

Analysis of Administrative Supervision on the Return of Immigration Documents for Children with Multiple Citizens Who Choose Foreign Citizens

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Abstract

The emergence of Government Regulation Number 2 of 2007 concerning Procedures for Acquiring, Losing, Canceling, and Regaining Indonesian Citizenship as well as the issuance of Government Regulation Number 31 of 2013 concerning Implementing Regulations of Law Number 6 of 2011 concerning Immigration requires children with dual citizenship who choose citizenship Foreigners are required to return all documents that can provide identical proof of Indonesian Citizens including Immigration Documents such as Passport of the Republic of Indonesia and Affidavit. However, in its implementation in the field, there are still many subjects with dual nationality who choose foreigners and those in charge not to do this. This of course can cause other problems. There should be awareness and strict sanctions should be made on those who do not carry out these obligations. Thus, if the issuance of legal rules governing the sanctions is expected to provide a deterrent effect for those who do not carry out these obligations. The existence of this journal writing is expected to be useful for various parties while for the Immigration ranks so that it can be used as reference material in conducting further research.

Keywords

immigration; passport; affidavit; dual nationality child; supervision



I. Introduction

Indonesia is a country founded on diversity. Various cultural characteristics, ethnicity, religion, and races together play a role as pillars of this nation. The key to the state is determined by the cohesiveness of the elements among the pillar. While the inter-ethnic group relations are a problem that often colors the life journey of the nation. In this context, inter-ethnic group relations do not always run well. History has recorded a number of tragedies caused by inter-ethnic relations. (Suprayetno, et al. 2019)

Indonesia's National Development aims to create a prosperous and just society ; however, in order to realise these objectives the government strives to make various policies and development programs which are oriented either towards village development or towards city development (Badaruddin in Ridwan, F. et al. 2020)

One of the consequences of the increasingly strong influence of the development of the era of globalization in various aspects of life is the number of marriages or marriages between foreign citizens (WNA) and Indonesian citizens (WNI). The existence of this trend has given rise to a legal phenomenon that has caused quite a lot of consequences and problems for the implementation of citizenship law in Indonesia.

In citizenship law, marriage between Foreign Citizens (WNA) and Indonesian Citizens (WNI) is related to the merging of two legal systems, namely the Indonesian legal system and the foreign citizen's original legal system. The merging of the two legal systems is due to differences in the citizenships of the two citizens, so that it can become a multinational civil law problem, where there is a legal imbalance between them because there are differences in the basis of the state. As for the positive legal basis of Indonesia, mixed marriages are regulated in Law Number 1 of 1974 concerning Marriage, Law Number 6 of 2011 concerning Immigration, and Law Number 12 of 2006 concerning Citizenship.

Meanwhile, based on Article 57 of Law Number 1 of 1974, what is meant by mixed marriage is a concept of marriage between Indonesian citizens and foreign nationals who are subject to 2 different legal concepts of the country due to differences in the origin of citizenship, namely foreign citizenship and Indonesian citizenship. .

Meanwhile, according to Law Number 12 of 2006 concerning Citizenship, if it is associated with a legal perspective on children resulting from mixed marriages, it will have a different legal effect than the existing legal rules, as explained in Law Number 62 of 1958, it is stated that the system Indonesian law does not recognize the principle of dual citizenship and a person's citizenship can only follow his father, which is different from the principle adopted in the latest law, namely Law Number 12 of 2006 which is as follows:

1. Principle *ius sanguinis* (determination nationality of a person based on descent)
2. Principle *ius soli* on a limited basis (determination of a person's citizenship based on the country of birth, which is limited to children in accordance with the provisions stipulated in the legislation)
3. The principle of single citizenship (determination of one citizenship for each person)
4. The principle of limited dual citizenship (determination of dual citizenship for children in accordance with the provisions stipulated in the legislation)

So from the above provisions that the latest legislation does not recognize the existence of a person with dual citizenship or without citizenship (with the exception of children up to a certain age). This exception applies when children resulting from mixed marriages are before adulthood (according to Indonesian law, namely 18 years old) they are required to choose one of their nationalities and are given a grace period of 3 years to 21 years to determine it.

The legal principles contained in Law Number 12 of 2006 concerning Indonesian Citizenship consist of several main points, including the following:

1. Indonesian citizens
2. Terms and procedures for obtaining Indonesian Citizenship
3. Conditions for losing Indonesian Citizenship
4. Terms and procedures for regaining Indonesian Citizenship
5. Criminal Provisions on Indonesian Citizenship

Meanwhile, the procedures for obtaining, losing, canceling, and regaining the citizenship of the Republic of Indonesia are regulated in Government Regulation Number 2 of 2007. With the change in the citizenship system of the Republic of Indonesia contained in Law Number 12 of 2006 concerning Citizenship, it is associated with the implementation of the Immigration function. one of the bases for changes to the immigration regulations contained in Law Number 9 of 1992 concerning Immigration to become Law Number 6 of 2011 concerning Immigration. Where Law Number 6 of 2011 adheres to the principle of non-discriminatory selective policy (selective non discriminatory policy) which means that all human positions are equal in the eyes of the law.

Furthermore, regarding children with dual citizenship resulting from mixed marriages, the legal rules are contained in the Regulation of the Minister of Law and Human Rights Number 22 of 2012 concerning Procedures for Registration of Children with Limited Dual

Nationality and Application for Immigration Facilities. In the event that the child subject to dual citizenship has been registered by his parents or guardian to obtain limited dual citizenship, an ordinary passport can be issued which can be submitted at the Immigration Office or at the Representative of the Republic of Indonesia. However, the use of the Republic of Indonesia passport is limited to only 21 years and after that they must determine their nationality.

So from the explanation above, the author will discuss about "Analysis of Administrative Supervision of Returning Immigration Documents for Children with Dual Citizenship Who Choose Foreign Citizenship."

1.1. Formulation of the problem

Based on the description of the background above, the formulation of the problem to be discussed in this study is as follows:

1. How is the implementation of returning Immigration Documents for children with dual citizenship who choose foreign citizenship?
2. How is the implementation of administrative supervision of the return of the Immigration Document?

1.2. Aim

The purpose of this research is to find out how the function of Administrative Supervision of the Return of Immigration Documents for Children with Dual Nationality Who Choose Foreign Citizenship.

II. Research Methods

This study uses a qualitative method with approach qualitative. The qualitative approach emphasizes the accuracy of the data, with using an inductive approach, meaning that data will be collected, approached, and abstracted (Nazir, 2009). Furthermore, research with a descriptive approach examines the status of a group human, an object, condition, system, thought or something class of events in the present (Sugiyono, 2018).

III. Discussion

3.1 Implementation of Return of Indonesian Travel Documents (Passports) for Children with Dual Nationality who Choose Foreign Citizenship

In PERMENKUMHAM Number 22 of 2012, it is regulated that children with dual nationality can receive immigration facilities, namely affidavits for foreign passport holders as well as regular passports. In writing this thesis, the author will focus on discussing immigration facilities for children with dual citizenship, namely obtaining an ordinary passport and returning it when they are 21 years old and choose a foreign citizenship. As for Article 6 paragraph (1) of Law Number 12 of 2006 concerning Citizenship, it is explained in the citizenship status of a child with dual citizenship (after reaching the age of 18 years or already married the child must choose one of his nationalities) where a statement to choose citizenship is submitted within 3 years after the child is 18 years old or married.

In the event that a child with dual citizenship chooses a foreign citizenship, he or she is required to return official documents such as a decree stipulating that the child is an Indonesian citizen no later than 14 days from the date of the limit determined by laws and regulations to choose another citizenship. It is known that the process of returning the passport of the Republic of Indonesia for children with dual citizenship who choose foreign

citizenship is carried out by the process of the arrival of the child with dual citizenship and the child's parents to the Immigration Office where the child takes care of his affidavits, while on arrival the former dual citizenship child and their parents bring The documents to be returned are:

- a. Photocopy of the application letter from the person in charge of the child (the parent or the legally delegated person in charge of the child with dual citizenship who chooses foreign citizenship)
- b. Photocopy of proof of identity of the person in charge of the child (parents or legally delegated person in charge of a child with dual citizenship who chooses foreign citizenship)
- c. Photocopy of Passport of the person in charge of the child which is still valid
- d. Republic of Indonesia Passport
- e. Proof of Statement Letter for choosing a foreign citizen
- f. The child's affidavit (if any)
- g. Photocopy of Child's Birth Certificate
- h. Original certificate for the application of a child with dual citizenship
- i. Original certificate of citizenship from the representative of the country to be addressed in Indonesia

Upon arrival, the applicant is required to fill out an Application for Revocation of Immigration Documents signed by the person in charge, as well as a Statement of choosing citizenship, which is signed by a former child with dual citizenship. The document is submitted to the officer, the officer will input data on the Foreigner Service System in the form of changing the child's citizenship status to become a foreign citizen. The officer will submit a Certificate of Return of the document proving an Indonesian citizen and will direct the child of the nationality who chooses the foreign citizenship to go to the Stay Permit Section to be given a residence permit while in Indonesian territory.

3.2. Juridical Analysis of Document Returns for Children with Dual Nationality Who Choose Foreign Citizenship

In the implementation of administrative supervision on the activities of Foreign Citizens in Indonesia, Immigration establishes a policy against Foreign Citizens in which they are obliged to carry out reporting on any changes in immigration status (citizenship, employment, guarantor, etc.) as regulated in Article 72 of Law Number 6 of 2011 and Government Regulation Number 31 of 2013. The existence of this reporting obligation is very useful for the implementation of immigration administrative supervision for immigration officers, but also for the implementation of changes in employment, citizenship, guarantor, where it is very influential for the residence permit of the Foreign Citizen when carrying out his activities in Indonesia.

As for Article 65 of PP Number 31 of 2013, it is explained that the implementation of the revocation of the Indonesian Travel Document can be carried out on children with dual citizenship who prefer foreign citizenship. As for there are other rules, namely Article 65 of PP Regulation Number 2 of 2007 explaining that children with dual citizenship who prefer foreign citizenship to carry out their obligations to return documents and other documents certifying that the child's identity as an Indonesian citizen within a period of no later than 14 days counted from the date of the deadline specified for choose his nationality expires. In the analysis of the two laws and regulations, it is explained that the return of documents that explain identity as Indonesian citizens for children with dual citizenship. The legal basis is strengthened by the issuance of the Director General of Immigration Implementation Guide Number: IMI.1-GR.01.1303849 Year 2016 which describes that every foreigner residing in

the territory of Indonesia or the guarantor/responsible person is required to report any changes in immigration status (citizenship, employment, guarantor, etc.), change of address or family data.

So in the elaboration, it is concluded that when the return of the Indonesian Republic Travel Document (Passport) and immigration facilities, namely the affidavit, was found to be irregular, when we returned the affidavit, it can be ascertained that the child chose Indonesian citizenship and when the child returned the passport and affidavit. then the child chooses foreign citizenship. The high number of registrations for children with dual citizenship and the number of applicants for immigration facilities is not in line with the return of passports and Indonesian affidavits. As for the implementation in the field, there are still many cases where children with dual citizenship who choose their foreign citizenship forget their obligations to report to the immigration authorities and take care of affidavits and their Indonesian passports. It is still common to find incidents when conducting immigration checks at the Immigration Checkpoints, ex-children with dual citizenship who choose foreign citizenship crossing into or out of the territory of Indonesia are still using the passport of the Republic of Indonesia.

As we know that the Passport of the Republic of Indonesia can only be obtained by Indonesian citizens and that is proof of identity as an Indonesian citizen, but when a former child with dual nationality who chooses a foreigner has a passport and it is still valid, does not return the passport and is found to use it again when entering or leaving the territory of Indonesia, the child has misused the passport of the Republic of Indonesia. They did not return the passport of the Republic of Indonesia to be used as a favorable moment for them when they could enter or leave the territory of Indonesia like Indonesian citizens.

IV. Conclusion

Based on the results of research in the field as well as a description of the discussion in this writing, it can be concluded that:

1. In implementing the registration of a child with dual citizenship, it can be submitted at the Immigration Office at the place of domicile of the child. For those who apply for affidavit registration, it is given to children who use foreign passports, but for those who do not apply for affidavit, they submit a travel document, namely Passport of the Republic of Indonesia. However, it is also possible for those who apply for affidavits to also apply for a Republic of Indonesia passport. Later, when the child with dual citizenship chooses a foreign citizenship, the process of returning documents that are identical proof of Indonesian citizens is also carried out at the Immigration Office by bringing all the requirements and documents that have been determined.
2. In practice in the field, it is still found that children with dual nationality who prefer to be foreign nationals do not carry out their obligations to return documents that are identical evidence of Indonesian citizens with the discovery of misuse of the passport of the Republic of Indonesia when they enter or leave the territory of Indonesia with foreign citizenship status.

Suggestion

After conducting research, discussing, and analyzing related to the topics discussed in this paper, as a final author, the author will convey some suggestions that can later be expected to be useful in the future to anticipate problems that arise. The suggestions are as follows:

1. Synchronization of data on children with dual nationality in the Directorate General of AHU with the Directorate General of Immigration, making it easier to carry out administrative supervision
2. It is necessary to create a supervisory system that is more administrative in nature in which each registration of a child's passport application with dual citizenship is made a separate register number.
3. There is an early warning for the Immigration Office so that the Immigration Office knows that the subject of limited dual citizenship has entered the age that has been set for voting, which is 18 years so that it can be controlled by the Immigration Office.
4. It is necessary to make a notification letter to the subject of the dual citizen to report the change in citizenship when it has entered the time limit determined by the law so that the person concerned will not experience negligence in carrying out his obligations.
5. There needs to be firmness and sanctions for children with dual nationality who choose foreigners who do not report their obligations in returning immigration documents or who misuse the passport of the Republic of Indonesia with the status of being foreign citizens so that it can create a deterrent effect and awareness of their obligations.

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