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REPORT ON CITIZENSHIP LAW: INDONESIA

AUTHORED BY

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Report on Citizenship Law

Indonesia

Susi Dwi Harijanti

1. Introduction

It is important to note at the outset that the terms ‘nationality’ and ‘citizenship’ are used interchangeably in this report. Moreover, the terms ‘nationality’ and ‘citizenship’ refer to a ‘politico-legal’ term denoting membership of a state (Weis 1979: 1).

The Indonesian citizenship regime has been formed through two fundamental historical processes: “decolonization and the emergence of multi-ethnic states, and post-colonial nation building in a period of emerging globalization” (Hassall 1999: 49). The first process has resulted in an emphasis on citizenship as a ‘boundary’, whereas the second has seen citizenship as a more complicated concept, involving a “site of ideological construction” (ibid.). In the transition period to independence, the socio-political as well as legal character of Indonesia was determined through several competing ideologies of politics, culture, religion and ethnicity. However, it is important to note that during Dutch colonisation, there was a legal policy regulated by Article 163 of the *Indische Staatsregeling* (the Constitution of the colony of the Dutch East Indies) which created a racial division of the population of the Dutch East Indies into three categories: Europeans and its equivalent group (mostly Christians); far eastern (mainly Chinese and Arabs); and indigenous people (*pribumi*).¹ Unsurprisingly, the Indonesian citizenship regime has, thus, been heavily characterised by nationalism, rather than any other issues such as culture.

The racial division during colonisation, which resulted in the indigenous people being considered the lowest group within the population, had a significant influence on the formation of basic policies necessary for Indonesia as a new independent country. This was apparent in regard to constitutional requirements for holding the office of president and vice president. Article 6(1) of the 1945 Constitution stated that the “President is indigenous Indonesian”. The Elucidation to the 1945 Constitution did not provide any meaning of the phrase ‘indigenous Indonesian’. However, it was believed that ‘indigenous Indonesian’ referred to ‘*pribumi*’ as stated in Article 163 of the *Indische Staatsregeling*. In practice, all presidents and vice presidents have been indigenous Indonesians from 1945 until the present. Manan points out that this practice has become a constitutional convention (Manan 2006: 63).

¹ The term *pribumi* has the same meaning as the term *orang2jang asli* used in other publications on Indonesian citizenship law.

As a result of the above historical processes, the development of Indonesian citizenship has shown a number of significant changes, including the basis on which individuals may enter or exit citizenship arrangements. In 1946, the Indonesian government promulgated the first Indonesian citizenship law, known as Law No. 3 of 1946 concerning Citizenship and Resident of Indonesia which emphasised the use of *ius soli* (the principle of territory). This principal basis was then changed to *ius sanguinis* by Law No. 62 of 1958. Both laws, however, preferred single nationality.

In addition, the Indonesian post-independence also witnessed two important agreements with foreign governments dealing with citizenship. The first happened in 1949 when the Republic of Indonesia and the Netherlands agreed to adopt a Charter on the Agreement to make 'distribution' of citizenship as a result of the official recognition of the Indonesian independence by the Netherlands. The second was a bilateral agreement between the Republic of Indonesia and the People's Republic of China in 1956 in order to settle dual nationality problems between both countries.

Another important historical development dealing with Indonesian citizenship is the case of East Timor. Previously, East Timor was part of the colonial territory of Portugal and known as an 'overseas province'. On 17 July 1976, East Timor became Indonesia's 27th province, regardless of the widespread allegation that Indonesia conducted the annexation of East Timor. The integration of East Timor into Indonesian territory was legalised through the adoption of Law No. 7 of 1976,² which was supplemented by an Elucidation.³ As a result, all Indonesian legislations in regard to citizenship were applicable to East Timor. However, the integration broke up and led to state succession after the East Timorese people had a final say on the matter in a 1999 referendum.

In 2006, Indonesia adopted a new Law on Citizenship No. 12 which repealed the 1958 Law. Although the rules concerning *ius sanguinis* remain unchanged, a new legal policy was introduced in the form of limited dual citizenship in order to provide greater protection for children having parents with different nationalities.

After ten years of accepting limited dual nationality, there is currently a strong demand to implement full dual nationality for reasons that include economic considerations, as Indonesia has received almost USD 10.5 billion annually in remittances from Indonesian migrant workers (Dewansyah 2016: 1). This puts Indonesia in the top 10 developing countries and top 14 countries in the world with the highest levels of remittance receipts in 2015 (Dewansyah 2016: 1). While some argue that dual citizenship would entail significant benefits for Indonesia, others strongly reject this idea, bringing to the fore issues of nationalism and security.

This report will discuss the development of the Indonesian citizenship regime post-independence and evaluate how Indonesia will respond to the issue of globalisation with regard to citizenship. In doing so, I will explain the Indonesian historical perspective on citizenship law, which will then be followed by the existing citizenship regime. In this regard, I will broadly discuss the implementation of Law No. 12 of 2006 as well as its main implementing regulation, i.e. Government Regulation No. 2 of 2007. The last part of this report will focus on current political debates and reform plan as a response to some problems that arise from the implementation of the existing law and regulation.

² State Gazette 1976 No. 35.

³ Supplement to State Gazette No. 3084.

2. Citizenship Law in Historical Perspective

2.1. Law No. 3 of 1946: The First Indonesian Citizenship Act

Indonesia declared its independence on 17 August 1945. On the following day, the Indonesian Constitution (known as the 1945 Constitution) entered into force and matters concerning citizenship were regulated by Article 26, which said:

- (1) Citizens consist of indigenous Indonesian peoples and persons of foreign origin who have been legalised as citizens in accordance with the law;
- (2) Matters concerning citizens and residents shall be regulated by law.

Although both the Constitution and Elucidation of the 1945 Constitution⁴ were silent on the meaning of ‘indigenous Indonesian people’, this phrase was broadly understood to refer to persons who during the Dutch colonisation were known as ‘*pribumi*’ (Manan 2009: 16). This distinction between different ethnic groups did not only lead to different legal treatment, but also – and in particular for the indigenous Indonesian people – resulted in a number of discriminatory treatments in all aspects of their life during colonisation.

In 1946, a new law on citizenship, known as Law No. 3 of 1946, which had retroactive effect to the day of independence, was enacted in order to further regulate matters on citizenship as ordered by the constitutional provision. This law primarily applied the *ius soli* principle in the sense that all residents of Indonesia passively obtained nationality. However, they had the right to renounce Indonesian citizenship, which could be done by a written declaration and directed to the Minister of Justice through the Court of First Instance.⁵

The application of *ius soli* was interesting given the fact that Indonesia has never been regarded as an immigration country. Arguably, this principle was preferred over *ius sanguinis* due to the urgent need to determine the status of persons living in Indonesia at the time.

Through a number of provisions the 1946 Act gave prevalence to the principle of ‘the unity of a family’, by which all members of a family should have the same nationality. The status of married women was determined by the status of their husband. Article 2(1) stipulated that a woman during her marriage should have the same nationality as that of her husband. In addition, Article 2(2) stated that a wife was unable to make an application or declaration to change her nationality. Further, Article 3(1) stated that the Indonesian nationality granted to a father would automatically be transmitted to his children.

Citizenship is a matter of sovereignty and each state, through its legislative body, can decide on the legal requirements that are considered necessary for membership of the state. In addition to birth, the 1946 Act provided another method for obtaining Indonesian nationality, namely through naturalisation as regulated in Article 5. A foreign person who wanted to acquire Indonesian citizenship had to meet a number of requirements, including a minimum age of 21 years or already married; be in Indonesia for at least five years with continuous residence; and be able to speak the Indonesian language. The Law applied two kinds of

⁴ Unlike other constitutions in the world, the 1945 Constitution was accompanied by an Elucidation that was broadly prepared by Soepomo, one of the founding fathers and the framers of the Constitution.

⁵ Interestingly, the retroactive effect was stipulated by Art. 14a of Law No. 6 of 1947 which stated: “Art. 15 should be read: this Law comes into force on 17 August 1945”.

naturalisation, namely ordinary and extra-ordinary naturalisation.⁶ The main purpose of extra-ordinary naturalisation was acquisition of nationality in the national interest, whereas ordinary naturalisation did not have any relation with the national interest, but rather came about in the interest of the applicant. Considering this fundamentally different purpose, the law created different requirements in the sense that a number of requirements that should be met by applicants going through the ordinary naturalisation process were not applicable to those eligible for extra-ordinary naturalisation (though subject to any special requirements that would be decided by the House of Representative on a case by case basis).

Regardless of the different purpose and requirement, however, the 1946 Act stated that each application on naturalisation should be approved by the House of Representatives, and this approval would take the form of an act of legislation. In 1947, for example, the *Badan Pekerja Komite Nasional Pusat* (the Working Group of the Central National Committee)⁷ had approved naturalisation of Frans Matheas Hesse through Act No. 9 of 1947.⁸

In regard to the loss of citizenship, Article 8 of the 1946 Act set out two causes, including naturalisation in a foreign country, and entering the army forces or civil service of a foreign country without permission by the President of the Republic of Indonesia.

In practice, the 1946 Act was amended several times, starting with Law No. 6 of 1947 which added new provisions, including the inclusion of legal entities (e.g. limited companies) as Indonesian citizens as well as the retroactive effect of the 1946 Act. The enactment of both Law No. 8 of 1947 and Law No. 11 of 1948 aimed to accommodate those who needed to use their right to renounce Indonesian nationality until 17 August 1948. It is also important to note that according to Presidential Decree No. 7 of 1971, all provisions of the 1946 Act were applicable to determine the status of the people of West Irian (West Papua) as Indonesian citizens.⁹

2.2. Citizenship Agreement between the Federal Republic of Indonesia and the Netherlands

On 27 December 1949, the Dutch government officially recognised Indonesian independence as a result of the Round Table Conference conducted in The Hague. Consequently, there was a *Piagam Persetujuan Pembagian Warga Negara* (Charter on the Agreement regarding distribution of citizenship) between the Republic of Indonesia and the Netherlands.¹⁰

According to this Agreement, all Dutch citizens remained the holder of their Dutch nationality. However, if they were born or had been living in Indonesia for at least six months, they had the right to opt for Indonesian citizenship within two years after the recognition of Indonesian independence. Approximately 70 million Dutch subjects, non-Dutch citizens, would become Indonesian citizens and lose their former status (van Oers, et.

⁶ The 'extra-ordinary' naturalisation was regulated in Art. 7.

⁷ During the early years of independence, according to the Transitional Provision of the 1945 Constitution, all legislative powers shall be vested in the Central National Committee. Its Working Group was in charge of carrying out legislative powers on a daily basis.

⁸ State Journal 1947 No. 18.

⁹ When the Netherlands recognised Indonesian independence in 1949, however, the territory of West Irian was excluded. In 1968, under the auspices of the United Nations, a referendum was carried out in which most West Irian people expressed that they were keen to join the Republic of Indonesia.

¹⁰ State Gazette 1952 No. 2.

al 2013: 10). The Agreement stated that the use of the right to opt or to renounce should be carried out within two years, from 27 December 1949 to 27 December 1951.

However, the 1949 Agreement was only in force for six months. On 17 August 1950, the Indonesian government unilaterally announced the replacement of the 1949 Federal Constitution by the 1950 Temporary Constitution, which changed the institutional form of the state from federal to unitary. Article 144 of the 1950 Temporary Constitution stipulated two important criteria of being Indonesian citizens, namely:

- a. Those who were the holder of Indonesian citizenship based on the 1949 Agreement, and
- b. Those who had not yet opted for their citizenship based on the 1949 Agreement, but were Indonesian citizens according to the existing law at the time.

2.3. Law No. 62 of 1958: The *ius sanguinis* citizenship regime

The 1950 Temporary Constitution stipulated that matters on citizenship would be further regulated by an act, and this led to the adoption of Law No. 62 of 1958 which repealed the old Law No. 3 of 1946. This new Law was also supplemented by an Elucidation aiming to provide official explanatory guidance to the law, and thus it functioned as an authentic interpretation of the law makers.

This organic Law of 1958 provided some fundamental changes. One of the most notable changes was the use of *ius sanguinis* as the principal method for obtaining Indonesian citizenship, which was regarded as a reflection of the re-emergence of nationalism during the 1950s in Indonesia (Gautama 1987: 19). The principle of *ius sanguinis* gave priority to the male line of descent in regard to the acquisition of Indonesian nationality by birth. However, to prevent cases of statelessness among children or persons born in Indonesia, the law also applied elements of *ius soli* in the following circumstances. A child was an Indonesian national

- a. if born in Indonesia and both parents were unknown;¹¹
- b. if found in Indonesian territory and both parents were unknown;¹²
- c. if born in Indonesian territory to parents who were stateless or whose whereabouts were undetermined at the time of birth;¹³
- d. if born in Indonesian territory and did not at the time of the birth acquire the parent's nationality, nor was granted the parent's nationality.¹⁴

Another legal policy adopted by the 1958 Law was preventing and abolishing dual nationality. This particular policy was in line with the international trend in which many countries around the world inclined to adopt single nationality rather than dual nationality (Gautama 1960: 2). Efforts to halt dual nationality resulted in the signing of a bilateral agreement between the Republic of Indonesia and the People's Republic of China, which will briefly be explained in the following section.

¹¹ Art. 1(f) of Law No. 62 of 1958.

¹² Art. 1(g) of Law No. 62 of 1958.

¹³ Art. 1(h) of Law No. 62 of 1958.

¹⁴ Art. 1(i) of Law No. 62 of 1958.

As mentioned, the 1958 Law contained several provisions that prevented dual citizenship in respect of children, international marriages as well as applicants for naturalisation. Article 3 provided the opportunity for children who were born out of wedlock or as a result of a divorce process, and had been in the care of their mother and had their father's nationality, to make an application directed to the Minister of Justice requesting their mother's Indonesian citizenship. Such an application could be made during one year after reaching the age of 18 years. However, for the purpose of preventing dual citizenship, the act determined that the applicant should renounce his or her other citizenship. Similarly, the 1958 Law required that applicants for naturalisation renounce their original citizenship. Moreover, when successful applicants took the oath of allegiance, they had to abandon all allegiance to a foreign authority.¹⁵

Like under the old law, the principle of 'the unity of family' was preferred, as it was seen as a principle that could be used to avoid dual nationality. A foreign woman who became the wife of an Indonesian man would have Indonesian nationality if she acquired her husband's nationality within one year after her marriage.¹⁶ Likewise, a woman having Indonesian nationality who concluded a marriage with a foreign man would lose her Indonesian nationality if she made a declaration within one year after her marriage.¹⁷ Moreover, Article 9(1) clearly stipulated that Indonesian nationality acquired by an Indonesian man would automatically be transferred to his wife and children. Article 9(2), in turn, stated that losing Indonesian nationality by a husband would also automatically affect his wife and children.

According to the 1958 Law, naturalisation could be achieved in two distinct ways. In some circumstances, the Government could grant Indonesian citizenship under its discretionary power, but this was conditional on approval by the House of Representatives. In another situation, if the applicant met the legal requirements set out by Article 5(2), he or she had the right to naturalisation. Interestingly, if a foreign man applied for naturalisation, he needed approval from his wife.

In terms of the loss of citizenship as regulated in Article 17, the 1958 Law determined more causes in comparison to the 1946 Act. These included, among others:

- a. Having a foreign nationality despite naturalisation in Indonesia;
- b. Being acknowledged by a foreign person as his/her child;
- c. Entering a foreign army service without approval from the Minister of Justice;
- d. Being a foreign state officer without approval from the Minister of Justice;
- e. Taking an oath or declare allegiance to a foreign country or part of that country;
- f. Voting in a general election of a foreign country;
- g. Having a foreign passport;
- h. Have been living for five consecutive years abroad without making a declaration to continue to hold Indonesian citizenship through an Indonesian embassy.

¹⁵ Art. 5 of Law No. 62 of 1958.

¹⁶ Art. 7(1) of Law No. 62 of 1958.

¹⁷ Art. 8(1) of Law No. 62 of 1958.

2.4. The Sino-Indonesia Dual Nationality Treaty

2.4.1. Background and its associated problems

The adoption of the Sino-Indonesia Dual Nationality Treaty was driven by two major factors, i.e. citizenship as such and political motives. In regard to citizenship, Indonesia was not satisfied with the result of the 1949 Agreement between the Republic of Indonesia and the Netherlands concerning the Chinese people residing in Indonesia. When the period of choosing nationality according to the 1949 Agreement ended in December 1951, 40% or approximately 600,000 to 700,000 Chinese people living in Indonesia at the time had renounced Indonesian nationality (Paulus 1983:233). This had raised concern with the Indonesian government about their loyalty and allegiance.

The political concerns, on the other hand, resulted from controversial statements made by the Chinese Ambassador to Indonesia as well as some actions that were carried out by the Chinese embassy (Paulus 1983: 234). This culminated in the issuance of diplomatic protest by the Indonesian government, which then led to the withdrawal of the Chinese Ambassador in 1951. As a result, the diplomatic relations between the two countries were terminated for almost three years.

In 1953, the political regime changed in Indonesia and this paved the way to the normalisation of diplomatic relations with the PRC. Moreover, a new political approach in regard to foreign relations was introduced in the PRC, known as ‘peaceful co-existence’. With the arrival of the first Indonesian ambassador to China in 1954, initial efforts labeled as a ‘meeting of minds’ were made to settle the problems of dual citizenship, which was then followed by several official meetings either in Indonesia or the PRC (Paulus 1983: 238). The Indonesian initiative to tackle such dual nationality problems through a bilateral agreement was seen as a ‘test case’ by the PRC government in the sense that this model might be extended to include other countries with which the PRC was having similar problems. From the point of view of the PRC, the bilateral treaties served two foreign policy objectives, namely “ending diplomatic isolation and bringing its overseas nationals into the PRC’s political system” (Low 2016: 5). For Indonesia this agreement played an important role to prevent the PRC government’s involvement in Indonesia’s domestic political affairs through its influence on overseas Chinese living in Indonesia (Paulus 1983: 239).

2.4.2. The Agreement and its implementation

In 1955, the Indonesian government and the People’s Republic of China finally agreed to conclude a bilateral agreement to end dual citizenship, which was then ratified by the Indonesian parliament through Law No. 2 of 1958.¹⁸ Government Regulation No. 20 of 1959 was adopted to further implement this law.

The Sino-Indonesia Dual Nationality Treaty was drafted according to some fundamental principles, including mutual benefit; mutual equality; and non-interference in each other’s domestic political affairs. Moreover, it was agreed that both Indonesian and Chinese citizens residing in China respectively Indonesia would abide by the laws and customs in each of the respective countries and would not engage or participate in political activities.¹⁹

¹⁸ State Gazette No. 5 of 1958.

¹⁹ Art. XI of the Sino-Indonesia Dual Nationality Treaty.

The principle of free choice was applied to Chinese dual nationals living in Indonesia who were required to choose, in accordance with their own will, between the nationality of the PRC and the nationality of the Republic of Indonesia.²⁰ Married women also had to choose their nationality based on their own free will.²¹ Individuals who had reached the age of eighteen years were required to choose their nationality within two years of the coming into force of the treaty.²² Those who had the two nationalities and wished to have Indonesian nationality should declare before the Indonesian authorities that they renounced their Chinese nationality.²³ A similar procedure applied to those who had both Indonesian and Chinese nationality and desired to have Chinese nationality. They had to renounce Indonesian nationality before the authority of the PRC.²⁴ Upon choosing one's preferred nationality, such a person automatically lost Indonesian or Chinese nationality.²⁵ The citizenship of children was decided based upon their father's citizenship or upon that of their mother if born out of wedlock.²⁶ They had to choose their nationality within a year after reaching the age of majority.²⁷ A person who had the two nationalities and failed to choose within the stipulated two-year period was considered to have chosen his/her father's nationality.²⁸

In the event that there were different opinions or disputes in regard to the implementation and interpretation of the treaty, both Indonesia and the PRC agreed to solve this through mutual negotiation.²⁹ The treaty would be effectively in force for twenty years and allowed for an extension, unless it was terminated unilaterally.³⁰

In 1959, the Indonesian government issued Presidential Regulation No. 10 of 1959 prohibiting foreign small traders and retailers to carry out their business in small towns and villages which then resulted in the exodus of a significant number of Chinese traders. In response, the PRC government through its embassy in Jakarta encouraged the Chinese people not to comply with the Indonesian regulation and requested them to remain living in towns until both governments reached an agreement (Paulus 1983: 242). Following this, the PRC government urged the Indonesian government to make 'immediate consultations' in order to solve the problem by paying attention to three points, including:

- a. Ratifying the treaty immediately and implementing the treaty so that Chinese people who had already chosen Indonesian citizenship were entitled to their civil rights in Indonesia without any form of discrimination;
- b. Protecting the rights and interests of Chinese nationals; and
- c. Securing the right of voluntarily repatriation for Chinese people who desired to return to their homeland, and allowing them to sell their properties as well as facilitating them to arrange all necessary administrative requirements (Paulus 1983: 242).

As a result of the repatriation policy offered by the PRC government, approximately 119,000 Chinese people left Indonesia. However, most of them were classified as

²⁰Ibid. Art. I.

²¹ Ibid.

²²Ibid. Art. II.

²³Ibid. Art. III.

²⁴ Ibid.

²⁵Ibid. Art. IV.

²⁶Ibid. Art. VI.

²⁷ Ibid.

²⁸ Ibid. Art. V.

²⁹ Ibid. Art. XIII.

³⁰ Ibid. Art. XIV.

‘unexpected and unwanted’ by the PRC government, mostly due to their being lowly skilled. This situation subsequently motivated them to return to Indonesia (Paulus 1983: 244).

The option period was set at two years and began on 20 January 1960. During this period a number of official forms necessary for declaring or choosing nationality were issued.³¹ Overseas Chinese holding Chinese nationality and desiring to choose Indonesian citizenship simply made a declaration to this effect using such forms. This meant that they received special treatment in terms of the acquisition of Indonesian nationality by not having to go through the process of naturalisation. However, following the termination of diplomatic relations with the PRC by Indonesia in 1967, which then led to the treaty’s unilateral suspension by Indonesia in 1969, this special treatment was ended.

2.5. The issuance of *Surat Bukti Kewarganegaraan Republik Indonesia*

The suspension of the implementing regulation of the 1955 Sino-Indonesia Dual Nationality Treaty resulted in a number of fundamental policy changes on the part of the Indonesian government. All forms necessary for the model option as described in the previous section were no longer valid. In 1969, the Minister of Justice promulgated a Circular Letter stating that the Court of First Instance might issue a *Surat Keterangan Kewarganegaraan Indonesia* (SKKI or Letter of Statement of Indonesian Citizenship). Later, this SKKI was changed to become a *Surat Bukti Kewarganegaraan Republik Indonesia* (SBKRI or Letter of Proof of Nationality of the Republic of Indonesia).

The 1958 Law regulated matters regarding proof of Indonesian nationality as provided by Article IV of its Closing Provision. Those who held Indonesian citizenship but failed to have an official letter of statement concerning their nationality could request the Court of First Instance to issue such letter. Prior to this provision, the need to provide proof of Indonesian citizenship was dealt with by Regulation of Military Authority of 1957. Thus, the provision in the 1958 Law reinforced the 1957 Military Regulation.

When the New Order regime came into power in 1967, the use of *SKBRI* became much more complicated. It even tended to create discriminatory practices, in particular with regard to Chinese people (Manan 2009: 110). Through a 1980 Presidential Decree as well as a 1980 Presidential Instruction, every Chinese person had to include the *SKBRI* when dealing with a number of administrative offices, in particular when dealing with the *Catatan Sipil* (Civil Register) for the purpose of obtaining an administrative letter for marriage, birth and death. The *SKBRI* was also used to apply for identity cards, passports, and for other administrative affairs.

Importantly, the Presidential Instruction changed the authority in matters relating to the *SBKRI* from the court to the administrative officers. The President ordered the Minister of Justice as well as the Minister of Interior to further arrange the issuance of this *SKBRI*, and to speed up the process the Ministers delegated this power to the Head of Local Government (either Mayor or Regent).

In reality, sadly not all Chinese people could afford the *SBKRI* due to economic reasons. Consequently, they would not receive any public services provided by the government. *Cina Benteng*, for example, was among the Chinese groups that suffered from

³¹ Art. 3 of Government Regulation No. 20 of 1959.

this discriminative treatment.³² Most members of this group have been economically weak so that they cannot pay the fee for processing the *SBKRI*.

Although the Soeharto administration (1967-1998) officially abolished the *SBKRI* in 1996 through Presidential Decree No. 56, in practice the use of *SBKRI* could still be found, such as in Palembang where some Chinese persons holding Indonesian citizenship were still required to include their *SBKRI* when applying for passports (Harijanti et., al 2007: 3). In order to reinforce this abolishment, President Habibie issued a Presidential Instruction in 1998 through which the *SBKRI* was no longer needed by Chinese people holding Indonesian citizenship.³³ The adoption of Law No. 40 of 2008 concerning the Elimination of Ethnic and Racial Discrimination also helped to end this practice of discrimination.³⁴ Moreover, Indonesia ratified the International Convention on the Elimination of All Forms of Racial Discrimination through Law No. 29 of 1999.³⁵

3. The Current Citizenship Regime: Law No. 12 of 2006 and Its Implementing Regulations

3.1. Major background of changes

Soeharto stepped down in May 1998 and was succeeded by Vice President Baharudin Jusuf Habibie. This transfer of power made the democratisation process possible, which led to a series of constitutional amendments from 1999 to 2002. The matter of citizenship was also revised through the adoption of Article 26 of the Amended 1945 Constitution. The new provision (Article 26(1)-(3)) is as follows:

- (1) Citizens shall consist of indigenous Indonesian peoples and persons of foreign origin who have been legalised as citizens in accordance with the 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.

In addition to this provision, matters concerning citizenship have also been stipulated in the Chapter on Human Rights. Article 28D(4) of the Amended 1945 Constitution states that “every person shall have the right to citizenship”. This is a very crucial development in the Indonesian citizenship regime and the article should be construed to mean that the state is obliged to prevent statelessness. In addition, Article 28E(1) of the Constitution ensures that every person has the right “to choose one’s citizenship”.

In line with the process of democratisation, there has been a growing movement on human rights protection, in particular in relation to women and children’s rights. Since the 1990s, Indonesia has been a party to a number of fundamental international conventions

³²*CinaBenteng* refers to Chinese people living in the area between Tangerang and South Jakarta. Most are classified as poor people.

³³ Presidential Instruction No. 26 of 1998.

³⁴ State Gazette No. 170 of 2008.

³⁵ State Gazette No. 83 of 1999.

relating to human rights, including the International Covenant on Civil and Political Rights (ICCPR),³⁶ the International Covenant of Economic, Social and Cultural Rights (ICESCR),³⁷ the International Covenant on the Right of the Child (CRC),³⁸ and the International Covenant of the Elimination of All Forms of Discrimination against Women (CEDAW).³⁹

The initiative to replace the 1958 Law with a new law began in 1997 when the Department of Justice prepared a bill (Manan 1997: 30). However, it took more than five years to come to fruition. The bill was the result of the right of initiative as belonging to the House of Representatives. It was in 2005 when the government together with the House of Representatives began the debate process and finally agreed to adopt the new law, known as Law No. 12 of 2006, on 1 August 2006.⁴⁰

The Elucidation to the new law provides three basic reasons behind its adoption: to provide better protection of human rights as well as citizens' rights, in particular those of women and children, which is in line with trends at the international level; to provide a new legal basis for the citizenship act which is based on the Amended 1945 Constitution;⁴¹ and to provide more democratic legislation that eliminates any form of discriminative treatment.⁴²

3.2. Some fundamental features of the 2006 Law

Regarded as a 'progressive or revolutionary Act' by the Minister of Law and Human Rights at the time – Hamid Awaluddin – the new 2006 Law contains a number of significant and distinct principles in comparison to the old 1958 Law (Harijanti et., al 2007: 3). In the same vein, Lukman Hakim Saifuddin – member of the Committee on Final Drafting – points out several reasons why the new law is revolutionary in nature (Harijanti et., al 2007: 95-98).

Firstly, the 2006 law allows for a limited form of dual citizenship which is applicable to children having parents with different nationalities. This fundamental principle has been seen as a recognition of women and children's rights. Children born from an international marriage now receive better protection in the sense that they may hold both parents' nationality until the specified age, i.e. the age 18 years or maximum 21 years.

Secondly, in terms of women's rights, the law grants equal rights to men and women as to the determination of their children's nationality. As mentioned above, Indonesia has ratified the CEDAW Convention, Article 9(2) of which states that "States Parties shall grant women equal rights with men with respect to the nationality of their children". Thus, as a party to the CEDAW Convention, Indonesia has carried out its international obligation. In addition, married women can now also become 'sponsor' for their foreign husbands who wish to become Indonesian citizens.

Thirdly, it provides a new meaning of the term 'indigenous Indonesian people' by referring to "those natural born citizens who have never received another nationality based on their own free will".⁴³ By doing this, it is expected that the national reconciliation will occur.

³⁶ Law No. 12 of 2005. State Gazette No. 119 of 2005.

³⁷ Law No. 11 of 2005. State Gazette No. 118 of 2005.

³⁸ Presidential Decree No. 36 of 1990. State Gazette No. 57 of 1990.

³⁹ Law No. 7 of 1984. State Gazette No. 29 of 1984.

⁴⁰ State Gazette No. 63 of 2006.

⁴¹ The legal basis for the 1958 Law, by contrast, was the 1950 Temporary Constitution.

⁴² Supplement to State Gazette No. 4634 of 2006.

⁴³ Elucidation to the Law No. 12 of 2006, providing explanatory guidance on Art. 2.

In that connection is important to point out that since independence, the Indonesian citizenry basically consists of two main groups. The first is indigenous Indonesian people and the second is composed of ‘outsiders’ (Chinese, Indian, and Arabic). The Chinese have always formed the biggest portion in comparison with the other two groups. Within the Chinese group, in turn, there are the ‘origin Chinese’ and the ‘mixed ethnic origin Chinese’. Most of the Chinese belonging to the latter group had renounced their Indonesian nationality under the 1949 Agreement between the Federal Republic of Indonesia and the Netherlands. As a result, the loyalty of Chinese holding Indonesian nationality was cast in doubt.

Paulus (1983: 21) points out several reasons for the increasingly sharp distinctions between indigenous and non-indigenous, including:

- a. Cultural distinction which has created exclusiveness;
- b. Economic distinction;
- c. Legal distinction as a result of the racial division established under the colonial government.

In the economic sector in particular, there were specific terms showing such differences, i.e. ‘pribumi’ and ‘non-pribumi’. Moreover, Indonesian history has shown a number of incidents reflecting the above concern, such as events in May 1998 which resulted in a high number of casualties and the exodus of Chinese people.

In the past, the meaning of ‘indigenous Indonesian people’ always referred to ‘*pribumi*’. Hamid Awaluddin argues that the radical change of meaning has been endorsed in order to prevent discriminative treatment of particular groups, for example through the use of the *SBKRI* as described above (Harijanti et., al 2007: 3). Although this new meaning was intended to prevent discriminatory treatment, Manan argues that it is not in line with the intention of the founding fathers as expressed in the deliberative process during the constitutional drafting in 1945. He further argues that avoiding discrimination should not be accomplished by an extensive interpretation of the law (Manan 2009: 63-64).

Fourthly, like the 1958 Act, the new law emphasises the *ius sanguinis* principle as the prime method to determine Indonesian citizenship. The current use of both maternal and paternal lineages is a deviation from the previous *ius sanguinis a patre* principle.

Finally, in order to prevent statelessness, the 2006 Act makes use of *ius soli* and *ius sanguinis* simultaneously, regardless of the fact that Indonesia has not acceded to the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. This is, however, in line with Article 15(1) of the Universal Declaration of Human Rights (UDHR) stipulating that “everyone has the right to a nationality”, and Article 24(3) ICCPR and Article 7(1) CRC stating that “every child has the right to acquire a nationality”.

In addition to the above principles, the Elucidation to the 2006 Law provides some basic principles dealing with the state’s obligation to protect its citizens, including principles of national interest, maximum protection, non-discrimination, gender equality, as well as recognising and respecting human rights. With regard to the process of acquisition and loss of citizenship, the Elucidation lays down the principles of openness, publicity, and substantive correctness.⁴⁴

The basic structure of the 2006 Law is as follows:

⁴⁴ Ibid. General Explanation.

- a. Persons entitled to be a citizen of the Republic of Indonesia;
- b. Requirements and procedures for acquiring citizenship of the Republic of Indonesia;
- c. Loss of citizenship;
- d. Requirements and procedures for regaining citizenship of the Republic of Indonesia;
- e. Criminal sanctions.

3.3. Modes of acquisition and loss of nationality

Generally, the 2006 Law determines the legal policy of Indonesian citizenship. There are several important bases that can be considered shaping this policy (Manan 1997: 15-19). The first is that all indigenous Indonesian people hold Indonesian nationality. The next is that Indonesia is a non-immigrant state in the sense that Indonesia is not regarded as the final destination of people on the move. Moreover, Indonesia should apply the selection principle through which Indonesia will only give a permit to foreigners to enter and remain in Indonesian territory based on national interests. The same selection principle applies with regard to naturalisation. Furthermore, Indonesia should respect people who already chose to become Indonesian nationals. In other words, Indonesia should avoid the practice of involuntary deprivation.

3.3.1. Acquisition of nationality

The 2006 Law provides for several methods of becoming an Indonesian national: by birth, by naturalisation, by adoption, and by marriage. Indonesian nationality acquired by birth includes those born in Indonesia or abroad both whose parents are Indonesian nationals;⁴⁵ any person born in the country one of whose parents is an Indonesian citizen;⁴⁶ a child born in Indonesia to unknown parents;⁴⁷ and those born out of wedlock.⁴⁸ Moreover, Article 4 says that those born in the country to parents who are stateless are Indonesian nationals.⁴⁹ Furthermore, a child whose father or mother has been granted Indonesian nationality but passed away before swearing the oath is also regarded an Indonesian citizen.⁵⁰

As mentioned above, children born from an international marriage have dual citizenship. They have to opt for one of the nationalities when they reach the age of 18 years and before the age of 21 years at the latest. Unfortunately, the 2006 Law does not regulate in detail their status if they fail to do so. Rather, the consequence of this failure is found in Government Regulation No. 2 of 2007, which says that “in the case of children... who do not choose any of their citizenships, the legislative provisions on foreigners shall apply”.⁵¹ Thus, the concerned children will lose their Indonesian nationality if they are affected by this condition. I would argue, however, that the Indonesian government should regard them as Indonesian citizens rather than as foreigners, because this particular rule is in contradiction with the Indonesian citizenship policy which determines that Indonesian citizens will not lose

⁴⁵ Art. 4(a) of Law No. 12 of 2006.

⁴⁶ Ibid. Art. 4(c) and (d).

⁴⁷ Ibid. Art. 4(j).

⁴⁸ Ibid. Art. 4(g).

⁴⁹ Ibid. Art. 4(k).

⁵⁰ Ibid. Art. 4(m).

⁵¹ Art. 65(1) of Government Regulation No. 2 of 2007.

their nationality easily. Moreover, the consequences of not choosing any particular nationality should be regulated by the Law on Citizenship rather than by a Government Regulation, according to the Indonesian system of legislation.

For those children born prior to the enactment of the 2006 Law, their parents could simply make a declaration concerning the children's nationality before the relevant authority and had to do so, under Article 41, within four years after the entry into force on 1 August 2006. If the parents failed to do so, their children would lose Indonesian nationality. Many raised concern about this rule. It could happen that parents did not know about the time limit due to inadequate dissemination of information or parents unintentionally forgot to make a declaration on behalf of their children. The latter was evident in the Gloria Natapradja case that will be explained briefly below.

With respect to naturalisation, the 2006 Law distinguishes between two models of naturalisation. Article 8 deals with naturalisation of foreign national through the 'normal' process, whereas Article 20 regulates that the President may grant citizenship to those who make a substantial contribution or for the sake of national interest upon the consideration of the House of Representatives, unless this naturalisation results in dual nationality. The Elucidation to the 2006 Act provides that 'substantial contribution' includes contributions with regard to humanity, science and technology, culture, environment and sports that have enhanced the nation's status. The phrase 'for the sake of national interest' has been defined as "an extraordinary contribution to strengthen the state's sovereignty and to enhance the country's progress in particular in the economic field".⁵²

Foreigners who apply for Indonesian citizenship should:

- a. Be at least eighteen years of age or already married;
- b. Have lived in Indonesia for at least five consecutive years or at least ten years intermittently at the time of application;
- c. Have good health and sound mind;
- d. Be able to speak *Bahasa Indonesia* and acknowledge the state basic principles of *Pancasila* and the 1945 Constitution;
- e. Have never been legally prosecuted due to acts of crime and sentenced to jail for one year or more;
- f. Renounce any other citizenship upon acquiring Indonesian citizenship;
- g. Have employment or steady income; and
- h. Pay the naturalisation fee to the government.⁵³

Naturalisation is conditional since the President may approve or refuse the application.⁵⁴ There are two conditions that the President needs to comply with in approving or refusing the application. First, the President may approve or reject solely based on a legal consideration in which he/she will examine all the requirements determined by the 2006 Law. Secondly, the application may be rejected under the President's discretionary power in the sense that such application will be assessed using criteria that have been developed by the President, which will broadly be based on criteria of public order or maximum benefit for the country or society (Manan 2009: 98).

⁵² Elucidation to the Law No. 12 of 2006, providing explanatory guidance on Art. 20.

⁵³ Art. 9 of Law No. 12 of 2006.

⁵⁴ Ibid. Art. 13(1).

In the case of refusal, the President should provide a reason.⁵⁵ Although it has not been explicitly regulated, this refusal may be brought before a court as the decision of the President is classified as an administrative decision since it takes the form of a Presidential Decree (Manan 2009: 98). Unsuccessful applicants could make another application as the 2006 Law is silent about the matter of reapplying.

For the purpose of legal certainty, the 2006 Law lays down a time limit for the naturalisation process. Article 11 states that the application for naturalisation received by the Minister of Law and Human Rights should be conveyed accompanied by the Minister's consideration to the President within three months at the latest. If the President grants nationality, which takes the form of a Presidential Decree, the Minister should inform the applicant within fourteen days after the issuance of the Presidential Decree.⁵⁶ Indonesian nationality becomes effective once the successful applicant takes the oath. However, failing to do so within a particular time will lead to the non-acquisition of Indonesian citizenship.⁵⁷

It is important to note that although the 2006 Law provides for a time limit, this might not be fully honoured in practice. This is because the Minister may request other relevant institutions to conduct a thorough investigation as part of the principle of substantive correctness and the verifiability of the naturalisation requirements. This is possible under Article 5(2) of Government Regulation No. 2 of 2007.

In addition to ordinary naturalisation, the 2006 Act also provides for naturalisation based on an 'extraordinary' consideration. Government Regulation No. 2 of 2007 further regulates the procedure for this kind of naturalisation. A number of institutions, including state organs, governmental institutions or civil society organisations, can propose a candidate for whom it is deemed necessary that he/she receives Indonesian nationality, and the proposal is directed to the Minister.⁵⁸ Unlike with its predecessor, which required approval from parliament, naturalisation under the 2006 Act merely needs parliament's consideration. Thus, it is likely that the naturalisation process is 'easier' than under the previous law.

Indonesian nationality can also be acquired through adoption, which is regulated by Article 21(2) and says that a child below the age of five years old having a foreign nationality shall be an Indonesian national at the time of his/her legal adoption by persons holding Indonesian nationality. Similarly, a child having Indonesian citizenship who is adopted by foreigners will remain an Indonesian citizen, as stated in Article 5(2). If these conditions result in dual nationality for the concerned children, they must choose one of those nationalities upon reaching the age of 18 years.⁵⁹

Article 19(1) of the 2006 Law provides an opportunity for foreigners who have married an Indonesian national to become Indonesian citizens by simply making a declaration before the relevant authority. However, he/she should have had domicile in Indonesia for at least five consecutive years or ten years intermittently.⁶⁰ However, the 2006 Act also determines that the grant of Indonesian nationality may not create dual nationality. If dual nationality occurs, the person may be granted a permit to stay permanently in Indonesia under the existing immigration regulation.⁶¹

⁵⁵ Ibid. Art. 13(4).

⁵⁶ Ibid. Art. 13(3).

⁵⁷ Ibid. Art. 14(3).

⁵⁸ Art. 15 of Government Regulation No. 2 of 2007.

⁵⁹ Art. 6 of Law No. 12 of 2006.

⁶⁰ Ibid. Art. 19(2).

⁶¹ Ibid. Art. 19(3).

3.3.2. *Loss of nationality*

The Amended 1945 Constitution is silent as regards the principles guiding the loss of Indonesian citizenship. However, it guarantees that every person has the right to citizenship as well as the right to choose between the nationalities to which he/she is eligible. The right to citizenship, in my view, does not only create an obligation for the state to prevent statelessness, but it should also prohibit the state to involuntary or arbitrarily deprive a person of citizenship. In this regard, the state should avoid the loss of citizenship based on political reasons or as a consequence of serving a prison sentence due to committed crimes or for any other subjective reasons.

The 2006 Act provides a number of grounds for loss in Article 23 (a) – (i) which to some extent are quite similar to those in the former 1958 Law. Furthermore, it emphasises that in principle loss takes effect on a voluntary basis. Briefly, the grounds for loss are as follows:

- a. obtaining another citizenship on the basis of a person's own free will;
- b. refusing to renounce a foreign citizenship although he/she has the opportunity to do so;
- c. being declared to lose citizenship by the President of the Republic of Indonesia because the person of his/her own free will renounced Indonesian citizenship, provided that the concerned person has reached the age of 18 years or has married and has been living abroad. Loss of citizenship may not, however, result in statelessness;
- d. entering into foreign army service without the President's approval;
- e. entering voluntarily into foreign administrative service, provided that according to Indonesian law such an office in Indonesia can be held by Indonesian citizens only;
- f. voluntarily taking an oath or declare allegiance to a foreign country or a part of that country;
- g. participating in an election having a constitutional character in a foreign country;
- h. having a passport or official letter that functions as a nationality identification for the person;
- i. living abroad for five consecutive years without being in state service, without a legitimate reason, and intentionally not declaring his/her willingness to remain an Indonesian citizen before those five years have passed and thereafter every five years. Loss may not, however, result in statelessness.

Depending on the ground for loss under which a person lost citizenship, Government Regulation No. 2 of 2007 provides for different ways of reacquiring Indonesia nationality.⁶² For those who lose their nationality based on Article 23(a) to (h) and wish to reacquire, the Government Regulation determines they should follow the naturalisation process whereas persons who lose nationality based on Article 23(i) simply make a direct application to the Minister. Once they comply with all necessary requirements to the Minister's satisfaction, the latter issues a Ministerial Decree on the reacquisition of Indonesian nationality.⁶³

⁶² Art. 43(1) and (2) of Government Regulation No. 2 of 2007.

⁶³ Ibid. Art. 44(1) and Art. 46(3).

4. Current political debates and reform plans

In 2015, an initiative to amend the existing 2006 Law was proposed by Commission III of the House of Representatives. There are a number of issues that are the driving force behind the proposed amendment, first and foremost the possibility to allow full dual citizenship and to address the weaknesses of the citizenship regime under the 2006 Law, including a disharmony of rules between the 2006 Law and its implementing regulation. The need to solve this disharmony is fundamentally important, but the adoption of dual citizenship is considered a more controversial issue. This is particularly driven by two recent and famous incidents, known as *ArcandraTahar* and *Gloria Natapradja Hamel*.

4.1. The dual citizenship issue

As mentioned just now, there are two leading cases that stimulated the ongoing discussion about dual citizenship in 2016. The first is *ArcandraTahar*. He was appointed as Minister for Energy, Mineral and Natural Resources in August 2016 but was in office for only twenty days, as the President dismissed him after receiving major criticism from the public based on the fact that Tahar was a US citizen.⁶⁴ However, according to the US Citizenship Act, Tahar automatically lost his US citizenship when he took the oath as a Minister, which then led to the issuance of a Certificate of Loss of Nationality by the United States on 15 August 2016. The US Embassy officially confirmed this loss at the end of August 2016. As a result, Tahar was stateless. Surprisingly, the Indonesian government proceeded to a ‘quick response’ to the effect that Tahar reacquired Indonesian citizenship, despite criticism from academics that political motivations had encouraged the government to do so (Harijanti 2016). In September 2016, the Minister of Law and Human Rights ‘reinstated’ Tahar’s Indonesian nationality, and it paved the way for Tahar’s appointment as Vice Minister of Ministry of Energy and Mineral Resources.

The second case concerned Gloria Natapradja Hamel – a 16 year old senior high school student – who was dismissed from *PasukanPengibarBenderaPusaka* (the prestigious flag-hoisting team) for the state palace Independence Day celebration. The main reason was that she holds French nationality. She was born from a mixed marriage before the adoption of the 2006 Law. Her father holds French citizenship whereas her mother is an Indonesian citizen. As a result of the parents’ failure to comply with Article 41 by not reporting to the authorities their choice for Indonesian nationality for the child, Hamel lost her Indonesian nationality. Unlike in the Tahar case, the Indonesian government through the Minister of Law and Human Rights is reluctant to use its discretionary power to restore Hamel’s Indonesian citizenship. Hamel’s mother has submitted a petition to the Indonesian Constitutional Court requesting the Court to review Article 41 of the 2006 Law against the Amended 1945 Constitution. At the time of writing this report, the review process is still in progress.

⁶⁴In February 2012, the Representative Office of the Republic of Indonesia in Houston had extended Tahar’s Indonesian passport until 2017. Two months later, Tahar also became the holder of a US passport which was in force until 2022. According to the 2006 Indonesian Citizenship Act, Tahar lost his Indonesian nationality, particularly based on Art. 23(a), (f), and (h). However, it was believed that Tahar had not renounced his Indonesian nationality before the Representative Office. This is the main reason why his loss of Indonesian nationality had not been published in the State Journal (Harijanti 2016).

The two instances mentioned above demonstrate distinct approaches by the Indonesian government. On the one hand, the Government issued a quick decision to solve Tahar's case, despite the fact that one could argue bad faith on the part of Tahar because he had never intentionally made a declaration to renounce Indonesian citizenship when he received US citizenship. On the other hand, the government shows an unwillingness to restore Hamel's citizenship under its discretionary administrative power. I would argue that for three reasons the government should be more accommodative on relaxing Article 41 of the 2006 Law and thereby treat the Hamel case in a way similar to that of Tahar (Harijanti 2016).

First, the core character of Indonesian citizenship is allegiance, which to a certain extent reflects a genuine link between state and its members. Hamel in this regard has satisfactorily demonstrated a true link with Indonesia as she has been living in Indonesia since her birth and has never expressed and committed any hostility towards Indonesia. Second, Indonesia has ratified the CRC and therefore should comply with the fundamental principle of 'the best interest of the child'. Finally, as reacquisition of Indonesian nationality is classified as an administrative action, the Minister of Law and Human Rights should immediately grant nationality by using his/her inherent discretionary power. This action is justified as it merely emphasises the main purpose of the reacquisition, i.e to give greater protection and benefit to Hamel.

As a result of the Tahar and Hamel cases, the toleration of dual citizenship has widely been suggested by some leading civil society organisations, most notably the Indonesian Diaspora Network, *GerakanKebajikan Indonesia* (the Indonesian Movement for Righteousness), and *AdvokasiMasyarakatPerkawinanCampuran Indonesia* (the Indonesian Advocacy Community for Mixed Marriage). In general, the proposals show two distinct approaches. One approach strongly suggests that Indonesia should adopt a new regime on citizenship, allowing Indonesian people living abroad to hold dual citizenship. In contrast, the second approach is 'softer' in the sense that full dual nationality is not the only solution to accommodate the Indonesian diaspora. It may also reach the desired outcome by other means, for example, through the concept of 'quasi citizenship' or the use of immigration law measures (Dewansyah 2016:7).

The Government holds a similar opinion on the need to amend the existing 2006 Law. This has been pointed out, for example, by Freddy Haris – Director General of the Legal Administration of Ministry of Law and Human Rights (Republika 2016). However, Arsul Sani – member of the Legal Commission of the House of Representatives – has urged for the need to conduct a comprehensive study before making a decision on revising the 2006 Law, as a number of issues should be considered carefully, in particular the issue of dual nationality (Kompas 2016). This reflects to some extent that there is so far "no political design to implement [dual citizenship]" (Santoso 2014: 117).

4.2. The weaknesses of current citizenship regime

As mentioned in the previous section, the existing citizenship regime contains some flaws. This is apparent in relation to the time limit for parents having different nationalities to make a declaration of Indonesian nationality on behalf of their children born before 2006. Article 41 only gives four years to do so (2006-2010). Ike Farida – Head of the Advocacy Division of Mixed Marriage Organisation – strongly points out that this particular provision is expected to be quashed by the court (Kompas 2016). Similarly, those who lost Indonesian citizenship because they did not make a declaration before the Representatives Office of the

Republic of Indonesia demonstrating their willingness to continue Indonesian citizenship, only have three years to register in order to reacquire their Indonesian nationality.⁶⁵

On a more fundamental level, the 2006 Law has also failed to stipulate the status of children having dual nationality once they reach the age of eighteen years (or maximum twenty-one years) in case such children do not explicitly express their intention to retain one of the nationalities. Although Government Regulation No. 2 of 2007 has regulated this matter, it is in contravention with the basic policy on Indonesian citizenship regime, which says that “once persons are Indonesian, they should always be regarded as Indonesian citizens”. From this perspective, the Indonesian government should thus defend their Indonesian nationality to the maximum extent possible.

Another matter to consider regulating in more detail in the 2006 Law would be ‘extraordinary naturalisation’. The provisions in the Government Regulation dealing with this matter should be transferred to the 2006 Law.

5. Conclusions

It is generally accepted that according to the principle of sovereignty, each state has the power to decide who its nationals are, based on its own national law. While at the national level citizenship law should be consistent with the constitution, from an international perspective the national government should uphold basic principles that are recognised in other legal fields, including international law dealing with citizenship as well as the domain of human rights. This means that several inroads have been made into the concept of state sovereignty.

The Indonesian citizenship regime has been shaped by two fundamental processes, namely decolonisation and post-colonial nation building in the era of globalisation. These two processes, in particular decolonisation, undoubtedly are responsible for some important characteristics of Indonesian citizenship law in comparison to other states. Citizenship has been heavily viewed as an ‘ideological construction of politics and history’. This leads to the ideal of the nation-state. Consequently, the issues of nationalism and allegiance take a significant part in all efforts to citizenship reform and these have, indeed, constantly marked citizenship law and policy in Indonesia.

The development of the citizenship regime in Indonesia has shown considerably change in terms of how citizenship is acquired. Although the last two citizenship laws, i.e, the 1958 Laws as well as the 2006 Law, emphasise the use of *ius sanguinis*, the first citizenship law of 1946 preferred *ius soli*. Nonetheless, *ius soli* plays a role under current Indonesian law in order to prevent statelessness. The duty to avoid statelessness has been reinforced by the adoption of a constitutional provision that guarantees the right to a nationality.

The most fundamental post-colonial citizenship reform is the introduction of a form of limited dual citizenship that allows children born from international marriages to have the citizenship of both their parents – at least until they reach the age of majority, when they have to make a choice for one of their nationalities. Indeed, this toleration of dual citizenship

⁶⁵ Art. 42 of Law No. 12 of 2006.

shows that Indonesia is serious about better safeguarding the rights of women and children. This is the result of the ratification of the CEDAW Convention and the CRC Convention in 1984 and 1990, respectively.

In response to the recent proposal for implementing full dual nationality, I am not confident that the relaxation of the prohibition on dual nationality can be accomplished in the near future. This is mainly because nationalism and allegiance or loyalty appear to be dominant arguments in the debate. If any amendment takes place, it will likely only touch on matters that are considered not too 'sensitive' in nature.

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