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Law and Human Rights Approach of Limited Double Citizenship Policy in Indonesia

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***Abstract*- The Law of the Republic of Indonesia Number 12 of 2006 on the Citizenship of the Republic of Indonesia accommodates some aspects of the rights and obligations of Indonesian Citizen comprehensively that was not provided by the previous one. Even so, the principles adopted, especially dealing with the limited double citizenship, raise some problems in the praxis. This research is aimed to study the problem persisted and to figure out the possible suggestion to solve it. The juridical empirical method is used to collect the primary data from the society qualitatively, compare to the law and its derivation, then analyze evaluatively from the perspective of Law and Human Rights. It found various problems endured in this rule as it resulted in the loss of many heir of Indonesian Citizen, particularly, the subject of double citizenship who was born before this decree stipulated. Moreover, it does not facilitate their special needs to acquire their citizenship of the Republic of Indonesia back. Thus, it recommends the revision of The Law on the Citizenship of the Republic of Indonesia and its derivation, specifically about naturalization, also to harmonize them all.**

Keywords-Law, Human Rights, Limited Double Citizenship

I. INTRODUCTION

Universal Declaration of Human Rights and some other international legal instruments protect the right to nationality but do not mention a right to dual nationality (Turp, 2016). Even so, Indonesian allowed someone to have double citizenship as it adopts universal citizenship principle which consist of the principle of jus sanguine (law of the blood); the principle of jus soli (law of the soil); the principle of singular citizenship; and the principle of limited double citizenship (bipartite) (Based on the Law of the Republic of Indonesia No. 12 of 2006 on The Citizenship of the Republic of Indonesia). Those dual citizenship is only granted for those who meet the criteria of Article 6 jo. Article 4 letter c, d, h, and l of The Law on Citizenship.

For the children who hold double citizenship, then, after 18 (eighteen) years old or soon after marriage, should declare their preference to a citizenship. Such declaration should be presented in written at least 3 (three) years after (Article 60 of The Government Regulation of the Republic of Indonesia No. 2 of 2007). If not, their Indonesian Citizenship will lose.

Even though Indonesian Citizenship Law System allow them to get Indonesian Citizenship by naturalization, practically, children ex-limited dual citizenship holder face some problems to fulfill the requirements of this law, such as occupation and/or has a fixed revenue (Article 9 letter g of The Law on Citizenship). The main reason is because almost all of ex-double citizenship children is a teenager or younger who are still study, do not work, thus, do not have any income yet. It becomes problematic especially for the ex-double citizenship children who wish to get their Indonesian Citizenship back soon, for instance those who are under time pressure to disclaim their other citizenship as ruled by the law of other country. It is impossible for that children to disclaim their other citizenship if they do not own Indonesian Citizenship since it causes stateless. (The General Directorate of the General Law Administration, 2018b).

There is no other way for the ex-double citizenship children to grant the citizenship of Indonesia except naturalization. This kind of policy is abandoned them. Meanwhile, it is a pity if thousands of them loss the citizenship of Indonesia and hold foreign citizenship as most of them have experienced high quality education abroad. Thus, if they can hold their Indonesian Citizenship back, they can be the important and precious assets for the Indonesia. Based on those, there are a citizenship process problem caused by the status of double citizenship children on the perspective of law and human rights.

II. RESEARCH METHOD

This research is conducted by juridical-empirical method which analyze both primary and secondary data. The primary data is any regulations concerned to citizenship while the secondary data consists of literatures, journal, and dictionary related to the problems persisted on this research. Thus, this research does not only compile of the materials such as theories, concepts, principles and regulations of law dealing with the topic, but also explains the reality of law in society as a law phenomenon for the subject, that is children with limited double citizenship. All data needed are collected by literature review.

That data, then, are analyzed qualitatively by doing a deepen analysis. Deep interview and Focus Group Discussion are conducted to supply the empirical data needed. The interviewees are chosen purposively from

various background categorized as government and Non-Government Organization also practitioner and academics.

III. FINDINGS AND DISCUSSION

There are some problems dealing with double citizenship children as the existence of Article 41 (The General Directorate of the General Law Administration, 2018a). The first problem faces by double citizenship children who holds decision letter from the Minister of Law and Human Rights of the Republic of Indonesia, but overdue to declare their chosen of Indonesian Citizenship as ruled by Article 6. As a result, based on article 41, these children considered as foreigner since they do not declare their Indonesian Citizenship until the time limit. The other problem faces by children who was born by Indonesian citizenship parents but in other country which adhere to the principle of Jus soli. The Jus soli principle determine them as their citizenship without considering their postnatal impermanent stay. After some moment their parents bring them back to their home country, Indonesia, and never mind about the citizenship of their children. When these children wish to go to their country of birth, the problem emerged. When they apply for their visa for whatever their reasons are (most of the reason is for further study), those children, then, receive the passport form their country of birth. It is happened as those children exist on the database of that country as their citizenship. If those children accept the passport, their Indonesian Citizenship will loss for the practical mechanism of Article 23 letter h of the law of Indonesian Citizenship. The discussion is grouped into two main idea, which are the perspective of law and human rights.

1. The Perspective of Law

a. The Status of Double Citizenship Children Regulated by the Law of the Republic of Indonesia

Double citizenship children that lose their citizenship because do not submit their declaration to choose Indonesian Citizenship at least three years after 18 years old or after married, considered as foreigner soon after they turn to 21 years old (article 65 point 1 Government Regulation No. 2 of 2007). They can regain their Indonesian Citizenship back by giving a written proposal to the Minister through naturalization procedure (Article 41 of the Law on citizenship). Even so, there are no special rules about procedures of regaining Citizenship for the ex-double citizenship children.

As a result, ex-double citizenship children should follow the naturalization mechanism. Whereas, they need privileges, especially in the terms of requirements. The reason is because the ex-double citizenship children are not a pure foreigner but genetically bound to Indonesia Thus, for the sake of justice, they are not equal to the pure foreigner.

Pure naturalization mechanism is a mechanism applied to the pure foreigner who wish to own Indonesian Citizenship (Article 1 and 2 of Government Regulation No. 2 of 2007). It clearly explains that citizenship consist of the Citizenship of Indonesia and the citizenship of foreign, without specifically mention the subject of the limited double citizenship.

As a matter of fact, the legal status of a dual citizenship children is like foreigner who married Indonesian Citizen. Both have a bonding relationship with Indonesia. The differences lie on the cause of the bonding as a foreigner who married Indonesian Citizen bond to Indonesia as the result of his or her married, then a double citizenship children bond to this country genetically, because one of their parents is an Indonesian Citizenship.

Therefore, it is necessary to provide legal protection to ex-double citizenship children for obtaining Indonesian Citizenship by simplifying the terms and procedures. It can be done in two options. Firstly, by setting up a new citizenship mechanism with different terms and procedures which is simpler than the one stated by Article 8 of The Law on citizenship. Secondly by giving an exceptional in the Article 8 of that law for the subject of limited double citizenship, especially in the required fee. In the special case of ex-double citizenship, it is important to considering the philosophical and sociological reasons also respecting human rights.

The other important thing is the limit age as there are no universal limits existed. In Indonesia, especially dealing with citizenship, children considered as an adult at the age of 18 years old by the obligation to choose one citizenship if the children owned double citizenship. The act of choosing nationalities can be done for three years since the age of 18 years to 21 years, as ruled by the law. It differs, for instance, from Japan rules. In Japan, children may choose or release their citizenship at least at the age of 22 years. This difference rule is the main problem faced by every Indonesian-Japan citizenship holder as those who wish to have Indonesian Citizenship are restrained by Japanese Law. Such legal conflict is an unavoidable in the legal citizenship system.

The policy for Children with Limited Double Citizenship that exceeded the limits to declare their Citizenship of the Republic of Indonesia is not regulated explicitly in the Law on citizenship. It is considered as same as those who lose the Citizenship of the Republic of Indonesia that is ruled by Article 23 of the Law on citizenship of the Republic of Indonesia on the loss of citizenship.

For those who loss citizenship, there are a regulation for regaining it as ruled in article 43 of The Law on Citizenship of the Republic of Indonesia, which are:

1) Citizens losing citizenship of the Republic of Indonesia as meant in Article 23 letter a up to letter h

of the law can regain citizenship of the Republic of Indonesia by submitting application to the President through the Minister.

2) Procedure for submitting the application as meant in paragraph (1) shall be in accordance with the naturalization provisions as meant in Article 2 up to Article 12.

There are other problems persisted due to the big number of the naturalization fee. Based on Article I clause 3 letter h point 1 of Government Regulations No. 45 of 2016 on the Second Revision on the Government Regulation No. 45 of 2014 on the Type and Fare on the Valid Non-Tax Revenue on the Ministry of Law and Human Rights, the naturalization charges Rp 50.000.000,00 (fifty million rupiah). That is the clause applied for the ex-double citizenship children who take naturalization. The nominal is considered unfair compared to the nominal of naturalization of foreigners who marry the Citizenship of Indonesia which, ruled by Article I clause 3 item h point 2, should pay Rp. 2.500.000,00 (Two and half million rupiah) only (The Government Regulations No. 45 of 2016).

b. The Status of Double Citizenship Children Regulated by the Law on Population

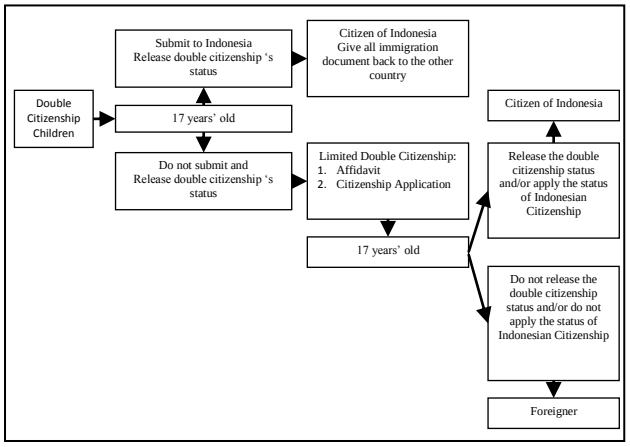

Fig.1. Double Citizenship Children in the Law on Population

The illustration above depicts the mechanism of granting the status of Indonesian Citizenship to the Double Citizenship Children as ruled on Article 6 and 41 of the Law on citizenship also on Article 63 of the Law of the Republic of Indonesia No. 24 of 2013 on the revision of The Law of the Republic of Indonesia No. 23 of 2006 on Administration of the Resident of the Republic of Indonesia. This law does not rule the subject of limited double citizenship specifically, so that all residence can take the equal legal action with the other residence, worst, equal with the citizen of the republic of Indonesia.

Based on that chart, every child who turn 17 years old or has and/or has ever been married, ought to choose a citizenship, whether prefer a pure Citizenship of Indonesia or a foreign nationality by releasing the status of Indonesian Citizen. This process, based on the valid laws and regulations, should be implemented within three years, started when the Children of Double Citizenship turn to 17 years old, through a statement of submission/non-submission to the laws and regulations in the Republic of Indonesia. This statement should be proved by the ownership of an KTP-el (The General Directorate of Population and Civil Administration, 2018). Practically, there are a contradictory as the Children Double Citizenship owned KPT-el since they turn to 17 years old. As a result, legally, they are the subject of the laws and regulations of the Republic of Indonesia and hold the status of a Citizenship of Indonesia. Thus, all immigration facility such as affidavit should be declared invalid and those children ought to return back all of their immigration documents. Albeit the law regulates so, in reality, those children still hold the status of Double Citizenship Children.

However, if, at the age of 17, Children of Double Citizenship do not declare their submission and do not hold a KTP-el, those children get three years, or maximum at the age of 21, to choose their citizenship status. After those time, if children with Double Citizenship do not choose their status or forget to decide their status of citizenship, they will be the subject legal status as a Foreign Citizenship. Thus, philosophically, the regulations relating to populations, the administration of population and the status of citizenship should regulate the citizenship status of children of mixed marriage (the subject of limited double citizenship) clearly and explicitly. The harmonization for e-government should refer to the development of knowledge and technology toward industrial era of 4.0 (Handajani, 2012), for instance by giving a single identity number (SIN) to identified where a citizen was born, lives, and is raised.

2. The Perspective of Human Rights

a. Considering the Relation of Double Citizenship Children to Their Homeland

The ex-double citizenship children are those who left their childhood, both those who do not register based on Article 41 of the Law on citizenship and those who have registered but do not declare that they choose Indonesian Citizenship. According to Article 6 of the Law on Citizenship, they are considered as adults that had ever hold Indonesian citizenship but lost it in another day. In this case, those ex-double citizenship children should submit an application to regain Indonesian Citizenship based on Article 30 of the Law on Citizenship. Even though, until today, the mechanism to regain those Citizenship refer to Article 8 to 18 of the Law on Citizenship. Thus, this research has a hypothesis about the needs of special mechanism for ex-double citizenship children, so that they do not apply pure naturalization as regulated by Article 8 the Law on citizenship.

Furthermore, beside pure citizenship mechanism, there are another option for foreigner to gain Indonesian Citizenship, namely by marriage. It requires a legal marriage with Indonesian Citizen as stated by Article 19 of the Law on Citizenship.

Article 32 clause (1) of the Law on citizenship states "Indonesian Citizens who have lost their citizenship as mentioned in Article 23 item i, Article 25, and Article 26 clause (1) and (2) may regain their Indonesian Citizenship by forwarding a written application to the Minister without going through the procedures as mentioned in Article 9 to Article 17." This article provides exclusivity of naturalization due to divorce.

Since a foreigner who married to Indonesian Citizen has privilege to obtain Indonesian Citizenship, then the double citizenship children should have so. It is because the double citizenship children have a direct relationship with this country as the impact of blood relations between a foreigner who married to Indonesian. Thus, those children hold more rights to the Citizenship of Indonesia rather than the foreigner. This equity can be realized by providing a special naturalization process beside those that ruled by Article 8 to 18 of the Law on Citizenship. This special process should provide the simpler and easier mechanism rather than the general one. It includes special naturalization tax that is lower than the other.

It is clear that child with double citizenship has the equal legal position with a foreigner who married to Indonesian citizen. Thus, it is not fair if ex-double citizenship children should apply for citizenship by pure naturalization mechanism as ruled by Article 8 of the Law on Citizenship as this mechanism requires more complex requirement than those which is applied for a foreign who are married to Indonesian Citizen. (Article 8 to 18 of The Law No. 12 of 2006)

If children meant in Article 60 clause (1) over the age of 21 will be granted by submitting a written application to the Minister without/through the Citizenship Procedure, the government should create a regulation of the procedure of regaining citizenship for ex-double citizenship children by considering the principle of certainty, justice, and the expediency of the law.

b. Considering the Condition of Double Citizenship Children

Based on the data recapitulated by the General Directorate of General Law Administration of the Republic of Indonesia, since 2006, there are 12.279 double citizenship children registered in over 100 Regional Offices of Ministry of Law and Human Rights in the Republic Indonesia and the Representative Offices abroad. Evidently, the development of Human Resources Capacity in other countries, especially in the developed one, is better than in Indonesia.

Most of double citizenship children who undergo dual nationality problems are those who are domiciled abroad, mostly in the developed countries such as the United States, Australia, Japan, and Korea. Those children, who have received various human resource development facility, have a good quality of human resource. They are the priceless national assets; thus, it is a challenge to persuade them to be the Citizen of Indonesia for accelerating the quality of human resources of Indonesia. Those excellent resources should be explored for the sake of this country.

On the other hand, if those children are foreigner, Indonesia do not have an equal human resource to compete with other country. Ironically, ex-double citizenship children, which own Indonesian blood but were kicked out by this country, will strengthen the squad of Indonesian competitor. Thus, the citizenship policy be taken based on a careful and complex consideration as every policy decide whether Indonesia "possess new high-quality resources" or even "create a new high-quality enemy". Those decisions should be declared on high quality law considering the needs to accommodate the double citizenship children to possess an Indonesian Citizenship.

IV. CONCLUSION

Based on the discussion above, it is clear that the Amendment of Government Regulation No. 2 of 2007 on the Procedures of Obtaining, Losing, Nullifying, and Regaining Citizenship of the Republic of Indonesia is needed, by providing special naturalization mechanism for ex-double citizenship children due to negligence or lack of literary. The amendment covers the requirement of occupation, fixed income, and the amount of non-tax revenue. Moreover, the regulation as stated in Article 65 clause (1) should be examined.

Furthermore, to enforcement of the laws, it is important to build the synergy between the General Directorate of General Law Administration and the General Directorate of Immigration of the Ministry of Law and Human Rights. The synergy is also needed by the Ministry of Law and Human Rights and The Ministry of Home Affairs especially the General Directorate of Population and Civil Registration regarding harmonization the regulation about e-KTP which is given in the age of 17, the regulation about choosing citizenship before 21 years old, and the application Information Technology 4.0 by giving a Single Number Identity (SNI).

This research strongly recommends the revision of the Law No. 12 of 2006 on Citizenship of the Republic of Indonesia. It also recommends the harmonization of regulation related to Citizenship especially the Law on Citizenship of the Republic of Indonesia; the Law on Population; the Government Regulation on the Procedures of Obtaining, Losing, Nullifying, and Regaining Citizenship of the Republic of Indonesia; and the

Government Regulations on the Type and Fare on the Valid Non-Tax Revenue on the Ministry of Law and Human Rights. Moreover, the Government Regulation No. 2 of 2007 on the Procedures of Obtaining, Losing, Nullifying, and Regaining Citizenship of the Republic of Indonesia advised to reform.

Practically, it is strongly recommended to have synchronized and integrated the valid e-gov database between The General Directorate of General Law Administration of the Ministry of Law and Human Rights and the General Directorate of Population and Civil Registration of the Ministry of Home Affairs. It also recommends to strengthen the synergy between the General Directorate of Population and Civil Registration, the General Directorate of General Law Administration, the General Directorate of Immigration, the Ministry of Labor, and Police to manage that database.

Finally, it is recommended to organize a socialization and literation on double citizenship children, especially to the children of mixed marriage.

REFERENCES

[1] L.B.S. Handajani, Kewarganegaraan Ganda Anak dalam Perkawinan Campuran dan Implikasinya dalam Hukum Perdata Internasional. Perspektif, xvii (1), 2. 2012

[2] The General Directorate of Population and Civil Administration. Hasil Penelitian Status Kewarganegaraan Anak yang Melampaui Usia 21 Tahun. Presented on Monday, Sept 24th. 2018

[3] The General Directorate of the General Law Administration. Hasil Kajian Status Anak Berkewarganegaraan Ganda. 2018

[4] The General Directorate of the General Law Administration. The Policy for the Status of Children with Limited Double Citizenship. Consignment at Bogor on December 10th-12th. 2018.

[5] The Government Regulation No. 2 of 2007 on Procedures for Obtaining, Loosing, Nullifying, and Regaining Citizenship of the Republic of Indonesia.. 2007.

[6] The Government Regulations No. 45 of 2016 on the Second Revision on the Government Regulation No. 45 of 2014 on the Type and Fare on the Valid Non-Tax Revenue on the Ministry of Law and Human Rights. 2016.

[7] The Law No. 12 of 2006 on Citizenship of the Republic of Indonesia. 2006.

[8] Tim Balitbang Hukum dan HAM. (2018). Hasil Penelitian tentang Status Kewarganegaraan Ganda Anak yang Melampaui Usia 21 Tahun. Jakarta: Balitbangkumham Press.

[9] T. Daniel. Dual Nationality in International, European and Constitutional Law. Europa Ethnica, 73 (1/2), 5-7. 2016