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Harmonization of Citizenship Regulation in Indonesia

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Abstract

Globalization has resulted in complex dynamics and many changes in society, including the law. The human traffic flow between countries has also led to the emergence of citizenship problems. The main problem to cause polemic in Indonesia is the factor of disharmony between the laws and regulations on citizenship in Indonesia. Therefore, it is necessary to create harmonization, particularly on how to align between Pancasila, the Constitution, and Article 23 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia as "das sollen" or the multiple interpretations of the law into the real practice in the society as"das sein". Such disharmony has urged the need to harmonize the regulations governing this matter. This research analyzes this case based on the theory of truth consistency, correspondence, correlation and coherence and interpretation to solve this problem. This paper aims to explore the factors behind the making of positive law, in this case laws and regulations, which may have multiple interpretations in terms of their application in reality. This is normative research on positive law and the implications of positive law. The conclusions of this study are the discovery of the causes of disharmony and the answer to realize harmonization process andsome recommendations for material review at the Constitutional Court or revision of aquo provisions by the legislators.

Keywords

Harmonization, Legislation, Citizenship

JEL Classifications: J11, F43

1. Introduction

The rapid pace of the globalizing world today has brought about countless changes in all aspects of human life, especially in many developingcountries, including Indonesia. Natural changes are also observable in legal aspects, because people's needs are subject to quantitative and qualitative changes. The main problems at stake in legal changes is the extent to which the law be in line with these changes and the degree to whichthe legal order can keep up with the changes in society (Manan,2018).

Globalization, which goes hand in hand with the scientific and technological development makes the world seem borderless. An outbreak in one country at the same time can be witnessed by citizens of different countries. The globalizing has also led to an increasing human traffic flow from one country to another, be it due to employment, education, socio-cultural, or legal factors (Wardoyo, 2006).For example, it is evident in Europe that:

"Also, as part of many countries' colonial or imperial experiences large parts of their populations moved or have been moved. After the breakup of larger imperial entities or after the end of colonial rule, these groups of people may have remained resident 'abroad' but were granted special rights to citizenship in what was considered the 'homeland'. Furthermore, past colonial subjects were often considered to have special ties with the former colonial ruler and therefore received facilitated access to the body of the citizenry. Again, Hungary provides a good example of these practices".

This movement is clearly observable in Hungary, which shows the importance of clear arrangements for resolving citizenship rights issues. In this particular context, Indonesia is no exception. As a state of law, Indonesia must respect human rights in terms of political, cultural, social, economic, legal and population aspects. This is in accordance with the concept of human rights, which contains the right to property, the right to life, and the right to freedom. The current developments and progress in the journey of the Indonesian nation have indicated a common vision of human rights and the mission of increasing human rights between the government on the one hand and the community on the other. Even so, the difference between the two remainsobservable, which lies in the way to realize the protection of human rights into people's lives (Atmasasmita, 2001). Legal and constitutional reforms, on the other hand, have the same meaning and purpose. Hence, the two are completely inseparable. This reciprocal relationship means that when everyone talks about the desire to create a rule of law, they must also talk about legal and constitutional reforms (Asshiddiqie, 2008). Law is an order (law exists in an order that can at least be divided into three, namely: transcendental order, social order and political order), which is holistic and always in motion, both evolutionarily and revolutionary. The nature of the movement is something that cannot be eliminated or abolished, but it is something that exists and is principal (Israhadi, 2015).

The whole series of processes is a manifestation of the obedience of all Indonesians to Pancasila. Strictly speaking, Pancasila has guaranteed the protection of citizens' rights from discriminatory treatment. Awareness of the values of Pancasila is the key in solving this problem. The noble values inherent in Pancasila must be strongly implemented in the life of the state and nation (Susanto, 2012). The protection of human rights is clearly guaranteed and stated in the constitution, which is inseparable from the principles of constitutionalism itself. Strong (1966) articulated that, "the objects of a constitution, in short, are to limit the arbitrary action of the goverment, to guarantee the right of the governed, and to define the operation of the sovereign power"This viewpinpointes that it is in line with the Indonesian constitution, which contains: (1) limitation of state power; (2) protection of human rights; (3) Regulation regarding the exercise of state power. The 1945 Constitution or the 1945 Constitution clearly regulates the rights of citizens and their relation to the current of globalization, specifically regarding citizenship in Article 26 which states that: (1) Citizens shall consist of indigenous Indonesian peoples and persons of foreign origin who have been legalised as citizens in accordance with law. (2) Residents shall consist of Indonesian citizens and foreign nationals living in Indonesia. (3) Matters concerning citizens and residents shall be regulated by law.

The idea of citizenship is based on the meaning of citizen. Citizens are members of the state. Citizens collectively are one of the important fundamentals of the existence of a country. Citizenship is one of the conditions that must be met for the establishment of an independent and sovereign state, in addition to other conditions. Politically, citizens are an important element of a country that deserves legal certainty and protection from the state. A citizen must obtain guaranteed protection and legal certainty for the rights he has as well as the obligations as part of his responsibility as a citizen of a country. The importance of citizenship status is closely related to its existence, which includes rights and obligations. A country generally constitutes two kinds of residents, namely citizens and non-citizens. The principle of citizenship determines that the legal status, rights, and authority of a citizen remain attached to him wherever he is. A person's citizenship status will confirm the relationship between the state and the individual, so that a person's citizenship is proof of his or her membership of a country. Thus, citizens have a reciprocal relationship of rights and obligations to their country. This is what distinguishes between a citizen and a foreigner.

Citizenship regulation is stipulated in the Citizenship Law. In 1946, Indonesia has issued Law no. 3 of 1946 concerning Indonesian Citizens and Residents. Article 1 of Law no. 3 of 1946 states that an Indonesian citizen is a person who is native to the territory of the Indonesian state and a person who is not in the above-mentioned group, but is descended from a person from that group who was born and domiciled and resides within the territory of the Indonesian state (Kansil, 1996). Seeing these regulations, it is clear that Law no. 3 of 1946 adheres to the *ius soli*principle, meaningthat a person's citizenshipis determined from where

he was born, so that everyone born in indonesia automatically becomes an Indonesian citizen (Ferdiles, 2019).

There new a lot of the Citizenship Law is carried out with the issuance of Law no. 62 of 1958 concerning Citizenship of the Republic of Indonesia jo. Government Regulation No. 67 of 1958 concerning the Implementation of the Indonesian Citizenship Law, the issuance of Law no. 3 of 1976 concerning Amendments to Article 18 ofLaw no. 62 of 1958, and the latest was the issuance of Law No. 12 of 2006 concerning Citizenship, in which th emost important part of this of a quo was the absence of the principle of bipatride, namely dual citizenship and apatride or being stateless (Subiharta, 2007).Suchchanges are inevitable ashighlightedby Donnelly (2003) that"the transition from nationalist to territorial and juridical conceptions of political community has been closely associated with an ideology of human rights. One's rights depend not on who one is, but simply on the fact that one is a human being. In a world of states, this has taken the form of an emphasis on equal rights for all citizens".

The recent case related to citizenship is the case of the former Minister of Energy and Mineral Resources, Archandra Tahar. When it was discovered that Archandra also has United States (US) citizenship, which was obtained in 2012, he was honorably dismissed from the position of minister.However, in fact, Arcandra's US citizenship was lost when he accepted the position as Minister of Energy and Mineral Resources of the Republic of Indonesia. This is in accordance with the US provisions which state that:"If you become an elected official or hold a policy-level position (like an ambassador, cabinet minister, or anyhigh-leveladministrative position where you make government policy) in your native country or a foreign country, you run the risk of losing your US citizenship.On the other hand, if you hold a non-policy level job like working in your native country's embassy or working for your native country's government in an advisory or purely administrative capacity, you run little risk of jeopardizing your US citizenship. It was formally confirmed with a Certificate of Loss of United States since August 12, 2016. The loss of US citizenship status of Arcandra has also been ratified by the Department of State of the United States of America and a letter from the US Embassy dated August 31, 2016. The Minister of Law and Human Rights later confirmed Archandara's citizenship as an Indonesian citizen on September 1, 2016.

This issue then does not reduce the various questions from a legal perspective. These various problems arise because of the different interpretations of the related citizenship norms. Normatively using the Grammatical Interpretation method, several experts stated that in this case Archandra had automatically lost Indonesian citizenship when he took the oath to become a US citizen. This refers to the provisions of Article 23 of Law Number 12 of 2006 concerning Citizenship which states that "Indonesian citizens lose their citizenship if the person concerned:voluntarily take an oath or pledge allegiance to a foreign country or part of that foreign country.

The article implies that Archandra has automatically lost citizenship without having to go through a series of existing procedural processes.On the other hand, there are several experts and also the Government, in this case the Minister of Law and Human Rights, who argued based on a Systematic Interpretation that Article 23 of Law Number 12 of 2006 concerning Citizenship cannot simply be understood automatically, because in fact there are principles that underlie the establishment of the *a quo* Law, namely the Publicity Principle as explained in the explanation of Law Number 12 of 2006 concerning Citizenship which is also derived into Government Regulation Number 2 of 2007 concerning Procedures for Acquiring, Losing, Canceling, and Regaining Indonesian Citizenship. The polemic is increasingly gaining countless interpretations when experts come up with various solutions to the Archandra problem. There are those who stated that Archandra should have gone through the citizenship procedure again, some otherssaid that it is enough for Archandra to go through the procedure to regain Indonesian citizenship, and there are those who said that it is enough with Article 20 of Law 12/2006, namely the President returning Archandra's citizenship as an Indonesian citizen as happened in the Hassan Tiro and Zaini Abdullah's cases.

The importance of this research lies on its attempt to solvethe existing legal problems as a result of the application and interpretation of the law to the applicable laws and regulations. Thus, it is expected that the conclusions and recommendations of this research can serve as an option to resolve the disharmony between laws and regulations regarding citizenship in Indonesia.On the basis of the aforementioned, this research aims to explore and analyze the aforestated problems and to look for the appropriate solution in the harmonization of citizenship regulations in Indonesia.

1.1 Problem Formulation

Problem formulation is an essential research element as a way to solve the main problems clearly and systematically with a more focused goal to achieve. The problem formulation is created to further emphasize the problem under study as a way to find the appropriate solution the the problem and achieve the goal.

The aforestated research background can be formulated into the following research problems:

1. What is the cause of disharmony in the Citizenship Regulations in Indonesia?
2. How is the process of harmonization between laws and regulations on citizenship in Indonesia?

2. Research Method

Research is a basic tool in developing science and technology. In an effort to find scientific truth, the research method becomes a fairly important part in compiling research. Scientific research is deemed reliable when it is conductedwith an appropriate method. Research

is a scientific activity related to analysis and construction, which is carried out methodologically, systematically and consistently (Soekanto, 1984). Thus, the notion of research method refers to an orderly and coherent way of thinking and using the scientific method with the aim of discovering, developing or testing the truth or untruth of a knowledge, symptom or hypothesis. This study usesnormative legal research method that is limited to a literature review. As normative legal research, this research researchespositive law inventory, legal principles, systematic legislation, synchronization, harmonization of legislation, legal history and comparative law. Therefore, the emphasis is on studying and reviewing secondary data obtained from research and theories of experts, which does not require any hypothetical formulation (Asikin, 2004). Meanwhile, as seen from its nature, this legal research is prescriptive,because this research examines the problem of legal norms (Marzuki,2005).

3. Results and Discussion

Before describingof the research problems, the conceptual framework for this research design is elucidated in Figure 1.

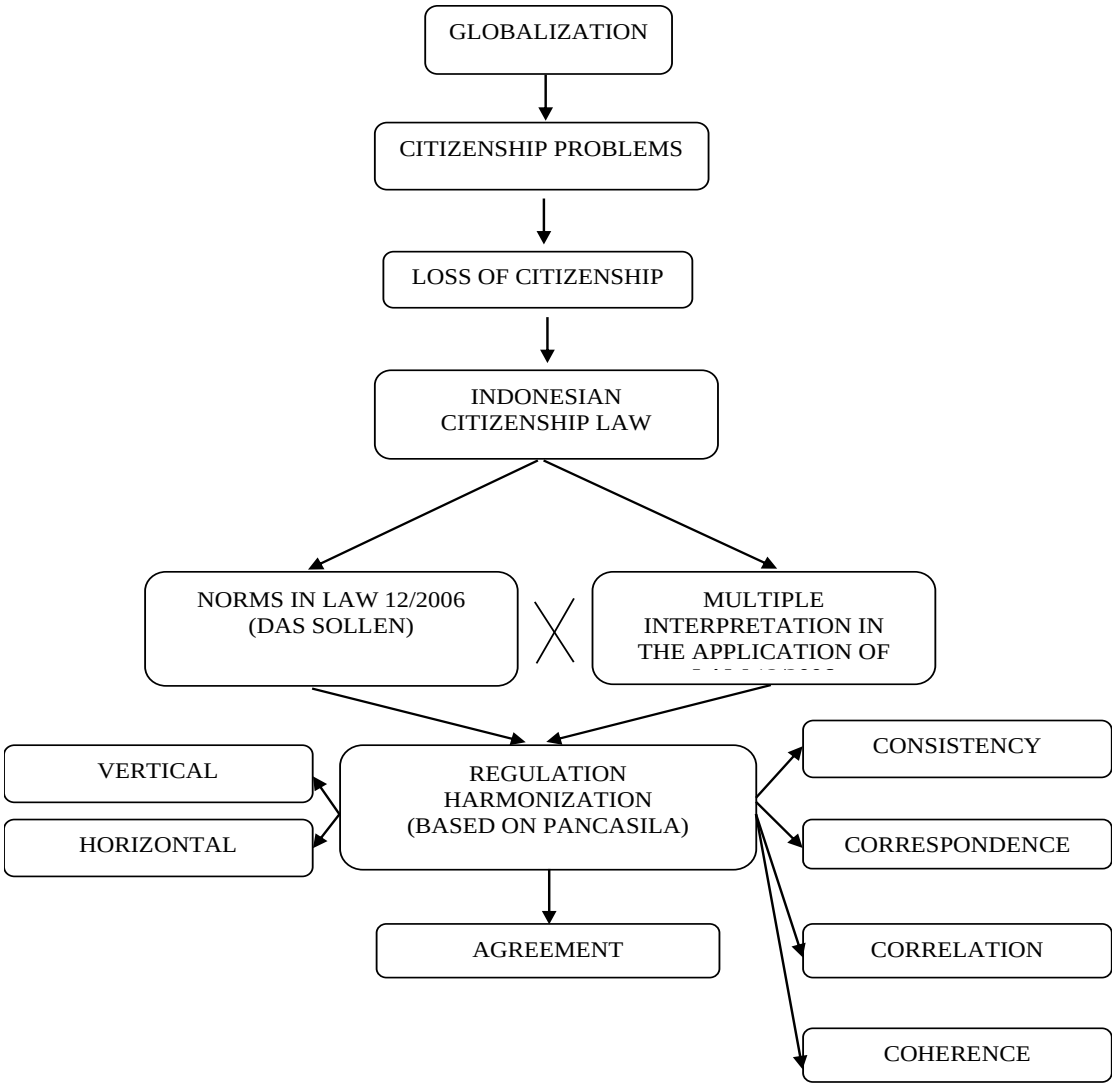

Figure 1: Research Design

3.1 Factors that cause disharmony in the laws and regulations concerning citizenship in Indonesia

In essence, there is no legislation that is as complete or clear in regulating all human activities. In reality, the laws and regulations are static and rigid, while humans always develop from time to time. No wonder that this condition spurs the birth of the popular expression "*Het recht hink achter de feiten ann*" appears, to indicate that laws will always lag behind the time (Efendi & Cahyono, 2020).

Legislation as a source of law, especially in dynamic and developing societies, serves as a means to realize state policies in the fields of economy, social culture, politics and defense, national security in accordance with the priority scale and defense of National Development (Rahardjo, 2009).The Indonesian Legislative System as a series of written legal elements that are interrelated, influential, and integrated isinseparable from each other consisting of: principles, formation, types, hierarchies, functions, content material, promulgation, dissemination, enforcement and testing, which are based on the philosophy of Pancasila and the 1945 Constitution (Natabaya& Aziz, 2006). For this reason, it is necessary to have a conformity of understanding in applying the law as concreted through statutory norms.In terms of prevention, harmonization is carried out in order to avoid legal disharmony. The existing legal disharmony requires harmonization of the legal system, while potential legal disharmony must be prevented through efforts to harmonize, align, and adjust various legal harmonizations.

The urgency of harmonization can be seen from the potential for legal harmonization, which is reflected by the following factors (Goesniadhie, 2010):

1. Too many laws and regulations are enforced;
2. There are differences of interest and interpretation;
3. There has been gap between technical understanding and legal understanding of good governance;
4. There are some legal constraints in the application of laws and regulations, which consist of regulatory mechanisms, regulatory administration, anticipation of change, and law enforcement;
5. Legal barriers are encountered in the application of laws and regulations, namely in the form of overlapping authorities and conflicts of interest.

The second factor, the different interpretation is the root cause of the problem in the case of losing Indonesian citizenship. The issue of disharmony in the regulations regarding the loss of citizenship in Indonesia stems from different interpretations between one party and another regarding Article 23 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, which is a regulation regarding the loss of citizenship in Indonesia.

In the Archandra case, there are several interpretive analyzes in order to find an understanding of a *quo* article, which is based on a different method of interpretation. An unclear statute must be explained first, while an incomplete

statutory regulation cannot be directly applied to the event. Likewise, without statutory regulation, a legal rule must be formed or created. Hence, in dealing with a concrete event, the law must be found by way of explaining, completing, and creating the rule of law. To find the law in an event, an auxiliary science is needed through the method of legal discovery. One widely used method of legal discovery so far is Interpretation.

Theoretically, since its early inception, the method of interpretation can be grouped into the following (Mertokusumo, 2010):

a. Grammatical Interpretation (by language), which can simply be interpreted as interpreting the statementof the rules according to the predetermined rules of the language.
b. Historical Interpretation, consisting of two methods as listed below:

1) Interpretation according to the history of the legal regulation, which aims to find out the purpose of the legislation, which in this case is seen from the legislator.
2) Historical interpretation of legal institutions, namely understanding the law based on its legal history.

c. Systematic interpretation with aims to interpret the law as part of the whole law.
d. Sociological interpretation which can be interpreted as interpreting the law by comparing or synchronizing the positive nature of the law with the nature of legal reality.

3.2 Grammatical Interpretation

As seen from the first opinion by way of reading the provisions of a *quo* article grammatically, there will not be anyinternational problems because literally there is no problem in the norm of Article 23. By interpreting the law based on*a quo* article, a person will automatically lose citizenship if one of the causes (letters a to i) is fulfilled.Article 23 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia stipulates that:

"An Indonesian citizen will lose their citizenship due to the following:

1. Acquires another citizenship voluntarily;
2. Will not refuse or will not relinquish other citizenship when the incumbent has the opportunity to do so;
3. Is declared of having relinquished their citizenship by the President at their voluntary request, the person is aged above 18 (eighteen) or has married, isliving abroad, and with the relinquishment of their citizenship does not become stateless;
4. Has entered into foreign military service without prior approval from the President;

5. Has voluntarily entered into the services of foreign entities in a position where by law, such a position in Indonesia is only reserved for citizens of the Republic of Indonesia;
6. Has voluntarily declared allegiance to a foreign country or part of the said foreign country**;**
7. Was not obligated but has voluntarily participated in a referendum that is civic in nature for a foreign country;
8. Possesses a passport or travel document equivalent to a passport from a foreign country or a letter that may be construed as a valid citizenship identity from another country on his/her name; or
9. Livingoutside theterritories of the Republicof Indonesiafor 5 (five) consecutiveyears for non-official purposes, withoutlegal reason and deliberately refuses to declaretheir intentionto remain asIndonesian citizens before the 5 (five) year limit ends, and in each of thenext 5(five) years the said person fails to declare their intention of retaining their citizenship to theIndonesian Representativeoffices in which thesaidperson's residence is under their jurisdiction although the said Representative Office has duly informed them in writing, as long as the incumbent does not become stateless because of such negligence.

By directly interpreting Article *a quo*(given) based on grammatical interpretation, there will be an understanding that an Indonesian citizen who fulfills the conditions specified (alternatively), will automatically lose his Indonesian citizenship.

4. Systematic Interpretation

The gap between das solen (supposedly) and das sein (reality) will only be seen when we analyze the article with a **systematic interpretation**by looking at the other series of provisions in Law 12/2006 and their derivations, namely:

1. Elucidation of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia; and
2. Government Regulation Number 2 of 2007 concerning Procedures for Obtaining, Losing, Canceling, and Regaining Indonesian Citizenship.

In terms of systematic interpretation, it is necessary to have content conformity between norms and other norms in stages in a hierarchical order of legislation. According to Hans Kelsen, a legal norm is always sourced and based on the norms above it, but below the legal norms it also becomes the source and serves as the basis for norms that are lower than it. In terms of the arrangement/hierarchy of the norm system, the highest norm (Basic Norm) becomes serves as the foundation for the lesser norms, and thus the changes in the Basic Norm will certainlydamage the lesser system of norms.

4.1 The Process of Harmonization of Legislation Concerning Citizenship in Indonesia

The government in this case constantly strives to apply the predetermined principles in citizenship law, which covers ways to obtain and ways to lose citizenship as well as ways to avoid stateless person (Marliyanto&Indrayati, 2011). On this basis, this research topic will be further developed to acquire broader scope egarding matters as the implications of the harmonization between laws and regulations regarding citizenship in Indonesia.

5. Vertical and horizontal harmonization

This problem clearly needs vertical harmonization because it is obvious that the problem occurs due to the tiered regulations, namely between the Law and the Government Regulations below it. Apart from that, there is indeed no horizontal conflict between Law 12/2006 and other laws, althoughthere is an internal conflict between one article and another, even with the principles forming the Law 12/2006.

In relation to the hierarchy of legal norms, Hans Kelsen proposed a theory regarding the level of legal norms (*Stufentheorie*). Hans Kelsen argued that legal norms are tiered and layered in a hierarchy. In other words, a lower norm applies, originates, and is based on higher norms, while higher norm applies, originates, and is based on higher norms, and so on until a norm that cannot be explored further and is hypothetical and fictitious, namely the Basic Norm (*Grundnorm*). Basic Norms are the highest norms in a system of norms that are no longer formed by a higher norm, but the Basic Norms are determined in advance by the community as Basic Norms, which serves as the support for the lower norms, and thus a Basic Norm is deemed as the pre-supposed (Soeprapto,2007).

The law is not derived from a distinct entity independent of the law itself, as the widely held expression, which suggests that the "source of law" is itself always law: a "higher" legal norm in relation to a "lower" legal norm, or the method of forming (lower) norms determined by higher norms, and that means a specific legal content (Kelsen, 2007).

Hans Nawiasky, one of Hans Kelsen's students, developed his teacher's theory of the level of norms in relation to a country. Hans Nawiasky said a legal norm of any country is always layered and tiered. The norms at the lower level are valid, sourced and based on higher norms, while higher norms apply, are sourced and based on the highest norm called the Basic Norm. Hans Nawiasky also argued that in addition to the norms that are layered and tiered, the legal norms of a country are also grouped, and the grouping of legal norms of a country consists of four major groups, among others:

1. Group I : *Staatsfundamentalnorm* (State Fundamental Norms);
2. Group II : *Staatsgrundgesetz* (Basic Rules/Basic Rules of the State);
3. Group III : *Formell Gesetz* ("Formal" Law)

4. GroupIV: Verordnung & Autonome Satzung (Implementing Rules/Autonomous Rules).

According to Hans Nawiasky, the *staatsfundamentalnorm*contains norms that serves as the basis for the formation of the constitution of a country (*Staatsverfassung*), including the norms for changing them. The legal essence of a *Staats-fundamentalnorm* is a requirement for the enactment of a constitution, which existed even before the formulation of constitution.

Furthermore, Hans Nawiasky added that the highest norm, which Kelsen referred to as the basic norm in a country should not be called the *staatsgrundnorm* but rather the s*taatsfundamentalnorm* or the state's fundamental norm. *Grundnorm* has a tendency not to change or is permanent in nature, while the fundamental norms of a country can change at any time due to rebellions, coups and so on.

A. Hamid S. Attamimi compared Hans Nawiasky's theory with Hans Kelsen's theory and applied it to the structure and legal system in Indonesia. To explain this, A. Hamid S. Attamimi drew a pyramid to describe the comparison between Hans Kelsen and Hans Nawiasky. Moreover, A. Hamid S. Attamimi also illustrated the hierarchical structure of the Indonesian legal system using Hans Nawiasky's theory.

On the basis of this theory, the structure of the Indonesian legal system is described as:

a. *Staatsfundamentalnorm*: Pancasila (Preamble to the 1945 Constitution);
b. *Staatsgrundgesetz*: TAP MPR, and the Constitutional Convention;
c. *Formell Gesetz*: Law;
d. Verordnung & Autonome Satzung : hierarchically starting from Government Regulations to Regent or Mayor Decrees.

Based on the above theories, there really needs to be a match between the intent or content of the norms contained in Law 12/2006 with PP/2007. Hierarchically, PP 2/2007 is a derivative of Law 12/2006 which functions to describe technically the procedural aspects of what has been regulated in Law 12/2006. However, it becomes inappropriate when there is disharmony between the two. The question lies onwhether the phrase "**by itself**" in PP 2/2007 does explain the meaning of automatic loss of citizenship, which is not yet clearly defined in Article 23 of Law 12/2006. This becomes even more complicated when faced with the Publicity Principle that underlies these provisions.

Regarding the compatibility between Article 23 of Law 12/2006 and the publicity principle, it is necessary to first understand the basic principles of law. The principle of law is different from a rule of law (rechtsregel). A principle of law is too general to be deemed as a rule of law, since it does not speak too much (*of niets of veel te veel zeide*). Direct application of legal principles through subsumption or

grouping as a rule is not possible, because for that sake it is necessary to form concrete contents first (Yuliandri, 2010; Budianto, 2015).

Giventhis opinion, in essence, the concrete will of the Publicity Principle has been normalized in:

- Article 29 which states, "The Minister announces the name of the person who has lost his Citizenship of the Republic of Indonesia in the State Gazette of the Republic of Indonesia".
- Article 30 which states, "Further provisions regarding the requirements and procedures for the loss and cancellation of citizenship are regulated in a Government Regulation".
- Explanation of the*a quo* Law Part I. GENERAL, which explains the Publicity Principle as the basis for the emergence of Articles 29 and 30, namely, "The principle of publicity is the principle that determines that a person who gains or loses Indonesian Citizenship is announced in the State Gazette of the Republic of Indonesia so that the public knows it."
- Government Regulation Number 2 of 2007 concerning Procedures for Obtaining, Losing, Canceling, and Regaining Citizenship of the Republic of Indonesia as a derivation of a *quo* Law, which regulates the elaboration of procedures for losing citizenship of the Republic of Indonesia, namely:

Article 39 which states "The Minister announces the name of the person who has lost his Citizenship of the Republic of Indonesia as referred to in Article 34 and Article 38 in the State Gazette of the Republic of Indonesia."

The formulation of the principles for the formation of good laws and regulations can be divided into two parts, namely formal principles and material principles, namely:

Formal Principles include the following:

a. *Het beginsel van duidelijkedoelstelling* (clear purpose principle);
b. *Het beginsel van het juiste organ* (the principle of the right organ/institution);
c. *Het noodzakelijkheidsbeginsel* (the principle of the need for regulation);
d. *Het beginsel van uitvoerbaarheid* (principles that can be implemented);
e. *Het beginsel van consensus* (consensus principle);

Material principles include the following (Yuliandri, 2010):

a. *Het beginsel van duidelijketerminologieenduidelijkesystematiek* (clear principles of terminology and systematics);
b. *Het beginselven de ken baarheid* (recognizable principle);
c. *Het rechtsgelijkheidsbeginsel* (the principle of equal treatment in law);
d. *Het rechtszekerheidsbeginsel* (the principle of legal certainty);

e. *Het beginsel van de individualerechtsbedeling* (The principle of implementing the law according to individual circumstances).

The formation of laws and regulations, in addition to being guided by the principles of the formation of good legislation, also needs to be based on general legal principles, which consist of the principles of the state based on law, government based on the constitutional system and the state based on people's sovereigntyYuliandri (2010).In this case, the principle of citizenship is the basic guideline for a country to determine who is its citizen. Every country has the freedom to determine which citizenship principle it aims to use (Parwitasari, 2010; Bakhri, 2015).

Meanwhile, some of the principles in the legislation include the following (Soekanto,1984):

a. The law cannot be applied retroactively;
b. Laws made by higher authorities have a higher position as well;
c. Laws of a special nature override laws of a general nature (*lexspecialisderogetlexgeneralis*);
d. A later statute takes away the effect of a prior one (*lex posterior derogetlex priori*);
e. The law is inviolable;
f. The law as a means to the maximum extent possible to achieve spiritual and material welfare for the community and individuals, through renewal or preservation (*welvaarstat principle*).

Meuwissen gives a simpler classification of principles by making a distinction between material legal principles and formal legal principles.

Material Principles cover the following aspects:

1. The principle of respect for the human personality, which is further concretized in:
2. The principle of respect for the spiritual and physical aspects of existence as a person, which is thought of in relation to other persons gives rise to:
3. The principle of trust (*vertrouwensbeginsel*), which demands reciprocity and raises:
4. The principle of accountability. The last two principles determine the structure of society and give rise to:
5. The Principle of Justice.

Besides that, there is a tri-fundamental formal law (Sidharta, 1999):

1. The principle of logical consistency;
2. Certainty**;**
3. The principle of equality.

Given the above theories, a systematic interpretation of the need for equality of will between one regulation and another higher regulation is needed because it is basically in accordance with Hans Kelsen's hierarchical theory (*stuffentheorie*) that the higher law is the source of the lower law.

In addition, the need to link Article 23 a quo with the principle of publicity which was later concretized in several articles in Law 12/2006 and even more fully regulated in PP 2/2007, which essentially means that the loss of Indonesian citizenship must still be formalized by being announced in the State Gazette by the Minister of Law and Human Rights with the approval of the President as stated in Article 31 PP 2/2007:

1. Article 31 paragraph (1) Indonesian citizens automatically lose their citizenship due to:

a. Acquires another citizenship voluntarily;
b. Will not refuse or will not relinquish other citizenship when the incumbent has the opportunity to do so;
c. Is declared of having relinquished their citizenship by the President at their voluntary request, the person is aged above18 (eighteen) or has married,is livingabroad, andwith therelinquishment of their citizenship does not become stateless because of it;
d. Has entered into foreign military service without prior approval from the President;
e. Has voluntarily declared allegiance to a foreign country or part of the said foreign country;
f. voluntarily take an oath or pledge allegiance to a foreign country or part of that foreign country;
g. Was not obligated but has voluntarily participated in a referendum that is civic in nature for a foreign country;
h. Possesses a passport or travel document equivalent to a passport from a foreign country or a letter that may be construed as a valid citizenship identity from another country on his/her name; or
i. Livingoutside theterritories of the Republic of Indonesiafor 5 (five) consecutiveyears for nonofficial purposes, withoutlegal reason and deliberately refuses to declaretheir intentionto remain as Indonesian citizens before the 5 (five) year limit ends, and in each of the next 5 (five) years the said person fails to declare their intention of retaining their citizenship to theIndonesian Representativeoffices in which thesaidperson's residenceis under their jurisdiction although the said Representative Office has duly informed them in writing, as long as the incumbent does.

In principle, the contradiction between the phrase "by itself" and the subsequent technical procedural provisions from Article 32 to Article 38, which is then designated as Principle of Publicity is confirmed in Article 39, which states

"The Minister announces the name of the person who has lost his Citizenship of the Republic of Indonesia as referred to in Article 34 and Article 38 in the Newspaper. Republic of Indonesia."

6. Consistency/Coherence

According to this theory, one rule is related to another and explains one another. "The truth is systematic coherence." Truth is consistency".

Furthermore, this consistency/coherence theory can be concluded as follows (Anshari, 2009):

a. Truth is the conformity between a statement and another statement that we know/accept/acknowledge as the truth.
b. This theory may also be called the justification theory of truth, because according to this theory a rule is considered correct if it is justified by other previous regulations that are already known to be true.

7. Correspondence

Correspondence theory of truth holds that statements are true if they correspond to facts or statements that exist in nature or the object to which the statement is addressed. Truth or a condition is said to be true if there is a match between the meaning intended by an opinion and the facts. A proposition is true if there is a fact that supports and states what it is.

a'dalam'konteks'ketatanegaraan'

Repub lik' Indonesia.' Pancasila,' seb agaimana' sudah' disinggung' oleh' kelompok-kel ompok 'dalam'

pertemuan-pertemuan' sebel umnya,' merupakan' jiwa' dan' keprib adian' bangsa' I nd

8. Conclusion

In matters of the nation and the state, especially in terms of citizenship, the harmonization of laws and regulations is a deemed as an appropriate solution to deal with a "gap" between the principles of "*das sollen*" and "*das sein*" from the problems related to citizenship in Indonesia, especially regarding the article on loss of citizenship, which uses the Archandra case as an example.Differences in understanding the law are based on different interpretations in interpreting Article 23 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. Grammatical interpretation is used by several groups to assess the Article *a quo* literally or linguistically.

On the other hand, Systematic Interpretation, which is based on the hierarchical theory according to Hans Kelsen, states that a legal norm always originates and is based on the higher norms, but the lower legal norms also become the source and the basis for the lower norms.Differences in interpretation of the

same Article certainly demands a way out for a better understanding. Harmonization is deemed as an appropriate way to find the intended solution.

From the aforementioned descriptions in the previous sections, this research suggests the following points. There is a need for harmonization to resolve the problem of multiple interpretations of Article 23 of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. The resolution of the polemic on the understanding of the loss of citizenship could be achieved by way of examining Law 12/2006, particularly Article 23, for further interpretation at the Constitutional Court. Thus, the decision of the Constitutional Court can then be used as a guide to avoid any multiple interpretation in the given article.

A *quo* Law is revised by the legislators, in this case the DPR. With a comprehensive and in-depth discussion, it is hoped that the amendments to Article 23 can be written in a sentence that can be understood uniformly by all groups as a way to avoid disharmony in the legislation on citizenship in Indonesia.

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