

Analysis of attributes of citizenship in legal dimension

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ABSTRACT

Citizenship as a legal status is the form of relationship between a state and citizens who act in accordance with laws, have rights and obligations, and are entitled to protection from the state. It has important consequences for the public life of citizens. However, does the regulation of the legal status of citizenship automatically include contents of citizenship, namely attributes of citizenship? The present study aims to analyze the attributes of Indonesian citizenship because of the regulation of citizenship as a legal status. Researchers employed document content analysis toward a legal norm that is Law No. 12 of 2012 concerning Indonesian Citizenship as well as interviews with experts. The results of the study show that based on its legal dimension Indonesian citizenship contains attributes of identity, acceptance of shared social values and formal contents of citizenship. The study concludes that there is no formulation of the material contents of Indonesian citizenship in the form of citizens' rights, obligations, and participation. The material contents of Indonesian citizenship are found in other norms in the articles of the 1946 Constitution which are further elaborated in laws of implementation.

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Introduction

The concepts of citizenship are diverse, and their meanings are developed. Some experts express different views. Citizenship is defined as a set of legal, political, economic, and cultural practices which define an individual as a competent member of society and consequently shape the flow of resources to individuals and social groups (Turner, 1993). It is a set of characteristics of being a citizen (Cogan & Derricott, 1998). Furthermore, Isin & Turner (2002) define citizenship as three fundamental axes, including extent (rules and norms of inclusion and exclusion), content (rights and responsibilities), and depth (thickness or thinness). Smith (2002) and Kalidjernih (2011) identify four meanings of citizenship, namely: (1) political rights to participate in government, (2) valid legal status of members of political community or sovereign nation, (3) attachment of individuals to not only their nation but also other communities (such as family, club, university, and broader political communities), and (4) presence of not only membership but also a set of practices. Meanwhile, Ilija (2011) mentions that citizenship has legal, political, and social dimensions.

Based on the views above, one of the meanings of citizenship involves a legal status or a legal dimension. Citizenship as a legal status can be equated to a concept of citizenship as a juridical tie (Arwiyah et al., 2013; Asshiddiqie, 2006; Winarno, 2013). Citizenship in a juridical sense is a legal tie (*de rechtband*) between a state and a natural person (*natuurlijke personen*), which causes the person to be under the authority of the state or, in other words, become the citizens of the state. The key notion of citizenship is the bond with the state, which marked either a firm statement from an individual to be a member or a citizen of the state or, in concrete form, a letter (a reference letter or a decree) as a proof of membership of the state.

Nowadays, citizenship as a legal status is of concern and the emergence of the concept of the rule of law (Asshiddiqie, 2006; Isharyanto, 2015). The legal concept of citizenship began with a view from Roman tradition that saw citizens as lawful men (*legalis homo*), replacing the concept in which citizens were considered as *zoon politicon* in Greek tradition (Kalidjernih, 2011). Afterward, the concepts of citizens as legal persons and legal citizenship were developed in the West. The concept of citizenship as a legal status in the form of relationship between a state and citizens who act by laws, have rights and obligations, and are entitled to protection from the state. In the rule of law, citizenship status is of consequence nowadays. According to Salim (2017) whether or not a person is a citizen contributes to a great consequence for public life. It is later said that statutory laws in each state constitutionally govern citizenship status.

The legal citizenship status of Indonesian citizens can be identified from the regulating legal formulations. In this case, Indonesia has a legal foundation of citizenship status regulations. Article 26 of the 1945 Constitution recognizes that citizens are indigenous Indonesians and persons of foreign origin who are legalized as citizens by the law. In addition, matters of citizenship are regulated by the law. An organic law that establishes the application of the Article is Law No. 12 of 2006 concerning Indonesian Citizenship. Until now, the law has become guidance for regulations regarding Indonesian citizenship.

However, referring to the arguments of Isin and Turner (2002), it is questionable whether Indonesia's citizenship regulations in a legal manner automatically have contents of such concepts of citizenship as rights, obligations, and participation. Also, referring to arguments of Cogan & Derricott (1998), it is questionable whether Indonesia's citizenship regulations contain matters of attributes of citizenship.

As a concept, an entire dimension of citizenship should include many elements, particularly attributes of citizenship. Bosniak (2006) stated that there are four meanings of citizenship. First, citizenship is a matter of formal legal status. Second, citizenship is a matter of rights—at an early stage, civil and political rights. Third, citizenship indicates active involvement or participation in democratic self-governance. Fourth, citizenship has subjective components that capture collective identity and social membership. Iija (2011) explained that citizenship has legal, political, and social dimensions. The legal dimension is indicated by certain rights guaranteed by law. Meanwhile, citizens' rights are included in the contents of citizenship (Isin & Turner, 2002). Therefore, the present study is important to conduct to find out and analyze whether Indonesian citizenship in legal dimension as stipulated in Law No. 12 of 2012 contains contents of the concepts of citizenship (Isin & Turner, 2002; Bosniak, 2006) or, according to Cogan & Derricott (1998), attributes of citizenship.

Some studies on citizenship in Indonesia in the legal dimension have not yet discussed the contents or attributes of citizenship. A study conducted by Prameswari & Agustin (2018) revealed that although citizenship status has become the right of every individual, Indonesia's citizenship law does not mention dual citizenship. However, it recognizes limited dual citizenship for children of intermarried couples until they reach 18 years of age or are married. A study conducted by Bakarbesy & Handajani (2012) affirmed that dual citizenship for children has implications for private international law, namely the applicable state law of their status. A study carried out by Supriyadi (2020) explained that recognizing dual citizenship is seen as part of state efforts to realize the welfare of all citizens and protect citizens' right to their citizenship status.

The studies above have not yet examined an issue on the attributes of citizenship as stipulated in Indonesia's Citizenship Law. The concept of attributes of citizenship was first introduced by Cogan & Derricott (1998). They defined citizenship as a set of characteristics of being a citizen. The attributes, or characteristics, include: 1) sense of identity, 2) the enjoyment of certain rights, 3) the

fulfillment of corresponding obligations, 4) a degree of interest and involvement in the public affair, and 5) acceptance of basic social values.

Based on the above explanation, the research questions of this study are (1) what are the attributes of Indonesian citizenship arising from the governance of Indonesian citizenship in its legal dimension, namely Law No. 12 of 2006?, and (2) Is the aspect of the legal status of Indonesian citizens as regulated by the citizenship law automatically attributed to such aspects as identity, rights, obligations, acceptance of shared values, and citizen participation?

Ideally, the legal membership of citizens in a state is followed by possession of citizenship attributes. With such possession, the citizens can live the life of the nation. They have active citizenship, meaning that citizenship is not merely a status but a measure.

Method

The present study presented a qualitative method in document analysis using content analysis techniques and interviews with civic education and law experts. The analyzed documents include Indonesia's citizenship law, namely Law No. 12 of 2006 concerning Indonesian citizenship. It is related to the focus of the study, which places the meaning of citizenship in a legal or formal juridical dimension. Interviews with two experts, civic education and law experts, were conducted to obtain information about attributes of citizenship reflected from the citizenship law.

Two units were analyzed, namely 1) contents of a legal or formal dimension of Indonesian citizenship, and 2) contents or attributes of citizenship or material contents arising from the regulation in legal dimension, as regulated in Law No. 12 of 2012. The former was analyzed in terms of what has been regulated in Indonesia's citizenship law. Meanwhile, the latter was analyzed in terms of what attributes of citizenship emerge from Indonesia's citizenship law.

The data analysis was done interactively during and after data collection at specific periods. During the interviews and the document reading, the researchers had started analyzing answers given by the informants as well as the reading. The data analysis consists of three concurrent activity flows: data reduction, data display, and conclusion drawing/verification (Afrizal, 2014; Sugiyono, 2012). The three flows are activities that take the form of interaction in the data collection process and the cyclical process. The conclusion and data display comprise two findings: formal contents of Indonesian citizenship (citizenship as legal dimension) and material contents of Indonesian citizenship or emerging attributes of citizenship. The data display is presented in narrative form. Hasil dan Pembahasan

Result and Discussion

Indonesian citizenship is regulated in Section 1 of Article 26 of the 1945 Constitution. It states that citizens are those who are indigenous Indonesians and persons of foreign origin who are legalized as citizens in accordance with the law. In addition, the fundamental law mandates that the law regulates citizenship.

An organic law that regulates Indonesian citizenship or a prevailing law that establishes the application of Article 26 of the 1945 Constitution is Law No. 12 of 2006 concerning Citizenship of the Republic of Indonesia. The law was promulgated on August 1st, 2006 as an amendment to Law No. 62 of 1958 concerning Citizenship of the Republic of Indonesia.

Law No. 12 of 2006 concerning Citizenship of the Republic of Indonesia contains 8 chapters, 46 articles, and 50 sections. Chapter I, General Provisions, includes Articles 1, 2 and 3. Chapter II, Citizens of the Republic of Indonesia, includes Articles 4, 5, 6, and 7. Chapter III, Requirements and Procedures for Acquiring Citizenship of the Republic of Indonesia, includes Articles 8, 9, 10, 11, 12, 13, 14, 15, 16,

17, 18, 19, 20, 21, and 22. Chapter IV, Loss of Citizenship of the Republic of Indonesia, includes Articles 23, 24, 25, 26, 27, 28, 29, and 30. Chapter V, Requirements and Procedures for Regaining Citizenship of the Republic of Indonesia, includes Articles 31, 32, 33, 34, and 35. Chapter VI, Provisions for Criminal Acts, includes Articles 36, 37, and 38. Chapter VII, Transition Clauses, includes Articles 39, 40, 41, 42, and 43. Chapter VIII, Closing, includes Articles 44, 45, and 46.

Based on the above description, contents regulated in the law are 1) those who become Indonesian citizens, 2) requirements and procedures for acquiring citizenship of the Republic of Indonesia, 3) loss of citizenship of the Republic of Indonesia, 4) requirements and procedures for regaining citizenship of the Republic of Indonesia, and 5) provisions for criminal acts for those who violate the law.

The law also contains transition clauses that state if requests for naturalization, statements to retain citizenship of the Republic of Indonesia, or requests to regain citizenship of the Republic of Indonesia have been processed but not yet been finalized upon the promulgation of this law, the requests and statements will then be finalized in accordance with this law. The Closing of this law states that upon the promulgation of Law No. 12 of 2006 concerning Citizenship of the Republic of Indonesia Law No. 62 of 1958 as amended by Law No. 3 of 1976 concerning Amendment to Article 18 of Law No 62 of 1958 concerning Citizenship of the Republic of Indonesia is therefore declared void.

About the analysis, the law can be said to be the form of citizenship regulation in the legal dimension in Indonesia. Citizenship in the legal dimension serves as rules that regulate the beginning and the end of the relationship between state and citizens. In other words, citizenship law has such scopes as citizenship status, procedures for acquiring citizenship of the Republic of Indonesia, loss of citizenship, and avoidance of statelessness. As seen from the contents, Law No. 12 of 2016 refers to establishing Indonesian citizenship status.

With the citizenship law, in this case, Law No. 12 of 2006 concerning Citizenship of the Republic of Indonesia, individuals, who meet the conditions, have legal status to be Indonesian citizens. The legal status is stipulated in Article 2 of Law No. 12 of 2006 "Indonesian citizens are those who are indigenous Indonesians and persons of foreign origin who are legalized as citizens by the law." The article's content is not different from that of Section 1 of Article 26 of the 1945 Constitution. It is then explained in detail and emphasized in Article 4, stating that Indonesian citizens can meet one of 13 conditions to acquire Indonesian citizenship.

The citizenship law is a delegation of the mandate of Article 26 of the 1945 Constitution, which merely regulated citizenship in an administrative sense or administrative law. For that reason, the citizenship law regulates such matters as citizenship status, loss of citizenship, and procedures for acquiring citizenship. Citizens' rights, obligations, and participation are excluded from the contents of the mandate of Article 26 of the 1945 Constitution. They are regulated in other norms in the 1945 Constitution and then stipulated in many laws (Source: interviews, April 2021).

Based on the conditions and the arguments of the informants, it follows that Indonesian citizenship in the legal dimension does not include such matters as citizens' rights, obligations, and participation as attributes of citizenship. However, it can be said that Indonesian citizenship in the legal dimension includes elements of identity or, referring to arguments of Cogan & Derricot (1998), formal legal identity as Indonesian citizens. The identity can be later proved with such documents as a Birth Certificate, Certificate of Family Membership, and National Identity Card. The identity is said to be insufficient to build a sense to have an identity of Indonesians. It is built from not only legal bonds, but also social bonds. Social citizenship will strengthen the existing legal bonds and then create emotional connection and appreciation as Indonesian citizens. In accordance with an

argument that bonds of citizenship refer to juridical bonds and social bonds (Arwiyah et al., 2013; Winarno, 2013). The identity of Indonesian citizens as a form of juridical bonds also applies for foreigners who intend to become Indonesian citizens. Foreigners can acquire Indonesian citizenship by requests, statements, grants and statements to choose citizenship for teenagers with dual citizenship who reach 18 years of age or are married.

Indonesia's citizenship law also regulates the identity of Indonesian citizens as legal status for those who have lost their citizenship and procedures to regain Indonesian citizenship. The identity as Indonesian citizens will be lost if the citizens meet conditions of loss of citizenship as described in Articles 23, 26, and 28 of Law No. 12 of 2006. Indonesian citizens who have lost citizenship identity can regain their Indonesian citizenship through procedures for being Indonesian citizens, as regulated in Article 9 to Article 18 and Article 22.

Identity in formal juridical bonds is indicated in conditions to become Indonesian citizens (Articles 4 and 5 of Law No. 12 of 2006). Meanwhile, identity in the sense of social bonds is shown in requirements for foreigners to request naturalization and Indonesian citizens who have lost their citizenship. The requirements include willingness to prove that they have lived in Indonesia for five consecutive years or at least ten in consecutive years, ability to speak the Indonesian language, willingness to acknowledge Pancasila (the Five Principles) and the 1945 Constitution, and willingness to take an oath of allegiance (Articles 9 and 16 of Law No. 12 of 2006). Based on the above analysis, Indonesian citizenship conforms to legal perspectives as regulated in Law No. 12 of 2006. The elements (attributes) attached to Indonesian citizens are elements of senses of identity, both formal juridical sense, and social sense.

As contained in Law No. 12 of 2006, Indonesia's citizenship law is said to have included elements (attributes) in terms of an acceptance of fundamental social values. The attributes of citizenship are indicated in an oath of allegiance below: "For God's sake, I promise that I renounce all allegiances to foreign powers, that I acknowledge, be obedient, and bear true allegiance upon the Unitary State of Republic of Indonesia, Pancasila (the Five Principles), and the 1945 Constitution and will solemnly defend them, that I will sincerely and wholeheartedly perform obligations as an Indonesian citizen" (Article 16 of Law No. 12 of 2006).

Next, based on the results of the analysis in material contents of citizenship, Indonesia's citizenship law, particularly Law No. 12 of 2006, does not include such attributes of citizenship as the enjoyment of certain rights, the fulfillment of corresponding obligations, and a degree of interest and involvement in the public affair. It is indicated by the absence of articles in Law No. 12 of 2006 that contain chapters, parts, or conditions regarding citizens' rights, obligations, and participation.

It can be said that Indonesian citizenship in the legal perspective, namely Law No. 12 of 2006, emphasizes on citizenship in formal juridical sense (Arwiyah et al., 2013; Winarno, 2013), aspects of extent (rules and norms of inclusion and exclusion) (Isin & Turner, 2002), legal aspects (Ilija, 2011), formal legal status (Bosniak, 2008), judicial aspects (Turner, 1993), fulfills such attributes as a sense of identity and possession of shared values (Cogan & Dericot, 1998). Indonesian citizenship as regulated in Law No. 12 of 2006 does not include aspects of contents (rights and responsibilities) (Isin & Turner, 2002), measures in political, economic, and social aspects (Ilija, 2011; Turner, 1993), citizenship in senses of rights, obligations, and participation (Bosniak, 2008; Cogan & Derricott, 1998).

Based on the contents of articles of Indonesia's citizenship law, it follows that the contents include citizenship in the formal sense, namely citizenship law as a public issue, for example, procedures to acquire citizenship. Meanwhile, the contents exclude citizenship in a material sense, namely consequences of the form of the relationship, for example, rights and obligations. Citizenship in a material sense contains further regulation regarding the rights and obligations of citizens

(Arwiyah et al., 2013). The citizenship law is the derivation of Article 26 of the 1945 Constitution that emphasizes the regulation of Indonesian citizenship status. Meanwhile, regulation on other contents or attributes of citizenship is included in other articles of the 1945 Constitution. The contents of the articles are then delegated to other laws as laws of implementation.

Conclusion

Indonesian citizenship in legal dimension as stipulated in Law No. 12 of 2006 emphasizes formal contents of citizenship, citizenship in a juridical sense, citizens as legal status. It fulfills attributes of citizenship regarding identity, meaning that it contains the determination of whoever belongs to Indonesian citizens. Indonesian citizenship in the legal dimension implicitly gives rise to the possession of shared values, namely the necessity for acknowledgment of Pancasila) and the 1945 Constitution for foreigners who intend to become Indonesian citizens or those who intend to regain their Indonesian citizenship.

Other attributes or characteristics of citizenship such as citizens' rights, obligations, and participation, or roles as active participants in the state are excluded in the law. Indonesia's citizenship law is mandated and delegated from Section 1 of Article 26 of the 1945 Constitution. The contents of the article are administrative since the article regulates the legal status of Indonesian citizens.

In order that Indonesian citizenship has not only meaning as legal status but also as active participants, other attributes of citizenship such as rights, obligations, and participation can be included in Law No. 12 of 2006 in the form of formulation of outlines of regulation on the attributes. Articles containing the outlines can subsequently be formulated in details in-laws regarding citizens' rights, obligations, and participation in various fields of life. Therefore, although Indonesia's citizenship law includes formal contents of citizenship, it can implicitly accommodate material contents of citizenship. Citizenship law will contain legal status and citizens as identity and active sociopolitical agents in Indonesia.

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