

The Validity of the Appointment of A Minister Who is A Foreign Citizen in Indonesia Based on Article 22 of Law Number 39 Year 2008 About State Ministry (Case Study of the Appointment of the Minister of Energy and Mineral Resources Arcandra Tahar)

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ABSTRACT

In the year of 2016, the President of the Republic of Indonesia inaugurate one of the state functionary, which is a Minister of Energy and Mineral Resources who has dual citizenship status. By that time the Minister known as Arcandra Tahar, admitted that he had become an American Citizen. Article 23 of the Law Number 39 Year 2008 about Citizenship of the Republic Indonesia regulates that if a person acquires another citizenship voluntarily, they will automatically lose their Indonesian citizenship. Therefore, Indonesian Citizenship of Archandra Tahar is invalid. The subject matter in this study is about the validity of the appointment of a Minister who is a foreign citizen in Indonesia based on Article 22 of Law Number 39 Year 2008 about State Ministry (case study of the appointment of the Minister of Energy and Mineral Resources Arcandra Tahar). The author examines the subject matter comprehensively using normartive legal research methods. Based on the results, it can be concluded that Indonesian citizenship of Arcandra Tahar has been lost since Arcandra Tahar swore allegiance to the United States of America. The loss of Arcandra Tahar's Indonesian Citizenship is regulated in the Citizenship Act which states that people who knowingly promise to be loyal to other countries will lose their status as Indonesian citizen. In connection to Article 22 of the State Ministry Act, Arcandra Tahar is never legally a Minister of the Republic of Indonesia because the main requirement to become a candidate is the person must be an Indonesian citizen.

Keywords: *Requirements to become Minister, Dual Nationality, Legality of Minister with Foreign Citizen Status*

1. INTRODUCTION

1.1. Background

The state is a continuation of the human desire to mingle with one another in order to perfect all the necessities of life. The wider the human relationship and the more the needs, the greater the need for a state organization that will protect and maintain the safety of his life. A country that later developed into a country that we understand today, has the requirements to become a sovereign state. These conditions are that it must have territory for a country, have people or residents in the country, there must be a sovereign government, and it must be recognized by other countries.

The state is said to be sovereign or sovereign because sovereignty is an essential characteristic of the state. When it is said that the state is sovereign, it means that the country has the highest power. The area where the highest power applies is limited by the boundaries of the state's territory, meaning that a country only has the highest power within its territorial boundaries, outside its territory, a country no longer has such power.

People or residents who are one of the conditions in the formation of a country, related to citizenship status. Citizenship status is also regulated by the state in law. Indonesia as a rule of law also regulates its citizenship status in Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia. Legitimate Indonesian citizens must comply with the basis of the state and also the laws that apply in the country of Indonesia.

In Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, the Indonesian state does not recognize dual citizenship. Indonesia only recognizes its citizens who have one nationality. If anyone has dual citizenship status, the Indonesian citizen status will be lost.) Dual citizenship itself is a citizen status where a person is registered as a citizen of two different countries, for example a person who has been registered in Canada is also registered as a citizen in the United States. Both countries recognize dual citizenship, so one person can have two nationalities at the same time. The Indonesian state is different from the two countries that recognize the dual claims. Indonesia in its law clearly states that if anyone has dual citizenship, his Indonesian citizen status will be lost.

The head of state and head of government in Indonesia is led by the President. The President has the authority to be able to select several state officials to assist him in carrying out state duties. State official is an official whose working environment is in a state institution which is a state apparatus and its derivatives in the form of supporting state institutions. State officials carry out their functions for and on behalf of the state.

Arcandra Tahar's position was later revoked because he had dual citizenship status which was clearly not recognized in Indonesia. On the day that Arcandra Tahar was removed by President Joko Widodo as Minister, the United States government revoked his US citizenship.) Even though Arcandra Tahar as a minister has been revoked, there are rules that have been violated in the appointment of Arcandra Tahar as minister, namely Article 22 of Law Number 39 of 2008 concerning State Ministries which regulates the requirements for the appointment of a Minister. Article 22 Paragraph (2) letter a describes the requirements for the appointment of a Minister, namely Indonesian Citizen (WNI).

Arcandra Tahar's citizenship status as an Indonesian citizen was indeed about to be revoked by the state, but later canceled again for certain reasons. Whereas according to the prevailing regulations, people with two nationalities are not legalized in Indonesia. This means that the status of an Indonesian citizen, Arcandra Tahar, has never been recognized since Arcandra Tahar obtained a US passport in 2012 and became a citizen of the United States.

Based on the above background, the writer wants to examine more deeply and compile it in the form of a thesis

with the title "how about The Validity Of The Appointment Of A Minister Who Is A Foreign Citizen In Indonesia Based On Article 22 Of Law Number 39 Year 2008 About State Ministry (Case Study Of The Appointment Of The Minister Of Energy And Mineral Resources Arcandra Tahar)".

1.2. Formulation Of The Problem

How about the validity of the appointment of a minister who is a foreign citizen in Indonesia based on article 22 of law number 39 year 2008 about state ministry (case study of the appointment of the minister of energy and mineral resources Arcandra Tahar)

1.3. Research Methods

1.3.1. Types Of Research

This type of legal research is divided into 2 (two) parts, namely normative legal research and empirical legal research (sociology). The legal research used is normative legal research, which includes research on legal principles.

1.3.1.1. Research Type

The type of research used in this research is Normative Law Research, which means that it is research on building the norm system. The system of norms in question is about the principles, norms, rules of law and regulations, court decisions. In conducting this research, the author will analyze and also examine the status of dual citizenship in Indonesia and the transfer of dual citizenship to Indonesian citizens in relation to the case study that the author examined.

1.3.1.2. Type of Approach

According to Mukti Fajar, there are 7 types of approaches in normative legal research, namely, Legislative Approach, Concept Approach, Analytical Approach, Comparative Approach, Historical Approach, and Case Approach. This type of approach is a statutory approach, in which researchers use statutory regulations as the initial basis for conducting analysis.

1.3.2. Nature of Research

The nature of this research is descriptive analytical which aims to describe or obtain a description (description) of the legal conditions prevailing in a certain place and at a

certain time or regarding the juridical symptoms that occur in society. This research is expected to provide complete and clear information about the status of Indonesian citizenship, dual nationality and also understand how the process of transferring a dual nationality status to an Indonesian citizen.

1.3.3. Data Type and Source

In research, it is always necessary to have materials or data that will be searched for, then processed and then analyzed to find answers to the research problems posed.

Secondary data from normative research include the following legal materials:

1.3.3.1. Primary Legal Materials, consisting of statutory regulations, jurisprudence or court decisions (especially for research in the form of case studies). In this study, the primary material used is Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia

1.3.3.2. Secondary Legal Materials, namely legal materials that can provide explanations for primary legal materials, which can be in the form of legislation drafts, research results, text books, scientific journals, newspapers (newspapers), pamphlets, letleats, brochures, and internet news .

1.3.3.3. Tertiary legal materials, namely materials that provide guidance and explanation for primary and secondary legal materials, for example, such as a legal dictionary.

1.3.4. Data Collection Techniques

The data collection technique used by the writer in writing this proposal by conducting literature study on legal materials, namely primary, secondary, and tertiary. The tracing of the three legal materials can be done by looking, listening and reading. Even now, many searches of legal materials are carried out using the internet media, while primary data through interviews are conducted by interviewing legal experts related to the issues raised in this study.

1.3.5. Data Presentation Method

In the results of this study, the data presentation method used in this paper is descriptive qualitative.

1.3.6. Data Analysis Techniques

Data analysis is an activity in research in the form of conducting studies or examining the results of data management aided by theories that have been previously obtained. The data analysis technique used is qualitative normative analysis. In analyzing this research, the writer uses 1 (one) approach, namely the statutory approach (Statute Approach), it is intended that the researcher uses statutory regulations as the initial basis for conducting the

analysis. According to Law Number 12 of 2011 concerning the Formation of Laws and Regulations, Legislation is a written regulation that contains legally binding norms and is formed or stipulated by state institutions or authorized officials through procedures stipulated in statutory regulations. invitation. Thus, the statutory approach is an approach using legislation and regulations.

2. DISCUSSION

2.1. Probabilistic Automata

The state of Indonesia is a sovereign state since independence on August 17, 1945. The state is said to be sovereign or sovereign because sovereignty is an essential characteristic of the state. When it is said that the state is sovereign, it means that the state has the highest power. The area where the highest power applies is limited by the territorial boundaries of the country, meaning that a country only has the highest power within its territorial boundaries. Outside its territory, a country no longer has such power.) This statement also means that the highest power in Indonesia lies with the country itself.

The Indonesian state adheres to the Trias Politica teachings put forward by a French political thinker named Montesquieu. The Trias Politica teaching divides power into the power to implement laws (executive), the power of lawmakers (legislative), and the power to supervise the implementation of laws (judiciary). This theory is widely used by countries around the world in their constitutions.

Executive power is generally controlled by the President, Prime Minister, or King. The Indonesian state makes the President as the holder of executive power, assisted by the Vice President and Ministers in the cabinet. The President holds executive power and leads Indonesia as stipulated in the 1945 Constitution which states that the form of Indonesian government is the Republic and the government system is Presidential.

The institution that is authorized to make and compile laws is the holder of legislative power. These institutions are the People's Consultative Assembly (MPR), the People's Representative Council (DPR), and the Regional Representative Council (DPD) at the national level, as well as the Regional People's Representative Council (DPRD) at the regional government level. Article 5 paragraph (1) of the 1945 Constitution prior to the amendment states that the president has the power to form a law with the approval of the DPR. Then amended to become the President has the right to submit a Bill to the DPR. The president is no longer the main legislative power holder.

Judicial power is the institution that holds the supervisory power for the implementation of laws. All state institutions

that deviate from the laws in force in a country always receive supervision from the judiciary. Indonesia has made the Supreme Court (MA), the Constitutional Court (MK), and the Judicial Commission (KY) as a judicial institution which is a law enforcement tool, the right to examine material, settlement of preliminaries, the right to ratify legal regulations or cancel regulations if they conflict with the state's basis. The function of the judicial power is important to decide violations of law that occur in the constitutional structure, including resolving disputes and other disputes.

Article 4 of the 1945 Constitution explains that the President of the Republic of Indonesia holds governmental power and in carrying out his duties the president is assisted by one Vice President. Article 17 of the 1945 Constitution provides that apart from the Vice President, the President is also assisted by state ministers. Chapter V of the 1945 Constitution regulates the state ministries. There is one chapter which contains four verses in it. The reason is Article 17 with its contents paragraph (1) The President is assisted by the minister of state, paragraph (2) The Ministers are appointed and dismissed by the President, paragraph (3) Each minister is in charge of certain affairs in the government, paragraph (4) Establishment, modification, and the dissolution of state ministries is regulated in a law. Based on the 1945 Constitution, Law No. 39/2008 on State Ministries contains nine chapters and 28 articles.

In chapter V of Law Number 39 Year 2008 concerning State Ministries, article 22 regulates the appointment of Ministers appointed by the President. To be appointed as Minister, a person must meet the requirements, namely that the candidate must be an Indonesian citizen, fear God Almighty, be loyal to Pancasila as the basis of the state, the 1945 Constitution of the Republic of Indonesia, and the ideals of the proclamation of independence. Physically and mentally healthy, has integrity and a good personality, and has never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a crime punishable by imprisonment of 5 (five) years or more.) The first requirement to become a Minister is Indonesian citizenship. Arcandra Tahar according to Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia, Article 1 paragraph (2) has lost his citizenship.

Citizenship is everything that is related to citizens.) Citizenship status is also a matter related to citizens according to Law Number 12 Year 2006 concerning Citizenship of the Republic of Indonesia, Article 1 paragraph (2). The status of Indonesian citizens can be lost due to several things that have been regulated in the law.

President Joko Widodo in his first term appointed Mr. Ir. Arcandra Tahar, M.Sc., Ph.D. became minister of Energy and Mineral Resources of the Republic of Indonesia in the Working Cabinet who has served since July 27, 2016. He replaces Sudirman Said who was dismissed by President Joko Widodo during a cabinet reshuffle on July 27, 2016. Arcandra Tahar was appointed with the hope that Arcandra Tahar's presence could fix the sector energy. But

before he could show his expertise, Arcandra Tahar was hit by a lopsided issue regarding his citizenship status.

Arcandra Tahar was once a US citizen and holds a US passport. Arcandra Tahar has become a citizen of the United States, through a naturalization process in March 2012 with the taking of an oath of allegiance or an oath of allegiance to the United States of America and has lived in the United States for about 20 years.

The loss of Indonesian citizen status according to Law Number 12 of 2006 is due to things such as, consciously making a promise to be loyal to another country, requesting to change nationality, Indonesian women who are married to foreigners whose countries have their own regulations, Indonesian men who married to a foreign woman whose country has its own regulations, If she lives in another country for 5 years without clear and valid reasons, and also does not wish to become an Indonesian citizen again, has a passport from a foreign country that still shows another nationality identity, participate In activities related to state administration in another country, entering into service in a foreign country, entering the military service of another country without the permission of the President of the Republic of Indonesia, not giving up other citizenship when having the opportunity, falsifying Indonesian citizenship, granting citizenship by a country and not rejecting it, violates the rules that exist in the Law, and children who are brought in ah 5 years legally appointed by a foreigner.

Indonesia is a country where if someone obtains another nationality because of their own accord, their previous Indonesian citizenship status will be revoked. Arcandra Tahar admits that he has 2 (two) passports and has become a citizen of the United States (USA), the status of an Indonesian citizen owned by Arcandra Tahar becomes invalid because in Indonesia if someone obtains another nationality because of their own will, then the status of the Indonesian citizen concerned lost.

Arcandra's position was later revoked because he had dual citizenship status which was clearly not recognized in Indonesia. On the day that Arcandra was removed by President Joko Widodo as Minister, the US government revoked his US citizenship.) Even though Arcandra Tahar's position as Minister has been revoked, there are rules that have been violated in the appointment of Arcandra Tahar as Minister, namely Law on State Ministries Number 39 of 2008 Article 22 Paragraph (2) letter a, explaining the conditions for the appointment of a Minister and one one condition is Indonesian citizenship (WNI).

His citizenship status as an Indonesian citizen was indeed about to be revoked by the state, but was later canceled again for certain reasons. Yet according to the prevailing regulations, people with two nationalities are not legalized in Indonesia. This means that Arcandra's Indonesian citizen status has never been recognized since he had a US passport since 2012 and became a citizen of the United States. Arcandra Tahar was officially dismissed as Minister of Energy and Mineral Resources on August 15, 2016 following a dual nationality polemic aimed at him as a The

minister made him the minister with the shortest working period in the history of Indonesia, which is 20 days.

The status of Indonesian citizens can also be obtained again by carrying out procedures and meeting certain conditions. How to regain the status of Indonesian citizens who have been lost is regulated in the Law and also related government regulations. A person who has lost his Indonesian citizen status because he pledged allegiance to a foreign country, cannot simply regain his Indonesian citizenship status by throwing away his old citizenship status. The person must reapply as an Indonesian citizen when he has resided in Indonesia for five consecutive years or 10 consecutive years.)

Entered into the analysis and in-depth description of the answers to the problems studied in this study using data from interviews of the sources and the theories used in writing this thesis, the following is a discussion which is divided into two, namely, the first is analysis using theory citizenship, decision theory and authority theory. Second, analysis using interview data.

2.1. Analysis Using Theory

There are three theories that are used to answer the problems in this thesis. Three theories are used, namely the theory of citizenship, the theory of decisions and the theory of authority.

2.1.1. Citizenship Theory

According to Ko Swaw Sik, citizenship is a legal bond between a state and a person who is called a citizen. This bond or relationship becomes a "political contract", in which a country has constitutional law and sovereignty recognized by the world community. Citizenship here is part of the concept of citizenship (citizenship). According to Graham Murdock (1994), citizenship is a right so that they can participate and participate in a full way in various patterns of social, political and cultural structures in order to create something new in the future because it will form big ideas.)

Here are some of the principles on which the theory of citizenship is based:

2.1.1.1. Ius Soli Principle

The principle of *ius soli* is that the nationality of a person is determined according to the place of birth. The principle of *ius soli* can also be called the principle of birth area. According to this principle, a person's nationality is determined by the place where he is born, for example a person born in a country adhering to the *ius soli* principle will become a citizen in the country where he was born.

2.1.1.2. Principle of Ius Sanguinis

The principle of *ius sanguinis* is that a person's nationality is determined according to heredity. The principle of *ius sanguinis* can also be called the principle of blood. According to this principle, a person's nationality is determined by the lineage of the person concerned. A person obtains citizenship according to the nationality of his parents.)

2.1.1.3. Mixed Principle

The mixed principle means that the state recognizes two principles of citizenship, namely *ius soli* and *ius sanguinis*. Countries that adhere to the mixed principle determine citizenship status by lineage and also place of birth.

The Indonesian state itself uses the *ius sanguinis* principle, which means that Indonesia adheres to a stream where a person's citizenship is determined according to lineage. A person born in Indonesia will get his citizenship according to Indonesian citizenship. If there is a child of an Indonesian citizen who was born outside of Indonesia, the child still has the status of an Indonesian citizen because the child's parents are Indonesian citizens. Regarding citizenship in Indonesia, everything is contained in Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia.

Arcandra Tahar was born on October 10, 1970 in Padang, to Indonesian parents, namely Taharuddin (father) and Zuraida (mother). So that at birth, Arcandra Tahar was an Indonesian citizen. However, since March 2012 Arcandra Tahar has lost his Indonesian citizen status because he has become an American citizen. Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia Chapter IV regulates the loss of citizenship of the Republic of Indonesia. Article 23 states that Indonesian citizens lose their citizenship if they acquire another nationality of their own accord. This confirms that Indonesia does not allow its citizens to have dual citizenship status. So since Arcandra Tahar became an American citizen, Arcandra Tahar is no longer an Indonesian citizen.

2.1.2. Decision Theory

Indonesia itself, through Law Number 12 of 2011 concerning the Formation of Laws and Regulations, translates the term *beschikking* as a decision. Van der Pot defines *beschikking* as a legal action that is unilateral in the field of government, carried out by a government agency based on extraordinary powers.) Van der Pot summarizes four conditions for the validity of a decision, namely:

2.1.2.1. Made by a powerful tool (*bwoged*).

2.1.2.2. Caused by the decision is a statement of will (*wils verklaring*) must not lack juridical.

2.1.2.3. The forms and procedures must be in accordance with the basic rules.

2.1.2.4. The content and objectives must comply with the basic rules.

As for the opinions of experts that distinguish decisions seen from their nature, namely decisions that are lightning in nature (*Vluchtige Beschikking*) or decisions in passing because they quickly disappear and decisions are permanent (*blijvend*). From another perspective, decisions can be divided into two parts, namely legal decisions and invalid decisions.

The presidential decision to appoint Arcandra Tahar as Minister of Energy and Mineral Resources is considered an illegal decision because it violates the Law. Van der Pot has summarized four conditions for the validity of a

decision and President Jokowi's decision at that time violated the legal requirements of a decision.

2.1.3. Authority Theory

The term authority is often equated with the term authority. In the concept of constitutional law, authority is described as *rechtmacht* (legal power), in public law authority is related to power, whereas in administrative law, authority is part of it and the initial part of administrative law because the object of administrative law is the authority of the government.) Within the authority there are powers (*rechtsbevoegdheden*). Authority does not only include authority, make government decisions (*belsuit*), but includes authority in the context of carrying out duties, and the formation of authority and the distribution of the main powers stipulated in the 1945 Constitution.

According to the 1945 Constitution, it explains that the president of the Republic of Indonesia holds governmental power and in carrying out his duties the president is assisted by one vice president. The president is also assisted by state ministers. Chapter V of the 1945 Constitution regulates the state ministries. Article 17 states that the President is assisted by state ministers and the ministers are appointed and dismissed by the President.

The constitution has authorized the president to select and appoint ministers to assist him in running the government. However, at that time, President Jokowi used his authority incorrectly because he chose and appointed a minister, namely Arcandra Tahar as Minister of Energy and Mineral Resources, while Arcandra Tahar did not meet the requirements to become a minister as stipulated in Law Number 39 of 2008 concerning State Ministries Article 22 which regulates the appointment of appointed Ministers. by the President. In order to be appointed as a minister, a person must meet the requirements, namely that the minister is an Indonesian citizen.

2.2. ANALYSIS USING INTERVIEW DATA

2.2.1. Analysis using data from interviews with Mrs. Dr. Cut Memi, S. H., M. H. on December 13, 2019 at 09.30 at Tarumanagara University.

According to an interview with Dr. Cut Memi, S. H., M. H. as a resource person, a Presidential Decree that violates the Law must be canceled because it cannot violate a higher regulation. In the case of Arcandra Tahar, he has lost Indonesian citizenship and the requirement to become a minister must be Indonesian citizenship.

The Presidential Decree is deemed to have never existed because it violates the Law. Returning to the hierarchy of laws as regulated in Law Number 12 of 2011 which replaces Law Number 10 of 2004. In this Law, the order is regulated from the highest, namely the 1945 Constitution to the lowest, namely the Regency / City Regional Regulations .

So according to Dr. Cut Memi, S. H., M. H. Minister Arcandra Tahar's legitimacy should be invalid because he was not appointed based on existing regulations.

Meanwhile the presidential decree must be based on law. So the SK on his appointment is considered invalid.

2.2.2. Data analysis using the results of the interview Mr Dr. Rasji, S. H., M. H. on December 19, 2019 at 17.30 at Tarumanagara University.

Ministers are appointed by Presidential Decree. If the Kepres contradicts the law, the Kepres must be put aside and have no legal force. This is still related to the Legislative Assembly hierarchy. It reads from article 7 paragraph (1) of Law Number 12 Year 2011 concerning the Formation of the Prevailing Laws which discusses the hierarchy of the Laws.

According to Dr. Rasji, S.H., M.H. A Presidential Decree that is canceled and becomes invalid is deemed never to have existed. Because it is against the law, since the beginning the Presidential Decree is no longer valid so it is considered never to exist.

Arcandra Tahar is not considered a former minister. Because first Arcandra Tahar never met the requirements to become a minister. Article 22 paragraph (2) letter (a) of Law Number 39 of 2008 concerning State Ministries stipulates that in order to be appointed as a minister, a person must meet the requirements as an Indonesian citizen. The two reasons for his appointment were contrary to the law. So it can be said that the status of the minister Arcandra Tahar is invalid.

Regarding the citizenship status of Arcandra Tahar, which has been lost since becoming an American citizen but was given back for several reasons, Mr. Rasji, S.H., M.H. said that the loss of a citizen could be because he wanted to change nationality, made a promise to be loyal to another country, marriage, military service, and so on. So because Arcandra Tahar had made a promise to be loyal to another country, he lost his citizenship status.

Then, in connection with the return of citizenship status, it can be accepted again but must meet the requirements and methods. The president was supposed to appoint the Indonesian citizen minister but Arcandra Tahar had dual citizenship while Indonesia did not adhere to the principle of dual citizenship, so that the valid citizenship was the last citizen, namely America. Supposedly Arcandra Tahar is an American citizen.

2.2.3. Analysis using interview data from Mr. Dr. Ahmad Redi, S. H., M. H. on December 20, 2019 at 09.30 at Tarumanagara University.

Law 12 of 2006 concerning Citizenship regulates that Indonesian citizens who become foreigners will lose their citizenship status. This is, to be precise, as regulated in Article 23 paragraph (2) letter a and letter b of Law 12/2006 that Indonesian citizens lose their citizenship if they:

- a. Obtaining another nationality of his own accord; and
- b. Not refusing or not giving up other citizenship, while the person concerned gets the opportunity.

If indeed Minister Arcandra Tahar has ever obtained a foreign nationality, he will automatically lose his Indonesian citizenship. If the person concerned has become a foreigner and his / her foreigner still has a passport or applies for a passport extension, then the legal act can be suspected as a citizenship crime as regulated in Article 37 of Law Number 12 Year 2006, that it is prohibited for everyone to provide false information. , making fake letters / documents to obtain Indonesian citizenship. As a result of loss of Indonesian citizenship, all documents of a person's Indonesian citizenship are automatically deleted or do not take effect immediately since the person concerned received foreign citizenship. Given that Indonesia adheres to the principle of single citizenship.

Regarding the appointment of Arcandra Tahar as Minister of Energy and Mineral Resources with his citizenship status? Law Number 39 of 2008 concerning State Ministries stipulates that in order to be appointed as a minister, a person must fulfill the requirements as an Indonesian citizen (Article 22 paragraph (2) letter a). This means that if Minister Arcandra Tahar is proven to have foreign citizenship then his status as a minister will not apply and is considered never to exist. As a result, every policy he makes must never exist because the policy was made by an unauthorized person.

Then to become echelon 1 in Ministries / institutions, the involvement of the State Intelligence Agency only exists, then is it possible to select a minister whose superior echelon 1 BIN is not involved? Given that intelligence information does not only concern the citizenship status of the person concerned, but more than that, the track record of the person concerned so far. BIN should have been involved. If in the end, it turns out that it was not through intelligence investigation, then this is a form of negligence which should not have occurred because the issue of citizenship is not only an issue of prohibiting dual citizenship for Indonesian citizens but also concerning the issue of national security.

Arcandra Tahar was appointed the Minister of Energy and Mineral Resources, which is actually the Ministry closely related to the issue of national strategic interests, in which there is an interest of nationalism. ESDM is closely related to the legal ideals of the welfare and prosperity of the people as stated in Article 33 paragraph (2) and paragraph (3) of the 1945 Constitution.

Returning to the problem that the author raised, namely how is the validity of the appointment of ministers with the status of foreign citizens in Indonesia based on article 22 of Law Number 39 of 2008 concerning State Ministries (case study of the appointment of the Minister of Energy and Mineral Resources, Arcandra Tahar)? The author will answer this problem by concluding all the analysis descriptions that have been presented throughout this chapter.

So the appointment of ministers with the status of foreign citizens in Indonesia based on article 22 of Law Number 39 of 2008 concerning State Ministries is not valid. The reason is because the first requirement to become a minister is an Indonesian citizen. In connection with the case study of the appointment of Minister of Energy and

Mineral Resources, Arcandra Tahar by President Jokowi on 27 July 2016, Arcandra Tahar was never legally a minister and was not even considered a former minister. Although on the official website of the Ministry of Energy and Mineral Resources, Arcandra Tahar is still listed as a former minister. Arcandra Tahar should no longer be listed as a former minister because Arcandra Tahar was never legally a minister.

The reason Arcandra Tahar was never legally a minister and was not even considered a former minister was because there was a mistake made by the President in exercising his authority to decide who was his assistant in running the government. When Arcandra Tahar was appointed minister, he was an American citizen. So it is clear that Arcandra Tahar is not an Indonesian citizen. Looking back at article 23 of Law number 12 of 2006 which confirms that Indonesian citizens including Arcandra Tahar can lose their citizenship status if they obtain another nationality of their own accord and also voluntarily take an oath or declare a pledge of allegiance to a foreign country or part of that foreign country.

3. CLOSING PART

3.1. Conclusion

Based on the discussion that has been described in chapter IV by using three theories, namely the theory of citizenship, decision theory, and theory of authority as well as several interviews with three sources, namely Dr. Cut Memi, S. H., M. H., Mr. Dr. Rasji, S. H., M. H., and Mr. Dr. Ahmad Redi, S. H., M. H., the writer draws the following conclusions.

According to Article 22 of Law Number 39 Year 2008 concerning State Ministries, the appointment of Mr. Ir. Arcandra Tahar, M.Sc., Ph.D. being the Minister of Energy and Mineral Resources of the Republic of Indonesia in the Working Cabinet who took office since 27 July 2016 by Mr. President Joko Widodo in his first term to replace Mr. Sudirman Said who was dismissed by President Joko Widodo during the cabinet reshuffle on 27 July 2016 is invalid. The reason is Mr. Ir. Arcandra Tahar, M.Sc., Ph.D. is an American citizen since the naturalization process in March 2012 with the taking of an oath of allegiance or an oath of allegiance to the United States of America and has lived in the United States for about 20 years.

The status of Indonesian citizen Arcandra Tahar has been lost since March 2012 when Arcandra Tahar swore allegiance to the United States of America. The loss of the status of an Indonesian citizen, Arcandra Tahar, is regulated in Law Number 12 of 2006 which states that people who knowingly promise to be loyal to other countries will lose their status as Indonesian citizens.

3.2. Suggestion

The government, as the holder of power to run the state government led by the President, has failed to implement the Law with the appointment of Arcandra Tahar as Minister of Energy and Mineral Resources. This appointment indicates government negligence as well as

inadequate work. The suggestions that the author can convey as solving problems that are expected to help and provide benefits for those who need them are as follows.

The government should be better at carrying out its duties which must be in accordance with the law. Then to become a Minister, personal data and all information about the candidate to be elected to become Minister must already be owned by the Government. The involvement of the State Intelligence Agency should exist and the government should really check what data violates the law. The author would like to suggest that every article and verse that regulates the requirements to become a Minister must be thoroughly explored and checked by the government before the President appoints a candidate for Minister to be a legitimate Minister. The first requirement is that the prospective Minister must be an Indonesian citizen, if a foreign citizen, he / she cannot be appointed as Minister. The second requirement is to fear Almighty God, a candidate for Minister who does not adhere to a religion recognized by Indonesia cannot be appointed as Minister. The third requirement is to be loyal to Pancasila as the basis of the state, the constitution of the Indonesian state, namely the 1945 Constitution, and the ideals of the Proclamation of Independence. If a ministerial candidate makes a pledge and swears allegiance to another country, it means that the ministerial candidate is disloyal to Pancasila, the 1945 Constitution, and the ideals of the Proclamation of Independence. The fourth requirement is that a candidate for Minister must be physically and mentally healthy.

The fifth requirement is that a candidate for Minister is a person with integrity and has a good personality and the last requirement is that a candidate for Minister has never been sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a crime punishable by imprisonment of five years or more. The six conditions must be obeyed and none of them may be violated by all Indonesian citizens.

It is hoped that in the next cabinet election there will be no more problems like this. The good government is making this bad experience a lesson so that it does not fall into the same problem for the sake of implementing laws and running good governance.

4. BIBLIOGRAPHY

4.1. Book

- Asshiddiqie, Jimly. *Pengantar Ilmu Hukum Tata Negara*, (Depok: PT Raja Grafindo Persada, 2019).
- Budiarjo, Miriam. *Dasar-Dasar Ilmu Politik*, (Jakarta: Gramedia Pustaka Utama, 2000).
- Gunardi. *Pedoman Penulisan Skripsi Bidang Hukum*, (Jakarta: UPT Penerbitan Universitas Tarumanagara, 1996).
- HR, Ridwan. *Hukum Administrasi Negara*, (Jakarta: Rajawali Pers, 2014).
- Kusumaatmadja, Mochtar. *Pengantar Hukum Internasional*, (Bandung: PT Alumni, 2003).

Lutfi, Mustafa. *Hukum Sengketa Pilkada di Indonesia*, (Yogyakarta: UII Press, 2010).

M. Hadjon, Phillipus. *Perspektif Fungsi Pengawasan Komisi Yudisial Pasca Putusan Mahkamah Konstitusi*, (Malang, Universitas Brawijaya, 2007).

Mochtar Kusumaatmadja, *Pengantar Hukum Internasional*, (Bandung: PT Alumni, 2003).

R. Rahaditya. *Pendidikan Kewarganegaraan di Perguruan Tinggi*, (Jakarta: Pustaka Mandiri, 2010).

Rasjidi, Lili. *Hukum Perkawinan Perceraian di Malaysia dan di Indonesia*, (Bandung: Remaja Rosdakarya, 1991).

Ridwan HR, *Hukum Administrasi Negara*, (Jakarta: Raja Grafindo Persada, 2006).

Samidjo, *Ilmu Negara*, (Bandung: Armico, 2002).

Setiardja, A. Gunawan. *Dilaekta Hukum dan Moral dalam Pembangunan Masyarakat Indonesia*, (Yogyakarta: Kanisius, 1990).

SF. Marbun dan Moh. Mahfud MD, *Pokok-Pokok Hukum Administrasi negara*, (Yogyakarta: Liberty).

Soekanto, Soerjono. *Ringkasan Metodologi Hukum Empiris*, (Jakarta: Ind. Hill-Co, 1990).

WF. Prins dan R.Kosim Adisapetra. *Pengantar Ilmu Hukum Administrasi Negara*, (Jakarta: Pradnya Paramita, 1983).

4.2. Constitution

Indonesia, the 1945 Constitution of the Unitary State of the Republic of Indonesia.

Indonesia, Law Number 12 Year 2006 concerning Citizenship of the Republic of Indonesia.

Indonesia, Law Number 39 of 2006 concerning State Ministries.

Indonesia, Law Number 5 of 2014 concerning State Civil Apparatus.

4.3. Internet

Anonymous, "Research Methods", www.statistikian.com, 24 January 2019.

Gumilang, Prima. "Chronology of the Return of Indonesian Citizenship Arcandra Tahar", www.cnnindonesia.com. accessed on March 11, 2019.

Henney, "7 Definitions of Citizenship According to Experts", <https://gurupkn.com>, 24 January 2019.

Prima Gumilang, "Chronology of the Return of Indonesian Citizenship Arcandra Tahar", www.cnnindonesia.com, March 11, 2019.

Wicaksana Dramanda, "State Officials and Government Officials", www.hukumonline.com, 5 November 2019.

Zakky, "The Definition of Analysis According to Experts, KBI and in General", www.zonareference.com, 3 May 2019.