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RECONSTRUCTION OF CITIZENSHIP LOSS REGULATION BASED ON THE PRINCIPLE OF NON-ARBITRARY DEPRIVATION OF NATIONALITY IN THE PERSPECTIVE OF THE RULE OF LAW

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Abstract

The regulation of citizenship loss under Article 23 of Law Number 12 of 2006 concerning the Citizenship of the Republic of Indonesia presents fundamental legal concerns because citizenship loss is treated as an automatic consequence of certain legal acts without adequate mechanisms to protect citizens' constitutional rights, without guarantees of due process of law, and without fully incorporating the principle of Non-Arbitrary Deprivation of Nationality. This condition potentially results in human rights violations, including the risk of statelessness. This normative legal research employs statutory, conceptual, comparative, and case approaches to analyze the weaknesses in the regulation of citizenship loss under Article 23 of Law Number 12 of 2006. The findings reveal that the current regulation contains fundamental weaknesses: it provides for automatic loss of citizenship upon the fulfillment of certain legal conditions without clearly distinguishing between administrative consequences and legal sanctions; it fails to provide adequate procedural safeguards, including prior notification, the right to be heard, individual assessment, objection mechanisms, legal remedies, and judicial oversight. This research formulates a conceptual and normative reconstruction based on the principles of legal certainty, justice, due process of law, and human rights protection, aiming to balance state sovereignty with the protection of citizens' constitutional rights.

Keywords: *Legal Reconstruction; Loss of Citizenship; Non-Arbitrary Deprivation of Nationality; Protection of Citizens' Constitutional Rights*

INTRODUCTION

Citizenship provides the legal basis that connects an individual to a state's political and legal systems. It grants access to civil, political, and social rights, along with protection from the state. Conceptually, citizenship links human rights to the exercise of constitutional rights within a country's framework. It defines obligations like taxes, voting rights, access to public services, and guarantees of consular protection when abroad. Losing citizenship is more than an administrative change; it can alter a person’s legal

status, potentially rendering them stateless. This can lead to serious consequences for human rights, freedom of movement, and the ability to enjoy economic and social rights.[1]

The international legal framework regarding citizenship as a human right is established in several international instruments, including the Universal Declaration of Human Rights (1948), which in Article 15(1) states that "everyone has the right to a nationality," and in Article 15(2) that "no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."[2] The International Covenant on Civil and Political Rights (1966) further strengthens these principles, aiming to reinforce the human rights provisions contained in the UDHR into legally binding provisions.[3] The prohibition of arbitrary deprivation of nationality has been recognized as having attained the status of customary international law, as affirmed by the UN Human Rights Council.[4]

At the national level, Indonesia's legal framework concerning citizenship is regulated by Law Number 12 of 2006 concerning the Citizenship of the Republic of Indonesia, which contains provisions on the causes of acquiring, losing, and reacquiring citizenship. This law contains key articles relevant to the study of citizenship loss, including provisions regarding loss due to certain acts (e.g., accepting foreign citizenship, becoming a member of a foreign military) and provisions concerning procedures for reacquiring citizenship (Articles 31–32).[5]

In practice, the actual legal problems of citizenship demonstrate several patterns that underscore the need for normative reconstruction. First, there is the issue of automatic loss of citizenship due to certain actions—for example, appointment as military personnel of a foreign country or acceptance of foreign citizenship—where the procedural elements to ensure intent or human rights effects are often inadequate.[6] Second, provisions linking the period of residence abroad and reporting obligations (along with their administrative sanctions) open the possibility of interpretations that can result in the removal of status without effective notification to the person concerned. Third, cases involving cross-national marriages, child naturalization, or family members affected by the policies of other countries reveal family and gender dimensions that are insufficiently addressed in formal provisions.[7]

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[1] Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara Jilid II* (Jakarta: Sekretaris Jenderal dan Kepaniteraan Mahkamah Konstitusi, 2006), 112.

[2] Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (1948), art. 15.

[3] International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. Res: 2200A (XXI), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

[4] UN Human Rights Council, "Human Rights and Arbitrary Deprivation of Nationality," Report of the Secretary-General, A/HRC/25/28 (2014), para. 5; see also LICADHO, "Statement: Repeal the Nationality Law Amendments," Sept. 9, 2025, https://www.licadho-cambodia.org.

[5] Indonesia, Undang-Undang Nomor 12 Tahun 2006 tentang Kewarganegaraan Republik Indonesia.

[6] I. Ariski et al., "Hakikat Kewarganegaraan dan Keimigrasian dalam Tata Hukum Indonesia," Jurnal Hukum, Politik dan *Ilmu Sosial* 2, no. 2 (2023): 290–302.

[7] Feby Dwiki Darmawan and Dodik Setiawan Nur Heriyanto, "Invoking International Human Rights Law to Prevent Statelessness of International Refugee Children Born in Indonesia," *Prophetic Law Review* 5, no. 1 (2023): 22–41.

The international framework, particularly the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, imposes obligations on states to avoid practices that result in statelessness and to provide pathways for recovery for those who lose citizenship unjustly.[8] Although Indonesia has not fully ratified all these instruments, their principles remain relevant as human rights standards and normative inspiration for the reconstruction of domestic law: prevention of citizenship loss in children, restrictions on discriminatory revocation of citizenship, and transparent and accessible procedural obligations.[9]

Based on the background above, this research addresses the following problems:

1. Does the regulation of citizenship loss under Law Number 12 of 2006 fulfill the principles of legal certainty, protection of constitutional rights, and non-arbitrariness?
2. Has the administrative mechanism for citizenship loss provided adequate preventive and repressive legal protection for citizens?
3. What is the ideal model for regulating citizenship loss based on the principles of the rule of law, human rights protection, and non-arbitrary deprivation of nationality?

This research aims to: (1) identify and analyze the legal provisions concerning the loss of Indonesian citizenship according to applicable laws and regulations in relation to legal certainty and protection; (2) describe and analyze the practice of citizenship loss in Indonesia, both in terms of norm implementation and social reality; and (3) provide more appropriate solutions for improving the provisions governing citizenship loss to realize protection and legal certainty for Indonesian citizens.

This research employs a multi-layered theoretical framework. The grand theory is the Theory of State Objectives, which in the Indonesian context is articulated in the Preamble to the 1945 Constitution: protecting the entire Indonesian nation, advancing general welfare, educating the nation's life, and participating in world order.[10]

The middle theory is the Theory of Legal Certainty. Gustav Radbruch posits that law has three fundamental values: legal certainty (*Rechtssicherheit), justice (Gerechtigkeit), and expediency (Zweckmäßigkeit*). Legal certainty is understood as the demand that law be enforced according to its text (legal positivism).[11] Jan Michel Otto emphasizes that legal certainty is not only measured by the existence of written norms but also by how those norms are applied and felt by legal subjects.[12]

The applied theory is the Theory of Legal Protection. According to Philipus M. Hadjon, legal protection consists of two forms: preventive legal protection, which

[8] Convention on the Reduction of Statelessness, adopted Aug. 30, 1961, 989 U.N.T.S. 175 (entered into force Dec. 13, 1975).

[9] A. N. Atqiya et al., "Kewarganegaraan dan Hak Asasi Manusia: Studi tentang Perlindungan Hukum bagi Orang Tanpa Kewarganegaraan (Stateless Persons)," *Konstitusi* 2, no. 1 (2024): 44–52.

[10] Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pembukaan alinea keempat.

[11] Gustav Radbruch, *Rechtsphilosophie* (Stuttgart: K.F. Koehler Verlag, 1950), 168–72.

[12] Jan Michel Otto, *The Rule of Law and the Rule of Men* (Groningen: University of Groningen, 2000), 45.

provides opportunities for the public to object before government decisions are established, and repressive legal protection, which resolves disputes after violations occur (e.g., through courts).[13] Satjipto Rahardjo emphasizes that legal protection is an effort to protect society from arbitrary actions by those in power by placing law as an instrument of justice protection.[14]

METHOD

This research employs normative legal research (legal research), which relies on a literature study by examining positive legal norms, legal principles, and relevant legal doctrines. Three approaches are used: (1) the Statute Approach, examining all laws and regulations relating to citizenship, particularly concerning the loss of Indonesian citizenship; (2) the Conceptual Approach, analyzing legal concepts and principles; and (3) the Comparative Approach, comparing Indonesian regulations with those of other countries.[15]

Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2006 concerning the Citizenship of the Republic of Indonesia, Government Regulation Number 2 of 2007, and relevant international instruments such as the UDHR, ICCPR, and the 1961 Convention on the Reduction of Statelessness.[16] Secondary legal materials were obtained from legal literature including textbooks, dissertations, and scientific articles in national and international journals, as well as reports from official institutions such as the Ministry of Law and Human Rights and the National Commission on Human Rights.[17]

RESULTS AND DISCUSSION

Normative Weaknesses in the Regulation of Citizenship Loss
The Principle of Automatic Loss (Automatic Loss)

Article 23 of Law Number 12 of 2006 adopts a formalistic and deterministic approach to citizenship loss. It stipulates that meeting specific criteria automatically results in losing citizenship, without additional assessment. This approach raises concerns because it overlooks the substantive and procedural aspects that should accompany any state action impacting fundamental rights. Conceptually, this automatic loss presumes that actions like acquiring another citizenship or aligning with a foreign state invariably indicate an intent to renounce citizenship. However, this view oversimplifies complex social and legal realities, as such actions often respond to

[13] Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia* (Surabaya: Bina Ilmu, 1987), 2–5.

[14] Satjipto Rahardjo, *Hukum dan Masyarakat* (Bandung: Angkasa, 1980), 87.

[15] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017), 93.

[16] Indonesia, Undang-Undang Nomor 12 Tahun 2006 tentang Kewarganegaraan Republik Indonesia; Indonesia, Peraturan Pemerintah Nomor 2 Tahun 2007 tentang Tata Cara Memperoleh, Kehilangan, Pembatalan, dan Memperoleh Kembali Kewarganegaraan Republik Indonesia.

[17] Bambang Sunggono, *Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2002), 115.

practical needs, external pressures, or legal frameworks of other countries, rather than an explicit intent to sever legal ties.[18]

From a constitutional perspective, the mechanism of automatic loss demonstrates a procedural deficiency. Law Number 12 of 2006 does not explicitly regulate the state's obligation to conduct verification, provide notification, or offer individuals an opportunity to clarify their status before citizenship is declared lost. The absence of this mechanism indicates that the norm of citizenship loss does not fulfill the principle of due process of law, which requires a fair, transparent, and accountable process in every action that harms individual rights.[19] The problem of automatic termination of citizenship has also been critically examined in other jurisdictions. Saahas Arora, in a 2025 study on Indian citizenship law, observed that involuntary loss of citizenship—whether due to residence abroad or acquisition of foreign citizenship—raises significant constitutional questions regarding legal legitimacy and due process protections.[20] This parallel demonstrates that the issue of automatic citizenship loss is not unique to Indonesia but represents a broader challenge in citizenship law across multiple legal systems.[21]

Ambiguity and Overgeneralization of Norms

The formulation of Article 23 reveals normative problems in the form of ambiguity and overgeneralization. Ambiguity is clearly evident in the use of key phrases lacking precise conceptual boundaries. For example, the phrase "acquiring another citizenship of one's own free will" contains uncertainty regarding the parameters of "free will." In practice, a person's will to acquire another citizenship does not always arise from autonomous free choice. Still, it is often influenced by structural pressures such as economic needs, job demands, mixed marriage status, or even the automatic policies of other countries. Without a clear operational definition, this norm has the potential to interpret every acquisition of another citizenship as a voluntary act, even when the individual is in fact in a situation of compulsion.[22]

Overgeneralization is evident in the formulation of norms that are too broad, encompassing situations that should not fall within their regulatory scope. The norm of citizenship loss is formulated categorically and applies generally without considering variations in individual conditions. For example, every act of acquiring another citizenship is automatically constructed as grounds for losing Indonesian citizenship, without

[18] Koesmoyo Ponco Aji et al., "Dual Citizenship in Indonesia from the Perspective of Dignified Justice and Sovereignty," *Law and Humanities Quarterly Reviews* 3, no. 1 (2024): 27–38.

[19] John Kenedi, "Constitutional Protection for Crime Victims and Witnesses in Indonesia and Its Problems," *Mimbar: Jurnal Sosial dan Pembangunan* 36, no. 1 (2020): 53–62.

[20] Saahas Arora, "Automatic Termination of Citizenship Under Indian Law: How India's Legal Structure Makes Citizens Stranger to Their Own Motherland," *Journal of Asian and African Studies* (2025), https://doi.org/10.1177/00490857251330227.

[21] Luuk van der Baaren and Maarten Vink, "Involuntary Loss of Citizenship: Residence Abroad and Acquisition of Foreign Citizenship," *Comparative Migration Studies* 9, no. 1 (2021): 1–18.

[22] Deden Rafi Syafiq Rabbani, "Problematika Hak atas Kewarganegaraan Kehormatan (Honorary Citizenship) di Indonesia: Implementasi dan Dampaknya," *Sasi* 27, no. 3 (2021): 288.

distinguishing whether the act was performed with the intent to renounce Indonesian citizenship or merely to fulfill administrative requirements in another country.[23]

Syahtia Ratu Gustin and M. Yarni, in their 2024 analysis of Indonesian citizenship law, found that the regulation of losing Indonesian citizenship lacks legal certainty and does not fully reflect the principles of Indonesian citizenship law and good governance.[24] This finding reinforces the need to reformulate the regulation to provide legal certainty and clarity. Similarly, a comparative study by M. Teguh Kurniawan and Nurhilmiyah (2025) examining the transition of Indonesian citizenship to Thai citizenship revealed that Indonesian law emphasizes the formal and administrative aspects of citizenship loss, creating potential procedural gaps that may expose individuals to legal uncertainty and risks of temporary statelessness.[25]

The Absence of Mens Rea Testing Mechanism

The regulation of citizenship loss in Article 23 demonstrates a fundamental normative weakness: the absence of a mechanism for testing intent (*mens rea*) in determining the loss of a person's citizenship status. The norm tends to focus on the fulfillment of external elements of action (*actus reus*), such as acquiring another citizenship or performing certain acts relating to a foreign state, without assessing whether the action was accompanied by a conscious will to renounce Indonesian citizenship.[26]

The concept of *mens rea* is an important element in assessing legal responsibility, because a serious legal consequence ideally can only be imposed if there is correspondence between the act and intent. Although this concept developed in criminal law, its relevance extends to administrative law that affects fundamental rights, including citizenship. The loss of citizenship is not an ordinary legal consequence but an action with direct impact on a person's legal existence as a subject of rights.[27]

Potential for Statelessness

One of the most serious problems in the regulation of citizenship loss under Article 23 is the potential for statelessness. Although the law is not explicitly intended to create statelessness, the construction of the norms opens considerable space for such situations, both directly (*de jure*) and indirectly (*de facto*).[28] Statelessness is a condition in which a person is not recognized as a citizen by any state under applicable law. This condition is not merely an administrative matter. Still, it concerns the loss of access to

[23] Martijn Van Den Brink, "Revising Citizenship within the European Union: Is a Genuine Link Requirement the Way Forward?," *German Law Journal* 23, no. 1 (2022): 79–96.

[24] Syahtia Ratu Gustin and M. Yarni, "Analisis Terhadap Hilangnya Kewarganegaraan Indonesia Berdasarkan Undang-Undang Nomor 12 Tahun 2006 tentang Kewarganegaraan Indonesia," *Limbago: Journal of Constitutional Law* 4, no. 1 (2024): 99–121.

[25] M. Teguh Kurniawan and Nurhilmiyah, "The Transition of Indonesian Citizenship to Thai Citizenship from a Civil Law Perspective," *Al-Risalah: Jurnal Ilmu Hukum*, 2025, https://doi.org/10.24252/al-risalah.vi.64999.

[26] Laura van Waas, *Nationality Matters: Statelessness under International Law* (Antwerp: Intersentia, 2008), 89.

[27] Patti Tamara Lenard, "Democratic Citizenship and Denationalization," *American Political Science Review* 112, no. 1 (2018): 165.

[28] Atqiya et al., "Kewarganegaraan dan Hak Asasi Manusia," 46.

various basic rights, including legal protection, the right to identity, the right to work, education, and participation in social and political life.[29]

At the end of 2023, UNHCR reported that at least 4.4 million people remain stateless or are of undetermined nationality—based on data from just 95 countries. Several factors, including discrimination in nationality laws, gaps in nationality laws, or state succession, can cause statelessness.[3031] The Inter-American Commission on Human Rights, in its Resolution 2/23, emphasized that deprivation of nationality resulting in statelessness is considered arbitrary and urged states to refrain from adopting arbitrary measures of deprivation of nationality.[32]

Indonesia's regulation has not explicitly regulated the state's obligation to ensure that a person who loses Indonesian citizenship has acquired another citizenship. A strict verification obligation regarding replacement citizenship status does not accompany the mechanism of automatic loss. In this situation, there is a risk that a person will lose Indonesian citizenship without effectively acquiring the citizenship of another state, thus falling into a stateless condition.[33]

Implementation Problems
Dominance of Administrative Discretion

The determination of citizenship loss in practice demonstrates the dominance of state administrative discretion, particularly exercised by the Ministry of Law and Human Rights through administrative authority in the field of citizenship. Although normatively the regulation of citizenship loss is provided for in Law Number 12 of 2006, implementation and interpretation depend heavily on government administrative action. This condition raises serious problems because the focal point of determining citizenship loss lies more in the domain of administrative discretion than in independent judicial review mechanisms.[34]

Conceptually, administrative discretion is authority given to government officials to make decisions in certain circumstances based on assessment and interpretation of legal norms. In the context of citizenship, this discretion is evident in the government's authority to determine whether a person fulfills the elements of citizenship loss as referred to in Article 23. However, problems arise when the norms forming the basis of

[29] Laura van Waas and Sangita Jaghai, "All Citizens Are Created Equal, But Some Are More Equal Than Others," *Netherlands International Law Review* 65, no. 3 (2018): 413–30.

[30] UNHCR, "States must protect stateless refugees and asylum-seekers: UN human rights experts," Oct. 11, 2024, https://www.unhcr.org.

[31] European Migration Network, "Statelessness in the European Union, Norway and Georgia: EMN Inform" (2023), 5–7.

[32] Inter-American Commission on Human Rights, Resolution 2/23, "Protecting the Right to Nationality and Preventing Statelessness" (2023), para. 12–15.

[33] Sangeetha Pillai and George Williams, "Twenty-First Century Banishment: Citizenship Stripping in Common Law Nations," *International and Comparative Law Quarterly* 66, no. 3 (2017): 521.

[34] H. M. Sahat Radot Siburian, "Constitution Formulation and Amendment in Indonesian and American Legal System: A Comparative Study," *Journal of Law and Legal Reform* 3, no. 1 (2022): 39–66.

assessment are themselves ambiguous and open to multiple interpretations, such as the phrases "voluntarily," "of one's own free will," or "not refusing another citizenship."[35]

The legal framework for administrative decisions concerning citizenship loss must ensure a nuanced interplay between systems of appeal and judicial review, as well as the right to a fair hearing.[36] However, in the Indonesian context, the absence of robust mechanisms for administrative review has been identified as a significant gap in legal protection.[37]

Weak Judicial Oversight

The absence of a direct administrative judicial review mechanism results in government authority becoming too dominant and potentially ignoring the principle of due process of law. The determination of citizenship loss, in essence, immediately has serious legal consequences, yet is not accompanied by an obligation first to obtain approval or review from an independent judicial body. In other words, the applicable mechanism still follows the pattern of "administrative first, judicial later," where administrative action is considered valid and effective first. In contrast, judicial oversight is merely corrective after individual rights have already been affected.[38]

In the context of fundamental rights such as citizenship, judicial oversight mechanisms should be preventive and direct, not merely repressive. This is important because citizenship loss is not merely a change in administrative status but also concerns legal identity, state protection, and access to basic rights.[39]

Deficiencies in Procedural Protection

Research findings indicate that the process of citizenship loss in Indonesia is still heavily dependent on government administrative authority. Although there are administrative procedures in implementing regulations, these provisions have not explicitly required comprehensive examination and effective legal protection mechanisms before a decision on citizenship loss is established.[40]

In practice, the determination of citizenship loss often emphasizes the administrative-formal approach rather than individual rights protection. The state tends to place individuals as objects of administration, not as holders of constitutional rights.

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[35] Laurensius Arliman S, "Mewujudkan Penegakan Hukum Yang Baik Untuk Mewujudkan Indonesia Sebagai Negara Hukum," *Jurnal Hukum Doctrinal* 2, no. 2 (2020): 509–32.

[36] M. F. Cassar, "Administrative decisions concerning the acquisition and loss of citizenship: the nuanced interplay between systems of appeal and judicial review, and the right to a fair hearing" (Bachelor's dissertation, University of Malta, 2025).

[37] Xavier Nugraha et al., "Constitutional Question: Alternatif Baru Pelindungan Hak Konstitusional Warga Negara Melalui Concrete Review di Indonesia," *Negara Hukum: Membangun Hukum Untuk Keadilan dan Kesejahteraan* 10, no. 1 (2019): 129–48.

[38] Nugraha et al., "Constitutional Question," 135.

[39] Supriyadi A. Arief, "Decompose Dual Nationality (Dual Citizenship) in Indonesia in Human Rights Perspective and Welfare State," *Sasi* 26, no. 4 (2020): 527.

[40] Caesar Demas Edwinarta and Rizkya Dwijayanti, "Implementation Dynamics of Passport Service Policy for Dual Nationality Child Subjects in Indonesia," *Journal La Sociale* 5, no. 1 (2024): 45–58.

Consequently, citizens who may lose their citizenship are often in a weak position because they lack adequate participatory space to refute or explain their actual circumstances.[41]

The Indonesian government has recently acknowledged these challenges. In September 2024, the Director General of General Legal Administration stated that the government is developing a new regulation concerning the Indonesian diaspora to facilitate the reacquisition of citizenship, recognizing that the current framework needs reform to protect citizens' rights better.[42]

Comparative Analysis

The Netherlands

The Netherlands regulates citizenship loss through the *Rijkswet op het Nederlanderschap* (Netherlands Nationality Act). Loss of citizenship is not merely based on the fulfillment of normative elements but is also carried out through government decisions subject to administrative judicial oversight. Affected individuals have the right to file objections and obtain review by the courts.[43]

The Dutch system demonstrates a balance between the principle of national sovereignty over the definition of citizenship and the responsibility to protect against the risk of statelessness. The mechanisms for restoration and legal protection in the Netherlands include several administrative/judicial instruments to prevent unwanted loss and to restore status for former citizens. Administrative practices include the ability to extend passports/IDs or apply for a certificate of Dutch nationality.[44]

United States

The United States adheres to the principle that citizenship loss cannot be considered to occur automatically merely because a person performs certain acts. The U.S. Supreme Court, particularly in *Afroyim v. Rusk* (1967) and *Vance v. Terrazas* (1980), affirmed that citizenship loss requires voluntary intent from the individual to renounce their citizenship.[45]

The constitutional framework of U.S. citizenship rests on the Fourteenth Amendment, which establishes the principle of birthright citizenship as a binding constitutional norm. The Immigration and Nationality Act, codified in 8 U.S.C. § 1481, regulates actions that may cause loss of citizenship status, such as voluntary

[41] Samadam Boang Manalu and Armisella Br Sembiring, "Dinamika Kontemporer Kewarganegaraan Indonesia (Studi Etnisitas dalam Pemilihan Bupati Pakpak Bharat)," *Jurnal Kewarganegaraan* 19, no. 2 (2022): 102.

[42] Direktorat Jenderal Administrasi Hukum Umum, "Diberikan Fasilitas Oleh Pemerintah Diaspora Diharapkan Turut Membangun Bangsa," Sept. 20, 2024, https://portal.ahu.go.id.

[43] Martijn van Den Brink, "A Qualified Defence of the Primacy of Nationality over European Union Citizenship," *International and Comparative Law Quarterly* 69, no. 1 (2020): 177–202.

[44] Roel Jennissen et al., "The Netherlands as a Country of Immigration," *IMISCOE Research Series* (2023): 17–41.

[45] *Afroyim v. Rusk*, 387 U.S. 253 (1967); *Vance v. Terrazas*, 444 U.S. 252 (1980).

renunciation before U.S. diplomatic or consular officials, taking an oath of allegiance to a foreign state, or serving in the military of a state at war with the U.S.[46]

Australia

Australia regulates citizenship loss through the Australian Citizenship Act 2007. Although the state has authority to revoke citizenship under certain conditions, its application is within the framework of administrative procedures that can be tested through objection mechanisms and judicial oversight.[47]

The role of the Administrative Appeals Tribunal (AAT) is significant in ensuring administrative protection against decisions made by the Minister for Home Affairs or related officials. The AAT functions as a quasi-judicial body with authority to review administrative decisions regarding citizenship, including revocation or rejection of naturalization applications.[48]

Comparative Findings

A comparison with various countries reveals several fundamental differences between Indonesia's legal system and international practice. First, Indonesia remains oriented toward a normative approach, whereas the comparator countries place greater emphasis on protecting citizens' procedural rights. Second, the comparator countries have generally implemented the principle of due process of law by granting the right to be heard, the right to file objections, and oversight by judicial institutions.[49]

Reconstruction Model: Urgency of Reconstruction

Reconstructing Indonesia's citizenship regulation is urgent due to globalization's influence on cross-border movement. Globalization enables people to move for work, study, or migration, posing challenges in defining and safeguarding citizenship status. Additionally, threats to the human right to citizenship underscore the need for reform. This right is explicitly protected in Article 28D(4) of the 1945 Constitution.[50]

The evolution of international law, especially the principle of no statelessness, underscores the need for policy renewal. This principle is embodied in the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. While Indonesia has not fully ratified these treaties, they include key norms that resonate with the principles of the 1945 Constitution.[51]

The 2025 Cambodian experience serves as a warning: changes to the Nationality Law permitting citizenship revocation based on vague and broad criteria have faced

[46] 8 U.S.C. § 1481 (2018).
[47] Australian Citizenship Act 2007 (Cth) ss 33–36.
[48] Administrative Appeals Tribunal Act 1975 (Cth).
[49] Diya Ul Akmal, Fatkhul Muin, and Pipih Ludia Karsa, "Prospect of Judicial Preview in the Constitutional Court Based on the Construction of Constitutional Law," *Jurnal Cita Hukum* 8, no. 3 (2020): 215–30.
[50] Indonesia, Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, art. 28D(4).
[51] Convention on the Reduction of Statelessness, adopted Aug. 30, 1961, 989 U.N.T.S. 175 (entered into force Dec. 13, 1975).

criticism for violating international laws and norms, risking statelessness. This highlights the need for all citizenship regulations to adhere to international standards of clarity, due process, necessity, proportionality, fairness, and non-discrimination.[52]

Proposed Reconstruction of Article 23

Based on the analysis of normative weaknesses and comparative study, this research proposes a reconstruction of Article 23 of Law Number 12 of 2006 as follows:

Article 23 (Revised):

1) A citizen of the Republic of Indonesia may only be declared to have lost their citizenship based on a Ministerial Decree after an administrative examination has been conducted in accordance with statutory provisions and while still guaranteeing the protection of human rights.
2) Every decision on citizenship loss must be based on the principles of legality, legal certainty, proportionality, non-discrimination, human rights protection, and the prohibition of arbitrary deprivation of nationality.
3) Before a decision on citizenship loss is established, the citizen must be given written notification, an opportunity to provide explanations, submit evidence, and be accompanied by legal counsel if necessary.
4) The examination shall be conducted objectively, transparently, and accountably based on valid evidence in accordance with statutory provisions.
5) Every person subject to a citizenship loss decision has the right to file an administrative objection and/or a lawsuit to the court in accordance with statutory provisions.
6) In establishing a citizenship loss decision, the Minister must consider the degree of fault, good faith, the actual relationship with the Republic of Indonesia, and the legal consequences arising for the person concerned.
7) A citizenship loss decision may not result in a person becoming stateless, except in circumstances expressly permitted by national and applicable international law.
8) Every citizenship loss decision must contain the legal reasons, evidentiary basis, and considerations forming the basis for establishing the decision.
9) The examination and establishment of a citizenship loss decision must be completed within a maximum period of ninety (90) days from when the examination is declared complete.
10) If a citizenship loss decision is annulled by a court or declared legally defective, citizenship status shall be restored from the date of annulment with the restoration of all civil and administrative rights attached to that citizenship status.

CONCLUSION

First, the regulation of citizenship loss in Law Number 12 of 2006 and Government Regulation Number 2 of 2007 has normatively regulated the reasons and mechanisms for citizenship loss. Still, it has not provided adequate legal protection for citizens. This weakness is demonstrated by the absence of comprehensive regulation of the principle of due process of law, particularly regarding the obligation of notification,

[52] Licadho, "Statement: Repeal the Nationality Law Amendments," para. 10–15.

the right to be heard, and mechanisms for objection or legal remedies against citizenship loss decisions. Furthermore, there remains normative ambiguity, including regarding the phrase "not refusing foreign citizenship" and the criteria for "legitimate reasons" for citizens residing abroad for more than five years, opening space for differing interpretations in practice.

Second, the implementation of the process of granting permits and determining citizenship loss in Indonesia has not fully guaranteed the protection of citizens' constitutional rights because it remains oriented toward an administrative-based approach, not yet based on a rights-based approach. This condition is reflected in the lack of integration of authority among competent institutions—the Ministry of Law through the Directorate General of General Legal Administration, the Ministry of Foreign Affairs through Representatives of the Republic of Indonesia abroad, and the Population and Civil Registration Service—resulting in recording delays, data asynchronization, and differences in interpretation in implementing citizenship loss procedures.

Third, the reconstruction of citizenship loss regulation in Indonesia needs to be directed toward a paradigm shift from an administrative compliance model to a human rights and due process model, so that citizenship loss regulation is no longer merely oriented toward fulfilling administrative requirements but also guarantees the protection of citizens' constitutional rights. This reconstruction includes: (i) affirmation of norms regarding the reasons for citizenship loss along with evidentiary standards to avoid multiple interpretations; (ii) regulation of notice and hearing procedures guaranteeing citizens' rights to receive notification, be heard, obtain legal assistance, and file objections and legal remedies within clear time limits; (iii) affirmation of the principles of non-statelessness and maximum protection of citizens as basic principles in every citizenship loss process.

Recommendations

First, to the legislature (the People's Representative Council together with the Government), it is necessary to reformulate Article 23 of Law Number 12 of 2006 and its implementing regulations to eliminate ambiguous legal phrases, add the principles of no statelessness, due process of law, and non-discrimination, and ensure that every administrative decision is based on legal considerations that can be tested through objection and appeal mechanisms.

Second, it is necessary to strengthen the mechanism of due process of law. The Government needs to establish procedures that guarantee citizens' rights to receive written notice, an opportunity to present a defense, and access to administrative and judicial appeal channels before a citizenship loss decision becomes final. An integrated citizenship information system should be established between the Ministry of Law, the Ministry of Foreign Affairs, the Directorate General of Immigration, and the Population and Civil Registration Service.

Third, special protection should be provided for vulnerable groups—diaspora, children of mixed marriages, and migrant workers—through more adaptive legal protections, such as policies extending the period for choosing citizenship or recognition of limited dual nationality, to maintain legal relations with the state without ignoring the principle of sovereignty. The Indonesian government's recent initiative to develop a

Global Citizenship of Indonesia (GCI) program, granting broad residency rights to foreigners with strong ties to Indonesia while respecting their current citizenship, represents a step in this direction.

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