

Juridical Review of the Cancellation of Pilkada Results for Candidates with Dual Citizenship Status in Indonesia (Case Study: Constitutional Court Decision No. 135/PHP.BUP-XIX/2021)

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ABSTRACT: The ownership of dual citizenship by the Elected Regent Candidate has raised a dispute regarding the results of the Regional Head Elections in Sabu Raijua 2020. This study aims to analyze the considerations of Constitutional judges and the impact that arises after the Constitutional Court Verdict Number 135/PHP.BUP-XIX/2021. The research method used is normative juridical, with a statute approach and a case approach. The research results showed that the panel of judges gave a fair assessment by canceling the investiture of the Elected Regent Candidates because of formal defects at all stages of the Regional Head Election and the impact received was the loss of Indonesian citizenship which caused him to no longer have political rights as the exclusive rights of Indonesian citizens.

KEYWORDS: Regional Head Elections, Dual Citizenship, Constitutional Court Verdict Number 135/PHP.BUP-XIX/2021; Indonesian Citizens.

I. INTRODUCTION

Indonesia is known as a state of law that implements a democratic system. According to Sahya Anggara in his book Indonesian Political System (1), democracy is defined as the government of the people, where the people run the government through their representatives with a will that must be respected. This is in line with Article 2 paragraph (2) of the 1945 Indonesian Constitution which states that sovereignty is in the hands of the people, indicating that the people are the ultimate power holders in Indonesia.

As a democratic country, general elections are an important element that must be held periodically (2). Elections are a means for the people to channel their political rights, government rights, and other civil rights directly. In addition to elections, people's aspirations can also be conveyed through Regional Head Elections (Pilkada), which since 2005 have been held directly (3).

In its dynamics, Pilkada held in Indonesia still often causes disputes that end up in the Constitutional Court (MK). One of the cases occurred in the Pilkada in Sabu Raijua Regency in 2020, where the Elected Regent Candidate, Orient P Riwu Kore, was suspected of having dual citizenship. This is against the requirements for regional head candidacy which requires the status of an Indonesian citizen (WNI).

II. RESEARCH METHOD

The approach method used is normative juridical. The approach is based on primary and secondary legal materials, namely research that refers to the norms contained in the legislation. Descriptive analytical is a research specification used in this research, which describes the applicable laws and regulations and is associated with positive legal theories that are concerned with the problem under study (4).

The data collection method used is positive law inventory, literature study, and decision observation which aims to obtain data or information according to the research. The data analysis method will be carried out qualitatively (5), which emphasizes its analysis on the deductive and inductive inference process and on the analysis of the dynamics of the relationship between the problems at hand, with scientific logic, and answers research questions.

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III. DISCUSSION

A. Considerations of Judges of the Constitutional Court (MK) in Ruling on the Cancellation of Pilkada's Results

1. Stages of the Pilkada Process in Sabu Raijua Regency that were Canceled by the Constitutional Court.

The election results at issue here are the Regent and Deputy Regent elections which turned out to cause conflicts related to the issue of dual citizenship owned by one of the candidates for the election. The following are four (4) stages of the 2020 Sabu Raijua regional election process that were canceled by the Constitutional Court.

a. Stage of Determination of Candidate Participants

Registration of candidates for this election is the first step in the process of electing the Regent and Deputy Regent. Prospective candidates for Regent and Deputy Regent who will register are required to meet the requirements and conditions to become candidates for Regent and Deputy Regent in accordance with what has been socialized in various social media and directly by the KPU. There are three prospective candidate pairs who have registered after the opening of the registration, including:

- 1) Nikodemus N. Rihi Heke and Yohanis Uly Kale.
- 2) Orient P. Riwu Kore and Thobias Uly
- 3) Takem Irianto Radja Pono and Herman Hegi Radja Haba

All of those will be declared to have met the requirements as socialized by the KPU, after passing the checking and verification of related documents. Verification is carried out under the supervision of the Badan Pengawas Pemilu (BAWASLU), and is officially stipulated through Komisi Pemilihan Umum (KPU) No. 152/HK.03.1-Kpt/5320/KPU-Kab/IX/2020 concerning the Determination of Candidates for the 2020 Sabu Raijua Regent and Deputy Regent Elections.

b. The stage of determining the Candidate's Sequence Number Determination of serial numbers is generally carried out by drawing from the three pairs of candidate participants in a meeting attended by related parties. The results of the drawing were officially stipulated by KPU Decree No.153/HK.03.1-Kpt/5320/KPU-Kab/IX/2020 concerning Determination of Candidate Sequence Numbers for the 2020 Sabu Raijua Regent and Vice Regent Elections.

The results showed that the candidate pair that received serial number one was Nikodemus N. Rihi Heke and Yohanis Uly Kale, who were supported by PKD and Nasdem political parties with a total support requirement of 5 (five) seats or 7,807 voters. Serial number 2 is used by the candidate pair Orient P. Riwu Kore and Thobias Uly, which is supported by PDIP, GERINDRA, and Democrat with a total support requirement of 9 (nine) seats or 15,918 voters.

Lastly, the candidate pair Takem Irianto Radja Pono and Herman Hegi Radja Haba, who are supported by individuals without political parties with a total support requirement of 5,382 voters, received serial number Three. The absence of objections regarding the determination of the candidate pair's sequence number, is used as a reason to proceed to the next stage.

c. Voting Stage and Determination of Voting Results

The campaign period has ended, and then came the day when direct voting was carried out simultaneously in Sabu Raijua. Along with the completion of the voting, the recapitulation of the vote results based on the vote count by the authorized party was carried out. The results of the vote recapitulation were then officially determined by the KPU through KPU Decree No. 342/HK.03.1- Kpt/5320/KPU-Kab/XII/2020.

The results stated that the winner of the most votes was pair number two, Orient P. Riwu Kore and Thobias Uly, with the results of 21,363 voters or equivalent to 48.30%. The second highest result was obtained by pair number 1, Nikodemus N. Rihi Heke and Yohanis Uly Kale, with the results of 13,313 voters or equivalent to 30.10%.

The third highest result was obtained by pair number 3, Takem Irianto Radja Pono and Herman Hegi Radja Haba, with the results of 9,557 voters or equivalent to 21.60%. There were no parties who objected to the recapitulation results, so the KPU announced to the public about the results.

d. Stage of Determination of Elected Regent and Deputy Regent Candidates

The plenary meeting was held after the recapitulation of the voting results that had been carried out a few days ago. The meeting discussed the determination of candidate pair number two, Orient Riwu Kore and Thobias Uly as the elected Regent and Deputy Regent pair, which was officially stipulated through KPU Decree No. 25/HK.03.1- Kpt/5420/KPU-Kab/IX/2020. Since three (3) days after the issuance of the KPU decision, no party has objected to the determination.

The recommendation regarding the elected candidate pair was sent to the Minister of Home Affairs on January 29, 2021, but on February 1, 2021, an email was received stating that the elected Regent candidate, Orient Riwu P Kore, was not an Indonesian citizen (WNI). The email was a copy of the United States Embassy (US) which was officially sent.

This resulted in no party filing an objection, but a party (election participant) who objected and wanted to submit a request to cancel the election results to the Constitutional Court. The application was only submitted to the Constitutional Court on March

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9, 2021 by candidate pair number 3, as the applicant or party who had objected.

Regarding this situation, the submission of a request to annul the election results to the Constitutional Court (MK) by candidate pair number 3 on March 9, 2021, must be considered in the context of the time limit for filing election result disputes as stipulated in Article 157 paragraph (5) of Law No. 10 of 2016 concerning Regional Elections. This law explicitly states that a request for annulment of election results must be submitted no later than three working days after the announcement of election results by the General Election Commission (KPU)(6).

Thus, if the request is submitted after that period, the Constitutional Court is authorized to reject the petition on formal grounds as it is deemed to have exceeded the filing deadline (7). In this context, it is essential to ensure that the constitutional rights of the disputing parties are respected, but it must also adhere to legal certainty and procedural order as mandated by the applicable laws and regulations.

2. Problems with the Time Limit for Filing a Petition for Cancellation of Election Results

Legal standing is a person's right to submit an application to the Constitutional Court. Referring to Article 4 of Constitutional Court Regulation Number 6 of 2020 concerning Procedure in Disputes over the Election Results of Governors, Regents, and Mayors, explains 4 (four) parties who are entitled to file a petition to cancel the election results, namely:

- a. Governor and Deputy Governor candidate pairs;
- b. Candidate pairs for regent and deputy regent
- c. Candidates for Mayor and Deputy Mayor; and
- d. Election observers in the event that there is only one candidate pair.

The applicant certainly has legal standing because he is included in the parties entitled to file an application in accordance with letter b in the article above. The applicant is also a participant in the election with serial number three. The existence of fraud committed by Orient P Riwu Kore in fulfilling the requirements during registration, made the applicant feel disadvantaged and made a formal defect in this election process. Not only legal standing, the applicant is also required to have a predetermined time period. The time period for filing a petition for annulment.

The election results are no longer than three working days, after the results of the determination are announced in accordance with Article 157 paragraph (5) of Law No. 10 of 2016 concerning the Election of Governors, Regents and Mayors in conjunction with Article 7 paragraph (2) of the Constitutional Court Regulation Number 6 of 2020 concerning Procedures in Disputes over Pilkada Results. The existence of these specific conditions causes that in each stage of the 2020 Sabu Raijua Regent and Deputy Regent elections, there are things that have violated the constitution and the principles of elections.

Referring to Article 22E paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that elections are carried out with the principles of *luber* and *jurdil*, which principles have been violated. The absence of laws and regulations governing the specific conditions that arise, then in accordance with Article 5 paragraph (1) of Law No. 48 of 2009 concerning Judicial Power, states that the Constitutional Court is an institution that is obliged to conduct legal discovery (*rechtscinding*) in the event of anomalies, crises, or the absence of norms that can resolve cases that have not been regulated by law (8).

The applicant does have legal standing but it has lapsed because it has expired, as well as legal standing, even so the applicant still believes that the Constitutional Court can override the time limit issue because of the specific conditions and the principle of *maxim nullus / nemo commodum capere potest de injuria sua propria* which means that no one can benefit from deviations committed by themselves and no one can be harmed due to deviations by others.

3. The Issue of Orient P Riwu Kore's Citizenship Status as an Election Participant

a. The Response of Komisi Pemilihan Umum

The KPU states that it has carried out its duties in accordance with KPU Regulation No. 5 of 2020 concerning Stages, Programs, and Schedules for the Implementation of the elections of Governors and Deputy Governors, Regents and Deputy Regents, and/or Mayors and Deputy Mayors. The KPU also has a big role in the nomination stage to verify the fulfillment of requirements according to laws and regulations.

Based on confirmation from the Kupang City Population and Civil Registration Office, the KPU stated that it had verified the documents belonging to the candidate pairs because they met the requirements. This is confirmed by the existence of a valid KTP-el, which is a sign that a person is a citizen.

The KPU revealed that it had fulfilled several BAWASLU recommendations, due to the discrepancy between the Kupang City Population and Civil Registration Office and the US Embassy regarding the citizenship status of the elected regent candidate. KPU also stated that the petition to cancel the election results has expired, so the applicant has no legal standing to file the petition.

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b. The Response of Badan Pengawas Pemilu

The issue of dual citizenship status owned by one of the prospective candidate pairs participating in the regional elections, underlies BAWASLU to send a recommendation letter to the KPU to reconfirm the validity of the citizenship status of the prospective participants. Not only sending a letter to the KPU, but also writing to agencies that can provide information.

The absence of a reply from these agencies led BAWASLU to approve the KPU's decision to proceed with the next step after verification of the validity of the requirements of the candidates based on confirmation from the Kupang City Population and Civil Registration Office. When all stages of the election were completed, a few days later BAWASLU received an email from the US Embassy's response.

The email clearly stated that Orient P Riwu Kore was indeed a US citizen. Based on the email, BAWASLU sent another recommendation letter to postpone the inauguration for the elected Regent and Vice Regent candidates. Confirmed again by writing to the Minister of Home Affairs, who then also stated that the email was correct, BAWASLU recommended to cancel the inauguration.

It was stated by BAWASLU that in resolving the cancellation of this election, the competent person to decide to provide a legal solution was the Constitutional Court because of the specific conditions and the time period that had expired, even though BAWASLU actually had the authority in the existence of administrative violations and election disputes to not have such authority anymore (9).

BAWASLU's decision to proceed with the election stages after receiving confirmation from the Kupang City Population and Civil Registration Office indicates a procedural error in verifying the citizenship status of the regional head candidate (10). BAWASLU should not have solely relied on the information from local agencies but should have also considered information from international authorities regarding foreign citizenship status, in this case, the US Embassy. Upon receiving the email from the US Embassy stating that Orient P Riwu Kore was indeed a US citizen, BAWASLU should have immediately suspended the inauguration process instead of merely recommending a postponement. This step is crucial to ensure that the final decision regarding the candidate's status does not lead to legal uncertainty and to prevent the inauguration of an ineligible candidate (11).

On the other hand, BAWASLU's subsequent action of transferring the resolution of the dispute to the Constitutional Court (MK) was appropriate, considering MK's authority in resolving disputes over regional election results as stipulated in Article 24C paragraph (1) of the 1945 Constitution. Although BAWASLU has the authority to handle administrative violations in the electoral process, this case had already entered the realm of electoral result disputes, thereby placing the final decision under the jurisdiction of Constitutional court (12). Nevertheless, BAWASLU's oversight in handling the initial report concerning Orient P Riwu Kore's citizenship status serves as an important precedent, emphasizing the need to strengthen the verification mechanism for regional head candidates to prevent similar incidents in the future.

c. The response of US Embassy

The issue of the US citizenship status of one of the candidates for the local elections has prompted the US Embassy to confirm the status. Through email, it was stated that Orient P Riwu Kore was indeed a US citizen. The email is an official statement signed by Eric M. Alexander as Consulate General at the US Embassy.

The existence of this email resulted in the postponement of the inauguration of the elected candidate pair and with the letter No 02992/PK/02/2021/64 which was complemented by diplomatic note No 00709 causing the cancellation of the inauguration of the elected candidate because it did not meet the requirements as Regent and Deputy Regent of Sabu Raijua in 2020.

In the United States legal system, the embassy has the authority to provide official information regarding the citizenship status of its nationals to foreign authorities. The US Embassy's action in issuing the official email can be regarded as a form of international cooperation in the context of citizenship law enforcement (13).

In the US, citizenship is regulated under the Nationality Act and the Immigration and Nationality Act (INA). Any individual holding a US passport is automatically recognized as a US citizen and is subject to the rights and obligations associated with US citizenship (14). The US Embassy acts as a representative of the US government to ensure compliance with citizenship laws.

In Indonesia, relevant authorities such as the Ministry of Law and Human Rights, BAWASLU, and the General Elections Commission (KPU) are authorized to act upon citizenship information provided by foreign entities, including the US Embassy. In this case, BAWASLU used the information as the basis for postponing and subsequently canceling the inauguration of Orient P Riwu Kore due to his ineligibility as a regional head candidate.

Therefore, the role of the US Embassy in this case is not limited to providing administrative information but also serves as a vital part of the verification mechanism for citizenship status, which can be used by local authorities as a legal basis for making decisions. This reflects the cross-national coordination in enforcing citizenship laws and preventing the misuse of dual citizenship status,

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which is contrary to Indonesian law.

d. The Response of Constitutional Court Judges

The Constitutional Court stated that with regard to the issue related to the dual citizenship of the elected Regent candidate, which was only discovered after the entire series of Pilkada stages were completed, there was a specific condition in this case. The dual citizenship status of the Elected Regent candidate requires the Constitutional Court to collaborate with several other related agencies.

Based on the official email from the US Embassy and the two passports owned, the Constitutional Court considers that the party concerned is not an Indonesian citizen, which does not meet the requirements to participate in the elections. Because the right to be elected and vote in general elections and regional heads is only an exclusive right for Indonesian citizens.

The Court also considered that in taking care of the missing Indonesian Passport, the relevant party gave irrelevant reasons when questioned at the Consulate General of the Republic of Indonesia (KJRI) Los Angeles with the South Jakarta Immigration Office. The dishonesty of the reason for the loss of the Indonesian Passport, makes the Court think that the party concerned does not want to be frank about his citizenship status.

4. The Consideration of Constitutional Court and Decision

a. Consideration of the Constitutional Court

The consideration by the Constitutional Court is that it considers that the object of the petition submitted is not only about canceling the election results, but also with a specific condition regarding the issue of dual citizenship which also violates the provisions of Article 27 paragraph (1) and Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which essentially states that positions and management in government can only be filled by Indonesian Citizens (WNI).

Positions in government certainly contain issues of sovereignty and national interests, therefore the participation of foreign nationals (WNA) as candidates for regional heads cannot be legally justified. Based on this, the Constitutional Court stated that it had the authority to hear the petition, in accordance with Article 157 paragraph (3) of Law 10 of 2016 concerning the election of governors, regents and mayors.

The next consideration by the Constitutional Court, which is related to the time limit, states that with the existence of specific conditions that do not have laws and regulations and have never occurred, it can be a reason for the Constitutional Court to deviate from the rules of Article 157 paragraph (5) of Law No. 10 of 2016 concerning the Election of Governors, Regents and Mayors related to the time period which should only be 3 days, can be more than that.

The Constitutional Court's consideration further states that the applicant still has legal standing because he is an election participant with serial number 3 on behalf of Taken Radja Pono and Herman Hegi Radja Haba in accordance with Article 157 paragraph (4) of Law No. 10 of 2016 concerning the Election of Governors, Regents and Mayors related to parties entitled to submit applications.

The Constitutional Court also considered that by canceling the elected candidate pair, there would be legal consequences, namely a legal position vacuum. The Constitutional Court anticipates the occurrence of a vacant position by asking to conduct a re-vote based on popular support. The re-voting was carried out with a grace period of 60 days after the reading of the Constitutional Court's decision, which was followed by candidate pairs number 1 and number three only.

b. The Verdict

- 1) Granted the petition in partial;
- 2) Disqualify candidate pair number 2, Orient Patriot R. Kore and his deputy from the Sabu Raijua Regent and Vice Regent elections;
- 3) Ordering the respondent, namely the Sabu Raijua KPU, to hold a re-vote for candidate pairs 1 and 3 within 30 days after the issuance of this decision and ordering the Election Supervisory Agency to supervise each stage of the re-vote and the NRI Police to secure the process; and
- 4) Ordering to cancel the four KPU decisions, namely No. 342/HK.03.1-Kpt/5320/KPU-Kab/XII/2020, Kpt/5320/KPU- Kab/IX/2020, No. 152/HK.03.1- No.153/HK.03.1-Kpt/5320/KPU- Kab/IX/2020, No. 25/HK.03.1-Kpt/5420/KPU-Kab/IX/2020.

B. The Impact of the Decision on the Cancellation of Pilkada Results on the Loss of Citizenship Status in the Perspective of Citizenship Law

1. Legal Effects on Orient P Riwu Kore that Arise After the Constitutional Court Decision No. 135/PHP.BUP- XIX/2021

The presence of Constitutional Court Decision Number 135/PHP.BUP-XIX/2021 resulted in several legal consequences for Orient P Riwu Kore. First, the candidate pair was disqualified from participating in the Sabu Raijua Pilkada because they did not meet the

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requirements of Indonesian citizenship, as stipulated in Article 7 paragraph (1) of the Regional Head Election Law. Violation of this provision caused Orient to no longer qualify as a candidate for regional head.

The above is evidenced by the inauguration of the elected candidate pair being legally canceled. This cancellation was carried out because the inauguration was an inauguration step to confirm the status of the elected regional head, but Orient did not meet the required citizenship requirements. This provision is in accordance with Article 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia in conjunction with Article 21 paragraph (2) of the Universal Declaration of Human Rights (UDHR) which states that only citizens are entitled to hold public office. As a consequence, the vice-regent candidate is also affected because they are running as a candidate pair.

The candidate will automatically lose his Indonesian citizenship status as he is proven to have another citizenship, namely with the United States of America. Thus, he loses the political right to be elected and to vote as stipulated in Article 43 of Law No. 39/1999 on Human Rights. Finally, the Constitutional Court's decision also created a legal vacuum in the government in Sabu Raijua. To resolve the situation, the Constitutional Court ordered a re-voting by only involving other candidate pairs that still meet the nomination requirements (15).

2. Analysis of Orient P Riwu Kore's Loss of Citizenship with Citizenship Law After the Issuance of Constitutional Court Decision No 135/PHP.BUP-XIX/2021

Orient P Riwu Kore raises several reasons for his claim that he is still an Indonesian citizen (WNI). The first reason is that he is a direct descendant of parents who are native Indonesians. He adheres to the principle of *ius sanguinis*, where citizenship is determined by descent.

However, although Indonesia adheres to the *ius sanguinis* principle, the country also applies the principle of single citizenship which requires every citizen to have only one citizenship. Normatively, citizenship status is automatically lost when a person acquires foreign citizenship, although administratively the process of revoking citizenship requires official reporting.

On another occasion, Orient stated that he never formally applied for renunciation of his Indonesian citizenship when he obtained a US passport. He argued that since there was no official report revoking his Indonesian status, he was still considered an Indonesian citizen. However, based on Article 23 letter a of Law No. 12/2006 on Indonesian Citizenship, a person will lose their citizenship if they voluntarily acquire foreign citizenship. In this case, Orient chose to obtain a US passport instead of extending his green card.

This is because Orient is of the opinion that he was forced to accept a US passport due to job demands at a company engaged in the manufacture of combat ships and oil for the US. According to him, obtaining US citizenship was not of his own free will, although he had the opportunity to apply for renunciation of Indonesian citizenship after marrying a US citizen. However, Article 23 letter b of Law No. 12 Year 2006 clearly states that an Indonesian citizen will lose his/her citizenship if he/she voluntarily accepts foreign citizenship and does not reject the status (16). In this case, Orient was deemed not to have rejected the US citizenship status he received, so he automatically lost his Indonesian citizenship status.

The last reason is because he revealed that he had applied for the release of his US passport through the US Embassy in Jakarta, before participating in the regional election candidacy in Sabu Raijua. Referring to 8 U.S.C Section 1481, he stated that he had fulfilled 3 actions that could automatically eliminate his US citizenship status. It was revealed that he registered using his KTP-el and was declared still registered as an Indonesian citizen.

Analysis for the fourth reason, if examined normatively the relevant party has indeed fulfilled the release of his US Passport, but again that he is still listed as a citizen, with evidence of an email from the US Embassy stating that he is still a US Citizen, it is concluded that he has lost his Indonesian citizenship status according to the citizenship law in force in Indonesia.

IV. CONCLUSION

The Constitutional Court stated that it has the authority to adjudicate the Sabu Raijua Pilkada Results Dispute, with various considerations that have been made by the judges, namely, in its implementation, this Pilkada has violated the constitution with the participation of foreign nationals when referring to Article 27 paragraph (1) and 28D paragraph (3) of the 1945 Constitution of the Republic of Indonesia, and was declared formally flawed due to the failure to fulfill the requirements to become a Pilkada participant as regulated in Article 7 of Law No. 10 of 2016 concerning the Election of Governors, Regents, and Mayors. The Constitutional Court also decided to disqualify and cancel the inauguration of the elected candidate pair, and ordered a re-vote.

The impact is that Orient P Riwu Kore has lost his political rights to be elected or to vote because he was proven to have a foreign citizenship in the form of a passport in accordance with Article 23 of Law No. 12 of 2006 concerning Indonesian Citizenship related to matters that cause Indonesian citizens to lose their citizenship status. Normatively, if someone obtains foreign

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citizenship, then their Indonesian citizenship will automatically be lost, but in practice in Indonesia, they still have to go through an administrative mechanism first.

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