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DUE TO LAW OF SELECTING THE RIGHT REPUDIATION CITIZENSHIP STATUS IN CITIZENSHIP LAW REVIEW OF INDONESIA

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ABSTRACT

Designation (naturalization) includes giving Indonesian citizenship status of one or a number of people from foreign nationals, or gives the status as a citizen of Indonesia or the number of people who do not have citizenship (stateless) .According to the laws of the Republic of Indonesia citizens who have dual citizenship must choose one of these citizenship so until he has only one nationality. For Indonesian citizens are treated when these approvals to those Indonesian nationals, according to Indonesian citizenship legislation that called "gain" or "select" nationality of the Republic of Indonesia will be replaced with Indonesian nationality, and which are called "retained" Dutch nationality or nationality of foreign countries or "reject" Indonesian nationality. So goes the Indonesian nationality, if it has lost the nationality Indonesia automatically all matters concerned with the rights and obligations of citizens or her country also erased or lost. The problem that will be discussed are: Does the right of repudiation in the process of selecting citizenship status lead to legal consequences for those concerned? Does repudiation rights used in the process of selecting citizenship status in Indonesia? By studying this research, it is expected to find out the point of problems in selecting indonesian citizenship.This research used qualitative. Since this method is a directed and systemic method. In addition, this research study used statute approach and conceptual approach. It is an approach which comes from views and doctrines that are developed in the science of law.The findings of this research are: first, as a result of law that is rejected, rejected state has no right to force someone to reject the offer, this happens because of self-will without intervension from other sides. Since, the status of citizenship related to the existence in getting right and obligation of someone in every action. The second problem is repudiation right that is used in Indonesia by special naturalization. It means that the state is able to offer or give citizenship status by using it, and in this session, the citizen has right to receive or reject that offer.

Keywords: *Citizenship law, naturalization (Naturalization), Dual Nationality, Stateless*

BACKGROUND

In the history of human being, no one can live alone and separate from others. One of the needs of humans as social beings is by living together to obtain offspring through a legal marriage with the aim of forming a happy and eternal home based on a God. This marriage is expected to the last for a long time until death. Such as in Indonesia in Chapter X Article 28B Paragraph (1) of the Constitution of the Republic of Indonesia that every person has the right to form a family and continue the descent through a legal marriage.

In this case, marriage is always seen as a basis for the family which has an important meaning for the moral preservation or character of the community to continue living. The legal consequences of the existence of a marriage bond that will arise certain rights and

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obligations among other, between husband and wife, and among communities.

Humans as social beings, in their lives can not live alone without getting help from others. So, as a social creature that depends on other human beings, thus encouraging people to be able to live in the midst of society. Human interaction in society gives birth to various relationships, both individual and collective. One of the individual human relationships is the relationship between a man and a person. women in marriage ties. In addition, humans have universal tastes, do not recognize skin color, religion, race, class or nation, so it is not impossible if there is a marriage between people who have different nationalities, namely between Indonesian Citizens (Indonesian citizens) with Foreign Citizens (foreigners).

If the birth of a child through mixed marriages in the territory of the Republic of Indonesia, where each party both husband and wife defend each other's citizenship, then there will be two possibilities, namely the child born to obtain the citizenship of his father or the child does not obtain citizenship because it was rejected by his father's home country.

The problem that is vulnerable and often arises in mixed marriages is the issue and status of the citizenship of children. The Citizenship Act, which for a long time adheres to the principle of single citizenship, so that children born from mixed marriages can only have one nationality, which stipulates in that Act that must be followed was his father's citizenship. Whereas Law Number 12 of 2006 concerning citizenship adheres to the principle of limited dual citizenship meaning that the citizenship status of a child from mixed marriages is dual citizenship, until the age of 18 the child is required to choose one nationality between the nationalities of the country where he was born (the right option) or reject a citizenship offered by another country, this means, someone still chooses his country of birth (Repudiation Rights). In the end he got one citizenship status from just one country.

In connection with the status and legal status of children from the results of such mixed marriages, bearing in mind the enactment of Law Number 12 Year 2006 of course brings consequences that are different from the previous Law, where a child has already been born from a mixed marriage.

Apart from the issue of mixed marriages, there are principal reasons for the emergence of the right of repudiation. In accordance with Article 20 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, Law Number 12 of 2006 concerning Citizenship states "Foreigners who have served the Republic of Indonesia or on the grounds

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that the interests of the state can be given citizenship of the Republic of Indonesia by the President after obtaining the consideration of the House of Representatives of the Republic of Indonesia, except by granting such citizenship the person concerned is dual citizenship ".

The President can grant R.I Citizenship to foreigners who have contributed to the Republic of Indonesia because of his outstanding achievements in the fields of humanity, science and technology, culture, environment, or sports which have provided progress and fragrance to the name of the Indonesian nation. The President can give Indonesian citizenship to foreigners for reasons of the country's interests because the foreigner is considered by the state to have made an extraordinary contribution in the interests of strengthening the country's sovereignty and promoting progress especially in the Indonesian economy as long as the granting of citizenship is not hampered by the emergence of dual citizenship . For this reason, those concerned must firmly choose one of the two citizenship statuses, both the initial citizenship status and the offer of granting citizenship from another country. Simultaneously with this emergence, the right of repudiation emerged as we know it the right of denial of citizenship in order to avoid double citizenship.

Based on this background, the researcher is interested to conduct study on the the legal consequences of the right of repudiation in the selection of citizenship status based on Indonesian citizenship law.

Problem of the Research

Based on the description above, the problems of study are: Does the right of repudiation in the process of selecting citizenship status lead to legal consequences for those concerned? Is the right of repudiation used in the process of selecting citizenship status in Indonesia?

RESEARCH METHOD

The legal research method used in this paper is a qualitative method. It is a directed and systematic method as a way to find and test the truth. So that in the end of the research, it can be drawn a conclusion that can be justified scientifically. The right method is expected

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to provide sequential thinking in an effort to achieve assessment to produce arguments, theories or new concepts that are in accordance with the development of science.

Problem Approach

In this legal research the problem approach method used in this study is the statute approach method. The method of approach to the law carried out by examining all the laws and regulations relating to the legal issues that are handled, so that the results of the study are an argument to solve the problems faced. and Conceptual Approach (Conceptual Approach) is an approach derived from the views and doctrines that develop in the science of law, so that by studying the views and doctrines that develop in the science of law, the author can find ideas that gave birth to legal understanding, legal concepts and legal principles relevant to the issue at hand.

Legal Material Analysis

This research analysis process uses the normative juridical research method, by examining a problem based on legislation which in this case uses the Civil Code, Law No. 1 of 1974 concerning citizenship status. The analysis used in this thesis is prescriptive and applied. Prescriptive nature is the study of the purpose of law, the values of justice, the validity of the rule of law while applied science is the science that sets the standard procedures, provisions, signs in implementing the rule of law.

DISCUSSION

1. Legal Results of Repudiation Rights

At present, the notion of citizens referring to Law Number 12 of 2006 is to regulate all matters relating to citizenship. Citizenship is understood as all matters relating to citizens. Meaning is very general and far from comprehensive meaning. This meaning can only be understood when it is associated with other laws and regulations such as Article 26 of the 1945 Constitution. Article 26 of the 1945 Constitution states that citizens are: native Indonesian people, foreign nationals who are ratified as a citizen.

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Citizenship recognizes three principles, namely (1) the principle of *ius sanguinis* (law of the blood), namely citizenship based on heredity, (2) the principle of *ius soli* (law of the soil), namely citizenship based on the place of birth, and (3) the principle of naturalization, i.e. citizenship because of a gift from the state. Law Number 12 of 2006 concerning Citizenship adds two more principles, namely the principle of single citizenship and the principle of limited dual citizenship (up to the age of 18 and after that the child must make his choice).

Normatively, Indonesia actually adheres to single citizenship and not dual citizenship (*bipatriide*). Citizens are only allowed to have one nationality identity. However, in the interest of accommodating the need for children born as a result of mixed marriages (Indonesian citizens married to foreigners), the principle of limited dual citizenship is also adopted.

The purpose of limited dual citizenship is that a child is allowed or allowed to have two nationalities according to the identity of the citizenship of the father and mother until the age of 18. When the child reaches the age of 18, the child must decide to choose one of two nationalities, namely the citizenship of his father or mother.

Indonesia also adheres to the principle of naturalization, namely the granting of citizenship to foreigners. In general, countries have two citizenship political attitudes related to naturalization, namely immigrant state and non-immigrant state. Immigrant states are usually chosen by countries with a small population. Citizenship is carried out in order to accelerate the rate of population growth, so that the country invites foreigners to come to the country to be granted citizenship. In general, countries like this also use the principle of *ius soli* (law of the soli), namely citizenship based on place of birth. While non-immigrant state is chosen by countries that already have large and densely populated populations. Even if it is naturalized, it is done for reasons foreigners have the potential and capital to be used in developing the country.

In addition to the naturalization process in Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, it also regulates the loss of citizenship. The reasons for the loss of citizenship status may occur due to negligence, for political reasons, for technical reasons that are not principled, or for reasons that the person concerned is consciously wishing to renounce his citizenship status as an Indonesian citizen. The cause or

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reason for the loss of citizenship should be made important consideration, if the person concerned wants to regain Indonesian citizenship status. The process that must be done for each of these reasons should be different from one another. The main thing is that every person must be guaranteed the right to obtain citizenship status, so as to avoid the possibility of being stateless or not citizenship. But at the same time, each country must not let someone have two citizenship status at once. That is why a citizenship agreement between states modern country to avoid the dual citizenship status. Therefore, in addition to the regulation of citizenship based on birth and through the process of citizenship (naturalization), another simpler mechanism is also needed, namely through regular registration.

Indonesia as a country that basically adheres to the sanguinis principle, regulates the possibility of its citizens to obtain citizenship status through the principle of birth. For example, many citizens of Chinese descent who are still citizens of China or who have dual citizenship between Indonesia and China, but live in Indonesia and have offspring in Indonesia. With regard to their children, as long as they are not trying to obtain citizenship status from the country of origin of their parents, can be accepted as an Indonesian citizen because of birth. Even if this is considered not in accordance with the basic principles adopted, at least those who can be subject to the provisions of citizenship through the ordinary registration process, not through a naturalization process that equates their position as foreigners at all.

In addition to the principles of *ius soli* and *ius sanguinis*, in determining citizenship two sets of rules or rules that bind citizenship are used. These two sets are active sets and passive sets. Understanding active sets is one must take certain legal actions actively to become citizens. Whereas the understanding of passive systems is a person automatically considered to be a citizen without taking certain legal actions. The implementation of the two systems results in the enactment of two legal consequences, namely the option rights and the right of repudiation. The definition of option rights is the right to choose a nationality and transfer certain citizenship. Option applies to active systems. Whereas the notion of the right of repudiation is the right to refuse citizenship offered by another country. This means, a person still chooses his country of birth. Repudiation rights apply in passive systems.

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This dual citizenship issue can be found in the case of the habiebie citizenship issue in which he was rumored to get an offer from the German state to become a German citizen, the Habiebi being a figure of Indonesia's pride until now. The most striking is his service in building human resources. So that Indonesia is able to create aircraft for the first time. His intelligence, totality and responsibility towards the state apparently were not only visible when he was in Indonesia. Before Indonesia realized its potential, Habibie had been offered several times by other countries to promote aircraft technology. The first offer came from Germany. Germany, who at that time knew Habibie was no ordinary person, immediately offered Habibie the status of "honorary citizen". Not happy with the status that was rarely given by Germany, Habibie actually refused. "Even if I become a German citizen, if one day my country calls, my (German) passport will be torn and will return to Indonesia," Habibie was quoted as saying in the book *Habibie and Ainun*. Germany also perfumes and continues to pay homage to Habibie by releasing him stay in Germany as long as he wants. Almost the same thing was done, the Philippine government. In the days of President Ferdinand Marcos, Habibie was offered to manage the Philippine aerospace. Marcos, who at that time went down immediately persuaded Habibie to reason that this was in the interest of Asia. Habibie's answer was the same, he refused again.

Luckily, Pertamina's senior official, Ibnu Soetowo, saw his potential at the time. Then, with Suharto's order, Ibnu Soetowo met Habibie and asked him to work for Indonesia. Since then Habibie began to develop industries and strategic institutions until finally a government-owned company such as PT Dirgantara Indonesia, Batan, the Agency for Assessment and Application of Technology (BPPT) and PT Pindad was born. Specifically for BPPT, the Indonesian Non-Departmental Government Institution is under the coordination of the State Ministry of Research and Technology. The task of the agency is to carry out governmental tasks in the field of technology assessment and application.

Based on the case above and some of the regulations that the author found about the dual citizenship issue, it has been legally found that the legal consequences of the right of repudiation or denial of citizenship status offered from a country to the person concerned are the loss of citizenship from the released state and loss of rights, the obligations of citizens and citizens as well as the facilities of the countries which are refused. As for the legal consequences for the rejected country does not exist, the rejected country has no right to

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force the parties concerned not to refuse the offer, this must happen because of their own volition without intervention from any party, because citizenship status is related to the existence of a person in relation to rights and obligations of every action. It's just that the country still allows the person to remain in the rejected country even though based on the requirements as specified in the statutory book.

2. Repudiation Rights in the Selection of Citizenship Status in Indonesia

The legal status of citizenship referred to here is the status of a person related to his citizenship in a country based on applicable laws. The concept of citizenship legal status refers to the concept of the legal relationship between an individual and the state, besides referring to the presence or absence of juridical recognition and protection of rights and the inherent obligations, both to the individual and to the country concerned. The legal status of citizenship in a country is usually regulated in the constitution or national legislation of a country. The constitution or national legislation is related to the issue of citizenship legal status, generally regulates who can be legally qualified as a citizen, and who does not. Normally, it is also regulated about anyone who, because of the legal status of his citizenship, obtains rights and bears civic obligations feeling or not.

In a more general sense, citizenship is one of the ways foreigners become Indonesian citizens. After running for a long time, it turns out that in practice the issue of citizenship raises a number of problems, including if it is related to Human Rights and international law. The requirements and procedures for citizenship can vary in different countries to some degree, according to the needs brought by the conditions and situations of each country.

The citizenship system is known in 2 (two) ways: active and passive. In active citizenship, a person can use the option to choose or submit the will to become a citizen of a country. While in passive citizenship, someone who does not want to be citizenship by a country or does not want to be given or made a citizen of a country, the person concerned can use the right of repudiation, that is the right to refuse the granting of citizenship.

To determine who is a citizen and the process of obtaining citizens in a country, each country determines the terms and procedures in accordance with the provisions of the legislation in force. Although there are countries that apply the principle of *ius soli*, or *ius sanguinis* or apply both to protect their citizens who are likely to give birth to their children in the territory of the country of *ius soli*, someone who *apatride* or does not have citizenship

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because of his birth, one can obtain citizenship by citizenship (naturalization)), or an application to become a citizen of a particular country.

In connection with the issue of citizenship, a person can take active action, which is known as the right of a person to obtain citizenship. One's right to obtain citizenship from a desired country / option right. Option rights can be done by someone primarily for those who apatride or who do not have citizenship. For rights that are contrary to the right to obtain citizenship are the rights to refuse to become citizens of a country that we know as repudiation rights. This right can be done by someone to release one of the citizenship status because someone is bipatride or dual citizenship.

Lots of residents of a country who travel abroad, whether intentionally or not, can give birth to children abroad. It can even happen, for reasons of better medical services, people deliberately give birth to children in hospitals abroad that can better ensure health in the birth process. In the case, the country of origin of a person from the country where he gave birth or was born to follow the same citizenship system, certainly would not cause problems. However, if the two countries concerned have different systems, then there can be circumstances that cause a person to hold dual citizenship status (double citizenship) or vice versa instead become stateless at all (stateless).

In contrast to the principle of birth, in some countries, the principle of 'ius sanguinis' is based on the factors related to a person with parental status related to blood. If the parents are citizens of a country, then automatically the citizenship of their children is considered the same as the citizenship of the parents. However, once again, in the dynamics of relations between nations that are increasingly open today, we can no longer limit relationships between people of different nationality status.

Mixed marriages often occur involving different citizenship statuses between husband and wife couples. Apart from differences in the citizenship system adopted by each country of origin of the couple, the legal relationship between the husband and wife who conduct such mixed marriages always raises issues regarding the citizenship status of their sons and daughters, so that the regulation of citizenship status is held. determined on the basis of birth or through a process of naturalization or citizenship.

The first way to regulate a person's citizenship status is determined because of his birth. Anyone born in the jurisdiction of a country, especially those who adhere to the

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principle of 'ius soli' as stated above, then the person concerned directly gets citizenship status, except if the person concerned turns out to refuse or submit a reverse application. The second way to obtain citizenship status is determined through the process of citizenship (naturalization).

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Mixed marriages often occur involving different citizenship statuses between husband and wife couples. Apart from differences in the citizenship system adopted by each country of origin of the couple, the legal relationship between the husband and wife that conduct such mixed marriages always raises issues regarding the citizenship status of their sons and daughters, so that an arrangement is established that the citizenship status it is determined on the basis of birth or through a process of naturalization or citizenship.

The first way to regulate a person's citizenship status is determined because of his birth. Anyone born in the jurisdiction of a country, especially those who adhere to the principle of 'ius soli' as stated above, then the person concerned directly gets citizenship status, except if the person concerned turns out to refuse or submit a reverse application. The second way to obtain citizenship status is determined through the process of citizenship (naturalization).

Through the citizenship process, a person can submit an application to the competent authority, in this case the Ministry of Law and Human Rights, then the official concerned can grant the request and subsequently determine the status concerned to become a legal citizen. In this era of openness, we have many witnessing the large number of citizens of a country traveling abroad, whether intentionally or not, could have given birth to children abroad. It can even occur due to better medical services, people deliberately giving birth to children in hospitals abroad that can better guarantee health in the birth process. In the case, the country of origin of a person from the country where he was born or gave birth to follow the sister citizenship of the same nationality, of course the parties will draw up the problem. However, if the two countries concerned have different systems, then a situation can occur

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that causes a person to be a dual citizenship (double citizenship) or vice versa instead becomes stateless at all (stateless).

In contrast to the principle of birth, in some countries, the principle of *ius sanguinis* is based on the factors related to a person with the status of parents related to blood. If the parents are citizens of a country, then automatically the citizenship of their children is considered the same as the citizenship of their parents. However, once again, in the dynamics of relations between nations that are increasingly open today, we can no longer limit the association between residents of different citizenship status. Frequently there are mixed marriages involving different citizenship status between married couples. Apart from differences the citizenship system adopted by each country of origin of the husband and wife, the legal relationship between husband and wife who carry out mixed marriages always raises issues regarding the citizenship status of their sons and daughters.

That is why an arrangement was held that citizenship status was determined on the basis of birth or through a process of naturalization or citizenship. In the first way, a person's citizenship status is determined because of his birth. Anyone born in the jurisdiction of a country, especially those who adhere to the principle of *ius soli* as stated above, then the person concerned directly gets citizenship status, except if the person concerned turns out to refuse or submit a reverse application. The second way to obtain citizenship status is through the process of citizenship (naturalization). Through the citizenship process, a person can submit an application to the competent authority, and then the official concerned can grant the request and subsequently determine the status in question to become a legal citizen.

There are some special things that must be known by readers of this scientific work namely RI's citizenship can be given to foreigners due to his services to Indonesia (because of his outstanding achievements in the fields of humanity, science and technology, culture, environment or sports, it has provided progress and fragrance of the name Indonesian people), or for reasons of state interest. The person is considered to have been able to make an extraordinary contribution in the interests of strengthening the country's sovereignty and the country's progress especially in these fields for Indonesia. For those who obtain this special citizenship, the president will be given directly after giving consideration to the DPR.

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In the statement and explanation of the author above that the actual right of repudiation is used in Indonesia by special citizenship or naturalization, because only by special naturalization can a state offer or give citizenship status to the concerned person so that as a legal consequence of the said offer he can reject or accept it , while the option can be used for ordinary citizenship. In Indonesia there is still no regulation regarding repudiation rights, Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia only explains the right of repudiation implicitly which we can see in article 8 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia and its implementing regulations , in which the article explains about naturalization or citizenship, the implementation of naturalization results in the enactment of two legal consequences, namely option rights and repudiation rights. Although the right of repudiation is not explicitly stated in the legislation, the implication of the right of repudiation itself has existed in Indonesia since the reign of government.

CONCLUSION

Based on the discussion previously mentioned, the following conclusions can be made: (1) Law Number 12 of 2006 concerning citizenship basically does not recognize dual citizenship or bipatride, this dual citizenship granted to children in this law is an exception . That a child is allowed or allowed to have two nationalities according to the nationality identity of his father and mother until he is 18 years old. When the child reaches the age of 18, the child must decide to choose one of two nationalities, in this case, he has the right to use the option or the right of repudiation. Which if he uses the right of repudiation, it will cause a legal consequence that he will lose the citizenship status he rejects and automatically also will lose the rights and obligations of the citizens and countries he rejects. (2) There are some special things that must be known by readers of this scientific work, namely that Indonesian Citizenship can be given to foreigners as a result of his services to Indonesia or because of the interests of the state. The person is considered to have been able to make an extraordinary contribution in the interests of strengthening the country's sovereignty and the country's progress especially in these fields for Indonesia, this can be done by naturalization or citizenship. In Indonesia there is still no regulation regarding repudiation rights, Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia only explains the

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right of repudiation implicitly that we can see in article 8 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia and the implementing regulations, where in the article explains about naturalization or citizenship, the implementation of naturalization results in the enactment of two legal consequences, namely option rights and repudiation right. Although the right of repudiation is not explained in explicit statutory regulations, but the implication of the right of repudiation itself already exists in Indonesia. The government should issue policies relating to the application of repudiation rights so as to provide convenience in the citizenship procedures that are specific through repudiation rights. In Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia there is no stipulation concerning the right of repudiation expressly, for this reason there is a need for changes to Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia or issuing new Government Regulations to find out about problems arising from the right of repudiation.

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