



Supervision and Law Enforcement of Dual Citizenship for the Indonesian Diaspora

Dudik Djaja Sidarta¹, Subekti¹, Sri Astutik¹, Nur Handayati¹

¹ Universitas dr. Soetomo, Surabaya, Indonesia
subekti@unitomo.ac.id

Abstract. *This research will analyze supervision and coordination between agencies so that the principle of single citizenship is maintained by that adopted by Indonesia, which is carried out using a type of normative research that prioritises legislation related to citizenship as well as literature studies related to supervision theory, as well as bureaucracy. Related to coordination between government agencies, but in this research there are interviews as an explanation of the results of this normative research. The research results show that monitoring of citizenship can be carried out at the borders of international airports and international seaports through Immigration Officers. Suppose it is discovered that an Indonesian citizen has dual citizenship. In that case, he can be deported and have his Indonesian citizenship revoked by Immigration. Still, the revocation of Indonesian citizenship by Immigration does not automatically change the citizenship status on the Resident's Identity Card. Changes to citizenship status on the Identity Card identity, the authority lies with the Population Service under the Ministry of Home Affairs. The Ministry of Law and Human Rights and the Ministry of Home Affairs have not yet integrated the supervision and enforcement of laws regarding single citizenship.*

Keywords: supervision and law enforcement, dual citizenship, and diaspora

1. Introduction

Since the beginning of independence, Indonesia has adhered to the principle of single citizenship and determining citizenship is based on the principle of *Ius Solly* (birth). The *Ius Solly* principle is the principle that determines citizenship based on birth. The opposite of *Ius Solly* is *Ius Sanguinis*, where determining citizenship is based on birth/descent. These two principles can make someone *apatride* or *bipatride*. A husband and wife who have citizenship in a country that adheres to the *Ius Sanguinis* principle then live in a country that uses the *Ius Solly* principle, so if they give birth to a child in an *Ius Solly* country, the child will get dual citizenship (*biopatride*) because the child is a citizen of the country where he was born and also gets from the country of origin of his parents. On the other hand, for couples who are citizens of a country based on *Ius Solly* and then live in a country based on *Ius Sanguinis*, then if they give birth to a child, the child will not get citizenship (*apatride*).

This incident was experienced by an Indonesian citizen couple where the Indonesian citizen couple lived in China and then they gave birth to a child, the child

did not get citizenship, on the other hand, a Chinese couple who lived in Indonesia, when they gave birth in Indonesia, the child got two citizenship (bipatride). This event was resolved through an agreement between the two countries, where Indonesia was represented by Foreign Minister Sunario while China was represented by Chou En Lai on April 22 1955 in Bandung which resulted in a treaty regarding the citizenship of the two countries.[1]

In subsequent developments, regarding citizenship, it was not only a matter of *Ius Soly* and *Ius Sanguinis*, but new problems arose regarding the principle of single citizenship (monotride) and the principle of dual citizenship (double tride) which were carried out by each country differently, this was because there were countries which adhere to single citizenship (monnotrde) there are countries which adhere to dual citizenship (double tride). A person who comes from a country that adheres to the principle of single citizenship, where the country states that each of its citizens must or is only allowed to have one citizenship, on the other hand, countries that adhere to the principle of dual citizenship do not prohibit their citizens from having two or more citizenships.

Based on human rights, every citizen is given the freedom to live in any country they like. Those who live in foreign countries are known as diaspora. This diaspora is actually not a problem if they live in countries that both recognize the principle of single citizenship, but it will be a problem for diasporas who live in countries that recognize dual citizenship, and they accept the citizenship of the local country and do not report to their country that they have accepted new citizenship. In other words, they have dual citizenship. This is a legal problem for countries that practice single citizenship. Based on Law Number 12 of 2006, Indonesia adheres to single citizenship. Legally, Indonesia in principle does not recognize dual citizenship, except for children born in mixed marriages, then the child is allowed to have single citizenship as long as they are not yet 21 years old.

The Indonesian Diaspora Network estimates that the Indonesian diaspora worldwide currently reaches eight million people. This figure does not include data on overseas Indonesian citizens, who are estimated to be more than fifteen million living in various countries around the world[2]. Of this astonishing number, four point six million of the Indonesian diaspora still have the status of Indonesian citizens. The remaining four point six million means that it is still questionable whether they have given up their Indonesian citizenship or instead accepted dual citizenship[3].

In reality on the ground, there have been two very controversial case discoveries, namely the case of Achandra who was to be appointed as Minister of Energy and Mineral Resources which was canceled after it was discovered that he had dual citizenship but in the end he was still appointed as a deputy minister after the Minister of Law and Human Rights granted him new citizenship and that concerned has revoked the foreign citizenship. . Furthermore, another similar case emerged, namely that the Regional General Election Commission of Sabu Raijua Regency has appointed as the elected Regional Head the pair Orient Patriot Riwu Kore and Thobias Uly with 48.3% of the vote, beating two other pairs in the 2020 Regional Elections. The problem arose when it was discovered that Orient P. Riwu Kore holds dual citizenship status by having a United States passport[4].

single citizenship significantly, there is a proposal for Indonesia to adopt dual citizenship like European countries. This debate was particularly reflected in the first Diaspora Congress held in Los Angeles in 2012, followed by a similar event at Wisma Indonesia in Sydney with the theme "Dual Citizenship Forum". The event aims to continue last year's Indonesian diaspora petition efforts, after 6,000 names and signatures were submitted in Los Angeles[5]. This proposal has apparently not been responded to by the Government and the House of Representatives until now to change the citizenship law to legalize or recognize dual citizenship. In fact, many countries have implemented the principle of dual citizenship, approximately 30 countries have adhered to this principle, such as: Australia, Barbados, Belgium, Bangladesh, Canada, Cyprus, Denmark, United States, England, Switzerland, South Korea, South Africa (permit required), Egypt, Greece, France, Finland, Germany, Iraq, Italy, Israel, Ireland, Poland, Hungary, Iceland, Kenya, Sweden, Slovenia, Syria, Serbia, Armenia, Thailand, Lebanon, Malta, Spain and so on[6].

Citizenship registration, apart from being written in the passport, is also included in population administration. This population administration plays an important role in recording all legal activities in Indonesian territory, both Indonesian citizens and foreign citizens. Through the identity card, all people's activities are monitored by the government through the identity card and through the passport. Population administration as reflected in the Family Card and resident identity card is regulated in Law Number 23 of 2006 concerning Population Administration, which was amended by Law Number 24 of 2013 concerning Amendments to Law No. 23 of 2006, while passports are regulated in Law Republic of Indonesia Number 6 of 2011 concerning Immigration. These two legal documents are indicators for the state to monitor the identity of single citizens.

Indonesian citizens who live in the territory of Indonesia and those who live outside the territory of Indonesia are monitored through these two documents. Errors in recording these two documents could backfire for the state in making policies. Ironically, these two documents are not under one department, but are handled by different departments, for population administration it is under the Ministry of Home Affairs (central government), the organizer is under the provincial government, while the implementer is under the population service which is under the City/City government. Regency, while passports are under the Ministry of Law and Human Rights, which is implemented by the Immigration Office. These two ministries have the authority to enforce the law regarding the principle of single citizenship

In order to prevent misuse of citizen status documents, it is necessary to reflect on and think about the issue of enforcing single citizenship laws in the diaspora so that they continue to have a single citizenship.

2. Problems

- a. How is the supervision and law enforcement of diasporas who have dual citizenship?

- b. How does the Ministry of Home Affairs coordinate with the Department of Law and Human Rights to supervise diaspora residing in countries that use dual citizenship?

3. Methods

This research is sociological juridical research which can be classified as a sociological study of law. According to Achmad Ali and Wiwie Heryani, research involving the sociology of law does not only look at legal principles which see the law in an ideal way but also looks at the social facts (humans) who carry out the law, which turns out not always to be in accordance with the ideal law but rather there are behaviors that influence the operation of the law so that they are different from the ideals of the law[7]

Primary data was obtained through interviews with stakeholders, especially immigration officers who have the authority to carry out supervision and other administrative tasks in immigration matters, as well as population service officials who handle population administration. Interviews were conducted by means of question and answer using a questionnaire directly with the relevant officers, regarding the provision of decision making and operational supervision

Next, the researcher filled in secondary data by studying various laws and regulations related to immigration and population. Both primary data and secondary data are recorded in special notes and then studied, then classified. The data that has been input is then systematized in such a way that conclusions can be drawn to answer the problem as a whole.

4. Discussion

4.1. Passports and Resident Identity Cards as Legal Instruments

Citizenship law in Indonesia from the beginning until now only recognizes the principle of single citizenship and rejects the principle of dual citizenship (bipatride), rejecting the principle of statelessness (apatride). Exempt dual citizenship is only granted to children in mixed marriages. So in principle the Indonesian state only recognizes one citizenship, namely single citizenship. To enforce this single citizenship, legal means are needed, either through a passport or a Resident's Identity Card as a legal instrument that enforces the principle of single citizenship. If these two legal instruments are not enforced properly then it is possible that an Indonesian citizen will have two citizenships or vice versa. have no citizenship.

Resident ID cards, passports and visas in the literature are classified as State Administrative Decisions because all these documents are issued by State Administrative Officials (administration), which means they are *beschikking* or decisions that are final, individual and concrete. All include government actions which function to implement and enforce laws and regulations in achieving certain goals in accordance with applicable laws and regulations, namely upholding the

principle of single citizenship for Indonesian citizens, whether residing outside the country (diaspora) or domiciled within the country.

The government in administering the state in the field of citizenship is handled by the Minister of Home Affairs cq central government, the governor as a representative of the provincial government organized by the Regency/City Regional Government organized by the Population Service by providing a document known as a Family Structure Card accompanied by a population number which is then broken down. in the identity card for those who are 17 years old. This identity card is the identity for residents. Apart from providing identity in the form of name, address and religion, a population identification card also has a population identification number and citizen identity. With a resident identity card, a person can carry out activities related to legality in all data collection in all fields. The identity card comes from a birth card, which means that they automatically become Indonesian citizens or are still waiting to reach adulthood because their parents are in a mixed marriage. Through an identity card, you can get a passport for those who want to travel abroad. After they get a passport for a specific purpose such as travelling for tourism, work, school and so on.

4.2. An Overview of the Diaspora

The Indonesian diaspora can be divided into three groups, namely Indonesians who work abroad, Indonesians who later become citizens of other countries through marriage, and diaspora who love Indonesia such as diplomats and ambassadors. Apart from that, there are 4 (four) categories of the Indonesian diaspora, namely Indonesian citizens who renounce their citizenship and then become citizens of another country, people from Indonesia who are foreigners, and Indonesian lovers/sympathizers[8]. In general, the Indonesian diaspora can be classified as: former Indonesian citizens who wish to become Indonesian citizens; former Indonesian citizens who decided to become foreigners and foreigners who served the Indonesian government. In the exercise of civil and political rights, one citizen must be distinguished from another; Semi-foreigners and foreigners participating in Indonesia.

It is estimated that there are around 30 countries that allow their people to have dual citizenship. Due to the widespread presence of the diaspora in various countries, it can be said that it is relatively difficult to control Indonesian citizens who still maintain single citizenship or whether they get double citizenship because these countries will not care whether new citizens are in a country that prohibits dual citizenship or not.

State Administrative Officials are law enforcers in the field of administrative law, these officials control and control the State Administrative Decrees that they have issued. And this is an official document as a legal instrument in controlling and upholding the principle of single citizenship.State Administrative Officials (state administration officials) as government officials, if related to the executive, according to Phlipus M Hadjon, are not just implementing the law but include active power which in the concept of administrative law is the main element of *sturen (bestuuren)*. *Sturen* in Dutch comes from the word *stuur* in Javanese which becomes "*stir*" which means steering or can also be interpreted as controlling and/or directing[9].

Sturen, which includes continuous activities, does not stop after issuing a decision, such as issuing a resident's identity card, passport and visa, but always monitors that the decision is used and obeyed. In the event that enforcement of the principle of single citizenship is truly effective, if it is discovered that there are Indonesian citizens who have dual citizenship then action must be taken in accordance with the underlying law[10].

4.3. Citizenship Administration Authority

State Administrative Officials as state apparatus, apart from having the authority to make these decisions, these officials are also required to supervise the decisions that have been made, because if supervision is not carried out, it is feared that the decisions that have been issued could deviate from what was desired by the decision being issued.

Documents such as passports, visas, identity cards, permits issued by state authorities as state officials, are considered as concrete, individual and final government actions (*beschikking*), where new policies are no longer needed to act. The Population Service is under the implementing city/district government which produces documents such as Resident Identity Cards. This identity card is the most urgent document because all legal activities are related to legality. The identity card must always be accompanied by the applicant to whom they are applying, both in private and government institutions.

Judging from population developments, population administration plays an important role as a guarantor of legal certainty and protection of the individual rights of residents. This protection takes the form of public services at the time of issuing population documents such as population identification codes (NIK), identity cards, family cards and population registration documents, including birth certificates. With these administrative services, the basic rights and needs of citizens are guaranteed, because documents that can guarantee the existence, identity and civil rights of other citizens play a very important role in the lives of citizens.

Services are very important and are part of public services that must be implemented by the state. The Population Administration Information System can be a solution to existing population problems. Web-based data management can overcome the weaknesses of traditional data processing. The Population Administration Information System itself offers many advantages, including the results of calculations and management of statistical data that can be used as material for preparing and refining policies, strategies and programs for implementing and developing of quality, quantity and mobility of the population and other development interests. Based on Article 13 of Population Law No. 23 of 2006, the government issued new regulations contained in Government Regulation Number 37 of 2007, which included the implementation of Law Number 23 of 2006. This law was followed up by issuing Minister of Home Affairs Regulation Number 9 of 2011 concerning Guidelines for Issuing Identity Cards Population is based on the National Population Identification Number, which is further regulated by the Surabaya City Government by issuing Surabaya City Regional Regulation Number 6 of 2019 concerning the Implementation of Population Administration. Looking at this

Population Administration Regulation, authority over official documents falls under the authority of the Minister of Home Affairs down to the City/Regency Government.

Administration related to matters of going abroad, documents are in the hands of the Minister of Law and Human Rights which is carried out by Immigration Offices spread across various districts and cities. However, both passports and KTPs are not under the same department, so in enforcing the law the two departments require coordination, between departments, which is carried out directly by the city/district government together with immigration officers.

Each country has its own way of ensuring citizenship. Therefore, it can give rise to various regulatory patterns that are not similar in the national aspect, moreover, it can give rise to conflicts of law or legal antagonism. For example, country A adheres to *jus soli* while country B adheres to *jus sanguinis*, this comparison of national arrangements can give rise to a double national status (bipatriote) or can give rise to no nationality (apatride). In general, bipatriote can create uncertainty in a person's status. Apart from determining the citizenship of *Ius Soli* and *Ius Sanguinis*, there are also people who become bipatriote because they get new citizenship from a country that practices dual citizenship because the Indonesian citizen has fulfilled certain requirements from the country concerned.

Coordination in the enforcement and supervision of single citizenship, both Indonesian citizens residing in Indonesia and those in the diaspora in foreign countries, needs to be carried out in order to maintain single citizenship status. For this reason, coordination between agencies is needed because if supervision and coordination between agencies are still lacking There are many weaknesses, it can be predicted that law enforcement regarding single citizenship for Indonesian citizens can be said to not be running optimally, causing there to be no legal certainty in maintaining the certainty of single citizenship in accordance with the citizenship law in force in Indonesia.

5. Conclusion

Enforcement and supervision of the Indonesian diaspora is passive, meaning that the authorities wait for reports from the diaspora with their awareness of reporting to government officials at the Indonesian embassy in the local country, they still maintain their status as Indonesian citizens and refuse to accept becoming citizens of the local country, Those who have received citizenship from the local country and do not report it to the Indonesian embassy will have the status of dual citizenship holders, which is relatively difficult to detect so it is natural for law enforcement and supervision of single citizenship of Indonesian citizens who are abroad to have citizenship. double, it was only discovered after the person concerned was known to many people because they were a public figure.

In enforcing the law and supervising Diaspora members who have released their Indonesian citizens, passports will be withdrawn and, like Resident Identity Cards, their status will also change. However, in practice, the Population Identification Card does not automatically change according to the passport because

the authority to make changes to the Identification Card is the Population Service which is under a different ministry. In other words, the Immigration Office does not have the authority to change a resident's identity card, so it is possible that the relevant resident's identity card could be misused by the person concerned to carry out legal activities in Indonesia, including matters relating to state activities including becoming a member of a political party.

Law enforcement regarding dual citizenship status is relatively difficult as long as there is no good coordination between the authority of the party issuing the identity card and the authority of the agency issuing the passport so law enforcement regarding single citizenship is still relatively weak.

References

- [1] Wikipedia Indonesia, "Perjanjian Kewarganegaraan Ganda Indonesia-Tiongkok," *ensiklopedia bebas*.
- [2] Chelsea Chesly Bernanda, "Pemberian Kewarganegaraan Indonesia terhadap Arcandra Tahar ditinjau dari Undang-Undang Nomor 12 Tahun 2006 tentang Kewarganegaraan Republik Indonesia," vol. 18, no. 21, p. 14, 2020.
- [3] CR-27, "Urgensi Dwi Kewarganegaraan bagi Diaspora Indonesia," *hukumonline*.
- [4] B. P. Suhendarto *et al.*, "Implikasi Hukum Status Kewarganegaraan Asing Pada Calon Terpilih Dalam Pemilihan Kepala Daerah," vol. 4, pp. 382–401, 2022.
- [5] M. L. Charity, "Urgensi Pengaturan Kewarganegaraan Ganda Bagi Diaspora Indonesia (The Urgency of The Dual Citizenship The Indonesian Diaspora)," *J. Konstitusi*, vol. 13, no. 4, pp. 809–827, 2016.
- [6] A. G. Mahardika, "Politik Hukum Penerapan Overseas Citizenship of India (Oci) Dalam Sistem Ketatanegaraan Indonesia," *Leg. J. Ilm. Huk.*, vol. 27, no. 2, p. 205, 2019, doi: 10.22219/jihl.v27i2.10158.
- [7] Achmad Ali dan Wiwe Heryani, *Menjelajahi Kajian Empiris terhadap Hukum*. Jakarta: KENCANA, 2012.
- [8] E. M. Wulansar, "Konsep Kewarganegaraan Ganda Tidak Terbatas (Dual Nasionality) Dalam Sistem Kewarganegaraan Di Indonesia," pp. 1–6, 2015.
- [9] P. L. Sompi, G. J. Tulung, and D. Imbang, "Kata-kata Serapan Bahasa Belanda pada Bahasa Melayu-Manado (Kajian Morfologi dan Leksikologi)," *Kaji. Linguist.*, vol. 4, no. 3, 2019, doi: 10.35796/kaling.4.3.2017.24800.
- [10] Ridwan HR, *Hukum Administrasi Negara*, Rev.7. Jakarta: Rajagrafindo Persada, 2011.

Open Access This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

