



# *The Politics of Naturalization Law for Indonesian Diaspora of Excellence*

**Abdul Mun'im Wasi'**

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia  
Ir. Sutami street, No. 36 Kentingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126  
[abdulmunim@student.uns.ac.id](mailto:abdulmunim@student.uns.ac.id)

**Lego Karjoko**

Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia  
Ir. Sutami street, No. 36 Kentingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126  
[legokarjoko@student.uns.ac.id](mailto:legokarjoko@student.uns.ac.id)

**Abstract**—Globalization represents a necessity for the development of world society, extending beyond the mere movement of people from one country to another. It also results in the dissemination of scientific knowledge, which in turn affects the laws of a country. The latter are certainly related to how the state regulates its citizens in order to achieve a state goal. This is what makes Indonesia regulate the legal principles that will be applied, in particular with regard to Indonesian nationality. A normative research approach will be employed to explore the manner in which this problem will be addressed. The research will begin with an examination of the development of citizenship law in Indonesia, with specific attention to the naturalization process for the Indonesian diaspora. The analysis will draw upon the theoretical frameworks of the Politics of Ideal Law, Constitutional Law and Instrumental Law. In terms of norms, the naturalization process is relevant for application in Indonesia, subject to certain conditions. In particular, it must remain consistent with the second and fifth precepts of Pancasila, align with the constitutional mandate in Article 26, and be governed by the provisions set out in the Citizenship Law. Furthermore, the Citizenship Law encompasses a range of additional citizenship-related matters. The preceding considerations will be analyzed in light of the theoretical lenses of human rights, citizenship, public policy, and legislation. The findings indicate that Indonesia gains significant benefits from its policy of welcoming diaspora of excellence through naturalization that is open to individuals who fulfil certain qualifications or limitations, and who adhere to the values espoused by Pancasila. In addition, they must comply with the constitutional and legal regulations that govern Indonesian society. This policy is founded upon a careful analysis of its advantages and disadvantages, which is essential to ensure the fair treatment of all individuals within Indonesian society.

**Keywords**—Globalization, Naturalization, Politics of Law, Human Rights

## I. INTRODUCTION

The globalization that is sweeping the globe today has caused profound changes in all aspects of human life, with developing countries being particularly affected, including Indonesia. Moreover, legal changes are also inevitable due to the quantitative and qualitative changes occurring within society. One of the key challenges in legal reform is striking a balance between the pace of societal change and the capacity of the legal system to adapt.[1] Globalization, in conjunction with the advancement of science and technology, has led to the perception of a borderless world. Events that occur within a single country can also be observed by citizens of other countries. The advent of globalization has also led to a rise in the migration of individuals across the globe, whether driven by factors related to work, education, socio-cultural interactions, or legal considerations.[2]

Indonesia is a state of law and thus must respect human in all fields, including political, cultural, social, economic, legal, and population. This respect is in accordance with the concept of human rights, which includes the right to property, the right to life, and the right to freedom. In view of the preceding discussion, there can now be observed a convergence in the vision of human rights and the mission to improve human rights held by the

government and the community. However, there remains a discrepancy in how these objectives are to be achieved.[3]

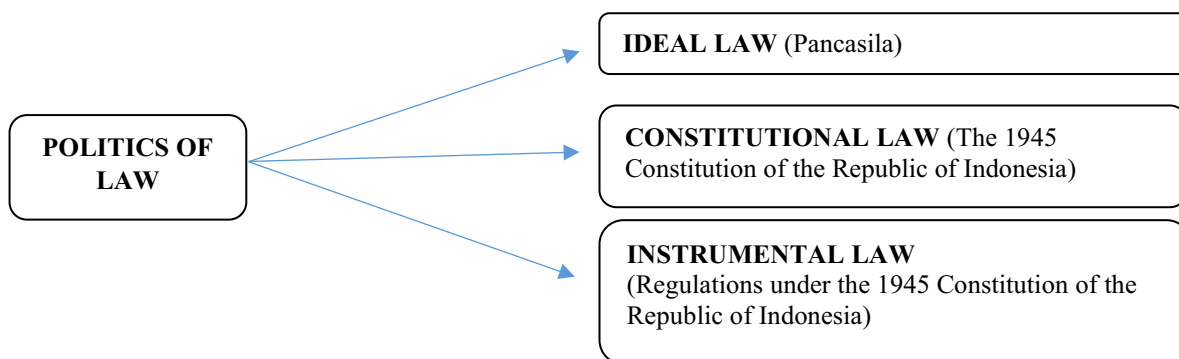
Furthermore, the protection of human rights is also concerned with issues of citizenship in Indonesia. Of particular concern is the protection of the rights of the Indonesian diaspora. The recent performance of the Indonesian national football team, both at the senior and U-23 level, competing in the 2024 Asian Cup has provided a considerable national pride. In addition to the achievements of the Indonesian football national team, the slick performance of the national team players is worthy of note. Notably, several naturalized players have contributed to this success. Some of them have Indonesian ancestry, either through their fathers or mothers or grandparents who were married to foreign nationals. This issue is not a novel one in Indonesia. One example of its occurrence is the 2016 incident in which President Joko Widodo “Indonesianized” Archandra Tahar, The Deputy Minister of Energy and Mineral Resources of the Republic of Indonesia.

In light of these observations, it is significant to examine the process of “naturalization” in Indonesia based on a perspective of politics of law, with a particular focus on the politics of ideal law, constitutional law, and instrumental law. The inquiry at hand is how the politics of law in Indonesia operates in the context of naturalization for the Indonesian diaspora.

## II. LITERATURE REVIEW

### A. Politics of Law

Arief Hidayat highlights that Pancasila is also referred to as the ideal form of politics of law, one that is permanent. In contrast, the articles in the Constitution constitute the fundamental politics of law, a form that is semi-permanent. As a result, the fundamental agreement that the preamble is an immutable area of the Constitution is a sound one. In the context of Indonesia’s legal system hierarchy, the 1945 Constitution of the Republic of Indonesia is the supreme law of the land which is still abstract. Therefore, it requires elaboration in legal products that are below it (concretization process). The following diagram illustrates this relationship:



Based on an internal perspective, two primary areas of political law can be identified as follows: *First*, the political process of law formation poses the procedural and content aspects of legislation. It encompasses the creation, renewal, and development of law, including the following policy areas: (i) the policy on legislation; (ii) the policy on jurisprudence; and (iii) the policy on unwritten rules. *Second*, the politics of law implementation and enforcement pertain to policies related to the following: (i) Policies pertaining to the field of justice and methods of resolving legal matters outside the judicial process (e.g., arbitration, negotiation, and reconciliation) and (ii) Policies pertaining to the field of legal services.

### B. Citizenship

Indonesia’s legal policy on citizenship is characterized by a strategic approach. Such a policy is not merely a matter of protecting the citizens of Indonesia, it also serves to elevate the nation’s standing in the global arena. Therefore, the enactment or amendment of legislation pertaining to citizenship is regarded as a *sine qua non*, an absolute requirement.[4]

Article 26, paragraph 1, of the 1945 Constitution of the Republic of Indonesia asserts that citizens are indigenous Indonesians or people of other nations governed by law as citizens. Meanwhile, paragraph (2) asserts that residents are Indonesian citizens and foreigners residing in Indonesia. The provisions of Article 26, paragraph (1) of the 1945 Constitution follow the provisions set out in Article 2 of Law No. 12 of 2006 concerning Indonesian Citizenship. The article defines Indonesian citizens as indigenous Indonesians and individuals of other

nations who have been granted citizenship status by law. A person may be considered an indigenous Indonesian if their ancestors have lived in Indonesia for hundreds of years, making it challenging to ascertain their ethnic origins. This differentiates them from individuals of European, Chinese, Arab, Indian, and other ethnic backgrounds. In accordance with the provisions of Article 2 of Law No. 12 of 2006, individuals of non-Indonesian descent must apply to be legalized as Indonesian citizens. In the context of naturalization in accordance with Article 20 of the aforementioned law, the President may, with the approval of the DPR, confer citizenship upon descendants of the Republic of Indonesia.

### C. Human Rights

Scheltens proposes that an understanding of human rights can be advanced through an examination of two distinct concepts: *first*, Human Rights, derived from the translation *Mensen Rechten*, are rights that are inherent to the human condition and are universally applicable; and *second*, Basic Rights, derived from the translation *Grondrechten*, are rights that are obtained by a person as a citizen of a country and are domestic in nature, not universally applicable.[5]

The author will investigate the concept of dual citizenship, focusing on its interpretation as a matter of civil rights. The examination will be centered on the implications of dual citizenship (*Mensen Rechten*) for those who exercise their civil rights as basic rights (*Grondrechten*), in a context where dual citizenship has been chosen as a legal status. Furthermore, experts have formulated their own definitions of human rights, including:

- a) Hendarmin Ranadireksa defines human rights as “a set of provisions or rules” that protect citizens from oppression, confinement, or restrictions on their movement by the state. That is, certain restrictions are imposed on the state in order to safeguard the fundamental liberties of citizens from the arbitrary exercise of power.[6]
- b) Mahfud MD defines human rights are inherent to humanity’s intrinsic dignity as creatures of God, with these rights being inherent at birth and universal in nature that are not granted by humans or the state.
- c) Koentjoro Poerbopranoto, posits that human rights are inherent to the nature of humankind, inseparable from their being and thus sacred.[7]
- d) Scott Davidson defines human rights are concerned with the protection of individuals from state or government authority in specific areas, yet also create societal conditions at the behest of the state.[8]

The author draws the conclusion from the aforementioned understanding that human rights are inalienable and intrinsic to each individual from birth. They are not a gift from humans or the state, and thus not subject to the protection of the state.

## III. METHOD

The data utilized in this research were obtained from primary sources, comprising the entities involved in the development and renewal of citizenship law in Indonesia. In addition to the primary data, this research also employs secondary sources, which include legal literature, dissertations, theses, research reports, articles, and papers. Tertiary sources, which consist of legal dictionaries and encyclopedias, have also been employed.

Analytical techniques were employed to describe, interpret, and analyze the data, linking it to context, interactions, and relevant theories. To ensure the accuracy and reliability of the data, a triangulation methodology was used, which involved comparing and contrasting the data from multiple sources to enhance credibility. Triangulation is not merely a method of data collection but a comprehensive approach to research. It involves a process of cross-checking findings based on diverse sources and types of evidence.[9] Researchers who are fully aware of the data they are collecting can incorporate triangulation tactics into the data collection process by cross-checking findings based on diverse sources and types of evidence.

## IV. RESULT AND DISCUSSION

### A. Naturalization

Given with the aforementioned Article 1 paragraph 1, what is meant by citizen is a citizen of a country that is governed by law and regulation. This is in line with the provisions of Article 8, which asserts that Indonesian citizenship can also be obtained through naturalization.[10] Three basic elements or principles determining a person’s citizenship are listed as follows: *First*, the principle of “descent” or “blood relationship” or *ius sanguinis*. A person’s citizenship is determined by the citizenship of his parents, even if the child himself was born outside his country. The *ius sanguinis*, among others, is adopted by China, so that if a father is a Chinese citizen, then his child is also a Chinese citizen, regardless of the place or country where the child was born. Indonesia also adheres to this principle.

*Second*, the principle of “regional or territorial”, also known as *ius soli*. This principle is the antithesis of *ius sanguinis*, which determines a person’s citizenship by the place of birth, despite the nationality of the parents. The United States employs the *ius soli*, among others, to the effect that every child born within the territory of the United States is deemed a citizen of the United States, regardless of the citizenship of the parents who gave birth. *Third*, the principle of “citizenship or naturalization.” This principle of determination can be invoked when an individual with foreign nationality applies to become a citizen of a particular country. The process, comprising the conditions and procedures that must be carried out between one country and another, is not uniform.[10]

At the time of the enactment of Law No. 62 of 1958, the judiciary (District Court) continued to play an active role in the naturalization process. Once the applicant had satisfied the requisite criteria and the presidential decree had been issued, they were required to take an oath before the chairman of the district court. In contrast, the 2006 legislation stipulates that the application for citizenship is submitted in Indonesia by the applicant in writing in Indonesian on paper with sufficient stamps to the President through the minister (Article 10, paragraph 1). Moreover, as stipulated in Article 10, paragraph (2), the application file for citizenship, as referenced in paragraph (1), is submitted to the official. Subsequently, the Minister shall transmit the application as referenced in Article 10, along with the pertinent considerations, to the President within a period of three months from the date of receipt of the application (Article 11).

Foreigners who are legally married to Indonesian citizens are entitled to apply for Indonesian citizenship by submitting an application to become a citizen before the relevant official (Article 19, paragraph 1). This stipulation ensures the protection of human rights for both foreign and Indonesian spouses. The submission of a statement in front of an official is sufficient to become an Indonesian citizen. The statement referred to in paragraph (1) is made if the person concerned has resided in the territory of the Republic of Indonesia for at least five consecutive years or for at least ten non-consecutive years, unless the acquisition of citizenship results in dual citizenship (Article 19 paragraph 2). Furthermore, in paragraph (3), the ancestor in question did not obtain Indonesian citizenship, which was subsequently revoked by the citizenship of the country as referenced in paragraph (2). Consequently, the individual in question may be granted a permanent residence permit in accordance with the relevant legislation.

Article 20 of Law No. 12 of 2006 asserts that foreigners who have made a significant contribution to the Republic of Indonesia or who have been granted Indonesian citizenship for reasons of state interest may be granted Indonesian citizenship by the President following the recommendation of The House of Representatives of the Republic of Indonesia, unless the granting of citizenship would result in the individual concerned holding dual citizenship. Article 21 of Law No. 12 of 2006 asserts that children who have not yet reached the age of 18 or are not married yet, as well as their families residing in the territory of the Republic of Indonesia, shall be granted Indonesian citizenship upon the acquisition of Indonesian citizenship by their fathers or mothers (Article 21, paragraph 1).

#### B. *Politics Of Naturalization Law*

*First*, the categorization of politics of law in question is ideal politics of law. This is defined as the extent to which Pancasila, as an ideology or ideal foundation in the state, provides control in applying the principles of the state, especially in terms of citizenship in Indonesia. Pancasila, particularly the second precept of “just and civilized humanity” and the fifth precept of “social justice for all Indonesian people,” are the precepts most directly related to the issue of applying the principle of dual citizenship in Indonesia. In terms of the application of naturalization practices as a means of safeguarding the human rights of the Indonesian diaspora, it is evident that the second and fifth precepts of Pancasila are of particular significance.

*Second*, the Politics of Constitutional Law provides fundamental guidance, with the 1945 Constitution serving as its foundation. The constitutional law is formed by making the 1945 Constitution the “guideline.” In the context of naturalization practices in Indonesia, it is pertinent to consider the alignment of these efforts with the 1945 Constitution. In particular, the Preamble of the 1945 Constitution, which states that the government of the State of Indonesia “protects the entire Indonesian nation and the entire homeland of Indonesia,” provides a foundation for these practices. Furthermore, Article 26 of the 1945 Constitution empowers legislators to determine the principle of citizenship.

*Third*, the Politics of Instrumental Law may be elucidated by reference to how citizenship law, as delineated in Pancasila and the 1945 Constitution, is structured in a rigid manner as a consequence of derivation, as set out in the law and, more specifically, government regulations, in their capacity as implementing rules. Consequently, following the enactment of Laws 3/1946, 62/1958, and now 12/2006, there is a pressing necessity to enhance or even alter the legislation regulating the naturalization process within Indonesia.

## V. CONCLUSION

The author concludes that the application of open citizenship law in Indonesia is a necessity by following three legal political principles outlined above. It is inevitable that changes will occur, particularly in the context of citizenship or naturalization. An applicant may request naturalization through the submission of a written statement that does not conflict with Pancasila's status as an open ideology, the Constitution's role as the foundation for legal principles, and the Constitution as a foundational philosophical concept. This statement is then legally substantiated through subsequent legislation.

## REFERENCES

- [1] A. Manan, *Aspek-Aspek Pengubah Hukum*. Jakarta: Kencana Prenada Media, 2006.
- [2] H. S. Wardoyo, *Kewarganegaraan (Pemahaman Dalam Konteks Sejarah, Teori, dan Praktik)*. Jakarta: Komisi Nasional Hak Asasi Manusia, 2006.
- [3] R. Atmasasmita, *Reformasi Hukum, Hak Asasi Manusia dan Penegakan Hukum*. Bandung: Mandar Maju, 2001.
- [4] Gunarto and Y. Endian, *Politik Hukum Kewarganegaraan*. Bogor: Eltah, 2007.
- [5] Aswanto, "Jaminan Perlindungan HAM dalam KUHAP dan Bantuan Hukum Terhadap Penegakan HAM di Indonesia," Universitas Airlangga, 1999.
- [6] Muladi, *Hak Asasi Manusia Hakekat, Konsep dan Implikasinya Dalam Perspektif Hukum dan Masyarakat*. Bandung: Refika Aditama, 2005.
- [7] Budiyanto, *Dasar-Dasar Ilmu Tata Negara*. Jakarta: Erlangga, 2003.
- [8] D. Scoot, *Hak Asasi Manusia*. Jakarta: Grafiti, 1994.
- [9] N. K. Denzin and Y. S. Lincoln, *Handbook of Qualitative Research*. Yogyakarta: Pustaka Pelajar, 2009.
- [10] Siahaan and Subiharta, *Hukum Kewarganegaraan dan HAM, Bagaimana SBKRI Menurut UU No. 12 Tahun 2006?* Jakarta: Pancuran Alam, 2007.

**Open Access** This chapter is licensed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (<http://creativecommons.org/licenses/by-nc/4.0/>), which permits any noncommercial use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons license and indicate if changes were made.

The images or other third party material in this chapter are included in the chapter's Creative Commons license, unless indicated otherwise in a credit line to the material. If material is not included in the chapter's Creative Commons license and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder.

