



# Juridical Review of Citizenship Problems from The Perspective of Private International Law

Anak Agung Sagung Laksmi Dewi<sup>1</sup>, I Gusti Agung Ayu Gita Pritayanti Dinar<sup>2\*</sup>, I Kadek Wahyu Dwipayana<sup>3</sup>

<sup>1, 2, 3</sup> Faculty of Law, Universitas Warmadewa, Denpasar, Indonesia  
gitafhunwar@gmail.com\*

**ABSTRACT.** The objective of this study is to examine the problems of citizenship from the perspective of private international law with the aim that later the findings can be of benefit to business actors, legal practitioners and students. The concept is very urgent to be scientifically researched and analyzed bearing in mind that there are various problems of citizenship that cause problems of dual citizenship, business disputes and mixed marriages. Implementation of Republic of Indonesia Government Regulation No. 21 of 2022 concerning the Amendments to Government Regulation of the Republic of Indonesia No. 2 of 2007 concerning Procedures for the Acquisition, Deprivation, Cancellation and Reacquisition of the Citizenship of the Republic of Indonesia has not been fully understandable due to the lack of outreach from competent parties to the public. Issues raised in this research are: (i) what are the problems of citizenship in Indonesia? (ii) How are the issues of citizenship resolved from a private international law perspective? The research uses the normative legal research method to reveal justice and legal certainty regarding the problems of citizenship in Indonesia. The kind of data used is secondary data, data originating from library research or data collected not directly from the first source but from data that have been documented in the form of legal materials. Once collected, the data were analyzed using descriptive and argumentative techniques. With this research, the problems of citizenship in Indonesia and their solutions from the perspective of private international law are revealed.

**Keywords:** Problem of Citizenship, Private International Law, Government Regulation

## 1 INTRODUCTION

The impact of globalization on various fields of human life has resulted in relations between humans becoming wider and boundless. The condition, in turn, opens opportunities for different nations or citizens to meet. The encounters lead to engagement and attraction between citizens from different countries which ends in marriage. Mixed marriages between two people of different nationalities are increasing in quantity despite the reality that many face problems when dealing with differences in policies between countries, cultures and legal systems.

In the provisions of Article 4, letter a, of Law No. 12 of 2006 concerning Citizenship of the Republic of Indonesia, it is specified that an Indonesian citizen refers to

any person who, based on laws and regulations and/or based on agreements between the Government of the Republic of Indonesia and other countries before this Law came into effect, was already an Indonesian citizen.

Various problems concerning citizenship occurring in Indonesia also tend to occur in other countries but with different laws and dispute resolution procedures. On this ground, the researchers believe that a juridical review of the problems of citizenship from the perspective of private international law deserves to be conducted more deeply to answer the problems that have arisen so far.

## **2 RESEARCH METHOD**

The normative legal research method is used in this study, which is applied by reviewing the norms of Republic of Indonesia Government Regulation No. 21 of 2022 concerning the Amendments to Government Regulation of the Republic of Indonesia No. 2 of 2007 concerning Procedures for the Acquisition, Deprivation, Cancellation and Reacquisition of the Citizenship of the Republic of Indonesia.

A statute approach, which is applied by looking at problems based on concepts, theories, principles, and applicable laws and regulations, is one of the problem approaches employed in this study. Scholars look at the opinions of legal experts from different nations on this issue. It is intended that by dissecting legal notions, legal scholars will be better equipped to comprehend the core ideas of legal science. Analytical and conceptual approaches are also employed in normative research. Researchers using secondary data, or data drawn from library research—that is, data not directly from the original source but rather from data documented in the form of legal materials—make up the data utilized in normative legal research.

## **3 RESULT AND DISCUSSION**

### **3.1 Legal Arrangement of Citizenship Naturalization in Indonesia**

"In exercising his/her rights and freedoms, every person shall have the duty to accept the restrictions established by law for the sole purposes of guaranteeing the recognition and respect of the rights and freedoms of others and of satisfying just demands based upon considerations of morality, religious values, security and public order in a democratic society," reads Article 28J, subsection (2) of the Constitution of the Republic of Indonesia.

Article 1 point 3 Law of the Republic of Indonesia No. 12 of 2006 concerning Citizenship of the Republic of Indonesia (hereinafter referred to as Law no. 12 of 2006) states: "Naturalization is the procedures applied to aliens in acquiring Indonesian Citizenship by forwarding an application."

Article 9 of Law no. 12 of 2006 states that requests for naturalization may be forwarded by the applicant upon meeting the following requirements:

- a. Aged 18 (eighteen) or married;

- b. At the time of forwarding the application, the applicant has resided in the Indonesian territory for at least 5 (five) consecutive years or at least 10 (ten) years intermittently;
- c. Sound in health and mind;
- d. Able to speak Bahasa Indonesia and acknowledge the state's basic principles of Pancasila and the 1945 Constitution;
- e. Has never been legally prosecuted due to acts of crime and sentenced to jail for 1 (one) year or more;
- f. Upon acquiring Indonesian Citizenship, will relinquish any other citizenship;
- g. Employed and/or has a steady income; and
- h. Pay a naturalization fee to the Government Treasury.

**Article 19 of Law no. 12 of 2006 reads:**

- (1) By formally proclaiming their citizenship in front of the official, foreign nationals who are lawfully married to Indonesian citizens may get Indonesian citizenship.
- (2) If the incumbent has lived in Indonesia for at least five consecutive years or at least ten years intermittently, they may make the declaration outlined in paragraph (1), unless obtaining such citizenship will provide them dual citizenship.
- (3) The applicant may be granted a permanent residence visa in accordance with current legislation if they are refused Indonesian citizenship for not obtaining dual citizenship as required by Paragraph (2).
- (4) The Ministerial Regulation contains more details on the steps involved in requesting Indonesian citizenship, as stated in Paragraphs (1) and (2).

**Article 21 subsections (1), (2) and (3) of Law no. 12 of 2006 read:**

- (1) Children born to parents who have obtained Indonesian citizenship and who are living in Indonesia or who are single and under the age of eighteen (18) will immediately become citizens of the Republic of Indonesia.
- (2) Foreign national children under five (five) years old who are legally adopted as the offspring of Indonesian citizens will become citizens of Indonesia.
- (3) Should children under both paragraphs (1) and (2) obtain dual citizenship, they are required to select one of the two citizenships as specified in Article 6.

### **3.2 Citizenship in the Perspective of Private International Law (PIL)**

In its development, various PIL principles have developed which are intended to provide solutions to issues of status, authority of legal subjects and relevant legal systems, such as: (i) the principle of nationality (citizenship), (ii) the principle of domicile, and (iii) the principle of determining the status of a legal entity.

The concept of domicile in the common law tradition is divided into three definitions, as explained below:

- a. Domicile of origin, which is a person's permanent residence because of that person's birth in a certain place.
- b. Domicile of dependence, which is a person's permanent residence because of his or her dependence on other people, for example minor children will follow their parents' domicile or a wife will follow her husband's domicile.
- c. Domicile of choice, which is a person's permanent residence as evidenced by the fact of a person's permanent presence in a certain place and an indication that the place was indeed chosen on the basis of his or her free will.

Indonesia based on Article 16 AB (*Algemeine Bepalingen*) adheres to the Nationality Principle, stating that "for Indonesian citizens (formerly the Dutch East Indies) who are abroad the national law applies as their personal status."

### 3.3. Problems of Citizenship in Indonesia

Citizens constitute an essential element for the establishment of a state. By having citizenship status, a person will be legally recognized as a member of the country that recognizes him. Recognition of a state is a legal relationship between the two parties—the individual and the state that recognizes it. Through citizenship status, individuals can have many benefits both in the national and international legal systems.

Problems of nationality faced in Indonesia so far include the implementation of the administration procedures for mixed marriages, dual citizenship for adult citizens, family disputes related to mixed marriage divorces, child status, control of shared assets and inherited assets. Arrangements regarding Indonesian citizenship are regulated in Article 28D subsection (4) of the 1945 Constitution of the Republic of Indonesia. The article reads: Every person shall have the right to citizenship status. The article is the result of the second amendment to the 1945 Constitution of the Republic of Indonesia. Meanwhile, according to Article 26 subsection (1) of the 1945 Constitution of the Republic of Indonesia, those who can become citizens are native Indonesians and people of other nationals who are legalized by law to become Indonesian citizens.

When mixed-married children turn 18 (eighteen) or are married, they have to declare that they have chosen one nationality. Law No. 12 of 2006 contains several provisions that highlight the ban on adult dual citizenship. For example, Article 6 subsection reading (1) states that children's Indonesian citizenship status is determined by Article 4 subsections c, d, h, and i, and Article 5 will effect the child's dual citizenship. When the child becomes eighteen (18) or gets married, they have to select one citizenship.

Article 9 states that after fulfilling the qualifications, the applicant may submit a request for naturalization. This includes subsection (f), which states that the applicant will give up any other citizenship in exchange for Indonesian citizenship. According to Article 20, foreign nationals who demonstrate merit for their services to the Republic of Indonesia or for the welfare of the nation may be granted Indonesian citizenship by the President following the People's Representative Council's deliberations, unless doing so would grant the individual dual citizenship.

According to Article 21, children born to parents who have obtained Indonesian citizenship and who are residing in Indonesia as adults, whether married or under the

age of 18, will immediately become citizens of the Republic of Indonesia. (2) Foreign national children under the age of five (five) who are legally adopted as Indonesian citizens' children will become citizens of Indonesia as a result. (3) Should children under paragraphs (1) and (2) get dual citizenship, they must select one of the two citizenships in accordance with Article 6.

Article 23 reads: An Indonesian citizen will lose their citizenship due to the following:

- a. acquires another citizenship voluntarily;
- b. will not refuse or will not relinquish other citizenship when the incumbent has the opportunity to do so;
- c. possesses a passport or travel document equivalent to a passport from a foreign country or a letter that may be construed as a valid citizenship identity from another country on his/her name.

Especially for children according to the criteria above, in the event that the status of Indonesian citizenship for the child results in the child having dual citizenship, then upon reaching the age of 18 years or upon marriage, the child must declare that he has chosen one citizenship. The statement must be submitted in writing no later than 3 (three) years after the child turns 18 years of age or has been married as regulated in Article 60 of Government Regulation No. 2 of 2007. If the child does not submit a statement choosing Indonesian citizenship, his or her Indonesian citizenship will be annulled when he is 21 years old or 3 years after marriage. He or she is required to return to the Government of the Republic of Indonesia all decisions, documents or other letters proving the identity of the child as an Indonesian citizen within 14 days from the date of losing Indonesian citizenship.

### 3.4. Binding Force of International Civil Dispute Decisions.

International civil disputes can be caused by:

- a. contractual disputes, disputes that arise between the parties bound in an agreement or engagement, where the dispute is related to a contractual relationship;
- b. non-contractual disputes, disputes between parties who are not bound in a contractual relationship or disputes that do not recognize or are not bound by an existing contact relationship; and
- c. conflict of law, there are differences in jurisdictions and/or legal systems in a civil dispute where there is a foreign element.

In addition, there are many respects that must be taken into consideration in international civil disputes, including the appropriate jurisdiction of the court (choice of forum for dispute resolution), applicable law regarding the substance of the dispute (choice of law) and enforcement (implementation of decisions).

In the case of Boll's family in France, Johannes Boll or Johannes (husband) is a Dutch citizen and Gerd Elisabeth Lindwall or Elisabeth (wife) is a Swedish citizen who acquired Dutch citizenship by marriage. Their marriage produced a daughter named Maria Elisabeth Boll (Maria), who was born in Sweden on May 7, 1945 and lived in Sweden. On December 5, 1953, Elisabeth died, but her husband and daughter remained in Sweden. On March 18, 1954, Johannes filed an application for guardianship of Maria Elisabeth Boll at the Swedish Norkoping court and the request was

granted. However, on June 2, 1954, the Dutch Judge from *Kantonrechter*, Amsterdam, appointed Jan Alvertus Idema, a Dutch citizen, as the supervising trustee of Maria. On September 16, 1954, the Swedish Court of Norkoping ruled Emil Lindwall, Maria's maternal grandfather, as curator of Maria. On April 26, 1954, the Council for the Protection of Children in Norkoping Sweden placed Maria under the council's protection. The Dutch guardian submitted a request for supervision but it was rejected by the Child Protection Council. At the same time, the Swedish government considered that the Dutch government had intervened to defend the interests of its citizens, and the Swedish government was accused of violating the "1902 Hague agreement" regarding the guardianship of minors. Then, the case was submitted to the International Supreme Court, which decided, among other things, justified Sweden's stance and defeated the Netherlands, and decided: educational and protective measures were carried out by Swedish agencies against Maria. This decision prioritizes the principle of domicile (*lex domicile*) in the field of family law.

Multicultural citizenship competence is a set of knowledge, values and attitudes, as well as students' skills as citizens that support efforts to realize participatory and responsible multicultural citizens in the life of society, nation and state.

Article 1 point 2 of Law Number 12 of 2006 states that citizenship includes all matters pertaining to the citizen of a state. The new citizenship law contains the principles of general or universal citizenship. The principles adopted in this law are as explained below:

1. The law of the blood, or *ius sanguinis* concept, establishes a person's citizenship based on ancestry rather than place of birth.

2. In its limited application, the *ius soli* principle, sometimes known as the "law of the soil," establishes a person's citizenship based on their place of birth and is only applicable to children in accordance with the guidelines outlined in this decree.

3. The concept of singular citizenship establishes each person's sole citizenship.

4. The principle of restricted dual citizenship, or *bisatride*, is used to assess a child's dual citizenship in accordance with the terms of this law.

Each country has sovereignty in implementing and recognizing every international civil decision, as contained in the theory of State Sovereignty by Hegel. Hegel argues that the state is unique, because it possesses logic, reason and a system of thinking and behaving that is different from any political organ. Hegel adheres to the principle that freedom is nothing but the recognition and adoption of universal substantive objects such as rights and laws and the corresponding production of reality, that is, the State. International civil decisions that already have permanent legal force are in principle binding on each disputing party and each party is obliged to comply with the decision.

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## 4 Conclusions

### 4.1 Conclusion

1. Problems with citizenship in Indonesia include the implementation of administrative procedures for mixed marriages, dual citizenship for adult citizens, family disputes related to mixed marriage divorces, child status, and control of shared assets as well as inherited assets.
2. The settlement of the problem of citizenship from the perspective of private international law is by determining the factors that point towards the application of a certain country's legal provisions, for instance citizenship, location of objects, place of legal action, and domicile.

### 4.2 Recommendations

1. It is expected that the central government can be more proactive in collaborating with local governments in socializing the latest laws and regulations associated with administration and the latest legal issues to the public.
2. It is expected that the Association of Mixed Marriages in Indonesia will be more proactive in establishing communication with members and local government parties regarding the establishment of various limited discussion forums with interested parties.

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