fulfilled by the Indonesian Government since the state still subscribes to the principle of "one person one citizenship." This single citizenship principle has been adhered to since the independence of Indonesia, stemming from the 1945 Constitution as the highest state law, Law no. 3 of 1946 on Citizens and Residents of the State, Law no. 62 of 1958 on the Citizenship of the Republic of Indonesia, up until the Law no. 12 of 2006 as the current Citizenship Law of the Republic of Indonesia, which is currently applicable. In the present, the Government has issued a policy alternative in the form of Indonesian Overseas Card to ensure the civil rights of citizens and foreigners of Indonesian national descent who reside overseas so that they can enjoy facilities in Indonesia. This policy is also intended to revise the validity period for Visit Visa to be applicable for several visits and the period of residence permit, specifically for foreigners who are former citizens of Indonesia and their families, as a means of accommodating the diaspora's demands. With the issuance of the policy, there is a recognition towards the existence of the Indonesian diaspora overseas as one of the non-state actors for international relations and as agents of change for their homeland.

Keywords: *Diaspora; Dual Citizenship; Indonesian Overseas Card.*

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INTRODUCTION

The essence of state is a power organization that includes or unites human groups which are then called nation (Soehino, 2001). According to Article 1 of the Montevideo Convention on Rights and Duties of States 1993, the state as a legal subject has elements, namely the people, territory, government, and the ability to communicate with other nations. A state must have citizens. According to Sudargo Gautama, a state without citizens is something that is impossible, without citizens, a state cannot become a complete state yet (Gautama, 1997).

Everyone will definitely go through various phases of life such as getting married or working. These two things are some of the factors that make a person move from one state to another. However, the state and the government still have to fulfill the rights of their citizens who are abroad, in line with the definition of human rights which is a gift from God given to human to be respected, upheld and protected by the State, government, and everyone for the sake of honor as well as protection of human dignity itself.

Migration and Development are two things that are interdependent and influence each other. Especially in the context of cross-international migration, where the development of a country is also influenced by people or citizens who move from their country of origin to another country with the aim to live, study, even work and generate income that can be useful for their families and relatives in form of foreign exchange in their country of origin (Bachtiar, 2015).

Therefore, diaspora came from various countries, one of which is the Indonesian diaspora. The meaning of diaspora is a group of people or ethnic groups who leave their traditional homeland (their country of origin) and spread to other regions (other countries). According to Dino Patti Djalal, Chairman of the Board of Trustees Indonesian Diaspora Network Global (IDN), there are 4 (four) characteristics of the Indonesian diaspora, including: 1) everyone who is abroad and holds an Indonesian passport; 2) everyone who has Indonesian blood and not an Indonesian citizen; 3) Indonesian people who are married to foreign nationals; 4) not an Indonesian at all, either by blood or citizenship, but has a concern and inner bond with Indonesia (Bachtiar, 2015).

Until now, Indonesian diaspora has demanded the enactment of dual citizenship in Indonesia, because in the citizenship law arrangement of the Republic of Indonesia, namely Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, hereinafter referred to as the Citizenship Law, adopts the concept of single citizenship. The problem regarding the concept of single citizenship is experienced by Indonesian diaspora who live overseas knowing that the impact of globalization is increasingly demanding the mobility of citizens who are no longer limited to the territory of their country. Not only in terms of employment and education for Indonesian citizens who are overseas, but in terms of marriage and childbirth, it can occur overseas, so that dual citizenship is desired in Indonesia (Bachtiar, 2015).

Dual citizenship can be conceptually interpreted narrowly and broadly. In the narrow definition it refers to the concept of dual citizenship of a person from two different countries. Dual citizenship based on a broad definition is not limited to dual citizenship but rather than citizenship (plural multiple citizenship) of a country. So they have political membership of two or more countries.

The reasons that become the demands for recognizing and enactment dual citizenship in Indonesia are: 1) The Indonesian Diaspora demands not to lose its Indonesian citizen status if the diaspora obtains citizenship in another country (dual citizenship); 2) There is convenience and freedom for the Indonesian diaspora, especially former Indonesian citizens to enter or leave and settle in the territory of the Indonesian state, for example a special visa, permanent residence permit or limited stay permit; 3) There are flexible regulations for the Indonesian diaspora (former Indonesian citizens) who want to make investments, get jobs as experts, purchase property and others; 4) They have the potential to provide many benefits for Indonesia, from remittances to the country (remittances), business opportunities, transfer of knowledge to efforts to develop the country through their various capabilities. (Bachtiar, 2015)

It is not surprising that the diaspora plays a role as one of the non-state actors in international relation and also as an agent of change in their homeland where diaspora from any

country not only bring remittances, namely funds that is sent to the country of origin of workers overseas but also have the potential to bring assets in various forms such as human capital, skill, wealth, and networks that can strengthen the national economy in the development of a better country (Bachtiar, 2015).

However, the demand for a dual citizenship system raises pros and cons among the Indonesian government and society. Those who disagree with the enforcement of dual citizenship think that if Indonesia enactment dual citizenship it will affect the security side of the state which can lead to dangers such as terrorism, radicalism, separatism and the nationalist feelings and attitudes of citizens towards their state. So that the demands of dual citizenship arrangement enactment proposed by the Indonesian diaspora need to be studied and evaluated in order to find out opportunities that the dual citizenship system can or may not be implemented in Indonesia.

RESEARCH METHODS

This research was a "normative juridical" research conducted by collecting primary legal materials. (Soekanto, 1985). To find out an existing legal rule, it is necessary to collect relevant legal materials to be taken into consideration in examining the formulation of problems arising from legal issues so that it can provide legal research related to the legal aspects of regulating the dual citizenship enactment.

In this research, the authors used a statute approach, a conceptual approach, and a historical approach. The statute approach was carried out by examining all laws and regulations that were related to the legal issue being handled, namely regarding Indonesian citizenship law. The law in question includes Law of the Republic of Indonesia Number 3 of 1946 concerning Citizens and Residents, hereinafter referred to as Law Number 3 of 1946, Law of the Republic of Indonesia Number 2 of 1958 concerning the Approval of the RI dan RRC regarding the issue of dual citizenship, Law of the Republic of Indonesia Number 62 of 1958 concerning Citizenship of the Republic of Indonesia (LN of the Republic of Indonesia of 1958 Number 113, Supplement to the State Gazette of the Republic of Indonesia Number 1647) hereinafter referred to as Law Number 62 of 1958 and Law of the Republic of Indonesia Number 12 of 2006 concerning Citizenship of the Republic of Indonesia (LN of the Republic of Indonesia of 2006 Number 63, Supplement to the State Gazette of the Republic of Indonesia Number 4634) hereinafter referred to as Law No. 12 of 2006. Based on these four laws, it is hoped that this thesis problem can be resolved.

According to Peter Mahmud Marzuki, the conceptual approach is to build the concept of law through understanding the views of scholars or legal doctrines that are relevant to the formulation of the problem (Marzuki, 2005).

The use of a conceptual approach in this research was carried out by examining and explaining as well as describing the concept of dual citizenship and the concept of Indonesian diaspora, while the historical approach was carried out in the historical framework of Indonesian citizenship enactment. This approach helps understand the philosophy of the rule of law over time (Marzuki, 2005).

In this thesis the historical approach began when the 1945 Constitution was formed followed by Law number 3 of 1946 as a post-early independence law, then this thesis will discuss the conflicts over citizenship that emerged in 1952 due to policies related to the RRC citizenship law followed by Law number 62 of 1958 which became the citizenship law that was applicable for 48 years until Law Number 12 of 2006 under the citizenship law that is in applicable until today.

RESULTS AND DISCUSSION

Based on the development of Indonesian citizenship regulations, the principle of Indonesian citizenship is single citizenship. Starting from Law Number 3 of 1946 concerning Citizens and State Residents, then Law Number 62 of 1958 concerning Citizenship of the Republic of Indonesia, followed by Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. However, the bipartite state of Indonesian citizenship and Chinese citizenship has occurred due to a clash of citizenship law systems. Where at that time, according to Indonesian law, all people of Chinese descent who were born in post-independence Indonesian territory were Indonesian citizens, while



according to applicable law in China, it states that all Chinese descendants in the world are Chinese citizens. Finally, an agreement was made to resolve the dual citizenship problem. Continuing with Law Number 62 of 1958, Indonesia does not recognize dual citizenship as seen in the article losing Indonesian citizenship. Having two citizenships are considered disrespectful to the Indonesian state as explained in the explanation of the law. According to Law Number 12 of 2006 there is limited dual citizenship for children. The limited dual citizenship enactment for children is an effort to protect children's rights when problems occur due to mixed marriages or divorce from mixed marriages of their parents. This can result in differences in citizenships between parents and children resulting from the marriage. However, at the age of 18, the child must choose one citizenship. In other words, Indonesia still adheres to the principle of one person and one citizenship for adults. This is related to loyalty and loyalty to the state.

There is a principle that every sovereign state can determine its own citizens. In making this determination, it can be said that there are no significant restrictions. (Gautama, 1983: 7). Sovereignty is the highest power in a state. The principle that each state is sovereign to independently determine who its citizen is a very important foundation, as a consequence of the acceptance of this principle that no other country may determine who a citizen of a state is. Therefore, Indonesia as a sovereign state, in this case, the Indonesian government can determine for itself who its citizens are but cannot recognize people who do not have the slightest connection with Indonesia. There are several principles that form the basis for the politics of Indonesian citizenship law according to Bagir Manan: 1) The principle as a non-immigrant state is that Indonesia is not the final goal of the process of moving people; 2) The principle of selective policy, implies that a person will be accepted as an Indonesian citizen on the basis of effectiveness and results for the national interest; 3) Indonesian citizenship is not lost in a very easy way; 4) There is no dual citizenship and no person is stateless; 5) Blood relation and a straight down line (*ius sanguinis*); 6) Marriage does not lose citizenship.

These principles are evident in the current Indonesian citizenship regulations. Whereas in every Article in the Indonesian citizenship law it states that every Indonesian citizen will lose his citizenship if they have foreign citizenship, this proves that everyone is one citizenship and does not recognize the Bipatride condition of its citizen. The main principle in determining Indonesian citizenship is determined based on blood relations and a straight down line from descendants who have Indonesian relations and citizenship in addition to determining citizens based on place of birth. The principle that Indonesia is not a non-immigrant state is that the State is not intended to limit as much as possible the increase in citizens and/or residents through a citizenship process based on immigration rights, if Indonesia is considered as an immigrant state, of course the requirements for applying to become Indonesian citizens will be made heavier, for example, the requirements for staying in Indonesia are successively 10 (ten) years instead of 5 (five) years as regulated in the procedure for applying for citizenship of the Republic of Indonesia. In accordance with its principles, the state ensures that no one will experience an apatriide condition because apart from being contrary to the citizenship law, this is also against the 1945 Constitution of the Republic of Indonesia and even though an Indonesian citizen marriage in a mixed marriage, he/she will not immediately lose his status as an Indonesia citizen without any request from the parties concerned and for former Indonesian citizens if they want to regain Indonesian citizenship, they can get their citizenship as regulated in the Citizenship Law, this proves that marriage does not lose citizenship.

State Policy for Indonesian Diaspora

Immigration Facilities. Immigration authorities have provided facilities to handle the demands of the Indonesian diaspora regarding the ease of entering or leaving and settling in Indonesia such as obtaining special visas, permanent or limited residence permits for diaspora who are former Indonesian citizens. From the immigration aspect, Diaspora includes former Indonesian citizens, including former Indonesian dual citizens, husbands/wives joining former Indonesian citizens, as well as legal children who are not 18 years old yet and have not married



yet joining with parents of former Indonesia citizens. Diaspora can enter to Indonesian territory by using all immigration facilities in accordance with applicable laws and regulations including free visit visas and 'on arrival' visas on arrival, one-time visit visas or multiple trips and limited stay visas. Regarding residence permits, the diaspora can also change the status of a visit stay permit to a limited stay permit (ITAS) or change the status of a limited stay permit to a permanent residence permit (ITAP). Furthermore, the Government has revised the Government Regulation regarding the implementation of immigration in Government Regulation Number 26 of 2016 concerning Amendments to Government Regulation Number 31 of 2013 concerning Implementation Regulations of Law Number 6 of 2011 concerning Immigration which revised the validity period of a visit visa for several trips and a period of residence permit especially foreigners who are former Indonesian citizens. There are exceptions related to visiting stay permits for foreigners who are former Indonesian citizens and their families who hold a visit visa for several trips, namely the visit stay permit can be extended at most two times and the duration of each extension is a maximum of 60 days. The presence of this policy is an attempt by the government to provide easy access for the diaspora, namely former Indonesian citizens including legal children who are not 18 years old yet and have not married yet joining with parents of former Indonesian citizens in the form of extension of residence permits and to meet the dynamics that are developing in the International world related to the additional period of visit visas for foreigners.

Indonesian Overseas Card. The President as the holder of the supreme power has issued Presidential Regulation Number 76 of 2017 concerning Facilities for Indonesian Communities Overseas. This is based on empowering and enhancing the role of Indonesian people overseas in development, it is necessary to provide adequate facilities to be actively involved in economic, social and cultural activities such as one of the demands of the Indonesian diaspora for the enactment of dual citizenship. The Indonesian government provides the Indonesian Overseas Card. The Indonesian people overseas are Indonesian citizens and foreigners who reside and/or work overseas. Meanwhile, the foreigners in question are people who are not Indonesian citizens who include former Indonesian citizens, children of former Indonesian citizens, and foreign citizens whose parents are Indonesian citizens who reside and/or work overseas. KMILN holders who are Indonesian citizens can be provided with facilities in the form of opening an account at a commercial bank, owning property in Indonesia, and establishing an Indonesian business entity, while for KMILN holders who are foreigners, facilities and conveniences can be provided according to laws and regulations. Therefore KMILN is intended to accommodate the demands of the diaspora with regard to civil rights and Government policies in providing facilities to enjoy facilities in Indonesia for Indonesian citizens and foreigners who live overseas and increase the role of Indonesian people overseas in Indonesia's development activities from the economic, social and cultural sectors.

Dual Citizenship in Indonesia according to the 1945 Constitution of the Republic of Indonesia

The 1945 Constitution of the Republic of Indonesia as the country's supreme constitution states that everyone has the right to citizenship status. If seen from the clause of Article 28D paragraph (4), it does not clearly state the number of citizenships entitled to have. However, in the formation of the 1945 Constitution of the Republic of Indonesia, the concept of dual citizenship was not recognized, none of the several groups in Indonesia recognized any other citizenship apart from the Indonesian nation. Soepomo stated that the state must safeguard that no citizen has dual citizenship (dual citizenship or *dubbele ondedaanschap*) and no citizenship (*staatloosheid*). Therefore, it must be regulated by the Indonesian statutory system and regulations (Yamin, 1971)

In other words, determining the citizenship of Indonesian citizens is based on the principles of loyalty, unity and nationality. This is evidenced in the clause of several articles concerning citizenship in the constitution, including:

Art.6 of the 1945 Constitution of the Republic of Indonesia

One of the requirements for the candidate for President and candidate for Vice President must be an Indonesian citizen who since birth and has never accepted another nationality of his



own accord, or has ever betrayed the state and is spiritually and physically capable of carrying out his/her duties and obligations as President and Vice President. This provision is known as citizenship status as a natural born citizen, not naturalization or citizenship. It seems undeniable that this is closely related to someone's loyalty and allegiance to their country.

Art. 26 paragraph (1) of the 1945 Constitution of the Republic of Indonesia

After the 1945 Constitution has been amended 4 (four times) by the People's Consultative Assembly (MPR), Article 26 paragraph (1) has not changed. Therefore it is the original formulation of Article 26 paragraph (1) of the 1945 Constitution. It referred to as Indonesian citizens. Regarding the application of dual citizenship, the Minister of Foreign Affairs of the Republic of Indonesia, Retno, was of the opinion that Indonesia does not recognize dual citizenship for its citizens as regulated in this Article, that:

- (1) Those who become citizens are the original Indonesian nationals and people from other nations who have been legalized by law as citizens.
- (2) The requirements regarding state citizenship are stipulated by law.

The formula that is meant by native Indonesian people is Indonesians who have become Indonesian citizens since their birth and have never received another nationality of their own accord, while people from other nations are people who have become Indonesian citizens through naturalization.

Art. 27 paragraph (3) & Art. 30 paragraph (1) of the 1945 Constitution of the Republic of Indonesia

The defense aspect is one of the factors that can ensure the survival of the life of the state. In the 1945 Constitution of the Republic of Indonesia, the obligations of Indonesian citizens to participate in efforts to defend the state, defense and state security are regulated in Article 27 paragraph (3), Article 30 paragraph (1). It is undeniable that the era of globalization can create multidimensional threats from ideological, political, economic, social, cultural issues and security issues related to narcotics, terrorism or illegal immigrants.

Dual Citizenship in Indonesia According to Law Number 12 of 2006

The Government of the Republic of Indonesia regulates the Indonesian citizenship law specifically regulated in the Citizenship Law Number 12 of 2006. Based on the general explanation, this law adopts four principles of citizenship, namely: 1) The principle of *ius sanguinis* (law of the blood) is a principle that determines a person's citizenship based on descent, not based on the state of birth; 2) The principle of *ius soli* (law of the soil) in a limited manner is the principle that determines the citizenship of a person based on the state of birth which is limitedly enforced for children in accordance with the provisions stipulated in this law; 3) The principle of single citizenship is the principle that determines one citizenship for each person; 4) The principle of limited dual citizenship is the principle that determines dual citizenship for children in accordance with the provisions stipulated in this law.

It appears that every Indonesian citizen has the right to one citizenship status for each person. However, in this citizenship law, recognizing the principle of dual citizenship is limited. Currently dual citizenship status is limited to children up to the age of 18 and does not provide limited or full dual citizenship opportunities for adults. When Indonesia implements full dual citizenship, changes will also occur to the principle of Indonesian citizenship which no longer applies single citizenship, the way to obtain related Indonesian citizenship when obtaining Indonesian citizenship does not make it a bipatriate. The requirements for losing Indonesian citizenship will certainly experience a significant change from obtaining another citizenship of your own accord, having a foreign passport, participating in general elections of other countries, taking oaths against foreign powers, participating in foreign military service or foreign service. It will not cause loss of citizenship of the Republic of Indonesia when Indonesia applies dual citizenship. Changes will also occur in how to regain Indonesian citizenship for former Indonesian citizens.

Proposed Substance of Dual Citizenship Regulations in Indonesia

As a result of a change in the subject matter of the citizenship law if dual citizenship is recognized in Indonesia, there are several suggestions regarding changes to the substance of the citizenship rule. Imelda Bahctiar in her book stated that several main things that need to be regulated in the amendment of the Citizenship Law of the Republic of Indonesia in the dual citizenship enactment, include: *First*, the citizenship system; *Second*, the procedures and conditions for obtaining dual citizenship; *Third*, the coverage of citizen subjects who can be granted dual citizenship. (Bachtiar, 2015)

Meanwhile, according to Susi Harijati, there are 5 (five) points that need to be regulated in the Citizenship Law amendment, including: 1) Subjects of dual citizenship holders are Indonesian citizens, former Indonesian citizens with foreign citizenship status, children from mixed marriages between Indonesian citizens and foreign citizens; 2) Conditions that can be allowed to accept or obtain dual citizenship include procedures such as obtaining citizenship from a foreign country which also embraces or recognizes dual citizenship by birth, citizenship/naturalization, or mixed marriage; 3) Conditions that cause the loss of Indonesian citizenship who hold or have dual citizenship include procedures such as committing treason against the Indonesian state, as well as reasons that can cause loss of Indonesian citizenship other than the prohibition of dual citizenship; 4) Provisions regarding cooperation with states that accept dual citizenship to ensure dual citizenship is mutually recognized, including provisions regarding certain rights and obligations of dual citizenship status holders, such as tax treaty issues to avoid double taxation problems; 5) Transitional provisions governing the process of recognizing dual citizenship, such as registration for former Indonesian citizens, children resulting from mixed marriages who are foreign citizenship who lost Indonesian citizenship before the law on citizenship were enacted.

CONCLUSION

There has been a condition where Indonesian citizens have dual citizenship with Chinese citizenship, this is due to a clash of citizenship laws, namely the determination of citizens by both states based on the principle of *ius sanguinis* which then results in an agreement that obliges them to simultaneously hold two Indonesian and Chinese citizenships must choose one of the two citizenship. Until Law Number 12 of 2006, Indonesia adheres to limited dual citizenship for children resulting from mixed marriages, in which case the child must choose one of the citizenship he/she has. From the demands of the Indonesian diaspora who fight for dual citizenship, the Indonesian Government has issued alternative policies to make every effort to make it easier for citizens and foreigners who are overseas with the issuance of Presidential Regulation Number 76 of 2017 concerning Facilities for Indonesian Communities Overseas, namely the issuance of the Indonesian Overseas Community Card (KMILN) and the convenience through the immigration aspect by changing the period of extension of residence permits for foreigners who are former Indonesian citizens and their families as regulated in Government Regulation Number 26 of 2016.

The 1945 Constitution of the Republic of Indonesia does not rule out the possibility the enactment of dual citizenship. However, Law Number 12 of 2006 as the Citizenship Law of the Republic of Indonesia, does not recognize full or limited dual citizenship for adults. Therefore, when Indonesia will enact full dual citizenship, changes are needed related to the determination of citizenship, such as the principle of citizenship to the condition for losing citizenship of the Republic of Indonesia. In addition, the principle of loyalty to the state is also a basis that must be adhered to in the Indonesian citizenship system.

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