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Limited Dual Citizenship Age Limit

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Abstract

As a result of mixed marriages, children born based on their parents' descendants (the principle of *ius sanguinis*), or the nationality obtained based on where a child is born (the principle of *ius soli*) depends on the principle adopted by each country, giving implications for the existence of children who have dual nationality. This also creates the problem of a limited citizenship age limit for choosing citizenship, causing problems with a child's citizenship status, because the regulations regarding the age limit for children to choose citizenship also differ from one country to another. The research method used is normative juridical. The results showed that to answer to the needs of society, especially for children who have dual citizenship, the ideal age to choose citizenship should be limit to 25 years so that the person concerned has completed his education in higher education so that changes need to be made to the Citizenship Law, especially the article regarding the age limit for dual citizenship.

Keywords: Citizenship, Dual, Limit, Age

1. Introduction

Every child born into the world certainly can never choose which part of the world to be born in or from whose descendants. A child may be born to a mixed marriage or parents of different nationalities who are in fact subject to different laws. The birth event certainly raises the issue of citizenship for the Child, if the child is born in countries that adhere to the *principle of Ius Soli* or *law in soil* which determines the status of citizenship based on the place of birth, then the status of the child becomes a citizen of the State where he was born, while if the child is born to parents who have citizenship status from countries that adhere to *ius sanguinis* or *Law in Blood*, the child's citizenship status follows his parents regardless of the place where he was born.

In the Indonesian context, based on Law Nomr 12 of 2016 concerning Citizenship, it is stated that children from intermarriage are granted Dual Citizenship on a limited basis. The limited Dual Citizenship status adopted in the Citizenship Law is a breakthrough to overcome the problems that arise in mixed marriages and after the breakup of mixed marriages where there are differences in citizenship between parents and children resulting from the marriage. Along with the attachment of Dual Citizenship limited to children resulting from mixed marriages, the child is subject to two jurisdictions of two countries (the citizenship of his parents) (Eka Martiana Wulansari: 2015, p. 1).

After the age of 18 years, the child must declare choosing one of his nationalities no later than 3 (three) years after the child is 18 (eighteen) years old or married. The provision of a 21-year-old age limit to choose citizenship for a child resulting from intermarriage is considered a difficult thing to do, especially for a child whose one of the foreign parents is from an *ius soli-adopting state*, the age limit is also the age at which the child is studying at a college in the country of origin of his foreign parents. Usually, some countries of origin of foreign parents generally get educational scholarships, so it is not possible to choose Indonesian citizens, because they will lose all educational benefits for these children (Ahyar Ari Gayo, 2019, p. 276)

2. Research Method

The research method used is the normative juridical legal research method. The approach used with the statutory approach, the search system used by the *library research* method (Peter Mahmud Marzuki, 2011, p. 15).

The statutory approach is carried out to review regulations related to the legal issues discussed (Eka NAM Sihombing, Cynthia Hadita, 2022, p. 48). So in the issue of the age limit of citizenship if there are still shortcomings in its naming, a legal answer can be found so that it is regulated comprehensively and ideally.

3. Discussion

3.1. Limited Dual Citizenship Age Limit

In principle, the citizenship law is a manifestation of protection provided by the State to realize welfare for all Indonesian citizens. In fact, In Indonesia, adheres to the principle of single citizenship, while the granting of Dual Citizenship to children resulting from intermarriage is limited to the age outlined in the Citizenship Law. Conceptually Dual Citizenship can be interpreted narrowly and broadly. In a narrow society, Dual Citizenship refers to the concept of *dual citizenship (nationality)* on the status of a person who has two nationalities from two different countries. In a broad sense, dual citizenship is expanded not only to be limited to Dual Citizenship, but also more than multiple citizenships (*nationality*) (Supriyadi A Arief, 2020).

Dual Citizenship in general can arise due to the application of the principles of citizenship in terms of mutual birth (*interplay*), between the principle of *ius sanguinis* and *ius soli* or the naturalization of a citizen of one country to another country (Supriyadi A Arief, 2020).

Related to the application of the principles of citizenship several general principles of citizenship should always be embraced in the law of citizenship in various countries. According to Bagir Manan, the general principles of citizenship consist of: (Supriyadi A Arief, 2020).

1. The principle of *ius sanguinis (law of the blood)* is the principle that determines a person's nationality based on ancestry, not based on the country of birth.
2. The principle of *ius soli (law of the soil)* in a limited way is the principle that determines a person's nationality based on the country of birth, which is applied limited to children by the provisions stipulated in the citizenship law.
3. The principle of limited dual citizenship is the principle that determines dual citizenship for children by the provisions stipulated in the citizenship law.

Currently, in the era of globalization where technology makes a world without borders, it contributes to the increase in intermarriage in the world, including in Indonesia. Although the presence of Law Number 12 of 2006 is a step forward for the citizenship system in Indonesia, the provisions relating to Dual Citizenship are limited, and not spared from criticism. Based on the results of Ahyar Ari Gayo's research, shows that there is a strong

desire from the intermarriage community so that the Dual Citizenship of children resulting from intermarriage can be applied forever (Ahyar Ari Gayo, ¹2019, p. 275) and (Ahmad Jazuli, 2017, p. 100).

This is also in line with the interviews conducted by the author with several perpetrators of intermarriage in the city of Medan (Interview, 2022). The necessity of choosing citizenship for children resulting from intermarriage at the age of 18 years to 21 years raises very complicated administrative problems, especially for children whose parents are from the State who adhere to the principle of *ius soli* which is commonly practiced in States with few citizens. (Supriyadi A Arief, 2020).¹

In addition to these problems, when the age limit range has to choose citizenship, generally the child is still studying at the college where the foreign parents come from. Some countries provide scholarship facilities for their citizens so that when the child releases citizenship from his foreign parents, he will lose various educational facilities such as scholarships and so on. For this reason, I agree with Ahyar Ari Gayo to be able to consider changing the age limit for dual citizenship, from 18-21 years to 25 years, considering that at that age the child resulting from intermarriage has completed his higher education.

3.2 Dual Citizenship Age Limit between Indonesia, Philippines and Portugal

3.2.1. Philippines

Legal certainty regarding citizenship in the Philippines has been provided for in the Philippine Constitution in *Section 1*: The following are Filipino citizens: Those who were citizens of the Philippines at the time of adoption of this Constitution; Those whose fathers or mothers are Filipino citizens; Those born before January 17, 1973, to a Filipino mother, who chose Filipino citizenship after reaching the age of majority; and Those who are naturalized by the law. Children under the age of 18 may be included as dependents for the application of RA 9225. Requirements: Perform a Checklist of required documents either from the Public Information and Assistance Unit (PIAU) at BI G/F Head Office or from the BI Official Website. Then go to the Notes Section to provide a copy of the document. Submit the documents for pre-screening to the *Central Receiving Unit* (CRU) to process them. Get an Order of Payment Slip (OPS) to increase the required fees. Verify the status of the application and whether it is approved or not. If approved, claim a Certificate of Retention/Requisition of Filipino Citizenship, Order of Approval, and Oath of Allegiance (Republic of The Philippines, 2022).

Republic of the Philippines Act No. 9225, also known as the Dual Citizenship Act allows a former Filipino to regain or retain his or her Filipino citizenship. Law of the Republic of the Philippines No. 9225 provides that naturally born Filipino citizens who become citizens of other countries do not lose their Filipino citizenship. Former Filipinos only need to apply to regain or retain their Filipino citizenship and take the oath of allegiance. (This includes former Filipinos who, after Republic Act No. 9225 began to acquire the citizenship of another country; in this case, former Filipinos must apply to retain their Filipino citizenship). Let's explore how this is done for a person who is interested in obtaining citizenship by descent. In the Philippines, a person who is eighteen years of age or older, and born to at least one parent who was Filipino at the time of their birth can be recognized as a dual citizen. A person born before January 17, 1973, to a Filipino mother who chose Filipino citizenship when they were eighteen years old is also recognized as a citizen¹ (The Identity Strategist, 2022).

The conditions that can be submitted by the applicant for citizenship are: Original and photocopies of the following documents: Birth Certificate from the Office of National Statistics (NSO)/Philippine Statistical Authority (PSA), Certificate of Foreign Naturalization, or a combination of two documents from the Philippines and one document from the foreign country. The following are acceptable Filipino Documents: Old Filipino Passport Philippine Birth Certificate Id Philippine Marriage Certificate issued by a Philippine Government Agency with your photo, full name, date of birth, and nationality indicated (eg. LTO Driver's License and Postal ID) While the following are acceptable Foreign Documents: Foreign Passport with Explanatory Affidavit for not submitting a Certificate of Naturalization. Completed Dual Citizenship Application Form. A total of Three (3) 2X2 COLOR ID Photos on a WHITE Background without glasses or colored contact lenses were taken within six months of application. The

Consular Officer has the right to request additional documents from the applicant. What are the Requirements for Filipino Derivative Dual Citizenship in 2019? For those applying for inherited dual citizenship, the following documents must be present for each applicant's child under 18 years of age: Child Birth Certificate; Foreign Passport of Child, and Three (3) Photo of 2X2 COLOR ID of Child on WHITE Background without glasses or colored contact lenses taken within 6 months of application. It may also be applied to children under 18 years of age born naturally who are eligible for derivative dual citizenship (Renzo Claros, 2022)

Dual citizenship under RA 9225 is reserved for former Filipinos born naturally. As defined by the 1987 Constitution, Filipinos born naturally are People who, at the time of his birth, had at least one Filipino parent. People born to a Filipino mother before January 17, 1973, who chose Filipino citizenship after reaching the age of majority (21 years) (Michelle Abad, 2022).

Just like in Indonesia, the Philippines also strengthens the principle of *ius sanguinis* and there is an equal age limit for choosing dual citizenship of 21 years, even in the Philippines children under 18 years old born naturally who are eligible for dual citizenship derivatives can apply for citizenship. However, this is not the ideal age, because a child does not yet have the maturity of thinking to independently choose citizens who are of their own choice without intervention from the environment, family, etc.

3.2.2. Portugal

The Portuguese Citizenship Act of 1981, accommodates the principle of *ius sanguinis* (heredity) and limits the practice of *ius soli* (place of birth) which is the basis for obtaining citizenship. Portugal allows dual citizenship, which means that foreigners can obtain Portuguese citizenship without having to renounce the citizenship of their home country. However, on condition that the country in question also allows dual citizenship. In some cases, the country of origin does not require to renounce citizenship before allowing a child with dual citizenship to choose Portuguese citizenship. The naturalization route can be taken if a person is domiciled for more than 5 years in Portugal. This is down from six years in 2018. Since then, the number of applications for Portuguese citizenship has increased. The government has granted 149,157 citizenships in 2020. Citizenship is an alternative to permanent residence in Portugal. Despite the similarities between the two, Portuguese citizenship comes with additional benefits such as the right to vote in the right to a Portuguese passport, and a citizen card (in Portuguese). However, being a citizen is more difficult, and may have to renounce existing citizenship if the country of origin does not allow dual citizenship (Gary Buswell, 2022).

To become a Portuguese citizen is after staying in Portugal for only 5 years, after which the person will not be required to submit another passport. The possibility of dual citizenship, combined with the speed at which a child of dual nationality is eligible, many prospective citizens have made Portugal a very popular destination for second passport seekers, especially from the US, UK, Canada, and India (James Cave, 2022)

Portugal's nationality is an interesting one, allowing dual citizenship and having a minimum residency requirement where citizens can live anywhere in the world without ever losing their citizenship. Portuguese citizenship also allows a person to have the right to vote and hold the rights of another Portuguese person (Lara Silva, 2022).

Descendants or Births can obtain citizenship in Portuguese if a child: from Portuguese parents born in Portuguese territory, from Portuguese parents born abroad, from Portuguese mothers or fathers born abroad if their birth is registered in the Portuguese civil registry or alternatively if they declare they want to be Portuguese, who were born in Portuguese territory to foreign parents if at least one parent was born in Portugal and lived in Portugal at the time of birth, who was born in Portuguese territory to foreign parents if they declared they wanted to be Portuguese and if one parent had lived in Portugal for at least 5 years at the time of birth, born in a Portuguese territory that has no other nationality, born in Portuguese territory or abroad to parents who got Portuguese citizenship after the birth of the child, with at least one Portuguese grandparent who is quite familiar with Portuguese, born in Portuguese territory to foreign parents if the child has lived in Portugal for 10 years (Lara Silva, 2022).

Dual Citizenship, except: Portuguese nationals who obtained second citizenship before October 1981 lost their Portuguese citizenship under the previous Citizenship Act #2098, dated July 1959. After the adoption of the new law, such persons may petition for the return of their Portuguese citizenship. Unlike naturalization in Portuguese, citizenship can be obtained after meeting the following requirements: People are at least 21 years old. The person has lived in Portugal for at least six years if it is from a Portuguese-speaking country or for 10 years for a citizen of another country. A person has a working knowledge of the Portuguese language. A person has a good moral character and a civil record. A person has a decent means of support (https://www.multiplecitizenship.com/wscl/ws_PORTUGAL.html).

Just like in Indonesia and the Philippines, the deadline for applying for citizenship status for Portuguese people who have dual citizenship is 21 years, but the difference is that the application of the principle of *ius sanguinis* in Portugal applies if the child of a foreign parent born in Portugal is domiciled in Portugal for 10 years or if one of the parents of the child born in Portugal is a citizen of Portugal and domiciled in Portugal for 5 years.

4. Conclusion

The current legal dynamics want changes in various provisions of laws and regulations that are considered inconsistent with the legal needs of the people in Indonesia, changes to the limited citizenship age limit that has been determined in Law Number 12 of 2006 concerning Citizenship is a necessity. The Age Limit for Dual Citizenship of 25 years is the ideal age for children from intermarriage to choose their citizenship, at which age the person concerned has completed his education in college. To realize this, it is necessary to make changes to the Citizenship Law, especially the provisions governing the dual Citizenship Age limit. In essence, Indonesian citizens who have dual citizenship who are 18 years old have a time limit of 3 years to be precise until a child with dual nationality is 21 years old to make the choice of citizen he wants, the same age limit as the Philippines and Portugal children with dual nationality can determine their choice when the child has dual nationality is 21 years old, but slightly different practice in the Philippines if a child with dual nationality under the age of 18 who meets the requirements can apply for citizenship, Whereas in Portuguese a child with dual nationality who is under 21 years old but from his birth is domiciled in Portuguese for 10 years can become a Portuguese citizen. From the comparison of age limits to obtain citizenship between Indonesia, the Philippines, and Portugal, it is still necessary to have a more mature age for children with dual nationality to determine for themselves which country will be their choice, ideally the age of 25 years for children with dual nationality to choose their citizenship considering that the child has finished their education in higher education needs to be constructed in each country, in addition, it is also necessary to have a common age limit so that there is no opportunity for children with dual nationality to choose which country first has the opportunity to meet the age limit for them to choose their citizenship

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