

Gelijkgesteld: The Change of Chinese Legal Status Under Indonesian Colonial Structure

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ABSTRACT

This research attempts to reveal a phenomenon of legal history that has occurred so far, namely the process of achieving equal rights or internal naturalisation of the Chinese ethnic in Indonesia. The time period chosen is the colonial era with the consideration that at the time this ethnicity was directly involved in the legal system. By researching it, it is hoped that it can be known where the actual aim of granting the status of subject and citizen to the Chinese people in the colonial legal system and will continue in the national legal system. Considering that the chosen period is the Dutch East-Indies era, this paper uses historical research method with an emphasis on contemporary archival sources, which are traced, critiqued, analysed, and finally reconstructed. Based on the chosen theme of legal status, the archives that are used mostly take legal history data such as colonial era regulations and testimonies of their applications or public responses in contemporaneous newspapers. As a conclusion, it can be stated that Chinese ethnic were the object of policy and were not negatively responsive but accepted it with the hope of achieving the most benefit from the policy that was applied to them.

KEYWORDS

Gelijkgesteld; Regulation; Legal System; Colonial Era; Chinese

INTRODUCTION

On January 24th, 1918 a *Tionghoa* (Chinese person) wrote a letter that was published in *de Telegraaf* newspaper in the Netherlands. The letter contained a warning to the government as a reminder of the promise that was made by Governor-General van Limburg Stirrum at the Congress of Chinese People in Bandung.¹ The promise stated that Chinese people would obtain equal rights before the law, especially criminal law (*gelijkgesteld voor politie zaken*), just as the Japanese people had obtained under the Dutch East-Indies colonial legal system.

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¹ This congress was held by the Tiong Hoa Yjong Hwe Organization that established the aim of the organization in Bandung in the September of 1917. "Centrale Chineesche Vereeniging" in *De preianger bode*, October 6th, 1917, 1st sheet.

At the end of the letter, the author expressed a hope that the discrimination that had been carried out by the Dutch government against the Chinese ethnic would soon be ended as they were recognized as its citizens.²

The above paragraph discusses the issue of equal legal status of the Chinese people to obtain the same rights and responsibilities as were obtained by the European and Japanese people. The term for this “legal rights equalisation” is “*gelijkgesteld*”, which in a literal sense means “to be equalised”. This phenomenon became a defining characteristic of the legal system that was established by the Dutch East-Indies colonial regime since the 19th century, especially in the treatment of its colonial subjects who were differentiated based on race. This issue became particularly important because the colonial government used the European main standard in forming its administrative political policies and laws. As a consequence, those who were classified as European people and “were equalised with them” (*gelijkgesteld met Europeanen*) would obtain a special and different status compared to those who were not included in this group.³

HISTORICAL REVIEW

In order to understand the legal status of Chinese people and the process of their equalisation with the European people, it is necessary to first explain the history of the ethnic’s presence since its arrival under the colonial structure until it managed to achieve a certain position within the colonial legal-formal system. This subject is important given that the social position of this group grew and evolved in the context of administrative activities that led to the granting of status and position to them within the colonial administrative structure.

As the object of this writing, the term “*Tionghoa*” (Chinese) itself has a meaning, which is associated with the status of “*negeri Tionghok*” (China) as the Kingdom of the Middle Realm (*Bloemrijk van het Middenrijk*).⁴ The term encompasses two different types of this nation, namely the *Sinkeh* (those who are born in China) and the *peranakan* who have been born in the Dutch East-Indies or Indonesia.⁵ The Dutch government referred to both of them as *hoa kiao* which means “Chinese people who temporarily live here”.⁶ Over the course of colonial history, the existence of both terms marked the origin of their arrival.

Although it can be acknowledged from various historical sources about the presence of Chinese people in Nusantara since the early centuries AD and the relationship between the archipelago and the Chinese home region of China, their legal status remained uncertain until their placement under the colonial legal structure in the middle of the 19th century. Attempts that were made by the VOC rulers in the early years of its existence as well as the establishment of a Chinese bureaucracy in Batavia at the beginning of the 17th century did not provide clear certainty regarding their legal status.⁷ Likewise, VOC’s policy on Chinese ethnic settlement after the riots of 1740, which was followed by the “*Perang Cina*” (Chinese

² “De Zaak Beyerink” in *Bataviaasch Nieuwsblad*, January 28th, 1918, 3rd sheet.

³ “Europeanen” in D.G. Stibbe en H.J. de Graaff, *Encyclopaedie van Nederlandsch Indie, eerste deel* (’s Gravenhage, 1917, Martinus Nijhoff), page 695.

⁴ Kingdom of the middle realm when viewed from geographical aspect has a major influence on the regions surrounding it as a center of cultural distribution. M.W. de Visser, *De Invloed van China en Indie op de Japaansche Taal en Literatuur* (Leiden, 1917, E.J. Brill), page 6.

⁵ Ong Eng Die, *Chineezzen in Nederlandsch Indie : Sociografie van een Indonesische Bevolkingsgroep* (Assen, 1943, Van Gorkum), page 13.

⁶ Therefore, *Hoia Kiao* when viewed from China’s (*Tionghok*) perspective are Chinese people who live in other countries. F. Veldhuyzen, *Hoia Kiao : Chineezzen in Indonesie* (Amsterdam, 1948, Uitgeverij Keizerskroon), page 6.

⁷ B. Hoetink, *So Bing Kong: Het eerste hoofd der Chineezzen te Batavia* (’s Gravenhage, 1923, Martinus Nijhoff), page 1. VOC needed the presence of these Chinese people because their skills and energies were necessary in building the city in order for it to grow into a metropolitan of land and sea that would benefit the VOC’s economy.

War) of 1741-1743, did not provide any certainty of their status apart from the spatial restrictions that was imposed on this ethnic group.⁸

The decision of Governor-General H.W. Daendels that placed this ethnic group under the legal authority of the colonial government as subjects of the government also did not provide any clear certainty regarding their status. This policy could only be felt in the territories of the indigenous kings who separated the Chinese ethnic from other communities there in terms of settlement and political treatment.⁹ There were no visible difference regarding the presence and status this ethnicity in the government areas, including in the matter of land ownership.¹⁰

Under the British rule, the policy of Lieutenant-Governor Th.S. Raffles in regard to the Chinese ethnic also showed no difference when compared to his predecessors. The primary function of this ethnicity as the British government's source of finance led to them being considered as partners of the government, particularly trusted as landowners, buyers of a number of exploitation sectors and also managers of local businesses, including as buyers of *landrente* which became its program of agrarian reform.¹¹ This is evident from his statement about them

Small duties are generally levied in these bazars, the collection of which was formerly farmed out to Chinese but it being found that they exacted more than the settled of authorized rate, and that they contrived, by means of the influence which their office conferred, to create a monopoly in their own favor, not only of the articles of trade but of many of the necessaries of life, that system has latterly been relinquished wherever practicable, and government has taken the management of that portion of the public revenue into its own hands.¹²

In the above statement, it can be understood that the Chinese people had the influence and expertise in carrying out the businesses that were entrusted to them by the government.

This function continued for the Chinese ethnic after the authority over the Dutch East-Indies colony was taken over by the Dutch government from the British in August of 1816. The activities and functions of the Chinese people in the hinterland were especially needed by the government to continue the implementation of their exploitative policies towards the indigenous people. Even within the territories of the Javanese kings, their presence was facilitated and guaranteed by the government officials who were stationed in that area (*residen*). Although warnings were issued by a number of officials concerning the risks posed from such activities by the Chinese people, the Dutch government in Batavia preferred to allow this ethnicity to become the government's agents in its policy of social exploitation among the indigenous people.

⁸ From November 1740 to August 1742 VOC issued amnesties to lure back Chinese people who left Batavia and commit resistance. For the 5934 Chinese people who returned to Batavia, a place was provided on the periphery of the city with a sugar milling (*suikermolen*) and arrack distillery. (*arakbranderijen*) business. Johannes Theodorus Vermeulen, *De Chineezers te Batavia en de Troebelen van 1740* (Leiden, 1938, Eduard Ijdo), page 133.

⁹ In article 18 of the contract with the Sultanate of Banten, Daendels stated that Chinese people along with other foreign indigenous people within the territories of Banten Sultanate were no longer considered as subjects of the Sultan but of the Dutch East-Indies government. Herman Willem Daendels, *Staat van nederladnsch Oost Indische Bezittingen onder het bestuur van Maarschalk en Gouverneur Generaal H.W. Daendels* (Amsterdam, 1814), *organique stukken van Bantam no. 4*.

¹⁰ During Daendels' government era, the policy of selling lands with "*partikelir*" (private) land status became one of the main pillars of income source for the government and most of the land purchasers were Chinese people. C.H.F. Riesz, *De particuliere landerijen van Westelijk Java, eerste deel* (Batavia, 1887, G. Kolff en Co), page 24.

¹¹ H.D. Levyssohn Norman, *Britsche Heerschappij over Java en Onderhoorigheden 1811-1816* (Granvenhage, 1857, Gebroeders Belinfante), page 244.

¹² Sir Thomas Stamford Raffles, *The History of Java, vol. I* (London, 1830 John Murray), page 221.

This put the Chinese people, especially those who operated in the hinterland, at great risk. In the early months of the “*Perang Jawa*” (the Javanese War), almost all of Chinese business objects in the hinterland became the targets of mob violence as well as assaults and killings by the armed Javanese soldiers. Toll gates, excise markets, gambling houses, auction houses and money exchange places, which were the main centers of Chinese commercial activity, became the targets of large-scale attacks and destruction by mobs. This issue did not stop here, as violent actions continued with attacks on Chinese settlements and the burning of their houses, accompanied by massacres.

In all of these incidents, the colonial authorities were unable to help. The local Dutch military commanders also did not seem to care about these events. They devoted much of their attention to strategic military operations in order to deal with the people’s fighting force under Diponegoro’s field commanders, and were more concerned in securing strategically vital locations such as the “*kraton*” (royal palace), nobles’ houses, government buildings and bridges rather than the business centers of Chinese ethnic including markets.

The Chinese officers at the scene of riots could not do much themselves when faced with such situation. Although protests and requests for help and protection were submitted by them to the local resident as the highest head of colonial government, these civilian officials could perform no action without coordination with the local military officers. In addition to the shortage of troops, especially in the first year of Diponegoro’s resistance, it was understood by the Dutch civilian officials that the focus of attention of the Dutch military ranks was not directed on the interests of the Chinese people. As a consequence, no meaningful action was taken by the Dutch government in protecting the Chinese ethnic who were considered to be its subjects.

Entering the *Kultuurstelsel* era, which was characterized by the political stability and safety after the year 1830, the economic role of Chinese ethnic was once again taken into consideration by the colonial government along with the escalation of agrarian exploitation under the leadership of Governor-General J. van den Bosch. Although no longer as lively as the period prior to 1825, Chinese economic activity in the hinterland was allowed by the government up to the rural level. They were even granted the freedom to engage in sectors that were profitable to the government such as rent-seeking, pawnbroking, opium retailing, and the manufacture as well as management of local alcohol.

Beside private landowners (*particuliere landerijen*) who dominated several areas in Java, Chinese people also played a role as “*klas menengah*” (middleman) in the production process during the *Kultuurstelsel*. Since its very beginning, in August of 1830, their function and role was especially strategic for the government’s land production interest, as was described by Piccardt in the statement as follows

*Van den Bosch werd daarbij door eenige residenten uitstekend geholpen, zoodat bij den voorspoedigen voortgang der zaken reeds in Augustus 1830 besloten werd tot invoering en uitbreiding der cultuur in alle daarvoor geschikte residentien van Java. Daartoe ging men contracten aan met de hoofden en oudsten, die even als vele planters, zoo weinig met suikerteelt bekend waren, dat zij de leiding der zaken aan Chinezen moesten toevertrouwen.*¹³

Van den Bosch received excellent help from a number of residents, so that in August of 1830, following the rapid development of this affair, it was decided to introduce and expand the cultivation in all of the suitable residencies in Java. To this end, contracts were made with the local heads and leaders who, just as many

¹³ Rixtinus Arnoldus Soetbrood Piccardt, *De Geschiedenis van het Kultuurstelsel in Nederlandsch Indie* (Deventer, 1873, J.H. de Lange), page 81.

businessmen, were also unfamiliar with the cultivation of sugar that they had to entrust management of the business to the Chinese people.

Considering sugar as a highly productive and prospective crop in the *Kultuurstelsel* in addition to coffee, the role that Chinese people played as partners of the government became very strategic and profitable. Apart from that, it can be understood from the above statement that prior to Van den Bosch's arrival, the regional officials (resident) had already established a mutually beneficial economic cooperation with the local Chinese people, so they were ready to recommend it to the new Governor-General.

After the end of the *Kultuurstelsel*, which signified the end of government's dominance in the economy and the opening of the Dutch East-Indies colony to private investment through the *Agrarische Wet* of 1870,¹⁴ the presence Chinese people within the state exploitation system also ended. However, their position and status under the *Kultuurstelsel* had enabled them to re-enter the villages and establish relationships with the indigenous population. If in the years prior to 1807, when the ban on village leasing was made for the Chinese people, they controlled the economy of villages through piecemeal leases (*pachten*),¹⁵ now they established relationships with the villagers through trade channels, including credit granting, which gave rise to the term "*Tjina mindering*".

In regard to this, Burger provides the following review.

*Boven dit niveau wordt het economische leven vrijwel geheel georganiseerd door niet-Inlanders, in den handel voornamelijk door Europeanen en Chineezers, in de cultures vooral door Europeanen en Indo-Europeanen. De Chineezers werken voor een groot gedeelte op smallere basis dan de Europeanen en hebben niet immer behoefte aan deze kleine, boven individuele eenheden. De tjina's mindering hebben zonder eenige tusschenkomst van derden met hun Inlandsche credietnemers contact.*¹⁶

Outside of this level, the economic life is almost entirely organized by non-indigenous, particularly by European and Chinese people in trade, and by European and Indo-European people in the plantation industry. The Chinese people predominantly work on a smaller basis than the European people and do not always need these smaller units above the individual. This "*minding*" (credit granting) allows Chinese people to make contact with their indigenous debtors without the need of a third party.

From Burger's statement above, it can be known that Chinese people were able to establish transactions on an individual basis without institutions (business entities) as was practiced by the European people. This allowed them to establish direct cooperation with any individual including the indigenous people. This individual network later grew and evolved to form a non-spatial market, which was a network of low level trades that required no

¹⁴ *Staatsblad van Nederlandsch Indie* of 1871 number 55. This first agrarian law of the Dutch East-Indies was important because it opened the opportunities for individuals including the Chinese people to have absolute ownership over land (*eigendom*) besides those who had obtained it through private land ownership.

¹⁵ This restriction was included in the fourth section of article 19 of the Government Regulation for the lands of Cirebon (*Reglement van bestuur voor de Cheribonsche Landen*) February 2nd, 1809 that was issued by Governor-General H.W. Daendels. H.W. Daendels, *Staats van Nederlandsch Oost Indische Bezittingen onder het bestuur van den Gouverneur Generaal Herman Willem Daendels, bijlage tweede stukken* (Amsterdam, 1814).

¹⁶ D.H. Burger, *Ontsluiting van Java's Binnenlands voor Wereldverkeer* (Wageningen, 1939, H. Veenman en Zonen), page 230. From its term "*minding*" which originated from the word "*minder*", it could be suspected that these people were part of the low class and participants in field economic activities, not retailers or those from the upper-middle economic class.

specific location in performing its transactions. This system further determined the dominance of the low-level Chinese economy during the colonial rule system and lasted until the year 1959 when “*Peraturan Pemerintah*” (Government Regulation) number 10 was implemented which banned the economic activities of Chinese people at the rural level.

The Dutch Legal Policy on Vreemde Oosterlingen

In the middle of the *Kultuurstelsel* policy period, a legal-political event occurred in the Dutch East-Indies that affected the government policy towards the Chinese people. This event was the government’s decision to apply the principle of “*Konkordansi*” (Concordance) in the field of legal-formal regulations for the colony. This principle stated that the laws that were applied in the Netherlands would also be applied in its colony, and Dutch subjects were obliged to submit while indigenous rulers could subject themselves to the enforcement of the government’s legal regulations.

As a consequence of this decision, in 1854 the government issued the *Regeerings Reglement*, which became the first legislation in the Dutch East-Indies.¹⁷ In one of the articles that regulated the subject of citizenship or subjectship (*onderdaanschap*) in the Dutch East-Indies, the following provisions were stated.

Artikel 109

De bepalingen van dit reglement en van alle andere algemeene verordeningen, waarin sprake is van Europeanen en inlanders, zijn waar het tegendeel niet bepaald is, toepasselijk op de met hen gelijk gestelde personen. Met inlanders worden gelijkgesteld Arabieren, Mooren, Chinezen en allen die Mohammedanen of heidenen zijn.

Article 109

The provisions of this regulation and all the other regulations, in which reference is made to the European and indigenous people, if the contrary is not provided for, apply to persons who are equalised with them. Those who are equalised with the indigenous people are the Arabs, Moors, Chinese, and all who are Muslims or heathens.

From the above article, it is evident that Chinese people during the 19th century were classified or were equal in their status with the indigenous people. Thus, at the time this regulation was issued, the term “Foreign Easterners” (*Vremde Oosterlingen*) had not been officially coined to refer to a certain group of people in the formal juridical administration.

Those who were in the Dutch East-Indies at the time of the issuance of this law were considered as Dutch subjects (*Nederlandsch Onderdaan*) and had the same rights and obligations as those that were granted to the indigenous people. However, certain restrictions were applied to them, namely the restriction of living in certain *kampongs* (villages) that were designated for non-indigenous ethnicities only (*wijkenstelsel*).¹⁸ Those who left their *kampongs* were required to have a permit to travel, which was requested from the local European authorities after they obtained a letter of introduction from the head of *kampong*

¹⁷ *Staatsblad van Nederlandsch Indie* of 1855, number 2.

¹⁸ Those whose residence was limited by this *kampong* system were not only foreign immigrants or those who were classified as Foreign Easterners, but also foreign indigenous people who were not a part of the local native population. As a consequence this system created a segregation in the pluralistic social life on the basis of space and race limitation, because this *kampong* based settlement was considered mandatory to live in. *Bescheiden betreffende eene Herziening van het Wijkenstelsel voor de Vreemde Oosterlingen* (Batavia, 1909, Landsdrukkerij), page 9.

who was appointed among the ethnic group itself. This system was often referred to as the traveling license system (*passenstelsel*).¹⁹

About ten years after, the colonial government issued a new policy regarding the presence of these Foreign Easterners. Although this policy was actually aimed more at foreign eastern immigrants (*Oostersche Vreemden*), in actuality it provided opportunities for the *peranakan* Foreign Easterners who had already become subjects of the Dutch government to apply a request for a change of status. This was due to the increase in their mobility in accordance with their economic dynamics. This regulation, which was issued in 1866, states among other things as follows

Artikel 8

*De oostersche vreemdelingen die, krachtens bekomen vergunning tot inwoning, ingezetenen zijn geworden van Nederlandsch Indie, mogen zich vestige op alle plaatsen, waar wijken zijn aan gewezen voor den landaard waartoe zij behooren.*²⁰

Article 8

Foreign Easterners who based on permission that was obtained to reside, have become citizens of the Dutch East-indies, are permitted to settle in any where kampongs that are designated for the ethnic in which they belong to stand.

From this article, it can be acknowledged that naturalisation had occurred between the foreign immigrants and Dutch subjects that was based on ethnic similarity and those who were later integrated into their ethnic group would be subjected to the same enforcement (*wijkenstelsel and passenstelsel*).

In both of these systems, an important role was played by the heads of *Kampongs* who were often referred to as “*opsir*” (officers). These officers were appointed by the government through appointment letters from the Governor-General that were later given to the local European officials, who would also control their performance and give government instructions through them to the Foreign Easterners. These officers were given the ranks that were in accordance with the military ranks such as major for the residency level, captain for the *afdeeling* level, and lieutenant (which was the lowest) at the district level, while those at the *onderdistrik* level were merely considered as *kampong* heads who were not appointed by the central government.²¹

With the existence of such structure, which was only abolished by the end of the 1920s, the Dutch government implemented discriminatory policies and maintained social segregations in inter-ethnic relations in the Dutch East-Indies, especially the Chinese ethnic. They were not only separated in terms of spatial morphology but also in terms of bureaucracy from the other ethnicities, whether those were the European or indigenous, with the existence of such vertical bureaucracy structure. This bureaucracy only served its own ethnicity and was responsible to the European government.²²

¹⁹ Unlike the *kampong* system, this traveling license system was also applied to indigenous people, especially Java in the 19th century. This requirement was included in the *Staatsblad van Nederlandsch Indie* of 1816 number 25 with the intention to control safety by the government. After fifty years of implementation and many protests were submitted because of its constraint on mobility, this passing license system was abolished for indigenous people in 1863, but remained in effect for Foreign Easterners until the early 20th century. Anon, “De afschaffing van het Passenstelsel” dalam *Tijdschrift voor Nederlandsch Indie*, tahun 1863, jilid II, page 236.

²⁰ *Staatsblad van Nederlandsch Indie* of 1866, number 56.

²¹ *Regeerings Almanak van Nederlandsch Indie over het jaar 1901, eerste deel*, page 95.

²² *Staatsblad van Nederlandsch Indie* of 1892 number 8. In this subject the Chinese officers who were appointed by the colonial government were required to take an oath of loyalty to the Queen of the Netherlands and Governor-General of

The condition had caused a sense of discomfort for many people including the Chinese themselves. The existence of such structure that was attached to the settlement and license system was perceived as overly controlling and restrictive of their lives. As a consequence, many protests emerged, particularly since the beginning of the 20th century when the Dutch government launched its Ethical Politics and decentralisation.²³ They considered the existence of such system as incompatible with the ethical values and needed to be abolished.²⁴ It was only after twenty years had passed that the Dutch East-Indies government made the decision that the Chinese ethnic settlement system would cease to exist from the first of April 1919.²⁵

However it is evident from this step that a sense of doubt still existed in the Dutch East-Indies government. Apart from the long span of time it took to consider the matter, the abolition was only applied to Java and Madura while for the regions outside of Java this settlement restriction rule was still in effect. The same could be said in the judicial system, there were still noticeable differences between Java and Madura when compared to the regions outside of Java in the judiciary for legal cases that involved the Chinese ethnic. Outside of Java, people of Chinese ethnicity and indigenous people were still unified under one police court (*politierol*) on the grounds that political considerations weigh more heavily (*een maatregel die blijkbaar ook door politieke overwegingen ingegeven, zijn bedenkelijke zijde heeft*).²⁶

Due to continuous pressure even outside of Java, considering the settlement and passing license system limited the mobility that were required for the escalation of economic dynamics with crucial role that was played by the Chinese people, especially outside of Java, the system was eventually abolished in 1926. In the decision that was published concerning it, it is stated in the second article as follows

Vreemde Oosterlingen, die gerechtigd zijn in de gewesten buiten Java en Madoera verblijf te houden, zijn in de keuze van hun woonplaats aldaar geheel vrij.

Foreign Easterners, who are granted the right to reside in the regions outside of Java and Madura, are given the freedom to choose their residence there.²⁷

With that decision, a guarantee of freedom was given to the Chinese ethnic outside of Java in determining their domicile, especially to support their economic life.

While within the administrative juridical aspect, the existence of Chinese people as part of the Foreign Easterner group also experienced change when the Dutch East-Indies government issued the *Indische Staatregeling* in the year 1925 as a replacement for the *Regelings Reglement* of 1854. In article 163 which regulates the division of classes within the Indies society, it is noted in paragraph 4 as follows

Aan de bepalingen voor Vreemde Oosterlingen zijn behoudens den bij ordonnantie te regelen rechtstoestand dergenen onder hen, die het Christendom

the Dutch East-Indies, as well as readiness to carry out instructions which that were assigned to them and be accountable of the results to the nearest European government apparatus.

²³ In the context of decentralisation, this system was viewed as unsuitable to be implemented particularly in the cities that gained regional autonomy in the early 20th century such as township (*kotapraja*) and municipality (*kotmadya*). "Wijken stelsel" in *De Locomotief*, July 6th, 1914, 6th sheet.

²⁴ "Opheffing passen en wijkenstelsel" in *Het Nieuws van den dag voor Nederlandsch Indie*, January 22nd, 1914, 3rd sheet.

²⁵ *Staatsblad van Nederlandsch Indie* of 1919 number 150.

²⁶ "De Rechtstoestand der Chineezzen in Nederlandsch Indie" in *Weekblad voor Indie*, September 18th, 1925, number 11394, page 8.

²⁷ *Staatsblad van Nederlandsch Indie* of 1926 number 239.

*belijden, onderworpen allen, die niet vallen in de termen van het tweede of van het derde lid van dit artikel.*²⁸

Subject to the legal status of those among them who profess Christianity to be regulated by ordinance, all of those who do not fall within the terms of the second or third paragraph of this article are subject to the provisions for Foreign Easterners (those are the European and indigenous people).

In this last regulation, the Foreign Easterner group began to be considered not merely from their ethnic unity but also from a religious aspect. Those who embraced Christianity were suspected to no longer obtain the same treatment as non-Christians from the Dutch government. This matter allowed for the mobility of this group to increase and surpass the barriers within the two systems that were still maintained until that moment.

After these two systems were abolished, the existence of a Chinese bureaucratic structure (*Chinezen bestuur*) consisting of the officers was considered to be the last pillar of obstacle to mobility and was no longer in accordance with the times. The officers were viewed as ineffective because of the rapid growth of the Chinese intellectual elite during the first quarter of the 20th century, they were perceived as mere remnants of the old foreign eastern feudal bureaucracy that was no longer worth maintaining.

It appears that this effort was also successfully accomplished in 1934 when a decision was issued by the colonial government that as of the end of March 1934 all of the Chinese officer positions were to be abolished, with the exception of Batavia where the position was still considered necessary due to the high intensity of interaction with Chinese ethnic group. Thus the Chinese bureaucratic structure that had been maintained since the beginning of the 17th century ended and there were no more obstacles for Chinese individuals to engage in mobility and social interaction in their lives.²⁹

Gelijkgesteld and Vertical Gradation

Although in the early decades of the 20th century a policy shift towards more freedom and certain citizenship status placement for the Chinese people was created by the Dutch East-Indies government, it did not mean that this group obtained immediate equal rights and facilities as were enjoyed by the other groups. The European group was still guaranteed as the most privileged group in all respects by the Dutch government within the legislation, which was soon followed by the Japanese people.³⁰ Meanwhile, the indigenous group also gained the freedom of mobility without the restriction of the *kampong* system or the traveling license system, although in the bureaucratic structure (*indlansche bestuur*) they were more strictly regulated than the Foreign Easterner group.

According to the reasoning of Western legal experts, the difficulty in legally regulating the Chinese people as well as subjecting them to the same rules that were applied to the European people stemmed from the difference in basic legal principles. The Chinese people based their legal system on the basis of community, while the European people based theirs on the basis of family. This subject is evident in article 109 of the *Regeerings Reglement* as follows

Aan bepalingen voor Europeanen zijn onderworpen voorts alle van elders afkomstige personen, die in hun eigen land onderworpen zouden zijn aan een familierecht, in hoofdzaak berustende op dezelfde beginselen als het Nederlandsche.

²⁸ *Staatsblad van Nederlandsch Indie* of 1925 number 415.

²⁹ *Staatsblad van Nederlandsch Indie* of 1934 number 181.

³⁰ *Staatsblad van Nederlandsch Indie* of 1899 number 202.

Furthermore those who are subjected to the provisions for European people are all the individuals from elsewhere, those who in their country of origin would be subjected to a certain family law, especially the ones that are based on the same principles as the Dutch law.

The application of family laws that were similar to the ones applied in the European society, especially following the implementation of the concordance principle in the Dutch East-Indies, paved the path for Chinese people to obtain naturalisation and equal rights (*gelijkgesteld*) with the European people.

This path only grew when the abolishment process of the systems which had previously limited their mobilities reached its conclusion and the possibility for Chinese people to perform vertical mobilities was further guaranteed. However obstacles continued to exist, such as the one published in the mass media of that time

Van de ongelijkheid is in de practijk niet veel meer overgebleven, de tijden van passen- en wijkenstelsel liggen ver achter ons. De Chineezzen willen ook openlijk als aan de Europeanen gelijkwaardigen bekend staan. Toch is er nog een belangrijk verschilpunt en dat is de rechtsbedeeling. De Chineezzen staan hier te lande nog steeds terecht voor den Landraad, welk college zij minderwaardig achten aan den Raad van Justitie. Verdwijnt dus de wettelijke ongelijkheid ten opzichte der Chineezzen, dan ziet de Indische Regeering zich geplaatst voor een algeheele hervorming van ons rechtwezen.³¹

In reality, inequality is not widely practiced anymore, for gone are the times of traveling license and settlement system. The Chinese people also openly want to be known as equals to the European people. However, there is one important point of difference and that is the administration of justice. The Chinese people in this country still stand in trial before the District Court (Landraad), which its institution they consider to be inferior to the High Court (Raad van Justitie). If this legal inequality with regard to the Chinese people are to be abolished, the Indies government will have to face the task of reforming the entirety of our legal system.

From the above quote, it can be acknowledged that the process of of naturalisation and equalisation of rights was not only limited to the administrative field such as the settlement system, passing license, and bureaucarcy but also the legal and judicial field which required a process of reformation in order to pave a clearer path for the Chinese ethnic.

To facilitate the process, it was necessary that the rules of European law should be applied to the Chinese people and they had to be ready to accept and impelent them. Particularly in this case is the application of the civil and commercial law which in 1917 had already been prepared to be applied to the Chinese ethnic (*toepasselijkverklaring van het Europeesche burgerlijk en handelsrecht*).³²

These rules mainly concerned the legal status of Chinese people in following civil processes such as marriage and divorce in addition to their commercial affairs. Under these provisions, European civil law that regulated the subject of marriage was applied to Chinese married couples. They were thus legally recorded in the same civil registry (*burgerlijk stand*) as marriage records for the European people.³³ This was also applied to the law of inheritance

³¹ Chinesische Kroniek" in *Bataviaasche Nieuwsblad*, September 7th 1925, 2nd sheet.

³² "Juridische Vragenbus" in *Bataviaasch Nieuwsblad*, June 23rd, 1923, 9th sheet.

³³ *Staatsblad van Nederlandsch Indie* of 1917 number 129.

and descent including the subject of adoption for Chinese people which was equalised with those of European people. All of these civil activities were then included in the administrative system, which was registered and issued in the form of deed or certificate as evidence. The same also applied to cases of death.³⁴ Henceforth the Chinese people had been administratively equalised with the European people.

When these were possible, and it was perceived that there were no more obstacles to the application for equal rights, the number of applicants soared during the first half of the 1920s. The Dutch East-indies government itself was apparently unprepared for this. As the following excerpt shows.

*Het standpunt ingenomen dat bij de beoordeeling dier rekesten niet zoozeer moet gelden de positieve behoefte aan Europeesch recht dan wel de negatieve, om n.l. te ontkomen aan den rechtstoestand van niet-Europeanen. Deze behoefte wordt geacht te bestaan voor Chineezzen zoo zij wat betreft hun positieve uitkomen boven het gros der toekangs en kleinhandelaren.*³⁵

The standpoint taken is that in the assessment of these claims the positive need for European law should apply rather than the negative, namely to avoid non-European legal conditions. This necessity is viewed as existent for Chinese people if they exceed the majority of craftsmen and retailers in terms of their positive.

The quote above seems to show that economic aspects were also taken into consideration in granting equal rights status. Given that most Chinese people lived as either craftsmen or small traders, they were viewed as incapable of meeting the living standards and legal rules of European people. Therefore, those who could be considered for equalisation were those who met the economic criteria that was made in accordance to European standards of living.

However, the above phenomenon actually showed dualism within the colonial policy itself. The increase in the number of applications for equal rights (*gelijkstelling*) was also triggered by a regulation that was issued by the Dutch East-Indies government in 1912 which regulated the appointment of Chinese officers. This provision is stated as follows

*Door de Regeering is beslist dat met Europeanen gelijkgestelde Vreemde Oosterlingen tot Hoofden hunner natie kunnen worden benoemd aangezien de gelijkstelling slechts wijziging brengt in den rechtstoestand en niet in den landaard of de nationaliteit van den betrokkene. Ofschoon dus de gelijkstelling met Europeanen geen beletsel oplevert om tot Hoofd der Vreemde Oosterlingen te worden benoemd kan de wijziging van rechtspositie in het algemeen niet als eene aanbeveling voor de vervulling van die function worden aangemerkt.*³⁶

It has been decided by the government that Foreign Easterner who are equalised with the European people could be appointed as heads of their nation, considering this equalisation only brings about the change of legal status and not of the ethnic or nationality. Although the equality with European people does not cause obstacle for the appointment as head of the Foreign Easterners, the change of legal status in general cannot be considered as a recommendation to fill this position.

³⁴ *Staatsblad van Nederlandsch Indie* of 1917 number 130.

³⁵ "Gelijkstelling van Chineezzen" in *De Sumatra Post*, July 21st 1924, 10th sheet.

³⁶ *Bijblad op het Staatsblad van Nederlandsch Indie* of 1916 number 8326.

Although the above provision only related to the requirements for the appointment as officers, this regulation was interpreted by the Chinese people as an opportunity to improve their status and legal position in general, including in improving their economic careers. As a consequence, a surge in the number of applications for equal rights occurred, far exceeding the number of existing officer positions in the Dutch East-Indies.

This situation forced the Dutch government to remove the limits of administrative requirements and make concessions. Among other examples, it relaxed the regulations that were issued regarding the Chinese civil affairs that had been promulgated in 1917. Since the first of March 1925 the government reissued a new regulation by adding to the areas that were regulated from the previous regulation. Among other things, article 19 was as follows

*De bemoeiingen van de wees- en boedelkamers met Chineezers en hunne boedels, voordat ter plaatse deze ordonnantie toepasselijk was aangevangen krachtens de destijds bestaande wettelijke voorschriften, worden door deze colleges op denzelfden voet voortgezet en ten einde gebracht.*³⁷

The interventions of the the estate offices and orphanages with Chinese people and their inheritances, prior to the application of this ordinance in this place, according to the then existing legal regulations, are continued and brought to an end by these institutions on the same basis.

With the issuance of this provision, the lives of individual Chinese people were closely associated to the institutional administrative system under the Dutch colonial structure with the aim of being adapted to the lives of European people.

Eventually, the colonial government recognized the need for equal rights for Chinese people, although the steps that were taken still showed signs of discriminatory policies against the Chinese ethnic, even to those who had obtained equal rights with the European people. Two notable evidences can be seen in these colonial political steps, the first being the composition of the *volksraad*. Although representatives of Chinese ethnic were appointed by the government, who were the fewest in number when compared to the European and indigenous representatives, these Chinese representatives were still considered as *Uitheemschem Nederlands Onderdaan* (Foreign Dutch Subjects), in order to distinguish them from the *Inheemsche* (Indigenous Dutch Subjects).

Secondly, in the case of the population census that was held in the 1930, the names of Chinese people who were equalised in rights with the European people were recorded separately from both the European or other Chinese people (*die op afzonderlijke lijsten zijn geteld*). This issue proves that whatever status might be given to them, the Chinese people were still different from the European people. If a European woman marry one of them, she would no longer be considered European but would be included as a part of “those who are equal to the European people” (*tot de groep worden gerekend*).³⁸

CONCLUSION

The history of the legal status and social position of Chinese ethnic in Indonesia has been long and full of ups and fluctuative. They depended on the social and political situation of the times, and would often have to endure the risks that came from the changes brought about by the political turmoils and changes in power. However, there is a defining character that cannot be ignored within the long span of time that has always colored and determined the

³⁷ *Staatblad van Nederlandsch Indie* of 1925 number 557.

³⁸ William Edward van Mastenbroek, *De Historische Ontwikkeling van de Staatsrechtelijke Indeling der Bevolking van Nederlandsch Indie* (Wageningen, 1934, H. Veenman en Zonen), page 95.

status of Chinese people, namely their relationship with the authorities, whether indigenous or foreign. This relationship and dependence on the authorities became the absolute requirement for their life and existence as an immigrant group who sought for livelihood outside of their land of origin. Ironically, the perception of “immigrants” is still attached to this ethnicity even though their descendants have already been born in Indonesia, namely with the classification in the Foreign Easterner group (*Vreemde Oosterlingen*).

In this paper, a particular phenomenon that is the subject of this discussion is the issue of equal rights or *gelijkgesteld*, an interesting subject when compared to the centuries-long presence of Chinese people in Indonesia and the constant transformation of its governmental systems. Under the authority of indigenous kingdoms as well as the Portuguese or Spanish rule in several areas for at least a century, there were no laws concerning their status and position. The VOC, which started by appointing So Bing Kong as leader of the Chinese people in Batavia at the beginning of the 17th, had started the application of legal system towards them.

As a consequence of this policy, the Chinese ethnic began to become objects of subordination within the structure that was built in accordance to the laws that was actually applied on another continent (Europe) and were forcefully applied in the colony. Coercive enforcement and subjugation characterized the legal relationship between the Dutch East-Indies rulers and the Chinese ethnic during the course of the 19th and 20th centuries which led to the modern legal system relationship. From there, the affirmation of the administrative and formal juridical status of Chinese ethnic began to occur, and opened government policies towards them up until the post-colonial era by the Indonesian national government in all of its regulations.

On the contrary, there is no other options for Chinese ethnic but to accept such treatment, which is outlined through several legal rules. Any opposition to the rule of law is considered an act of crime or resistance against the existing authorities and should be ready to face the consequences. As a result, since the middle of the 19th century until now, the Chinese ethnic have been the objects of the alternating legal regulations depending on the changes of political authorities that in turn determine their policies towards the Chinese ethnic.

The equal rights that are pursued by this ethnicity are by no mean aimed at transforming themselves into other their ethnicities, but rather at social juridical reason, namely to obtain equal rights with other citizens and not be subjected to discrimination. Through this equal rights (*gelijkgestelling*) they hoped to enjoy the same facilities and freedom as were obtained by other citizen groups, whether they were the European people during the colonial period or the indigenous people during the national government era, through the implementation of various policies by the government such as name changes, citizenship status, and so on. Whatever form the policy may be, the status of Chinese people as object of the government persists, as either subjects or citizens. A new issue that is currently in need of answer is no longer the issue of difference but to what extent this ethnicity can utilize all of the things that it has achieved so far for its existence.

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