

CHAPTER III

SOCIO-POLITICAL PROBLEMS OF PERSONS OF INDONESIAN DESCENTS (PIDS)

Looking at the high numbers of persons of Indonesian descents in Mindanao that live without any legal documents and threat to be stateless status holder they might possibly face many problems in spending their daily life. The problem itself could come from many ways, from their surroundings, until the problem of the law protection that is always been blurry for them because they do not belong to any states whether it is Philippines or Indonesia.

In every country, the citizen was protected under the law of their country but it is really different from what happened to the persons of Indonesian descents in Mindanao. The unclear nationality become the main concern why they did not get any law protection from both countries whether from Philippines government or Indonesian government. This problem is really complicated since it is regarding the nationality recognition.

A. Nationality Status

The beginning of the problem of the nationality of persons of Indonesian descents in Mindanao is not only because of the historical factor that their ancestor come to Mindanao and marry to Filipino without any legal documents but also the factor that makes this problem getting even difficult to manage is because they do not belong to Indonesia or Philippines. Both countries whether it is Indonesia or

Philippines has their own rule regarding this issue in managing the persons of Indonesian descents.

The persons of Indonesian descents in Mindanao have settled in the Philippines for many years. The persistence of the persons of Indonesian descents have led to the nationality status of the people of Indonesian descent into gray or unclear situation. According to Indonesian Constitution No. 12 Year 2006 on Indonesian Citizenship, every individual that lived more than 5 years outside Indonesian territory without a legitimate reason will lose their citizenship. Based on the description of Article 23 letter (i) the persons of Indonesian descents who originally hold the Indonesian nationality but have settled in Mindanao for more than five years, without valid reason, will lose their citizenship status (Kemenhukam, 2006).

On the other hand, the persons of Indonesian descents in Mindanao is still often report their existence to the Indonesian Consulate in Davao City as Indonesian citizens. Based on the data owned by Indonesian Consulate in Davao City, the persons of Indonesian descents in Mindanao even though they have settled more than 5 years in southern Philippines, they still admitted themselves as an Indonesian citizen. However, as the representative of Indonesian government, the Indonesian consulate in Davao City, should accept their report.

The action that was done by Indonesian consulate in Davao City that they accepted the report of the existence of the Persons of Indonesian Descents is related to what has mentioned in Setyo Widagdo and Hanif Nur Widhiyanti's book *Hukum Diplomatik dan Konsuler* that the function of consular is mostly about protecting

the interest of the Indonesian people in their area, also to support in another interests as well such as trading, industry and shipping (Widagdo & Widhiyanti, 2008).

According to Soehardi as the leader of *Diaspora Indonesia-Filipina Selatan* section of Indonesian Consulate in Davao City, they have chosen some of persons of Indonesian descents to be as “*pamong*” or to be the supervisor of another persons of Indonesian descents in reporting their existence to the Indonesian Consulate. According to Indonesian constitution, they do not belong to Indonesia anymore, but in other hand they still keep reporting to the “*pamong*” about their existence as Indonesian (Soehardi, 2016).

Citing from article 23 letter (i) of Indonesian Constitution No. 12 of 2006, although the persons of Indonesian descents have settled more than five years, their recognition as citizens cannot be denied by the Indonesian Consulate in Davao City. Their statement about the admission of themselves as Indonesian citizen causes the status of persons of Indonesian descents in Mindanao become gray or unclear.

The following is an excerpt of Article 23 letter (i) of Indonesian Constitution No. 12 of 2006:

"Residing outside the territory of the Republic of Indonesia for 5 (five) years continuously instead of in the context of official reason, without valid reason and deliberately not expressed his desire to remain as a citizen of Indonesia prior to the period of 5 (five) years over and in every next 5 (five) years he did not submit a statement to show that he will remain as a citizen of Indonesia to the Indonesian Representative Office which the Representative office area covers the residence of him, whereas the Indonesian Representative office had informed him in writing to the person concerned, all the concerned is to not become a stateless."

To emphasize the process by law in accordance with the legislation and immigration services of the Republic of Indonesia, there are some elements that form the basis for putting the nationality status of the persons of Indonesian descents in Mindanao. That element is based on a personal statement, based on the rules on the nationality, their respective countries, and documents ownership (Majid, 2016).

These three elements are also included in article 23 letter (i) of Indonesian Constitution No. 12 of 2006 on Indonesia Nationality that must be filled by the persons of Indonesian descents in Mindanao to clarify their nationality status. So, in case of problems of the persons of Indonesian descents in Mindanao who are at risk to become a stateless, if it is classified according to the level of urgency and their problems it will be concluded by the following explanation:

1. No longer recognize Indonesia as his country and himself as a citizen of Indonesia (Absolute loss of the nationality of Indonesia).
2. Recognizing Indonesia as his country and themselves as Indonesian citizens. (Indonesian citizen with problematic status).
3. Recognizes Indonesia as a country and himself as an Indonesian citizen and does not violate other provisions of the loss of nationality in Act No. 12 of 2006. (Indonesian citizen with problematic status).
4. Recognize Indonesia as his country and themselves as Indonesian citizens, does not violate the provisions of other loss nationality in Act No. 12 of 2006, and did not stay overseas more than 5 consecutive years without a legitimate reason. (Indonesian citizen with normal status).

According to the explanation above, every persons of Indonesian descents in Mindanao that do not persist for more than five years are still become Indonesian citizens like in general. However when they have settled for more than five years and the reasons are not valid according to the law, the nationality status of persons of Indonesian descents would be unclear (Kemenhukam, 2006).

The Liaison Officer of Indonesian Police for Indonesian Consulate in Davao city, Wahyu Candra Irawan mentions that:

“When every persons of Indonesian descents in Mindanao has unclear status or gray, then the independent recognition of nationality or referred as self-declaration is the only supporting points. If it is not done by the persons of Indonesian descents, then regarding to the laws of Indonesian nationality, the persons of Indonesian descents in Mindanao will lose their Indonesian nationality and risk themselves to be a stateless if the Philippines government does not recognize them as citizens” (Irawan, 2017).

In this case, the persons of Indonesian descents in Mindanao are on the second level, where they still declare themselves as citizens of Indonesia, but has settled for more than five years for no apparent or valid reason in accordance to Law No. 12 of 2006. The uncertainty regarding to the status of the nationality of persons of Indonesian descents in Mindanao will become really serious problem if it is not addressed immediately. The vagueness of this status will bring the persons of Indonesian descents in stateless status.

In addition, the persons of Indonesian descents in Mindanao are also weighed down because they have been settled outside Indonesia without official documents, or so-called passport. According to the Law No. 6 of 2011 on Immigration, every citizen of Indonesia that will go out from the territory of Indonesia must have an official travel document or passport. It can be concluded that the persistence of the

persons of Indonesian descents in Mindanao is illegal according to the law (DPR-RI, 2011).

B. Legal Status of Persons of Indonesian Descents

Referring to the nationality status of persons of Indonesian descents that is still unclear that possibly risk them to be a stateless person, these persons of Indonesian descents need law protection to protect them for being marginalized. In other hand, the unclearness of their nationality give them difficulties in gaining the law protection. They are not belonging to Indonesia nor Philippines, which as we know that only a citizen from such countries could be protected by its law protection.

The law status of persons of Indonesian descents in Mindanao is also become unclear because the nationality status of someone will be conducted to their law protection status. The law status of persons of Indonesian descents in Mindanao is very limited and unclear, it's proven by the calling "undocumented citizen" by some institutions (Alam, 2006).

The immigration laws whether it is from the Indonesian law that send them out of country or from the Philippines law that received them are unclear. Since they do not have any supported document, from Indonesia's side the persons of Indonesian descents are illegal to go out of Indonesia and from Philippine's side it is illegal for them to come in to the Philippines (DPR-RI, 2011).

These phenomena are difficult to be cleared because from the ancestor of persons of Indonesian descents they come to Mindanao by traditional way without any document at that time. That is why they were considered as "illegal immigrant".

From the explanation above it could be clarified that the unclearness status of the persons of Indonesian descents in Mindanao especially in law protection status could give them many risks even they have limited protection from Indonesian consulate to protect their rights when something happened to them.

As what mentioned by the Liaison Officer of Indonesian Police for Indonesian Consulate in Davao city, Wahyu Candra Irawan that if the persons of Indonesian descents were involved in any criminal issue whether it is as a victim or as the suspect the Indonesian consulate will take care of it until the court session and will offer them a lawyer (Irawan, 2017).

However, there are not many criminal issues that has done by the persons of Indonesian descents in Mindanao, because the persons of Indonesian descents have taught about their law protection status by the Indonesian consulate in Davao City. They have to know and realize their position as the foreigners or “alien” in another country so they become obedient to the rules and laws from Indonesian consulate and Philippines government (Alam, 2006).

Considering this problem will make these persons of Indonesian descents as persons with stateless status, United Nations High Commissioner for Refugees (UNHCR) which take control over the immigrants issue especially about the refugees, will become a mediator for both countries which are Indonesia and Philippines since these countries are involved in this problem (Majid, 2016).

This complicated problem is really need to be done by the cooperation among the actors which are Indonesian government that was represented by Indonesian

consulate in Davao City, Philippines government and UNHCR as the mediator. These actors will accommodate the pilot project that has been discussed with many institutions and many people that involved in this issue to end the statelessness status issue of the persons of Indonesian descents in Mindanao.

C. The Impact of the Nationality Status

The unclearness of the nationality status and the law protection status of the persons of Indonesian descents in Mindanao gives many impact in their daily life even it could give them unclear future if they do not decide their nationality. Many positive impacts that someone could get from having a nationality which have many support and easy access to the facilities that was provided by the government, such as good quality of education, health facilities, job field, it will be easier for someone with nationality to find such a job according to their desire and the most important thing is someone will get his right to be protected by the country's law.

In this undergraduate thesis, the writer would like to explain two major impacts that happened to the persons of Indonesian descents in Mindanao over not having the nationality in their life.

1. The Negative Impacts of not having a Nationality in Social Life

The persons of Indonesian descents who lived in Mindanao southern Philippines is surrounded by the Filipino. Many of the persons of Indonesian descents married to Filipino as well and the kids from this inter-marriage is threatened to become a stateless person because the parents of the kids do not have supported documents to show to the related institution that they were belong to any country.

This problem makes the persons of Indonesian descents in Mindanao live in poverty. The unclear law protection status also gives bad impact to their social and economic life at the same time.

The unclear nationality of the persons of Indonesian descents lead them towards low education quality, unemployment and low health quality as well. The companies will not take any risk to employ the person of Indonesian descents as their employee because it is a high risk to employ someone with unclear nationality in Philippines, even in all countries does (Majid, 2016).

Even if the persons of Indonesian descent working in some places mostly they work as fishermen, or low level labor in some companies or factories with low income that is not enough to support their daily life. With that low income it is hard for the head of family to send their kids to school. If some of the kids from the persons of Indonesian descents lucky enough they could get the education from the *Sekolah Indonesia Davao* which is located at the back of Indonesian Consulate in Davao City.

The persons of Indonesian descents in Mindanao sometimes also become an object for some actions of state or regional actors during the election time such as a state or regional actor let the persons of Indonesian descents to take part in election to winning in local elections. Most of these actors treat the persons of Indonesian descents in invariably depends on how dominant the persons of Indonesian descents respond them (Talampas, 2013).

Unfortunately, after those explanations above, the most saddening part is when the persons of Indonesian descent got expulsion /eviction by the Philippines police because the land on which they built their home owned by a citizen of the Philippines. Landowners initially gave them permission for the persons of Indonesian descent to live and settle on their land, but later, the family of landowners asking for the rental fee and the persons of Indonesian descents cannot pay the rental fee to the landowners and then they were forcibly evicted by the evictions involving local police (Majid, 2016).

It is really obvious how the Filipino treat the persons of Indonesian descents differently. Indeed, the nationality issue become the main reason on their behavior, but regardless of the nationality issue they should respect each other in the name of humanity. However, it is not the fault of Filipino, because every country should take care of their citizens first instead of foreigners or another people come to their country. The dilemma that faced by the persons of Indonesian descents is also left them in difficulties in gaining the support from the government.

2. Difficult to Get Support from the Government

Becoming a persons of Indonesian descents which live with the dilemmatic of nationality is always becoming an obstacle for the persons of Indonesian descents to live their life. In some aspect these people need support beside of their daily income to support their life. Like what other citizen got such as scholarship for further studies, support to start a new work field and others. Somehow, they got the same treatment from the Philippines government like what other Filipino get such as the discount of 30% from PhilHealth card in public hospital, free school from

primary school until high school and concession card for senior citizen (Irawan, 2017).

Because they are still regarded as foreigners, they are required to have ACR (Alien Certificate of Registration) from the local immigration authorities, but looking at the conditions they were living in a state of poverty, they almost completely lack the ability to pay the maintenance of ACR (especially processing of immigration documents - such as Passport, etc.) so that is why most of them become illegal (undocumented) and potentially becoming a stateless.

These conditions (undocumented, are at risk of becoming stateless) causes the PIDs are vulnerable to become the source of exploitation in the employment and get different treatment from the owner or another employee arbitrarily. Sometimes, the employer also paid lower wages to the employers from the persons of Indonesian descents. The persons of Indonesian descents also lose their right the access to community services and facilities, the fishermen forced to do illegal fishing that bloom in Bitung and the surrounding waters, doing illegal smuggling of goods as well as even sometimes they were thought to be involved in terrorism-related crimes (Majid, 2016).

From the Indonesian government they also got some sponsorship that provided by the *Diaspora Indonesia-Filipina Selatan* section of Indonesian Consulate in Davao City. In other hand, this sponsorship from the Diaspora is not given to all of them but it needs process and the one who will complete all the process will get the money first (Soehardi, 2016).

For this case, in December 2015 the *Diaspora Indonesia-Filipina Selatan* section of Indonesian Consulate in Davao City has executed mushroom training cultivation for the persons of Indonesian descents so they could sell the mushrooms when it ready to be harvested. The income from this mushrooms farming could support their daily needs and decrease the number of unemployment (Majid, 2016).

Beside that, for the wives of the persons of Indonesia descents the Indonesian consulate in Davao City has established the training skills which are include the sewing section, baking section and others sections to encourage the wives to support the financial of their family. From this training the wives have another activity which could support their daily needs instead of just staying at home (Alam, 2006).

This problematic issue has brought them to the level where they have to decide about their nationality for their further life because they cannot live with this condition forever. They need to be recognize as any country's citizen to gain what they deserve. Regarding this problematic issue, the cooperation among UNHCR, Indonesian government and Philippines government are made to manage the stateless issue of persons of Indonesian descents in Mindanao. The actors have established a pilot project which is nationality award to the persons of Indonesian descents, which later during the execution the persons of Indonesian descent will choose their nationality by their own willingness for their future.