

# Legal Awareness of Surakarta Local Government Officer to Law Number 12 Year 2006 on Citizenship in Vanishing Civic Discrimination to Chinese Indonesians

Triyanto

**Abstract**—The purposes of the paper are to know and improve the legal awareness of Surakarta local government officer to Law No.12/2006 on Citizenship in vanishing civic discrimination to Chinese Indonesians. Some issues of the Chinese Indonesian are the definitions of Indonesian citizens and native Indonesian people or “*warga negara Indonesia (WNI) asli*” and their obligation to show Indonesian Citizenship Certificate (SBKRI) in processing civil documents. Legal awareness of Surakarta local government officer can be categorized as “legal knowledge” only. They know the laws but they do not implement it yet. Nevertheless, at least this research has given the new awareness in citizenship law for the officers.

**Keywords**—Legal Awareness, Government Officer, Civic Discrimination, Chinese Indonesians

## I. INTRODUCTION

IN accordance with Pancasila and the 1945 Constitution, the Republic of Indonesia guarantees the potential, dignity of its peoples with respect to their human rights.

Being a citizen of a certain country is one of a nation's most fundamental elements. The citizenship status presents a reciprocal relationship between a citizen and his/her country. Each citizen has a right and obligation towards his/her country. On the other hand, a country is obligated to protect their citizens.

Citizenship is a basic right and fundamental element of the state with rights and obligations that must be protected and ensured. Each country guarantees the potential, dignity of its peoples with respect to their human rights. Based on deliberations of the above, the regulation on citizenship is deemed necessary. Each country has different citizenship law system and principles. It is caused by social and political background of each country.

Indonesian Citizenship law is based on the Law Number 12 Year 2006 on Citizenship of The Republic of Indonesia (“Law No.12/2006”). The special principle that has been applied as the basis of formulation of this Decree is non discriminative principle. It is a principle that does not differentiate the treatment of all matters concerning citizens that is based on race, belief, faction, or gender. Indonesia consists of multifarious ethnics, races, religions, and factions. One of them is Chinese Indonesian. On a somewhat more positive note, in the past five years they have witnessed the unfolding of a set of social trends and legal reforms in Indonesia which have improved the position of certain minority groups that are considered in a long time to be vulnerable to discrimination, extortion, harassment, and intimidation.

Dr. Triyanto is a lecturer in Civic Education Dept., Faculty of Education, Universitas Sebelas Maret, Indonesia. E-mail: try\_uns@yahoo.com.

Most notable in this regard is the case of Indonesia's small Chinese Indonesians minority, whose representatives include most of the wealthiest businessmen in the country, but whose more modest ranks have long suffered from various forms of legal and social forms of segregation, and discrimination. Surakarta is one of the cities in Indonesia which has Chinese Indonesians society.

## II. REVIEW OF LITERATURE

### A. Theoretical Framework

One of the law functions is to arrange the people's interest. On this case, law is used as a tool to finish the problem of the people interest and it means that law is a tool for social engineering.

Legal awareness is human awareness as to what the meaning of law is and what like of law ought to be. Legal awareness covers problem of law effectiveness in implementation that depends on law planting effectiveness, reaction of people and planting duration of new elements [19].

Legal awareness is related to factor whether the certain law is already known, understood, adhered and appreciated. If the people know the existence of rule only hence its legal awareness level is lower than people who comprehend the law. This is called with the term “legal consciousness, knowledge and opinion about law”.

The steps in attainment of people legal awareness pass some process covering the following:

#### 1. Legal Knowledge

The knowledge of meaning and concept is started by learning legal term. It is used for guidance on discussion concerning legal matters.

#### 2. Legal Comprehension

The comprehension of legal term will be saved in memory and make legal comprehension. The aim of legal comprehension is to comprehend the purpose of legal forming as well the obtained benefit for stake holders.

#### 3. Legal Appreciation

If the purpose and benefit of law are already understood, the people will appreciate the agreed law.

#### 4. Legal Awareness Improvement

Legal awareness improvement will be created if the people have appreciated the law. There is a memory in their mind to obey the law. The used ways to improve legal awareness as

follows: (1) Legal lighting is to improve legal knowledge; (2) Legal counselling is to improve certain legal comprehension including rights and obligations as well benefit in certain sector when law adhered.

### *B. Law Number 12 Year 2006*

Law Number 12/2006 regulates definition of Indonesian Citizens and Native Indonesian People (“WNI asli”), Requirements and Procedures for Acquiring Citizenship of Indonesia, Loss of Indonesian Citizens, Requirements and Procedures for Regaining Citizenship of Indonesia, and Provisions for Criminal Acts.

#### *1. Indonesian Citizens and Native Indonesian People*

Indonesian Citizens are native Indonesian people and other nationalities who are formally legalized under law as citizens of the Rep. of Indonesia (Article 2). The definition of “native Indonesian people” stipulates that Indonesians entitled to be citizens of the Rep. of Indonesia are people whom from birth have never acknowledged any other citizenship at their own volition (explanation of Article 2).

Article of Law Number 12/2006 states that a citizen of the Rep. of Indonesia is one of these below:

- (1) All persons whom by law and/or based on agreements between the Government of the Rep. of Indonesia and other countries prior to the application of this Decree have already become Citizens of the Rep. of Indonesia;
- (2) Children born through legal wedlock from an Indonesian father and mother;
- (3) Children born through legal wedlock from an Indonesian father and an alien mother;
- (4) Children born through legal wedlock from an alien father and an Indonesian mother;
- (5) Children born through legal wedlock from an Indonesian mother and a stateless father or whose country does not provide automatic citizenship to their offspring;
- (6) Children born within 300 (three hundred) days after the father has passed away, under legal wedlock, and whose father is an Indonesian citizen;
- (7) Children born out of legal wedlock from an Indonesian mother;
- (8) Children born out of legal wedlock from an alien mother who is claimed by the Indonesian father as his natural child and such claim is declared before the child reaches the age of 18 (eighteen) or before the child has married;
- (9) Children born in Indonesian territory whose parents are of undetermined citizenship at the time of the child’s birth;
- (10) Children newly born and found in Indonesian territory and whose parent’s are undetermined;
- (11) Children born in Indonesian territory whom at the time of birth both parents were stateless or whose whereabouts are undetermined;
- (12) Children born outside the Rep. of Indonesia from an Indonesian father and mother whom due to law prevailing in the country of birth automatically provides citizenship to the child;

- (13) Children born from a father and mother who was granted citizenship and died before the parents had sworn their allegiance.

#### *2. Requirements for Acquiring Citizenship of Indonesia*

Citizenship of the Rep. of Indonesia may be acquired through naturalization (Article 8). Requests for naturalization may be forwarded by the applicant upon meeting the following requirements (Article 9):

- (1) Aged 18 (eighteen) or married;
- (2) At the time of forwarding the application, the applicant has resided in Indonesian territory for at least 5 (five) consecutive years or at least 10 (ten) years intermittently;
- (3) Sound in health and mind;
- (4) Able to speak Bahasa Indonesia and acknowledges the state basic principles of Pancasila and the 1945 Constitution;
- (5) Was never legally prosecuted due to acts of crime and sentenced jail for 1 (one) year or more;
- (6) Upon acquiring Indonesian Citizenship, will relinquish any other citizenship;
- (7) Employed and/or has a steady income; and
- (8) Pay a naturalization fee to the Government Treasury.

#### *3. Loss of Indonesian Citizens*

An Indonesian citizen will lose their citizenship due to the following (Article 23):

- (1) Acquires another citizenship voluntarily;
- (2) Will not refuse or will not relinquish other citizenship when the incumbent has the opportunity to do so;
- (3) Is declared of having relinquished their citizenship by the President at their voluntary request, the person is aged above 18 (eighteen) or has married, is living abroad, and with the relinquishment of their citizenship does not become stateless because of it;
- (4) Has entered into foreign military service without prior approval from the President;
- (5) Has voluntarily entered into the services of foreign entities in a position where by law, such a position in Indonesia is only reserved for citizens of the Republic of Indonesia;
- (6) Has voluntarily declared allegiance to a foreign country or part of the said foreign country;
- (7) Was not obligated but has voluntarily participated in a referendum that is civic in nature for a foreign country;
- (8) Possesses a passport or travel document equivalent to a passport from a foreign country or a letter that may be construed as a valid citizenship identity from another country on his/her name; or
- (9) Living outside the territories of the Rep. of Indonesia for 5 (five) consecutive years for non official purposes, without legal reason and deliberately refuses to declare their intention to remain as Indonesian citizens before the 5 (five) year limit ends, and in each of the next 5 (five) years the said person fails to declare their intention of retaining their citizenship to the Indonesian Representative offices in which the said person’s

residence is under their jurisdiction although the said Representative Office has duly informed them in writing, as long as the incumbent does not become stateless because of such negligence.

Article 24 clarifies that provisions stipulated in Article 23 Item is not applicable to those pursuing education in other countries which applies military service as a compulsory requirement.

According to Article 25, Loss of Indonesian citizenship of the father does not automatically apply to their children who retains legal relations with their fathers until the child is aged 18 (eighteen) or has married. Loss of Indonesian citizenship of the mother does not automatically apply to their children who do not have legal relations with their fathers until the child is aged 18 (eighteen) or has married. The loss of Indonesian citizenship upon acquiring other citizenship by the mother due to annulment of marriage does not automatically apply to her children until the child reaches the age of 18 (eighteen) or has married. The status of Indonesian citizenship of the children as mentioned above will result in double citizenship to the child, therefore upon reaching the age of 18 (eighteen) or marriage, the child should declare to choose one of either citizenship as stipulated in Article 6.

Female citizens of the Rep. of Indonesia who marry male citizens of foreign nationality will automatically lose their Indonesian citizenship if by law of her husband's country, the citizenship of the wife will follow that of the husband as a result of their union. Male citizens of the Rep. of Indonesia who marry female citizens of foreign nationality will automatically lose their Indonesian citizenship if by law of his wife's country, the citizenship of the husband will follow that of the wife as a result of their union (Article 26).

Loss of citizenship by the husband or wife tied by legal wedlock does not result in the loss of citizenship of the respective wife or husband (Article 27). A person acquiring Indonesian citizenship based on further information to be proved false or forged, not valid, or due to discrepancies made by an authorized institution, is declared void and their citizenship is annulled (Article 28).

#### 4. Procedures for Regaining Citizenship of Indonesia

A person who has lost their Indonesian citizenship may regain their citizenship through naturalization procedures (Article 31). Indonesian citizens who have lost their citizenship may regain their Indonesian citizenship by forwarding a written application to the Minister without going through the naturalization procedures (Article 32).

#### 5. Provisions for Criminal Acts

Failure by Officials whom due to their negligence to perform their appointed duties and responsibilities as mentioned in this Decree causing the loss of a person's right to acquire or regain and/or lose their Indonesian citizenship is punishable by 1 (one) year incarceration in jail. Deliberate acts of crime as mentioned above is punishable by 3 (three) years incarceration in jail (Article 36).

Article 37 paragraph (1) Persons who deliberately provide false information, including false information under oath, submit false letters or documents by forging the said letters and documents to acquire Indonesian citizenship or regain Indonesian citizenship is punishable by at least 1 (one) year incarceration in jail and a maximum of 4 (four) years in incarceration in jail and is subjected to a fine of at least Rp.250.000.000,00 (two hundred and fifty million rupiahs) and a maximum fine of Rp1.000.000.000,00 (one billion rupiahs).

Article 37 paragraph (2) states that Persons who deliberately use false information, including false information under oath, (submit false letters or documents by forging the said letters and documents to acquire Indonesian citizenship or regain Indonesian citizenship is punishable by at least 1 (one) year incarceration in jail and a maximum of 4 (four) years in incarceration in jail and is subjected to a fine of at least Rp250.000.000,00 (two hundred and fifty million rupiahs) and a maximum fine of Rp1.000.000.000,00 (one billion rupiahs).

Article 38 clarifies that in the event that such crime as stipulated in Article 37 is done by a corporate, criminal punishment is applied to the corporate and/or management acting on behalf and for the corporation. The corporate as mentioned in Paragraph (1) is punishable by a criminal fine of at least Rp1.000, 000.000,00 (one billion rupiahs) and a maximum of Rp5.000.000.000,00 (five billion rupiahs) and their license is thereby withdrawn. The corporate management as mentioned in Paragraph (1) is punished to at least 1 (one) year to 5 (five) years incarceration in jail and is fined by at least Rp1.000.000.000,00 (one billion rupiahs) to a maximum amount of Rp.5.000.000.000,00 (five billion rupiahs).

#### C. Chinese Indonesians

Chinese Indonesians are ethnically Chinese people living in Indonesia, as a result of overseas Chinese migration for centuries. Most Chinese who migrated to Indonesia came as traders or laborers. Colonial policies made it difficult for Chinese to acquire land, and the only region with a significant Chinese farmer population was West Kalimantan. (There is also a significant population of *Peranakan* peasant farmers in the countryside around Jakarta. They are descended from what were probably amongst the earliest Chinese immigrants to Southeast Asia). The largest populations of Chinese Indonesians today are in the cities of Jakarta, Surabaya, Medan, Pekanbaru, Semarang, Pontianak, Makassar, Palembang, Surakarta, and Bandung.

Chinese Indonesians comprise 3% of the total population of Indonesia, or approximately 7 million. As a minority group, they still suffer from discrimination. It is a fact that most Indonesians consider the Chinese Indonesians as a separate group from the majority indigenous Indonesians that is due to different "ethnicity". The Chinese Indonesians are not considered a part of the nation in violation of the principle of equality before the law enshrined in the 1945 Indonesian Constitution [6].

The integration of the Chinese into the society was disrupted when the Dutch colonialists came to Indonesia for trading purposes. They eventually colonized Indonesia for political reason, and ruled for about 350 years. To maintain its

existence, the Dutch colonial government employed the divide and rule strategy (*divide et impera*) and divided the people in *Netherlands Indisch* (the Dutch colonial name of Indonesia) into several categories. Under State Regulation/*Indische Staatsregeling* No. 163 IS/1854, the population was divided into 3 categories: (1) Europeans or Westerners; (2) Foreign Easterners (Chinese, Indian, and Arab descent); (3) Indigenous people.

The largest waves of Chinese migration happened during early times to the middle Dutch colonial era, from about the 16th to the 19th Centuries, seeking to find new opportunities of trade [21].

According to a survey of corporations listed on the Jakarta Stock Exchange, the Chinese Indonesian community was thought to own or operate a large fraction of major Indonesian corporations. This is a result of a long government restriction for Chinese Indonesians from going into academia, public service, and other governmental occupations.

Such simplifications fuel stereotype that Chinese Indonesian people are extremely wealthy, and it becomes a common perception in Indonesian society. In part, as a result of this perceived dominance of the economy, the Chinese Indonesian community has frequently been viewed with suspicion by indigenous (*Pribumi*) Indonesians.

Various government policies banned Chinese language teaching, speaking, and publication. Established schools and colleges run by Chinese Indonesian foundations were nationalized and their facilities seized without compensation and converted to state or *pribumi*-run schools such as Universitas Res Publica, which became Universitas Trisakti. A presidential directive forced Chinese Indonesians to abandon their Chinese names and adopt Indonesian names. Anti-Chinese sentiments increased among the *pribumi* Indonesians and anti-Chinese pogroms were frequent. In birth certificate, all Chinese Indonesians were designated as "Indonesians of Chinese descent" (*WNI keturunan Cina*), a euphemism for "ethnic Chinese" as opposed to just "Indonesian" for the *pribumi* Indonesians.

#### D. Politics of Discrimination

Discrimination is a cultural phenomenon in any society in the world. But when a state, based on its policies and regulations, discriminates its own citizen or any individual in its territory, it certainly is a denial of humanity. Moreover, in the context of Indonesian state with its constitution that upholds the *rechtstaat*.

Discrimination can be because of an individual's race, religion or belief, their age, their gender or sexual preference, the fact that they are disabled, or sometimes it occurs specifically in connection with immigration. When discrimination occurs, the person affected will not always be protected by the law, but the volume of legislation is increasing and more and more situations are being covered.

Discrimination can mean that someone is treated less favorably than another person in the same situation. This could be deliberate or because a rule or condition has more effect on one group of people than everyone else. People can come to accept discrimination as an inevitable part of daily life and

sometimes find it difficult to recognize discriminatory situations that have existed for a long time. It is important to take action to stop discrimination.

Politics of Racial discrimination exist since a long time ago in Indonesia, it is even older than the age of Republic of Indonesia. Racial discrimination politic has been applied since Dutch colonial era in 1849, with its racial segregation law through private law '*Indische Staatsregeling*'. Since then, it extremely influences politics and practices of racial discrimination until now. Particularly in the period of 1953 to 1970, there have been numerous discriminative policies towards many racial groups in Indonesia, one of them implicated to Chinese ethnic group. Those various policies including the obligation to possess the SBKRI, restrictions of having education, restriction to enroll as Government personnel/army/police forces, general prohibition to use Mandarin language, limitation of property ownership and even furthermore restriction to trade in counties in 1959.

Racial Discrimination practices in Indonesia have also taken place due to conflict of laws, namely various conflicts within the Constitution (between articles), conflicts between laws, and conflicts within the hierarchy of law and regulations. Conflict of laws become as source of legitimation in committing acts of discrimination in a wider scale.

This racial-based politics was escalated with Government failure to provide minimum social welfare, which ended in abundance of racist treatment that resulted in systematic rights violations against Chinese ethnic. Such as Chinese massacre by Dutch colonial rulers in 1840, a riot happened in Bandung and recently May 1998 riot in various cities in Indonesia. The Government is unable to provide protection or even justice/remedy to the victims.

Since Dutch colonial until year 2006, the civil regulation is divided into four different groups, such as: *Staatsblad* 1849 for European, *Staatsblad* 1917 for Chinese, *Staatsblad* 1927 for Indigenous Indonesians, and *Staatsblad* 1933 for Christian Indonesians. It causes the Chinese Indonesians should possess the SBKRI in civil administration process. Yet the Dutch colonial laws have been revoked by Law Number 23 Year 2006 on Civil Administration ("Law No.23/2006")

The Government of Indonesia efforts to eliminate racial discrimination in Indonesia specifically in relations with revoking all discriminative policies has been very slow, despite many political promises stated by politicians and Government officers. Some steps and efforts of law reforms that have been performed by the Government of Indonesia is caused of people's pressure and initiative, which also have performed several law actions. Such as, political changes for elimination of racial discrimination in Indonesia like the permitted publishing of Mandarin language media, establishment Imlek New Year as National Holiday, or the effort the eradication of the SBKRI obligation by President Resolution No. 56 in 1996 and Law No. 12/2006 and Law No.23/2006.

Unfortunately that policy is not completely applied. For instance, countless racial discrimination cases are still happened and the Government has not performed any effective protection or public lawsuit on those racial discriminations

although Government apparatus who done it. It is true that there are some improvements on the elimination of regulations that control segregation, but those eliminations did not guarantee the effectiveness of prevention and settlement of segregation. For example, although the new laws stipulate eradication on the requirement of the SBKRI, but in reality practices of the SBKRI are still present in some areas. Research of 2006 by National Commission of Human Rights (KOMNAS HAM) and The Indonesian Anti Discrimination Movements (GANDI) in 4 (four) cities, namely Tanjung Pinang and Batam, Medan, Manado and Pontianak, found that the SBKRI are still present with patterns such as:

- (1) SBKRI is required to apply birth certificate for children of mix-marriage. In applying for Identity Card, children of lineage citizens were inquired to enclose the SBKRI with Family Card (Cases in Tanjung Pinang).
- (2) SBKRI is still required in applying Business Certifications and Passports (Cases in Medan).
- (3) Since 2003, University of North Sumatra, is not inquire SBKRI any more to new students enrolled. (Cases in Medan).
- (4) Most of Citizens of Indonesia with Indian descent do not have certified document, like birth certificates, then they are still considered as Foreign Citizens (Cases in Medan).

Furthermore, those law enforcement have not been reflected yet, because there are still some discriminative regulations like several Surakarta Local Government Regulations/by law. There are laws that were born to eliminate discrimination practices, which are Presidential Resolution No. 56 in 1996, Law No.12/2006 and Law No.23/2006, on the other hand the other discriminative law are also adopted by Surakarta local government, namely By Law No.6/2002 and Mayor regulation No.8/2005 on Surakarta Civil Registration.

Discrimination against Chinese ethnic, specifically regarding the SBKRI and the definition of Indonesian citizens (WNI) and native Indonesian people (*WNI asli*).

The new Citizenship Law of 2006 has taken effect in those issues. Besides that, the government has actually scrapped all laws and regulations on the SBKRI requirement through Presidential Resolution No. 56/1996 Law No.12/2006 and Law No.23/2006.

### III. METHOD

Methodology is a scientific activity that aims to do, develop or test a truth of science through methodological and systematic method. Methodologically, the research uses scientific method. Systematically, the research is appropriate with research procedures for scientific work. The science about scientific methods for research is namely research methodology [20].

#### A. Subjects

The subjects of this research are the Surakarta local government officer and Chinese Indonesians who live in Surakarta.

#### B. Design

The kind of this research applied is an action research with using a qualitative descriptive approach. The action has done through interaction group discussion (IGD). This research used primary and secondary data.

Primary data is the data which was directly obtained from the informant through the interview, observation and FGD in research location. Secondary data is the data which was indirectly obtained from the field but through library research. It covers primary and secondary source of law. Primary source of law includes formal document, rules of law, books, research report, daily book, etc. Secondary source of law consists of journal, article, paper, and essay concerning citizenship law [14].

The data were gathered through in-depth interview, observation, library research, and focus group discussion (FGD). Samples of the research are taken by using a purposive sampling technique.

The research took the data by using technique as follows:

- (1) In-depth interview is a data collection through communicating and asking directly to the subjects.
- (2) Observation is a data collection through observation of subjects location in Surakarta.
- (3) Library research is a data collection through stocktaking and studying rules of law, books, articles, paper, essay and other related documents.
- (4) Focus group discussion is a data collection through focused topic discussion with the subjects.

The cycle of action research can be explained as follows [9]:

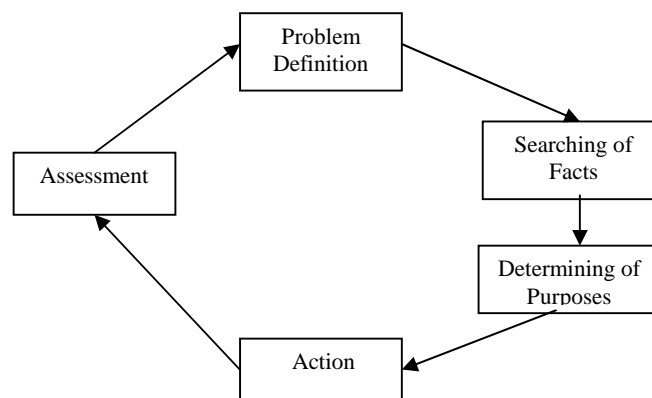


Fig. 1 The cycle of action research

### IV. FINDINGS

#### A. Result

The endorsement of Law No.12/2006 and Law No.23/2006 brings juridical consequences for Chinese Indonesians especially in Surakarta. The laws have given new definition of Indonesian people and revoked the discriminative Dutch law namely *Staatsblad* 1917 on Civil Administration for Chinese Indonesians.

Formerly, Indonesian people are divided into native Indonesian people or "*warga negara Indonesia (WNI) asli*" and descent Indonesian people or "*WNI keturunan*".

Chinese Indonesians are part of descent Indonesian people. Each fraction had different civil regulation, such as: *Staatsblad* 1849 for European, *Staatsblad* 1917 for Chinese, and *Staatsblad* 1927 for Indigenous Indonesians. According to old citizenship law, native Indonesian people were original tribes from Sabang until Merauke like Javanese, Balinese, Madura, Batak, Asmat etc.

At present, the definition of “native Indonesian people” stipulates that Indonesians entitled to be citizens of the Rep. of Indonesia are people whose birth have never acknowledged any other citizenship at their own volition (explanation of Article 2 Law No.12/2006). Therefore Chinese Indonesians whom from birth have never acknowledged any other citizenship at their own volition can be categorized as “*WNI asli*”.

The Law No.12/2006 and No.23/2006 do not recognize “*WNI keturunan*” term and revoked the *Staatsblad* 1917 for Chinese Indonesians. It means that there is no separation on civil regulation for Chinese Indonesians at present. So, the Chinese Indonesians do not have to possess the SBKRI in civil administration.

Nevertheless, the implementation of Law No.12/2006 and No.23/2006 still has juridical obstacles. At the moment, the civil administration in Surakarta is regulated by the By law No.6/2002 and Mayor Regulation (MR) No.8/2005. The two laws still use *Staatsblad* 1917 as the basis for the formulation though it has been eliminated by Law No.23/2007. This condition causes Chinese Indonesians in Surakarta have a different treatment on civil administration from “*WNI asli*”.

*Staatsblad* 1917 is the Dutch colonial discriminative regulation that separates people based on tribes, religions, races, and ethnic. This law causes birth certificate of Chinese Indonesian states “*WNI keturunan Cina* or Chinese Indonesians”. According to MR No.8/2005 states that Chinese Indonesians who have certificate like above shall possess the SBKRI in civil administration. Civil administration consists of birth registration, marriage registration, family registration, and death registration.

Although the Surakarta local government officer has known the new laws (Law No.12/2006 and No.23/2006) that have revoked *Staatsblad* 1917 and “*WNI keturunan*” term, in the fact they still treat Chinese Indonesians based on *Staatsblad* 1917 and Chinese Indonesians shall possess the SBKRI in civil administration. It is caused by the By law No.6/2002 and MR No.8/2005 explained above.

### B. Facts

Previously, the first survey to the officer indicated that the officer’s knowledge concerning definition of *WNI asli* was based on sociological definition. This definition stated that *WNI asli* were original tribes from Sabang until Merauke like Javanese, Balinese, Madura, Batak, Asmat etc. They also did not know the implication of revocation of *Staatsblad* 1917.

The Civil administration regulations in Surakarta still use the discriminative law, namely By law No.6/2002 and MR No.8/2005 which are not appropriate with the higher regulation, namely Law No.12/2006 and No.23/2006.

The constitutional basis for the formulation of By law No.6/2002 is *Staatsblad* 1917 which was revoked by Article 106 Law No.23/2006. Article 4, Article 25, and Article 26 MR No.8/2005 states that registration of birth certificate, marriage certificate, and death certificate for “*WNI keturunan*” need the SBKRI.

The officer clarifies that the By law No.6/2002 and MR No.8/2005 is currently used because the Law No.23/2006 still needs execution rules that have not been ready yet. Therefore the Chinese Indonesians are still discriminated by the both local regulations.

### C. Applicable Rules

The following are applicable rules for the case of Chinese Indonesians in Surakarta:

- (1) Law Number 12 Year 2006 on Citizenship (“Law No.12/2006”);
- (2) Law Number 23 Year 2006 on Civil Administration (“Law No.23/2006”);
- (3) Law Number 32 Year 2004 on Local Governance (“Law No.32/2004”)
- (4) Presidential Resolution Number 56 Year 1996 (“PR No.56/1996”).
- (5) By Law Number 6 Year 2002 on Civil Administration in Surakarta (“By law No.6/2002”)
- (6) Mayor Regulation of Surakarta Number 8 Year 2005 on Execution of By law No.6/2002 (MR No.8/2005).
- (7) Mayor Instruction of Surakarta Number 471/2004 (“MI No.471/2004”)
- (8) Legal principle of “*lex superior derogate lex inferior*”.

### D. Analysis and Results of Discussion

#### 1. Definition of *WNI Asli*

The first FGD was held on November 12, 2006 concerning implementation of Law No.12/2006. After discussing, the officers have known that the new definition of *WNI asli* is not sociological definition but juridical definition.

Indonesian Citizens are native Indonesian people (*WNI asli*) and other nationalities are formally legalized under law as citizens of the Rep. of Indonesia (Article 2 Law No.12/2006). It means that the Law No.12/2006 do not recognize term of “descent Indonesians people or *WNI keturunan*”.

Juridically, *WNI Asli* are Indonesians entitled to be citizens of the Rep. of Indonesia are people whom from birth have never acknowledged any other citizenship at their own volition (explanation of Article 2 Law No.12/2006). Therefore Chinese Indonesians whose birth have never acknowledged any other citizenship at their own volition can be categorized as “*WNI asli*”. As the consequences, Chinese Indonesians have the rights to participate in social and political process in Indonesia including the right to be president, government officer, Indonesian soldier, etc.

#### 2. Status of the SBKRI

Indonesians citizenship certificate or the SBKRI is identity card which states that the holder is Indonesian. In practice this regulation is specific to Chinese Indonesians.

They have to apply for this certificate and so are subjected to inconveniences and extortions. The SBKRI is required, if Chinese Indonesians want to obtain documents, such as ID cards, family cards, passports, birth certificates, marriage certificates, and death certificates. Theoretically, they no longer need an SBKRI to be recognized as Indonesian citizens, but what happens in reality is different.

Ethnic Chinese were required to obtain the SBKRI after Chinese premier Mao Tse Tung declared in 1950 that all Chinese around the world were "citizens of China". In response, Indonesia which does not recognize dual citizenship passed a law making the SBKRI mandatory for all Chinese Indonesians if they wanted to obtain legal documents.

Issue of the SBKRI emerged first when Law No.62/1958 about Republic Indonesia Citizenship was endorsed. In Article IV Closing Regulation of Law No. 62 in 1958 confirm that: "Whoever needs to proof that he/she is a republic Indonesia Citizen and does not have any letter of proof to show or to have or to also have the citizenship, can apply to District Court of his/her domicile to applied whether he/she is a citizen of Republic Indonesia or not, according to common private law. The regulation does not decreasing any specific condition in or based on other Laws". The condition actually remains facultative and be applied to all citizens of Indonesia. But then this Law was followed by Regulation of Minister of Justice No. J.B.3/4/12 in 1978, which in Article 1 declared that "every citizen of RI who need to proof his/her citizenship can applied request to the Minister of Justice to the SBKRI".

The government has revoked some of the discriminatory regulations since 1996 through PR No. 56/1996, Law No.12/2006, Law No.23/2006, MI No.471/2004. However, the other discriminative laws are also adopted by Surakarta local government namely By Law No.6/2002 and MR No.8/2005 on Surakarta Civil Administration. The local government agencies of Surakarta continue to ask for the SBKRI before issuing official documents.

Presidential Resolution and MI No.471/2004 states that all regulations requiring the SBKRI are not applicable and the proof of citizenship is only used ID card, family card, or birth certificate. So, the Chinese Indonesians in Surakarta should not possess the SBKRI in civil administration. Article 106 Law No.23/2003 has revoked the *Staatsblad* 1917 and Law No.12/2006 does not recognize the term of "WNI keturunan".

In legal hierarchy, by law and mayor regulations are lower than national Law. Legal principle states that the lower regulation may not oppose against the higher regulation. If the lower regulation oppose against the higher regulation, the higher one will overrule the lower (*lex superior derogat lex inferior*). Article 136 (4) Law No.32/2004 on Local Governance also prohibits by law oppose against the higher regulation. With the existence of Law No.12/2006 and No.23/2006 hence all clauses of By Law No.6/2002 and MR No.8/2005 differentiating citizens based on tribe, religion, race and ethnical become illegal.

This means that there is no separation on Civil Administration for Chinese Indonesians. Juridically, Chinese Indonesians do not have to possess the SBKRI in civil administration.

## V.CONCLUSION

The officers know the new laws that have revoked the SBKRI as requirement in civil administration. Theoretically, they are prohibited to ask for the SBKRI in civil administration for Chinese Indonesians but in reality the Chinese Indonesians in Surakarta are still obligated to possess the SBKRI in administration process. The officers still use the By Law No.6/2002 and MR No.8/2005 though the local regulation oppose against the national regulation. The bureaucracy culture of the officers indicates that they will not work without order from the leader though the new laws have ordered them to do.

Legal awareness of Surakarta local government officer can be categorized as "legal knowledge" only. They know the laws but they do not implement it yet. Nevertheless, at least this research has given the new awareness in citizenship law for the officers.

### A. Suggestion

The local government officers of Surakarta are expected not to implement some articles in By law No.6/2002 and MR No.8/2005 to classification based on *Staatsblad* 1917, because it will oppose against the legal principle and the higher regulation. The officers are also expected not to ask for the SBKRI to Chinese Indonesians in civil administration because Law No.12/2006 and No.23/2006 do not recognize term "WNI keturunan". Issuance of new civil documents may not mention *Staatsblad* 1917 as legal basis because it will be illegal.

### B. Recommendation

Since the officers are more obedient to the local regulation than national regulation so that the local government of Surakarta needs new local regulation which is appropriate with Law No.12/2006 and No.23/2006. Therefore there is no reason anymore for the officers to obligate Chinese Indonesians to possess the SBKRI

## REFERENCES

- [1] AITPN Report. 2007. *Indonesia: Piecemeal approaches to systemic and institutionalised discrimination*. India: Asian Indigenous & Tribal People's Network.
- [2] Ary Hermawan. 2006. *Activists question effect of Citizenship Law*. Jakarta: The Jakarta Post, July 17, 2006.
- [3] Bambang Hartono. 2007. *Status of Mortality Statistics in Indonesia*. Indonesia.
- [4] Elisabeth Sulistio. 2005. *Seven years after May 1998 Tragedy - A cry for Justice remains unattended*. Jakarta: CCEVI.
- [5] Frans H. Winarta. 2007. *Jalan Panjang Menjadi WNI, Catatan Pengalaman dan Tinjauan Kritis*. Jakarta: Kompas.
- [6] Indonesian Legal Studies Foundation. 2006. *Discrimination against Ethnic Chinese in Indonesia*, Focus Asia-Pacific Newsletter March 2006 Volume 43. Jakarta.
- [7] Indonesian NGO. 2007. *Breaking the smoke-screen of Racial Discrimination and Impunity in Indonesia*. Indonesia.
- [8] Ivan Wibowo. 2007. *Discrimination Against the Chinese Still Remains*. Jakarta.
- [9] Johana E. Prawitasari. 2007. *Need Assessment in Action Research*, presented on Workshop on Action Research. Yogyakarta.
- [10] Libertus Jehani & Atanasius Harpen. *Tanya Jawab UU Kewarganegaraan Indonesia No.12/2006*. Tangerang: Visimedia.
- [11] Local State Gazette of Surakarta. 2002. *By Law Number 6 Year 2002 on Civil Administration*. Surakarta

- [12] Local State Gazette of Surakarta. 2004. Mayor Instruction of Surakarta Number 471/2004. Surakarta.
- [13] Local State Gazette of Surakarta. 2005. Mayor Regulation of Surakarta Number 8 Year 2005 on Execution of By law No.6/2002. Surakarta
- [14] Soerjono Soekanto. 1986. *Pengantar Penelitian Hukum*. Jakarta: Universitas Indonesia Press.
- [15] State Gazette of Indonesia. 1996. Presidential Resolution Number 56 Year 1996. Jakarta.
- [16] State Gazette of Indonesia. 2006. Law Number 12 Year 2006 on Citizenship of the Rep. of Indonesia. Jakarta.
- [17] State Gazette of Indonesia. 2006. Law Number 23 Year 2006 on Civil Administration. Jakarta.
- [18] State Gazette of Indonesia. 2006. Law Number 32 Year 2004 on Local Governance. Jakarta.
- [19] Sudikno Mertokusumo. 2003. *Mengenal Hukum, Suatu Pengantar*. Yogyakarta: Liberty.
- [20] Sutrisno Hadi. 2002. *Metodologi Research*. Yogyakarta: Andi.
- [21] [www.wikipedia.org](http://www.wikipedia.org).