

# INDONESIAN CHINESE DIASPORA, DUAL CITIZENSHIP AND INDONESIAN DEVELOPMENT

**Tundjung Herning Sitabuana**

Constitutional Law Lecturer, at the Undergraduate and Master of Law Program,  
Faculty of Law, Semarang University, Jl. Arteri Soekarno-Hatta Semarang, and  
at the Undergraduate, Master, and Doctoral Program, Faculty of Law,  
Tarumanagara University, Jl. Letjend. S. Parman No. 1 Jakarta  
Email: tundjunghidayat@yahoo.com

## **Abstract**

Indonesian Citizenship Law Policy, in accordance with Article 26 Paragraph (1) of the 1945 Constitution and Act Nr. 12/2006, is closed in nature and does not recognize dual citizenship. Community members of the Indonesian Chinese Diaspora who hold foreign nationalities do not have the legal standing to file applications to the Constitutional Court for constitutional review of Act Nr. 12/2006 in an effort to obtain Indonesian citizenship, because they are not Indonesian citizens. In order for an individual to be able to obtain Indonesian citizenship without losing his or her foreign nationality, the principle of dual citizenship must be applied within the Indonesian Citizenship Law Policy. This can happen if a legislative review on or an amendment to the act (in this case Act Nr. 12/2006 regarding the Citizenship of the Republic of Indonesia) is conducted by Parliament. Thus the Government of the Republic of Indonesia must be absolutely sure and able to fully assure Parliament that Indonesia has a genuine need for the Indonesian Chinese Diaspora, because they have great potentials and can play an important role in Indonesia's development, both in terms of the quality of human resources that have been proven and tested abroad, as well as the capital that can be invested in Indonesia.

**Key words:** Indonesian diaspora, dual citizenship, constitutional review, legislative review, Indonesian development.

## I. INTRODUCTION

Currently there are approximately 8–10 million Indonesians (regardless of their ethnicity and legal and citizenship status) living overseas<sup>1</sup>. Almost 2% of the over 250 million Indonesian citizens worldwide have diaspora status in 167 countries.<sup>2</sup> According to the Chairman of the Indonesian Association of Professionals for Science, Technology and Enterprise (AIPSE), after moving to other countries, many Indonesian expatriates are forced to give up their Indonesian nationality for various reasons, including visas and education. For example, an Indonesian citizen living in Germany must spend weeks arranging visas whenever he or she wishes to travel internationally for business, while, if he or she becomes a German citizen, he or she is allowed to visit 172 countries without any visa at all. Regarding education for children, a child is financially supported by the state if his or her parents hold German citizenship<sup>3</sup>.

The Indonesian diaspora comprises four groups, namely (1) Indonesian citizens residing in other countries (Indonesians holding Indonesian passports), (2) Indonesian citizens who have become foreign citizens (Indonesians having changed their citizenship), (3) those born to at least one Indonesian parent outside of Indonesia and (4) foreigners having affinity or sympathy toward Indonesia (diplomats, students, and workers who once lived in Indonesia but they have returned to their respective countries).<sup>4</sup>

The Indonesian diaspora exists in three generations. The first generation is made up of Indonesian people who moved overseas as a result of government policy under Suharto's New Order. They have very limited skill in foreign language but became guardians of Indonesian culture. The second generation is the product of the first generation. They have better English and succeed in business. The third generation is a second migration resulting from the increase in choice from the newly democratic state; these individuals have an opportunity to return to Indonesia<sup>5</sup>.

<sup>1</sup> 'Diaspora Berharap Izin Tinggal', *Media Indonesia*, Jakarta, Februari 28, 2013, p. 14.

<sup>2</sup> 'Potensi Besar Diaspora Indonesia', *Koran Tempo*, Jakarta, May 28, 2013, p. A15.

<sup>3</sup> 'Potensi Besar ...', *ibid.*

<sup>4</sup> Dubes Indonesia Untuk AS Dino Patti Djalal Gaungkan Kewarganegaraan Ganda', *Rakyat Merdeka*, Jakarta, February 28, 2013, p. 10.

<sup>5</sup> 'Diaspora, Pelopor Diplomasi Indonesia', *Republika*, Jakarta, August 20, 2013, pp. 1 & 9.

A subcategory of the Indonesian diaspora is the Indonesian Chinese diaspora. Instances can be found in almost all countries. It is characterized by the presence of Chinatowns, where Chinese expatriates live in groups while maintaining the culture and traditions of their country of origin and ancestry.

Following the initiative of the Indonesian Ambassador to the United States, Dino Patti Djalal, a Congress on Indonesian Diaspora (CID I) was held, at Los Angeles Convention Center, Los Angeles, California, USA on July 6-8, 2012<sup>6</sup>.

The Congress was attended by more than 5,000 Indonesian expatriates from all over the world and resulted in the Declaration of Indonesian Diaspora containing efforts, among others, to foster and develop a sense of brotherhood and cooperation among Indonesian expatriates worldwide; to build relationships with Indonesian citizens living in Indonesia; to become agents of relationship for ideas, solutions, resources, and networks to build the common good, and to be a force for peace and progress. The idea of the Declaration, which was read by 18 Indonesians living in a number of countries and in several languages, will be realized through an institution named Indonesian Diaspora Network/ IDN<sup>7</sup>, and thus far there have been 55 IDN centres established in 26 countries covering the United States of America, Europe, Middle East, Asia, and Australia (the United States has the largest population of Indonesian expatriates followed by Malaysia and several countries in the Middle East)<sup>8</sup>.

The participants of the Congress on Indonesian Diaspora signed a petition expecting the Indonesian government to allow Indonesian expatriates to hold permanent residence permits and dual citizenship<sup>9</sup>. On February 26, 2013, Indonesian Diaspora Business Council (IDBC), one of the outcomes of CID I, held a seminar entitled “The Rising Impact of Diasporas on Indonesia” in Jakarta. In the seminar, representatives of the worldwide Indonesian diaspora

<sup>6</sup> ‘Diaspora: Ribuan WNI Di AS Usul Kewarganegaraan Ganda’, *Kompas*, Jakarta, July 10, 2012, p. 8; ‘Diaspora Indonesia: Kami Rindu Kembali ...’, *Kompas*, Jakarta, July 24, 2012, p. 38; Editorial, ‘Congress of Indonesia Diaspora’, *Indonesia Media* (online), July 15, 2012, <[www.indonesiamedia.com/2012/06/30/congress-of-indonesia-diaspora/](http://www.indonesiamedia.com/2012/06/30/congress-of-indonesia-diaspora/)>; & Diaspora Indonesia, *Declaration – Congress of Indonesian Diaspora* (2012) <[www.diasporaindonesia.org/results/declaration\\_cid2012.php](http://www.diasporaindonesia.org/results/declaration_cid2012.php)>.

<sup>7</sup> *Ibid.*

<sup>8</sup> Editorial, ‘Kongres Diaspora Indonesia II: Jembatani Investasi WNI di Luar Negeri, BNI Gandeng Diaspora’, (2013), 02 *MURI Jurnal Museum Rekor-Dunia Indonesia* September-October 2013, pp. 28-31.

<sup>9</sup> *Ibid.*

made some recommendations on, among others, immigration affairs, specifically permanent residence permits; economic affairs and constitutional rights, such as rights pertaining to elections. In line with the will of Indonesian expatriates to hold dual citizenship as raised in CID I, the Indonesian Ambassador to the USA, Dino Patti Djalal, said that if Indonesia allows dual citizenship, the potential of the diaspora will be more effective<sup>10</sup>. CID II was held on August 19, 2013, at Jakarta Convention Center and was attended by 7,000 Indonesian expatriates<sup>11</sup>.

This article discusses the will of Indonesian Chinese expatriates who retain foreigner status in their host countries in order to maintain permanent residence and offers dual citizenship as the best solution to their problem. Solving this problem is necessary because the Indonesian Chinese diaspora has great potential and could play an important role in Indonesian development considering the qualified human resources comprising the diaspora; for example, Iwan Sunito and Nisin Sunito from Borneo, who managed respectively to become “king of property” in Sidney and “king of ranch” in Perth, and Sehat Sutardja from Pasar Baru, Jakarta, who, with just an electrical engineering degree, successfully gained his doctoral degree from UCLA, Berkeley and now runs the information technology enterprise Marvell Technology Group in Silicon Valley, which has controlled two thirds of the world’s semi-conductor industries since 1995. The financial contribution from such individuals the country’s economy would be significant considering their large remittances (funds brought in by migrant workers to their home country)<sup>12</sup>. World Bank data shows that remittances from the Indonesian diaspora from 2012 to April 2013 amounted to US \$ 7.2 billion<sup>13</sup>. The problem is whether Indonesian citizenship policy and regulations allow members of the Indonesian Chinese Diaspora to obtain permanent residence and dual citizenship.

This article begins with the definition of diaspora and the causes of its occurrence. It also discusses the terms citizen and citizenship, some of the

<sup>10</sup> “Diaspora Berharap Izin Tinggal”, *op. cit.*, & “Dubes Indonesia Untuk AS: Gaungkan Kewarganegaraan Ganda”, *op. cit.*

<sup>11</sup> “Kongres Diaspora Indonesia II ...”, *op. cit.*

<sup>12</sup> “Diaspora Aset Bangsa”, *Jurnal Nasional (Jakarta)*(August 20, 2013), p. 3.

<sup>13</sup> “Potensi Besar ...”, *op. cit.*; & “Diaspora Tuntut Dwi Warga Negara”, *Harian Kompas, Jakarta*, August 19, 2013, p. 9.

universally applied basic principles in the field of citizenship, and also discusses dual citizenship. It is expected to assist in analyzing the data in order to find the best solution to the problem of citizenship for the Indonesian Chinese diaspora, particularly those with foreigner status. Furthermore, a new approach in the field of citizenship, namely Flexible Citizenship, which is currently practiced by a number of countries in order to encourage the diaspora to take part in and give their contribution to development programs implemented by the countries, either in the form of human resources or investments. The final section discusses Citizenship Laws of the Republic of Indonesia, Constitutional Review and the possibility of allowing permanent residence and dual citizenship for the Indonesian Chinese diaspora.

## II. DISCUSSION

### **Diaspora: Definition and Causes**

Diaspora is defined by *Kamus Besar Bahasa Indonesia*, the official dictionary of the Indonesian language, as “a diffused nation or people scattering to various corners of the world and subsequently losing their nationality”; in other words, they have no citizenship<sup>14</sup>. Generally diaspora is defined as nomads or “a group of people scattering to new places that are not their places of origin” or “a nation or population forced or compelled to leave their countries or regions and move to other countries,<sup>15</sup>”. Lavie and Swedenburg refer to “a massive migration of groups of colored people (non-white/non-European) to the heart of Central Europe during and after Western colonialism”<sup>16</sup>.

According to Gabriel Sheffer, diaspora is “social political formations, created as a result of either voluntary or forced migration, whose members regard

<sup>14</sup> Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia, Pusat Bahasa, Edisi Keempat*, Jakarta: PT Gramedia Pustaka Utama, 2008, p. 325.

<sup>15</sup> “Potensi Diaspora”, *Koran Sindo*, Jakarta, August 21, 2013, p. 6; “Pulang Kampung”, *Harian Kompas* (Jakarta), (Nov. 23, 2013), p. 7; & “Memaksimalkan Potensi Diaspora”, *Harian Suara Karya* (Jakarta), (August 27, 2013), p. 11.

<sup>16</sup> Smadar Lavie dan Ted Swedenburg, “Introduction: Displacement, Diaspora, and Geographies of Identity”, in Smadar Lavie dan Ted Swedenburg (Ed.), *Displacement, Diaspora, and Geographies of Identity*, Durkam: Duke University Press, 1991, p. 1-25, as cited by Arie Setyaningrum, “Globalisasi dan Diaspora Cina dalam Perspektif Kolonial: Dinamika Strategi Ekonomi dan Identitas Budaya”, *Jurnal JSP*, Fakultas Ilmu Sosial dan Ilmu Politik, Universitas Gadjah Mada, Yogyakarta, Volume 8, No. 2, November 2004, p. 182.

themselves as of the same ethno-national origin and who permanently reside as minorities in one or several host countries”<sup>17</sup>.

There are a lot of reasons for people leaving their country and migrating to other countries, even becoming citizens of those destination countries. The move might be voluntary, e.g., to look for a new life, to study, or to work or do business, or else there might be external causes, perhaps political, e.g., escaping a political upheaval or war or government policies that harm or endanger their lives and livelihoods—these people are referred to as “political refugees”—or socio-economic, e.g., overcrowding, famine, natural disasters or poverty. So it is with the Indonesian diaspora, who have been forced or otherwise compelled to leave their country or homeland and move to other countries<sup>18</sup>.

According to Carment and Bercuson, “today’s diaspora differ from previous generations of ethnic migrants because late 20th Century telecommunications advances and cheap travel allow for ‘a new type of hyper-connectivity’ between diasporas and their home communities”<sup>19</sup>.

## **Citizen and Citizenship, and Some Basic Principles in the Field of Citizenship**

### **1. Citizen and Citizenship**

A state establishment, according to JJ Rousseau’s theory of State Sovereignty, happens because of a social contract or agreement within the society<sup>20</sup>—there must be three elements to such a circumstance, namely the state must have a certain area (*staatsgebied*), a particular organization, and it must have citizens (*personengebied*)<sup>21</sup>. Citizens are collectively to be one element<sup>22</sup> or to be one of the essential elements<sup>23</sup> or an important element in the process of establishing of a state. Thus, a country might not

<sup>17</sup> Gabriel Sheffer, *Diaspora Politics: At Home Abroad*, Cambridge: Cambridge University Press, 2003, p. 9.

<sup>18</sup> “Dubes Indonesia Untuk AS ...”, *op. cit.*; dan “Potensi ...”, *op. cit.*

<sup>19</sup> Carment and Bercuson as cited by Rima Berns-McGown, “Redefining “diaspora”, *The Challenge of Connection and Inclusion*”, 63 *International Journal* 3 2007-2008, available at HEINONLINE (<http://heinonline.org>) (last updated Feb 5, 2014, 21:38:59).

<sup>20</sup> See F. Isjwara, *Pengantar Ilmu Politik*, Bandung: Penerbit Dhiwantara, 1964, p.109-113

<sup>21</sup> Sudargo Gautama, *Warga Negara dan Orang Asing*, Bandung: Alumni, 1987, p. 4.

<sup>22</sup> RG Kartasapoetra, *Sistematika Hukum Tata Negara*, Jakarta: Bina Aksara, 1987, p. 211.

<sup>23</sup> B. Hestu Cipto Handoyo, *Hukum Tata Negara, Kewarganegaraan dan Hak Asasi Manusia (Memahami Proses Konsolidasi Sistem Demokrasi di Indonesia)*, Yogyakarta: Universitas Atma Jaya Yogyakarta, 2003, p. 235.

be established without people to become its citizens. It is expressly stated in Article 1 of The Montevideo Convention 1933: On the Rights and Duties of States that “the State as a person of International Law should possess the following qualifications: a permanent population, a defined territory, a government, and a capacity to enter into relations with other states”.

Based on the quotation above it is clear that citizens are considered one of the pillars of a state beside territory and government.

A citizen is a full member of a state. As a member of a state, a citizen has an important and special position towards his country; he or she has a relationship or legal ties with his or her country. This is called citizenship, nationality or membership of a state. In such a relationship or bond, there are reciprocal rights and obligations between the citizens and their state. On one hand, every citizen has the right to obtain protection from the state in any form and anywhere, but on the other hand the citizen must remain loyal to the state and obey the laws of that state. Meanwhile, the state is obliged to provide welfare and protection to its citizens as an implementation of human rights. Thus, the function of the citizenship status is to provide a connection between a state and its citizens through various rights and obligations possessed by both the state and its citizens<sup>24</sup>.

By having a the status of citizenship to a certain state, an individual will be subject to “juridical consequences”, which include the fields of Private International Law, Law of Kinship, and Public Law.

In International Private Law, the *nationaliteit principle* (nationality principle) states that the legal status of a citizen in terms of rights and obligations will always be attached wherever he is. Therefore, he will always get protection from his state by invoking National Law wherever he is<sup>25</sup>. In Legal Kinship, citizenship status will have juridical consequences in the form

<sup>24</sup> See Koerniatmanto Soetoprawiro, “Asas-Asas Hukum Kewarganegaraan”, in Koerniatmanto Soetoprawiro (Ed.: A. Mustika W), *Hukum Kewarganegaraan dan Keimigrasian Indonesia*, Jakarta: PT Gramedia Pustaka Utama, 1994, p. 9.

<sup>25</sup> Nationality Principle is difficult to implement to the citizen facing legal problems because in International Law there is also “domicile principle” stating that legal status, rights and obligations of a citizen is determined by the law where he lives. See B. Hestu Cipto Handoyo, *Hukum Tata Negara Indonesia, Menuju Konsolidasi Sistem Demokrasi*, Yogyakarta: Penerbit Universitas Atma Jaya Yogyakarta, 2009, p. 357-360; & Winarno, *Kewarganegaraan Indonesia Dari Sosiologis Menuju Yuridis*, Bandung: Penerbit Alfabeta, 2009, pp. 64-66.

of an affirmation of the citizenship status of children, which will result in a legal certainty particularly in relation to rights and obligations between parents and their children, such as inheritance, custody and guardianship. Meanwhile, in Public Law, citizenship status provides proof of citizenship to a state. Therefore, the state has an obligation to protect the citizen, but, in return, he should be faithful, submissive, and obedient to his state<sup>26</sup>.

## **2. Some Basic Principles in the Field of Citizenship**

According to Article 1 of the Hague Convention of 1930, every state has the absolute right to determine who may be members or citizens, but this absolute right is limited by some general principles:

1. must not be contrary to international conventions;
2. must not be contrary to international practices, and
3. must not be contrary to the common law principles internationally applied in determining citizenship<sup>27</sup>.

Based on these provisions, each state has freedom and sovereignty to pass various regulations governing citizenship; in this case every state has freedom to determine an individual's citizenship. No country has the rights to regulate the citizenship matters of other countries<sup>28</sup>.

With regards to determining the citizenship of children, there are two principles, namely *ius sanguinis*, the principle of descent, and *jus soli*, the principle of place of birth.

In practice there are states that apply only one of the two principles and states that simultaneously apply both principles with priority to one of them. This is done to avoid a-patride, the occurrence of a person with no citizenship).

On the other hand, as a result of applying the principle of place-of-birth differently in different states when determining citizenship, *bi-patride*, the

<sup>26</sup> See B. Hestu Cipto Handoyo, *Hukum ...*, 2009, *loc.cit.*; & Winarno, *Kewarganegaraan ...*, *loc.cit.*

<sup>27</sup> B. Hestu Cipto Handoyo, *ibid.*, p. 356; & Sudargo Gautama, *op.cit.*, p. 7.

<sup>28</sup> See BP Paulus, *Kewarganegaraan RI Ditinjau Dari UUD 1945, Khususnya Kewarganegaraan Peranakan Tionghoa*, Jakarta: Pradnya Paramita, 1983, p. 48.



occurrence of a person with dual citizenship, or even *multi-patride*, where there are more than two citizenships, are possible.

Every state should consider Article 5 of the Universal Declaration of Human Rights, which states, “Everyone has the right to citizenship, and no one shall be arbitrarily deprived of his citizenship nor denied the right to replace his citizenship”.

In a state there are generally “two kinds of citizens”. The first is a citizen by operation of law, citizens who acquire their citizenship through passive *stelsel*, i.e. by a regulation enactment or due to the occurrence of certain legal event. In this case, the individual is automatically made a citizen of a certain state without taking any action at all. Such citizens do not require proof of citizenship, such as a letter stating citizenship to a certain state. The second is a citizen by registration, citizens who acquire their citizenship through active *stelsel* meaning that they undergo a registration procedure that has been determined by the state in question. These citizens require a letter of proof of citizenship<sup>29</sup>.

There are “two types of rights associated with both *stelsels*”, namely, (a) the right to accept citizenship offered by a certain state (in active *stelsel*), and (b) the right to refuse citizenship offered by a certain state (in passive *stelsel*)<sup>30</sup>.

In practice, there are currently five ways to earn citizenship status:<sup>31</sup> (a) citizenship by birth; (b) citizenship by descent; (c) citizenship by naturalization, whereby a foreigner wilfully applies to become a citizen of a state by fulfilling given requirements; (d) citizenship by registration (naturalization of foreigners who have been deemed to fulfil certain conditions through simpler registration administrative procedure rather than complicated naturalization procedures; and (e) citizenship by incorporation of territory.

<sup>29</sup> See CST Kansil, *Hukum Kewarganegaraan Republik Indonesia*, Jakarta: Sinar Grafika, 1992, p. 95; & BP Paulus, *op. cit.*, p. 53.

<sup>30</sup> See CST Kansil, *ibid.*, p. 11-12; & Koerniatmanto Soetoprawiro, *op. cit.*, p. 11.

<sup>31</sup> Jimly Assididjic, *Pengantar Ilmu Hukum Tata Negara Jilid II*, Jakarta: Konstitusi Press, 2006, p. 146-149.

Meanwhile, there are three ways to lose citizenship<sup>32</sup>, namely: (1) renunciation, whereby an individual holding dual citizenship chooses to give up the status of citizen to one of the two countries, (2) termination, which is a legal action conducted by a State to terminate the citizenship of an individual who has gained citizenship to another country, and (3) deprivation, the enforced revocation, termination, or dismissal of citizenship status pursuant to an order from the appropriate authority because there is an error or violation proven in the acquisition of citizenship or because the citizen in question is proven unfaithful or traitorous to the state and its constitution.

### Dual Citizenship and Flexible Citizenship

Citizenship defines a person's legal status as a member of a nation-state. In recent years, globalization has caused the international community to adopt a more accommodating attitude towards dual citizenship<sup>33</sup>.

Globalization has changed the meaning and significance of citizenship. Traditionally, it signified identification with and allegiance to a nation state. Yet, changes over the past two decades mean that recognizing dual citizenship has become a practical reality. Thus, as people increasingly identify with and become members of more than one nation-state, there has been growing acceptance of multi-citizenship<sup>34</sup>.

Theoretically, dual citizenship (*bi-patride*) could occur as a result of the aforementioned principle of place-of-birth (*jus soli*) being differently implemented in different states. For example, a child of an Indonesian couple born in a country that adheres to *ius soli* will have dual citizenship because the parents' state of origin, Indonesia, adheres to *ius sanguinis*, the principle of decent.

In line with the potential magnitude of the various diaspora expanding worldwide, a flexible approach to citizenship is developing.

<sup>32</sup> Jimly Assidqie, *ibid.*, pp. 150-151.

<sup>33</sup> Stephanie Wang, "Does The Nationality Law, And Its Prohibition of Dual Nationality, Need Reform ...", available at HEINONLINE (<http://heinonline.org>)(last updated Feb 5 21:42:34 2014).

<sup>34</sup> *Ibid.*, p. 327.

Flexible citizenship is a form of citizenship that redefines the traditional view of citizenship based on political rights and participation within a nation state. Flexible citizenship, which is arguably a response to economic concerns of globalization, has made the major contributing factor to citizenship people's choice, whereby individuals have the power to choose their citizenship as opposed to citizenship being based on an allegiance to a country's government. In light of this, it is reasonable to assume that people will choose their citizenship based on economic reasoning rather than political rights or participation within the nation states in which they reside. Thus, flexible citizenship is an ideology that asserts that economic reasons are the primary reason people choose their citizenship as opposed to identifying with a community based on shared political rights<sup>35</sup>.

In accordance with the economic successes achieved by diaspora, governments in some countries offer open citizenship (flexible citizenship) to individuals who are considered to provide economic benefits to those states. For those expatriates occupying positions of managers, technocrats, and professionals, flexible citizenship could provide a strategy for investing in overseas companies<sup>36</sup>.

India provides a strong example. India's Citizenship Act of 1955 prohibited dual nationality or citizenship. In 2003, this law was reformed to recognize the category "Overseas Citizen of India", which covered expatriates in 16 developed countries, and in 2005, eligibility was expanded to cover instances of the Indian diaspora in all countries. The overseas citizen is entitled to unlimited entry and stay in India, as well as the same economic rights and access to education as Indian citizens. This was done because the Indian government wanted to utilize the expertise and capital of the Indian diaspora in the country's own development. The Indian diaspora comprises approximately 25 million Indian expatriates, spread across 130 countries with a combined income of USD 160 billion, equal to one third of India's GDP<sup>37</sup>.

<sup>35</sup> Aihwa Ong, "Flexible Citizenship among Chinese Cosmopolitans" (<http://books.google.co.uk/books?id=4EmqLCWUFvEC&jpg=PA134&ots=rRnwH3i4U3&dq=a>) in Pheng Cheah & Bruce Robbins, *Cosmopolitics: Thinking and Feeling Beyond The Nation*, (Minneapolis: University of Minnesota Press, 2011), p. 137-139, in Cntras et. al., "Flexible Citizenship", available at <http://en.wikipedia.org/w/index.php?oldid=539481010> (last updated Feb 1, 2014).

<sup>36</sup> Aihwa Ong, *Flexible Citizenship: The Cultural Logics of Transnationality*, London: Duke University Press, 1999, as cited by Ari Setyanigrum, *op. cit.*, p. 190-191.

<sup>37</sup> Stephanie Wang, *op. cit.*; & "Diaspora Tuntut Dwi Warga Negara: Perubahan Disarankan Diperjuangkan Lewat UU", *Harian Kompas* (Jakarta), (August 19, 2013), p. 9.

## Law on Citizenship of the Republic of Indonesia

### 1. The Act Nr. 12/2006 on Citizenship of the Republic of Indonesia

To regulate citizens as desired by Article 26 of the 1945 Constitution, Act Nr. 12/2006 on Citizenship of the Republic of Indonesia was published. This Act repealed Act Nr. 62/1958 on Citizenship of the Republic of Indonesia.

According to Article 26 paragraph (1) of the 1945 Constitution and Article 2 of Act Nr. 12/2006, “those becoming Indonesian citizens are the indigenous Indonesians and people of other nations who are legally determined as citizens”.

Based on the provisions within it can be seen that Act Nr. 12/2006 adheres to the following principles:

- a. The principle of *ius sanguinis*. The implementation of this principle can be seen from the provision of Article 4 (b–h) of Act Nr.12/2006.
- b. The principle of *ius soli* on a limited basis; by Indonesian citizenship law, *jus soli* applies only to children who are born in Indonesian territory and whose parents’ citizenship status is not clear, newborn children found in Indonesia whose parents are unknown, or children born in Indonesia whose parents do not have citizenship or their existence is unknown as stipulated in Article 1 (i–k).
- c. Single citizenship principle, which limits individuals to only one citizenship, and
- d. Limited dual citizenship principle, which allows dual citizenship for children in accordance with the provisions stipulated in the Act Nr. 12/2006. According to Article 6 paragraph (1) of Act Nr. 12/2006, “when the Indonesian citizenship status for a child as referred to Article 4 c, d, h, i, and Article 5 of the Act Nr. 12/2006 makes the child have dual citizenship, then after the age of 18 years or else upon marriage, the child must declare to choose one citizenship”.

The principles of limited *ius soli* and limited dual citizenship, as stipulated in Act Nr. 12/2006, define who can be a citizen of the Republic of Indonesia in accordance with the Pancasila and the 1945 Constitution do not only

exercise the state's absolute right to determine its citizens, as specified in Article 1 of the Hague Convention of 1930, but also respect the right of every person with regard to his or her citizenship status, as regulated in Article 5 of the Universal Declaration of Human Rights (UDHR)<sup>38</sup>. Everyone's right to citizenship status and everyone's right to choose citizenship are recognized by Article 28D paragraph (4) and Article 28E (1) of the 1945 Constitution of the Republic of Indonesia, and Article 26 and 53 of the Act Nr. 39/1999 on Human Rights.

## **2. The Citizenship Status of Ethnic Chinese in Indonesia**

One of the important, fundamental, and revolutionary changes of the 1945 Constitution is the elimination of the term "indigenous Indonesian" for the candidates of President and Vice President. According to Article 6 paragraph (1) of the 1945 Constitution, "the candidate of *President* and Vice President shall be Indonesian citizens since their birth and never receive other citizenships by their own will.....".

The provision is then used as a reference or guidance in interpreting the term "indigenous" found in Article 26 paragraph (1) of the 1945 Constitution and Article 2 of Act Nr. 12/2006 regulating anyone who is to be an Indonesian citizen. Thus, "anyone who is born in Indonesia and never acquires another citizenship by his own will is an Indonesian citizen". This solves problem of citizenship for individuals of Chinese ethnicity in Indonesia as a person of Chinese decent born in Indonesia who never acquires another citizenship by his or her own will is recognised as an Indonesian citizen.

Based on the interpretation of the term "indigenous", the existence of Chinese ethnicity in Indonesia and their citizenship status based on the Act Nr. 3/1946 saying that they were citizens by operation of law and then got a confirmation by Act Nr. 62/1958 became more obvious and strong. In addition, there was no longer any obligation for the Indonesian Chinese to possess proof of citizenship, which is known by the name of a Letter

<sup>38</sup> B. Hestu Cipto Handoyo, "Kewarganegaraan", in B. Hestu Cipto Handoyo, *Hukum Tata Negara, ..., op. cit.*, p. 239-240; & Bagir Manan, "Pendahuluan", in Bagir Manan (Ed.: Ni'matul Huda), *Hukum Kewarganegaraan Indonesia Dalam UU No. 12 Tahun 2006*, Yogyakarta: FH UII Press, 2009, p. 1.

of Proof of Indonesian Citizenship (*Surat Bukti Kewarganegaraan Republik Indonesia/SBKRI*). In accordance with the provision of Article 18 paragraph (1) of Act Nr. 12/2006, valid evidence of Indonesian citizenship is only given to those who acquire citizenship through naturalization.

### **3. Ways to Obtain Indonesian Citizenship**

In accordance with the provision of Article 26 paragraph (1) of the 1945 Constitution and Article 2 of Act Nr. 12/2006, Article 4 point a-m, and Article 5 of Act Nr. 12/2006, an Indonesian Citizen is defined as follows:

- a. Any person who, by regulation and/or based on agreement between the Government of the Republic of Indonesia and other countries before this Act applies, has become a citizen of Indonesia;
- b. Any child born from a legitimate marriage of a father and mother who are both Indonesian citizens;
- c. Any child born from a legitimate marriage of a father who is an Indonesian citizen and a mother who is a foreign national;
- d. Any child born from a legitimate marriage of a father who is a foreign national and a mother who is an Indonesian citizen;
- e. Any child born from a legitimate marriage of a mother who is an Indonesian citizen and a father who does not hold any citizenship or whose country of origin does not by law grant citizenship to the child;
- f. Any child from a legitimate marriage who is born within a period of 300 days after the death of the child's father;
- g. Any child born outside a legitimate marriage to a mother who is an Indonesian citizen;
- h. Any child born outside a legitimate marriage to a mother who is a foreign national and recognized by a father who is an Indonesian citizen father, where such recognition is given before the child reaches 18 years of age or marries;
- i. Any child born in the territory of the Republic of Indonesia to a father and mother of unclear citizenship at the time of birth;
- j. Any newborn child found in the territory of the Republic of Indonesia whose father and mother are unknown;

- k. Any child born in the territory of the Republic of Indonesia whose father and mother do not have citizenship or whose father's and mother's whereabouts is unknown;
- l. Any child born outside the territory of the Republic of Indonesia who has been granted citizenship because of the provisions of the country where the child was born;
- m. Any child of a father or mother who has been granted Indonesian citizenship and who has then died before the oath or declaration of allegiance;
- n. Any child of an Indonesian citizen born outside a legitimate marriage, have not aged 18 years or unmarried which legally recognized by a foreign citizen father; and
- o. Any child with Indonesian citizenship who is, before the age of 5 years, legally adopted by a foreign citizen based on a court warrant.

In addition to citizenship by operation of law or citizen obtained through passive stelsel as described above, in accordance with the provision of Article 26 paragraph (1) of the 1945 Constitution and Article 2 of Act Nr. 12/2006, "people of other nations"/ foreign people / foreigners who meet the specified requirements can obtain Indonesian citizenship (1) through naturalization by written application to the President through the Minister of Law and Human Rights (Articles 8–18 of Act Nr. 12/2006, and Article 2, 3, 6-10, and 12 of Government Regulation Nr. 2/2007 regarding the Procedures for Acquiring, Losing, Cancellation of, and Regaining of Indonesian Citizenship); (2) by being legally married to an Indonesian citizen and having lived in Indonesia for at least 5 consecutive years or 10 unconservative years (Article 19 of Act Nr. 12/2006 and Article 67 Government Regulation Nr. 2/ 2007); and (3) directly form the President after obtaining the consideration of the Indonesian Parliament as an award for contribution to the Republic of Indonesia or other reasons of state interest (Article 20 of Act Nr. 12/2006 and Government Regulation Nr. 2/2007).

According to the Explanation of Article 20 of Act Nr. 12/2006, (1) what is meant by "foreigners who have rendered to the Republic of

Indonesia” are foreigners who through exceptional achievement in the field of humanitarianism, science and technology, culture, environment and/or sports have provided progress and glory for Indonesia; and (2) What is meant by “foreigners who are given citizenship for the reason of state interest” are foreigners who have given an outstanding contribution to the sovereignty of the country and thus increased progress, particularly in the field of Indonesian economy.

From the previous explanation, it can be seen that Indonesia is implementing a closed citizenship law policy, because anyone who can be an Indonesian citizen has already clearly defined in Article 26 paragraph (1) of the 1945 Constitution, and Article 2 and Article 4 of Act Nr. 12/2006. In addition, although “people of other nations” / foreign nationals / foreigners can obtain Indonesian citizenship based on the procedures and requirements specified in Articles 8–22 of Act Nr. 12/2006 and Government Regulation Nr. 2/2007, it is stated emphatically that “granting Indonesian citizenship should not result in dual citizenship”. Thus Indonesia clearly does not adhere to the principle of dual citizenship.

### **Constitutional Review**

In accordance with the provisions of Article 1 paragraph (2) and paragraph (3) of the 1945 Constitution, Indonesia is a state of law (*negara hukum*) that embraces the supremacy of the land.<sup>39</sup> Thus all actions of state officials and citizens must comply with and must not be contradictory to the constitution including the making of regulations.

Related to the making of regulations, such as acts, Constitutional Law provides two mechanisms for acts made by Parliament and the President and approved by Parliament, signed by the President, and published in the state gazette (Article 5 and Article 20 of the 1945 Constitution) vertically consistent with (not contradictory to) the 1945 Constitution, namely: (1) National Legislation

<sup>39</sup> The term “*negara hukum*” is usually used as the Indonesian translation of the terms rule of law or *rechtsstaat* or *etat de droit*. But in the context of the sentence “..., Indonesia adalah *negara hukum* yang menganut supremasi konstitusi”, it will be inappropriate if using those terms. Therefore the term used in this context is “state law”.



Program (Program Legislasi Nasional / PROLEGNAS); and (2) Constitutional Review by the Constitutional Court.

According to Act Nr. 12/2011 on the Establishment of Legislations, planning for the preparation of the Act is done in PROLEGNAS, which contains the program of legislation making with the name of the Act Draft, subject matters, and its links with other regulations.

Where a certain Act is contradictory to the 1945 Constitution, the Constitutional Court can conduct a constitutional review. For that, there must be a written application—in Indonesian accompanied by evidence supporting the application—by the applicant or their proxies to the Constitutional Court. The applicant is a party that concludes that rights and/or constitutional rights have been harmed by the enactment of an Act, namely: (1) an individual Indonesian citizen; (2) the unity of indigenous communities, if still existing, and in accordance with the development of the society and the principles of the Unitary State of the Republic of Indonesia regulated in the Act; (3) public or private legal entities; or (4) state organs (Article 29, 31, and 51 Act Nr. 24/2003 regarding the Constitutional Court as amended by Act Nr. 8/2011 on the Amendment of Act Nr. 24/2003 regarding the Constitutional Court).

From the description above, it is clear that parties who can apply individually to the Constitutional Court are Indonesian citizens whose constitutional rights have been harmed by the enactment of an Act.

### **Permanent Residence**

Permanent Residence is a permit granted to foreign nationals retaining their own national passports to reside and settle in the region of Indonesia as Indonesian people. Everything related to Permanent Residence in the Indonesian region is regulated by Article 48, Article 54, Article 55, Article 56 and Articles 59–65 of Act Nr. 6/2011 on Immigration (replacing Act Nr. 9/1992 on Immigration) and Articles 152–157 of Government Regulation Nr. 31/2011 on the Implementation of Act Nr. 6/2011 on Immigration.

These two regulations state that Permanent Residence can be granted to any individual who once held dual citizenship but who, at the time he or she turned 18 years of age, chose foreign nationality and to any Indonesian citizen who has lost his or her Indonesian citizenship, subject to the relevant laws.

Furthermore, Permanent Residence can also be granted to foreign nationals holding limited residence permits, such as clergy, workers, investors, and the elderly, after they have stayed in Indonesia for three consecutive years and have signed an Integration Statement addressed to the Indonesian government; families of mixed marriage after two years of marriage who have signed an Integration Statement addressed to the Indonesian government; husbands, wives, and/or children of foreign nationals holding Permanent Residence, as well as ex-Indonesian citizens and individuals who held dual citizenship before choosing foreign nationality upon turning 18.

Permanent Residence is valid for five years and can be extended for an indefinite period as long as the permit is not canceled. Foreign nationals staying in Indonesia should have guarantors of their existence, though foreign nationals who are legally married to Indonesian citizens do not need a guarantor.

Foreign nationals holding Permanent Residence are permitted seek employment to meet their needs of life. In accordance with Article 42 paragraph (4) of Act Nr. 13/2003 on Labor, foreign nationals holding Permanent Residence are allowed to work in Indonesia and to occupy certain positions for a determined period of time, and are therein named foreign workers (foreign nationals holding visas and permitted to work in Indonesia)<sup>40</sup>.

To obtain Permanent Residence, a foreigner or guarantor can apply to the Chief of Immigration Office or appointed immigration officers whose jurisdiction covers the foreign national's residence, by filling out an application and attaching

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<sup>40</sup> This is regulated by the Decree of Indonesian Minister of Labor and Transmigration Nr. KEP. 247/MEN/X/2011, the Decree of Indonesian Minister of Labor and Transmigration Nr. 462/2012, the Decree of Indonesian Minister of Labor and Transmigration Nr. 463/2012, the Decree of Indonesian Minister of Labor and Transmigration Nr. 464/2012, the Decree of Indonesian Minister of Labor and Transmigration Nr. 707/2012, the Decree of Indonesian Minister of Labor and Transmigration Nr. 708/2012, the Decree of Indonesian Minister of Labor and Transmigration Nr. 354/2013, the Decree of Indonesian Minister of Labor and Transmigration Nr. 355/2013, the Decree of Indonesian Minister of Labor and Transmigration Nr. 356/2013, the Decree of Indonesian Minister of Labor and Transmigration No. 357/2013, the Decree of Indonesian Minister of Labor and Transmigration Nr. 358/2013, and the Decree of Indonesian Minister of Labor and Transmigration Nr. 359/2013.

the required articles as specified in Article 153 of Governmental Regulation Nr. 31/2013.

### **III. CONCLUSION**

Based on the description of Permanent Residence above, it can be seen that Indonesian Chinese expatriates who wish to obtain Permanent Residence in Indonesia will not face any trouble as long as they apply, providing the required articles and attachments, to the relevant officer .

From the above description of how to obtain Indonesian citizenship, it is clear that Indonesia implements a closed citizenship law policy, because anyone who can be an Indonesian citizen has already been clearly defined in Article 26 paragraph (1) of the 1945 Constitution, and Article 2 and Article 4 of Act Nr. 12/2006. In addition, although “people of other nations” / foreign citizens / foreign nationals can obtain Indonesian citizenship based on the procedures and requirements specified in Articles 8–22 of Act Nr. 12/2006 and Government Regulation Nr. 2/2007, it is stated emphatically that “granting Indonesian citizenship should not result in dual citizenship”. Thus the desire of Indonesian Chinese expatriates holding foreign status to obtain Indonesian citizenship without losing their foreign nationalities can not be fulfilled due to the policy of citizenship law adopted by Indonesia that does not recognize dual citizenship.

With regard to the desire of Indonesian Chinese expatriates holding foreign citizenship to obtain Indonesian citizenship that results in dual citizenship, these individuals also can not apply to the Constitutional Court for constitutional review of Act Nr. 12/2006 on Citizenship of the Republic of Indonesia, because they have no legal standing, as defined by Article 51 of Act Nr. 24/2003 regarding the Constitutional Court, amended by Act Nr. 8/2011 on the Amendment of the Act Nr. 24/2003 regarding the Constitutional Court.

The only way that Indonesian Chinese expatriates holding foreign citizenship can obtain Indonesian citizenship without losing the foreign citizenship is by the recognition of the Principle of Dual Citizenship in the Indonesian citizenship law

policy through a legislative review, such as amendment of the relevant Act (in this case, Act Nr. 12/2006 regarding the Citizenship of the Republic of Indonesia) by Parliament. Therefore the Government of the Republic of Indonesia must be absolutely sure and can assure the Parliament that Indonesia really needs the Indonesian Chinese Diaspora, because they have great potential and can play an important role in Indonesia's development, both in terms of the quality of the human resources that have been proven and tested abroad, and the capital that can be invested in Indonesia, or because of the outstanding achievement in the field of humanity, science and technology, cultural, environment, and sports that provides progress and glory for Indonesia, or because he has been assessed by the country and who have been given an outstanding contribution to the sovereignty of the country and to increase progress, particularly in the field of Indonesian economy.

Nevertheless, it should be seriously and deeply considered how the implementation of dual citizenship might impact national interests (from social, political, legal, and economic points of view). The consequence of citizenship status is loyalty to the country in question, and this means that dual citizenship would lead to division of loyalty, which is certainly loaded with conflict of interest. It should be remembered that Pancasila, the foundation of Indonesia's state identity, is a very specific ideology.

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