



The existence and effectiveness of the law on the applicability of the constitutional rights of Citizens-Naturalization in elections in Indonesia

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Abstract

Indonesia is a country based on the Constitution of the Unitary State of the Republic of Indonesia of 1945, so that the basis of the country, has a basis on which it regulates human rights, human rights are not only the rights of Indonesian citizens, but the rights of foreign citizens through naturalization, both citizen statuses have the same rights in elections, and in this writing using juridical research, So that the research is based on laws and regulations, as well as a research approach with legal theory.

Keywords: Elections, legal effectiveness, naturalization

Introduction

Indonesia is a country that has the concept of unity, has long been initiated by the founding father, or better known as Ir. Soekarno and state figures, the concept of the unity of the Republic of Indonesia, bringing Indonesia to become a country of law, becoming a state of godliness, and having a morality, so as not to forget also Indonesia a country of law based on the 1945 Constitution. The 1945 Constitution includes the phrase Indonesia the state of law, in Article 1 paragraph 3, so that the Indonesian constitutional system is based on a 1945 Constitution, meaning that the existence of the life of the nation is stated in the 1945 Constitution, explicitly, the life of the state begins with the general election, in article 22 E, general elections have a meaning, that is, general elections are held directly, general, free, secret, honest, and fair every five years, vertically law / or based on a straight line of the basic law in the Basic Law there are constitutional rights of citizens that are less effective in their implementation, or it can be said that the effectiveness of the law in article 22 E, article 1 paragraph 2, and article 28 E paragraph 3, article 28D paragraphs 1 and 3 of these articles in the Basic Law, when remembering ¹the opinion of John Stuart Mill, legal theory, namely the theory of justice, then it is still far from a sense of justice that provides benefits, so that justice is subject to expediency, expediency is interpreted that for citizens in this case naturalized Indonesian citizens can feel a sense of voting in elections, in election regulations the existence and effectiveness of the law both related to existence, and the

¹ Karen Lebacqz, “Teori-Teori Keadilan, Six Theories of Justice”, (Nusamedia, Bandung, 2015), h.13



fact that the extent to which the law is obeyed or not obeyed, the existence of the applicability of the constitutional rights of citizens in an election does not have the right to vote in elections, in the election law number 7 of 2017, in the torso / or articles do not include naturalization sentences, in advancing a country, especially Indonesia which is a developing country, there needs to be a balance of voting rights in elections, The Indonesian state still needs the people or citizens, both Indonesian citizens and naturalized citizens, advancing a country in the future in elections does not only focus on the voters of Indonesian citizens, but naturalized Indonesian citizens have the same right to advance a country, especially Indonesia, meaning that they have the same right to vote in a general election, both Capres-Cawapres elections, as well as the legislature. Naturalized Indonesian citizens are citizens who were previously foreigners and carry out naturalization procedures in accordance with laws and regulations in Indonesia, renounce their original citizenship status, carry out the oath of allegiance to the Unitary State of the Republic of Indonesia. Naturalized Indonesian citizens have the right to obtain information related to the procedure of becoming a permanent voter whose name is listed on the permanent voter list, but every time there is a democratic-election party, naturalized Indonesian citizens often lack information related to the implementation of elections / or DPT during elections / or lack participation in general elections / or are not visible when choosing legislative candidates whose names are Indonesian citizens naturalization is mentioned to carry out voting in the conduct of elections. the existence of a democratic party in which democracy has been attached to a democratic society, meaning democratic in elections, the process of peaceful change of power, and outlined by the constitution, given that the principle of constitutional life that has the sovereignty of the people, then every citizen has the right to actively participate in every process of state decision-making, fundamentals / or fundamentals of elections as the executor of state life which has people's sovereignty. ²According to the opinion of Prof. Dahlan Thaib, people's sovereignty as a constitutional mandate which later became Representative Democracy is carried out by means of general elections, by electing people's representatives who will sit in the DPR, DPD, and DPRD, so that the main purpose of general elections is to allow people's representative institutions to function in accordance with the intentions of the 1945 Constitution as the main source of constitutional law. The people are citizens who reside in a state, are protected by the state and are guaranteed all rights as human beings, if they review or return to the sentence mentioned above, have not or are not able to carry out the legal basis of the Indonesian state, namely the 1945 Constitution relating to article 22 E, article 1 paragraph 2, and article 28 E paragraph 3, article 28D paragraphs 1 and 3, derived from these articles, in the form of a law as a regulation to meet the needs of citizens, both Indonesian citizens and naturalized Indonesian citizens to participate in elections, even when reviewing Law Number 12 of 2006 concerning Citizenship, that a citizen is required to apply, as stated in Chapter III on Terms and Procedures for Obtaining Indonesian Citizenship, The conditions that must be taken, as follows: a. have been 18 (eighteen) years old or have married. b. at the time of submitting the application, you have resided in the territory of the Republic of Indonesia for at least 5 (five) consecutive

² Dahlan Thaib, “Ketatanegaraan Indonesia Perspektif Konstitusional”. (Yogyakarta: total media, 2009)., h.105



years or at least 10 (ten) non-consecutive years, c. physically and spiritually healthy, d. can speak Indonesian and recognize the state basis of Pancasila and the 1945 Constitution of the Republic of Indonesia, e. never been sentenced for committing a criminal act that is threatened with imprisonment of 1 (one) year or more, f. if by obtaining citizenship of the Republic of Indonesia, do not become dual nationality, g. have a job and/or a fixed income, h. pay citizenship money to the State Treasury. A citizen who already has a regulatory decision relating to citizenship status in this case naturalization, then it is appropriate for the state, in the event that the government gives a naturalized person the right to carry out his obligations as a voter in elections as a naturalized Indonesian citizen, in this case it is the Permanent Voter List of DPT Naturalization. As for this writing, there is a formulation of the problem, namely: a. How is the authority of the government in the existence and effectiveness of the Law on the applicability of the constitutional rights of naturalized citizens in elections in Indonesia, b. How are the obstacles to government authority in the existence and effectiveness of the law on the applicability of the constitutional rights of naturalized citizens in elections in Indonesia, c. How is the government's authority to exist and the effectiveness of the law on the applicability of the constitutional rights of naturalized citizens in elections in Indonesia .

Government authority in the extension and effectiveness of the law on the applicability of the constitutional rights of naturalized citizens in elections in Indonesia

Indonesia is a country of law, an archipelagic country, which relies on the 1945 Constitution of the Unitary State of the Republic of Indonesia, so that there are people living in the Indonesian state, people who occupy an area that already has legality in the form of a valid identification card, in this case an identity card (KTP), or even the like, even the people are part of the country / or often called citizens, citizens are divided into foreign nationals, as well as Native Indonesian citizens, at the time of the democratic party or general election, the Original Indonesian citizen has been registered/or registered through the KPU/or KPUD office as a permanent voter list, through his ID card, when exercising his voting rights to vote, then the president and vice president who were previously presidential candidates and vice presidents, after declaring and taking an oath, the president becomes the head of government, where the head of government composes a working cabinet assisted by ministers, in the 1945 Constitution states that the president holds the power of government according to the Constitution, contained in Article 4 paragraph 1, the President is assisted by ministers of state, stated in article 17 paragraph 1, the understanding of the articles, meaning that after the president is sworn in, then to form a working cabinet, then fully the president is no longer a member of a political party, but the president is as the head of state, the head of government, and as the listener and executor of the will of the people, where the power of the president is covered by an authority, ³in State Administrative Law recognizes and understands authority, authority and authority, are two inseparable

³ Riawan Tjandra., *“Hukum Administrasi Negara”*, (Jakarta, Sinar Grafika, 2018), h.,96.



sentences, authority (authority, gezag), with authority (competence, bevoegheid), authority called power, which originates or is granted by law, while authority is only about an onderdeel / part, can be interpreted in authority there are powers, understanding elections is inseparable from democracy, democracy in terms of understanding the sovereignty of the people, the people govern and govern themselves (democracy). The people who have the right to regulate and determine the restrictions on themselves/ or the highest power are in the hands of the people (aux mains du peuple) and the exercise of democracy as pure as possible is "democratie directe"/or "direct", ⁴In the opinion of Arend Lijphart, states that adhere to a democratic system, in this case, include: a. there is freedom of expression of opinion, b. there is the right to vote in voting, as well as c. there is free and honest elections. The essence of elections is: a. the means of political legitimacy, through elections the validity of the ruling government can be enforced, as well as the resulting programs and policies. Elections are the most democratic means of forming a representative government, elections " the expression of democratic struggle", where the people determine who governs and what the people want the government to do. Second, elections are a means of transitioning government in a safe and orderly manner. Elections are expected to be able to produce a definitive and legitimate regeneration of leadership, so elections are a political mechanism to ensure the continuity of regular government changes. Third, the creation of representation, meaning to actualize or actualize in the aspirations of the people or the interests of the people / or in another sense that the aspirations of the people really / really occur and are carried out by the government, elections are not only the sovereignty of the people, but also build people's trust in the government. Fourth, elections for socialization and political education of the people. ⁵In the Black Law Dictionary, the understanding of constitutionality, namely, the consistency of the constitution, passed by the constitution, does not conflict with the constitution, is guaranteed and regulated by the Constitution, when reviewing the understanding of the black law dictionary, it can be understood that the exercise of citizens' rights in elections, has been regulated in the Constitution. Considering that in a decision of the Constitutional Court, namely: Constitutional Court Decision No. 102 / PUU-VII / 2009, and PUU-I / 2003 dated February 24, 2004 " the constitutional right of citizens to vote and be elected (right to vote and right to be candidate) is a right that guaranteed by the constitution, the Act and the International Convention, the restriction of deviation, the omission and abolition of such rights is a violation of the human rights of citizens". Considering the decision that in a case that has been raised and discussed by the Center for Constitutional Studies FH-Univ.Brawijaya, Constitutional Court Decision No. 102/PUU-VII/2009, has given new space in the implementation of the democratization process in Indonesia. The ruling that gives leeway to the administrative procedures for

⁴ Refly Harun., "*Pemilu Konstitusional*", (Depok, RajaGrafindo, 2016)., h.,35.

⁵Christianto Adri Talapessy., "Konstitusionalitas Kaidah"Presidential Threshold"Dalam Pemilihan Umum Presiden dan Wakil Presiden Tahun 2019, (Salatiga, 2018)., h.,9.



the conduct of the Presidential Election held on July 8, 2009, namely by allowing the use of Identity Cards (KTP) and passports in the electoral process, has more or less guaranteed the rights of citizens in the implementation of the democratic party. Constitutional Court Decision No. 102/PUU-VII/2009, has implications in its form as a basis for argumentation, which relates to the attitude and wisdom carried out by the KPUD to solve the problems of the Permanent Voter List (DPT) that arise, then the main consideration used by the Constitutional Court in resolving legal problems in this case is that DPT as an administrative procedure, It should not be possible to negate citizens' right to vote as a substantial constitutional right. So that the right to vote for citizens does not become lost by not fulfilling the provisions of the procedural nature (DPT), so it is necessary to seek a solution / method in relation to guaranteeing the rights of citizens in the electoral process itself, furthermore Violations of the right to vote for administrative reasons have occurred before in legislative elections, and are very likely or have the potential to occur in the implementation of regional elections. This is because the problem stems from the same root, namely the lack of organized population administration. If in the implementation of the Presidential Election it is possible to use ID cards and passports for voters who are not registered in the DPT, of course there is no reason to refuse their implementation in the implementation of the regional elections. Both are related to suffrage and administrative (organizer) issues of elections.

From this decision, the author in this idea, relating to the constitutional rights of citizens in relation to elections, is still not fulfilled the human rights of citizens by an Act / Regulation, so that in reality that the violation of the human rights of citizens through naturalization which is limited by provisions of an administrative nature / or regulatory policies related to the rights of constitutionality in elections. Understand the aspirations of the people / or the human rights of citizens and review the Election Law to date related to the constitutional rights of citizens which is from the fact that citizens are not only Indonesian citizens themselves, even citizens can come from the Naturalization procedure, understand naturalization in citizenship law, that have conditions that are met, including: a. the applicant is 21 years old, b. the applicant was born in Indonesian territory or at the time of application, the applicant resides in Indonesia for at least five consecutive years or ten non-consecutive years, c. is sufficiently able to speak Indonesian and has only knowledge of Indonesian history and has never been convicted of committing a crime in Indonesia, d. The applicant does not have citizenship or loses citizenship, if the applicant obtains Indonesian citizenship. The law related to elections is still contrary to the 1945 Constitution, contrary here it means that Indonesia and the government's authority in the existence of the applicability of the constitutional rights of citizens still enforce the constitutional rights of Indonesian citizens, but the existence and effectiveness of the law on the applicability of the constitutional rights of citizens in this case are Indonesian citizens through naturalization not or lack of effectiveness The law in this case is the basic law, as well as the effectiveness of the law on the applicability of the constitutional rights of citizens in elections still adheres to elections in Indonesian citizens themselves, or it can be interpreted as elections in the culture of their own country / or the politics of native Indonesian citizens. When reviewing from the existence and effectiveness of the law on the applicability of constitutionality rights,



the authority of the government in making, ratifying legal products, limited to electoral authority in the political realm of native citizens / or regulation of the permanent voter list of original Indonesian citizens, as well as the effectiveness of the law in the Election Law does not meet the sense of justice that brings benefits to Indonesian citizens through naturalization,⁶ So that Indonesia needs naturalization democracy in elections, meaning elections for the people, not only for the Indonesian people or Indonesian citizens, but also for naturalized citizens.

Obstacles to the authority of the government in the existence and effectiveness of the law on the applicability of the constitutional rights of citizens in elections in Indonesia.

The authority of the government / or government in exercising its power in accordance with laws and regulations, inseparable from internal conflicts / political conflicts of the nation in Indonesia, due to the politics of a nation, causes legal effectiveness in this case the basic law does not run optimally, so that the application of basic regulations, the Basic Law, and laws related to elections does not run smoothly, as for the obstacles factor in the authority of the government in The existence and effectiveness of the law on the applicability of the constitutional rights of citizens in elections, namely:

- a. Factors such as not / or not yet the establishment of implementing regulations, in this case government regulations, related to procedures for registering permanent voter lists for Indonesian citizens and Indonesian citizens through the Naturalization procedure
- b. Factor of not/or not having established a good management system relates to the management of procedures for registering permanent voter lists for Citizens.
- c. An inherent factor in this, is that there is still an understanding of colonialism.
- d. The political party factor that is the participant of the election, is a political party formed from the original Indonesian citizen.
- e. The factor of lack of unification or equality of opinion from the central and local governments is related to the applicability of the constitutional rights of citizens in this case Indonesian citizens through Naturalization.

Efforts to exercise government authority in the existence and effectiveness of the law on the applicability of the constitutional rights of citizens in elections in Indonesia.

In the big Indonesian dictionary, effort is a way, which is aimed at achieving goals, and there are problems that are resolved, so that they are related to the existence and effectiveness of the law on the applicability of the constitutional rights of citizens in

⁶ Uumbu Rauta, “Menggagas Pemilihan Presiden yang Demokratis dan Aspiratif”, (2014) 11, Jurnal Konstitusi. (600-616).



elections in Indonesia, these efforts, can be formed or use some of the legal theories, the efforts in question, in the form of:

- a. ⁷Legal effectiveness to the extent to which the law is obeyed by certain parties in the country / or government, legal effectiveness in this case the authority of the government in carrying out basic regulations is not fulfilled, then the basic regulations or the Basic Law can run effectively, it is necessary or able to form and ratify legal products in this case government regulations that aim to provide opportunities for Indonesian citizens through Naturalization, exercising the rights provided for by the constitution regarding the right to vote in elections, so the electoral law, necessary the existence of revisions or discussions in parliament, so that the electoral law can appear clearly the effectiveness of the law / or in other words a legal effectiveness of the law can have the nature of a sense of justice which is subject to the benefit of all people or the rights of citizens are guaranteed.
- b. Improving management of the KPU, in this case the KPU can make regulations derived from laws / or government regulations, relating to the implementation of the constitutional rights of citizens through naturalization allowed to exercise the right to vote in elections.
- c. Eliminating and reducing the understanding of the colonialism system, if former foreign nationals who have become Indonesian citizens through Naturalization use the right to vote in elections, or make an MoU which is an effort by naturalized Indonesian citizens to participate in democratic parties / or elections in Indonesia, do not use colonialism procedures, in this case the creation of political parties.
- d. Unification or equality of opinion from the central and local governments related to the applicability of the constitutional rights of citizens in this case Indonesian citizens through Naturalization, there needs to be legal responsiveness efforts from both central and regional governments related to the applicability of citizens' constitutional rights in elections, making legal products that respond to the wishes of the community, sometimes in using votes in elections, in fact native Indonesian citizens, not naturalized Indonesian citizens, the progress of the Indonesian nation does not only belong to native Indonesian citizens, even Indonesian citizens through naturalization have the same right to advance the Indonesian nation in any field.

Conclusion

The conclusion on this idea is related to the authority of the government in the existence and effectiveness of the law on the applicability of the constitutional rights of citizens in Indonesian elections is inseparable from the power covered by the Law, this power can run as well as possible or optimally, there is a need for additional regulations

⁷ Achmad Ali, “Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (JudicialPrudence)” , (Kencana Prenada Media Group, Jakarta, 2009)., h.375.

as implementers of the Law, namely the Election Law, power and authority become a forum in ensuring the rights of citizens in exercising the right to vote in elections, meaning that the forum changes or revises the Electoral Law more to ensure the rights of citizens in participation in exercising the right to vote, then the authority of the government can carry out government rulemaking policies aimed at regulating or implementing regulations of the Election Law, in this case regulating the implementation of the registration of suffrage or often called the permanent voter list, So that the legal responsiveness can run well according to the wishes of the community. The government together with former foreign nationals who have become naturalized Indonesian citizens make an MoU to be willing to participate in politics, or form political parties in accordance with applicable Indonesian laws and regulations.

Bibliography

Achmad Ali, *“Menguak Teori Hukum (Legal Theory) dan Teori Peradilan (Judicial Prudence)”*, (Kencana Prenada Media Group, Jakarta, 2009)

Christianto Adri Talapessy., *“Konstitusionalitas Kaidah” Presidential Threshold” Dalam Pemilihan Umum Presiden dan Wakil Presiden Tahun 2019”*, (Salatiga, 2018)

Dahlan Thaib, *“Ketatanegaraan Indonesia Perspektif Konstitusional”*. (Yogyakarta: Total Media, 2009)

Refly Harun., *“Pemilu Konstitusional”*, (Depok, RajaGrafindo, 2016)

Riawan Tjandra., *“Hukum Administrasi Negara”*, (Jakarta, Sinar Grafika, 2018)

Umbu Rauta, *“Menggagas Pemilihan Presiden yang Demokratis dan Aspiratif”*, (2014) 11, Jurnal Konstitusi. 600-616.

Constitution of the Unitary State of the Republic of Indonesia of 1945

Law of the Republic Indonesia Number 7 of 2017 concerning General Elections

Law of the Republic Indonesia Number 12 of 2006 concerning Citizenship