



Legal Review of Administrative Violations of The Status of Foreign Citizens (WNA) In The Election of Regent of Sabu Raijua Based On MK Ruling No. 135/php.bup-XIX/2021

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Abstract

Problems regarding citizen status recently occurred in the implementation of the 2020 simultaneous regional elections due to administrative violations of foreign citizen status in regional head elections, this problem occurred when the Regent of Sabu Raijua Regency, Orient Patriot Riwi Kore (Orient) was elected as the elected Regent in NTT based on KPU Decree Number 342/HK.03.1-Kpt/5320/KPU-Kab/XII/2020 concerning Determination of the Recapitulation of Vote Count Results and Determination of the Results of the 2020 Sabu Raijua Regent and Deputy Regent Election, dated December 16, 2020, who turns out to have Citizen status Foreign Country (WNA). This research was gathered through the use of documentation methodologies and a statutory approach. The data analysis technique employs qualitative techniques, which are then systematically collated to produce tangible data on Administrative Violations of the Status of Foreign Citizens (WNA) in the Sabu Raijua Regency Regent Election Based on Constitutional Court Decision No. 135/Php.Bup-Xix/2021. Based on the results of the dual citizenship provisions for regional official candidacy that apply in Indonesia are must be an Indonesian citizen, apart from that in Law Number 12 of 2006 concerning Citizenship which provides a time limit for having dual citizenship, namely the age limit of 18 years. The Constitutional Court nullified the appointment of Regent Orient Riwi Kore after discovering that his brother possessed a valid United States Passport, in contravention of Citizenship Law Number 12 of 2006.



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1. Introduction

General elections are a democratic process to elect leaders at any time. General elections aim to revive democracy as a form of government in which all citizens have rights.(Evi Noviawati, 2019) In the General Election Commission Regulation (PKPU) Number 1 of 2020 concerning Nominations for the Election of Governor and Deputy Governor, Regent, and Deputy Regent, or Mayor and Deputy Mayor in Article 4 number 1, it is explained that those who can nominate to become regional officials are Indonesian citizens.

Citizens are people who live in a certain territory and people concerning the state. In the relationship between citizens and the state, citizens have obligations towards the state and vice versa.(Tatik Rohmawati, 2010)

The 1945 Constitution of the Republic of Indonesia, which is the legal framework for Indonesia, regulates citizens and citizenship. The 1945 Constitution of the Republic of Indonesia, based on Article 26 paragraph 1 of the document, clearly states that "those who are citizens are native Indonesians and people of other nationalities who are permitted by law to be citizens. Recognized under Indonesian law. Only people with a single citizenship are recognized as citizens in Indonesia. If someone has two citizenships, then he will lose one of them. (*Undang-Undang No 12 Tahun 2006 Tentang Kewarganegaraan.*, n.d.) Dual citizenship itself is a citizen status where a person is registered as a citizen of two different countries. (Ghozi, 2021)

Even though he is known to have an American passport, Orient is also registered as an Indonesian citizen and has original residence documents such as e-KTP. However, if an Indonesian citizen has dual citizenship, then his or her status as an Indonesian citizen will be lost. This makes the citizenship status of the elected Regent Sabu Raijua in 2020 a concern for various parties (Lundy & Sainz, 2018).

Problems regarding citizen status recently occurred in the implementation of the 2020 simultaneous regional elections due to administrative violations of foreign citizen status in regional head elections, where this problem occurred when the Regent of Sabu Raijua Regency, Orient Patriot Riwu Kore (Orient) was elected as the elected Regent in NTT based on KPU Decree Number 342/HK.03.1-Kpt/5320/KPU-Kab/XII/2020 concerning Determination of the Recapitulation of Vote Count Results and Determination of the Results of the 2020 Sabu Raijua Regent and Deputy Regent Election, dated December 16, 2020, who turns out to have Citizen status Foreign Country (WNA) (Efendi, Anisah, Wara, & Trisiyah, 2023).

Orient Patriot Riwu Kore (Orient) was discovered to have the status of a citizen of the United States (US) after the Election Supervisory Agency (Bawaslu) of Sabu Raijua Regency, East Nusa Tenggara received a reply letter from the American Embassy which had submitted a letter regarding the Citizenship Status of the United States Orient Patriot Riwu Kore Number 136/K.BawasluSR/HK.00.021/IX/2020, where the reply sent from the American Embassy justified that Orient was a citizen of the United States. Based on this information, Orient once had a United States passport without giving up his Indonesian citizenship status (Santoso & Teguh, 2021).

Indonesia adheres to a single citizenship system (*stelsel*), citizens must have Indonesian citizen status to nominate themselves as regional heads. Therefore, within reasonable limits, passport holders from other countries still have the status of foreign citizens and do not meet the citizenship criteria as regulated in Article 7 of Law Number 10 of 2016. (May Lim Charity, 2016)

The emergence of the Sabu Raijua Regency General Election Commission Decree Number 152/HK.03.1-Kpt/5320/KPU-Kab/IX/2020 concerning the Determination of Candidate Pairs for the 2020 Sabu Raijua Regent and Deputy Regent Election, dated September 23, 2020, as a result of the Candidate Regent Sabu Raijua as Candidate Pair Number 2 in the name of Orient Patriot Riwu Kore has American citizenship (WNA), so formally fulfilling the requirements to be appointed as a Regent candidate contains formal legal defects because only Indonesian Citizens (WNI) should be able to nominate themselves as Regent Candidates (Mushafi, 2022).

The aftermath of the Decree issued by the KPU made Candidate Pair No. 2 in the name of Orient Patriot Riwu Kore had to be canceled in the election for regional head of Sabu Rajui district so that it was sued to the Constitutional Court by Ir. Taken Irianto Radja Pono, M.Sc. and Ir. Herman Hegi Radja Haba who is also the Candidate Pair for Regent and Deputy Regent in the 2020 Sabu Raijua Regency Regent and Deputy Regent Election, Serial Number Three (Cao, 2022).

Thus, the Constitutional Court as the guardian of the constitution is present amid these problems to carry out the mandate of Law Number 24 of 2003 concerning the Constitutional Court, especially in Article 10 paragraph (1) letter d which gives the authority to the Constitutional Court to decide disputes regarding the results in its decision No. 135/PHP.BUP-XIX/2021 the Constitutional Court canceled the Sabu Raijua Regency General Election Commission Decree No. 152/HK.03.1-Kpt/5320/KPUKab/IX/2020 and No. 342/HK.03.1-Kpt/5320/KPU-Kab/XII/2020 (Turel & Connelly, 2013).

2. Materials and Methods

This research is included in Normative Juridical research, namely legal research carried out by examining library materials or document studies. (Soekanto, 2010) The data source used is secondary data with Primary Legal Material Constitutional Court Decision Number: 133/134/135/PHP.BUP-XIX/2021, Secondary Legal Material in the form of scientific works such as these, laws, and other research results, the tertiary legal material used is the Big Indonesian Dictionary. The nature of this research includes research that uses data collection methods through documentation with data analysis techniques by describing the data in a quality manner in the form of sentences that

are orderly, coherent, logical, non-overlapping, and effective, making it easier to interpret the data and understand the results of the analysis. (Muhaimin, 2020)

3. Results and Discussions

Judge's Considerations Regarding Elected Candidates Candidates who have Dual Citizenship in the Sabu Raijua Electoral District

Considering that in connection with the emergence of the foreign citizenship issue of a Regent candidate named Orient Patriot Riwu Kore, the Court has carefully studied the statements and evidence of the parties in the trial as well as statements from various related agencies. From the various statements and evidence, the Court found the legal facts that:

- a. Regarding the 2020 Election of Regent and Deputy Regent of Sabu Raijua Regency, the Respondent opened registration for prospective pairs of participants on 4-6 September 2020 (see Exhibit T-1, Exhibit T3, and Exhibit T-4);
- b. A total of three prospective pairs of candidates registered, one of whom was a prospective pair named Drs. Orient P. Riwu Kore and Ir. Tobias Uly, M.Sc. (vide Exhibit T-5 to Exhibit T-10);
- c. The Respondent has announced to the public asking for responses and input regarding the three prospective candidate pairs between 4-8 September 2020 (vide Exhibit T-29) but there has been no response or input from the public;
- d. On 6-12 September 2020, the Respondent verified the candidate requirements and declared that Orient Patriot Riwu Kore met the candidacy requirements. Then the Respondent issued the Sabu Raijua Regency General Election Commission Decree Number: 152/HK.03.1- Kpt/5320/KPU-kab/IX/ 2020 concerning the Determination of Regent and Deputy Regent Candidate Pairs who Meet the Requirements as Participants in the 2020 Sabu Raijua Regent and Deputy Regent Election, dated 23 September 2020 (vide Exhibit T-36 to Exhibit T-39). Regarding citizenship identity, Orient Patriot Riwu Kore submitted a photocopy of his e-KTP legalized by the Kupang City Population and Civil Registration Service, which shows Indonesian citizenship and has an address in Kupang City, East Nusa Tenggara Province (see Exhibit T-7, Exhibit T-11 up to Exhibit T-28, and Exhibit T-30 up to Exhibit T-35);
- e. At the nomination stage, on 5 and 11 September 2020, Bawaslu Sabu Raijua Regency wrote to the Respondent to ensure the validity of the Orient Patriot Riwu Kore nomination documents, which the Respondent then followed up by clarifying the data with the Kupang City Population and Civil Registration Service on 16 September 2020. Head of the Kupang City Population and Civil Registration Service Drs. Agus Riri Mase, A.P., M.Sc. explains that Orient Patriot Riwu Kore is a resident of Kupang City (see Exhibit T-30, Exhibit T-52 to Exhibit T-58);
- f. On September 24, 2020, the Respondent drew the serial numbers of candidate pairs as outlined in the Decree of the Sabu Raijua Regency General Election Commission Number: 153/HK.03.1- Kpt/5320/KPU-Kab/IX/2020, dated September 24, 2020, concerning the Number Determination Sort of Pair of Candidates for Regent and Deputy Regent in the 2020 Sabu Raijua Regent and Deputy Regent Election, where Orient Patriot Riwu Kore and his partner obtained Serial Number 2 (vide Exhibit T-40 and Exhibit T-41); (*Keputusan Komisi Pemilihan Umum Kabupaten Sabu Raijua Nomor: 153/HK.03.1- Kpt/5320/KPU-Kab/IX/2020*, n.d.)
- g. In both stages, no party raised objections to the Respondent;
- h. The campaign stage for the election of the Regent and Deputy Regent of Sabu Raijua Regency was held from 26 September to 5 December 2020, followed by voting on 9 December 2020;
- i. Vote counting was carried out in stages and the vote counting at the Sabu Raijua Regency level was carried out on Wednesday, December 16, 2020. During the vote counting there were no objections from any of the parties, then the Respondent determined the final results of the vote counting in the Sabu Raijua Regency General Election Commission Decree Number 342/HK .03.1-Kpt/5320/KPU-Kab/XII/2020 concerning Recapitulation of Vote Counting Results in the 2020 Sabu Raijua Regent and Deputy Regent Election, dated 16 December 2020 (vide Exhibit T-42 to Exhibit T-45);
- j. That within the deadline for submitting a petition for dispute over election results to the Constitutional Court, namely 3 (three) working days from the announcement of the vote recapitulation, no pair of candidates submitted a petition for dispute over election results to the Constitutional Court (see Exhibit T-46 and Exhibit T-74);
- k. The Respondent appointed Candidate Pair Drs. Orient P. Riwu Kore and Ir. Tobias Uly, M.Sc. as the elected candidate pair for Regent and Deputy Regent of Sabu Raijua Regency and issued the Decree of the General Election

Commission of Sabu Raijua Regency Number: 25/HK.03.1- Kpt/5320/KPU-Kab/I/2021, dated January 23, 2021, concerning the Determination of Regent Candidate Pair and Elected Deputy Regent in the 2020 Sabu Raijua Regent and Deputy Regent Election. There were no objections whatsoever from the parties in the plenary session to determine the elected candidate pair in question. (vide Exhibit T-47 to Exhibit T-49);

- l. The Respondent submitted the determination of the selected candidate pairs to the Chairman of the Sabu Raijua Regency DPRD on January 23, 2021 (vide Exhibit T-59 to Exhibit T-61);
- m. On January 25 and 29 2021, the DPRD of Sabu Raijua Regency submitted a proposal to ratify the appointment of the Elected Regent and Deputy Regent of Sabu Raijua for 2020 addressed to the Minister of Home Affairs of the Republic of Indonesia through the Governor of East Nusa Tenggara Province (see Exhibit T72 and Exhibit T-73);
- n. On January 31, 2021, the Respondent received a copy of the letter via email accompanied by several attachments. A copy of the email is from the Chairperson of the Sabu Raijua Regency Bawaslu, one of the attachments of which is a reply email from the United States Embassy to the Sabu Raijua Regency Bawaslu Chair, Yudi Tagihuma, informing that Orient Patriot Riwu Kore is a United States Citizen (see Exhibit T-62 to Evidence T-65);
- o. On February 2, 2021, the Respondent received a letter from Bawaslu of Sabu Raijua Regency dated February 2, 2021, informing him of a reply to a letter from the United States Embassy in Jakarta stating that Orient Patriot Riwu Kore was a United States Citizen (see Exhibit T-66 and Exhibit T- 67);
- p. On February 3, 2021, the Respondent received a letter from the Campaign Team of one of the candidate pairs which essentially objected to the determination of the selected candidate pair (see Exhibit T-69);

From the series of legal facts described chronologically, even though Bawaslu of Sabu Raijua Regency has been warned by Letter Number: 117/Bawaslu-SR/PM.00.02/IX/2020 above, the Court considers that the legal issue concerns the status of Orient Patriot Riwu Kore as a resident. The United States was only known to the Respondent for certain, in its position as the organizer of the 2020 Regent and Deputy Regent Election of Sabu Raijua Regency, after the completion of the recapitulation stage of vote counting results, even after the Respondent had determined Candidate Pair Number 2 (namely Drs. Orient P. Riwu). Kore and Ir. Thobias Uly, M.Sc.) as the selected candidate pair in the 2020 Sabu Raijua Regency Regent and Deputy Regent Election;

Considering that regarding the citizenship status of Orient Patriot Riwu Kore itself, the Court has heard statements from various related agencies, especially the Ministry of Foreign Affairs c.q. Consulate General of the Republic of Indonesia in Los Angeles; Ministry of Home Affairs c.q. Directorate General of Population and Civil Registration and the Population and Civil Registration Service of Kupang City; and the Ministry of Law and Human Rights c.q. Directorate General of Immigration.(Indonesia, 2021)

The court determined the legal fact that related to citizenship status, Orient Patriot Riwu Kore has two passports, namely the Republic of Indonesia passport Number X746666 valid from 1 April 2019 to 1 April 2024 (notice statement from the Directorate General of Immigration, Ministry of Law and Public Relations). This finding is based on the institution's statements during the trial and documents submitted to the Court, as well as statements from Relevant Parties and documents submitted as evidence (vide Exhibit PT-18 and Exhibit PT-17 as well as the statement from Bawaslu Sabu Raijua Regency). Previously Orient Patriot Riwu Kore also held United States passport number 430562714 which was valid from 11 August 2007 to 10 August 2017 (vide Evidence PT-16).

Regarding such citizenship status, Article 23 letters a, b, and h of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia (UU 01/1116) states: "An Indonesian citizen loses his or her citizenship if the person concerned: a. acquire another citizenship of his own accord; b. not refuse or not give up another citizenship, while the person concerned has the opportunity to do so; has a passport or a letter that is a passport from a foreign country or a letter that can be interpreted as proof of valid citizenship from another country in his name; or...".

Ownership of such a United States passport, as well as passports from other foreign countries, if referring to Article 23 letter h junctions letter a and letter b of Law 12/2006, has the consequence that the person concerned, namely Orient Patriot Riwu Kore, should immediately lose his status as a citizen. Indonesia without having to go through the administrative mechanism of renouncing citizenship. Moreover, in 2017 a United States passport was issued in the name of Orient Patriot Riwu Kore (valid 2017-2027) as a continuation of the previous United States passport. According to the Court, the issuance of the passport confirms the person's status as a United States citizen.

Following the issuance of an American passport, Orient Patriot Riwu Kore was given a Republic of Indonesia passport in 2019 which is valid from 2019 to 2024. Orient Patriot Riwu Kore also refused to explain or admit to having a United States passport when officers from the Consulate General of the Republic of Indonesia (KJRI) in Los Angeles were informed of details of his efforts to obtain a Republic of Indonesia passport during the trial. This incomplete information then became the basis for the Indonesian Consulate General in Los Angeles to issue a Travel Letter Like

a Passport (SPLP) in the name of Orient Patriot Riwu Kore, with the status of an Indonesian citizen, as a replacement passport document for the person concerned when entering Indonesian territory to obtain a Republic of Indonesia passport (vide statement from the Indonesian Consulate General in Los Angeles, United States).

Whereas based on the legal considerations above, as well as taking into account the existence of Law 12/2006 which adheres to the principle of single citizenship, the Court considers that the status of Orient Patriot Riwu Kore from 2007 until now is that of a United States Citizen. This status was also confirmed by the email response from the United States Embassy in Jakarta to Bawaslu Sabu Raijua Regency and Diplomatic Note Number 00709, dated February 10, 2021, which was submitted by the United States Embassy to the Indonesian Ministry of Foreign Affairs which stated: "The Embassy can confirm to Ministry and the Election Supervisory Agency of The Republic of Indonesia, that Mr. Riwukore is an American citizen." This document became evidence presented at the trial. In addition, Orient Patriot Riwu Kore admitted during the trial that he had a United States passport which was still valid until 2027, which he said was lost but the person concerned still submitted a photo of the passport to the Court (see Exhibit PT-18). Apart from these facts, factually Orient Patriot Riwu Kore is the holder of a Republic of Indonesia passport and KTPel (see Exhibit PT-07 and Exhibit PT-01).

The requirement for citizens to be able to nominate themselves as candidates in regional head elections is to have the status of an Indonesian citizen as mentioned above. Indonesian citizens are not allowed to have more than one citizenship status because of the citizenship system in force in that country (stelsel). Therefore, Orient Patriot Riwu Kore does not meet the citizenship requirements (as regulated in Article 7 of Law 10/2016) to nominate himself as a candidate in the 2020 Election for Regent and Deputy Regent of Sabu Raijua Regency because he is an American citizen passport, within the limits of reasonable reasoning.

The Court considered the following matters about the implications of citizenship status for the legality/legitimacy of Orient Patriot Riwu Kore (and the Deputy Regent candidate who is his running mate) as a running mate for Regent and Deputy Regent of Sabu Raijua Regency 2020 Election;

"The conditions for nominating or being nominated as Regent are regulated, among other things, in Article 7 paragraph (1) of Law 10/2016, which states as follows: "(0) Every citizen has the right to have the same opportunity to nominate and be nominated as a Candidate for Governor and Candidate Deputy Governor, Regent Candidates and Deputy Regent Candidates, as well as Mayor Candidates and Deputy Mayor Candidates."

Based on this article, pairs of candidates who register to run as regional head and deputy regional head, or if there is a tie, as potential pairs for regent and deputy regent in the 2020 Sabu Raijua Regency Pilkada, must pair up. Law 10/2016 does not determine whether citizenship in Indonesia is obtained through naturalization or citizenship in these special circumstances. Therefore, Orient Patriot Riwu Kore's status as a candidate for Regent from Candidate Pair Number 2 must be declared null and void because as mentioned above, the person concerned still had the status of a United States Citizen when he registered for that position.

The Court is aware that the competition for the election of Regent and Deputy Regent—as well as the election of Governor and Deputy Governor, or Mayor and Deputy Mayor—is a competition that brings together pairs of candidates. This is relevant to the cancellation of the status of a Regent candidate. A candidate pair consists of two people who have decided that one will run for Regent, Governor, or Mayor, and the other will be that person's representative. To win the most votes, the two work together as a team. If two candidates are running together for a position, this will have an impact on the collective vote which cannot be divided or separated one by one. Likewise, the topic of "victory" or "defeat" and several other legal events is the candidate pair as a whole, as long as it is directly related to the election process. At this stage, if one candidate from a particular candidate pair violates election laws and regulations so that the pair cannot fulfill the requirements as a candidate, then the candidate pair will be subject to legal sanctions.

Based on the legal considerations above, Orient Patriot Riwu Kore has been declared ineligible for candidacy as a candidate for Regent. In this regard, even though the Deputy Regent fulfills the requirements, this is because both of them are candidate pairs as stipulated in the Decree of the General Election Commission of Sabu Raijua Regency Number: 152/HK.03.1-Kpt/5320/KPU-Kab/IX/2020 concerning the Determination of Regent Candidate Pair and Deputy Regent who fulfill the requirements as participants in the 2020 Sabu Raijua Regent and Deputy Regent election, dated September 23, 2020, then the deputy regent candidate will automatically be disqualified as a candidate pair for the 2020 Regent and Deputy Regent Election of Sabu Raijua Regency. This has consequences that the election of Candidate Pair Number 2 in the 2020 Election of Regent and Deputy Regent of Sabu Raijua Regency must be declared null and void.

Considering the cancellation of Candidate Pair Number 2 as a candidate pair in the 2020 Election for Regent and Deputy Regent of Sabu Raijua Regency, even though this pair was the chosen candidate pair, resulting in a vacancy

in the first rank position in the vote tally. The Court thinks that the consequences of the invalidity of candidate pairs on the results of the following elections may occur. Considering that there are three pairs of candidates in the 2020 Election for Regent and Deputy Regent of Sabu Raijua Regency, the Court thinks that this vacancy cannot simply be filled by appointing the pair of candidates who received the second most votes as candidates for Regent and Deputy Regent of Sabu Raijua.

With these considerations in mind, to reaffirm the legitimacy or support of the people for the pair of candidates who will later be elected and lead Sabu Raijua Regency, the Court believes that a re-voting must be carried out in the 2020 Election for Regent and Deputy Regent of Sabu Raijua Regency, including only two pairs of candidates, 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.Si. and Herman Hegi Radja Haba, M.Si.)

Considering that with the main arguments of the Petitioner's petition having been proven, the application of Article 158 paragraph (2) letter a of Law 10/2016 has proven to be reasonable to deviate from the Court's stance in handing down decisions on disputes over regional head election results, including in the decision of the Constitutional Court in 2021.

Considering that taking into account the level of difficulty, period, and capacity of the General Election Commission of Sabu Raijua Regency and the organizing apparatus and election participants in carrying out the re-voting for the Regent and Deputy Regent of Sabu Raijua, the Court believes that the time required to carry out the re-voting is at most 60 (sixty) working days from the promulgation of this Court's Decision, after which the results of the re-voting are determined and announced by statutory regulations by the Respondent without having to report to the Court; with supervision by the East Nusa Tenggara Province General Election Commission and the General Election Commission.

Considering that to supervise the re-voting in the 2020 Election of Regent and Deputy Regent of Sabu Raijua Regency, the Court ordered the General Election Supervisory Agency of East Nusa Tenggara Province and the General Election Supervisory Agency of Sabu Raijua Regency to supervise the implementation of this re-voting.

4. Conclusion

Based on the results of the research and description of the discussion regarding Administrative Violations of the Status of Foreign Citizens (WNA) in the Election of the Regent of Sabu Raijua Regency Based on Constitutional Court Decision No. 135/Php.Bup-Xix/2021, it can be concluded that the principles of democracy in the Pilkada were damaged, reflected in the implementation of the regional elections in Sabu Raijua Regency. East Nusa Tenggara Province, where the winner was selected in the regional head election process for Sabu Raijua Regency, has the status of a United States citizen but has also never given up his Indonesian citizenship status. Law No. 12 of 2006 concerning the Citizenship Status of the Republic of Indonesia has the principle of single citizenship (*monopatrie*). It means that every Indonesian citizen only has citizenship status, so it is not permissible for Indonesian citizens to have two citizens. The ruling of the Constitutional Court invalidated Orient's Elected Regent since it was determined that Orient had an active American passport until 2024.

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