

The Principles and Meaning of Indonesian Citizenship Conception According to The 1945 Constitution

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Abstract. Emphasizing on legal aspects of the conception of Indonesian citizenship, which is in the Constitution 1945 framework is putted as legal science study of matters pertaining to form of government. There were some kind of words, like as “bangsa, rakyat, and warga negara” that contented at the Constitution 1945, that show one meaning which in the conception of Indonesian citizenship. Major problems that are identified are (1) What fundamental principles of Indonesian citizenship that could brow up from the Constituion 1945 and (2) How the meaning of Indonesian citizenship according to the Constitution 1945. There are several fundamental principles of Indonesia citizenshipin the Constitution 1945 that could be base of Indonesian Laws of Citizenship toward, e.i. the unity citizenship principle, the integrated principle, non-immigration state principle, a close and factual connection, *ius soli*, and *ius sanguinis*. The Indonesian citizenship conception not only contain the meaning in legal or formal sense, but has wide sense that invollep contain historical, sociological, and *yuridis* sense. In Indonesian state”the tie pepertual or permanent allegiance” is inherent in each citizen of Indonesia.

Keywords: Citizenship, Meaning of citizenship, Principles of Citizenship.

1. Introduction

Discussing the principles of citizenship and the meaning of a conception of citizenship is closely attached to state organizations, such as the Indonesian state. In the study of Constitutional Law (*staatsrecht*), the state is the object of general state studies (*staatswissenschaft*) which in Logemann's view is conceived of as an organization of power[1] or political organization[2]. Generally, the state as an organization of power (*gezagsorganisatie*)[3] which is a political integration of power[4], formed of certain elements.

According to the 1933 Montevideo Convention, the states as a person of international law should have qualifications): (1) a permanent population; (2) a defined territory; (3) a government; and (4) a capacity to enter into relations with other states[5]. A permanent population which in the legal sense is a citizen, is a core element of the country's building, therefore the issue of citizenship in the state concerns the most central element. The

formulation of the understanding of the state in various schools of thought from experts ranging from ancient to modern thinking always places the existence of citizens as the main element[6].

In the context of the Republic of Indonesia, citizens are the main pillars of the existence of state buildings. The term “*sokoguru*” was put forward by the drafters of the constitution before the session of the Indonesian Independence Preparatory Agency for Investigation (BPUPKI)[7]. The thought of the conception of Indonesian citizenship was born in line with the formulation of the concepts of an independent Indonesian state which officially began to emerge since the discussions at the BPUPKI session[8]. Then obtain a constitutional form spread in the construction of the 1945 Constitution of the Republic of Indonesia (1945 Constitution), both listed in the Preamble and in the Body.

So far there have been quite a lot of studies on territorial issues, governance issues and sovereignty issues[9], while studies on citizenship issues are still lacking[10]. Research on the issue of Indonesian citizenship has so far not been carried out adequately compared to other fields of constitutionality[11]. General symptoms, writing and developing citizenship are more likely to be in the domain of State Administrative Law[12]. Therefore, a study of the conception of Indonesian citizenship occupies a strategic position in the discourse and treasury of Indonesian constitutional law, especially concerning more basic aspects.

In terminology, citizenship is as old as the Republic of Indonesia, but conceptually, there is no understanding that can be followed together. The conception of Indonesian citizenship, both stated in the Preamble and in the body of the 1945 Constitution, has not been well identified at least about the perspective of the principles and the meaning of the concept.

The element of citizens is closely related to the purpose of the formation of a country, because basically the state was established to protect the interests of its citizens. The Preamble to the 1945 Constitution states that Indonesia's independence on August 17, 1945 is the right of the Indonesian nation and is a gateway that delivers the Indonesian people to become an independent, united, sovereign, just and prosperous nation. Preamble of the 1945 Constitution contained the same *rechtheed* as the Jakarta Charter, Preamble of the RIS Constitution, and the Preamble of the 1950 Provisional Constitution. Likewise, within the framework of amending the 1945 Constitution, the MPR RI had agreed that Preamble of the 1945 Constitution was not changed. This means that the main ideas in the Preamble are very fundamental and remain relevant to development, because they continue to function as philosophical references to this day. Thus, the purpose of the formation of the Republic of Indonesia was to protect the entire Indonesian nation.

There are several words or terms for membership in the Indonesian state, such as the word people, nation, society, and citizens. Constitutionally insofar as the words are expressly stated in the formulations of the 1945 Constitution, the word people is a dominant term, at least referred to in 8 (eight) contexts, among others in relation to the highest power holders in the state, related to the designation of the institution representative {*vide*: Article 2 paragraph (1)}, and related to prosperity {*vide*: Article 23 paragraph (3)}. The word nation is coupled with the word *nusa* in the context of the president's oath and promise (*vide*: Article 9). Meanwhile, the word community was found in relation to the unity of traditional law, traditional rights, and culture {*vide*: Article 18B, Article 28I, and Article 32 paragraph (1)}. The names of citizens are included among others in the context of equality before the law and government, defense and security, and related to the issue of education guarantee (*vide*: Article 27, Article 30 and Article 31).

In development of state practice in Indonesia, there are two leading cases that stimulated the ongoing discussion about dual citizenship in 2016. *The first*, is Arcandra Tahar who was

appointed as Minister for Energy, Mineral and Natural Resources in August 2016. But he 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. According to the US Citizenship Act, Arcandra 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. He 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 [13]. 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 Pasukan Pengibar Bendera Pusaka (the prestigious flag-hoisting team) for the state palace Independence Day celebration. The main reason was that she holds French nationality, because was born from a mixed marriage. Her father holds French citizenship whereas her mother is an Indonesian citizen. As a result of the parents' failure to comply with Article 41 of Indonesian Law of Citizenship 2006 by not reporting to the authorities their choice for Indonesian nationality for the child, Hamel lost her Indonesian nationality.

This article discusses and describe the basic principles of Indonesian citizenship and the meaning of the conception of Indonesian citizenship according to the 1945 Constitution of the Republic of Indonesia.

2. Method

This paper is the result of a review or study of various positive legal documents relating to the themes discussed. The objective of the research is secondary data in the form of primary and secondary legal materials. Therefore, referring to the research methods that exist in the typology of legal research, the methodology in this study purely applies the juridical-normative-doctrinal legal research methods.

3. Result and Discussion

Discuss the principles and meaning of the conception of Indonesian citizenship, in line with the principles and meaning of the concept of general citizenship. In terminology there are several words or terms in foreign languages for the term citizenship, which contain different dimensions of meaning, understanding, and substance. In the perspective of comparative law there are terms of naturality, nationality, and citizenship which all mean citizenship in a united political community or organization of power. There are also terms that have special local meaning such as, *Indigenat (German)*, *Heimatrecht (Austria)*, and *Vecindad (Spanish)*. Like the terms Naturality and Subject subject, these terms tend to indicate territorial relations in local membership rather than national membership which has feudal characteristics (= citizenship in English Legal terminology).

The word nationality and citizenship is a word or term that is popular and is commonly interpreted as citizenship. All of these words or terms have the same meaning, which means membership or citizenship in the country. In other words conceptually, these terms are a concept that shows the same idea or purpose, namely membership in the state (membership of political community) with approaches and affirmations on different aspects. Therefore, the concept of citizenship has a broad dimension, because citizenship contains meaning or has meaning that can be seen from various points of view.

In linguistic citizenship (citizens plus suffixes to and affection) means all matters relating to citizens. Citizenship as any type of relationship between a citizen and a country which results in the obligation of that country to protect its citizens or in the sense of citizenship includes all types of protection by the state.

a. Basic Principles of Indonesian Citizenship

The principles of Indonesian citizenship are basic or general and some are specific. Principles that are basically in accordance with the way of the Indonesian people are generally more concerned with feelings than ratios, because they are intuitive, mystical, and immaterial. At the basic level of Indonesia's original transcendental (religious) mind, it cannot be separated from belief in the power of the One God. The birth and existence of the Indonesian nation and state is a blessing and a blessing from God Almighty. In the conception of citizenship, a nation is created in Indonesian nature, the status of Indonesian citizenship is essentially the destiny of God Almighty. This indicates the basic principle of the spirituality of Indonesian citizenship which is very strongly adhered to in line with the magical-religious customary law community characteristics reflected in the first principle of the Pancasila.

The original view of the Indonesian people, emphasized that the Indonesian state was formed essentially driven by an invisible inner force (*Innere stillwirkende Kraefte*) which grew as the soul of the Nation (*Volksgeist*). In the conception of citizenship, this view underlies the relationship between the Indonesian people and the territory that is eternal, the reciprocal relationship between citizens and the state is very strong bound by factors that exceed mere human will. This view places the national element in a central and primary position in the Indonesian state. The state is not only for the state, but for the benefit of citizens. A state ideology which contains the basic principles of the people as the primary element in the conception of Indonesian citizenship. The nation that led to the birth of the state, the nation is the nation's maker.

The thought of Indonesian citizenship is based on the unity of a community which is engraved on the basis of blood ties, the unity of residence, or based on blood ties with the unity of residence at once. The State of Indonesia was formed to reaffirm the relationship between the people and the state in a wider scope. The Indonesian people not only emphasize the mere aspect of humans, but are holistically seen in relation to their homeland. In the Indonesian homeland Indonesian people are born, live their lives, and when they die their bodies are united with the Indonesian homeland. The original Indonesian perspective requires the unity of Indonesian people and their region and environment. This thinking is the core of the basic principle of oneness between citizens and the Indonesian state.

Politically, the Indonesian people had gathered to build organized collectivity since 1908, so that with the declaration of the establishment of the Indonesian state, it meant that Indonesia's national integration was final. The existence of citizens from various nationalities and ethnicities is a logical consequence of national integration to lead to state integration[14]. So, there is an important basic principle in the conception of Indonesian citizenship, which is the basic principle of integration / unity of the state. This principle implies that a nation that declares Indonesian independence becomes a supporter (citizen) of the Republic of Indonesia.

The general principle of Indonesian citizenship is implicit in the designation of the whole of the Indonesian Nation and which is the construction of a group of native Indonesian people and people of other nationalities. The existence of citizens from native Indonesian people and the presence of citizens from other nationalities must be complementary or complementary in the Indonesian state. The first group can be considered as the main pillar of the building of the Republic of Indonesia, while the second group becomes part of the unity of members of the

country of their own choosing. Contained thoughts to realize a unified citizen as a whole. This shows one of the important principles in the conception of Indonesian citizenship, which is the basic principle of citizens' unity.

The principle of Indonesian citizenship is a constitutional formulation with the categorization and characteristics of Indonesian Citizens originating from native Indonesian people and those of other nationalities who are ratified by law as citizens. In practice, there are groupings of citizens into Indigenous and Non-Indigenous groups which result in differentiation of treatment for citizens.

The mention of the original Indonesian nation and other nations, only applies when determining who becomes an independent Indonesian citizen. The understanding of the nation attached to the expressions of the native Indonesians and other people must be understood in the context of constitutional determination. By law the term nation is related to citizenship, not related to the group of nations in the context of the founding of the Indonesian state, meaning citizens because of the stipulation of laws. The principle of determining citizenship through the enactment of a law (citizen by operation of law) means that all groups are declared citizens of the Republic of Indonesia, by establishing a constitution.

With constitutional arrangements that determine who is a citizen, general law principles are followed in determining citizenship, namely sovereign state. The right of the state determines who becomes its citizens, always paying attention to the principle of real and strong relationships (a close and factual connection). The State of Indonesia determines its citizens based on the structure of society before and at the time the country was born or established. The structure of Indonesian society before the declaration of independence inherited the composition of the population which was deliberately created and created by the grouping of society by law in the field of *Dutch* citizenship.

The native Indonesian people are those who are classified as *Inheemse onderdanen* or *Inlanders* (*Bumiputra*) and their descendants. *Bumiputra* are all people who belong to the native people of Indonesia from the Dutch East Indies and do not switch into other groups of people. *Bumiputra* or native people of Indonesia are often interpreted as a class of people who have been incarnated in the days of Srivijaya and Majapahit, for generations have inhabited the archipelago for generations. They make the land as a source of life, consider the land to be united with themselves, which has a magical-religious nature, realizing that their spilled land must be guarded and maintained, because it functions as a place to store their bodies after death. The Republic of Indonesia is considered to be the third national state as the restoration of Srivijaya's sovereignty as the first state and Majapahit fraternity as the second ever victorious state in Indonesia. Supporting these countries are the native people of Indonesia who are the main supporters of the birth of the Republic of Indonesia. *Bumiputra* is a person in the natural sense in terms of citizenship. An individual is called natural if born in that country (a natural of the country is an individual who is born in a city of certain which is located of this country). The term *bumiputra* contains citizenship which is based on the principle of birth according to the regional concept known as the *Ius Soli* principle.

In nationality the word *nasci* is known which means as a birth origin of the same common ancestor or group of people who are a lineage or nationality (nation). The principle of heredity in the original terminology of the Indonesian language is called *wangsa* which is the same as the nation. In the sense of dynasty or nation does not depend on elements or aspects of territorial territory, but is determined by aspects of blood lineage or lineage. Thus, the conception of Indonesian citizenship also applies the principle of *Ius Sanguinis*.

The principle of *solus* and the principle of *ius sanguinis* in Indonesian citizenship is not merely natural. According to the law there has been a fusion of ethnic groups that support the

existence of the Indonesian state into the unity of Indonesian citizens. At the same time, a principle is adopted that every citizen of the Republic of Indonesia within the territory of the Republic of Indonesia is deemed to have no other citizenship (the principle of single citizenship). Parallel with that, it should not be easy for an Indonesian citizen to lose his Indonesian citizenship status against his own will, on the contrary as a citizen has the right to all forms of protection from the State or government wherever located. Every Indonesian citizen has freedom of entry and exit into the territory of the Indonesian state. This is called the principle that once an Indonesian citizen is a permanent Indonesian citizen.

b. The Meaning of the Concept of Indonesian Citizenship

In the realm of legal studies, the notion of citizenship legally rooted in the word *citoyen* (citizenship) is the most popular formulation and is commonly considered standard as a term containing legal meaning[15]. The meaning of citizenship in the perspective of legal science is understood and indicated in the dimensions of positive, negative, active and passive status. The status of positive citizenship gives citizens the right to demand positive measures of protection from the state. Negative status means providing guarantees that the state cannot interfere and act arbitrarily in its personal affairs. While active status gives citizens the right to actively participate in the administration of state affairs through the right to vote and the right to be elected. This is what is commonly referred to as citizenship rights in politics. The passive status is actually an obligation of citizens to submit to and obey all power and state laws[16].

In general, the concept of citizenship has meaning and contains a broad dimension with a series of elements in it. The conception of citizenship shows a strong and special legal relationship in which an individual citizen is determined and committed to living for life and only ties a lasting relationship with a country with all forms of rights and obligations. The relationship can be seen from two polars, namely on the one hand the emphasis from the point of view of individual citizens and the point of view of the state, on the other side. The relationship must be built voluntarily without coercion by both the state and citizens based on agreement.

The conception of Indonesian citizenship is implied both in the general (broad) formulation and in a special (narrow) sense. With a coherent plot, the conception of Indonesian citizenship is implicit in the expressions of all Indonesians listed in the Preamble, the terms nation, people, and the words of citizens in several articles. In the context of an independent Indonesian state the words or terms of the people, nation, society and citizens are basically used to indicate the same thing (= membership in the Indonesian state).

Inclusion of these terms is more placed in the framework of reciprocal relations between members of the state and the state which reflects the existence of rights and obligations. As such, these terms describe membership in the political community or political unity in a juridical, sociological, and political sense.

The preamble of the Indonesian constitution states that the struggle for the Indonesian independence movement will bring the Indonesian people to the front gate of the independence of the Indonesian State, the Indonesian people who declare independence, and the government of the Indonesian state must protect the entire Indonesian nation, and must realize social justice for all Indonesian people.

Preamble of the Indonesian Constitution has something in common with the Preamble of United State Constitution, in term of subject. The Preamble constitution of United State begins with "We the People of the United States" which explicitly means affirmation about subject in the United State of America.

Along with the changes of the United State Constitution, term the people of the United States has strengthened and defined the meaning of being United State Citizen. According to the opinion Edward S. Corwin's, "We, the people of United States", in other words, We, the citizen of the United States, whether voters or nonvoters[17]. The words "people of the United States" and "citizen" are synonymous terms. They both describe the political body who according to our republican institution, form the sovereignty, and who hold the power and conduct the government through their representative[18].

In the Indonesian language, the terminology of a nation or people is the same as a citizen[19]. Thus, the phrase Indonesian people, Indonesian people, and all Indonesian people are one essence with the word people, nation, society, and citizens, identical to a permanent population which means citizens of the Indonesian state.

The constitutional basis of citizenship explicitly states that those who become Indonesian citizens are those who are native Indonesian people and those of other nationalities who are ratified by law as citizens. The terms native Indonesian people and other nationalities, reflect the category of the origin of Indonesian citizens who characterize the conception of citizenship according to the 1945 Constitution. Categorization of these terms is in line with the terms contained in the Preamble to contain meanings and principles basic principles relating to the conception of Indonesian citizenship, among others with regard to the term native Indonesian.

The term nation does not merely have an ethnic meaning and the word people does not only refer to groups of local people who are confronted with the word government. In the context of the establishment of an independent Republic of Indonesia, the terms nation and people must be understood as citizens and the expression of the whole nation means and must be read in the same way as all citizens.

In the terminology literature, the nation is defined as a group of people who are in the same boat and who want to live united together because of equality of fate. The term nation is used to describe the wholeness of one unit of people in relation to the wholeness and unity of other people. Meanwhile, the terminology of the people in the literature contains the understanding as a group of people who are united by a sense of togetherness to jointly inhabit a certain area. Nation and people already existed before the state was established or independent. Long before the Indonesian state was founded or formed, the Indonesian nation had already demonstrated its existence by pledging itself in the Youth Pledge on October 28, 1928. Then on August 17, 1945 together declaring Indonesian independence. As for the people of Indonesia (which are identified with the original Indonesian people) their existence is spread in various tribes and descendants with all forms of customs, culture, language, and beliefs or religions respectively.

The nation and people of Indonesia are the main elements of Indonesian citizens, because those who have lived since time immemorial in the Archipelago (*Dutch East Indies*) after the independence of the Indonesian state were formed automatically by the power of law (in this case the Constitution) changed its status to Indonesian citizens. Therefore, in the conception of Indonesian citizenship, it implies that the existence of Indonesian citizens is in line with the birth of the Republic of Indonesia. They have lived and existed in the territory when Indonesia was founded, together fighting for the country of Indonesia, loyal, and recognizing Indonesia as their homeland forever.

When examined with a theoretical approach, the conception of Indonesian citizenship not only contains meaning as a political-legal denoting membership of state, but also means as a historical-biological denoting membership of nation. In this case, the eternal loyalty (the tie perpetual allegiance) to the Indonesian state is inherent in every citizen. It also indicates that the conception of Indonesian citizenship according to the 1945 Constitution reflects the

characteristics of genuine citizenship which are simultaneously influenced by the concept of citizenship according to the Continental European and Anglo Saxon legal systems.

Membership in the state in the sense of being seen in the same way as biological history (historico-biological) is characterized by the existence of the subjectivity of group sentiments in a unity of people who wish to live together. This element of sentiment is usually considered a factor that forms a race. In the sense of membership like this it is not always necessary to have an element of territory. Membership is biologically a membership based on social facts and various feelings in common as part of fellow groups. Therefore, the conception of citizenship has several common attributes such as language equality, regional similarity, tradition, political entities, and religion. Thus, the meaning of citizenship emphasizes the role of individuals in horizontal relations with each other.

The membership in the state legally and politically has the essence of a person's basic status which is attached to the state by an eternal fabric that is recognized or formally accepted by all parties. The most important conditions that mark it are a very strong vertical attitude of citizens' loyalty to the state and horizontal loyalty among citizens who will strengthen their fellow relationships. With vertical loyalty and horizontal loyalty in the end will create a condition of a vertical relationship that is collective from all citizens to the state as a shade.

The conception of Indonesian citizenship according to the 1945 Constitution implies membership in the state from various perspectives, such as biological history, from legal aspects, and in relation to socio-political aspects.

The meaning of citizenship as is generally known in the field of citizenship field, is also reflected in the perspective and characteristics of the conception of Indonesian citizenship according to the 1945 Constitution. Even more than that, the meaning of Indonesian citizenship has a broader content, because it contains an understanding of citizenship that is characterized by Indonesia as reflected in the in the expression of the native people of Indonesia.

The conception of Indonesian citizenship has a broad meaning because it contains elements and accommodates a variety of state thoughts that have developed since the past and have been generally accepted. In the conception of Indonesian citizenship there are elements of membership relations that are mutualistic, give rise to status, give birth to rights and obligations, are feudal and territorial in nature, and there is an element of eternal loyalty. Judging from the state's thoughts that have been generally accepted, implied by several influences. First, it indicates the influence of ancient *Greek* legal thought that uses the term people identical to citizens who are vis-a-vis with the state. Secondly, it accommodates the concept of citizenship from the Continental European legal system and the Anglo Saxon legal system while simultaneously highlighting aspects of government and territorial aspects. Third, it shows the original Indonesian way of thinking that places local concepts in tandem with political aspects.

4. Conclusion

The 1945 Constitution of the Republic of Indonesia contains the conception of Indonesian citizenship, implied in the formulation of words contained in the Preamble and in the formulation of several articles with specific characteristics. The conception of Indonesian citizenship contains the principles and meaning of citizenship that is different from the principles and meaning of citizenship in general.

The concept of Indonesian citizenship includes a number of principles, such as the principle of a close and factual connection based on birth factors, both according to heredity

(*ius sanguinis* principle) or because of the birth area (*ius soli* principle), nonimmigrant countries (non immigrant state principles), and selective policy.

The meaning of the concept of Indonesian citizenship constitutionally (the constitutional meaning), is mainly reflected in the understanding of the people of the original Indonesian people and those of other nations who are ratified by the law. The terminology of all nations is the same as all citizens, because of any national origin Indonesian citizens must unite and merge in a complementary form personnel substratum (*sokoguru*) Indonesian state. Indonesian citizens are those who have lived within the territory of Indonesia, jointly fighting for the Indonesian state, being loyal, and recognizing Indonesia as their homeland forever. Every Indonesian citizen must establish himself and be determined to live a life and only bind a lasting relationship with the Indonesian state. With all rights and obligations, for every Indonesian citizen there is a permanent relationship with an emphasis on the ties of eternal loyalty (the tie perpetual allegiance) and horizontal vertical-loyalty loyalties. The conception of Indonesian citizenship has meaning as a political-legal denoting membership of state and as a historical-biological denoting membership of nation.

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