

## **Analysis of the Reacquisition of Citizenship Loss Based on Indonesian Constitutional Law**

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### **KEYWORDS**

Citizenship, Human Rights,  
Recovery.

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### **ABSTRACT**

In the democratic state and the rule of law, human rights protection is an essential principle. The fact that citizenship status is fundamental rights put consequences that the states and citizen has reciprocal relations which means states needs their citizens as well as citizens need states. States should ensure that no one in the states is left stateless. In order to avoid stateless, the State needs to be aware and anticipative which is reflected through legislation and administrative practices. In the Heidy Mariska case, the administrates neglected article 17c Law No. 62 Year 1958 on Citizenship which then results in diffusion of Heidy Mariska citizenship status so that she was stateless in the country she was born in. This paper analyse the implementation of the law on citizenship whether or not it reflects protection to citizenship status and anticipation of statelessness.

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### **Introduction**

Law Number 39 of 1999 concerning Human Rights explains that Human Rights are a set of rights inherent in the essence and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government, and everyone for the honor and protection of human dignity and dignity. Human beings and human rights are two things that cannot be separated. From his birth, man is born carrying with him the rights inherent in his life. Basically humans are free beings. As Jean Jaquas Rousseau argued, human beings will develop their potential and feel human values in an atmosphere of natural freedom. (Wilujeng, 2013)

One of the rights that must be fulfilled by the state towards its citizens is citizenship status. A person's citizenship status becomes a basic citizen right that must be fulfilled, valued, respected, and protected by the state. A person's citizen status is regulated in the Constitution of the Republic of Indonesia Year 1945 in Article 28 D paragraph (4). According to Mahfud MD, every citizen has constitutional obligations both as an Indonesian citizen and as a human being. As citizens, they are required to have a sense of nationality (nationalism) or love for the homeland so they must be ready to defend and sacrifice for its survival. Thus there is a reciprocal achievement between the protection of the rights granted by the state and the willingness to sacrifice for the survival of the nation and state. Regarding the relationship of citizenship status as a human right,

it has been clearly regulated by the Universal Declaration of Human Rights (UDHR) contained in Article 15 paragraph (1), namely that, "a person has the right to a citizenship status". Then in paragraph (2) states that "no person shall be deprived of his citizenship status and deny the right to change citizenship". A State guarantees protection and exercise to citizens. In its development, the 1945 Basic Law of the Republic of Indonesia after amendment has undergone many changes that better guarantee the protection of human rights and citizens' rights.(Asshiddiqie, 2007)

Citizenship status contains two aspects, namely the juridical aspect which means citizenship is a legal status of statehood, a complex of rights and obligations; and the socio-cultural aspect which means citizenship is the membership of a particular nation, namely a number of people who are bound to each other because of the unity of language, social and cultural life and national consciousness. The status of citizenship is juridically regulated by the national laws of each country, because in essence it is the right of each country to determine who its citizens are, and determine for themselves the conditions to become a citizen.(H. F. F. Busroh et al., 2022)

Heidy Mariska is a stateless person (*apatride*). Heidy Mariska is currently stateless in her homeland, Indonesia. Heidy Mariska is the daughter of Mrs. Soe Tin who married a Dutch man of religious (Islamic) nationality. The marriage was then registered at the Malang Civil Registration Office. Heidy Mariska's mother was divorced from the Dutch citizen at the time of the creation of Heidy Mariska's birth certificate. Thus, Heidy Mariska's birth certificate states that Heidy Mariska is the daughter of an Indonesian citizen. But Heidy Mariska's mother (Mrs. Soe Tin) tried to prove that Heidy Mariska was the daughter of a Dutch citizen with recognition from her father through the Notarial Deed of Chusen Bisri Malang, which was later determined by the Malang District Court (Jasin, 2016).

The formulation of the problem in this study is: What are the basic principles regarding the acquisition and loss of Indonesian citizenship status? And what is the mechanism for retrieval of loss of citizenship based on Indonesian constitutional law? While the purpose of the problem in this study is to find out how the basic principles regarding the acquisition and loss of citizenship status in Indonesia. To find out how the mechanism for retrieval of loss of citizenship based on Indonesian constitutional law.

## Research methods

The type of research used is normative legal research. According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced.

## Results and Discussion

### 1. Basic Principles Regarding the Acquisition and Loss of Indonesian Citizenship Status

A citizen is a citizen of a country established by laws and regulations. Therefore, to avoid statelessness, from birth, a child has the right to citizenship. So that in the explanation of the Citizenship Law of the Republic of Indonesia adheres to the principles of citizenship, as follows: The principle of *ius sanguinis* (*law of the blood*) is a principle that determines a person's nationality based on descent, not based on place of birth. The principle of *ius soli* (*law of the soil*) is a principle that determines the nationality of a person based on the country of birth, which is limited to children in accordance with the

provisions provided for in this Law. The principle of single citizenship is the principle that determines one nationality for each person. The principle of limited dual citizenship is the principle that determines dual citizenship for children in accordance with the provisions stipulated in this Law.(Salim, 2017)

A person who loses his citizenship status then means the loss of the rights and obligations of that person towards the country concerned. The loss of a person's citizenship status results in the breakdown of a citizen's relationship with his country. There are several causes of a person losing citizenship, including:(Asshiddiqie, 2006)

1. *Renunciation*, which is the voluntary act of abandoning one of two or more citizenship statuses held from two or more countries.
2. *Termination*, which is the termination of citizenship status as a legal action because the person concerned already has citizenship from another country.
3. *Deprivation*, which is the revocation or forcible termination or dismissal of citizenship status based on the order of an authorized official due to errors or violations in obtaining citizenship status.

In addition, the loss of a person's citizenship status can be caused by negligence for political reasons for technical reasons or for reasons that are concerned with consciously and deliberately wanting to give up their citizenship status. In reality, everyone is guaranteed the right to citizenship, thus avoiding the possibility of stateless, *apatride* or stateless. One of the laws and regulations is Law No. 12 of 2006 concerning Citizenship of the Republic of Indonesia. It is clearly written in the Explanation of Law No. 12 of 2006 that, "that this law basically does not recognize dual citizenship (*bipatriide*) or statelessness (*apatride*). In addition, in the Explanation of Law No. 12 of 2006 one of the specific principles underlying the preparation of this law is the principle of recognition and respect for human rights. States are given the right to use which principles to choose in order to determine citizenship for their citizens, and sometimes these principles must be used simultaneously to prevent the possibility of *bipatriide* or *apatride* and basically this law does not recognize *bipatriide* or *apatride*.(Asshiddiqie, 2006)

In Law Number 12 of 2006 and Government Regulation Number 2 of 2007, there are 13 groups of Indonesian Citizens (WNI) in terms of how to get them, namely:

1. Any person who based on laws and regulations and/or based on agreements between the Government of the Republic of Indonesia and other countries before this Law comes into force has become an Indonesian Citizen;
2. A child born from a legal marriage of an Indonesian father and mother;
3. Children born from a legal marriage of an Indonesian father and a foreign mother;
4. A child born from a legal marriage of a foreign father and an Indonesian mother;
5. A child born from a legal marriage to an Indonesian mother, but the father does not have citizenship or the law of the father's home country does not grant citizenship to the child;
6. A child born within a grace period of 300 (three hundred) days after the father's death from a legal marriage and the father is an Indonesian citizen;
7. A child born out of legal wedlock to an Indonesian mother;
8. A child born out of legal wedlock to a foreign mother who is recognized by an Indonesian father as his child and the recognition is made before the child turns 18 (eighteen) years old or unmarried;
9. Children born in the territory of the Republic of Indonesia who at the time of birth have unclear citizenship status of their father and mother;

10. Newborn children found in the territory of the Republic of Indonesia as long as the father and mother are unknown;
11. Children born in the territory of the Republic of Indonesia if the father and mother are stateless or whose whereabouts are unknown;
12. A child born outside the territory of the Republic of Indonesia to an Indonesian father and mother who, due to the provisions of the country in which the child was born, grants citizenship to the child concerned;
13. The child of a father or mother who has been granted citizenship, and then the father or mother dies before taking the oath or pledging allegiance.

For someone who is not included in the 13 criteria and wants to get Indonesian citizenship, the conditions that must be met are:

1. Be 18 (eighteen) years old or married;
2. At the time of submitting the application has resided in the territory of the republic of indonesia for at least 5 (five) consecutive years or at least 10 (ten) non-consecutive years;
3. Physically and spiritually healthy;
4. Be able to speak indonesian and recognize the state basis of pancasila and the 1945 constitution of the republic of indonesia;
5. Has never been convicted of a crime punishable by imprisonment of 1 (one) year or more;
6. If by obtaining citizenship of the republic of indonesia, does not become a dual citizen;
7. Have a job and/or a steady income; and
8. Pay citizenship money to the state treasury.

## **2. Retrieval mechanism for loss of citizenship under Indonesian Constitutional Law**

In Heidy Mariska's case, she voluntarily applied to become a Dutch citizen like her father. The Indonesian government through the Malang District Court granted the request by then stating that Heidy Mariska was no longer an Indonesian citizen but a Dutch citizen. Based on the Malang District Court Decree Number 331 / Pdt.P / 2001 / PN.Mlg dated January 14, 2002, granted the application for recognition of extramarital children and changes to the birth certificate in the name of Heidy Mariska. At that time Heidy Mariska was 18 (eighteen) years old. The determination of the Malang District Court has permanent legal force. On the basis of the Malang District Court Determination, the Head of the Malang City Population Office on January 26, 2002 made changes to the birth certificate in the name of Heidy Mariska, which through a marginal note stated Heidy Mariska was a Dutch citizen. When Heidy Mariska was declared deprived of Indonesian citizenship by the Malang District Court in 2001, the Malang District Court Judge used the provisions of Article 17 letter (c) of Law No. 62 of 1958, which states that Indonesian citizenship is lost because it is recognized by foreigners as their children, if the person concerned is not yet 18 years old and unmarried and by losing citizenship of the Republic of Indonesia does not make stateless (Jurdi, 2019). The article provides for the recognition of extramarital children by foreigners. Heidy Mariska's biological father, a Dutch citizen, recognized Heidy Mariska as his son. But another provision that the Judge did not pay attention to at the time was if the child concerned was not yet 18 years old and unmarried.

Heidy Mariska applied for Dutch citizenship in March 2008. The application was submitted through the Dutch Consulate Office. Until September 2013, Heidy Mariska's application to become a Dutch citizen was not accepted by the Dutch Government through the Consulate General in Surabaya. Referring to the Hague Court Decision Number C/09/424604/HA RK 12-436 dated April 25, 2013, the State of the Netherlands decided to reject the application for Dutch citizenship on behalf of Heidy Mariska. The marriage of both parents carried out religiously (Islamically) has no legal force by recording a certificate at the Civil Registration Office. So that the child of the marriage, Heidy Mariska could not be recognized by Dutch law. Heidy Mariska became stateless (*apatride*) (A. D. Busroh & Busro, 1982).

The loss of Indonesian citizenship experienced by Heidy Mariska must be immediately returned by the state as a form of state responsibility for the fulfillment of human rights. The fulfillment of citizenship status as Heidy Mariska's right is a form of state responsibility towards Article 28 D paragraph (4) of the Constitution of the Republic of Indonesia Year 1945, which states that citizenship status is the right of everyone. As a child born to an Indonesian citizen, Heidy Mariska has human rights that have not been fulfilled by the State of Indonesia. The procedure for obtaining citizenship requires a person to have predetermined supplementary documents. Heidy Mariska will not be able to fulfill the requirements set because she does not have the documents intended to regain Indonesian Citizenship because Heidy has not experienced any Residency events. For example, taking place abroad or marriage documents.

## Conclusion

The loss of citizenship that occurred to Heidy Mariska due to negligence in the application of the provisions of Article 17 letter (c) of Law No. 62 of 1958 which states that a child who is not yet 18 (eighteen) years old is recognized by foreigners as his child will lose Indonesian citizenship. This provision can be applied provided that the child concerned is not yet 18 (eighteen) years old or unmarried. At the time of the enactment of the Law, Heidy Mariska was 18 (eight years old). Special provisions need to be made, namely the concrete, individual and final State Administrative Decree (KTUN) stating that the reacquisition of Indonesian Citizenship. Heidy Mariska does not need to use the usual procedures established by laws and regulations. This is due to the loss of Indonesian citizenship owned by Heidy Mariska due to the carelessness of officials in implementing Article 17 huruc (c) of Law No. 62 of 1958.

As a form of state responsibility for a person's human rights as stated in the constitution, namely Article 28 D paragraph (4) of the NRI 145 Constitution that citizenship status is the right of everyone, the restoration of Indonesian citizenship status for Heidy Mariska must be done immediately. Heidy Mariska's stateless existence is severely restricted by the enactment of Law No. 23 of 2006 concerning Population Administration and Law No. 6 of 2011 concerning Immigration. The reacquisition of Indonesian Citizenship status for Heidy Mariska is useful for an acknowledgement that Heidy Mariska is declared an Indonesian Citizen which is corroborated by a written document. Passport or Identity Card is very useful for Heidy Mariska as a manifestation of the fulfillment of human rights. Heidy Mariska's passport or identity card as an Indonesian citizen is useful for the process of her residency events. For example, if Heidy Mariska still wants to become a Dutch citizen, then the identity card can be used by Heidy Mariska to apply to become a Dutch citizen

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