

Political Rights of the Indonesian Citizen Possessing Dual Citizenship: A Contextual Analysis

Sekar Dani Ajeng Adinda
University of Jember, Indonesia

Antikowati
University of Jember, Indonesia

Rosita Indrayati
University of Jember, Indonesia

Abstract. The issue of citizenship is one part of the study of state studies or commonly referred to as State Administration Law. One element of state existence is citizenship (*algemene staatslehere*). In the context of citizenship, the issue of citizenship is critical because, in general, the state consists of three elements, namely the territory, people who are identical with citizens, and sovereign government as a constitutive element and the recognition of other countries as declarative elements. Every citizen must have citizenship because it is an essential thing. After all, citizenship has a close relationship between the citizen and the country in which the citizen lives. These matters relate to citizens related to identity, rights, obligations, participation or participation, and shared social ownership. In addition, with citizenship, citizens automatically have legal protection wherever they are. Having two citizenships is no longer a taboo for citizens and is likely to continue to develop in the future. The fact is that there are citizens aged 18 years or over who have dual citizenship, even though the ownership of dual citizenship should be limited. One of the rights of every citizen is the right to be elected and elected. However, there are still citizens who have dual citizenship. Because of dual citizenship, approaching the General Election confuses citizens of those who have dual citizenship but still wants to fulfill their rights in electing potential national leaders and also the right to lead Indonesia.

Keywords: Political Rights, Citizenship, Dual Citizenship.



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I. INTRODUCTION

Each country, there are three elements of the state, namely the territory, people, and the government in power as constitutive and declarative elements that constitute recognition from other countries. Article 1 of the *Montevideo Convention on Right and Duties of States of 1933* (Montevideo Convention 1933) explains that one of the conditions for the formation of a state is the existence of permanent residents. There are various terms related to citizens. Citizens and residents mean different things, even though many interpret the same. Citizens are residents in a country or nation based on their descent and birthplace who have full obligations and rights as a citizen of that country. In other words, citizens are supporters or members of a country.¹ Whereas Article 1 number 1 of Law Number 12 of 2006 concerning Citizenship states that citizens are "citizens of a country determined based on statutory regulations".² And Article 2 of Law Number 12/2006 concerning Citizenship states that "Indonesian Citizens are native Indonesians and other nationalities endorsed by law as citizens."³ In this case, it can be concluded that what can be interpreted as citizens is a person who meets the requirements or qualifications as citizens. Then not all people who are in Indonesia can be said to be Indonesian citizens. Meanwhile Moh. Kusnardi and Harmaily Ibrahim stated that people who settled in a particular area related to the country could be said to be citizens.⁴

Meanwhile, RG Kartasaputra emphasized the obligation of citizens to comply with the law or UUD 1945. It is arguable that everyone who was within the scope of that state was truly obedient and obeyed the constitution was a citizen, whereas people who live within the scope of the country concerned but are not obedient to their constitution are not included in the people. So it is clear that not every citizen in a country is a citizen. If someone does not have a citizenship, then the citizen does not have legal protection from any country. For people without citizenship, there are difficulties encountered, including difficulties in obtaining an identity file and travel, which not only inhibits travel but also causes other problems in living everyday life and, in some cases, can cause prolonged detention for an individual. Citizenship prevents people from fulfilling their potential and

¹ BP.Paulus, *Kewarganegaraan RI Ditinjau dari UUD 1945 Khususnya Kewarganegaraan Tionghoa*, (Jakarta: Pradnya Paramita, 1983) at 42.

² Article 1 (1) Law No. 12 of 2006 on Citizenship.

³ Article 2, *ibid*.

⁴ Kartasaputra. *Sistematika Hukum Tata Negara*. (Jakarta: Bina Aksara, 1987) at 1.

can have a devastating effect on social integrity and stability.⁵ So, to avoid the above, everyone must have citizenship in order to get recognition from the state.

There are several ways to obtain citizenship, including:⁶ Because of birth, descent, through citizenship, through ordinary registration, and because of the expansion of territory. The government makes and regulates laws to determine the status of Indonesian citizenship. The law is regulated and aims to prevent obstacles, from social problems to legal issues. These problems are anticipated because problems relating to citizens' status may occur in the domestic territory as well as activities related to countries. One example is the presence of several celebrities in Indonesia from other countries that are currently dealing with immigration authorities because of their visas and citizenship status. Moreover, there are also cases of the spread of drugs by black citizens in Indonesia involving international networks. This includes criminal or criminal acts. Thanks to the existing citizenship status arrangements, police officers have valid evidence to block, arrest, and return the person concerned to their home country.⁷

In the general explanation of Law Number 12 of 2006 concerning Citizenship, there are 4 (four) ways to obtain Indonesian citizenship, namely, because of birth, recognition, and appointment, application granted, and citizenship. In fact, to determine the citizenship status, it can be divided into 2, namely *Ius Soli* and *ius sanguinis*. In determining one's nationality, each country generally uses both principles. It is an effort to prevent the occurrence of *apatride* and *bipatride*. The nationality of a person determined based on his place of birth is *Ius Soli*. For a country that adheres to the principle of *Ius Soli*, it does not see who or where the child's parents are from, the state only recognizes the child as a citizen if the child is born in the territory of the country itself. This principle allows a nation that is not limited by race, ethnicity, religion, and others. Whereas *Ius Sanguinis*, means that a person's citizenship is determined based on his descendants. The citizenship of the child will be recognized by the country that adheres to this principle if the parents of the child have the country's citizenship status

⁵ <http://www.unhcr.org/id/wp-content/uploads/sites/42/2017/05/Melindungi-Hak-Hak-Orang-Orang-tanpa-Kewarganegaraan-BAHASA-FINAL.pdf> (diakses pada tanggal 15 November 2018 pukul 13.40 WIB).

⁶ Jimly Asshidiqie, *Pengantar Ilmu Hukum Tata Negara jilid II*, (Jakarta: Sekretaris Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2006) at 145-148.

⁷ Rowland Bf *Kewarganegaraan*. at 31.

(seen from their offspring).⁸ While the principle adopted in Law Number 12 of 2006 concerning Citizenship, Indonesia, in terms of birth is the principle of *Ius Sanguinis* and also the principle of *Ius Soli* as an exception, while in terms of marriage, the principle adopted is the principle of equality and the principle of legal unity.⁹

According to Law Number 12 of 2006 concerning citizenship, children born from marriages of an Indonesian citizen with a foreigner man, as well as children born from a marriage of a foreigner woman to an Indonesian citizen, are equally recognized as Indonesian citizens. Then children born of mixed marriages will have dual citizenship. The definition of dual citizenship (*bipatride*) is a condition when a person has two legal citizenship status in different countries. The rules regarding dual citizenship are only in Indonesian citizenship law, namely Article 6 of Law Number 12/2006, namely "In terms of the citizenship status of the Republic of Indonesia for children as referred to in Article 4 letter c, letter d, letter h, letter I, and Article 5 results in a child having dual citizenship, after the age of 18 (eighteen) years or already married the child must declare to choose one of his citizenship. " In the new Citizenship Act, Indonesia adheres to the principle of limited dual citizenship, which is different from the previous Citizenship rules, which only adheres to the principle of single citizenship. Limited dual citizenship means that those who can hold dual citizenship are only children under 18 or not yet married. Therefore it is said to be limited. So if someone who is 18 years old or has married must choose one of his citizenship, moreover, someone who is over 18 years old or has been married cannot have 2 (two) citizenship for any reason. If the child does not renounce one of their nationalities, it will result in the loss of Indonesian citizenship as explained in Article 23 of Law Number 12 of 2006, which is related to the loss of Indonesian citizenship. Based on Article 6 of Law Number 12/2006 it is clearly stated that only children can hold dual citizenship status. However, there are still many people who are outside the provisions of Article 6 also having dual citizenship, namely on the grounds of long stay abroad, doing education, working outside country, as well as having different nationality marriages (mixed marriages) in order to get the same rights in the country where they live. Nevertheless, actually if outside

⁸ I Nengah Suantra, et al., *Hukum Kewarganegaraan dan Kependudukan (Fakultas Hukum Universitas Udayana Denpasar)*. 2016 at 18-19.

⁹ *Ibid* at 34.

the provisions of Article 6 a person is still a dual nationality, then that person may lose Indonesian citizenship.¹⁰

As a result of conditions that can cause a person not to choose one of his nationalities if the person has status has citizenship limited dual not been regulated further in the Act. Therefore, there is still a need for further provisions regarding the limitation of limited dual citizenship. Indeed, if the child has two citizenship, he will get legal rights from both countries and cover the possibility of stateless or no citizenship for the child. This is the positive side of dual citizenship.¹¹ So it is clear that citizens who have dual citizenship differ in their rights and obligations. One of the primary subjects regulated in each constitution that is in line with the modern state constitution is the rights and obligations of these citizens. As regulated in Article 1 paragraph (1) of Law Number 39/1999 concerning Human Rights states that:

Human Rights (hereinafter referred to as Human Rights) are a set of rights attached to the nature and existence of every human being as a creature of God Almighty and is a gift that must be respected, upheld, and protected by the State, Law, Government, and everyone, for the sake of honor and protection of human dignity.¹²

The 1945 Constitution outlines human rights into the constitutional rights of every citizen. This inclusion asserts the rights of its citizens, as seen from the guarantee of human rights stipulated in Article 28 AJ of the Constitution 1945.¹³ Human Rights in the arrangement, according to¹⁴ Aswanto, grouped into Civil Rights (*civil rights*), political rights (*Political rights*), rights of economics (*socio economic rights*), and Rights in the field of culture (*Culture rights*).

The International Covenant on Civil and Political Rights (ICCPR) stated that fundamental human rights and freedoms are classified into two types: first, the *neo-derogable category*, namely rights that are absolute and may not be reduced, even in an emergency. This right consists of; (i) *rights to life*; (ii) *right*

¹⁰ Kevin Dariola Anggita, 'Anggita, Kevin Dariola. "Status Hukum Warga Negara Yang Berkewarganegaraan Ganda Menurut Hukum Kewarganegaraan Indonesia.' at 33-34.

¹¹ I Nengah Suantra, *supra* note 8 at 38-39.

¹² Article 1 number (1) Law Number 39/1999 on Human Rights.

¹³ Jimly Asshiddiqie, *Hak Asasi Manusia dalam Konstitusi Indonesia*, (Jakarta: Kencana Prenada Media Group, 2005) at 85.

¹⁴ Nur Asmarani, *Teori Hak Asasi Manusia (HAM)*, Jurnal Hukum dan Masyarakat, Vol. 14, No 1, 2015 at 7.

to be free from slavery; (iii) the right to be free from detention because of failure in the agreement (debt); (iv) the right to be free from retroactive penalties, the right to be a legal subject, and to freedom of thought, belief, religion. The second type is the *derogable category*, namely the rights that may be reduced/limited by state parties. Rights and freedoms included in this type include (i) the right to freedom of peaceful assembly; (ii) the right to freedom of association, including the formation and membership of workers; and (iii) the right to freedom of expression, including the freedom to seek, receive, and provide information with all kinds of ideas without regard to boundaries (whether through oral / written). In the case of reducing the obligation to fulfill the above rights, it can only be held if the reduction is proportional to the existing threat and not discriminatory, namely for the sake of; (i) maintaining public security or morality; and (ii) respecting the rights or freedoms of others. Moreover, the reduction of this obligation is only allowed for parties ICCPR.

It has been mentioned above that one of the rights for citizens who live in countries that embrace democracy as in Indonesia, is a political right that is also part of the right to participate in the running of government in a country. The 1945 Constitution regulates the existence of human rights as the constitutional rights of every citizen, both direct and indirect, because the general election is a means of democracy for a country that adheres to democracy. Election means the election of people's representatives elected by the people to represent them in their participation in the state government's administration, which is also a political activity to accommodate the interests or wishes of the people. Alternatively, it can also be called as *conditio sine qua non*. The election in the human condition as an individual citizen is a process of temporary surrender of political rights. This right is a sovereign right to participate in carrying out state administration.¹⁵

The responsibility for protection, promotion, enforcement, and fulfillment, as well as respect for the right to be elected and to vote is the responsibility of Indonesia and shows that Indonesia is legally bound so that every democratic country contains guarantees of human rights, including civil and political rights of every person or population in the state constitution. It has also been regulated in the Indonesian constitution that those who have the most significant share in the election or fulfillment of political rights are the

¹⁵ Miriam Budiarjo, *Hak Asasi Manusia Dalam Dimensi Global*, Jurnal Ilmu Politik, No. 10, 1990, Jakarta at 37.

people as stipulated in Article 1 Paragraph (2), Article 6A (1), Article 19 paragraph (1), and Article 22C Paragraph (1) of the 1945 Constitution. The provisions above indicate that there is an inherent legal guarantee for every Indonesian citizen to exercise his right to vote. These provisions emphasize that all forms of legal products governing general elections should open up the most extensive possible space for citizens to exercise their right to vote in elections.¹⁶

Article 21 of the Universal Declaration of Human Rights (UDHR) stipulates that: (1) Everyone has the right to participate in the governance of his own country, either directly or through the mediation of freely chosen representatives; (2) Everyone has the right to an equal opportunity to be appointed to the government position of his country; (3) The people's will must be the basis of government power; this will have to be stated in honest periodic elections which are carried out according to general and equal suffrage, as well as by secret balloting or by other means which also guarantee freedom of voting".¹⁷

Article 27 Paragraph (1) of the 1945 Constitution stipulates that "all citizens must have equal position in law and government and must uphold the law and government without exception." Article 28D paragraph (1) of the 1945 Constitution stipulates that every person has the right to recognition, guarantee, protection, and certainty of law that is just and equal treatment before the law. Then, Article 28D paragraph (3) determines that every citizen has the right to have the same government opportunity.

At the level of the Law, Law Number 39/1999 concerning Human Rights regulates the suffrage in Article 43, which states:

"Every citizen has the right to be elected and to vote in elections based on equal rights through the direct, general, free ballot, confidential, honest, and fair under statutory provisions."

However, there are still citizens of the country mentioned who still have two or more citizenship, which is commonly called dual citizenship. Moreover, dual citizenship still raises questions for the government regarding the fulfillment of the rights that must be fulfilled, including political rights for every Indonesian citizen. However, in fact, Indonesia does not recognize dual citizenship, except for children from mixed marriages, which can be

¹⁶ <http://ditjenpp.kemenkumham.go.id/htn-dan-puu/2941-hak-politik-warga-negara-sebuah-perbandingan-konstitusi.html> (accessed on 18 November 2018 at 23.16 WIB)

¹⁷ Article 21 Universal Declarations of Human Rights.

said to be limited dual citizenship. This has been explained in Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia Article 6 states that: "In terms of the citizenship status of the Republic of Indonesia for children as referred to in Article 4 letter c, letter d, letter h, letter I, and Article 5 resulting in a child having dual nationality, after 18 (eighteen) years of age or already married the child must declare to choose one of his citizenship. " So Indonesian citizens who have dual citizenship and are 18 years old or are married are required to choose one of their nationalities. If an Indonesian citizen who has dual citizenship does not choose one of his nationalities, he will lose Indonesian citizenship under Article 23 letter b, which reads "Indonesian citizen loses his citizenship if the person concerned does not refuse or does not renounce another nationality, while the person concerned get the chance for that. " And as explained in Article 6 of Law Number 12/2006, in Indonesia adopts no double citizenship, which means that Indonesian citizens with dual citizenship cannot be fulfilled as Indonesian citizens again, including their political rights.

Therefore, political rights for Indonesian citizens with dual citizenship cannot be fulfilled if they are 18 years of age or have been married because, as explained above, namely in Article 6 of Law Number 12/2006 concerning Citizenship. If the Indonesian citizen has violated Article 6, which does not choose one of their nationalities, then the citizen will lose Indonesian citizenship, which will automatically lose his rights, including his political rights in Indonesia, and the citizen cannot fulfill his political rights in Indonesia.

II. THE RIGHT TO CHOOSE INDONESIAN CITIZENS

The Constitution states that Indonesia is a state of law whose primary component is the fulfillment, recognition, and guarantee of fundamental citizens' rights. The scope of constitutional understanding or constitutionalism based on the constitutional law and political science literature consists of: the anatomy of power (political power) subject to the law, guarantee and protection of human rights, a free trial and independent, and accountability to the people (public accountability) as the main joint of the principle of popular sovereignty.

According to Ramdlon Naning, human rights can be distinguished in: (1) *personal rights*; (2) *economic rights or property rights*; (3) *political rights*; (4) *human*

rights to get equal treatment in law and government (*right of legal equality*); (5) *social and cultural rights*; and (6) human rights to obtain equal treatment before the law.¹⁸

Human rights and democracy have very close links. Democracy recognizes the birth of broad public participation in government, and public participation reflects the recognition of sovereignty. The creation of public empowerment is through the implementation of the public role in the realm of government. Governance Democratic, through the protection and fulfillment of human rights, has the ability to realize the people's welfare.¹⁹ This also goes hand in hand with the 1945 Constitution's teachings that sovereignty is in the hands of the people and is fully implemented based on the 1945 Constitution. The amendment stipulates that sovereignty remains in the hands of the people, and the authority, duties, functions given by the 1945 Constitution are carried out by state institutions to the exercise of that sovereignty.²⁰ However, it must be recognized that the path of choice has been based on the spirit of building modern democratic practices. Bagir Manan proposes several rights that are included in political rights, namely the right to freedom of association and assembly, the right to freedom of thought through oral and written, and the right to express opinions in public. The 1945 Constitution, the laws and regulations have guaranteed the implementation of these political rights.²¹

Political rights, in particular, the right of citizens to vote (*right to vote*) are guaranteed by several provisions in the 1945 Constitution. Several such provisions include Article 27 paragraph (1) of the 1945 Constitution stated that all citizens are at the same time in law and government and must uphold the law and governance with no exception. Then there is also Article 28D paragraph (1), which states that everyone has the right to recognition, guarantees, protection, and certainty of law that is just and equal treatment before the law. Furthermore, no less important is the provision of Article 28D paragraph (3), which states that every citizen has the right to have the

¹⁸ H.Rosjidi Ranggawidjaja, "Pembatasan Konstitusional Hak Warga Negara untuk Memilih dan Dipilih dalam Jabatan Publik" Jurnal Konstitusi PSKN-FH Universitas Padjajaran, Volume II Nomor 2, November 2010, Jakarta at 38.

¹⁹ Majda El Muhtaj, *Dimensi-Dimensi HAM Mengurai Hak Ekonomi, Sosial, dan Budaya*, (Jakarta: PT Rajawali Pers, 2008) at 45.

²⁰ Janpatar Simamora, "Perlindungan Hak Memilih Sebagai Hak Konstitusional Warga Negara," Fakultas Hukum Universitas HKBP Nommensen Medan, 2013, at 124.

²¹ <https://eprints.uny.ac.id/23563/4/4.%20BAB%20II.pdf> at 29. (accessed on 26 November 2018 at 10 AM)

same opportunity in government. Several provisions in the constitution adequately show how the state guarantees and protects the constitutional rights of citizens, mainly about political rights in granting their voting rights in every direct democracy.²² Related to the existence of these articles, in this case a firm statement was made by Mahfud MD that the Constitution 1945 does not contain material that substantially must exist in every constitution namely the protection of human rights²³, but now it has increased significantly so that the formulation is complete and makes the 1945 Constitution one of the fundamental laws must complete, which includes the protection of human rights.²⁴

Every citizen who will exercise the right to vote and be elected in each General Election must be free from all forms of intervention, intimidation, discrimination and all forms of violence that can cause fear to channel their right to vote and be elected in each General Election process because of these rights—recognized by the state constitution. The provisions governing are Article 28C paragraph (2), Article 28I paragraph (1), and paragraph (5) of UUD 1945. While in Law Number 39 of 1999 concerning Human Rights is regulated in Article 23 paragraph (1) and Article 43 paragraph (1) which forms the legal basis for every Indonesian citizen to have the freedom to participate in determining their representatives, both to sit in the legislative body and serve as the leadership of the executive body which is carried out through the General Election.

The loading of the right to vote in international instruments shows that this right has the potential to be a powerful weapon owned by a citizen in order to balance state policies that threaten the freedom of citizens to participate in elections. The right to vote is also a gateway for everyone to sit in government through equal and non-discriminatory treatment. Therefore, discussing the right to vote is inseparable from two dimensions, namely the right *to vote* and the right *to be elected*. In the context of the right to vote and the right to be elected as political rights, the Universal Declaration of Human Rights is explicitly described in Article 21 as follows: Paragraph (1): Everyone has the right to participate in the governance of his own country, both directly and through the mediation of representatives freely chosen

²² Janpatar Simamora, *supra* note 20 at 127.

²³ Moh. Mahfud MD, *Demokrasi dan Konstitusi di Indonesia: Studi tentang Interaksi Politik dan Kehidupan Ketatanegaraan Cet II*, (Yogyakarta: Rineka Cipta, 2000) at 141.

²⁴ Jimly Asshiddiqie, *Menuju Negara Hukum yang Demokratis*, (Jakarta: PT Bhuana Ilmu Populer, 2009) at 433.

representatives. Paragraph (2): Everyone has the right to an equal opportunity to be appointed to the government position of his country. Paragraph (3): The people's will must be the basis of a government authority; this will must be stated in honest periodic elections, which are carried out according to general and equal suffrage, as well as by secret balloting or in ways that also guarantee freedom of vote. This provision can also be interpreted that everyone has the same rights and position in the government (government offices), and this is held through a democratic general election that takes place in general, direct, free, and confidential. Position in government obtained through a general election is non-discriminatory. Everyone (citizens) have the same rights and opportunities. Every citizen has the same rights, and the implementation of those rights and obligations must be shared.²⁵

The definition of "right to vote" is described in line with the notion of the "right to vote." The definition of "elected right" is described as the right to be elected as a member (regarding the House of Representatives, etc.). The "right to vote" is described as the right of citizens to have representatives in the people's representative institutions, which are elements in a democratic electoral system. "Voting rights" are divided into two, namely: "active voting rights" and "passive voting rights." "Active suffrage" as the right to choose representatives in people's representative institutions. While "passive suffrage" is the right to be elected and sit in the people's representative institutions.²⁶

The affirmation of the constitution of the political rights of citizens, contained in the covenant of civil and political rights, is affirmed Article 25 "Every citizen must have rights and opportunities, without any distinction as referred to in Article 2 and without improper restrictions, to (a) Participate in carrying out government affairs, either directly or through freely chosen representatives; (b) Voting and being elected at periodic pure elections, and with universal and equal suffrage, and carried out by secret ballot to guarantee freedom of expression of the wishes of the voters; (c) Gaining access to public services in his country based on equality in the general sense.

²⁵ A.Gunawan Setiardja, *Hak-Hak Asasi Manusia Berdasarkan Ideologi Pancasila*, (Yogyakarta: Kanisius, 1993) at 117.

²⁶ Anton M. Moelyono, *Kamus Besar Bahasa Indonesia*, (Jakarta: Departemen Pendidikan dan Kebudayaan Republik Indonesia, 1988) at 292.

The above contradicts a constitutional case. The Constitutional Court appeared with the question of whether voting is a right or an obligation? In its decision, the Constitutional Court stated that choosing and being elected was a "right" and not an obligation that could be imposed or could be imposed sanctions if not fulfilled. As a "right," citizens are given the freedom to use it or not. However, this does not mean that in its position as a constitutional right, the right to vote and be elected cannot be unlimited. In practice, the right to vote and be elected is also limited by the laws; the Constitutional Court can review the laws under the constitutional limitation doctrine.

One form of restriction on the right to vote is the provision governing members of the Indonesian National Army (TNI) and the Indonesian National Police (POLRI) not to exercise their rights in elections. The spirit contained in government policies restricting the right to vote for members of the TNI and POLRI is to maintain the neutrality of the TNI and POLRI and not get involved in practical politics. The neutral attitude of members of the TNI and POLRI is essential in order to carry out their duties to maintain the stability of defense, security, and state order. In its decision, the Court agreed with government policy and stated that the limitation of the right to vote for members of the TNI and POLRI was not in conflict with the Constitution 1945. Besides, the editorial chosen by the legislators is "not to use." This is a form of restriction and not a form of denial. Mostly members of the TNI and POLRI have the right to vote, but those rights are limited. At one time, this restriction policy would be revoked by the government, and members of the TNI and POLRI could exercise their right to vote.²⁷

Another limitation is for Indonesian citizens who have dual citizenship and are abroad. This is related to how the right to vote and be elected can be fulfilled. Soepomo has stated that the state must ensure that no citizen has dual citizenship (dual citizenship or *dubbele onderdaanschap*) and those who do not have citizenship (*staatloosheid*). This must be regulated based on the system and legislation in Indonesia. For this reason, Soepomo proposed the basis of Indonesian citizenship, namely: (1) *Ius Sanguinis* (principle of heredity) and (2) *Ius Soli* (principle territorial).²⁸ The contents of the position

²⁷ Bisariyadi, "*Hak Pilih Sebagai Hak Konstitusional*," Mahkamah Konstitusional Republik Indonesia, at 9-10.

²⁸ Naskah Komprehensif Perubahan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, *Buku VIII Warga Negara dan Penduduk, Hak Asasi Manusia dan Agama*, Jakarta, Mahkamah Konstitusi Republik Indonesia. 2010 at 14.

as citizens are (1) only citizens have political rights, for example, the right to vote and be elected, and (2) only citizens have the right to be appointed to state office. The status of a person's citizenship has two aspects, namely: legal aspects and social aspects, where citizenship is a legal status of citizenship, a complex of rights and obligations, especially in the field of public law owned by citizens and not owned by foreigners.

However, indeed in Indonesia, there are still many Indonesian citizens who have dual citizenship, whether it is because of mixed marriages and working abroad. The practice in Indonesia does not recognize dual citizenship as explained in Article 23 letter b of Law Number 12 of 2006, namely that Indonesian citizens who do not renounce other citizenship will lose their citizenship. Moreover, according to Article 6 of Law Number 12/2006, from that Article, Indonesian citizens do not recognize dual citizenship except for children under 18 (eighteen) years of age and not married. In addition to these provisions, the citizen must release one of his citizenship. However, there are still Indonesian citizens who have dual citizenship who do not renounce the citizenship Republic of Indonesia's citizenship. Furthermore, sometimes they still want to fulfill their rights in general elections in Indonesia, namely political rights.

Citizenship is the membership of a person in a particular political unit (specifically the state) with which it carries the right to participate in political activities. In particular, citizenship is the membership of a person in a political unit to take part in political activities. Someone with membership was called a citizen. Citizenship is part of the concept of citizenship. In this sense, citizens of a city or district, because both are political units. In regional autonomy, citizenship is essential because each political unit will give its citizens different (usually social) rights. Citizenship refers to a set of characteristics of a citizen. Characteristics or attributes of citizenship include:

Ownership of individual rights includes the fulfillment of appropriate obligations, level of interest and involvement in public matters, and acceptance of fundamental social values.

Having citizenship means that a person has an identity or status in the national scope. Having citizenship means getting several rights and obligations that apply reciprocally with the state. He has the rights and obligations of the state. On the contrary, the state has the rights and

obligations of that person. Therefore someone makes him involved in participating in the life of his country.

The right to vote for Indonesian citizens with dual citizenship is still possible to be fulfilled but is limited. Because based on Article 6 of Law Number 12/2006 it has been explained that children aged 18 (eighteen) or married must choose one of their nationalities. Whereas according to Law Number 24 of 2013 concerning Population Administration Article 63 paragraph (1) Indonesian Citizens and Foreigners who have Permanent Stay Permits who are 17 (seventeen) years old or have been married or have been married are required to have a KTP (Card) Identity Certificate), and paragraph (2) Foreigners who follow the status of their parents who have Permanent Stay Permits and are 17 (seventeen) years old must have a KTP. This means that for the 17-year-old citizen, he has a KTP, even though he has dual citizenship. Because Indonesian citizens with dual citizenship must declare their nationality after 18 years, so when he was 17 years old, he could still have an Indonesian KTP.

Under Article 198 of Law Number 7/2017 concerning General Elections, the requirements to become voters in general elections are:

- (1) Indonesian citizens who are already 17 (seventeen) years old or more are married or already married have the right to vote. (2) Indonesian citizens, as referred to in paragraph (1) shall be registered 1 (one) time by the Election Organizer in the voter list. (3) Indonesian citizens whose political rights have been revoked by the court do not have the right to vote.

So, if compared between Article 6 of Law Number 12 of 2006 and Article 198 of Law Number 7 of 2017, it can be concluded that citizens who are dual citizens aged 17 years to 18 years as long as he still has an Indonesian ID card, he still has the right to choose in Indonesia. And when he was 18 years old and did not choose one of his nationalities or did not choose Indonesian citizenship, then he lost his Indonesian citizenship automatically, he also lost his right to vote in Indonesia.

While Article 201 paragraph (1) of Law Number 7 of 2017 concerning General Elections mentioned as follows:

- (1) The government and regional governments provide population data in the form of: population aggregate data per sub-district as material for KPU in compiling the electoral districts for members of regency/city DPRD; data on potential residents of Election voters as material for KPU in compiling provisional voter lists; and data on Indonesian Citizens residing

overseas as material for KPU in the preparation of electoral districts and provisional voter lists.

Article 201 paragraph (3) states that "data on Indonesian Citizens residing abroad as referred to in paragraph (1) letter c must be available and submitted by the Minister of Foreign Affairs to the KPU no later than 16 (sixteen) months before the polling day sound." It is concluded that Indonesian citizens who are abroad can still use their voting rights but are included in the provisional voter list. To participate in elections for Indonesian citizens abroad, they must be eligible to vote abroad must be at least 17 years old and have an Indonesian identity such as an Indonesian passport or e-KTP. It can also be through the Indonesian representative office in the local country, voting in the traveling ballot box, through the method, drop box. For example, the election officials come to the voters and use the post. This can be done when those who will choose to show or have an Indonesian passport. Indonesian representative offices abroad can be at the embassy or consulate-general. So it is still possible for Indonesian citizens who have dual citizenship who are abroad and are still under 18 years of age, still be able to exercise their voting rights in the ways and conditions described above.

In contrast, related to the right to be elected for Indonesian citizens with dual citizenship, there is the tiny possibility to be fulfilled. The requirements for one of the nominees to be elected are the requirements of a Presidential Candidate and Vice Presidential Candidate. According to Law Number 42 of 2008 concerning Election of President and Vice President, Indonesian Citizens have been born since their birth. They have never received other nationalities of their own volition, residing in the Republic of Indonesia territory, and registered as Voters.

If seen one by one, the Presidential Candidates or Candidates for Vice-President must indeed be Indonesian citizens, and not bear dual citizenship status. Moreover, must reside in the territory of the Unitary Republic of Indonesia, which means that it is not currently abroad and has been confirmed not to reside abroad. So for Indonesian citizens who have dual citizenship and are abroad, obviously they cannot be nominated as President or Vice President. Likewise, to run for another official, of course, must be a true Indonesian citizen since his birth, not dual citizenship, and not residing abroad.

In Indonesia, there was a case of citizenship by a state official, namely the Minister of Energy and Mineral Resources (ESDM), Arcandra Tahar. The President dismissed Arcandra Tahar through the Minister of State Secretary Pratikno and a press conference at the President's office. This dismissal began with the discussion that said that Arcandra Tahar had obtained US citizenship in March 2012.

Article 22 Paragraph (2) of Law Number 39/2008 concerning the State Ministry states that there are several main conditions for serving as a minister, namely:

- a. Indonesian citizens.
- b. Fear God Almighty.
- c. Faithful to Pancasila as the foundation of the country. The 1945 Constitution of the Republic of Indonesia, and the ideals of the proclamation of independence.
- d. Physically and mentally healthy.
- e. Have integrity and a good personality.
- f. Never been sentenced to prison based on a court decision that has obtained permanent legal force for committing an offense threatened with imprisonment of 5 (five) years or more.

Based on information obtained, Arcandra Tahar obtained US citizenship in March 2012. However, he retained his Indonesian citizenship by renewing it at the Consulate General of the Republic of Indonesia in Houston, United States, in February 2012, which will be valid until 2017. At the time, when he offered to be a Minister by the President, most likely, he did not claim to have foreign citizenship. Meanwhile, Arcandra has been dishonest about citizenship to the Indonesian people for sure. When he has received the citizenship of the United States, the Indonesian citizenship that he has is automatically released regardless of his obtaining foreign citizenship. Then, in article 23 letter b, it is said that an Indonesian citizen loses his citizenship if the person concerned does not refuse or renounces other citizenship, while the person concerned has the opportunity for it. It can be concluded that people who do not refuse citizenship by another country can be said to be dual citizenship. Then Indonesian citizens who have dual citizenship and who have been married for 18 years or will lose their Indonesian citizenship.

Likewise, for those who have become state officials, he can be dismissed from his position. So to avoid this happening again, it is not possible for Indonesian citizens who are dual citizens to nominate themselves in the General Election. Moreover, in the case of political rights, namely the right to be elected and elect citizens can still get the right to vote as long as he is 17 years old and not yet 18 years old and is also not married. However, if the citizen wants to obtain the right to be elected in politics, then the citizen must choose one of the citizenship held in this case, the citizen who has dual citizenship must be an Indonesian citizen and never have another nationality of his own choice if he wants to obtain his right of choice.

III. CONCLUSION

Based on the problems that have been raised, it can be concluded that Indonesia does not recognize dual citizenship, except for children from mixed marriages, which can be said to be limited dual citizenship. Such limited dual citizenship is an exception. This has been explained in Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia article 6 states that: "In terms of the citizenship status of the Republic of Indonesia for children as referred to in Article 4 letter c, letter d, letter h, letter I, and Article 5 resulting in a child having dual nationality, after 18 (eighteen) years of age or already married the child must declare to choose one of his citizenship. " So Indonesian citizens who have dual citizenship and are 18 years old or are married are required to choose one of their nationalities. If the citizen does not choose one nationality, does not reject or not renounce another nationality, such a citizen will lose Indonesian citizenship. Thus, Indonesian citizens with dual citizenship cannot be fulfilled as Indonesian citizens again, including their political rights.

Regarding the right to vote for Indonesian citizens with dual citizenship it is still possible to be fulfilled but limited. For citizens who are 17 years old, they already have an ID card, even though they have dual nationality. Furthermore, because Indonesian citizens who are dual citizens must declare their citizenship after 18 years of age when he is 17 years old, he can still have an Indonesian ID card and be able to use his right to vote in elections before 18 years of age. However, if the citizen wants to obtain the right to be elected in politics, then the citizen must choose one of the citizenship held in this case, the citizen who has dual citizenship must be an

Indonesian citizen and never have another nationality of his own choice if he wants to obtain his right of choice.

A suggestion based on this problem is the need to increase awareness of the importance of citizenship for every citizen so that there is no *apatride*. Similarly, for dual citizenship, it needs to be emphasized that dual citizenship in Indonesia is limited. Because in Indonesia, they do not recognize dual citizenship except those stipulated in the Citizenship Act. Moreover, more clearly, sanctions if there are Indonesian citizens with dual citizenship because, in the Citizenship Act, there are no further regulations related to sanctions against Indonesian citizens with dual citizenship. In imposing the sanctions, it is also necessary to uphold human rights values and consider the sense of nationalism towards holders of dual citizenship, which can be used as a basis for sanctions against holders of dual citizenship.

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