

DYNAMICS OF THE OBLIGATION TO REGISTER BIRTH CERTIFICATES AS A PART OF THE RIGHT TO ISSUANCE POPULATION DOCUMENTS

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Abstract

The state is obliged to protect and recognise the legality of a person's birth. Registration of birth in the form of a birth certificate is proof of one's origin issued by the competent authorities. However, in practice, the time limit of one year given for such registration has proven a burden to citizens, such that complaint of constitutional damages has been brought before the Constitutional Court of Indonesia. Population administration is regulated under Act Number 23, Number 23 Year 2006 and amended by Act Number 24, Number 24 Year 2013 in accordance with Constitutional Court Decision 18/PUU-XI/2013. In order to take an active role in the registration of births, the government and local governments have to remove the deadline to report the birth of a child, as stipulated by the district court and as an effort to improve state responsibility. This requires that citizens have the "right to be heard" and, in future, there should be an integrated service from the government for the registration of births.

Keywords : Birth Registration, Birth Certificate, Right to be Heard

I. INTRODUCTION

Humankind experiences a number of phenomena, including birth, death, fetal death, marriage, divorce, child recognition, child legitimation child adoption, change of name and change of nationality.¹ Birth, the welcoming of a new member to a family, is certainly a source of happiness for those who experience it. On

¹ Article 1 subsection 17 Act Number 23, 2006 concerning The Population Administration as Amendment to Act Number 24, 2013.

the other hand, the birth of a child also brings about certain responsibilities for the parents in the form of reporting and registering the birth with the Civil Registry office in order to document the event and thus secure the protection of the law by the state for the citizen. With obligations fulfilled, the subject can act freely, safely and peacefully in the pursuit of his or her interests and needs under the protection and guarantee of the law.

In the broader scope, a community strives for an orderly society so that human interests can be duly protected. Society requires order and stability to ensure legal certainty. In the formulation of laws, legislators must give consideration to this matter. Similarly, the law protects the interests of the people, which are dynamic, ever-changing, growing both in number and in nature. As such, the law must be equally dynamic to keep up with these developments and ensure that protection is maintained. Thus, the law is *historisch bestimmt*, a phenomenon of history concerning both stability and change.²

Historically, Population Administration has been regulated by Book One, Chapter Two, Part Two and Chapter Three of the Civil Law Book (*Burgerlijk Wetboek voor Indonesie, Staatsblad 1847:23*), European Civil Registration Regulations (*Reglement op het Holden der Registers van den Burgerlijken Stand voor Europeanen, Staatsblad 1849:25* last altered by *Staatsblad 1946:136*) Chinese Civil Registration Regulations (*Bepalingen voor Geheel Indonesie Betreffende het Burgerlijken Handelsrecht van de Chinezean, Staatsblad 1917:129* jo. *Staatsblad 1939:288*, last altered by *Staatsblad 1946:136*), Indonesian Civil Registration Regulations (*Reglement op het Holden van de Registers van den Burgerlijken Stand voor Eenigle Groepen v.d nit tot de Onderhoring van een Zelfbestuur, behoorende Ind. Bevolking van Java en Madura, Staatsblad 1920:751* jo. *Staatsblad 1927:564*), Indonesian Christian Civil Registration Regulations (*Huwelijksordonantie voor Christenen Indonesiers Java, Minahasa en Amboiena, Staatsblad 1933:74* jo. *Staatsblad 1936:607* last altered by *Staatsblad 1939:288*) and Act Number 4, 1961 concerning Alterations and Additions to Family Name (1961 State Gazette, Number 15, Supplement State Gazette Number 2154). Later, upon the enactment of Act

² Sudikno Mertokusumo, *Teori Hukum*, Yogyakarta: Universitas Atma Jaya Yogyakarta, 2011, p. 25-26.

Number 23, 2006 concerning Population Administration (hereinafter referred to as Population Administration Act), the previous regulations were retracted and declared invalid.³

In principle, the issuance of a birth certificate is a right of citizens as regulated by Article 2, Point a of the Population Administration Act, which states that all citizens have the right to receive population documents. Citizen complaints that there is constitutional damage are caused by Article 32 of the Population Administration Act, which reads as follows:

- (1) *Births reported, as referred to in Article 27, Paragraph (1), in excess of the limitation of 60 days up to one year after the date of birth, will be registered upon consent from the local Head of Executing Agency.*
- (2) *Registration of births later than one year, as described in Paragraph (1), is conducted in accordance with District Court regulations.*
- (3) *Further provisions on the requirements and procedures for birth registration, as referred to in Paragraphs (1) and (2), are stipulated by Presidential Decree.”*

This is considered contrary to those principles within the constitution, namely the principle of equality before the law, the principle of legal certainty and the right of citizenship status to every citizen, that are found under Article 27, Paragraph (1); Article 28D, Paragraph (1) and Article 28D, Paragraph (4) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the Constitution), which state respectively as follows:

Article 27, Paragraph (1)

Every citizen is granted equality before the law and government and shall abide by the law and government without exception.

Article 28D, Paragraph (1)

Every person is entitled to recognition, security, protection, legal certainty and equality before the law.

Article 28D, Paragraph (4)

Every person is entitled to citizenship status

The Petitioners of Constitutional Court case Number 18/PUU-XI/2013 were the individual citizens Mutholib—a parking attendant represented in court proceedings by H. Sholeh Hayat, S.H.—H. Subroto Kalim and Bambang Juwono,

³ Article 106 Act Number 23, 2006 concerning The Population Administration.

S.H., M.Hum, a member of East Java Regional People's Representative Council who represented the voice of the people of Surabaya (*Kota*), Magetan (*Kabupaten*) and Lamongan (*Kabupaten*) regarding the difficulties involved in processing birth certificates. The Petitioners submitted the petition on 13 January 2013, and said petition was accepted and registered with the Constitutional Court Secretariat on 23 January 2013.⁴

The Petitioners postulated that children's rights guaranteed by the law generate obstacles, complexities, fees and added burdens for the District Court and the Ministry for Home Affairs. Furthermore, Article 32, Paragraph (2) of the Population Administration Act has resulted in the violation of rights guaranteed by Article 28D, Paragraph (4) of the Constitution, whereby the right to citizenship is burdened by obligation and by sanction requiring stipulation from the District Court should a birth be reported more than one year after the birth date.

These obligations and sanctions relating to the processing of a birth certificate generate excessive costs, especially for the underprivileged who live in rural areas, such as the transportation fares when visiting the court on multiple occasions, certification fees at the post office and the requirement to present two witnesses and to obtain a recognition of the birth from the head of the village. These matters have resulted in constitutional damages for Indonesian citizens, particularly those requesting birth certificates.⁵

II. DISCUSSION

A. Citizens' Rights and Obligations Regarding Births

The law must be differentiated from rights and obligations, which arise upon the application of the law to circumstances. However, neither one can be separated from the other.⁶ The granting of rights to members of a society results in obligations being posed upon those same members. The Population Administration Act, with regard to the right of all citizens to receive population documents, guarantees equal treatment by the Civil Registry and Population

⁴ MK's Decision Number 18/PUU-XI/2013 concerning Judicial Review of Act Number 23, 2006 concerning The Population Administration.

⁵ *Ibid.*

⁶ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, Yogyakarta: Liberty, 1999, p. 41.

Registration procedures, data security, legal certainty regarding ownership of documents, information regarding the results of registration and civil records for the individual and his/her family and recompense and vindication in the event of error resulting from misuse of private data by the executing agency.⁷ As such, citizens are obliged to report population events and other important events to the executing agency in order to fulfil the necessary requirements of population registration and the Civil Registry office. The obligation to report each birth to a citizen to the executing agency within 60 days of the birth so that the Civil Registry official can enter the birth into the Birth Certificate Register and issue an excerpt from the birth certificate.⁸

The Petitioner Mutholib was a citizen who requested a birth certificate from the Surabaya District Court outside of the time limit with the case number 2194/Pdt/20/PN.Sby. The Petitioner experienced difficulty in organising the registration owing to the meandering bureaucratic procedure, namely his having to request an accompanying letter from his hamlet and neighbourhood, urban village, sub district, Office of Demography and Civil Registry Affairs, District Court, Central Post Office, the bank and having to present two witnesses. The Petitioner also expended official fees of Rp 236,000 as well as further costs, which placed significant pressure on the Petitioner.⁹ In essence, the Petitioner felt that he had been unfairly treated by the implementation of Article 32 of the Population Administration Act, given that population documents are, in principle, an entitlement granted to all citizens in accordance with Article 2 Point a of the same Act. Every child, from the moment of birth, is entitled to an identity, in the form of a name, and citizenship, as stipulated in Article 3 and Article 5 of the Child Protection Act. Under Article 32 of the Population Administration Act, which regulates the birth registration process, births reported more than 60 days to one year from the date of the birth are registered only with confirmation from the Regional Head of the Executing Agency, namely the Head of the District/City Government who is responsible for and authorised to handle

⁷ *Ibid.*

⁸ Article 27 paragraph (1) and Article 27 paragraph (2) Act Number 23, 2006 concerning The Population Administration.

⁹ MK's Decision Number 18/PUU-XI/2013 concerning Judicial Review of Act Number 23, 2006 concerning The Population Administration.

matters of Population Administration in the region where the child in question was born. This procedure is carried out in accordance with stipulations from the District Court. It is further stipulated that provisions regarding any further delay in the reporting and registration of births, as referred to in paragraphs (1) and (2) are regulated under Presidential Decree. These regulations are considered in contraction with the principle of equality before the law, the principle of legal certainty and fairness and the right to citizenship status granted to every person as guaranteed by Article 27 Paragraph (1) and Article 28D Paragraph (1) and Paragraph (4) of the 1945 Constitution.¹⁰

B. Constitutional Court on the Process for Overdue Birth Registration

Based on Article 24C paragraph (1) and Article 24C paragraph (2) of the 1945 Constitution and Article 10 paragraph (1) and Article 10 paragraph (2) Constitutional Court Act as follows that Constitutional Court has responsible for reviewing the law against the Constitution, so that petition of Population Registration Act can held in Constitutionl Court. In a public plenary session, the Constitution Court issued a decision wherein it was stated that the delivery of public services at current are still faced with conditions that do not correspond to the needs and changes in various spheres of life of society, nation and state. This is due to an unpreparedness to face the diverse transformation of values and the impacts of various complex development the development of complex development issues. A higher public awareness with regard to seeking a quality education is often hampered by various technical administrative issues that cannot be addressed because prevailing laws are not conducive to a fast, simple, and inexpensive public service.¹¹

Article 27 Paragraph (3) of the Child Protection Act states, *“a birth certificate is based on a letter from the person who witnessed and/or assisted in the birth.”* Article 27 Paragraph (4) of said Act states, *“In the case of a child whose process of birth is unknown, and the whereabouts of whose parents are unknown, the birth certificate shall be based on the information given by those people who discover*

¹⁰ *Ibid.*

¹¹ MK's Decision Number 18/PUU-XI/2013 concerning Judicial Review of Act Number 23, 2006 concerning The Population Administration.

said child.” Article 28 Paragraph (1) of the Child Protection Act states, “*The issuing of a birth certificate is the responsibility of the government and is to be conducted at the lowest regional level possible.*” Thus, the birth certificate procedure is a responsibility of the government in the field of population administration to be implemented with simplicity and accessibility. On the other hand, every citizen is obliged to report any matters of population or special events experienced, including births. The Unitary State of the Republic of Indonesia is formed upon the principles of Pancasila and the 1945 Constitution and as such is obliged to provide protection and recognition regarding the determination of personal status and legal status for each population event and important event experienced by Indonesian citizens whether within or without the national boundaries of the Unitary State of the Republic of Indonesia. Protection granted by the state is implemented through population administration. Population Administration, particularly the birth certificate, is important for citizens because in the birth certificate, citizens possess a population document that provides authentic proof of one’s identity and of one’s relationship to his or her family, which contains within it certain legal consequences be they the civil responsibilities of a parent to a child or a person’s right to inheritance. Any person who does not hold a birth certificate, does not legally exist in the eyes of the state. This results in such a child not being registered by name, genealogy or nationality and not having his/her existence protected. The worst possible outcome is manipulation of such a child’s identity, making it easier to exploit said child, for example through child trafficking, child labour or child abuse. The birth certificate is also connected with the legal-formal matter of a person’s identity before the law, which includes the determination of a persons adulthood based upon his/her age, which determines a person’s competency in his/her actions and his/her ability to recognise the legal situation concerning said actions. Therefore, the birth certificate is an important document to any individual because with it, said individual receives recognition, security, protection and legal certainty because he/she is registered with the state, bringing about rights and legal obligations, personal status and citizenship.¹²

¹² *Ibid.*

On the other hand, regulations concerning population administration are also important to the state administration because the state requires population data in order to plan and execute purposeful and targeted development programs. These provisions indicate the importance of population administration regulations as a part of the effort to realise good governance. Thus, the birth certificate is extremely important in order that the state's protection of the rights arising from certain population events and other important events be rendered in an orderly and efficient manner. The Constitutional Court further remarked that the term "consent (*persetujuan*)" in Article 32 Paragraph (1) of the Population Administration Act generates legal uncertainty and unfairness in the process of registering and issuing the birth certificate because such consent is an internal matter of the executing agency. Thus, in order to ensure fair legal certainty, the recording or not of a birth that has been reported out of the time limit should be determined by a decision from the Head of the Executing Agent based on the accuracy of the data subited in accordance with the provisions in the law, so that the aforementioned term "consent (*persetujuan*)" should read be understood as meaning "decision (*keputusan*)".¹³

The Constitutional Court decision submitted that the extra provisions applied for births registered after the given time period is a burden upon the citizen. This burden affects not only those who live in remote areas but also for those who live in urban areas. Moreover, the court process, which involves a lengthy administrative procedure and incurs higher costs, is not a simple procedure for the layperson/general public, which places an obstacle to the constitutional rights of the citizens regarding legal certainty. For these reasons, Article 32 Paragraph (2) of the Population Administration Act not only violates the provisions in Article 28D Paragraph (1) of the 1945 Constitution but is also contrary to the principle of fairness, since justice delayed is equivalent to justice denied. The Petition was considered to have legal grounds and thus the Constitutional Court granted in its verdict that the term "*agreement*" as referred to above is indeed in contradiction with the 1945 Constitution and does not

¹³ *Ibid.*

possess binding legal force insofar as it is to be interpreted as “decision”; that the phrase “*up to one year*” is in contradiction with the 1945 Constitution and does not possess binding legal force. As such, Article 32 Paragraph (1) of the Population Administration Act becomes, in full, “When reporting of a birth, as referred to in Article 27 Paragraph (1), which is later than sixty days from the birth, registration requires a decision from the Head of the Executing Agency”. Furthermore, the Constitutional Court verdict considered Article 32 Paragraph (2) along with the phrase “*and Paragraph (2)*” as found in Paragraph (3) to be contradictory to the 1945 Constitution and to not possess binding legal force. Henceforth, this decision of the Constitutional Court, Number 18/PUU-X/2013 was published in the Official Gazette of the Republic of Indonesia in accordance with Article 57 paragraph (3) of the Constitutional Court Act.

C. Dynamics of the Obligation to Report for the Registration of Births with regard to the Constitution as the Protector of the State for the Realisation of General Well-being.

Dynamics, in the context of this paper refers to forces of change within the conditions of society. In this case, the Constitutional Court’s verdict, which deemed the prevailing laws in question no longer legally binding, constitutes such a force. Thus, the rule of law is a product of history that, once formed, will have an impact upon history and society and in turn can be historically and socially affected. Any legal system constructed within such a context is as such an open and dynamic system.¹⁴ Society can be well governed as long as the necessary institutions are formed in such a way that they generate the greatest possible satisfaction for all members of the society. Just as a private individual aims to achieve the maximum possible happiness for himself, so, according to Jeremy Bentham, a society aims to achieve the greatest satisfaction for the greatest number.¹⁵

Bentham states that the essence of happiness is pleasure and the absence of misery. Thus, the purpose of human efforts is to maximise happiness and reduce

¹⁴ Bernard Arief Sidharta, *Refleksi Tentang Struktur Ilmu Hukum: Sebuah Penelitian Tentang Fundasi Kefilsafatan dan Sifat Keilmuan Ilmu Hukum sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia*, Bandung: CV. Mandar Maju, 1999, p. 186-187.

¹⁵ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar*, Yogyakarta: Liberty, 1999, p. 74.

suffering.¹⁶ Bentham further suggests that a state arises not through the will of nature but through the will of society in the form of a contract, which becomes the basis of the state and is intended to create the maximum prosperity for its people. Therefore, should the constitution be found to generate a condition other than that described, the constitution should be altered accordingly. So it is with the law: the objective of the law is to realise the greatest possible satisfaction for the greatest number of people, and evaluation of the law is conducted against the outcomes of implementing the law. Thus, the law is made up of provisions for realising a prosperous state.¹⁷

Comparing the Constitutional Court Decision Number 54/PUU-XI/2013 on judicial review of Act Number 23, 2006 concerning Population Administration Act that birth registration is a child rights. In addition, the state also has the same obligation. But the country has very limited apparatus, with a very wide area coverage, and with a population that is very much unlikely to be able to find one after a birth that occurred in its territory. Therefore, the obligation for every citizen to report any births occurring. Birth registration is not just recorded on the birth of a person but also to the broader legal issue is the status of one's child. His parents, guardian, or other person who knows the event in terms of the parent or guardian does not exist. A fairness there is the state's obligation to note there is also a civic duty to report the birth event. Thus it is not obligatory that fetched when the policy options in the Law on Civil Registration which adheres to the principle of active stelsel. The participation of every citizen to report any incident of population and important events that have happened, including births, is one form of awareness and concern of citizens in determining the legal status as citizens in survival, grow, and develop as stated in Article 28B paragraph (2) and Article 28D paragraph (4) of the 1945 Constitution.¹⁸

State Administration has a combinational meaning (*verzamelterm*): 1) state administration as an organisation; 2) administration as an effort to achieve the state's objectives, meaning those objectives encoded as enforced by the law

¹⁶ H. Lili Rasjidi and I.B. Wyasa Putra, *Hukum Sebagai Suatu Sistem*, Bandung: CV. Mandar Maju, 2003, p. 116.

¹⁷ *Ibid.*

¹⁸ Yusti Nurul Agustin, *Active Stelsel "Principle in The Adminsitration Population No Contradiction with Constitution*, 26 February 2014, <http://www.mahkamahkonstitusi.go.id/index.php?page=web.Berita&id=9665#.V_7WdOWLTIU> accessed 13 Oktober 2016.

(*dwingend recht*).¹⁹ The deadline on reporting births is a policy of the state administration that is coercive in nature. Consistent with the Constitutional Court decision, the principle of *rechtmatigheids van bestuur* holds that acts of the government need not always be justified in the event that they are not based upon the law. The government's actions towards the state must be based upon the law, but citizens are not bound by the law of the administration and do not face the same limitations.²⁰

Following the Constitutional Court decision, Supreme Court Circular Number 6, 2012 concerning Guidelines on the Collective Determination of Birth Registrations Beyond the One-year Deadline, which had been issued by the Chief of the Supreme Court pursuant to the Population Administration Act on 6 September 2012, was determined similarly in contradiction with the constitution, and under these circumstances, it should be revoked.²¹ Thus, the Chief of the Supreme Court further issued on 1 May 2013 Circular Number 1, 2013 on the revocation of Circular Number 6, 2012 concerning Guidelines on the Collective Determination of Birth Registrations Beyond the One-year Deadline.²² Subsequently, the Population Administration Act was adjusted by Act Number. 24, 2013 concerning Amendment to Act Number 23, 2006 concerning Population Administration, which was valid immediately²³ from the moment of issue on 24 December 2013. Thus, the People's Representative Council as legislators and the Civil Registrar as the relevant government agency executed their commitments to achieve general well-being and to work towards the best life possible.

According to Lord Acton, any amount of power, no matter how little, can be abused, such that under the discretion born by the state administration at all sectors of the life of society occasionally injures that society.²⁴ Agencies and officials within the state administration, as the determiners of policy (*beleidsregel*), often make decisions that are not in accordance with the law, so it is necessary

¹⁹ Philipus M. Hadjon, et.al., *Pengantar Hukum Administrasi Indonesia*, Yogyakarta : Gajah Mada University Press, 1999, p. 26.

²⁰ M. Guntur Hamzah, "Hukum Administrasi (Negara)" (Paper in lecture Doctor Brawijaya University Program in Constitutional Court Indonesia Republic, 5 September 2014).

²¹ Hadjon, *Pengantar Hukum Op.cit.*, p. 155

²² Hadjon, *Pengantar Hukum Op.cit.*, p. 279.

²³ Article II Act Number 24, 2013 concerning Amend of Act Number 23, 2006 concerning Administration Population.

²⁴ Diana Halim Koentjoro, *Hukum Administrasi Negara*, Bogor: Ghalia Indonesia, 2004, p. 70.

to anticipate such occurrence to ensure that policies fulfil the requirements of good governance, considering that Indonesia as a state is based on the rule of law oriented towards social welfare (*sociale rechtstaat*).²⁵ The positive law can sometimes hinder the development of life; in fact, it has been said that those who most consistently follow the law are most detrimental to justice (*summum ius summa iniuria*).²⁶ Regarding the deadline for reporting births, this regulation constitutes a freedom of action of the government (*freies ermessen*), whereby the power of the government (*legis executio*) to execute the law,²⁷ as a matter of fact cannot be implemented as in the case of the Petitioner, where a right becomes a burden in the form of a sanction determined by the district court should the birth be reported late²⁸, which is a constitutional injustice.

It is natural that there be oversight in the running of the government, which represents security in the event of a conflict with the rule of law, so that there must be a system in place to protect the governed from the aforementioned discretionary measures (*Freies ermessen*).²⁹ Certain countries, including Japan, Australia and the Netherlands, no longer use the court for small matters with a small number of involved parties, but rather implement a mediation approach to settling conflict so that proceedings do not drag on.³⁰ In this light, use of the district court as a way to ensure timeliness from citizens in the birth registration process is a convoluted approach resulting, furthermore, in constitutional injustice. Population Registration is an active system for citizens.³¹ This relates to dynamics in that not every inner dynamic represents a process of development. In this case we can see that there was no transformation³² of the obligation of the public into an obligation of the government. Rather, we see a dynamic beginning with the absence of any deadline for birth registration and continuing with the introduction of a one-year deadline through the enactment of the Population

²⁵ Hadjon, *Pengantar Hukum Op.cit.*, p. 152. In H. Abdul Latief, *Hukum dan Peraturan Kebijakan (Beleidsregel) pada Pemerintah Daerah*, Yogyakarta: Ull Press, 2005, p. 8-9.

²⁶ Theo Huijbers, *Filsafat Hukum dalam Lintasan Sejarah*, Yogyakarta: Kanisius, 2006, p. 33.

²⁷ Philipus M. Hadjon, *Perlindungan Hukum bagi Rakyat di Indonesia: Sebuah studi tentang Prinsip-Prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum, dan Pembentukan Peradilan Administrasi*, Surabaya: Peradaban, 2007, p. 184.

²⁸ Achmad Dodi Haryadi, "Pengurusan Akta Lewat Setahun, Tak Perlu ke Pengadilan," *Majalah Konstitusi* Nomor 75 Mei (2013): 10.

²⁹ Koentjoro, *Ibid*.

³⁰ Supreme Court of Republic Indonesia, "Hakim, Salah Satu Kunci Keberhasilan Mediasi" (http://www.pembaruanperadilan.net/v2/category/akses_terhadap_keadilan/page/2/) (Accessed 22 September 2014).

³¹ General Act Number 23, 2006.

³² Philippe Nonet and Philip Selznick, *Hukum Responsif*, Bandung: Nusamedia, 2008, p. 28.

Administration Act and then completing with the Constitutional Court decision that such a provision is unconstitutional and non-binding, and finally the Act in question was amended. This is consistent with Article 28D Paragraph (4) of the 1945 Constitution, which states, “every person is entitled to citizenship status,” which implies that every person is obligated to report births in order to receive citizenship status for the newborn child. The obligation for citizens to register births through the birth certificate process, followed by the government’s (central government and regional administrative) obligation to provide excellent service to the public by playing an active role. According to Population Administration Act, population administration is a public system expected to fulfil the rights through public service and provide protection to the issuance of population documents without any discrimination.³³

Following up on the Constitutional Court ruling, the Ministry of Home Affairs issued Circular Letter Number 472.11/2304/SJ concerning Follow-up Implementation of Decision Number 18/PUU-XI/2013 dated May 6, 2013 that the date of May 1, 2013, reporting of births exceeded the time limit of 1 (one) year, recording no longer requires the court ruling the country but directly processed by the Department of Population and Civil registration Regency/City. Then, government publishing Ministry of Home Affairs Regulation Number 9 Year 2016 on Accelerating the Improvement Coverage Owners of Birth Certificate which came into force on February 29, 2016 to follow the Law of the Population Administration as the country’s efforts to provide protection and recognition of the determination of the personal status and the legal status of any event births experienced by the population included protection of children’s rights because the ownership is still low birth certificates through the acceleration of birth certificates that birth registration procedures done by manually or online that have the same legal force.

This is relevant to legal protection for the public in that there are preventative legal safeguards, namely the principle that every citizen has the right to be heard from either side (*audi alteram partem*) in those countries that have laws on the general provisions for administrative procedures, such as Australia, Germany,

³³ General Act Number 23, 2006.

Norway, Spain, Sweden and Switzerland, where individuals who are affected by acts of government can present their rights and interests in order to foster good governance and engender an environment of trust amongst the government and the governed.³⁴ Although such law can have an impact on the relationship between government institutions and the public tending towards intimidation, conflict, unresolved conflict and difference of opinion, such outcome is usually resultant of the government asserting its power in conflict with the interests of the public.³⁵ Ernest Gollhorn presents his opinion as follows:

“The constitutional foundation indicating when administrative action must be preceded by a trial-type (adjudicative) hearing and when rule making... administrative action must be preceded by notice and a hearing – particularly by an opportunity to be heard in an adjudicative setting.”³⁶

In the implementation of democracy in administrative law occurs the hearing process, whereby the government, before it issues its decision, gives the opportunity through public announcement for interested parties to be heard first.³⁷ The right to be heard is one method of socialisation that the government uses in the case of new laws that will have an impact on the public in order to guarantee fairness and a just government.³⁸ According to Jürgen Habermas in the theory of deliberative democracy, the legitimacy of the law is ensured through unbiased discourse amongst the interested parties, namely the government and the citizens who will be affected by the law.³⁹ Such discourse, and the implementation of the right to be heard, is a realisation of public participation in the creation of the law and is in turn an important part of realising good governance.⁴⁰ Any government policy that goes through such a hearing before it is issued experiences dynamics, and provided the government is committed to the participation from the public, then their positions are proportional and the result will be a government with better policies.

³⁴ Hadjon, *Perlindungan Hukum ... Op. Cit.*, p. 3.

³⁵ Charles Sampford, *The Disorder of Law: A Critique of Legal Theory*, New York: Basil Blackwell, 1989, p. 252-253.

³⁶ Irfan Fachrudin, *Pengawasan Peradilan Administrasi terhadap Tindakan Pemerintah*, Bandung: PT. Alumni, 2004, p. 107.

³⁷ Paulus Effendie Lotulung, *Beberapa Sistem Tentang kontrol Segi Hukum terhadap Pemerintah*, Bandung: Citra Aditya Bakti, 1993, hlm. 27. In Fachrudin, *Ibid.*, p. 107.

³⁸ Hadjon, *Perlindungan Hukum ...Op. Cit.*, p. 4.

³⁹ Reza A.A. Wattimena, *Melampau Negara Hukum Klasik Locke-Rousseau-Habermas*, Yogyakarta: Kanisius, 2007, p. xix and 124-125.

⁴⁰ Miranda Risang Ayu, dkk., *Partisipasi Publik dalam Proses Legislasi sebagai Pelaksanaan Hak Politik*, Bandung: Fakultas Hukum Universitas Padjajaran, 2004, p. 57-59. In Hernandi Affandi, *Konsepsi, Korelasi, dan Implementasi Hak Asasi Manusia dan Good Governance Mengurangi Kompleksitas Hak Asasi Manusia (Kajian Multi Perspektif)*, Yogyakarta: Pusham-Ull, 2007, p. 62.

III. CONCLUSION

With a birth certificate, citizens hold a population document that provides incontrovertible proof of identity and proof of relationship, which may bring with it legal consequences, such as a parent's civil liability to children or rights to inheritance. Any person who does not hold a birth certificate legally (*de jure*) does not exist in the eyes of the state. As such, a birth certificate is an extremely important document to he or she who holds it because with it, that person receives recognition, security, protection and legal certainty. Once a person is registered with the state, they are granted these rights and also are given legal obligations, personal status and citizenship status.

The instance of dynamics can be seen within the adjustment of the law regarding the imposition of a deadline on the birth registration process. Article 32 of the Population Administration Act was determined contrary to the constitution for the following reasons, amongst others:

1. In Article 32 Paragraph (1), the term “*agreement*”, unless interpreted as meaning “*decision*”, and the phrase “*up to one year*” were in contradiction with the 1945 Constitution and as such held no binding legal power;
2. Article 32 Paragraph (2) was in contradiction with the 1945 Constitution and as such held no binding legal power;
3. The phrase “and Paragraph (2)” in Article 32 Paragraph (3) was in contradiction with the 1945 Constitution and as such held no binding legal power.

Thus, the one-year deadline was repealed. Act Number 24, 2013 amended the Population Administration Act and the provisions thereunder in accordance with the Constitutional Court decision in order to ensure legal certainty and rigour in the implementation of population administration. In the implementation of the above measures, socialisation of the Constitutional Court's decision to the community and the relevant government agencies, namely the district courts throughout Indonesia and the Civil Registry Office for the Republic of Indonesia, is necessary. Commitment is also important to increase concern about for the importance of birth registration as an obligation for the citizens and for the state.

In addition, the dynamics of society need to be considered by any government policy in the field of population administration in accordance with the people's right to be heard through public participation, regarding both the drafting of legislation and feedback and criticism related to the implementation thereof. Also needed is an integrated service under one roof as a birth certificate (through cooperation with government office, necessity of verification and validation of the birth certificate's requirements, and reporting the information of birth certificates for increasing coverage of districts/cities cumulatively to the governor every month) is the doorway for citizens to obtain the fullest extent of their various rights through the course of their lives (a decent education, adequate job, marriage, etc.) so that the state apparatus and all citizens as a part of the Republic of Indonesia can jointly realise the best life possible.

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