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Post-Colonial Citizenship Law (Comparative Study of Asian Countries)

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Abstract

This paper describes the system of citizenship law in Asia. The first part of this article provides a narrative by highlighting some of the related issues surrounding citizenship law and by discussing this issue with the process of (de) colonization. The second section presents a comparison of the law with respect to citizenship legislation from selected countries. Furthermore, the comparative analysis is seen in 3 main things: how to obtain citizenship because of birth, how to obtain citizenship after birth, and the problem of losing citizenship. The third part discusses dual citizenship and statelessness as well as differences between legal provisions and practice.

Keyword : citizenship; colonization; nationalism.

Abstrak

Tulisan ini mendeskripsikan sistem hukum kewarganegaraan di Asia. Bagian pertama artikel ini memberikan narasi dengan menyoroti beberapa masalah terkait seputar hukum kewarganegaraan dan dengan membahas isu ini dengan proses (de) kolonisasi. Bagian kedua menyajikan perbandingan hukum sehubungan dengan peraturan perundang-undangan kewarganegaraan dari negara-negara yang dipilih. Selanjutnya, analisis perbandingan tersebut dilihat dalam 3 hal utama: cara memperoleh kewarganegaraan karena kelahiran, cara memperoleh kewarganegaraan setelah kelahiran, dan masalah kehilangan kewarganegaraan. Bagian ketiga membahas kewarganegaraan ganda dan kondisi tanpa kewarganegaraan (statelessness) serta perbedaan antara ketentuan hukum dengan pelaksanaan praktik.

Kata kunci: kewarganegaraan; kolonisasi; nasionalisme.

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Introduction

Citizenship determines the personal status of citizens, which includes the ability to carry out legal actions, protection of rights and obligations, issues related to family law, and determine submission to legal jurisdiction in a country (Isharyanto, 2016). The right to citizenship is based on the existence of an effective relationship between an individual and a state (Bosniak, 2000). Citizens who are not recognized or do not have citizenship status of a country are not entitled to political rights such as electing and being elected as head of state in the country where they live, cannot register their marriage, and cannot get travel documents, as well as other rights such as the right to education, medical care, and employment will not be obtained by individuals who cannot prove legal relations with a country (Ngai, 2007). Citizenship status is a very important identity when it is associated with the position of citizens towards a country (Kunal M. Parker, 2001). Citizens are an element of the founding of a country, if these elements are not fulfilled then a state will

never be formed and is a real problem for someone because their rights and obligations are related to citizenship status (Filomeno, 1999; Volpp, 2002).

According to Siim (2006), citizenship is a concept that is at the center of domestic and cross-border policy debates. In comparative analysis, citizenship has recently become a major concept, and various studies have focused on both social rights (in sociology) and on participation (in political science) and on the inclusion and exclusion of minority groups in society (Eisgruber, 1997). Nationality has different national meanings, designs and institutional patterns. However, as Anwar and Thahar said, a country's freedom to determine who is a citizen is limited by the general principles of international law regarding citizenship, that is, people who do not have any relationship with a country should not be included as citizens of a country concerned and a country must not determine who is a citizen of another country (Anwar and Tahar, 2014). To date there has not even been a generic agreement regarding the criteria for determining the status of citizenship that is applied to the entire world.

In subsequent developments, access to legal status and rights for non-citizens, since the Second World War, has become more equal to immigrants in countries open to immigration in the West (Hofhansel, 2008). The main difference between non-citizens and citizens is the right to vote (in national elections) and the selection of positions and the unconditional right to enter and reside.

Because the granting of citizenship is considered part of integration policy in most countries, the economic literature focuses primarily on the effect of citizenship in closing the pre-existing socio-economic gap between immigrants and indigenous people. Studies by (Chiswick, 1978), (Bratsberg, Ragan, and Nasir 2002), (Gathmann and Keller, 2014) and many other authors find positive effects on the integration of immigrants in the labor market. Recent literature also focuses on specific integration policies through granting citizenship status of immigrant ancestry at birth in the host country. (Avitabile, Clots-Figueras, and Masella, 2014) and (Felfe, Rainer, and Saurer 2016) found positive socio-economic effects of granting citizenship to their children and families.

So important is the determination of citizenship status, then it becomes the main agenda as a policy determined after independence or the formation of the state. The 20th century witnessed a lot of political upheaval, especially in Europe. Two world wars shook Europe and started the steps for independence in many European colonies. This decolonization process shifts global politics, and has had a long-standing impact on the meaning of identity and citizenship in this post-colonial context. In the 1930s, Britain, the Netherlands, France, America and Japan ruled Asia. In 1950, Asia was divided into various forms of nation-states. Between 1945 and 1949, India, Pakistan, Burma [now Myanmar], Sri Lanka, Indonesia and the Philippines achieved independence. The Communist Revolution in China created two countries namely the People's Republic of China and Taiwan, just as Korea was split into North and South Korea and survives to this day (Sunil S. Amrith, 2011).

In addition to its position, with the exception of Thailand, as a post-colonial country, countries in the Asian Region are generally "conspicuously multi-ethnic, multi-religious, and multi-lingual" (Suryadinata, 2015). Apart from this historic event during the 20th century, Asia was a region that was ignored in comparative studies of citizenship law. Comparative studies of this issue are generally Atlantic (Vink and Bauböck, 2013) or Global North (Sadiq, 2009), which are "partly related to the fact that data on nationality laws of countries outside Europe and the Western world remain relatively scarce, although there has been a notable improvement in this respect by recent scholarship on the Americas and Africa" (Bronwen Manby, 2015; Vonk, 2014). This lack of interest can be understood to some extent because Asian countries have a much lower level of access to international treaties dealing with citizenship law compared to other countries, and there are no citizenship trials and decisions that have been handed down by courts in the regional region. This is certainly different from the similar mission that has been carried out by the European Court of Human Rights and the Court of Justice of the European Union; the Inter-American Court of Human Rights; and the African Committee of Experts on the Rights and Welfare of the Child. The lack of attention for Asia is also recognized by writers from the region itself. For example, it has been noted by Choe that since the study of citizenship there has been mainly focused on European cases (Choen, 2006).

After the breakup of the Soviet Union, Central Asian countries, like other successor countries, had to develop their own citizenship policies. Unlike some other post-Soviet countries, countries in the region are less concerned about immigration and ethnic demographic issues. In addition to forming a new state, the determination of the status of citizens is exclusively territorial (Brubaker, 1992). In the early 1990s, Central Asian countries thus assumed that citizens were those who lived there at the time of independence, even though the determination of citizenship status was based more on heredity.

In this paper we will describe the legal system of citizenship in Asia. The first part of this article provides a narrative by highlighting several related issues surrounding citizenship law and by discussing this issue with the (de) colonization process. The second part presents a comparative law in connection with the statutory legislation of the countries chosen. Next, the comparative analysis is seen in 3 main ways: how to obtain citizenship by birth, how to obtain citizenship after birth, and the problem of losing citizenship. The third section discusses dual citizenship and the conditions of statelessness (statelessness) as well as the difference between the provisions of the law and the practice.

It should be noted, given the limitations of the author's access to related legal material, especially with respect to the availability of documents that are not all presented in English, the object of observation is a limited Asian country namely Afghanistan, Bangladesh, China, East Timor (Timor-Leste), India, Indonesia, Japan, Cambodia, Laos, Malaysia, Mongolia, Myanmar, Pakistan, Philippines, Singapore, South Korea, Sri Lanka, Taiwan, Thailand, and Vietnam as well as countries in the Central Asian region (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan). All of these

countries were formerly controlled by the Soviet Union, and both gained independence in 1991. This paper excludes Bhutan, Brunei and the Maldives, because no affordable legal material was identified and because all three had very small populations compared to other countries. which is the object of observation.

Research Problems

Based on introduction part in this paper, the problems examined in this paper are: *first*, how are related issues surrounding citizenship law and by discussing this issue with the (de) colonization process. *Second*, how is comparative law in connection with the statutory legislation of the countries chosen. *Third*, how are the conditions of dual citizenship and the conditions of statelessness (statelessness) as well as the difference between the provisions of the law and the practice.

Discussion

Overview of Citizenship

The concept of citizenship has been studied for centuries, since the beginning of the Greek republic in Athens. Citizenship has been defined in various ways, as (i) "the status granted to those who are full members of a community" (ii) "the obligation and invitation to participate and actively engage in the community"; (iii) "the ability to participate in collective decision making and thus fulfill one's role as an active constituent of popular sovereignty"; or "a set of social practices that are institutionally embedded" (Reiter, 2013).

However, with respect to this article, it is important to distinguish between substantive and formal citizenship. Formal citizenship is the formal legal definition of people, and whether or not they obtain proper legal documents to certify that they are citizens of a certain country. This status grants and is associated with certain privileges. However, substantive citizenship is far more profound. Reiter (2013) argues that "substantive citizenship has two important dimensions — namely, substantive citizenship as a social role, and substantive citizenship as a relational asset." Formal citizenship is a necessary but not sufficient requirement in the view of substantive citizenship.

Citizenship is associated with the particular role that a person plays in society, namely "the role of being a citizen invested with certain rights and duties, and protected by the state that makes and enforces the rules and laws that define citizenship" (Reiter, 2013). These roles occur in the public sphere such as voting, civil participation, jurying, and conscription in several countries. But the social role of citizenship goes beyond the formal requirements of the state. As a social role, citizenship needs to be "learned, accepted, and validated by others" (Reiter, 2013). As such, a person is not only subject to the state as a place where citizenship occurs and is validated, but also subject to fellow citizens or others, and their judgments about what is seen and to act like citizens. Thus, the rights of a citizen can vary greatly from country to country, depending on various ways that citizens are socialized to understand the meaning of citizenship (Reiter, 2013). Substantive citizenship actually occurs in our daily lives through various ways that have

been socialized to carry out actions as a citizen. While this requires recognition of individual autonomy and ownership of certain rights, these requirements are not sufficient for a full assessment of citizenship status.

Reiter also explores citizenship as a relational objectivity, a good subject for free market power. It is said that "Substantive citizenship is a contested status, and for it to translate into reality, it needs to be defended, upheld, substantiated, and negotiated vis-à-vis the state and other individuals and groups who share the same formal status" (Reiter, 2013). Position as status causes it to be assumed that citizenship status is a positional item, which is something that only provides the benefits sought as long as not everyone has it. Citizenship status does not derive its value from absolute acquisition but from a position relative to others. Thus, as more people gain citizenship status, the value of that status decreases (Reiter, 2013). This makes it possible to understand why citizenship policies are so competitive and discriminatory.

There are various ways to define citizenship and through an interdisciplinary perspective, each of which does not have satisfactory clarity or completeness. Whether citizenship is defined as membership, status, practice, or even performance, it carries a particular political, cultural, spatial, temporality, and sociality conception. To say, for example, that "citizenship is membership in the nation-state" assumes so many things and leaves so many problems that it becomes an analytically useless statement. Ironically, this concept is also the most common definition offered today. Likewise, to say that "citizenship is performance" leaves many things unsaid such as how they appear and function (Isin and Nyers, 2014).

Substantive citizenship still denies the fact that citizens of a country almost never belong to that country, but also to some neighboring countries. Clearly, in the contemporary world, the dominant government is the state, but even its dominance now involves various international and regional policies through international treaties (eg the European Convention on Human Rights), multilateral treaties (for example the North American Free Trade Agreement), supranational bodies (for example European Union) and joint sovereignty arrangements (eg Scotland or Quebec). This is further complicated by the fact that many citizens (and not citizens) in the contemporary world do not live in their birthplace but in countries where they later reside. All this puts citizens in a network of rights and obligations through which they are involved to negotiate certain combinations which are always complex relationships (Isin and Nyers, 2014).

Still according to Isin & Nyers (2014), the combination of rights and obligations is always the result of social struggles that find expression in political and legal institutions. Traditionally, in modern state society, there are 3 (three) types of rights (civil, political, and social) and 3 (three) types of obligations (conscriptio, taxation, and participation) that define the relationship between citizens and the state. In addition, new rights have emerged such as sexual, cultural and environmental rights with varying degrees of institutional success (for example in same-sex marriages in the United States and Europe). Because the combination of rights and obligations and their performance varies greatly in

different countries, it may be more accurate to talk about various citizenship regimes that characterize the development of certain combinations that are even interdependent. For example, talking about the Anglo-American regime (for example in Britain, the US), the North European regime (for example in Denmark, Norway), the continental regime (for example in France, Germany), the South American regime (for example in Brazil, Chile), the Asian regime South (eg in India, Pakistan) and so on. We can also talk about post-colonial citizenship regimes (eg India, Brazil, Ghana), post-communist citizenship regimes (eg Poland, Hungary, even China), neoliberal citizenship regimes (eg Britain, US), post-settler citizenship regimes (for example. Canada, Australia), or settler regimes (e.g. Israel).

If citizenship mediates rights between political subjects and the government they are in, it also involves the art of being with other people, negotiating various situations and identities, and articulating themselves as others, but similar to others in everyday life. Through social struggle, citizens feel their rights as obligations of others and the rights of others as their obligations. This is especially true for citizenship in a democratic country, because it is the only form of citizenship that approaches the combination of rights and obligations as a dynamic result (and thus contested but dynamic and flexible) and its creative performance as a fundamental aspect of a democratic government. Citizenship, especially democratic citizenship, depends on the creative and autonomous capacity of political subjects whose citizenship performance is not only a driving force for change but also guarantees the vitality and endurance of government. Governments can see the domain of citizen involvement as separate from each other and in the social lives of their citizens, but sometimes it needs to be reminded that citizens do participate and enforce citizenship (Isin and Nyers, 2014; Amitai, 2007).

Sometimes a country decides to prohibit the removal of citizens from their own territory. During the Italian Fascist Regime, exit visas were needed from 1922 to 1943 as was the case in Nazi Germany from 1933 to 1945. According to the law, "leaving USSR citizenship requires the approval of the Soviet Union Presidium of the Soviet Union" (Article 17, citizenship law, 1977). Individuals are not free to leave the territory of the Soviet Union, and even if they do so they cannot leave citizenship without the consent of the authorities. The case of Soviet Jews, who were banned from leaving the Soviet Union, especially during the 1980s, has become a well-known illustration (Herzog, 2012). Control of citizen travel abroad has been widely eliminated throughout the world. However, some countries continue to control the departure of their citizens. For example, Uzbekistan is the last former Soviet Union country that still needs an exit visa (visa valid for a period of two years). Cuba also still needs an exit visa or "white card" for all citizens who want to travel abroad (Herzog, 2012). There are many limitations to giving up citizenship. Bosnia and Herzegovina states that during a state of war or imminent war, the release of voluntary citizenship status is prohibited. The main reason is that citizens cannot avoid compulsory military service. In countries where there is compulsory military service, completion or exclusion of conscription is a prerequisite for the release of citizenship status (Moldova). Serbia even added this limitation by regulating "release from citizenship of the Republic

of Serbia shall not be granted if that is necessary for the reasons of security or defense of the county, for a reason of reciprocity of when that is requested by economic interests of Serbia and Montenegro. "In the same way, but in connection with national civil obligations, the release of voluntary citizenship status is approved only if citizens have no ongoing costs, for example, paying taxes, fees and other public costs (Slovakia); not having a pending criminal charge, an unfinished sentence, or other legal obligations (Albania); or must arrange financial obligations to the family (Macedonia). Some countries demand that the release of voluntary status can be processed only if citizens actually live abroad (Montenegro, Albania, and Slovenia). Other countries have an age limit (18 years) to ensure that decision (Montenegro, Albania, and Croatia). However, Serbia and Slovenia have also determined that this decision must be made before the age of 25 years.

All countries in the world have *ius sanguinis* provisions. This means that children who have at least one parent who holds the nationality of a country will automatically be granted similar citizenship. There are exceptions in some countries if parents are not married and only the father holds the citizenship of the country. Other countries, like Italy, also provide similar citizenship if grandparents have Italian citizenship (Isharyanto, 2016).

Another widely discussed way to obtain citizenship is the *solus* issue approach, which literally means that a child is granted citizenship from the host country only by being born in that country. This practice is most often found in traditional immigration countries such as the US or Canada. However, some countries, such as Germany or Greece, attach further requirements for granting citizenship based on *ius soli*. Usually this is related to the minimum duration of parent's residence which varies between 5 (five) and 8 (eight) years. Other countries, such as Hungary, Italy, Poland and Iceland, only give citizenship according to the place of birth if the child does not have another nationality (Isharyanto, 2016).

In recent years, several studies have analyzed the effect of citizenship according to the *Ius Soli* on the integration of parents and their children. The authors document the positive effects of citizenship according to the duration of stay and the efforts of parents to integrate immigrant children (Avitabile, Clots-Figueras, and Masella 2014; Ch. Sajons 2016; Maryellen, 2014). A study by (Felfe, Rainer, and Saurer 2016) found a positive effect on the introduction of citizenship in children and their educational efforts.

Another way to obtain citizenship is by means of naturalization. Naturalization is the acquisition of citizenship for foreign residents; citizenship; citizenship obtained after fulfilling the requirements as stipulated in the legislation (Luck, 2013). Over the past decade, several countries have changed their citizenship laws for immigrants and their children, some toward more liberal attitudes and others toward more stringent policies (Goodman, 2010). While Denmark is one of several European countries that has gradually tightened procedures for naturalization, Sweden has moved in the opposite direction, liberalization of citizenship laws over the past decade (Goodman, 2010). Already in the late 1970s, the language proficiency requirements for Swedish citizenship were abolished and,

since the early 2000s, everyone was permitted to hold various nationalities. Instead, Denmark has increased its barriers to naturalization by gradually introducing tougher citizenship requirements and selection (Ersboll, 2010; Alisson, 2010). Foreign nationals are further subject to wider housing requirements in order to qualify for citizenship in Denmark, compared to the situation in Sweden.

The Effect of Colonialism

With the exception of Thailand, all countries under discussion have a history of colonizing or colonizing other countries themselves. The majority attained independence around the middle of the 20th century so the consequences of citizenship were relatively new. Little is noticed in the case of Papua New Guinea, which was a German colony and then part of Australia before gaining independence in 1975. The British colonial legacy is also seen in the context of current citizenship in Malaysia. There is the case of British Overseas Citizens (BOC), a policy which promotes a situation of citizenship after failing to secure British citizenship, after the surrender of independence to Malaysia. Because it strictly enforces the principle of single citizenship, every citizen who obtains BOC status and obtains a British passport will lose Malaysian citizenship.

Decolonization not only has consequences in citizenship law, but also migration issues. Until the mid-20th century, the difference between internal and international migration did not mean much in the Asian context. Most migrations occur within and across royal boundaries. In the 20th century, internal migration during the colonial period changed suddenly to international migration, when new countries were formed and new territorial boundaries were established (Sunil S. Amrith, 2011). The main European colonial powers were Britain, France, Portugal, the Netherlands and the United States. Starting with the French government in Asia, Cambodia was a French protectorate between 1863-1953 and occupation had a lasting impact where Cambodia would subsequently comply with the civil legal system introduced by France.

In Vietnam, a French colony from the end of the 19th century to 1954, followed the French legal and judicial system with local modifications (Marr, 1991). Therefore, most of the laws dealing with citizenship issues are related to the naturalization of French citizenship (Nørlund, 1991). Because Vietnam holds the status of a colony under the French government (Woodside, 1989), unlike Protectorates such as Laos and Cambodia (Burlette, 2007), local residents are treated as "subjects" and generally enjoy more rights and privileges, including access to French citizenship. After establishing power in the Southeast Asian nation in the mid-19th century, France sought to improve existing conditions, and build new infrastructure to increase the productive capacity of the colony (Singer and Langdon, 2004). The more efficient the colonial economy, the more profit for the mother country. Unfortunately, what is good for France is not always good for Indochina (Dong, 1985). While most scholars focus on other causes of the Vietnam War, they rarely discuss how the direct influence of France was the main factor.

Indonesia declared independence from the Netherlands in 1945, after being dominated by European powers for nearly 350 years. East Timor has been a Portuguese colony for several centuries until its turn, invaded by Indonesia in 1975 (Gunn, 2009). East Timor's military occupation lasted from 1975 to 1999 at which time Indonesian citizenship law was adopted and the country became an independent state in 2002 (Almeida, 2015). While the East Timor report noted that "the issue of whether the population of East Timor was Indonesian and / or Portuguese became very warm in the early 1990s" and gave rise to detailed legal wrangling, the Indonesian report paid less attention to the concluded citizenship allocation agreement in 1949 between Indonesia and the Netherlands, but instead focused on Indonesian citizenship law after independence (Vonk, 2014).

India technically became a colony only from 1858-1947, despite the fact that the period of colonial rule in India extended nearly 2 (two) full centuries. Pakistan, which was previously part of British India, broke away from India in 1947 and at that time still included what is now Bangladesh. The latter gained independence from Pakistan in 1971. These processes caused a massive movement of people across borders in the Indian subcontinent. Burma had also been completely colonized by the British in 1885 and the law that was applied to British India also applied in what is now called Myanmar.

Sri Lanka was a British colony from 1796 to 1948. The citizenship law was predominantly established by the Tamil Community. Of particular importance were struggles by stateless groups who came from parts of South India and were recruited to work in the plantation sector during the British colonial period. While Tamils are the center of attention in the Sri Lanka report, other reports pay attention to the citizenship status of ethnic groups based in their respective countries, such as the Urdu / Bihari Non-Bengali speaking minority in Bangladesh; ethnic Vietnamese in Cambodia; and Rohingya, a religious ethnic minority based in the state of Rakhine in Myanmar, but have spread throughout the Southeast Asian region as refugees. While the status of Tamil citizenship and Urdu-speaking minority has greatly improved, this is not the case with Rohingya.

Malaysia and Singapore had become British colonies until 1957 and were fused for a moment in 1963. Singapore then separated from Malaysia in 1965. The geographical and institutional structure of Malaysia and Singapore was very complex both the citizenship status of Malaysian and Singapore citizens were just as complex when the laws of British citizenship were still in force .

The Philippines had been a Spanish colony before it was acquired, together with Puerto Rico and Guam, by the United States and its inhabitants thus becoming US citizens. Through the Paris Agreement in 1898, Spain surrendered to the United States all of its colonial authority over the Philippines, including other colonies (Punzalan, 2007).

Aguilar also referred to the 1882 Chinese Exclusion Law in the US, which was extended to the Philippines in 1898. Indeed, many reports paid attention to the role of Chinese migrants in their respective countries, for example with the agreement on Indonesian-Chinese dual citizenship (1955) (Harsono, 1992; Isharyanto, 2016) and discriminatory practices against individuals of Chinese descent. It has also been argued

that enacting Chinese citizenship laws in the early 20th century became even more pressing for the Chinese government because of the Dutch government's refusal of Chinese requests to build a consulate in the Dutch East Indies because this country did not have citizenship laws in which it could submit claims to the diplomatic protection of its citizens.

In the 19th century, when the Qing dynasty became a prisoner in East Asia because China lost much of its territory when tributaries south of Nepal and Burma were captured by Great Britain; Indochina controlled by France; Taiwan and the Korean and Sakhalin tributaries are controlled by Japan; and Mongolia, Amuria, and Ussuria were taken over by Russia. In the 20th century, there was a bloody Japanese takeover of the Shandong Peninsula and Manchuria in the heart of China. These are in addition to the humiliation imposed on the Chinese by the extraterritorial agreements of the 19th and early 20th centuries, in which Western countries seized control of Chinese cities (Kaplan, 2014).

The new Chinese citizenship laws were enacted in 1912 and 1929, and then remained in effect until 1949. The People's Republic of China would not have citizenship laws during the "silent period" from 1949 to 1980, when the citizenship laws were in force this time then came into force. Especially important in the Chinese context is the difference between rural and urban residents based on the household registration system (*hukou*). Segmented and differentiated allocations from citizens' rights are thought to result in rural migrants living in cities as second class citizens.

In contrast to the countries discussed, Japan is a former colonial power in Asia that acquired Taiwan in 1895 after the Sino-Japanese War and the southern part of Sakhalin (Korean territory) in 1905 after the Russo-Japanese War. Despite claims that immigration is a new phenomenon in Japan, Japanese politicians and experts have been debating the issue of merging immigrants since at least the Meiji period when Japan's first citizenship law [1899] was institutionalized. In addition, as was the case with the former European colonial powers, Japan formulated citizenship criteria in the context of decolonization and reconstruction in the postwar period. As a result, the debate on nationality and citizenship policy is not only related to redefining Japan's national identity as a democratic nation-state, but also with the legal position of the former Japanese colonial subjects (Chung, 2010).

Comparative Analysis: How to obtain citizenship because of birth

Initially, all countries that embraced *ius sanguinis* almost exclusively applied *ius sanguinis a patre* (by father line); only in exceptional circumstances is the *ius sanguinis matre* (based on maternal lines) relevant (for example in the case of a child born out of wedlock and not recognized by a man). But in practice, most children have the same citizenship as fathers and mothers, because women lose their own citizenship at the time of marriage and at that time obtain citizenship from their husbands. During the 20th century, this "unity" system was gradually replaced by a "dualistic" system which allowed women to have their own citizenship independently. Asian countries are no exception and

some show gender equality: Bangladesh (2008), China (1980), India (1992), Japan (1985), Nepal (2006), Pakistan (2000), South Korea (1998), Sri Lanka (2003) and Taiwan (2000 but with retroactive effects until 1980) (Isharyanto, 2016).

However, it is rather unique, some countries such as Indonesia and Japan do not accept dual citizenship arising from mixed marriages. In Japan, the obligation to choose between foreign and Japanese citizenship applies regardless of whether foreign citizenship is obtained because of the principle of *ius sanguinis* or *ius soli*, even though the policy does not appear to be strictly enforced. In Indonesia, children born from mixed marriages have dual citizenship. They must choose a nationality when they reach the age of 18 and no later than 21 years. Unfortunately, the 2006 Citizenship Law does not regulate in detail their status if it fails to do so. Instead, the consequences of this failure are found in Government Regulation No. 2 of 2007, which said that in the case of children who did not choose their nationality, the provisions of the regulation against foreigners would apply.

At present, most countries apply a combination of the principles of *ius sanguinis* and *ius soli*. The classical *ius soli* states stipulate that in the case of births in a foreign country, the child is granted citizenship status according to the *ius sanguinis* principle, but often limits the transmission of citizenship in this way to the first or second generation. In cases where countries have decided to apply additional provisions for the transmission of *ius soli*, they have given more weight to acquiring *ius sanguinis* by adding provisions for automatic acquisition by offspring for children born with the determination of citizenship status similar to parents.

The main way to obtain citizenship through birth in Asian countries is with *ius sanguinis*. In this regard, Asian countries follow European practices rather than America (Vonk, 2014). Especially important in the Asian context are the positions of children born abroad; Additional requirements are needed for children to obtain the citizenship of their parents and there is widespread rejection of children to become dual citizens. In this regard, Asian practices are clearly more stringent than those in Europe. Gender discriminatory rules still exist in Nepal (regardless of whether the child was born in Nepal or abroad, and Malaysia).

The global trend is the elimination of automatic *ius soli* or its replacement with a more conditional form than *ius soli* (in Africa especially in the Commonwealth countries. The Americas remain an exception, with 30 out of 35 countries providing automatic and unconditional *ius soli* (Vonk, 2014). The shift from *ius soli* to *ius sanguinis* had taken place in Asia in the 20th century, Indian constitution drafter adopted the idea of modernist and secular citizenship by trying to incorporate a broad conception of citizenship in the constitution, and over time, provisions had been modified to include various elements of the model of citizenship based on *ius sanguinis*, with the insertion of hereditary ideas, the same religious identity, and "national" values in the discourse of citizenship Determination of the citizenship status of Bangladesh from parents of children born in Bangladesh is the main reason for being a citizen from birth, so it can be said that principle of citizenship *de facto* statehood has shifted from *ius soli* to *ius sanguinis*. As for Indonesia,

in 1946, Law No. 3 of 1946 concerning Citizenship and Population which emphasizes the use of *ius soli*. This basic principle was later changed to *ius sanguinis* through Law No. 62 of 1958 (Isharyanto, 2016).

The situation in Malaysia has become more complex. The principle of citizenship introduced after independence was changed to double *ius soli* which took effect on February 1, 1948. Based on this principle, second-generation migrants automatically obtain Malaysian citizenship if both their parents were born and have lived in the Federation for a continuous period of at least 15 (fifteen years). The next development in the provision of Malay citizenship was in September 1952. In the constitutional amendment in 1952, the principle of citizenship was changed to *ius soli*. Under this principle, children born domestically become Malaysian citizens if at least one of their parents lives in Malaysia.

The Philippines had adopted the principle of *ius soli* under the short-lived Malolos Constitution (1899-1901) and during the period of US colonial rule, but preferred the principle of *ius sanguinis* after independence when the Supreme Court in 1947 introduced the issue of *ius soli*. The Philippines now provides naturalization procedures which make it a bit easier for people born in the region. One of the main reasons for adopting the principle of *ius sanguinis* in the 1935 Constitution and in postwar jurisprudence was the prejudice of the Filipino elite against ethnic Chinese, a generation that had migrated from southern China to the Philippines for several centuries. In the post-colonial period, Chinese born in the Philippines, as well as those who migrated to the country, were able to obtain Filipino citizenship only through naturalization procedures with high-cost endorsement. Chinese people who can't afford the cost of naturalization carry a Taiwanese passport. For decades Chinese leaders have campaigned for participation in the Philippine government. A proposal for modification of the form of *ius soli* was proposed but was never successful. In 1975, President Ferdinand Marcos used a historical conjuncture to naturalize the masses to ethnic Chinese and other foreigners, mostly South Asians, as part of establishing diplomatic relations with the PRC. Naturalization is now an established procedure, functioning as a vehicle for foreigners and some stateless people born in the Philippines to obtain citizenship.

Not all Asian countries provide automatic access to citizenship for children found or abandoned in their territories, although it can be assumed that most countries still regard these children as citizens. Those who provide citizenship sometimes maintain age-related restrictions, particularly by stipulating that only newborn children are eligible. The question whether boys who have no children is known to be naturally born citizens is a major issue in the Philippines in the context of the 2016 national elections.

Comparative Analysis: How to Obtain Post-Birth Citizenship

One characteristic of the citizenship law of non-Western countries is naturalization as a means of obtaining citizenship. In Bangladesh, for example only 418 people were naturalized in the 1988-2016 period, of which 416 were based on family relationships (Hoque, 2016). The rate of naturalization in Japan, 0.4 percent of the foreign population in

2013, was very low among OECD countries (Organization for Economic Cooperation and Development), which was mainly associated with Japan's rejection of dual citizenship.

Complexity also occurs in Malaysia. The biggest obstacles to naturalization include the lack of clear guidelines, lack of transparency, no reason for rejection, no time limit set for application evaluation, and no rules on appeal procedures. Citizenship through registration and naturalization is very free. Immigrant couples are subject to discretionary naturalization regimes, even when meeting application criteria. There were 32,927 citizenship applications submitted by local and foreign residents between 1997 and 2009. The application process did not have a clear timeline, which resulted in many applicants waiting for responses for two decades. According to the Minister of Home Affairs, approval of citizenship applications is very subjective. The main reasons behind the application for citizenship were rejected including patriotism, state security, and financial considerations. Between 2000 and 2009, 4,029 foreigners applied for citizenship; 1806 applications approved. In the same time period, 3,640 applications for citizenship involved children and 1,066 applications were approved. The Ministry of Home Affairs reiterates that Malaysian citizenship is exclusive rights and not rights (Choo Chin Low, 2017).

The South Korea case is a good illustration of the interaction between various ways to obtain citizenship status, namely automatic acquisition, naturalization, and citizenship recovery. The frequency of naturalization in the 1990s was very low in Korea because Korean male foreign partners did not need naturalization until early 1998 because they automatically gained citizenship after marriage. In that period, ethnic migration back from former communist countries was restricted. Migrants returning from China have a greater way to restore citizenship than to be naturalized because the first generation of Chinese Koreans is treated as having held Korean citizenship. Since 2001, there have been more and more cases of naturalization and more cases of rearguard. In practice, this means that the amount of naturalization does not exceed one hundred requests per year. By the mid-1990s it had risen to more than 10,000 applications. As for North Korea, the provisions dealing with naturalization only stipulate that the applicant is a foreigner. Therefore, this provision is difficult to interpret, but in many cases it will have little impact given the low application for North Korean citizenship.

With regard to Pakistan, Sadiq has pointed out the difference between the narrow national Islamic identity in the country, while on paper presenting a citizenship policy that appears to be open and based on inclusive principles. In Pakistan, there is a break between formal citizenship law and the reality of citizenship practices, where discriminatory treatment of women and ethnic minorities is rampant (Sadiq, 2009). Indeed, the policy effectively separated Muslims from non-Muslims and while formal gender restrictions in the citizenship law were liberalized in 2000, other judicial practices and norms continued to undermine women's citizenship.

Comparative Analysis: How to lose citizenship

In some countries the loss of citizenship explicitly occurred during wartime (Malaysia, Myanmar, Pakistan, the Philippines, Singapore and Sri Lanka). Some countries still have compulsory military rules, such as Singapore (Choo Chin Low, 2017) and South Korea, and making it one of the criteria for loss of citizenship is faced with fulfilling this obligation. Mongolia and Vietnam have a protection mechanism by providing citizenship recalls when the acquisition of other nationalities is not realized. Taiwan, by contrast, allows the cancellation of resignation if no other citizenship is obtained. Nepal and North Korea do not have provisions regarding voluntary rejection, while Thailand only allows rejection for certain categories of citizens, for example those who obtain citizenship from a foreign spouse.

The majority of Asian countries use the criteria of staying abroad continuously as a reason for losing citizenship, with only Malaysia stipulating that it only applies to naturalized citizens. This is very different from Africa, for example, which exclusively applies it to those who obtain citizenship through naturalization (Bronwen Manby, 2015; Linda, 2000).

Because most countries in Asia refuse dual citizenship, gaining a citizenship status from another country voluntarily causes the loss of one's original citizenship in most countries. Bangladesh and Pakistan state that citizens who obtain foreign citizenship can give up their native citizenship voluntarily. When citizenship is not released voluntarily, citizenship will automatically disappear. Losing citizenship due to obtaining another nationality is still the main rule in South Korea, but the law provides many exceptions (including when the person obtains the same citizenship as his partner through marriage). In Sri Lanka this loss provision only applies to citizens based on descent or registration.

There is widespread acceptance among international instruments dealing with citizenship law that fraud is a legitimate basis for losing citizenship (Vonk, 2014). Even if countries do not explicitly provide that basis in their citizenship law, it can be assumed that citizenship can still be withdrawn based on the principles of administrative law. Laos and Vietnam are examples of good practice by stipulating that citizenship can only be lost within 10 years after obtaining citizenship.

In studying the laws of Asian citizenship, people often find contradictions. Legal instruments in Bangladesh are said to be in conflict with each other; Sri Lankan citizenship laws and the Constitution were inconsistent for decades until this was amended by the 2003 amendment; and East Timor has a normative framework that is not always consistent and the laws are full of terminological inconsistencies and norm formulations and often conflict with constitutional norms.

Citizenship Law in Central Asia

In general, citizenship is obtained because of birth in a region (*ius soli*) or because of heredity (*ius sanguinis*). The automatic application of the *ius sanguinis* principle is spread throughout the world, and Central Asian countries are no exception in this regard. In Central Asian countries *ius sanguinis* is implemented automatically and in some

countries, such as Kyrgyzstan, there are provisions for obtaining approval from parents who have foreign citizenship. Provisions in Kazakhstan on how to obtain citizenship automatically apply in cases when parents live abroad or if one parent does not have citizenship or citizenship is unknown. In Tajikistan and Turkmenistan a written agreement is required. The same rule exists in Uzbekistan.

Among Central Asian countries, Kyrgyzstan offers the possibility of obtaining citizenship if a child is born in his territory provided there is agreement from parents with foreign citizenship (the same provisions also exist in another post-Soviet country, Armenia). Other countries in the region do not have such rules.

Specific rules regarding children born to parents who do not have citizenship or parents of unknown origin and children found in the country. There are 230 million children without citizenship in the world that are not registered and in Kyrgyzstan alone a survey carried out in 2007-2008 identified more than 6,000 children of citizenship without citizens who have difficulty obtaining a passport. In Central Asia if a child is born to a non-citizenship parent in many cases, the special rules *ius soli* applies to a child born to a parent who is both non-citizenship and is permanently in the country or, as in Tajikistan, at least one parent lives permanently in the country.

Status of residence is one of the main factors considered in requests for naturalization. Other requirements are language proficiency, denial of other nationalities, family relations, good applicant character, knowledge of the country, etc. All countries in the region need at least 5 years. In the case of Uzbekistan, an applicant must renounce another nationality, a provision that has existed since the country's law was adopted in 1992. Two countries in the region, Kyrgyzstan and Turkmenistan, require proof of their ability to earn income even without further provisions.

All Central Asian countries need the next 5 (five) years to reside and this also applies to other post-Soviet countries including Mongolia (not including the Baltic countries). Only 3 (three) countries require housing, Moldova and Belarus are much higher, with 10 and 7 years respectively, Central Asian countries do not impose state knowledge as a prerequisite for ordinary naturalization. Some countries, such as Kyrgyzstan and Turkmenistan need the ability to earn income. One country in the region, Uzbekistan, needs resignation as another citizen.

Good character often means no criminal record. In Kazakhstan this means not being a perpetrator of crimes against humanity, illegal activities, no record of inciting interethnic or interreligious hatred, and not being a recidivist. Kyrgyzstan also requires the same and excludes those who are temporarily or continually excluded from a country. In Uzbekistan the list of good character attributes includes non-membership in "other parties or organizations whose activities are not in accordance with constitutional principles." The 5 (five) year stay requirement does not apply in Uzbekistan if the applicant has proof that he or at least one of his parents or grandparents were born in the country. Residence was reduced to half in Tajikistan if one of his parents was a citizen at birth. Kyrgyzstan and

Turkmenistan specify in detail what is considered a continuous residence (if one does not spend more than three months a year abroad).

People who can access special naturalization are spouses of citizens, former citizens, fellow ethnicities and people who have different achievements. Two countries in the region, Kazakhstan and Kyrgyzstan, have special procedures for husband and wife. In Kazakhstan, the essential requirements can be reduced from five to three years if the spouse is a citizen. The target person in Kazakhstan is a person who is married to a local citizen and has settled legally and permanently for 3 (three) years. In Kyrgyzstan a person considered a foreign citizen is a woman or a stateless person, married to a citizen, has lived for 1 year and has arrived in the country with the aim of having a permanent residence.

There is a special procedure if someone is the son of someone who obtained citizenship. In Kazakhstan, a person is under 14 years old and his parents obtain citizenship. If one parent remains a foreigner, the child can obtain citizenship provided that the parent submits a written application together and as long as the child has permanent residence in the country. There are requirements for child consent between 14 and 18 years. In other Central Asian countries, the same provisions apply and in Kyrgyzstan, if one parent is stateless, the child is automatically shared in the citizenship acquisition by another parent (if the child lives in that country) or at the request of a parent who obtained citizenship. (if the child lives abroad).

All Central Asian countries have provisions for obtaining citizenship for people with special achievements. This achievement can be in the form of achievements in certain fields, such as science, art or technology and often in professions that are in great demand. Approaches to facilitate the acquisition of citizenship vary from country to country. In Tajikistan there are no special requirements. In the case of Kazakhstan housing requirements can be revoked and in Turkmenistan these requirements can be shortened. In Kyrgyzstan, the temporary residence is shortened 3 (three) years. In Uzbekistan, besides housing, the need to relinquish other citizenship and requirements for earning an income can be distorted.

Accepting refugees and facilitating the acquisition of their citizenship is a complicated process in Central Asia. Since the 1951 Convention on the Status of Refugees and the Protocol (1967) was adopted, most countries in the world have signed it. Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan each signed in 1999, 1996, 1993, 1998, and signed their respective Protocols in 1999, 1996, 1993, 1998. Uzbekistan is the only country that has not signed the Convention or the Protocol. The most acute case of the need to accept refugees in this region is the escape of refugees from Tajikistan due to civil war in the country in 1992-1997. In 2016, according to UNHCR in Central Asia, there were 130,000 citizens without citizenship and 3,570 refugees. In the previous two years 11 thousand citizens without citizenship obtained or confirmed their nationality in four countries in the region.

Turkmenistan and Uzbekistan do not have specific provisions regarding voluntary loss of citizenship. In 3 (three) other countries, Kazakhstan, Kyrgyzstan, and Tajikistan,

consider having another citizenship as a condition of voluntary loss of citizenship. In the three countries that regulate voluntary loss of citizenship, the prerequisites for this are the absence of unfulfilled obligations to the state, obligations relating to property to citizens or organizations in the country or ongoing criminal investigations and unfinished crimes. Kazakhstan considers "contradiction with national interests" as a condition that justifies the denial of citizenship status and Tajikistan, besides including the failure to carry out military service.

While Turkmenistan and Uzbekistan do not have specific provisions regarding the issue of voluntary acquisition of other citizenships, Kazakhstan, Kyrgyzstan, and Tajikistan have these provisions. The traditional conception of citizenship which according to them acquired other citizenship is seen as a violation of exclusive political membership that dominates the policies of many post-communist countries (Herzog, 2012).

Internal migration affects citizenship in post-Soviet Central Asian countries (Guliatir Hojaqizi, 2008), but more than that labor migration has been experienced by countries in the region since the 1990s. Labor migration is a significant contributor to social mobility, most of which ultimately results in the acquisition of citizenship in the recipient country. In 2017 (as of October, according to the World Bank) Central Asian countries such as Kyrgyzstan, Tajikistan and Uzbekistan received about 2.5, 2, and 2.7 billion USD respectively in remittances. For the first two countries, this is one third to almost half of their GDP.

Conclusion

Asia is most likely a region where citizenship is guarded very tightly, which can be explained by the fact that the majority of countries only gained independence from colonial rule in the 20th century or later separated themselves from territories created after such independence (eg. Bangladesh) and Pakistan. with India, and Singapore related to Malaysia).

Asian countries also have very low levels of accession to international treaties relating to citizenship, such as the Convention on the Status of Non-Citizenship (1954) and the Convention on the Reduction of People without Citizenship Status (1961). While there are relatively few legal standards for the protection of citizenship status, Asian countries are also hesitant to accept dual citizenship. Only a handful of countries accept this phenomenon, while the majority do not allow dual citizenship in limited circumstances or choose not to explicitly enforce such a policy.

The main way of obtaining citizenship through birth in Asia is based on *ius sanguinis*, with most countries imposing more stringent requirements if the child is born abroad. In line with international developments, gender equality has been introduced since the 1980s and beyond. Asia has also followed the global trend of either abolishing *ius soli* automatically or replacing it with a more stringent form of *ius soli*. Especially important when compared with Europe, but not with Africa or America, is the role of

naturalization as a means of obtaining citizenship. Indeed, the level of naturalization is very low and individuals who do naturalization usually have family relationships with local people.

Suggestion

Citizenship was developed from the beginning by the countries of Central Asia because they had to be involved in the development of the country simultaneously after the collapse of the Soviet Union. The process of nation building can partly explain the citizenship policies adopted by Central Asian countries. With regard to various problems, countries have developed similar approaches and standards while there are differences in some problems. There is a general tendency for post-Soviet countries to start with a universal approach to citizenship policies and then from time to time undergo the particularization of their laws to reflect their specific contexts and Central Asian countries share the same experience.

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