

CHAPTER TWO

LITERATURE REVIEW

A. Citizenship

Based on 1993 Montevideo Convention, citizen is one of constitutive elements of forming a state in addition to territory and government as well as independent capacity to enter into relations with other states.¹ The definition of citizenship in Indonesia basically larger than the definition of citizens. Citizenship does not limit into the status of the person in the country, but citizenship cover the whole aspect of the citizens in the life of the community, nation and state.²

In ancient Greece, the state was formed with city and those who were directly connected with its administration were called citizen. The founder of political science, Aristotle, said that a person is a citizen who takes active part in the administrative affairs of the state. Aristotle's conception of citizen is regarded as narrow. There is a great difference between the modern and the ancient concept of citizenship. In modern states, the large population cannot directly participate in administration. So, in modern time, the definition of citizen has changed. According to Professor Gettell, citizens are the members of that political society who are obliged to discharge their duties to that society and have the right to enjoy all the benefits from that

¹ Article 1 of 1993 Montevideo Convention

² Cholisin, 2016, Ilmu Kewarganegaraan (Civics), Yogyakarta, Penerbit Ombak, p. 2.

society.³ Professor Laski says, "A person is a citizen who enjoys the facilities of the state and pays obedience to state."⁴ In the context of these concepts we can define that a person is a citizen who lives in the state permanently, owes allegiance to state, wants the welfare of the state and enjoys all the social and political rights given by the state. The citizens, as the members of state, enjoy the state given status. In civics, it is called citizenship. That is; citizenship is the virtue or status of the citizens.

To be considered national by operation of law means that an individual is automatically considered to be a citizen under the terms outlined in the State's enacted legal instruments related to nationality or that the individual has been granted nationality through a decision made by the relevant authorities. Those instruments can be a Constitution, a Presidential decree, or a citizenship act. Most people are considered nationals by operation of only one State's laws—usually either the laws of the State in which the person was born (*jus soli*) or the laws of the State of which the person's parents were nationals when the individual was born (*jus sanguinis*).⁵

A citizen is an inhabitant of State or nation based on descent (*jus sanguinis*), Place of birth (*jus soli*), have full obligation and right as a citizen

³ Md. Mohsin, 2008, "Citizenship and State", available at http://wikieducator.org/Citizenship_and_State, accessed on Wednesday, October 26th, 2016 at 2.33 a.m.

⁴ Ilawstudent, 2016, "Citizenship", available at <http://ilawstudent.com/library/chapter-3-citizenship/>, accessed on October 26th, 2016 at 1.47 a.m.

⁵ Marilyn Achiron, Carol Batchelor and Philippe Leclerc, 2005, *Nationality and Statelessness: A Handbook for Parliamentarians*, Inter-Parliamentary Union, pp. 10-11.

of a state.⁶ As quoted by David Feldman from Marshall in his article “Mutable Citizenship”, Marshall distinguished between three facets of citizenship: civil rights, political rights and social rights.⁷ What Marshall meant by civil rights necessary for individual freedom-liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice. For the political rights, what Marshall means is the right to participate in the exercise of political power as a member of a body invested with political authority or as an elector of the members of such a body. By social rights, Marshall refers to the whole range from the right to modicum of economic welfare and security to the right to share to the full in the social heritage and to live the life of a civilized being according to the standards prevailing in the society.⁸

Law No. 12 Year 2006 concerning on Citizenship of Republic of Indonesia stated that Citizenship includes all matters pertaining to the citizen of a state. While according to this Citizenship Act, citizen of a state is the citizen of a certain state as determined by law. The article two of Citizenship Act explained that the Indonesian Citizens are native Indonesian people and other nationalities who are formally legalized under law as citizens of the Republic of The law also explains that citizenship of the Republic of Indonesia may only be acquired through certain requirements

⁶ H.A Prayitno and Trubus Rahardiandyah, 2006, *Pendidikan KADEHAM Kebangsaan, Demokrasi, dan Hak Asasi Manusia*, ISBN 979-8398-47-5, Jakarta, Universitas Trisakti, p. 273.

⁷ Bridget Anderson and Vanessa Hughes, 2015, *Citizenship and Its Others*, ISBN 978-1-137-43508-8, England, Palgrave and Macmillan, p. 28.

⁸ Jeff Manza and Michael Sauder, 2009, *Inequality and Society*, New York, W.W. Norton and Co, pp. 148-149.

provided in this law.

B. Dual Citizenship

At the end of the twentieth century and the beginning of the twenty-first century, the issue of dual/multiple citizenship has been on the political agenda in many countries around the world. Whereas in some countries (like Germany) there has been strong resistance against the acceptance of dual citizenship and in a few countries (like the Netherlands) the turn towards a liberal policy in the 1990s has been reversed. Overall, we are witnessing a clear and worldwide trend that countries accept or at least tolerate dual citizenship.⁹

Dual citizenship conceptually can be defined in narrow or broad sense. In narrow sense, dual citizenship can refer to the status of the person who has two citizenship status from different countries. In broad sense, dual citizenship can be enlarged not only limited in two citizenship status but can be more than 2 (two) citizenship or multiple citizenship. What will be discussed in this research is not about dual citizenship in abroad sense but it focus in narrow sense of dual citizenship.

In recent decades, multiple citizenship has become widely accepted in democratic states.¹⁰ Dual citizenship is no longer a silent political issue in some countries e.g. Netherlands, Germany, Hungary, and South Korea.

⁹ Joachim K. Blatter, 2011, "Dual Citizenship and Theories of Democracy", *Citizenship Studies*, Vol. 15 No. 6–7, October 2011, ISSN 1469-3593, Taylor & Francis, p. 769.

¹⁰ Szabolcs Pogonyi, 2011, "Dual Citizenship and Sovereignty", *Nationalities Papers* Vol. 39 No. 5, September 2011, ISSN 1465-3923, Routledge Taylor & Francis Group, p. 685.

Even in some countries, the development of dual citizenship is not in line with the development of political plan, for example, in the US, Canada and Great Britain. However, it becomes the important issue in the field of law and social science in that country.¹¹

C. Citizenship In Indonesia

Indonesia is one of the country that rejects the concept of dual citizenship. But in order to cover the children from inter marriage, then Indonesia applied limited dual citizenship or partial dual citizenship. The application of limited dual citizenship in Indonesia started since the enactment of Law No. 12 Year 2006 as the amendment of Law No. 62 Year 1958.

After the independence of Indonesia, the issue relating to the citizenship of Indonesia is being ruled under the constitution of Indonesia and also legislation. The Constitution of Indonesia (1945 Constitution) about citizens of Indonesia mentioned in the article 26 of 1945 Constitution. Citizens shall consist of indigenous Indonesian peoples and persons of foreign origin who have been legalized as citizens in accordance with law.

¹¹ Joachim K. Blatter, *et all*, 2009, "Acceptance of Dual Citizenship: Empirical Data and Political Contexts", *Working Paper Series "Glocal Governance and Democracy" 02*, ISSN 1662-923X, p.4, Taken from http://www.unilu.ch/eng/workingpapers_287648.aspx, downloaded on Saturday, October 23rd, 2016 at 7.03 a.m.

Juridically, based on article 26 paragraph (1) 1945 Constitution, terminology of Indonesian citizens is divided into two group of people, they are:

Origin citizens (indigenous), they are the original inhabitants of the country. For example Javanese, Madurese, Dayak, and ethnic by descend who are since the birth they already a citizens of Indonesia. Foreigners, for example, Chinese, Middle East, India, the USA and others on that have been approved on the basis of legislation become Indonesia citizen (WNI).¹² As the implementation of article 26 of 1945 Constitution, on April 10, 1946 Law No. 3 Year 1946 about State Citizens and State Residence being enacted.¹³ This law covers the whole aspect relating to the citizenship of Indonesia. Regulation concerning on Indonesian citizenship after the independence of Indonesia in 1945 actually has been changed in a few times such as:

- a. Law No. 3 Year 1946 about State Citizens and State Residence,
- b. Law No. 62 Year 1958 about Citizenship of the Republic of Indonesia
- c. Law No. 3 Year 1976 about the amendment of article 18 of Law No. 62 Year 1958 about Citizenship of the Republic of Indonesia
- d. Law No. 12 Year 2006 about Citizenship of Republic of Indonesia

¹² Amey Yunita Luntungan, 2013, "Naturalisasi Warganegaraan Asing Menjadi Warganegara Indonesia Menurut Undang-Undang Nomor 12 Tahun 2006 tentang Kewarganegaraan", *Lex et Societatis*, Vol. 1 No. 5, pp. 43-44.

¹³ *Ibid*, p. 44.

The applicable law of citizenship in Indonesia now days is Law no 12 Year 2006 about Citizenship of Republic of Indonesia. This law enacted in August 1st, 2006 and since the enactment of this law means the previous law concerning on citizenship in Indonesia automatically inoperative.

Some principles followed in Indonesian Citizenship Act are:

a. Jus Soli

One of the principal ways that most people acquire their citizenship on the basis of birth in a territory. This principle applied in Indonesia by limitation. It means that this principle is only valid for children born from inter marriage parents as regulated in Indonesian Citizenship Act.¹⁴

b. Jus Sanguinis

This citizenship principle decides the citizenship status of the person based on descend, not based on place of birth. As quoted by Eric C. Dahlin & Ann Hironaka from Brubaker, jus Sanguinis is Citizenship status which is based on familial ties, or blood relationships. The ties demarcate sharp ideological boundaries between citizens and foreigners, and they maintain tighter control of political and cultural boundaries.¹⁵

¹⁴ Iseult Hononan, 2010, "The Theory and Politics of Ius Soli", *Robert Schuman Centre for Advanced Studies: EUDO Citizenship Observatory*, European University Institute, Italy, p. 2, downloaded from <http://eudo-citizenship.eu/docs/IusSoli.pdf>, accessed on Friday, December 16th, 2016 at 3.17 p.m.

¹⁵ Eric C. Dahlin & Ann Hironaka, 2008, "Citizenship Beyond Borders: A Cross-National Study of Dual Citizenship", *Sociological Inquiry* Vol. 78 No. 1, Alpha Kappa Delta, p. 57.

- c. Single citizenship principle. This principle is used to decide one citizenship for each people.
- d. Limited dual citizenship principle is the principle to determine dual citizenship for children as mentioned in the regulation.

The main substance in Indonesian Citizenship Act covers such following issues including:

- a. Who are the citizen of Republic of Indonesia
- b. Requirements and procedures for acquiring citizenship of Republic of Indonesia
- c. Loss of Indonesian Citizenship
- d. Requirements and procedures for regaining citizenship of Republic of Indonesia
- e. Provisions for criminal acts

Based on Indonesian Citizenship Act, article 2 of this act, clearly mentions that Indonesian citizens are native Indonesian people and other nationalities whom are formally legalized under law as citizens of the Republic of Indonesia. Then article 3 also explains on who are the citizens of Indonesia.

Other nationalities can ask for naturalization for acquiring Indonesian citizenship. The requirements for naturalization are mentioned in article 9 of Indonesian Citizenship Act. They are:

- a. Aged 18 (eighteen) or married;

- b. At the time of forwarding the application, the applicant has resided in Indonesian territory for at least 5 (five) consecutive years or at least 10 (ten) years intermittently
- c. Sound in health and mind;
- d. Being able to speak Bahasa Indonesia and acknowledges the state basic principles of Pancasila and the 1945 Constitution;
- e. never legally prosecuted due to acts of crime and sentenced 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.

Applications for naturalization should be forwarded in Indonesia in writing by the applicant using Bahasa Indonesia, on paper affixed with sufficient duty stamp and addressed to the President of the Republic of Indonesia through the Minister.

The citizens of Indonesia also can loss their Indonesian citizenship status because some following factors as mentioned in Indonesian Citizenship Act, as follows:

- 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. Is declared of having relinquished their citizenship by the President at their voluntary request, the person is aged above 18 (eighteen) or has married, is living abroad, and with the relinquishment of their citizenship does not become stateless because of it;
- d. Has entered into foreign military service without prior approval from the President;
- e. Has voluntarily entered into the services of foreign entities in a position where by law, such a position in Indonesia is only reserved for citizens of the Republic of Indonesia;
- f. Has voluntarily declared allegiance to a foreign country or part of the said foreign country;
- g. not obligated but has voluntarily participated in a referendum that is civic in nature for a foreign country;
- h. 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; or
- i. Living outside the territories of the Rep. of Indonesia for 5 (five) consecutive years for non-official purposes, without legal reason and deliberately refuses to declare their intention to remain as Indonesian citizens before the 5 (five) year limit ends, and in each of the next 5 (five) years the said person fails to declare their intention of retaining their citizenship to the Indonesian Representative offices in which the said person's residence is under

their jurisdiction although the said Representative Office has duly informed them in writing, as long as the incumbent does not become stateless because of such negligence.

For Indonesian citizens who lost the citizenship status, based on article 31 of Indonesian Citizenship Act, they may regain their citizenship through naturalization procedures as stipulated in Articles 9 to Article 18 and Article 22 of Indonesian Citizenship Act. For Indonesian citizens who lost their citizenship status due to marriage or stay long time abroad without expanding the passport, for regaining their Indonesian citizenship status, they only need to forwarding a written application to the Minister without going through the procedures as mentioned in Article 9 to Article 17.