

Review of The Law of Special Citizenship on Naturalization in Indonesia

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Abstract

This study presents a legal review of the special citizenship law concerning naturalization in Indonesia, employing a normative juridical research method. The research approach includes statutory analysis, conceptual analysis, and comparative legal analysis, utilizing primary legal materials such as Law No. 12 of 2006 on Citizenship of the Republic of Indonesia, as well as secondary legal materials including academic texts and legal doctrines. The analysis examines two primary naturalization pathways: ordinary naturalization and special naturalization. Special naturalization is granted to foreigners who have rendered exceptional services to the Indonesian nation or who possess high expertise beneficial to national development. This study explores the legal criteria, procedural distinctions, and discretionary authority vested in the executive branch in granting special citizenship through a qualitative normative analysis. Furthermore, it identifies legal ambiguities, inconsistencies in implementation, and potential conflicts with constitutional principles of non-discrimination and legal certainty. The findings indicate that while special naturalization serves as an instrument to attract talent and reward extraordinary contributions, its application lacks transparent guidelines, leading to potential arbitrariness from a legal perspective. This review recommends the formulation of clearer objective criteria and judicial oversight mechanisms to align special naturalization practices with the rule of law and principles of good governance.

Keyword : *Special citizenship, Naturalization, Indonesian citizenship law.*

Introduction

The Unitary State of the Republic of Indonesia (NKRI), as a sovereign entity, has the exclusive right to determine who can be recognized as its

citizens. In the context of national law, the provisions regarding citizenship are regulated in Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. One of the ways regulated in the law to obtain citizenship is through the naturalization process, which is the granting of citizenship to foreign citizens who have met certain conditions as stipulated in the provisions of the applicable law. However, in addition to regular naturalization, there is also a special form of citizenship or also known as special naturalization. This type is granted to foreigners who are considered to have outstanding service to Indonesia, and the process does not require the fulfillment of all the requirements as applicable in ordinary naturalization. The existence of this mechanism has caused various debates, both from the juridical side, substantive justice, to the principle of equality before the law.

A clear example of this practice can be found in a number of foreign athletes who obtained the status of Indonesian Citizen (WNI) because of their contributions in the field of sports, especially in football and badminton, in the hope of improving Indonesia's achievements in the international arena. Although this policy is often justified on the grounds of national interest and state honor, questions still arise regarding the legality, procedures used, and accountability of the decision. Furthermore, the practice of granting special citizenship has the potential to raise problems with the basic principles of the rule of law, especially in terms of equal treatment in the eyes of the law (equality before the law). If a particular individual or group obtains citizenship status through a lighter pathway without equal process, then it is important to examine whether the policy is normatively justified and does not violate the principle of justice. Based on these considerations, the author feels the need to conduct an in-depth legal study of privileged citizenship in relation to the naturalization system in Indonesia. This research aims to explore the legal basis, implementation procedures, and legal impacts arising from the practice of privileged citizenship, as an evaluation of a fair, accountable, and in accordance with the principles of the rule of law.

A region can be recognized as a country if it has fulfilled various elements that are the requirements for the formation of a state. A state is a social unit in which a certain territory is occupied and is in political power or that functions effectively, and has political unity and sovereignty, and pursues predetermined national goals. One of the most important elements in the

formation of a country is the existence of the population in a country. Without citizens, the existence of a country is impossible to realize. Citizens have a very vital role because the existence of a country depends heavily on their existence. Citizens are the main pillars of a country, so their roles and positions have a very important meaning in the life of the state¹.

Indonesian citizenship status can actually be obtained by foreign citizens through three ways, one of which is through the process of naturalization, marriage, and granting of rights by the government of the Republic of Indonesia. The naturalization procedure can be done by submitting a citizenship request to the President. Naturalization is a procedure undergone by foreigners to be officially considered as Indonesian Citizens (WNI) based on the provisions of applicable law. The citizenship process, commonly referred to as naturalization, is a legal step taken by individuals to obtain or access Indonesian citizenship by changing their status from a Foreign Citizen (WNA). In the online Great Dictionary of Indonesian Language (KBBI), naturalization is defined as the acquisition of citizenship for foreign residents or citizenship obtained as it meets the requirements set out in laws and regulations².

Conceptually, the term citizen is used in the context of statehood, while the term population is more related to administrative aspects or community life. As a resident or member of society, each individual has a different position according to a socially regulated system. Meanwhile, as a state, every individual has equality in the rights granted under the applicable law. In the constitution, the status as an Indonesian Citizen (WNI) plays a very vital role in the legal system and government, the laws and regulations as the basis of the state constitution uphold the rights of every citizen, both those who live in the country and those who are abroad. Indonesian citizens have the right to be guaranteed their constitutional rights, while Foreign Citizens (WNA) in Indonesian territory only receive protection for human rights.

From the explanation of the right to statehood, it can be concluded that the meaning covers a wider area than the concept of human rights. Actually, a person who was born as an Indonesian citizen is not certain to remain in that

¹ Darmidi, Ni Putu Ika Putri, Geraldine Thirdaswari, "*Citizenship Requirements According to Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia*", *Journal of Civic Education Research*, Vol. 2 No. 1, (2024), h.22

² Darmidi, Ni Putu Ika Putri, Geraldine Thirdaswari. *Ibid.* hal. 23-24

status forever, there is a possibility that they will change their citizenship in the future. In addition, people who were originally foreign citizens also have the possibility to change their status to become Indonesian residents. The provisions on citizenship are also based on the principles that form the basis of legal policy in the field of citizenship³.

The history of Indonesian citizenship follows the evolution of the country's politics and laws. Many things affected Indonesia's citizenship system after independence in 1945. These include the former Dutch colonialism, an understanding of Western law, and local values with respect to religion, such as Islam. The Citizenship Law No. 12 of 2006, which replaced the previous colonial law, established the legal framework for the regulation of Indonesian citizenship⁴.

In this situation, Islamic values are often incorporated indirectly into state policies, especially in the process of building a national identity involving the majority of Muslims in Indonesia. Although Islamic law considers citizenship rights to be a right granted due to birth and social ties, citizenship policy in Indonesia focuses more on formal legal aspects based on legal status rather than religious affiliation. As a result, there is debate about the extent to which Islamic law can or should influence citizenship policy in Indonesia, especially given the country's religious and ethnic plurality.⁵

Research Methods

The type of legal research used is normative juridical (normative law). This method is an approach that aims to find legal rules or legal principles that can be used as answers to legal problems under study⁶. Therefore, this legal research is directed to analyze the rules or norms contained in positive law.

The type of research used is normative juridical, so the approach used is a legislative approach. This approach is carried out by examining all laws and regulations related to the legal issues being discussed. In addition, a concept approach is also used⁷.

Results and Discussion

³ Abrar, Syahrudin, and Alvan Kharis Aneboa, "Naturalized Players: Legal Issues, Nationalism, and Social Identity in Indonesia's Elite Football System" 2, No. 2 (2024): H. 347

⁴ *Ibid.* hal. 349

⁵ *Ibid.* hal. 86-87

⁶ Muhaimin, *Legal Research Methods*, Mataram University Press, Mataram, 2020 hal.47

⁷ Asep Sulaiman, *Pancasila Education and Diversity* (BANDUNG: CV Arfino Raya, 2015).

1. Citizenship Law Rules in Indonesia

Citizenship is a complex concept that has been discussed and debated for centuries. In essence, citizenship is a legal condition that gives specific rights, rights, and obligations to a person in a certain political community. This status is usually determined by a set of laws and institutions that govern the relationship between individuals and states.

Citizenship can be seen as a set of rights and privileges granted to individuals who are members of a particular political community. These rights may include the right to vote, the right to free speech, the right to a fair trial, the right to education and health, and the right to participate in the political process. Privileges can include access to government services and benefits, such as welfare programs and social security.

Citizenship also comes with certain responsibilities, such as obeying the law, paying taxes, and so on. In some countries, citizens are required to do military service, while in others they may be required to perform community service or civilian duty. The concept of citizenship has evolved over time, and different countries have different definitions and requirements of citizenship. In some countries, citizenship is based on ethnic or cultural ties, while in others it is based on legal or territorial criteria. Some countries have multiple nationalities, while others require individuals to renounce their previous citizenship when they become citizens of the new country⁸.

In addition, citizenship in a material sense refers to the consequences that arise from the status of a citizen, namely the existence of inherent rights and obligations, as well as an active role in the life of the state. Status as a citizen carries a different legal status compared to status as a foreigner.

The possession of citizenship status causes the individual to have a legal relationship with the country and is automatically subject to the laws applicable in it. A person who has become a citizen is not under jurisdiction. Other countries do not have the authority to apply the rule of law to individuals who are not citizens of their own⁹.

Citizenship in the juridical sense is the legal relationship between the state and the individual, where the relationship causes the individual to be

⁸ Muhammad Adiguna Bimasakti, "The Problematic Constitutionality of Naturalization in Indonesia," *Pancasila: Indonesian Journal* 3, no. 1 (2023): 100–112.

⁹ Wahyu Widodo, Budi Anwari, Maryanto, *Civic Education*, CV. Andi Offset, Yogyakarta, 2015, hal. 54

within the personal legal sphere of the country in question. Meanwhile, citizenship in a sociological sense refers to a person's attachment to a country based on a sense of unity that arises due to factors of heredity, togetherness, region of origin, and similarity in government or ruler. In other words, citizenship sociologically reflects the emotional and cultural attachment that grows in people's lives and develops in a communion of regions or countries in which they live¹⁰.

On the other hand, citizens also have a number of obligations, such as paying taxes as the main form of agreement between the state and its people, defending the state as stipulated in Article 27, participating in maintaining national defense and security in accordance with Article 30, and respecting the human rights of others and complying with the restrictions stipulated in laws and regulations as stated in Article 28J.

In Law Number 12 of 2006, it is explained that: First, if a mother loses her status as an Indonesian Citizen, it does not automatically have an impact on the citizenship of her child who does not have a legal relationship with her father, as long as the child is not yet 18 years old or unmarried. Second, if a mother loses Indonesian citizenship because she obtained foreign citizenship after divorce, this also does not directly affect her child's citizenship status until the child reaches the age of 18 or is married. Third, if as a result of the provisions in paragraphs (1), (2), and (3) the child becomes a dual citizen, then after reaching the age of 18 years or being married, the child is obliged to determine the choice of citizenship as stipulated in Article 6.

The loss of Indonesian citizenship experienced by Heidy Mariska needs to be immediately corrected by the state as a form of responsibility in fulfilling human rights. The restoration of Heidy Mariska's citizenship status is the state's obligation in accordance with Article 28D paragraph (4) of the 1945 Constitution of the Republic of Indonesia, which affirms that citizenship is the right of every individual. As a child born to Indonesian citizen parents, Heidy Mariska has human rights that have not been fulfilled by the state. He has the right to obtain citizenship status as guaranteed in national law and international legal instruments. The Indonesian state is obliged to guarantee these rights, and this form of responsibility begins with ratifying international legal instruments that regulate the protection of human rights, the Indonesian government then

¹⁰ Fransisca Jallie Pattiruhu, *Civic Education*, Deepublish Digital, Yogyakarta, 2024, hal. 6.

takes a further step by drafting laws and regulations that are the implementation of the ratified international law¹¹.

Heidy Mariska can take legal steps based on changes in the situation. This change refers to the change in regulations regarding citizenship, from Law Number 62 of 1958 to Law Number 12 of 2006. The court decision stating that Heidy lost her Indonesian citizenship occurred while Law Number 62 of 1958 was still in effect. Meanwhile, the rejection from the Dutch Government occurred after Law Number 12 of 2006 came into effect. As a result, Heidy was stateless for a long period of time. Therefore, the state needs to take steps to resolve the stateless status of Heidy Mariska, as this is contrary to the purpose of the establishment of the Citizenship Law of the Republic of Indonesia. State protection can be realized through the restoration of Indonesian citizenship status for Heidy Mariska. This action will also provide legal certainty for Heidy as an Indonesian citizen. The stateless status (apatride) makes Heidy not have official documents that recognize her as a citizen, both Indonesian and Dutch.

2. Granting Special Citizenship in Indonesia

Citizenship is a fundamental legal status inherent in every individual, because it is from it that the rights and obligations towards a country are determined. For the state, citizenship reflects the official recognition of the legal relationship between the state and the citizen. In the Indonesian legal system, the regulation regarding citizenship is listed in Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, which contains various pathways to obtain Indonesian citizenship status. One of these paths is through naturalization. Naturalization can be interpreted as a legal process that allows a foreign citizen to obtain Indonesian citizenship by fulfilling a number of conditions that have been determined by law. These requirements generally include length of stay in Indonesia, ability to speak Indonesian, understanding of the country's ideology, namely Pancasila and the 1945 Constitution, and not having a history of serious crimes. Through this mechanism, the state opens up opportunities for foreigners who meet certain criteria to be part of the national community legally and legally.

¹¹ Emmy Wulandari, "Regaining Lost Citizenship Status by Law," no. 62 (1958): hal.8.

Unfortunately, the public's understanding of the concept and procedure of naturalization is still quite limited. Many mistakenly assume that naturalization only applies to foreign athletes or figures who are considered meritorious to the country. In fact, basically, naturalization is a legal right that can be accessed by any foreigner who wants to become an Indonesian citizen, as long as he is able to meet the applicable provisions. This mistake has the potential to cause negative perceptions of government policies and give rise to misunderstandings in the community. Seeing this, an in-depth scientific study is needed on the meaning of naturalization in the context of national law, both in terms of normative, historical, and applicative. This research is expected to be able to provide a complete understanding of the concept of naturalization, including its underlying legal aspects, implementation procedures, and its impact on the citizenship system in Indonesia. Thus, the public and stakeholders can assess this policy in a more rational and proportionate manner.

Law Number 12 of 2006 gives the president the right to implement naturalization policies. In the law, the naturalization process is referred to as citizenship, which is an effort for foreign citizens to obtain the status of Indonesian Citizen (WNI). Therefore, the individual concerned is required to renounce his foreign citizenship, as the citizenship legal system in Indonesia does not allow dual citizenship.

The Citizenship Law systematically and clearly regulates the requirements and procedures for obtaining Indonesian citizenship. Generally, foreign nationals have to go through a long process to get approval from the government. However, since the implementation of the naturalization policy for the benefit of the Indonesian national football team, the government seems to have made it easier to grant citizenship status to foreign citizens, as long as they are considered eligible. However, some of these decisions are not entirely based on the provisions of the applicable law.

Based on Law Number 12 of 2006, there are two mechanisms for foreign citizens who want to apply to obtain their state. In its implementation, this naturalization process is divided into two types, namely normal and special. Naturalization is normally regulated in Article 9, which states that an application for citizenship can be submitted by an applicant as long as it meets certain requirements as follows:

- a. Minimum age of 18 years old or married.

- b. Have lived in Indonesia for 5 consecutive years before applying.
- c. Physically and mentally healthy.
- d. Able to speak in Indonesian, as well as recognize the foundation of the Pancasila state and the 1945 Constitution.
- e. Never received a prison sentence due to a criminal act.

In addition to the regular naturalization pathway, the Citizenship Law also provides special policies for foreign nationals who wish to obtain Indonesian citizenship. This provision is stated in Article 20 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, which states that the applicant must have services or contributions to the Indonesian nation, including in the field of sports. If these conditions are met, the applicant is not required to follow the naturalization procedure as usual. Article 20 also allows the granting of citizenship on the basis of national interest. This was then used by the leadership of PSSI in the era of Nurdin Halid and Djohar Arifin Husin to naturalize a number of foreign players and players of Indonesian descent, although some of them have not shown really clear qualities¹².

According to the main Indonesian dictionary, the definition of citizenship refers to the methods, methods, and actions of becoming a citizen. According to Article 1 Paragraph 3 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, citizenship is defined as a process that allows a foreign citizen to obtain Indonesian citizenship through the submission of an application. This process is known as naturalization, which is conveyed to the President through the Minister. The President has full authority to review such applications, either in the form of approval or rejection¹³.

Legal protection for naturalized citizens refers to the legal guarantees provided to individuals who have obtained citizenship of a country through the naturalization process, namely the transition of status from a foreign citizen to a local citizen in accordance with the provisions of applicable laws.

1. Rights and Obligations After Naturalization

¹² Annas and Hazzar, “*Analysis of Equality of Citizenship Rights for Naturalized Football Players in Indonesia.*” hal. 10.

¹³ Sri Jaya Lesmana, *Law of Disputes and Problems in Hattah*, PT. Bidara Cendekia Ilmi Nusantara, Tangerang, 2021, hal. 86.

Once a person is naturalized, their legal status changes to citizenship, which means:

- a. The right to live and work in the country is fully legal.
- b. The right to legal protection from the state.
- c. The right to participate in politics (e.g. voting and being elected, in accordance with applicable regulations).
- d. The right to enjoy public facilities and services such as education and health.

2. Legal Protection

- a. Protection from acts of discrimination on the basis of origin.
- b. Guarantees of human rights.
- c. Protection of personal property and security.
- d. The right to file a lawsuit or protection in court.

3. Legal Regulations for the Protection of Naturalization

Some of the important legal regulations in ensuring legal protection for naturalized citizens in Indonesia are as follows:

- a. 1945 Constitution Articles 27 and 28
Ensuring equal rights before the law and human rights protection.
- b. Law No. 12 of 2006 concerning Citizenship of the Republic of Indonesia
Regulate the conditions and consequences of naturalization.
- c. Civil Code and Criminal Code
Applies equally to all citizens regardless of previous citizenship origin.

4. Limitations or Exclusions

Although the rights are equal, in practice some restrictions can occur, for example:

- a. Certain position restrictions for naturalized nationals (e.g. military or strategic intelligence positions).
- b. Dual surveillance of loyalty or involvement with the previous home country.

5. International Protection

In addition to national protection, naturalization is also recognized in international law, among others through:

- a. The International Declaration of Human Rights (Article 15) guarantees the right to citizenship.
- b. United Nations Convention relating to the Status of Stateless Persons.

Conclusion

1. Conclusion

Special citizenship is a form of exception in the naturalization process which is generally regulated by Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. This citizenship is given by the President to foreign nationals who are considered to have extraordinary services to the nation and state, or who can provide strategic benefits for Indonesia's national interests, as stipulated in Article 20 of the Citizenship Law. Special citizenship in Indonesia is a special process that allows a person to obtain Indonesian citizenship through a special route, as a form of appreciation for extraordinary services rendered to the nation and state. To obtain special citizenship through the procedure, namely an application is submitted through the president with a recommendation from relevant institutions, such as the Ministry of Law and Human Rights and the ministry in charge of the field of citizenship.

2. Suggestions

The government should continue to evaluate Article 20 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. Given the many naturalization processes carried out by PSSI, the Government and the House of Representatives need to be more firm in enforcing the provisions of the article. This is important so that special naturalization is not carried out carelessly by PSSI, but is only given to football athletes who are really able to bring progress to the Indonesian national team. Thus, this special naturalization is really focused on improving Indonesia's achievements in the international arena without any other interests outside of these goals. To create continuity between foreign citizens and the regulations that apply in Indonesia, it is important to provide them with initial education about the naturalization procedure and the rights and obligations of being an Indonesian citizen, so that they can understand their position and responsibilities as part of Indonesian citizens.

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