

## THE DISQUALIFICATION OF ORIENT RIWU KORE IN SABU RAIJUA REGENCY ELECTIONS (DISKUALIFIKASI ORIENT RIWU KORE DALAM PILKADA KABUPATEN SABU RAIJUA)

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### ABSTRACT

*The development of Indonesian law, especially after the amendment of the 1945 Constitution, has resulted in significant changes in various fields of law, including in the field of Indonesian citizenship law. UU no. 62/1958 concerning Citizenship is the first law that comprehensively regulates citizenship in Indonesia. This law basically regulates various matters relating to the rights and obligations of a citizen, including citizenship resulting from marriage between husband and/or wife, one of which is foreigner. This article is a case study of the postponement of the inauguration and ultimately the disqualification of Orient Riwu Kore as regent of Sabu Raijua Regency, East Nusa Tenggara. And whether the qualification is fair and impartial. As well as reviewing the legality and requirements of Indonesian citizenship, and the requirements for candidacy as regent.*

**Keywords:** Indonesian citizen, foreigner, citizenship

### ABSTRAK

Perkembangan hukum Indonesia khususnya setelah dilakukannya amandemen UUD Tahun 1945 telah terjadi perubahan yang signifikan diberbagai bidang hukum termasuk di bidang hukum kewarganegaraan Indonesia. UU No. 62/1958 tentang Kewarganegaraan adalah UU yang pertama yang mengatur secara komprehensif tentang kewarganegaraan di Indonesia UU ini pada dasarnya telah mengatur berbagai hal yang berhubungan dengan hak dan kewajiban seorang warga negara, termasuk kewarganegaraan yang diakibatkan oleh perkawinan antara suami dan/atau isteri yang salah satunya adalah WNA. Artikel ini merupakan studi kasus atas ditundanya pelantikan dan pada akhirnya diskualifikasi Orient Riwu Kore sebagai bupati Kabupaten Sabu Raijua, Nusa Tenggara Timur. Serta apakah diskualifikasi tersebut adil dan tidak memihak. Serta mengulas kembali legalitas dan syarat-syarat kewarganegaraan Indonesia, dan syarat-syarat pencalonan diri sebagai bupati.

**Kata kunci:** WNA, WNI, kewarganegaraan

### 1. PENDAHULUAN

The country is an organization of power or authority that must fulfill certain elements, namely there must be a sovereign government, certain territories and people who live in an orderly manner so that it becomes a nation (Pringgodigdo, 2007). Legal scholars are of the opinion that apart from the elements of the state that have been mentioned above (territory, government, people), there must also be other elements, namely the goal of developing the country. After the proclamation of Indonesian independence on August 17, 1945, and in order to gain national and international legitimacy, the Indonesian Independence Preparatory Committee (PPKI) held a meeting on August 18, 1945 whose main agenda was to formulate and or establish the Constitution or the State Constitution, which will be used as a basic guideline in interacting with the nation and state of Indonesia (Abdullah, 1997). The core meaning of the 1945 Constitution is that Indonesia is a unitary state with a republic form. After a long gap in the legal vacuum since the 1945 Constitution relating to provisions governing Indonesian citizenship, finally in 1958 Law No. 62 of 1958 concerning Citizenship of the Republic of Indonesia, amended by Law No. 3 of 1976 concerning Amendments to Law No. 62 of 1958 concerning Citizenship of the Republic of Indonesia. Furthermore, with the passing of the reform era with the amendment of the 1945 Constitution up to four times, the law has changed with the development of the times,

especially in the field of citizenship, hence the birth of Law No. 12 of 2006 concerning Citizenship, replacing Law No. 62 of 1958 concerning Citizenship of the Republic of Indonesia and Law No. 3 of 1976 concerning Amendments to Law No. 62 of 1958 concerning Citizenship of the Republic of Indonesia, which has been deemed not in accordance with the developments and needs of society. The presence of Law No. 12 of 2006 concerning Citizenship replaced Law No. 62 of 1958 and Law No. 3 of 1976, as a legal consequence of the implementation of the amendments to the 1945 Constitution, particularly regarding citizenship rules, the legal paradigm that was previously closed has changed to become more open because space has been opened for people of other nations who wish to become Indonesian citizens, for example: in this case related to the naturalized athletes, especially in the field of football such as: Cristian Gonzáles (Uruguay), Greg Kwonkolo (Nigeria), Irfan Bachdim (Netherlands). This includes people born from mixed marriages between Indonesian women and foreign men, such as: in this case Cinta Laura (United States of America) and Orient Riwu Kore (United States of America).

The principles of citizenship in general consist of:

- (a) *Ius Sanguinis (Law of the blood)*, is the principle that determines a person's nationality is determined based on the person's ancestry, not based on the country of birth. For example, a person is born in country A, while his parents are citizens of country B, so he is a citizen of country B. So based on this principle, a child's nationality always follows the citizenship of his parents regardless of where the child was born.
- (b) *Ius Soli (Law of the soil)*, is the principle that determines a person's nationality based on the country of birth (region). For example, a person is born in country B, while his parents are citizens of country A, so he is a citizen of B. So according to this principle, a person's nationality is not affected by the nationality of his parents, because the benchmark is the place of birth. The existence of differences in determining citizenship in several countries, both those that apply the *jus soli* and *ius sanguinis* principles, can give rise to two possible citizenship statuses for a resident, namely: (a) *Apatride*, namely the existence of a resident who has absolutely no citizenship. For example, a descendant of nation B who adheres to the *ius soli* principle was born in country B which adheres to the *ius sanguinis* principle. Then that person does not become a citizen of country A and also cannot become a citizen of country B. Thus that person does not have citizenship; (b) *Bipatride*, namely the existence of a resident who has two types of citizenship at once (dual citizenship). For example, a descendant of nation B who adheres to the *ius sanguinis* principle was born in country A which adheres to the *ius soli* principle. Because he is a descendant of nation B, he is considered a citizen of country B. However, country A also considers him a citizen, because it is based on his place of birth.

The problems with the Orient Riwu Kore case ultimately resulted in his disqualification from the 2021 East Nusa Tenggara Regional Election. The reason that was used as the basis for the intended disqualification was because he was not an Indonesian citizen as he had possessed a United States passport.

## 2. METODE PENELITIAN

**Tabel 1**

*Legal Status of Citizens.*

Law No. 62 of 1958	Law No. 12 of 2006
People based on laws and/or agreements and/or regulations in force since the proclamation.	Everyone who is based on statutory regulations and/or based on agreements between the Government of Indonesia and other countries before this law comes into force has become an Indonesian citizen.
People who at the time of his birth had a family law relationship with their father,	Children born from legal marriages to an Indonesian citizen father and mother.
Citizen of the Republic of Indonesia, with the understanding that the said citizenship of the Republic of Indonesia started from the existence of the said family law relationship, and that this family law relationship was held before that person was 18 years old or before they married at the age of under 18 years.	
Children born within 300 days after their father's death, if the father is an Indonesian citizen at the time of his death.	Children born from legal marriages to an Indonesian citizen father and a foreign national mother.
People whose mother was a citizen of the Republic of Indonesia at the time of birth, if she did not have a family law relationship with her father at the time.	Children born from legal marriages from a father who is a foreign citizen and a mother who is a citizen.
People whose mother is a citizen of the Republic of Indonesia at the time of birth, if her father does not have citizenship, or as long as his nationality is unknown.	Children born from a legal marriage to an Indonesian mother, but the father does not have citizenship or the law of the father's country of origin does not grant citizenship to the child.
People born in the territory of the Republic of Indonesia as long as both parents are unknown.	Children born within 300 (three hundred) days after their father dies from a legal marriage and their father is an Indonesian citizen.
A child who was found in the territory of the Republic of Indonesia while his parents were unknown.	Children born outside of legal wedlock from an Indonesian mother.

### Legal Position Orient Riwu Kore In Accordance With Law No. 12 Of 2006.

#### a. Identity

Name : Orient Riwu Kore

Date of Birth : KUPANG, 07<sup>th</sup> of OCTOBER 1964 Marital status : MARRIED

#### b. Name : TRINIDAD MARTINEZ

#### c. Number of children : 1. FRANKLIN D. RIWU KORE, 2. JESSICA M. RIWU KORE

### Provisions Of The Article 2006

Paragraph (1). In the event that the citizenship status of the Republic of Indonesia for a child as referred to in Article 4 letter c, letter d, letter h, letter 1, and Article 5 results in the child having dual citizenship, after 18 (eighteen) years of age or when the child is married the child must declare that they have chosen one of the their nationalities.

Paragraph (2). The statement to choose citizenship as referred to in paragraph (1) is made in writing and submitted to the Official by attaching the documents as specified in the laws and regulations.

Paragraph (3). The statement to choose citizenship as referred to in paragraph (2) is submitted no later than 3 (three) years after the child turns 18 (eighteen) years old.

### **Attorney Statement**

Orient P Riwu Kore's attorney, Paskaria Tombi, emphasized that his client was an Indonesian citizen (WNI). Mr. and Mrs. Orient are Indonesian citizens as well, so there is no doubt about their origins.

"Orient is an Indonesian citizen from Kupang who has never lost an Indonesian citizenship and is an Indonesian citizen since birth and has never been separated. Based on the principle of *ius sanguinis* or law of the blood, citizenship is based on lineage. Based on the law, and because Orient was born from an Indonesian father and mother and has documented documents in the form of an active Identification Card, then based on this, those born to Indonesian fathers and mothers are *de facto* and *de jure* Indonesian citizens," (Saputra, 2021). In addition, he also added: "Orient submits an application for waiver of citizenship by filling out an official form request for determination of possible loss of United States citizenship through the United States Embassy" (CNN Indonesia, 2021)

"However, it is very unfortunate that due to the negligence of the United States Embassy, the request for waiver of citizenship at that time was not followed up due to COVID-19"

### **Election Commission Regulations Number 1 of 2020**

Requirements to become Candidates for Governor and Vice-Governor, Regent and Vice-Regent, or Mayor and Vice-Mayor based on General Election Commission Regulation Number 1 of 2020 concerning the Third Amendment to Election Commission Regulations Number 3 of 2017 concerning Nomination for the Election of Governor and Vice Governor, Regent and Vice Regent, or Mayor and Vice Mayor, listed in Article 4 are as follows:

- (1) Indonesian Citizens are eligible to become Candidates for Governor and Vice Governor, Regent and Vice Regent, or Mayor and Vice Mayor by fulfilling the following requirements:
  - a. Fears the God Almighty;
  - b. Loyal to Pancasila, the 1945 Constitution of the Republic of Indonesia, the ideals of the August 17, 1945 Proclamation of Independence, and the Unitary State of the Republic of Indonesia;
  - c. Education at least senior high school level or equivalent;
  - d. Minimum age of 30 (thirty) years for Candidates for Governor and Vice Governor and 25 (twenty five) years for Candidates for Regent and Vice Regent or Candidate for Mayor and Vice-Mayor as of the determination of the Candidate Pair;
  - e. Able physically, spiritually and free from narcotics abuse based on the results of a thorough medical examination from a team of doctors consisting of doctors, psychologists and the National Narcotics Agency;
  - f. Never as a convict based on a court decision that has permanent legal force for committing a crime punishable by imprisonment for 5 (five) years or more, except for a

convict who commits a crime of negligence or a political crime in the sense of an act declared as an act of punishment in positive law only because the perpetrator has a different political view from the regime in power. For convicts who are not serving a sentence in prison include: The convict due to negligence; or Convicted for political reasons;

- g. Must honestly or openly disclose it to the public; for former convicts who have finished serving their sentence, they must honestly or openly disclose it to the public: not a repeat offender;
- h. Not a former convicted drug dealer or not a former convict of sexual crimes against children;
- i. Is not being revoked by virtue of a court decision that has permanent legal force;
- j. Has never committed a disgraceful act;
- k. Submits a list of personal assets to the agency authorized to examine reports on state administrators' assets;
- l. Not currently having debt dependents individually and/or as a legal entity which is his responsibility which is detrimental to state finances;
- m. Is not being declared bankrupt based on a court decision that has permanent legal force;
- n. Has a Taxpayer Identification Number and have a personal tax report;
- o. Have never served as Governor or Vice Governor, Regent or Vice Regent, or Mayor or Vice Mayor for 2 (two) terms of office in the same position for Candidates for Governor or Candidate for Vice Governor, Candidate for Regent or Candidate for Vice Regent and/or Candidate for Mayor or Candidate for Vice Mayor, provided that:
  - a) The calculation of 2 (two) terms of office is calculated based on the number of appointments in the same position, namely the first term of office is 5 (five) full years and the shortest term is 2 ½ (two and a half) years, and vice versa;
  - b) The same position as referred to in number 1, is the position of governor and governor, vice governor and vice governor, regent/mayor with regent/mayor, and vice regent/mayor with vice regent/mayor;
  - c) 2 (two) terms of office in the same position, including: has 2 (two) times in a row in the same position, has been in the same position 2 (two) times, not consecutively, or 2 (two) times in the same position in the same area or in a different area
  - d) Calculation of 5 (five) years term of office or 2 ½ (two and a half) years term of office as referred to in number 1, calculated from the date of inauguration until the end of the term of office of Governor and Vice Governor, or Regent and Vice Regent or Mayor and Vice Mayor concerned; and
  - e) The provisions referred to in numbers 1 through 4, apply to
    - a. The position of Governor and Vice Governor, or Regent and Vice Regent or Mayor and Vice Mayor who are directly elected through elections, and who are appointed by the Provincial People's Representative Council or Regency/City Regional People's Legislative Council; or
    - b. Position of Governor and Vice Governor, or Regent and Vice Regent or Mayor and Vice Mayor due to change of name of province or regency/city;
- p. Has never served as: Governor for Vice Governor candidates, Regent candidates, Vice Regent candidates, Mayor candidates or Vice Mayor candidates in the same area;
- q. Has resigned from his position since being appointed as a candidate for:
  - a. Regent or Vice Regent, Mayor or Vice Mayor who is nominating himself as Regent or Vice Regent, Mayor or Vice Mayor in another regency/city;
  - b. Regent or Vice Regent, Mayor or Vice Mayor who is nominating himself as Governor or Vice Governor in another province; or

- c. Governor or vice governor nominating himself as governor or vice governor in another province;
  - r. States in writing that they are willing to take leave outside of the state's responsibility during the campaign period for Governors, Vice Governors, Regents, Vice Regents, Mayors, or Vice Mayors who are nominating themselves in the same area;
  - s. Does not have the status of acting Governor, acting Regent or acting Mayor;
  - t. Declares in writing the resignation as a member of the People's Representative Council, Regional Representative Council or Regional People's Representative Council for members of the People's Representative Council, Regional Representative Council or Regional People's Representative Council from the time they are appointed as candidates;
  - u. Declare in writing a resignation as a member of the Indonesian National Armed Forces, Indonesian National Police, Civil Servant, village head or other designations and village apparatus since being appointed as a candidate;
  - v. Irrevocably resign from a position at a State-Owned Enterprise or Regional-Owned Enterprise after being appointed as a candidate;
- (2) The requirements for candidates to be physically and spiritually capable as referred to in paragraph (1) letter (e) do not preclude persons with disabilities.

### 3. HASIL DAN DISKUSI

The provisions governing the requirements for becoming a regent are regulated in the Elections Commission Regulation Number 1 of 2020, one of the main requirements for becoming a regent, as stated paragraph (1) is to be an Indonesian citizen. Any dispute relating to Indonesian citizenship must be guided by the provisions of Law No. 12 of 2006. With regard to dual citizenship, this law regulates those that are limited in nature, namely children who are under 18 (eighteen) years of age or who are not yet married. Therefore it is not possible for a person who has another citizenship other than Indonesia, in this case being Orient Riwu Kore, to become a regent. If the US embassy in Indonesia had revoked Orient Riwu Kore's citizenship, then he could have been sworn in as regent of Sabu Raijua.

### 4. KESIMPULAN DAN SARAN

Indonesia is a constitutional state, namely legal legitimacy by emphasizing that the law is a law made by the government together with the People's Representative Council, other than that it is not legal. In the concept of legal positivism adopted by Indonesian law, that law is a state order that must be obeyed. And once a law has been enacted since then the public is considered to know. Therefore, Orient should have known that he was not qualified to become a regent. Orient Riwu Kore is a foreign citizen (foreigner) therefore is not eligible to become a regent.

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