



Juridical Analysis Of The Status Of Orient Riwu Kore In The Election Of The Regional Head Of Sabu Raijua Regency In 2020

Bill Nope¹, Gerald Aldytia Bunga²

¹ Law Faculty, University of Nusa Cendana, Kupang, Indonesia

² Law Faculty, University of Nusa Cendana, Kupang, Indonesia

Email: ¹Inter_bill2000@yahoo.com, ²gerald.bunga@yahoo.com.

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Abstract

In the 2020 Sabu Raijua regional head election, one of the regional head candidates, namely Orient P Riwukore, was questioned the status of his candidacy in the regional head election because he was suspected of being a citizen of the United States but at the same time he also had legitimate Indonesian citizenship documents. Therefore, this study aims to examine how citizenship is regulated in Indonesian and United States law and whether the Constitutional Court's decision in case number 135/PHP.BUP-XIX/2021 is constitutional. The results showed that Orient Riwu Kore was a citizen of the United States and had lost his Indonesian citizenship. Therefore, the decision of the constitutional court which annulled the victory of Orient Riwukore and his partner and ordered a re-election in Sabu Raijua Regency was a constitutional decision.

Keywords: Citizenship, Dual Citizenship, Regional Head Election

INTRODUCTION

The direct election of regional head and deputy of regional head has become an inseparable part in the development of democracy in Indonesia. Consolidation of democracy at the local level is believed to be a crucial part in realizing a more solid and democratic consolidation at the national level. Robert Alan Dahl in his book *Democracy and Its Critical* suggests that direct elections by the people are a must so that local governments always uphold their accountability and responsibility.

The choice to interpret the provisions of Article 18 paragraph (4) of the 1945 Constitution which states that "Governor, Regent and Mayor respectively as heads of provincial, district and city governments are democratically elected" by using a direct election mechanism as regulated in a Government Regulation in Lieu of Law of The regional head election which stipulated on May 4, 2020.

The first direct local elections were held on June 1, 2005. The direct elections still left many problems, not only in the substantive dimension, but also closely related to various technical dimensions related to, for example, the inefficiency and ineffectiveness that occurred in the implementation of the regional elections.¹

Djohermansyah Djohan noted the various problems that often follow the Pilkada process are as follows:²

1. The high cost of holding elections;
2. Increase escalation of conflict in the regions;
3. The rise of money politics;
4. Disharmonization of relations between regional head and deputy of regional head;
5. The high political cost in regional head elections;
6. The phenomenon of the rise of lawsuits in the regional head election process.

The rise of lawsuits in the Pilkada has become a common thing after the determination of the winner by the Regional General Election Commission. One of the regional election disputes that has attracted public attention in late 2020 to early 2021 is the election dispute of Sabu Raijua Regency in East Nusa Tenggara Province. The Sabu Raijua Regency Election held on December 9, 2020 was attended by 3 (three) pairs of candidates, namely::

1. Drs Nikodemus N Rihi Heke, M.Si dan Yohanis Uly Kale A.Md;
2. Drs Orient Patriot Riwu Kore dan Ir Thobias Uly;
3. Ir Takem I. Radja Pono, M.Si dan Ir Herman Hegi Radja Haba.

After all the stages were passed, on December 16, 2020, the Regional General Election Commission of Sabu Raijua Regency held an Open Plenary Meeting for the Recapitulation of Vote Count Results and determined the pair of candidate number 2 on behalf of Drs Orient Patriot Riwu Kore and Ir Thobias Uly as the winner of the most votes. The results of this open plenary meeting are contained in the Decision of the Regional Election commission of Sabu Raijua Number 342/HK.03.1-Kpt/5320/KPU-Kab/XII/2020 on the Determination of the Vote Count Result of the Election of the Regent and Deputy of Regent of Sabu Raijua in 2020.

Matrix 1. Recapitulation of Vote Count Results of The Election of Regent and Deputy of Regent of Sabu Raijua in 2020

Candidate Pair Serial Number	Voting Result (%)
1. Drs Nikodemus N Rihi Heke, M.Si dan Yohanis Uly Kale A.Md	13.313 (30,1%)
2. Drs Orient Patriot Riwu Kore dan Ir Thobias Uly	21.363 (48,3%)

¹ Djohermansyah Djohan, 2015, *Pemilihan Kepala Daerah di Era Otonomi Daerah: Sebuah Tinjauan Kritis Atas Agenda Demokrasi di Indonesia* dalam Pemilihan Umum Serentak, Editor: Khairul Fahmi dkk., PT Rajagrafindo Persada, p.301

² Djohermansyah Djohan, *Ibid*, p.301-302.

3. Ir Takem I. Radja Pono, M.Si dan Ir Herman Hegi Radja Haba	9.557 (21,6%)
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After the determination of the Regional Election commission of Sabu Raijua, there was a rejection of the election of Drs Orient Patriot Riwu Kore and Ir Thobias Uly from numbers of the Sabu Raijua community. This refusal was due to a polemic regarding the citizenship status of the Orient Patriot Riwukore. The refusal was made by the Sabu Raijua Democratic Concerned Society Alliance (AMAPEDO). AMAPEDO found irregularities regarding the citizenship status of the elected Regent on behalf of the Orient Patriot Riwu Kore. Based on the AMAPEDO findings, there are irregularities regarding the identity of the elected regent of Orient Patriot Riwu Kore who has 2 (two) Electronic ID cards. The Electronic Id Card from the Orient Patriot Riwu Kore, which was published on 20-03-2019, has the status of Not Married, but the other Electronic Id Card have the status of Married. Furthermore, the addresses of the two Electronic ID cards from the Orient Patriot Riwu Kore are the same, namely at Jalan Warakas GG 22, RT. 003/RW.007, Tanjung Priok, North Jakarta. After checked the address, AMAPEDO found that the address on the Electronic KTP of the Orient Patriot Riwu Kore was different from the actual address.

Regarding the polemic above, the Election Supervisory Body of Sabu Raijua has actually taken a number of supervisory steps long before the voting. On September 5, 2020, it sent a letter Number 117/Bawaslu-SR/PM.00.02/IX/2020 to the Regional Election Commission of Sabu Raijua which asked the Regional Election Commission to ensure the validity of the candidate requirements documents and nomination on behalf of the Orient Patriot Riwu Kore because the person concerned has been living abroad for a long time. The Election Supervisory Body of Sabu Raijua even sent a letter of recommendation for the second time to the Regional Election Commission of Sabu Raijua. The letter with Number 128/Bawaslu-SR/PM.00.02/IX/2020 dated September 10, 2021 essentially asked the Regional Election Commission of Sabu Raijua to investigate the validity of the Electronic ID card documents of the prospective regent candidate on behalf of the Orient Patriot Riwu Kore. Following up on the recommendation, the Regional Election Commission of Sabu Raijua made a clarification to the Kupang City Population and Civil Registry Office. Based on the results of the clarification, it was found that the Orient Patriot Riwu Kore is a resident of the city of Kupang having his address at RT 003 RW 001, Nun Baun Sabu Village, Alak District, Kupang City.³

In addition to making clarifications to the Population and Civil Registry Office of Kupang City, the Election Supervisory Body of Sabu Raijua also wrote a letter to the Election Supervisory Body of Indonesia and the Election Supervisory Body of East Nusa Tenggara Province asking for assistance in tracing. The letter of assistance and requesting information on the citizenship status of the Orient Patriot Riwu Kore was also sent to the Immigration Office in Jakarta, the Director General of General Administration of the Ministry of Home

³ The results of the clarification which stated that Orient P Riwu Kore was a resident of Kupang city were delivered directly by the Head of the Kupang City Population and Civil Registration Office, Drs. Agus Riri Masse. He also said that all kinds of population administration processes for Mr. Orient P. Riwukore had been carried out in accordance with the applicable laws and regulations. *see*, <https://regional.kompas.com/read/2021/02/03/17232851/disebut-warga-as-bupati-terpilih-sabu-raijua-orient-kore-pernah-miliki-ktp?page=all>

Affairs and the Consul General of the United States Embassy in Jakarta. All of these letters did not receive a quick response—until February 1, 2021, there was an e-mail from the Consul General of the United States Embassy in Jakarta which read: “We would like to inform you that Mr. Orient Patriot Riwu Kore is holding a US citizenship”.

Based on the background of this problem, the two problems to be investigated in this paper are about how the citizenship status of the Orient Patriot Riwu Kore based on the laws and regulations in Indonesia and the United States and whether the decision of the Constitutional Court in case number 135/PHP.BUP-XIX/2021 constitutional.

RESEARCH METHOD

This research uses normative legal research that examines written law from various aspects, namely aspects of theory, history, philosophy, comparison, structure and composition, scope and material, consistency, general explanation and article by article, formality and legal binding strength of law, as well as the legal language used. This research uses secondary data. This secondary data consists of primary legal materials, secondary legal materials, and tertiary legal materials.⁴

FINDINGS

After the election of the Orient Patriot Riwu Kore as the Regent of Sabu Raijua, there was a polemic regarding the citizenship status of the person concerned when he registered himself as a candidate for regent. Rumors circulated that Orient has United States citizenship because he has a United States passport but at the same time he also has Indonesian citizenship because he has Indonesian citizenship certificates such as Identity Cards and Family Cards. This is a polemic because to register as a candidate for regional head in the general election in Indonesia, you must be an Indonesian citizen (WNI). For this reason, in this section, we will analyze how the regulation of citizenship in Indonesian law and United States law, especially regarding the dual citizenship arrangement and the actions that have been taken by the Orient, whether they have legal consequences for their Indonesian citizenship status or not.

The Arrangement of Citizenship in Indonesian Law

In general, there are 3 ways to obtain citizenship, namely citizenship obtained by birth, citizenship obtained through naturalization, and citizenship obtained through registration.⁵ The regulation of citizenship in Indonesia is regulated in Law Number 12 of 2006 on Indonesian Citizenship (Indonesian Citizenship Law) and Government Regulation Number 2 of 2007 on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship (PP Number 2/2007). In the Indonesian citizenship law there is a regulation regarding dual citizenship but this can only be applied to those who are categorized as children under this law, namely those who are under the age of 18 years.⁶ Children who can have dual citizenship are those born from mixed

⁴ Abdulkadir Muhammad, 2004, *Hukum dan Penelitian Hukum*, Citra Aditya Bakti, Bandung, p.101-102.

⁵ May Lim Charity, “Urgensi Pengaturan Kewarganegaraan Ganda Bagi Diaspora Indonesia”, *Jurnal Konstitusi*, Volume 13, Number 4, December 2016, p.816

⁶ Article 6 of Law Number 12 of 2006 On Indonesian Nationality, also see Eka Martiana Wulan Sari, “Konsep Kewarganegaraan Ganda Tidak Terbatas (Dual Nationality) Dalam Sistem Kewarganegaraan Di Indonesia”,

marriages.⁷ The children of these mixed marriages are subject to two jurisdictions from the nationality of their parents.⁸ The Minister of Law and Human Rights Regulation number 22 of 2012 states that the registration of children with dual citizenship must be registered by their parent or their guardian. If you are in the territory of Indonesia, the registration is submitted to the Head of the Immigration Office whose working area includes the residence of a Child with Dual Citizenship. If the registration is carried out outside the territory of Indonesia, the registration is submitted to the Head of Representative of the Republic of Indonesia or the Immigration Officer appointed by the Minister whose work area includes the residence of the Dual Nationality Child.⁹

For these children they will continue to hold dual citizenship until the age of 18 or when they are married.¹⁰ Thus, when they are over 18 years old or married before 18 years old, they must choose one citizenship between the dual citizenships they hold. This statement of choosing citizenship must be made in written form by the person concerned and submitted to the competent authority no later than 3 years after turning 18 years old or after marriage.¹¹ So the maximum age limit for a child from mixed marriage to choose one citizenship, if he is not married yet, is 21 years old.

Based on the explanation above, it can be seen that in the legal rules regarding citizenship in Indonesia it is not recognized that there is dual citizenship for adults.¹² Therefore, if an Indonesian citizen has chosen to become a foreign citizen (WNA) on his own free will without coercion from other parties, then for the person concerned, his Indonesian citizenship status will be automatically lost.¹³ The loss of Indonesian citizenship owned by an Indonesian citizen can also be affected by the person concerned having a passport or a letter that is a passport or a letter that can be considered as a sign of citizenship from a foreign country on his behalf.¹⁴ Regarding the citizenship status of Orient P. Riwu Kore, there is some evidence showing that the person concerned has United States citizenship.

Jurnal Rechts Vinding, 2015, p.2 Downloaded from https://www.rechtsvinding.bphn.go.id/jurnal_online/edit_JURNAL%20KEWARGANEGARAN%20GANDA.pdf

⁷ Mixed marriage in Indonesian law is a marriage between an Indonesian citizen and a foreign citizen. See Sasmiar, *Mixed Marriage and Its Legal Consequences*, p.42. <https://media.neliti.com/media/publications/43265-ID-perkawinan-campuran-dan-akibat-hukumnya.pdf>, downloaded on 11 of Agustus 2021

⁸ Lazuardy Glery, "Status Kewarganegaraan Ganda Dilihat Dari Perspektif Undang-Undang Nomor 2 Tahun 2006 tentang Kewarganegaraan Republik Indonesia," *Jurnal Hukum*, Vol.2, No.1, September 2020, p.44

⁹ Devi Laksmi Friment F.S. Aruan, 2020, *Penentuan Status Keimigrasian Dan Kewarganegaraan: Teknis Substantif Status Keimigrasian dan Kewarganegaraan*, Badan Pengembangan Sumber Daya Manusia Hukum Dan Hak Asasi Manusia Kementerian Hukum Dan Hak Asasi Manusia Republik Indonesia, p.30

¹⁰ Article 6 paragraph (1) of Law Number 12 of 2006 On Indonesian Nationality

¹¹ Article 6 paragraph (2) and paragraph (3) of Law Number 12 of 2006 On Indonesian Nationality

¹² Novianti, "Juridical Perspective of Dual Citizenship Status, Info Singkat", Vol XIII, No.4/II/puslit/February/2021, p.3 also see Rokilah, "Implikasi Kewarganegaraan Ganda Bagi Warga Negara Indonesia", *Jurnal Ajudikasi*, Vol.1, No.2 Desember 2017, p.59

¹³ Article 23 point a of Law Number 12 of 2006 On Indonesian Nationality. Also see Supriyadi A Arief dan Iwa Kustiwa, "Pemberatan Syarat Dan Prosedur Terhadap Warga Negara Dalam Mendapatkan Kembali Kewarganegaraan Indonesia", *Jurnal Rechts Vinding*, Volume 9 Number 3, Desember 2020, p.29

¹⁴ Article 23 point h of Law Number 12 of 2006 On Indonesian Nationality

First, there is a statement from the United States embassy in Indonesia through an electronic letter signed by the head of the consular section, Eric M Alexander, who stated to the Election Supervisory Body of Sabu Raijua that Orient P. Riwukore is a citizen of their country.¹⁵ This was revealed after suspicions arose that Orient had United States citizenship when he participated in the regional head election of Sabu Raijua, which was then followed up by the Regional Election Supervisory Body of Sabu Raijua by sending an electronic letter to the US embassy to confirm whether the United States citizenship status held by Orient was true or not..

This was also confirmed by him who stated that it was true that he had a United States passport.¹⁶ Based on the statement of the Minister of Law and Human Rights of the Republic of Indonesia, the United States passport owned by Orient is still valid until 2027.¹⁷ This then became a legal issue when at the same time Orient also had Indonesian citizenship as indicated by the existence of an Indonesian passport which was still valid until April 2024.¹⁸ In addition, he also has an Indonesian Identity Card and is still recorded in the population database at the Directorate General of Population and Civil Registration, Ministry of Home Affairs, Republic of Indonesia.¹⁹

Indonesian citizenship regulations do not recognize dual citizenship for an adult or married person. Therefore, it is not legally possible for Orient to hold Indonesian citizenship and United States citizenship at the same time. Thus, in a situation like this, under Indonesian law, the Orient is only allowed to have one citizenship. As described above, based on Article 23 letter (a) of the Indonesian Citizenship Law, it is stated that having foreign citizenship on one's own will automatically result in the person concerned losing his Indonesian citizenship. In this case, by having United States citizenship, Orient has automatically lost Indonesian citizenship. This was later strengthened by his ownership of a United States passport, which based on Article 23 letter (h) of the Indonesian Citizenship Law, this also resulted in the person concerned losing his Indonesian citizenship automatically.

If so, why does Orient still have Indonesian citizenship certificates and are still listed as Indonesian citizens in the population database? Based on Indonesian law, the head of the central agency who knows that there are Indonesian citizens who have become foreigners or have foreign passports must coordinate this with the relevant minister.²⁰ In addition, the leadership of regional agencies and the public who know of any Indonesian citizens who have become foreigners or have foreign passports must report in written form to the

¹⁵ <https://regional.kompas.com/read/2021/02/03/15484941/bawaslu-buktikan-orient-riwu-kore-warga-amerika-dari-surat-kedubes-as-kpu?page=all>, accessed on 21 of agustus 2021

¹⁶ <https://www.antaraneews.com/berita/2069522/orient-riwu-kore-akui-paspor-amerika-serikat-miliknya-berakhir-2027>, accessed on 21 Agustus 2021

¹⁷ <https://www.liputan6.com/news/read/4508494/menkumham-paspor-amerika-serikat-bupati-terpilih-orient-p-riwu-kore-berlaku-hingga-2027>, accessed on 21 Agustus 2021

¹⁸ Ibid

¹⁹ <https://www.antaraneews.com/berita/1980804/kemendagri-jelaskan-status-kependudukan-orient-riwu-kore>, accessed on 21 Agustus 2021

²⁰ Article 32 paragraph (1) of Government Decree Number 2 of 2007 on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship

relevant officials.²¹ Indonesian citizens who are abroad knowing that there are Indonesian citizens who have become foreigners or have foreign passports must report in written form to the representatives of the Republic of Indonesia who are in that country, either embassy or consulate general.²² When the matter has been reported to the relevant official, it will be processed in a formal manner so that a ministerial decision is issued regarding the name of the person who has lost his Indonesian citizenship.²³ Furthermore, the minister will announce the name of the person who has lost his Indonesian citizenship in the State Gazette of the Republic of Indonesia.²⁴

By relying solely on supervision by the leader of central and regional agencies as well as the public both in Indonesia and abroad, it will be very difficult to monitor whether there are Indonesian citizens who have become foreigners or have foreign passports or not, due to changing citizenship or having passport from other country is an act carried out by an individual and may not be reported to his home country, while the country that accepts the person concerned as a citizen is not obliged to provide information about this to the country of origin of the new citizen because for all countries, citizenship data protection of every citizen is mandatory. In this case the honesty of the individual concerned is very necessary. So in the context of Indonesia, when someone has turned into a foreigner or has a foreign passport, the person concerned is expected to be able to report it to the relevant officials so that they can be processed formally regarding the loss of their citizenship.

In connection with the Orient citizenship polemic, when he has become a citizen of the United States of America and/or has a United States passport, he should have shown good faith to report the matter to the Indonesian government either through the Embassy of the Republic of Indonesia or the Consular General of the Republic of Indonesia in United States of America so that further formal proceedings can be carried out regarding the loss of Indonesian citizenship of the person concerned. This is what the Orient did not do, coupled with the ignorance of the central government as well as the local government or the community which resulted in the absence of a formal process being carried out against the Orient regarding the loss of his citizenship. however, the absence of this formal procedure does not negate any material act (being a citizen of the United States and possessing a United States passport) that has been carried out by Orient which resulted in him losing his Indonesian citizenship..

Orient P. Riwukore Citizenship Status in United States of America Law

The United States of America is a country that recognizes dual citizenship.²⁵ Therefore it is possible for its citizens to have citizenship other than the citizenship of the United States of America. If it is related to

²¹ Article 32 paragraph (2) of Government Decree Number 2 of 2007 on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship

²² Article 32 paragraph (3) of Government Decree Number 2 of 2007 on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship

²³ Article 34 paragraph (3) of Government Decree Number 2 of 2007 on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship

²⁴ Article 39 of Government Decree Number 2 of 2007 on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship

²⁵ Maarten Vink, et all, "The international diffusion of expatriate dual citizenship", *Migration Studies*, Volume 7, Number 3, 2019, p.364

Orient citizenship status, from the point of view of the United States citizenship regulations, he is allowed to be able to hold Indonesian citizenship even though he has become a United States citizen, but in this case it cannot be judged solely on the basis of United States law. The discussion above has clearly illustrated that under Indonesian law he has lost his Indonesian citizenship when he became a citizen of the United States of America and has a United States passport, therefore it is not possible for Orient to hold dual citizenship of the United States and Indonesia, thus his citizenship by the Orient is only United States citizenship. Based on this, it can be understood that the dual citizenship status can only be enjoyed by a person if the country he wants to become a citizen of adheres to the dual citizenship principle, if one of the countries does not adhere to this principle then this is not possible.

Regarding Orient's candidacy as regent of Sabu Raijua, his supporters stated that by running for regent in the regional head election he was automatically deemed to have lost his American citizenship. To analyze this, it is necessary to refer to the United States citizenship regulations, especially regarding any matters that can result in the loss of United States citizenship. The United States Immigration and Citizenship Act of 1952 states that a citizen of the United States, either by birth or by naturalization, has the potential to lose his citizenship while serving in a foreign government.²⁶ In this law, the word used is “potentially” so that the loss of United States citizenship due to working in a foreign government does not occur automatically. There must be active action from the person concerned to declare retaining or relinquishing United States citizenship.²⁷

If they work for a foreign government in a position that is not at the policy-making level then they are not required to make a statement that they still want to retain their United States citizenship or relinquish it. If they work in foreign governments at the level of policy-making positions, they must make a clear statement to the United States government whether they want to retain or relinquish their citizenship.²⁸ If the person concerned chooses to renounce his United States citizenship, he or she must follow certain steps to complete the application process for the Certificate of Loss of Nationality.

If you see that being a Regent is considered as working for a foreign country's government (in the perspective of being a foreigner) at the policy-making level, then the person concerned is not considered to automatically lose his United States citizenship because he must first obtain a certificate of loss of citizenship from the United States government. This means that before the certificate is issued, the person concerned is still considered a citizen of the United States. In this case, the Orient is still considered a citizen of the United States until he has obtained a certificate of loss of United States citizenship.

In the Immigration and Citizenship Act of the United States, it is stipulated that by voting in a general election in a foreign country, a US citizen will lose his citizenship,²⁹ so if the Orient also voted in the election process then the person concerned can be considered to have lost his United States citizenship. Even if Orient

²⁶ Article 349 (a) (4) of United States of America Immigration and Nationality Act of 1952

²⁷ <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/Advice-about-Possible-Loss-of-US-Nationality-Dual-Nationality.html>, accessed on 15 of october 2021

²⁸ <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/Advice-about-Possible-Loss-of-US-Nationality-Dual-Nationality/Loss-US-Nationality-Foreign-State.html>, accessed on 15 of october 2021

²⁹ Article 349 (a) (5) of United States of America Immigration and Nationality Act of 1952

loses his United States citizenship, he will not automatically regain Indonesian citizenship status, because the person concerned must first go through a series of procedures to be able to regain Indonesian citizenship as stipulated in PP No. 2/2007.

If Orient has lost his United States citizenship due to his own application and has received a certificate of loss of citizenship from the United States government or because he participated in voting in the election then it does not mean that he is considered to automatically return to being an Indonesian citizen. For an Indonesian citizen who has become a foreigner and intends to return to being an Indonesian citizen, he must re-fulfill the legal procedures regulated in PP Number 2 of 2007. He must submit a written application to the president through the relevant minister in accordance with the citizenship provisions regulated in Article 2 – Article 12 of PP Number 2 of 2007.³⁰ The written application must be accompanied by a number of other administrative requirements which will then be verified by the relevant official.³¹ If the requirements are complete, it will be forwarded to the relevant minister³² henceforth the minister will carry out a substantive examination and forward the application again to become an Indonesian citizen accompanied by ministerial considerations to the president.³³

Furthermore, the president will decide whether to reject or accept the application to become an Indonesian citizen. If the application is accepted, the president will make a presidential decision and notify the applicant in written form with a copy to the relevant official.³⁴ A copy of the presidential decree will then be submitted to the minister, relevant officials, and representatives from the country of origin of the applicant who previously became a citizen.³⁵ Furthermore, the person concerned will take an oath and pledge allegiance to the state of Indonesia.³⁶ After that, he must return the immigration documents or papers in his name to the immigration office where he is domiciled.³⁷ After all these procedures have been fulfilled, the minister will announce the name concerned as having regained Indonesian citizenship in the State Gazette of the Republic of Indonesia.³⁸ In this case, if the Orient follows this stage, the president's decision regarding his return to be

³⁰ Article 43 of Government Decree Number 2 of 2007 on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship

³¹ Article 3 of Government Decree Number 2 of 2007 on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship

³² Article 4 of Government Decree Number 2 of 2007 on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship

³³ Article 5 paragraph (1) of Government Decree Number 2 of 2007 on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship

³⁴ Article 6 paragraph (1) of Government Decree Number 2 of 2007 on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship

³⁵ Article 6 paragraph (2) and paragraph (3) of Government Decree Number 2 of 2007 on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship

³⁶ Article 7 of Government Decree Number 2 of 2007 on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship

³⁷ Article 10 paragraph (1) of Government Decree Number 2 of 2007 on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship

³⁸ Article 12 of Government Decree Number 2 of 2007 on Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship

an Indonesian citizen will also be conveyed to the diplomatic representatives of the United States in Indonesia and thus he can only return to being an Indonesian citizen.

Is the decision of the Constitutional Court in case number 135/PHP.BUP-XIX/2021 constitutional?

Pair number 3, namely Ir Taken I. Radja Pono, M.Si and Ir Herman Hegi Radja Haba submitted an application to the Constitutional Court on March 15, 2021. This application was then registered with Number 135/PHP.BUP-XIX/2021. The respondent is the Regional Election Commission of Sabu Raijua and those who are related parties are Pair Number 2, namely Drs Orient Patriot Riwu Kore and Ir Thobias Uly.

Principal of Application

This application was initiated by a letter signed by Erick M. Alexander, Consul General of the United States Embassy in Jakarta on February 1, 2021. The letter reads: 'We would like to inform you that Mr. Orient Patriot Riwu Kore is holding a US citizenship'. Previously, this letter was an answer to a letter Number 136/K.Bawaslu SR/HK.00.021/IX/2020 sent by the General Elections Supervisory Body of Sabu Raijua Regarding United States Citizenship Status of Orient Patriot Riwu Kore.

Some of the principal applications submitted by the applicant to the Constitutional Court include:

- 1) There were constitutional, legal and moral complications that arose when it was discovered that the Candidate for Regent from the Candidate Pair number 2 on behalf of the Orient Patriot Riwu Kore was officially declared by the United States Embassy in Jakarta on February 1, 2020, that the person concerned was holding a citizen United States of America. At the same time, the Candidate for Regent from the Candidate Pair number 2 on behalf of the Orient Patriot Riwu Kore has admitted that he has a United States passport and is an American citizen. Thus, the determination of the Orient Patriot Riwu Kore as regent of the Candidate Pair number 2 must be declared against the law (illegal) or null and void (void ab initio) because it has American citizenship (foreigners).
- 2) Based on the applicant's legal review, the issue of formal defects in the general election process can no longer be resolved by the Regional Election Supervisory Body of Sabu Raijua as mandated by Article 142 jo. Article 143 paragraph (2) of Law number 10 of 2016 on the Second Amendment to Law Number 1 of 2015 on Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 on the Election of Governor, Regent, and Mayor to become Law because the time has passed (expired).
- 3) For applicants, Law number 10 of 2016 on the Second Amendment to Law Number 1 of 2015 on Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 on the Election of Governor, Regent, and Mayor to become Law also does not regulate the disqualification of candidates pair for regent and deputy regent who have been designated as pairs of elected candidates but later it was discovered that their candidacy was formally flawed, namely the non-fulfillment of the requirements as an Indonesian citizen because the person concerned has a foreign citizen, namely a citizen of the United States of America.
- 4) The Applicant stated that after reviewing the existing regulations, there is a legal vacuum (rectsvacuum) so that based on the authority guaranteed by Article 24C paragraph (1) (2) (3) of the 1945 Constitution,

Law Number 48 of 2009 on Judicial Power and Law Number 7 of 2020 on the Third Amendment to Law Number 24 of 2003 on the Constitutional Court, the Constitutional Court in its function as the positive legislator can make legal findings (*rechtsvinding*) to break the legal deadlock and to obtain truth and substantive (material) justice for the applicant and for the establishment of the constitution, law and morals, as well as to provide solutions for the continuation of the system and wheel of government in Sabu Raijua.

- 5) A citizen of the United States of America does not have the same rights as an Indonesian citizen in government affairs as referred to in Article 27 paragraph (1) of the 1945 Constitution, which reads: "All citizens are equal before the law and government and are obliged to uphold the law and the government without exceptions."
- 6) The fact that the status of an American citizen held by Orient Patriot Riwu Kore who was determined by the Respondent as a candidate for Regent from Candidate Pair number 2 in the 2020 Sabu Raijua regional head election violated Article 28D paragraph (1) and paragraph (3) of the 1945 Constitution which states that:
Paragraph (1) Everyone has the right to recognition, guarantee, protection and fair legal certainty and equal treatment before the law. Paragraph (3) "every citizen has the right to have equal opportunities in government".
- 7) The applicant believe that the Regent Candidate from the Candidate Pair number 2 on behalf of Orient Patriot Riwu Kore and the Election Organizer, namely Regional Election Commission of Sabu Raijua has violated the constitutional rights of the applicant and unlawfully robbed other Indonesian citizens opportunity to participate in the government as a candidate for Regent and has treat other Indonesian citizens unfairly in the context of the 2020 Sabu Raijua Regent and Deputy Regent election.
- 8) The status as American citizen held by the Regent Candidate from the Candidate Pair number 2 on behalf of the Orient Patriot Riwu Kore and the fact that the Respondent has passed the relevant candidate as a candidate for Regent from candidate pair number 2 in the election of Regent and Deputy Regent of Sabu Raijua 2020 also violates the basic rights of Indonesian citizens to be elected and to vote democratically as regulated in Article 43 of Law number 39 of 1999 on Human Rights which states that "Every citizen has the right to be elected and to vote in general elections based on equal rights through direct, general, free, secret, honest and fair voting in accordance with the provisions of the legislation."
- 9) The actions of the Regional Election Commission of Sabu Raijua which passed an American citizen named Orient Patriot Riwu Kore as a candidate for Regent from candidate pair Number 2 in the 2020 Sabu Raijua Regent and Deputy Regent election also violated Article 7 paragraph (1) (2) letters b and m of Law Number 10 of 2016 on the Second Amendment to Law Number 1 of 2015 on the Stipulation of Government Regulations in Lieu of Law Number 1 of 2014 on the Election of Governors, Regents, and Mayors to become Laws in particular:
 - a. Article 7 paragraph (1) of Law Number 10 of 2016 states that 'Every citizen has the right to have the same opportunity to nominate himself and be nominated as a candidate for governor and

candidate for deputy governor, candidate for regent and candidate for deputy regent, as well as candidate for mayor and candidate for deputy mayor

- b. Article 7 paragraph (2) letter b of Law Number 10 of 2016 states that 'candidate for Governor and Candidate for Deputy Governor, Candidate for Regent and Candidate for Deputy Regent, as well as Candidate for Mayor and Candidate for Deputy Mayor as referred to in paragraph (1) must meet the following requirements, namely: : "faithful to Pancasila, to the 1945 Constitution of the Republic of Indonesia, to the ideals of the Proclamation of Independence August 17, 1945, and to the Unitary State of the Republic of Indonesia" and has a Taxpayer Identification Number and has a personal tax report.
- 10) For the applicant, due to the candidacy for regent and deputy regent is a package in the form of pairs, then when one of the candidates, namely the candidate for regent on behalf of the Orient Patriot Riwu Kore, does not meet the formal requirements, the candidate pair number 2 is also automatically has a formal defect and against the law.
 - 11) Based on the principle of *maxim nullus/nemo commodum capere potest de injuria sua propria*, where "no one may benefit from irregularities and violations committed by himself and no one may be harmed by irregularities and violations committed by others", then the candidate pair for Regent Number 2 and all decisions of the Respondent must be declared null and void by the Respondent or by the Constitutional Court for the sake of upholding the law, morals and constitution.
 - 12) For the applicant, a number of the Respondent's decisions that should be declared null and void are:
 - a. Decision of the Regional Election Commission of Sabu Raijua Number 152/HK.03.1-Kpt/5320/KPU-Kab/IX/2020 on the Determination of Candidate Pairs for the Election of Regent and Deputy Regent of Sabu Raijua in 2020, September 23, 2020
 - b. Decision of the Regional Election Commission of Sabu Raijua Number 153/HK.03.1-Kpt/5320/KPU-Kab/IX/2020 on Determination of the Serial Number and of List of Candidates for the Election of Regent and Deputy Regent of Sabu Raijua in 2020, along with their attachments, September 24 2020.
 - c. Cancellation of Decision of the Regional Election Commission of Sabu Raijua Number 342/HK.03.1-Kpt/5320/KPU-Kab/XII/2020 on Stipulation of Recapitulation of Vote Count Result and Determination of Election Result of Regent and Deputy Regent of Sabu Raijua in 2020, dated December 16, 2020.
 - d. Cancellation of Decision of the Sabu Raijua Regency General Election Commission Number 25/HK/03.1-Kpt/5420/KPU-Kab/2021 on the Determination of the Elected Pairs of Regent and Deputy Regent Candidates in the 2020 Sabu Raijua Regent and Deputy Regent Election, 23 January 2020.

Constitutional Decree Number 135/PHP.BUP-XIX/2021 is Constitutional

In the decision that was read by the Chief Justice of the Constitutional Court Anwar Usman, the Constitutional Court partially granted the applicant's request. The Constitutional Court also canceled 4 (four) decisions of the Regional Election of Sabu Raijua, namely: First, Decree Number 342/HK.03.1-Kpt/5320/KPU-Kab/XII/2020 on the Determination of the Recapitulation of Vote Count Result for the 2020 Sabu Raijua Regent and Deputy Regent Election Dated December 16, 2020. Second, The Regional Election Commission of Sabu Raijua Decree Number 152/HK.03.1-Kpt/5320/KPU-Kab/IX/2020 on the Determination

of Candidate Pairs for Regent and Deputy Regent who are Eligible as Participants in the Election of Regent and Deputy Regent of Sabu Raijua in 2020 dated 23 September 2020. Third, the Regional Election Commission of Sabu Raijua Decree Number 153/HK.03.1-Kpt/5320/KPU-Kab/IX/2020 on Determination of Serial Numbers and List of Candidates for Election of Sabu Raijua Regent and Deputy Regent in 2020 dated September 24, 2020, as long as it related to the Candidate Pair Number 2 (Orient Patriot Riwu Kore and Thobias Uly). Fourth, the Regional Election Commission of Sabu Raijua Decree Number 25/HK/03.1-Kpt/5420/KPU-Kab/2021 on the Determination of the Elected Pairs of Regent and Deputy Regent Candidates in the 2020 Sabu Raijua Regent and Deputy Regent Election, dated January 23, 2021.

The Constitutional Court also ordered the respondent to carry out a re-voting of the 2020 Sabu Raijua Regent and Deputy Regent participated only by two candidate pairs, namely Candidate Pair Number 1 Nicodemus N. Rihi Heke and Yohanis Uly Kale and Candidate Pair Number 3 Taken Radja Pono and Herman Hey Radja Haba. The re-voting is carried out within a grace period of 60 working days from the date the decision is issued.

For researchers, the Constitutional Court Decision Number 135/PHP.BUP-XIX/2021 is a constitutional decision³⁹. The Constitutional Court's decision is based on the legal facts in the proceeding, namely:

1. That the Orient Patriot Riwu Kore has two passports. The two passports are the Republic of Indonesia passport Number X746666 which is valid from April 1, 2019 to April 1, 2024 according to the information from the Directorate General of Immigration of the Ministry of Law and Human Rights and the United States passport Number 574900485 which is valid from July 10, 2017 to July 9, 2027.
2. The polemic regarding the legal status of the candidate for Deputy Regent (Ir Thobias Uly) the couple from the Orient Patriot Riwu Kore who was deemed innocent in this case—which was later aborted by the Constitutional Court, the researchers agree that the Constitutional Court's decision was correct and constitutional. This is because, one of the requirements to nominate or be nominated as a Regent or Deputy Regent is regulated among others in Article 7 paragraph (1) of Law 10/2016, which states that : (1) Every citizen has the right to have the same opportunity to nominate himself and be nominated as a Candidate. Governor and Deputy Governor Candidate, Regent Candidate and Deputy Regent Candidate, as well as Mayor Candidate and Deputy Mayor Candidate.” Such a provision means that a couple who register themselves as a candidate for regional head and deputy regional head, as a candidate pair in the 2020 Sabu Raijua Regency Regent and Deputy Regent Election, must have the status of Indonesian Citizens. The contest design for the election of the Regent and Deputy Regent is a contest in which the participants are pairs of candidates.

The pair of candidates consists of two people, one of whom has agreed to become a candidate for Regent, while the other one becomes his deputy. Both work together as a unit to win the people's choice. As a consequence of the contestation/election in which the participants are pairs of candidates, the vote acquisition is the result of joint gains that cannot be separated/segregated individually. Likewise,

³⁹ A constitutional decision means that the decision has been in accordance with or regulated in the constitution of a country (1945 constitution).see. <https://kbbi.web.id/konstitusional>.

"victory" or "defeat" as well as various other legal events, as long as they are closely related to the election process, the subject of such legal events is the pair of candidates as a unit. It is at this point that election violations committed by only one person from a certain pair of candidates will have legal consequences for the pair of candidate concerned.

3. The Constitutional Court's decision stating that a re-voting must be carried out in the 2020 Sabu Raijua Regency Regent and Deputy Regent Election by only including two candidate pairs, namely Candidate Pair Number 1 (Nikodemus N. Rihi Heke, M.Si. and Yohanis Uly. Kale) and Candidate Pair Number 3 (Ir. Taken Radja Pono, M.Sc. and Herman Hegi Radja Haba, M.Sc.). For the researchers, this decision is constitutional. This decision was taken to fill the vacant position in the first rank in terms of vote acquisition. This vacancy cannot simply be filled by appointing the candidate pair who received the second most votes as the elected candidate pair, considering that the votes (which show voter support) in the 2020 Sabu Raijua Regency Regent and Deputy Regent Election are spread among the three pairs of candidates. The existence of a re-voting will reaffirm the legitimacy or support of the people for the candidate pair who will later be elected and lead the Sabu Raijua..

CONCLUSION

Based on the discussion above, it can be concluded that Orient P. Riwukore is a citizen of the United States as evidenced by his possession of a United States passport and therefore he has lost his Indonesian citizenship. Thus, the Constitutional Court's Decision Number 135/PHP.BUP-XIX/2021 is a constitutional decision because only Indonesian citizens are entitled to participate in the regional head election and the re-election will only be followed by two pairs of candidates who meet the legal requirements.

REFERENCES

- Anggraini Titi, dkk, 2011, *Menata Kembali Pengaturan Pemilukada*, Perluden, Jakarta
- Djohan Djohermansyah, 2015, *Pemilihan Kepala Daerah di Era Otonomi Daerah: Sebuah Tinjauan Kritis Atas Agenda Demokrasi di Indonesia* dalam Pemilihan Umum Serentak, Editor: Khairul Fahmi dkk., PT Rajagrafindo Persada;
- Glery Lazuardy, "Status Kewarganegaraan Ganda Dilihat Dari Perspektif Undang-Undang Nomor 2 Tahun 2006 tentang Kewarganegaraan Republik Indonesia," *Jurnal Hukum*, Vol.2, No.1, September 2020; <https://kbbi.web.id/konstitusional>.
<https://media.neliti.com/media/publications/43265-ID-perkawinan-campuran-dan-akibat-hukumnya.pdf>;
<https://regional.kompas.com/read/2021/02/03/15484941/bawaslu-buktikan-orient-riwu-kore-warga-amerika-dari-surat-kedubes-as-kpu?page=all>;
<https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/Advice-about-Possible-Loss-of-US-Nationality-Dual-Nationality.html>;
<https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/Advice-about-Possible-Loss-of-US-Nationality-Dual-Nationality/Loss-US-Nationality-Foreign-State.html>;
<https://www.antaraneews.com/berita/1980804/kemendagri-jelaskan-status-kependudukan-orient-riwu-kore>;
<https://www.antaraneews.com/berita/2069522/orient-riwu-kore-akui-paspor-amerika-serikat-miliknya-berakhir-2027>;
<https://www.liputan6.com/news/read/4508494/menkumham-paspor-amerika-serikat-bupati-terpilih-orient-p-riwu-kore-berlaku-hingga-2027>;
- Laksmi Devi and Aruan Friment F.S., 2020, *Penentuan Status Keimigrasian Dan Kewarganegaraan: Teknis Substantif Status Keimigrasian dan Kewarganegaraan*, Badan Pengembangan Sumber Daya Manusia Hukum Dan Hak Asasi Manusia Kementerian Hukum Dan Hak Asasi Manusia Republik Indonesia;
- Lim Charity May, "Urgensi Pengaturan Kewarganegaraan Ganda Bagi Diaspora Indonesia", *Jurnal Konstitusi*, Volume 13, Nomor 4, Desember 2016;
- Maarten Vink, et all, "The international diffusion of expatriate dual citizenship", *Migration Studies*, Volume 7, Number 3, 2019;
- Muhammad Abdulkadir, 2004, *Hukum dan Penelitian Hukum*, Citra Aditya Bakti, Bandung
- Novianti, "Juridical Perspective of Dual Citizenship Status", *Info Singkat*, Vol XIII, No.4/II/puslit/February/2021;
- Peraturan Pemerintah Nomor 2 Tahun 2007 Tentang Tata Cara Memperoleh, Kehilangan, Pembatalan, Dan Memperoleh Kembali Kewarganegaraan Republik Indonesia;
- Rokilah, "Implikasi Kewarganegaraan Ganda Bagi Warga Negara Indonesia", *Jurnal Ajudikasi*, Vol.1, No.2 Dese,ber 2017
- Sari Eka Martiana Wulan, "Konsep Kewarganegaraan Ganda Tidak Terbatas (Dual Nationality) Dalam Sistem Kewarganegaraan Di Indonesia", *Jurnal Rechts Vinding*, 2015, Downloaded from https://www.rechtsvinding.bphn.go.id/jurnal_online/edit_JURNAL%20KEWARGANEGARAN%20GANDA.pdf

Sasmiar, Mixed Marriage and Its Legal Consequences, downloaded from <https://media.neliti.com/media/publications/43265-ID-perkawinan-campuran-dan-akibat-hukumnya.pdf>;

Supriyadi Arief A and Kustiwa Iwa, "Pemberatan Syarat Dan Prosedur Terhadap Warga Negara Dalam Mendapatkan Kembali Kewarganegaraan Indonesia", *Jurnal Rechts Vinding*, Volume 9 Nomor 3, Desember 2020;

Undang-Undang Imigrasi dan Kewarganegaraan Amerika Serikat Tahun 1952;

Undang-Undang Nomor 12 Tahun 2006 Tentang Kewarganegaraan Indonesia;