

## CHAPTER FOUR

### FINDING AND ANALYSIS

#### A. History of Indonesian Citizenship System

After the independence of Indonesia, the issue relating to the citizenship in Indonesia was regulated under the constitution of Indonesia and also legislation. The 1945 Constitution about citizens of Indonesia was mentioned that citizens shall consist of indigenous Indonesian peoples and persons of foreign origin who have been legalized as citizens in accordance with law.<sup>1</sup> From that article has not been able to determine who are considered an Indonesian citizen, the article requires further regulation of citizenship regulated by law.

Nine months after the independent of Indonesia precisely on April 10, 1946, the Indonesian government began to form a special law that regulated the citizenship system in Indonesia, namely Law No. 3 Year 1946 on Citizens and Residents of the State.<sup>2</sup>

In the history, law concerning of citizenship system in Indonesia was changed for several times. They cover:

- a) Law No. 3 Year 1946 about State Citizen and Citizenship
- b) Law No. 62 Year 1958 about Indonesian Citizenship

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<sup>1</sup> Article 26 of 1945 Constitution

<sup>2</sup> Noor M Aziz, 2011, Laporan Kompendium Hukum Bidang Kewarganegaraan, Pusat Penelitian dan Pengembangan Sistem Hukum Nasional, Badan Pembinaan Hukum Nasional Kementerian Hukum dan HAM RI, downloaded from [http://www.bphn.go.id/data/documents/laporan\\_kompendium\\_hukum\\_bidang\\_kewararganegaraan.pdf](http://www.bphn.go.id/data/documents/laporan_kompendium_hukum_bidang_kewararganegaraan.pdf), accessed on January 27<sup>th</sup>, 2017, p. 11.

c) Law No. 12 Year 2006 about Indonesian Citizenship

1. In The Regime of Law No. 3 Year 1946

The first regulation which was concerned on the citizenship system in Indonesia started from April 10, 1946 by promulgation of the Law No. 3 Year 1946. This law was agreed by the Government of Indonesia and Working Committee Central Indonesian National Committee (BP KNIP). But on February 27, 1947, the Government of Indonesia by approval from BP KNIP issued law No. 6 Year 1947 about the changes in the law No. 3 Year 1946. Through the Law No. 6 Year 1947, there were some changes in the Law No. 3 Year 1946. The fundamental alteration was the law No. 3 Year 1946 that was declared retroactive since August 17, 1945.<sup>3</sup>

The Law No. 3 Year 1946 in conjunction with law No. 6 Year 1947 was then enhanced into Law No. 3 Year 1946 with some changes from Law No. 6 Year 1947.<sup>4</sup> Moreover, on 1947 the government also issued Law No 8 Year 1947 and Law No. 11 Year 1948 in order to extend the time for using the right of repudiation.<sup>5</sup>

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<sup>3</sup> *Ibid*, p.11.

<sup>4</sup> Winarno, 2009, *Kewarganegaraan Indonesia Dari Sosiologis Menuju Yuridis*, Bandung, Alfabeta, pp. 107-108.

<sup>5</sup> Amalia Diamantina, 2014, Protection to Child Citizenship Right in Mixed Marriage in Indonesia, *South East Asia Journal of Contemporary Business, Economics and Law*, Vol. 4, ISSN 2289-1560, p. 29 Taken from [seajbel.com/wp-content/uploads/2014/06/KLL4311-Amalia-Diamantina-PROTECTION-TO-CHILD.pdf](http://seajbel.com/wp-content/uploads/2014/06/KLL4311-Amalia-Diamantina-PROTECTION-TO-CHILD.pdf) Law No. 3 Year 1946 + Citizenship, downloaded on Monday, May 15<sup>th</sup>, 2017 at 5.41 a.m.

In line with the mandate from the 1945 Constitution, Law No. 3 Year 1946 regulated about state citizen and citizenship of Indonesia. This law covers some aspects as the followings:

a. Who are the citizens and resident of Indonesia

Basically, in this law, the term of citizen and resident are different. Based on Law No. 3 Year 1946 citizen are: (a) The origin Indonesian within the territory of Indonesia; (b) Anyone who does not belong to the above group but derives from a member of that group and is born, domiciled and residence within the territory of Indonesia, and the persons who do not come from the intended group, born and domiciled and resident for at least 5 consecutive years most recently within the territory of the State of Indonesia, who is 21 years old or has married; (c) People who get the citizenship of the Indonesia by naturalization; (d) Legal or legalized children by his father, who at the time of the birth of his father has the citizenship of the State of Indonesia; (e) A child born within 300 days after his father, who has the citizenship of Indonesia, dies; (f) A child only whose mother is recognized in a legitimate way, which at the time of the birth of his mother has the citizenship of Indonesia; (g) A child who was appointed in a legal manner by an

Indonesian citizen; (h) A child born in the territory of the State of Indonesia, whose father or mother is not recognized in a legal manner; (i) Children born in the territory of the State of Indonesia, who is not known who his parents or the citizenship of his parents country; (j) The corporation or institution established based on applied law of the Republic of Indonesia and domiciled within the territory of the State of Indonesia.<sup>6</sup> While, about resident of Indonesia was also mentioned in this laws. Residents of Indonesia are the people who stay in Indonesia at least 1 year consecutively. The status of resident of Indonesia will be lost when they live outside of Indonesia.<sup>7</sup>

b. Status of wife's citizenship

The status of wife's citizenship in this law based on Law No 3 Year 1946 was that a woman during the marriage followed her husband's citizenship. Changes or statements to change the status of citizenship cannot be done by a wife, but must be done by her husband.<sup>8</sup>

c. Loss and acquiring of Indonesian citizenship

This law also regulated about lost and regain the citizenship of Indonesia. Based on Law no. 3 Year 1946, the citizenship of a father or mother automatically applies

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<sup>6</sup> Article 1 of Law No. 3 Year 1946

<sup>7</sup> Article 14 of Law No. 3 Year 1946

<sup>8</sup> Article 2 of law No 3 Year 1946

to his legitimate son, who is not yet 21 years old and not married. Also for a widow who get Indonesian citizenship by naturalization, will automatically apply to her legitimate child, who is not yet 21 years old and not married.<sup>9</sup>

Whereas for the loss of citizenship, there are some aspects that can be the causes for losing the citizenship, they are (a) Obtaining citizenship from another State, (b) Does not get the president's permission to enter into the army or civil servant of another State and (c) Woman who marriage with foreigner.<sup>10</sup>

Basically, there are two ways or systems for a person to gain or lose the citizenship status of the country. First, the person actively seeks to obtain or renounce his nationality, which is commonly known as an active stelsel. Conversely, a person obtains or loses his citizenship status without any legal action, which commonly known as passive stelsel.

## 2. In the Regime of The Republic of United States of Indonesia

On January 1<sup>st</sup> 1950, the United States of Indonesia officially organized the country based on the new constitution which was called as the 1949 Federal Constitution. This change began with a

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<sup>9</sup> Article 3 of Law No. 3 Year 1946

<sup>10</sup> Winarno, 2009, *op. cit.*, p. 110.

round table conference held in Den Hag on August 23 to November 2 1949.<sup>11</sup> The changes which had happened in Indonesia in 1950 in order to gain the recognition of Indonesia's sovereignty from the Dutch kingdom brought up other changes in term of the system, law and also the citizenship system in Indonesia at the time.

The transformation of the form of the Indonesia from unitary state to the federal state also changed the main basis of Indonesia. Previously 1945 Constitution was the main basis of Indonesia but since the transformation of Indonesia to be federal state the main basis of Indonesia also changed to be 1949 Federal Constitution.

In the new constitution, the issue of citizenship was stated in the article 5 and article 194 1949 Federal Constitution. The article 5 paragraph 1 stated that concerning on the regulation of the citizenship would be regulated in the federal law. But in its journey, the federal laws referred to in Article 5 paragraph 1 of the Constitution of the Republic of the United States of Indonesia never exist.<sup>12</sup>

At that time the citizenship system in Indonesia was based on Article 194 of 1949 Federal Constitution which determined that while waiting for citizenship arrangements with the legislation referred to in Article 5, paragraph 1, Then those who are already citizens of the United States of Indonesia, are those who have the

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<sup>11</sup> R. Abdoel Djamali, 2012, Pengantar Hukum Indonesia, ISBN 979-421-257-1, Jakarta, Rajawali Pers PT. RajaGrafindo Persada, p. 113.

<sup>12</sup> Noor M Aziz, 2011, *op. cit.*, pp. 15-16.

nationalities in accordance with the agreement on the determination of citizenship which is attached to the Charter on the Agreement regarding distribution of citizenship.<sup>13</sup>

The article 194 of the 1949 Federal Constitution is a Charter on the Agreement Regarding Distribution of Citizenship that was resulted from Round Table Conference held in The Hague as published in State Gazette 1950 Number 2.

According to this Agreement, all Dutch citizens remained the holder of their Dutch nationality. However, if they were born or had been living in Indonesia for at least six months, they had the right to obtain for Indonesian citizenship within two years after the recognition of Indonesian independence. Approximately 70 million Dutch subjects, non-Dutch citizens, would become Indonesian citizens and lose their former status. The Agreement stated that the use of the right to obtain or to renounce should be carried out within two years, from 27 December 1949 to 27 December 1951.

As it is known that in the results of the Round Table Conference has been stipulated the Agreement on the Distribution of Citizens (State Gazette 1950 Number 2) in 3 important matters:<sup>14</sup>

- a. The Dutch who continued to uphold Dutch citizenship, against this Dutch person who was born in Indonesia or resided in Indonesia at least 6 (six) months prior to 27

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<sup>13</sup> Article 194 of 1949 Federal Constitution of the United State of Indonesia

<sup>14</sup> Noor M Aziz, 2011, *op. cit.*, p. 16.

December 1949. Within 2 (two) years after the transfer of sovereignty, might declare the election of Indonesian citizenship. In this case, the Dutch descendants obtained Indonesian citizenship by using the option right and they obtained an active Indonesian citizenship.

- b. Persons classified as Dutch citizens of indigenous Indonesians, residing in Indonesia obtaining Indonesian citizenship, except those residing in Suriname or the Netherlands Antilles, within a specified time may elect Dutch Citizens.
- c. The people who were according to the Dutch East Indies legal system belonged to the Foreign East-the Dutch foreigners who were not Dutch, were known as Arabs and Chinese. Against these people there were several possibilities:
  - 1) If residing in Indonesia, they obtain Indonesian citizenship (Article 5);
  - 2) If residing in the Kingdom of the Netherlands, they are still Dutch citizens (Article 6).

The existence of this citizenship agreement indicates that since the enactment of the regulation, the matter concerning the regulation of citizenship in Indonesia refers to the new regulation. When we observed further, the approval of the distribution of



citizens is not enough in answering the reality in the society. Moreover, the article 5 paragraph 1 stated that the concerning on the citizenship is regulated in special regulations or the Federal Law. It implies that Law No. 3 Year 1946 is no longer valid. This condition made the citizenship system at that time faced many problems. One of them was for the children who were born at the time of Indonesia turning into a federal state, precisely on December 27, 1949, because the child was not included in the agreement on the distribution of citizenship. It also happened to the foreigners who were not from the Netherlands but from other European and Eastern foreigners. They were also not listed in the agreement on the division of citizenship, so that for these people did not have a clear citizenship at the time.

However, the 1949 Agreement was only applied for six months. On 17 August 1950, the Indonesian government unilaterally announced the replacement of the 1949 Federal Constitution by the 1950 Temporary Constitution, which changed the institutional form of the state from federal to unitary. The 1950 Temporary Constitution stipulated two important criteria of being Indonesian citizens, namely:<sup>15</sup>

- a. Those who were the holder of Indonesian citizenship based on the 1949 Agreement, and

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<sup>15</sup> Article 144 of the 1950 Temporary Constitution

- b. Those who had not yet opted for their citizenship based on the 1949 Agreement, but were Indonesian citizens according to the existing law at the time.

### 3. In the Regime of Law No. 62 Year 1958

In 1951 Indonesia returned to the unitary state. The returning of Indonesia into the unitary state caused Indonesia adjusting the system that has been changed from 1949 to 1950. The changes of system gave many impacts in terms of the application of laws in Indonesia and not excluding laws governing citizenship. The problems that arose in citizenship arrangements in Indonesia during the United State of Indonesia's period required Indonesia to reorganize the applicable citizenship system in Indonesia. Therefore, based on articles 5 and 144 and article 89 of the UUDS, Law No. 62 Year 1958 was issued and came into force since its enactment on August 1, 1958.

The main principle used in Law no. 62 Year 1958 was *ius sanguinis* which means that one's nationality is based on descent. This principle is clearly seen in the few articles of governing citizenship obtained by a child from his parents. But in some circumstances, this law prevented someone from becoming apatriote, This law also applies the principle of *ius soli* which is seen in article 1 letter f, g, h and i, i.e.<sup>16</sup>

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<sup>16</sup> Winarno, 2009, *op. cit.*, pp. 121-122.

- a. those born within the territory of the Republic of Indonesia as long as both parents are unknown;
- b. a child found within the territory of the Republic of Indonesia as long as both parents are unknown;
- c. persons who are born within the territory of the Republic of Indonesia, if both parents have no nationality or as long as the nationality of both parents is unknown;
- d. persons born within the territory of the Republic of Indonesia who have not acquired the nationality of the father or mother at the time of their birth and as long as they do not acquire the nationality of either their father or mother;

The presence of a new specific law which is regulating the citizenship is expected to solve all the problems of citizenship that has occurred or will happen in the future. Obviously this law is not much different from the previous special law which is concerned on the issue of citizenship in Indonesia namely Law No. 3 Year 1946.

In order to fulfill the need of society, the law No. 62 Year 1958 covers some aspects. They are:

- a. About who are the citizens and resident of Indonesia

Citizens of the Republic of Indonesia are:<sup>17</sup>

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<sup>17</sup> Article 1 of Law No. 62 Year 1958

- 1) Persons who, based on the legislation and/or treaties and/or regulations prevailing since the August 17, 1945 Proclamation, are already citizens of the Republic of Indonesia;
- 2) Persons who at their birth have a legal family relationship with their father, a citizen of the Republic of Indonesia, with the understanding that said citizenship of the Republic of Indonesia starts as from the existence of that legal family relationship and that said legal family relationship is created before the persons concerned have reached the age of 18 or before they are married at an earlier age;
- 3) A child born within 300 days after the decease of its father, if said father is a citizen of the Republic of Indonesia at the time of his death;
- 4) Persons whose mother is a citizen of the Republic of Indonesia at their birth, if at that time they have no legal family relationship with their father;
- 5) Persons whose mother is a citizen of the Republic of Indonesia at their birth, if their father has no nationality, or as long as the nationality of the father is unknown;

- 6) Those born within the territory of the Republic of Indonesia as long as both parents are unknown;
- 7) A child found within the territory of the Republic of Indonesia as long as both parents are unknown;
- 8) Persons who are born within the territory of the Republic of Indonesia, if both parents have no nationality or as long as the nationality of both parents is unknown;
- 9) Persons born within the territory of the Republic of Indonesia who have not acquired the nationality of the father or mother at the time of their birth and as long as they do not acquire the nationality of either their father or mother;
- 10) Persons who have acquired the citizenship of the Republic of Indonesia according to the regulations of this law.

This law also recognizes the term naturalization that can be used by foreign citizens to become Indonesian citizens. As stated in the law that the citizenship of the Republic of Indonesia because of naturalization is acquired with the validity of the decree of the Minister of Justice who grants this naturalization.<sup>18</sup> This indicates that Indonesia provides an opportunity for those foreign nationals

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<sup>18</sup> Article 5 paragraph 1 of Law No. 62 Year 1958

who wish to obtain Indonesian citizenship. However, it is certainly accompanied by certain terms and conditions as stated in the next chapter. In order to present a petition for naturalization, the petitioner shall:<sup>19</sup>

- a. have reached the age of 21;
- b. be born within the territory of the Republic of Indonesia or at the time of presenting the petition be domiciled in said region for at least the last 5 consecutive years or in total 10 inconsecutive years;
- c. if the person is a married man – obtain the approval of his wife (wives);
- d. master the Indonesian language properly and have appropriate knowledge of the history of Indonesia and have never been penalized because of having committed an offence which harms the Republic of Indonesia;
- e. be in a spiritual and physical healthy condition;
- f. pay to the State's Treasury an amount between IDR.500,-to IDR.10.000,- of which the amount is fixed by the Tax office at the residence of the petitioner, based on the evident petitioner's monthly earnings, with the stipulation that it may not exceed the evident earnings for one month;
- g. have a fixed income;

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<sup>19</sup> Article 5 paragraph 2 of Law No. 62 Year 1958

h. have no nationality, or have lost his nationality if the petitioner acquires the citizenship of the Republic of Indonesia or states at the time to have released another nationality according to the legal provisions of the country of origin or according to the legal provisions of the Agreement on the settlement of the bi-nationality between the Republic of Indonesia and the country concerned.

Whether the application for citizenship is accepted or rejected, it depends on the decision from The Minister of Justice with the approval of the Cabinet Council.<sup>20</sup> If the petition for naturalization is rejected, the petitioner may send in a repeat petition.<sup>21</sup>

Other than through application for naturalization, citizenship of Indonesia may also be granted to foreigner with several reasons. As stated in the law that naturalization may also be granted for the interest of the State or because of services rendered to the State, by the Government with the approval of Parliament.<sup>22</sup> Another way for acquiring citizenship of Indonesia may be through marriage.<sup>23</sup> But through marriage, the woman of Indonesian citizens may also loss their citizenship if and when she makes a statement as to that effect within one year after her marriage has been contracted except if,

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<sup>20</sup> Article 5 paragraph 4 of Law No. 62 Year 1958

<sup>21</sup> Article 5 of Law No. 62 Year 1958

<sup>22</sup> Article 6 of Law No. 62 Year 1958

<sup>23</sup> Article 7 of Law No. 62 Year 1958

with the loss of the citizenship of the Republic of Indonesia, she becomes stateless.<sup>24</sup>

Regarding on the loss of Indonesian citizenship, it was also regulated in this law. Citizenship of the Republic of Indonesia lost because of:<sup>25</sup>

- a. Acquiring another nationality out of one's own free will, with the understanding that if the person concerned is, at the time that said other nationality is acquired, in the territory of the Republic of Indonesia, the citizenship of the Republic of Indonesia is only considered lost if the Minister of Justice declares it lost with the approval of the Cabinet Council on its own initiative or on the request of the person concerned;
- b. Not having rejected or having released another nationality whilst the person concerned has had the opportunity as to that effect;
- c. Being recognized by an alien as his/her child if the person concerned has not reached the age of 18 and is not married yet and does not become stateless with the loss of the citizenship of the Republic of Indonesia;
- d. Being legally adopted by an alien as his/her child if the child concerned has not reached the age of 5 yet and it does not

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<sup>24</sup> Article 8 of Law No. 62 Year 1958

<sup>25</sup> Article 17 of Law No. 62 Year 1958



become stateless at the loss of the citizenship of the Republic of Indonesia;

- e. Being declared as lost by the Minister of Justice with the approval of the Cabinet Council on the request of the person concerned if the person has reached the age of 21, is domiciled abroad and does not become stateless at the declaration of the citizenship of the Republic of Indonesia as being lost;
- f. Entering a foreign military service without prior permission from the Minister of Justice;
- g. Without prior permission from the Minister of Justice, entering a foreign state's service or the services of an organization of nations not entered by the Republic of Indonesia as member, if the position held in the state's service may, according to the regulations of the Republic of Indonesia, only be held by a citizen or the position in said nation organization service requires on oath or official promise;
- h. Taking the oath or making the promise of loyalty to a foreign country or a part thereof;
- i. Without being obliged, participating in a vote for one and another of constitutional nature for a foreign country;

- j. Having a passport or certificate which has the character of a passport from a foreign country in one's name which is still valid;
- k. Other than for state's service, domiciling abroad during 5 consecutive years by not declaring one's wish as to continue being a citizen before the period has lapsed and thereafter every two years; such a wish shall be declared to the Representation of the Republic of Indonesia at one's residence.

Anything mentioned in the article 17 above, the implementation is excepted for those who have not reached the age of 18 yet, except if they are married, the five and two years' period mentioned above is applicable as of the date that he reaches the age of 18.

However, if we see further, in regulating the matter of citizenship, basically there are still some problems and shortcomings inside the Law No. 62 Year 1958. These problems include the lack of attention to women's rights, so it's like there is discrimination between men and women. This can be seen clearly in determining the nationality of a child born of intermarriage or not allowing a woman in marriage to apply for a citizen.

Law No. 62 of 1958 does not give full right for women in determining citizenship status either for themselves or for their

children. This is because Law No. 62 of 1958 applies the principle of citizenship *ius sanguinis* which in determining the nationality of a child resulted from mixed marriage determined based on a familial legal relationship with his parents which are more emphasized on civil relationships with his father.<sup>26</sup>

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

The above mentioned is essentially contrary to CEDAW which clearly stated that: (1) States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. (2) States Parties shall grant women equal rights with men with respect to the nationality of their children.<sup>27</sup>

## **B. The Citizenship System of Indonesia in the Era of Law No. 12 Year 2006**

After a few changes of regulation of citizenship system in Indonesia, nowadays Indonesia applies the Law No. 12 Year 2006 about Indonesia Citizenship System. Law No. 12 Year 2006 is valid since the enactment on

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<sup>26</sup> Article 1 letter b of Law No. 62 Year 1958

<sup>27</sup> Article 9 of Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

August 1, 2006. Law No. 12 Year 2006 changes the Law No. 62 Year 1958 about The Citizenship of Indonesia. Based on consideration on Law No. 12 Year 2006, it is necessary to amend the regulation of citizenship system in Indonesia, because the Law No. 62 Year 1958 is no longer appropriate with the development of society and the constitution of the Republic of Indonesia.

The importance of amendment of Law No. 62 Year 1958 can also be reviewed from several aspects, namely:<sup>28</sup>

#### 1. Philosophical Aspect

Philosophically, Inside of Law No. 62 Year 1958 there are some provisions which are not in line with the values Pancasila as the basis of the state. They are the Law No 62 Year 1958 discriminatory in nature, less of protection of human rights and equality between the people, and lack of guarantees for the fulfillment of human rights and equality between citizens, and less protection of women and children.

#### 2. Juridical Aspect

Juridically, the constitutional basis for the formulation of the law is the Temporary Constitution 1950 which has been inapplicable since July 5, 1959 and back to the 1945 Constitution of the Republic of Indonesia. In its development, the Constitution

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<sup>28</sup> Winarno, 2009, *op. cit.*, pp. 126-127.

of 1945 has been changed many times which has more attention to the human rights and citizens' rights.

### 3. Sociological Aspects

Sociologically, the Act is no longer in accordance with the development and the needs of Indonesian society as part of the international community in the global association, which requires equality of treatment and status of citizens before the law and the existence of gender equality.

From the 3 aspects above, it can be seen that Indonesia should have a new regulation that regulates the issue of citizenship in Indonesia. So since the enactment of Law no. 12 Year 2006, all previous legislation governing citizenship in Indonesia by itself does not apply. This is in accordance with the principle of legislation that is the principle of *lex posteriori derogate lex priori*.

In accordance with article 1 of Law no. 12 Year 2006 that Citizenship is all matters relating to citizens, therefore citizenship covers several aspects such as:

- a) Who are the citizenship of Indonesia.
- b) Requirements and procedures of obtaining the citizenship of the Indonesian.
- c) The loss of the Indonesian citizenship.
- d) Requirements and procedures of regaining the Indonesian citizenship

Thus, Law no. 12 Year 2006 contains several aspects that are needed in organizing citizenship in Indonesia, among others:

- a) Who are the citizenship of Indonesia.
- b) Requirement and procedures of obtaining the citizenship of the Indonesian.
- c) The loss of the Indonesian citizenship.
- d) Requirements and procedure of regaining the Indonesian citizenship
- e) Provisions for criminal acts

Based on Law no. 12 Year 2006, the meaning of a citizen is a citizen of a state is the citizen of a certain state as determined by law.<sup>29</sup> Therefore in the next article the law emphasize that Indonesian Citizens are native Indonesian people and other nationalities whom are formally legalized under law as citizens of the Rep. of Indonesia.<sup>30</sup>

The definition of “native Indonesian people” stipulates that Indonesians entitled to be citizens of the Republic of Indonesia are people whom from birth have never acknowledged any other citizenship at their own volition.<sup>31</sup> While the meaning of citizens of Indonesia who are the people of other nations are those who obtain Indonesian citizenship through a citizenship based on applicable laws and regulations.<sup>32</sup>

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<sup>29</sup> Article 1 paragraph 1 of Law No. 12 Year 2006

<sup>30</sup> Article 2 of Law No. 12 Year 2006

<sup>31</sup> Article 2 of article by article explanation to decree of the republic of Indonesia number 12 Year 2006

<sup>32</sup> Noor M Aziz, 2011, *op. cit.*, p. 27.

From the above understanding of indigenous people of Indonesia, it can be concluded that the formation of Law No. 12 Year 2006 is intended to prevent the occurrence of apartheid or stateless against a person. This is supported by the application of the principle of *Ius Soli* or the nationality based on the place of birth, so that all children born in Indonesia will become the nation of Indonesia and or the citizens of Indonesia.

Then for further explanation about who the citizens of Indonesia, Law no. 12 Year 2006 explained that:<sup>33</sup>

A Citizen of the Republic of Indonesia is:

- a. All persons whom by law and/or based on agreements between the Government of the Rep. of Indonesia and other countries prior to the application of this Decree have already become Citizens of the Rep. of Indonesia;
- b. Children born through legal wedlock from an Indonesian father and mother;
- c. Children born through legal wedlock from an Indonesian father and an alien mother;
- d. Children born through legal wedlock from an alien father and an Indonesian mother;
- e. Children born through legal wedlock from an Indonesian mother and a stateless father or whose country does not provide automatic citizenship to their offspring;

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<sup>33</sup> Article 4 of Law no. 12 Year 2006

- f. Children born within 300 (three hundred) days after the father has passed away, under legal wedlock, and whose father is an Indonesian citizen;
- g. Children born out of legal wedlock from an Indonesian mother;
- h. Children born out of legal wedlock from an alien mother who is claimed by the Indonesian father as his natural child and such claim is declared before the child reaches the age of 18 (eighteen) or before the child has married; w.parlemen.net
- i. Children born in Indonesian territory whose parents are of undetermined citizenship at the time of the child's birth;
- j. Children newly born and found in Indonesian territory and whose parents are undetermined;
- k. Children born in Indonesian territory whom at the time of birth both parents were stateless or whose whereabouts are undetermined;
- l. Children born outside the Republic of Indonesia from an Indonesian father and mother whom due to law prevailing in the country of birth automatically provides citizenship to the child;
- m. Children born from a father and mother who was granted citizenship and died before the parents had sworn their allegiance.

Therefore, Then the subject of who becomes an Indonesian citizen based on Law No.12 Year 2006 has been clear.



Another subject in this law is regarding on the acquisition of Indonesian citizenship. In addition to the native people of Indonesia, people of other nations who want to obtain Indonesian citizenship are also regulated in Law no. 12 Year 2006 in Chapter 3 of the law. The process of obtaining such citizenship generally can be divided into 4 ways, i.e.:<sup>34</sup>

#### 1. By Application

Process of acquiring the Indonesian citizenship through application requires the applicant to fulfill the requirements as listed in the article 9 Law No. 12 Year 2006, namely:

- a. being 18 (eighteen) years old 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. Having sound in health and mind;
- d. Being able to speak Bahasa Indonesia and acknowledge the state basic principles of Pancasila and the 1945 Constitution;
- e. Being never legally prosecuted due to acts of crime and sentenced jail for 1 (one) year or more;
- f. Upon acquiring Indonesian Citizenship, relinquishing any other citizenship;
- g. Employed and/or has a steady income; and
- h. Paying a naturalization fee to the Government Treasury.

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<sup>34</sup> Winarno, 2009, *op. cit.*, pp. 130-132.

## 2. By Declaration

As mentioned in the article 19 of Law No. 12 Year 2006, foreign citizens legally married to Indonesian citizens may acquire Indonesian citizenship by declaring citizenship in front of the Official. Such declaration as mentioned may be carried out if the incumbent has already resided in Indonesia for a minimum of 5 (five) consecutive years or at least 10 (ten) year intermittently, unless the acquisition of such citizenship shall render them with double citizenship.<sup>35</sup>

## 3. By Awarding

The Article 20 of Law No. 12 Year 2006 declared that alien persons deserving merit for services to the Rep. of Indonesia or for the country's best interests may be given Indonesian citizenship by the President after receiving the deliberations of the People Representative Council, unless the granting of such citizenship shall result in double citizenship to the said person.<sup>36</sup>

The definition of "Alien persons deserving merit for services to the Rep. of Indonesia" refers to foreign citizens who because of their outstanding contributions to humanity, science and technology, culture, environment and sports have enhanced the nation's status. The definition of "Alien persons may be given Indonesian citizenship for the country's best interests" referring to

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<sup>35</sup> Article 19 of Law No. 12 Year 2006

<sup>36</sup> Article 20 of Law No. 12 Year 2006

foreign citizens who are considered by the country of having and being able to give outstanding benefit towards the nation's sovereignty and enhancing the country's progress, especially Indonesia's economy.<sup>37</sup>

#### 4. By Declaration for Choosing

Acquiring Indonesian citizenship by declaration for choosing is valid only for the child who at least 18 years old or married and was recognized as Indonesian citizen in the previous, as mentioned in the article 4 and 5 in this law regarding on who are the citizens of Indonesia.

In addition to the issue of gaining the citizenship of Indonesia, the matters of loss of Indonesian citizenship also discussed in this law. Basically, the loss of a nationality means that the person's rights and duties to the country also lost.<sup>38</sup> The loss of citizenship status of the person lead into the breakup of a citizen's relationship with his country. There are several causes for a person to lose citizenship, among others:

1. Renunciation, i.e. voluntary action to leave one of two or more citizenship status hold from two or more countries.
2. Termination, namely termination of citizenship status as a legal action because the person has another nationality from another country.

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<sup>37</sup> Explanation of article 20 of Law No. 12 Year 2006

<sup>38</sup> Emmy Wulandari, 2014, Perolehan Kembali Status Kewarganegaraan yang Hilang Berdasarkan Undang-Undang Kewarganegaraan, *Yuridika* : Volume 29 No 3, September-Desember 2014, p. 305, downloaded from <http://e-journal.unair.ac.id/index.php/YDK/article/download/373/207>, accessed on February 17, 2017 at 3.41 p.m.

3. Deprivation, i.e. revocation or forcible termination or dismissal of citizenship status pursuant to the command competent authority due to the existence of error or violation in obtaining citizenship status.<sup>39</sup>

The loss of citizenship was also mentioned in Law No. 12 Year 2006 which stated that an Indonesian citizen will lose their citizenship due to the following:<sup>40</sup>

- 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;

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<sup>39</sup> Jimly Asshiddiqie, 2006, Pengantar Ilmu Hukum Tata Negara Jilid II, Jakarta, Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi RI, p. 151.

<sup>40</sup> Article 23 of Law No. 12 Year 2006

- g. Was 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.

Besides the article 23, loss of citizenship is also mentioned in another article, specifically in term of marriage:<sup>41</sup> (1). Female citizens of the Republic of Indonesia who marry male citizens of foreign nationality will automatically lose their Indonesian citizenship if by law of her husband's country, the citizenship of the wife will follow that of the husband as a result of their union; (2). Male citizens of the Republic of Indonesia who marry female citizens of foreign nationality will automatically lose their

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<sup>41</sup> article 26 of Law No. 12 Year 2006

Indonesian citizenship if by law of his wife's country, the citizenship of the husband will follow that of the wife as a result of their union;

Also in the article 28, a person acquiring Indonesian citizenship based on further information to be proved false or forged, not valid, or due to discrepancies made by an authorized institution, is declared void and their citizenship is annulled.

A person who has lost their Indonesian citizenship may regain their citizenship through naturalization procedures as stipulated in Articles 9 to Article 18 and Article 22.<sup>42</sup> Except for those who lost their citizenship Due to the matters contained in Article 23 letter I and Article 26 paragraph 1 and paragraph 2, the applicant does not need to go through the procedures referred to in articles 9 to 17.<sup>43</sup> Regarding the procedure of obtaining citizenship, loss of citizenship and regaining Indonesian citizenship is further stipulated in Government Regulation no. 2 Year 2007 on the procedure of obtaining, losing, cancellation, and reclaiming Indonesian citizenship. The existence of Government Regulation No. 2 Year 2007 is in order to carry out the mandate of article 22, article 30 and article 35 Law No. 12 Year 2006 as it sounds:<sup>44</sup>

a. Article 22

Further provisions on procedures for acquiring Indonesian citizenship is administered by the Government Regulation.

b. Article 30

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<sup>42</sup> Article 31 of Law No. 12 Year 2006

<sup>43</sup> Article 32 paragraph 1

<sup>44</sup> Winarno, 2009, *op. cit.*, pp. 135-136.

Further provisions on requirements and procedures for the loss and annulment of Indonesian citizenship are provided in the Government Regulations.

c. Article 35

Further provisions on the requirements and procedures for regaining Indonesian citizenship are provided in the Government Regulations.

The provisions for criminal acts, in this law are regulated in the article 36 until 38:

Article 36

- (1) Failure by Officials whom due to their negligence to perform their appointed duties and responsibilities as mentioned in this Decree causing the loss of a person's right to acquire or regain and/or lose their Indonesian citizenship is punishable by 1 (one) year incarceration in jail.
- (2) Deliberate acts of crime as mentioned in Paragraph (1) is punishable by 3 (three) years incarceration in jail.

Article 37

- (1) submit false letters or documents by forging the said letters and documents to acquire Indonesian citizenship or regain Indonesian citizenship is punishable by at least 1 (one) year incarceration in jail and a maximum of 4 (four) years in incarceration in jail and is subjected to a fine of at least IDR

250.000.000,00 (two hundred and fifty million rupiahs) and a maximum fine of IDR 1.000.000.000,00 (one billion rupiah).

- (2) Persons who deliberately use false information, including false information under oath, (submit false letters or documents by forging the said letters and documents to acquire Indonesian citizenship or regain Indonesian citizenship is punishable by at least 1 (one) year incarceration in jail and a maximum of 4 (four) years in incarceration in jail and is subjected to a fine of at least IDR 250.000.000,00 (two hundred and fifty million rupiahs) and a maximum fine of IDR 1.000.000.000,00 (one billion rupiah).

#### Article 38

- (1) In the event that such crime as stipulated in Article 37 is done by a corporate, criminal punishment is applied to the corporate and/or management acting on behalf and for the corporation.
- (2) The corporate as mentioned in Paragraph (1) is punishable by a criminal fine of at least IDR 1.000, 000.000,00 (one billion rupiah) and a maximum of IDR 5.000.000.000,00 (five billion rupiah) and their license is thereby withdrawn.
- (3) The corporate management as mentioned in Paragraph (1) is punished to at least 1 (one) year to 5 (five) years incarceration in jail and is fined by at least IDR 1.000.000.000,00 (one



billion rupiah) to a maximum amount of IDR 5.000.000.000,00 (five billion rupiah).

### C. Case Analysis

#### 1. Case of Archandra Tahar

Archandra Tahar (Arcandra) was graduated from Institut Teknologi Bandung (ITB) in 1994. He continued for master study in Texas A&M University in the field of Ocean Engineering since 1996 until 1998 and in 2001 he finished the doctoral philosophy in Texas A&M University in the field of Ocean Engineering. Since in the United States, Arcandra has worked in many places. On July 27<sup>th</sup>, 2016, Arcandra was appointed as a Minister in the Indonesian Ministry of Energy and Mineral Resources. Previously, before he is appointed as the Minister, he was worked as President in Petroneering Houston Company in Texas since 2013. This company was concerned in the field of oil and energy.<sup>45</sup>

The appointment of Arcandra as the Minister brought up the problem since 13<sup>rd</sup> August, 2016 due to the problem of dual citizenship. Arcandra had been reported holding a dual citizenship status from Indonesia and United States. Based on the report, Arcandra got the citizenship status from United States since March

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<sup>45</sup> 2016, "Sosok Menteri ESDM Baru", available at <http://energyworld.co.id/2016/07/27/ini-sosok-baru-menteri-esdm-baru/>, published on July 27, 2016, accessed on August 11<sup>st</sup>, 2017, 7:57 p.m.

2012, Arcandra was also reported to have used the United States passport 4 times to enter into Indonesia.<sup>46</sup>

As a response of the issue of dual citizenship hold by Arcandra, Joko Widodo as the President of Indonesia terminated him from the position as the Minister on August 15, 2016.<sup>47</sup> President has pointed out Coordinating Minister for Maritime Affairs Luhut Binsar Pandjaitan as the caretaker until the appointment of the definitive Minister of ESDM.<sup>48</sup>

When we analyze the case of Arcandra Tahar from the perspective of Law No. 12 Year 2006 about Indonesian Citizenship, Arcandra was lost the status of Indonesian citizens since he made an oath as the citizen of United States. The Article 23 of Law No. 12 Year 2006 mentions that every citizens will lost their citizenship status when he or she make an oath to be the citizens of another country. The loss of the citizenship status ruled under the Law No. 12 Year 2006 stated that the citizenship status is lost, which means that the loss of the citizenship status does not need or require any procedure for the loss of the citizenship status, the citizenship status

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<sup>46</sup> BBC Indonesia, 2016, "Soal kewargaan AS, Menteri Archandra Tahar: 'sudah dikembalikan'", available at [http://www.bbc.com/indonesia/berita\\_indonesia/2016/08/160814\\_indonesia\\_archandra\\_warga\\_ne\\_gara](http://www.bbc.com/indonesia/berita_indonesia/2016/08/160814_indonesia_archandra_warga_ne_gara), published on August 14<sup>th</sup>, 2016, accessed on August 12<sup>nd</sup>, 2017, 3.41 a.m.

<sup>47</sup> Ihsanuddin, 2016, "Jokowi Copot Menteri ESDM Arcandra Tahar", available at <http://nasional.kompas.com/read/2016/08/15/21092281/jokowi.copot.menteri.esdm.arcandra.tahar>, published on August 15<sup>th</sup>, 2016, at 21:09, accessed on August 12<sup>nd</sup>, 2017, 4.33 a.m.

<sup>48</sup> Yuliana Ratnasari, "Jokowi Akhirnya Copot Arcandra", available at <https://tirto.id/jokowi-akhirnya-copot-arcandra-bAS2>, August 15<sup>th</sup>, 2016, accessed on August 12<sup>nd</sup>, 2017, 3.54 a.m.

will directly lost when he or she makes an oath as the citizen in another country.

The appointment of Arcandra Tahar as the minister in July 2016 was a big mistake for the country. The Indonesian government had pointed out the foreigner as the minister in Indonesia. Arcandra could not be considered as the Indonesian citizen since he had made an oath as the United States citizens, even he is one of the assets of the country and he is one of the Indonesian origin. The appointment of Arcandra as the minister has violated various laws like Law No. 39 Year 2008 about State Ministry. The appointment of Arcandra Tahar as the Minister has violated Article 22 of Law No. 39 Year 2008 about State Ministry which requires Indonesian citizenship to be appointed as the Minister in Indonesia. Based on Article 23 of Law No. 12 Year 2006 about Indonesian citizenship, and Article 31 of Government Regulation No. 2 Year 2007 Arcandra is not an Indonesian citizen anymore since he has made an oath as the citizen of United States. Based on the regulation in the United States, even the United States recognize the dual citizenship system but the citizens of United States will lost their citizenship status when he or she have a position in the government in another state. It indicates that Arcandra has lost his citizenship status from United States since he is appointed as the minister in Indonesian Ministry of Energy and Mineral Resource. The loss of United States citizenship status makes

Arcandra Tahar being stateless since July 27<sup>th</sup>, 2016 and this condition violates the Non-Stateless Principle. As mentioned in the 1954 Convention relating to the Status of Stateless Persons, the term stateless person means a person who is not considered as a national by any State under the operation of its law.<sup>49</sup>

In the dilemma of the case of Arcandra, the Indonesia government may use Article 20, 23 letter i and Article 32 paragraph (1) of Law No 12 Year 2006 in order to protect Arcandra from the stateless. Based on Article 20, Arcandra may acquiring the status of Indonesian citizen from the President since Arcandra considered as the person deserving merit for services to the Republic of Indonesia or for the country's best interests. Indonesia also may use the Article 23 letter i and 32 pharagraph (1), in Article 23 the persons who live in another country for 5 years length and more, does not declare their intention of retaining their citizenship to the Indonesian Representative offices will lost their citizenship status as long as the incumbent does not become stateless because of such negligence. And based on Article 32 paragraph (1), Indonesian citizens who have lost their citizenship as mentioned in Article 23 Item i may regain their Indonesian citizenship by forwarding a written application to the Minister without going through the procedures as mentioned in Article 9 to Article 17 of Law No. 12 Year 2006.

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<sup>49</sup> Article 1 paragraph (1) of 1954 Convention relating to the Status of Stateless Persons

## 2. Case of Gloria Natapradja Hamel

Gloria Natapradja Hamel (Gloria) was 16 years old and a student in Islam Dian Didaktika Senior High School in Depok, West Java.<sup>50</sup> She was appointed as the Flag Hoisting Troop for August 17<sup>th</sup>, 2016. On August 15<sup>th</sup>, 2016 Gloria was reported failed to perform as Flag Hoisting Troop August 17<sup>th</sup>, 2016 due to the issue of dual citizenship owned by her.<sup>51</sup> Gloria get her dual citizenship status from her parents, her mother Indonesian and her father France.

Basically, the problem faced by Gloria is not her mistake. Based on Law No. 12 Year 2006, the child from intermarriage is ruled under the Article 6 in this law. For those who are under the age of 18 (eighteen) and are unmarried, the children may choose their own citizenship status when they have reached the age of 18 years or marriage. But since Gloria was born before the Law No. 12 Year 2006 promulgated, in Article 41 was ruled that the children have to register within 4 years after the law is promulgated. The mistake is, the Gloria's mother does not register Gloria within 4 years after the law was promulgated. Which means that, the case of Gloria could be

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<sup>50</sup> Fabian Januarius Kuwado, 2016, "Ini Penjelasan Ibunda Gloria Natapradja soal Paspor Perancis Anaknya", available at <http://nasional.kompas.com/read/2016/08/15/18044991/ini.penjelasan.ibunda.gloria.natapradja.soal.paspor.perancis.anaknya>, published on August 15<sup>th</sup>, 2016 at 18:04, accessed on August 12<sup>nd</sup>, 2017, 7.03 a.m.

<sup>51</sup> Robertus Belarminus, 2016, "Sekolah Masih Berharap Gloria Jadi Anggota Paskibraka", available at <http://megapolitan.kompas.com/read/2016/08/16/11544811/sekolah.masih.berharap.gloria.jadi.anggota.paskibraka>, published on August 16<sup>th</sup>, 2016 at 11:54, accessed on August 12<sup>nd</sup>, 2017, 7:14 a.m.

said as administrative mistakes, since Gloria has not reached the age of 18 yet and unmarried.

#### D. The Concept of Dual Citizenship System in Indonesia

Dual citizenships have been in much of the debate over the years. Many developed countries such as US, UK, Australia, and Switzerland have no restrictions on holding dual nationality, whereas countries such as Singapore, Austria, India, and Saudi Arabia do not “recognize” or “restrict” dual citizenships, leading to automatic loss of citizenship upon acquiring other. Some countries such as Austria, Spain may still grant dual citizenships upon certain special conditions under exceptional cases like celebrities. The following are list of countries which allow and do not allow dual citizenships.<sup>52</sup>

**Table 1.** list of countries which allow and do not allow dual citizenships

No.	The states Allowed Dual Citizenships	The states Not Allowed Dual Citizenships	The states Allowed Dual Citizenships with Requirements
1	Australia	Andorra	South Africa
2	Barbados	Austria	Egypt
3	Belgium	Azerbaijan	Germany
4	Bangladesh	Burma	Spain
5	Canada	Bahrain	Sri Lanka
6	Cyprus	Botswana	Pakistan
7	United States	Brunei	Turkey
8	United Kingdom	China	

<sup>52</sup> List of countries that allow or disallow Dual Citizenship, available at <http://dlgimmigration.com/united-states-citizenship/list-of-countries-that-allow-or-disallow-dual-citizenship/>, accessed on August 10<sup>th</sup>, 2017, at 11.48 a.m.

9	Switzerland	Czech Republic	
10	South Korea	Denmark	
11	Greece	Fiji	
12	France	India	
13	Finland	Indonesia	
14	Iraq	Ecuador	
15	Italy	Estonia	
16	Israel	Iran	
17	Ireland	Poland	
18	Hungary	Papua New Guinea	
19	Iceland	Japan	
20	Sweden	Peru	
21	Slovenia	Kuwait	
22	Syria	Kenya	
23	Serbia	Kazakhstan	
24	Armenia	Chile	
25	Lebanon	Kiribati	
26	Malta	Poland	
27	Tonga	Korea	
28	Philippines	Kuwait	
29	Sierra Leone	Denmark	
30		Latvia	
31		Singapore	
32		Slovakia	
33		Ecuador	
34		Lithuania	
35		Solomon Islands	
36		Fiji	
37		Malaysia	
38		Mauritius	
39		Netherlands	

40		United Arab Emirates	
41		Romania	
42		Thailand	
43		Mexico	
44		Nepal	
45		Venezuela	
46		Norway	
47		Zimbabwe	
48		Mauritius	
49		Myanmar	
50		Nepal	

Source: D'Alessio Law Group, List of countries that allow or disallow Dual Citizenship, available at <http://dlgimmigration.com/united-states-citizenship/list-of-countries-that-allow-or-disallow-dual-citizenship/>,

Since the independence era, Indonesia has used the single citizenship system. It is aimed to maintain the nationality of the Indonesian citizens and to prevent negative impacts from foreigners. Commonly the states which fight for their independence will tend to use the system of single citizenship. But in the process, the regulations on citizenship in Indonesia has been changed many times, but in all of these changes, there is no citizenship law in Indonesia which specifically states that Indonesia absolutely implements the concept of dual citizenship system.

The first law which is concerned with citizenship in Indonesia is law No. 3 Year 1946. In this law, Indonesia applied the concept of single citizenship. When we refer to the Law No. 3 Year 1946, this law applied *jus*



*solis* and *jus sanguinis* principle with the rights of repudiation.<sup>53</sup> The next law is Law No. 62 Year 1958. This law also does not recognize the concept of dual citizenship. Law No. 62 Year 1958 emphasized the use of *jus sanguinis* principle but beside the principle of *jus sanguinis*. Law No. 62 Year 1958 also applied the principle of *jus soli*. The implementation of the principle of *jus soli* can be seen in the article 1 letter f, g, h, i. The implementation of these two principles in Law No. 62 Year 1958 does not mean that this law recognizes the concept of dual citizenship.

The issue of dual citizenship in Indonesia was firstly famous in 1949. In the history, in 1949 the Communist succeeded to seize the power from Kuo Min Tang, and People's Republic of China (PRC) was borne at the time. This state used the law of citizenship with the *jus sanguinis* principle which means that all of the people who have the Chinese's descent, they are the citizen of PRC including all the Chinese people in Indonesia and it is causing the dual citizenship in Indonesia.<sup>54</sup> Based on law in Indonesia, dual citizenship is prohibited in Indonesia, which means that it becomes a problem for Indonesia and China in terms of the citizenship. In order to resolve the dual citizenship happened at the time, there was a discussion between Indonesian Minister of Foreign Affair, Sunario and PRC Minister of Foreign Affair, Chou En-Lai on April 22, 1955. The result of the discussion was known as Dual Citizenship Agreement of Indonesia and China. The agreement was ratified in Law No. 2 Year 1958. The aim of this

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<sup>53</sup> Article 1 letter b of Law No. 3 Year 1946

<sup>54</sup> Imam Choirul Muttaqin, 2011, *Kewarganegaraan Ganda Terbatas Dalam Perspektif Hak Asasi Manusia*, Tesis Universitas Indonesia, p. 78.

law to resolve the status of dual citizenship in Indonesia and to prevent the dual citizenship happen in the future. In the Law No. 2 Year 1958, the way to solve the dual citizenship was by refusing one of the citizenship status owned by the people who hold the dual citizenship status from Indonesia and China.<sup>55</sup>

On April 10, 1969, Law No. 2 Year 1958 was amended by Law No. 4 Year 1969. The amendment was conducted because there was a special treatment to the Chinese people in a long period. Based on the new decision, for those who have Indonesia citizenship based on Law No. 2 Year 1958 they will still become an Indonesian citizen and it is also valid for those who have the legal relationship with them.

In the process, Law No. 62 Year 1958 amended by Law No. 12 Year 2006 by considering the Philosophical, Juridical and Sociological Aspects of Law No. 62 Year 1958 at the time was inappropriate with the condition of Indonesia.<sup>56</sup> The presence of Law No. 12 Year 2006 indirectly leads Indonesia to apply the concept of dual citizenship, although nowadays the concept of dual citizenship in Indonesia only applied in limited to the children as defined in the law.<sup>57</sup> Law No. 12 Year 2006 applied *jus soli* and *jus sanguinis* principle in deciding the citizenship status as stated in article 4 in this law. In term of dual citizenship, it is stated in the article 6 in this law. For those who are under the age of 18 (eighteen) and are unmarried, the children may choose their own citizenship status. This article clearly shows

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<sup>55</sup> *Ibid*, p. 79

<sup>56</sup> *Ibid*, pp. 80-81

<sup>57</sup> Article 6 of Law No. 12 Year 2006

the concept of dual citizenship but limited to the children from intermarriage until the child has reached the age of eighteen or until the child has married. When the child has reached the age of 18 and has marriage, they have to choose one of the citizenship status owned previously. The implementation of dual citizenship in Indonesia is one of the solution for the protection of the rights of the children from intermarriage.

#### **E. The Advantages and Disadvantages of Implementing Dual Citizenship System in Indonesia**

The implementation of dual citizenship system certainly gives a new spirit for the Indonesian diaspora in various countries. The implementation of dual citizenship system in Indonesia is one of a big hope from the Indonesian diaspora today. The issue of implementing dual citizenship in Indonesia has been famous since August 2016, precisely after the existence of the case of Arcandra Tahar and Gloria Natapradja Hamel. Thus, both issues lead the Indonesian to consider about implementing dual citizenship. However, the implementation of dual citizenship cannot be directly implemented in Indonesia. There should be a deepest study on the effect of the dual citizenship in Indonesia. Indonesia needs to consider about the advantages and disadvantages of the implementation of dual citizenship in Indonesia. There will be some advantages and disadvantages when Indonesia apply dual citizenship system.

## 1. The Advantages of implementing dual citizenship in Indonesia

From the view of the advantages, the implementation of dual citizenship system in Indonesia provide such benefits both for the citizens and also for the country itself.

The advantages for the citizens when the Indonesia apply dual citizenship are that it will be easier for the Indonesians who live in the develop countries such as going to another state without visa and for the Indonesian who hold US passport or other will be easily to have an intellectual property right and other facilities in their living country.<sup>58</sup>

Dual citizenship also provides a full capacity for diaspora to act transnationally, because they have full access to employment opportunities abroad and in their homeland. This status can also stimulate domestic investment related to economic capacity. In addition, it should be considered that the role of diaspora in developing the country will be very big if it can be maximized. As stated by Wahid Supriyadi<sup>59</sup> that dual citizenship plays an important role in optimizing the role of Indonesian diaspora abroad to benefit Indonesia. Learning from China, how they can use the

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<sup>58</sup> Ahmad Jazuli, 2017, Diaspora Indonesia dan Dwi Kewarganegaraan dalam Perspektif Undang-Undang Kewarganegaraan Republik Indonesia, *JIKH* Vol. 11 No. 1 Maret 2017, p 101, download from <http://ejournal.balitbangham.go.id/index.php/kebijakan/article/download/215/pdf>, accessed on September 9<sup>th</sup>, 2016, at 4.31 p.m.

<sup>59</sup> Triono Wahyu Sudiby, 2015, "Laporan dari AS: Jalan Panjang Mengupayakan Dwi Kewarganegaraan Indonesia", available at <http://news.detik.com/berita/2921957/jalan-panjang-mengupayakan-dwi-kewarganegaraanindonesia>, Published on Friday, May 22<sup>nd</sup>, 2015, at 11:26 a.m. accessed on September 7<sup>th</sup>, 2016, at 12.59 a.m.

diaspora. When they began to open themselves in 1979, the first concern was the potential of the diaspora. During the first twenty years of China's development, there were USD307 billion of incoming investment, and 50 percent from the diaspora.

The same thing also pointed out by Amith Singh,<sup>60</sup> that the diaspora has a very important power in building relationships between the countries, for the example, the Indian diaspora. In simple, there are three reasons why the diaspora community is the most prominent base.

Firstly, in the side of economy, we can see how the diaspora may contribute through their highest income and increase every year. This income surely increases the amount of remittance received by Indonesia when they send their money to their family in Indonesia. The increasing of remittance also leads to the increasing of GNP (Gross National Product)<sup>61</sup>. Based on the study conducted by Task Force Immigration and Citizenship (TFIK), dual citizenship system which is applied in some countries leads to the increasing of GNP dramatically in that country such as Pakistan, Sri Lanka, India and Bangladesh.<sup>62</sup> Another benefit in the

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<sup>60</sup> GRFDT Seminar Series Indian Diaspora: Emerging Issues and Challenges available at <http://grfdt.com/EventDetails.aspx?Type=Events&TabId=30>, accessed on September 9<sup>th</sup>, 2016, at 2.31 p.m.

<sup>61</sup> GNP is a total income of the country in 1 year, include the value of production of the citizens of the country while inside or outside the country. (source: <https://alpari-forex.org/id/beginner/glossary/gross-national-product/>)

<sup>62</sup> Ahmad Jazuli, 2017, *op. cit.*, p 101.

side of economy is ease of transactions, investment, business, and encourage construction and development.

Secondly, in the aspect of politic, diaspora can be ambassador in promoting Indonesia where they live. Diaspora plays an important role in strengthening the relationship between the countries of origin and receiving countries.

Thirdly, in the cultural aspect, diaspora may also contribute to introduce the Indonesian culture in their living country. It is important in order to conserve our culture. More diaspora also can be an ambassador in promoting the tourism places in Indonesia.

Jusuf Kalla also explains the benefit when the citizenship law in Indonesia allows the citizens for having dual citizenship status. If there are talented Indonesians living abroad, they can be called back to the Indonesia without worrying about losing their citizenship status. For example, there are many Indian citizens live in the United States to work in the famous technology companies such as Google and Microsoft, anytime if the state needs them, they can come back at any time because the constitution of India allows their citizens to hold dual citizenship.<sup>63</sup>

Other advantages in applying the concept of dual citizenship

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<sup>63</sup> Dani Prabowo, 2016, "Menurut JK, Ini Untung-Rugi jika Indonesia Terapkan Dwi-kewarganegaraan", available at <http://nasional.kompas.com/read/2016/08/19/16323831/menurut.jk.ini.untung-rugi.jika.indonesia.terapkan.dwi-kewarganegaraan> published on Friday, August 19<sup>th</sup>, 2016 at 16:32 p.m., accessed on Friday, October 11<sup>st</sup>, 2016 at 15:21 p.m.

are:<sup>64</sup>

- a. Increasing the competitiveness and state revenue
  - b. Enhancing employment opportunities
  - c. Linking for investment, negotiation, technology transfer and infrastructure development
  - d. Encouraging the enhancement of cooperation's among countries (Economy, Social & Law)
  - e. Enabling family reunion, asset circulation and cultural exchange (language, cultural activity, idea)
  - f. Increasing the potential of human resources, transfer of competence and skills in order to reduce dependence on foreigners
  - g. Maintaining regional stability or international peace.
  - h. Enabling entitlement to social programs, such as education, health care, and pensions;
  - i. Enabling property ownership;
  - j. Possessing Unrestricted residency; and
  - k. Having sense of belonging through personal ties to more than one country.
2. Disadvantages of implementing dual citizenship in Indonesia

Besides a lot of advantages gained in the implementation of dual citizenship system, there are also many disadvantages or

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<sup>64</sup> Eka Martiana Wulansari, 2015, Konsep Kewarganegaran Ganda Tidak Terbatas Dalam Sistem Kewarganegaraan Di Indonesia, *Jurnal RechtsVinding* 09 April 2015, ISSN 2089-9009, p.3.

obstacles in implementing dual citizenship system in Indonesia. These disadvantages or obstacles do not only influence the state but also give an impact to the society itself.

Disadvantages which is impact to the society is that there will be double obligation for the person who hold dual citizenship status. These double obligations can be in the form of military services or taxation which is imposed to the persons who hold dual citizenship status. The persons who hold dual citizenship have to devoted to both countries and obey the regulation in both countries including in the taxation matter. Beside double obligations, the persons who have dual citizenship also have a problem in performing the rights and obligation as the citizen. It happens because many factors, one of them is the differences of law or system applied in that country. The differences of law or system applied in one country to another country bring through the contradictory one another.

Related to the performing of rights and obligations as the citizen, the persons who hold dual citizenship status have a potential to get different treatment from the country or the society in their living country. This different treatment can happen in the social life or in the field of political rights in their living country because they are not an origin people of the country.

Other disadvantages in the implementation of the dual



citizenship system which are effect to the country.:<sup>65</sup> There is a potential of decreasing the loyalty to the State. It happens because someone has felt comfortable in his second country or get better service in the country where they live. There is also a possibility that someone who has dual citizenship will be more inclined to his second country because what he or she got in his second country is not available in his or her origin country. More, there is a possibility for them to bring his or her family move to their living country. When it happens, surely it will influence Indonesia especially in term of economic and development of the country.

Another negative aspect that should be considered and should be settled by the state that is the possibility of illegal act or avoid of law. It has a big potential to happen in the country which is applied dual citizenship systems. For those who hold dual citizenship status and they commit a crime, they can hide or get a protection in another country by using the status of dual citizenship, or by having dual citizenship status, they are trying to avoid the tax from the country.

Relating to the citizenship protection that hold dual citizenship, the country can be in dilemma to apply dual citizenship system. Hikmahanto<sup>66</sup> gives an example, when the foreigners who hold Indonesian citizenship status become hostage in the Abu

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<sup>65</sup> Eka Martiana Wulansari, 2015, *op. cit.*, p.3.

<sup>66</sup> International Law Expert from Universitas Indonesia

Sayyaf case, whether the foreigners who are not Indonesian origin should also be assisted by the Indonesian government?<sup>67</sup>

The implementation of dual citizenship system in the citizenship law in other countries and the benefits acquired by them inspire the idea for implementing dual citizenship system in Indonesia being proper to be consider to apply in Indonesia in the future. But the idea of implementing dual citizenship in Indonesia needs to have a deep research or discussion. This idea of implementing dual citizenship Indonesia is a very compatible with the current condition all over the world. The needs of the people now days towards the mobility from one country to another country are being wider or even unlimited.

The study conducted in this research shows a lot of fact regarding on the citizenship system in Indonesia since the past where it also gives an answer on the implementation of the single citizenship in Indonesia until nowadays. Then it leads to the new understanding on the citizenship in Indonesia in the future. By considering the needs of the society in the past, nowadays and in the future surely it is different.

The current global competition makes the state all over the world have to responsively fulfill the needs of their society in order to keep exist in the global competition. The implementation of dual citizenship in Indonesia is a demand as well as a big dream of the Indonesian diaspora over the past few

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<sup>67</sup> Isyana Artharini, 2016, "Problematika di balik kewarganegaraan ganda", available at [http://www.bbc.com/indonesia/berita\\_indonesia/2016/08/160817\\_indonesia\\_kewarganegaraan\\_ganda](http://www.bbc.com/indonesia/berita_indonesia/2016/08/160817_indonesia_kewarganegaraan_ganda), accessed on Thursday, March 16, 2017 at 9.17 p.m.

years. But until nowadays the changes of the citizenship system in Indonesia cannot be done, by considering that there should be a research and deep discussion in order to prevent the negative impacts from the implementation of dual citizenship in Indonesia.

Besides the tantalizing benefits of implementing dual citizenship system in Indonesia, the negative impacts of the changes of citizenship system in Indonesia should be considered by the Indonesian government.